

ETP.1095/RPD/BCC

26<sup>th</sup> May 2018

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**By Email and Post**

Dear Mrs Wilcox,

**Proposed New Perimeter Fence  
Stoke Lodge Playing Field, Shirehampton Road, Bristol, BS9 1BN  
Concerns about Breach of Planning Control  
Town and Country Planning Act 1990  
Planning (Listed Buildings and Conservation Areas) Act 1990  
Town and Country Planning (Tree Preservation) (England) Regulations 2012  
The Town and Country Planning (General Permitted Development) (England) Order  
2015**

I am instructed by the community group 'Save Stoke Lodge Parkland' to bring to your attention proposed development that will cause significant and irreparable harm and request the City Councils assistance to ensure that such unauthorised development does not proceed.

As you will be aware, Cotham Academy successfully challenged Bristol City Council's decision to register Stoke Lodge Parkland as a town or village green. As a result of this, Save Stoke Lodge Parkland has become aware that the Academy proposes to proceed to erect a 2 meter high security fence around the Parkland prior to the commencement of the Autumn term in early September, which they mistakenly believe would be development permitted under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

The proposed 2 meter high security fence would cause severe harm to the setting of the Grade II listed Stoke Lodge House and its curtilage, to trees which benefit from Tree Preservation Orders, to the character of Stoke Lodge Parkland and to local ecology, including Badgers.

I understand that it is the intention of Cotham Academy to imminently erect the fence for the following reasons;

1. Cotham Academy Governors were advised, at the December 2017 Governors meeting, that 'work is being done on the design for the fencing, which may not need planning permission';
2. In early May 2018, following the Judicial Review decision, the Academy's Newsletter to Parents advised;

*"We have been unable to use our playing fields at the Stoke Lodge site since 2014 and now look forward to students playing sports on the fields again in the*

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*very near future. We also recognise that these playing fields are a valuable community resource and welcome the opportunity, as we always have, to work with local residents to produce a cohesive plan for sharing use of the space in the future.*

*Obviously, this is the best news possible but there is some work to do in terms of making the site secure before we are able to make use of the playing fields again. Therefore, we will keep you posted on developments, including on the planning permission that we now hope will be granted for our new sports pavilion funded by the Education Funding Agency."*

3. Jo Butler (Head Teacher), Sandra Fryer (Governor), Nathan Allen (FM Manager) and Susan Priest (Business Manager) advised Cllr John Goulandris (Stoke Bishop) and Alan Preece and David Mayer of Save Stoke Lodge Parkland, that the School are proceeding to install a 2 meter perimeter fence approximately 2 - 3 metres inside the line of their lease to exclude the public from the pitches and to create an external perimeter walkway around the field under permitted development rights. I attach a copy of Save Stoke Lodge Parkland's Newsletter dated 22.05.18 confirming the receipt of this advice.

I raise this concern because;

1. Stoke Lodge House is a Grade II listed building and is therefore an important Heritage Asset:
  - a. The erection of the fence will cause significant harm to the setting and character of the listed building;
2. Stoke Lodge Park is the curtilage of Stoke Lodge House;
  - a. The Parkland was developed as a landscaped garden for the house and forms its curtilage, a point confirmed by Peter Insole (Principal Historic Environment Officer).
  - b. The Parkland has a high visual amenity due to the undulating landscape and wide variety of trees that are in excellent condition spread throughout the site and as such represents parkland. (New North Bristol Institute, Environmental Statement Assessment of Alternative Sites - 18/08/04)
  - c. The Parkland is a Cultural Asset of significant amenity value and is an important Heritage Asset that will suffer possibly irreparable damage by the erection of the fence;
3. Stoke Lodge Parkland accommodates 14 trees with individual Tree Preservation Orders (TPO's) and ten groups of trees with Group TPO's;
4. The Parkland is important foraging for a large population of Badgers, and may include Badger setts;
  - a. Severing Badgers from their setts and essential foraging will cause them considerable harm.



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If the fence is erected in the location proposed, it will cause permanent harm to the TPO'd trees and significant harm to the listed building and its setting, to the character of the area as a whole and to the Badger population.

### **Permitted Development Rights**

The proposed development does not benefit from permitted development rights for the following reasons,

#### **1. The site is a Parkland that is at times used as a Playing Field, it is not a School**

Class A to Part 2 of Schedule 2 to the General Permitted Development Order 2015 (as amended) states;

'A.1 Development is not permitted by Class A if—

- (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—
- (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;'

The interpretation of Class A states;

A.2 For the purposes of Class A, "school" includes—

- (a) premises which have changed use under Class S or T of Part 3 of this Schedule (changes of use) to become a state-funded school or registered nursery as defined in paragraph X of Part 3; and
- (b) a building permitted by Class C of Part 4 of this Schedule (temporary buildings and uses) to be used temporarily as a school, from the date the local planning authority is notified as provided in paragraph C.2(b) of Part 4.

This quite clearly relates to buildings used as a school. The site is Parkland that is used at times as a school playing field, as a sports pitch by other organisations and as recreational space. The above right applies to Schools, not to other land no matter who it. The Order quite clearly does not state 'schools & land occasionally used as school playing fields'.

The fence therefore cannot be erected under this provision.

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## **2. Listed Building Curtilage or Boundary**

The permitted development rights to erect a fence to a school does not apply within the curtilage of a listed building or if the fence forms a boundary with a listed building or its curtilage. This is simply because the GPDO does not remove the requirement to secure Listed Building Consent under the Planning (Listed Buildings and Conservation Areas) Act 1990.

## **3. Impact on TPO'd Trees**

The proposed route of the fence had a significant impact on TPO'd trees, running directly through the Root Protection Zones and canopies of 9 of the 10 TPO Groups and 13 of the 17 individually TPO'd trees.

The harm to the trees may be irreparable: Permitted development rights do not outweigh protection to trees. Tree Preservation Order Consent is therefore required before completing any work that has an impact upon the trees.

## **4. Ecology – Badgers**

The site is known to be actively used by Badgers. I draw your attention to the attached objection to withdrawn application 16/06304/F (to erect a fence on the Parkland) submitted by Ruth Corner in 2016 which highlights that no Badger survey had been completed. We thus do not know whether Badger setts are present or how much harm the erection of the fence would cause harm to Badgers.

## **Contravention and Enforcement**

As you will be aware, Sections 16 and 66 of The Town and Country Planning Act 1990 state:

*'Authorities considering applications for planning permission or listed building consent for works which affect a listed building to have special regard to certain matters, including the desirability of preserving the setting of the building. The setting is often an essential part of the building's character, especially if a garden or grounds have been laid out to complement its design or function. Also, the economic viability as well as the character of historic buildings may suffer, and they can be robbed of much of their interest, and of the contribution they make to townscape or the countryside, if they become isolated from their surroundings, e.g. by new traffic routes, car parks, or other development.'*

Works within the curtilage of a listed building which affect the setting and character of a listed building requires Listed Building Consent. It is a criminal offence, with a possible unlimited fine and two years in prison, to carry out works that require listed building consent without such a consent being obtained. The offence is committed by the person who carried out the works and by anyone who caused them to be carried out.



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As advised by Historic England, preventing unlawful works is therefore a very important part of heritage protection.

Similarly, anyone who contravenes a Tree Preservation Order by wilfully damaging or carrying out work on a tree protected by an Order, or causes or permits such actions, without getting permission from the local planning authority is guilty of criminal offence and may be fined up to £20,000 in the Magistrates Court for each tree harmed.

Badgers are of course protected by the Protection of Badgers Act 1992, which confirms that one could be sent to prison for up to 6 months and get an unlimited fine if one is found guilty of any of these offences:

- Intentionally capture, kill or injure a badger;
- Damage, destroy or block access to their setts;
- Disturb badgers in setts.

Whilst Badgers are protected under the above legislation, Local Plan Policy DM19 advises;

*'Development which would be likely to have any impact upon habitat, species or features, which contribute to nature conservation in Bristol will be expected to:*

- i. Be informed by an appropriate survey and assessment of impacts; and*
- ii. Be designed and sited, in so far as practicably and viably possible, to avoid any harm to identified habitats, species and features of importance; and*
- 5. Take opportunities to connect any identified on-site habitats, species or features to nearby corridors in the Wildlife Network.*

*Where loss of nature conservation value would arise development will be expected to provide mitigation on-site and where this is not possible provide mitigation off-site.'*

It is therefore clearly and quite rightly, the Local Planning Authorities stated policy to protect nature conservation interests.

Save Stoke Lodge Parkland wish to protect the Parkland from inappropriate development and would not like the Cotham Academy, its staff or Governors to be fined for committing a criminal offence. I am therefore copying this letter to the Academy in the hope that it will prompt them to stop the implementation of unauthorised development.

## **Conclusion**

I hereby request that the City Council enters into a dialogue with the Cotham Academy before they cause significant harm and confirm to them that the erection of the proposed fence is not permitted development but requires Planning Permission and Listed Building Consent.

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As I have previously stated on behalf of Save Stoke Lodge Parkland, I am strongly of the opinion that such permission and consent should not be granted due to the significant harm the development would cause.

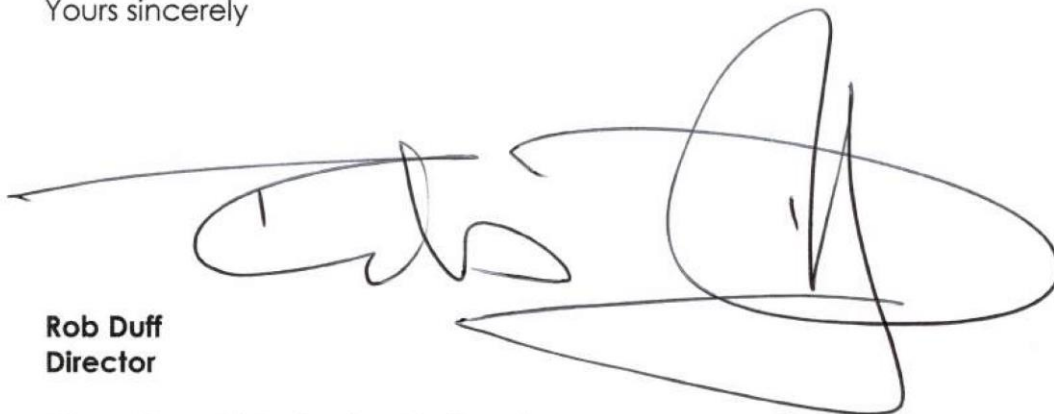
In line within the above advice from Historic England, I ask that the City Council act to prevent the proposed unauthorised and harmful works by entering into a dialogue with the Academy, and not wait until the harm has been caused to consider enforcement action.

I also request that, if works commence without authority, the City Council issues a Stop Notice without delay to limit the harm caused.

Save Stoke Lodge Parkland has asked me to again confirm that they do not wish to deny anyone use or access to the Parkland, but simply wish the status quo, which has continued for over 70 years without harm, to continue.

I thank you for your assistance with this matter and look forward to hearing from you with confirmation that the City Council has been in touch with the Academy.

Yours sincerely

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the left.

**Rob Duff**  
**Director**

C.c    Save Stoke Lodge Parkland  
         Jim Bowyer                    Cotham Academy Chair of governors  
         Jo Butler                        Cotham Academy Head teacher  
         Nathan Allen                  Cotham Academy FM Manager  
         Peter Insole                   BCC Principal Historic Environment Officer  
         Shahzia Daya                BCC Head of Legal  
         Cllr John Goulandris  
         Cllr Peter Abraham



# Save Stoke Lodge Parkland

## Newsletter 22<sup>nd</sup> May 2018

Below is an extract from a recent newsletter put out by Cotham to their parents following the result of the Judicial Review: -

*“We have been unable to use our playing fields at the Stoke Lodge site since 2014 and now look forward to students playing sports on the fields again in the very near future. We also recognise that these playing fields are a valuable community resource and welcome the opportunity, as we always have, to work with local residents to produce a cohesive plan for sharing use of the space in the future.*

*Obviously this is the best news possible but there is some work to do in terms of making the site secure before we are able to make use of the playing fields again. Therefore, we will keep you posted on developments, including on the planning permission that we now hope will be granted for our new sports pavilion funded by the Education Funding Agency.” (emphasis added)*

Below is an extract from the Cotham Minutes of the December 2018 Governors Meeting which is available on their web-site:

*“The Judicial Review has taken place. We don’t expect to hear anything before February 2018. SF and JBu gave an update.*

*We appealed on four grounds. There is another case going through on statutory compatibility (one of the grounds) which could strengthen our case. (they lost this point)*

*A planning application has gone in for the pavilion.*

*Work is being done on the design for the fencing, which may not need planning permission.*

*SF believes the field will be ready to use from September.*

*FPGP plan to have an open meeting for all Governors in January to go through SF’s paper on how to run Stoke Lodge.” (emphasis added)*

Cotham’s intention to proceed with their proposal to fence the pitches at Stoke Lodge was confirmed at a meeting held at the school on Monday 21<sup>st</sup> May attended by; -

1. Jo Butler - Head Teacher -Cotham
2. Sandra Fryer – Governor - Cotham
3. Nathan Allen – FM Manager - Cotham
4. Susan Priest – Business Manager - Cotham

5. Heather Marouf – PA to JB (taking minutes) - Cotham
6. Alan Preece – Save Stoke Lodge Parkland
7. John Goulandris – Stoke Bishop Councillor
8. David Mayer – Save Stoke Lodge Parkland

The meeting lasted for over 90 minutes but in summary: -

Cotham advised that they are proceeding to install a perimeter fence to restrict public access to the pitches. It will be located approximately 2 - 3 metres inside the line of their lease for the majority of its length but not all, notably hard up against Stoke Lodge Cottages requiring the use of Ebenezer Lane (despite access gates from the Cottages on to the field) and adjacent to the old barns on the House Boundary requiring use of the Adult Learning Centre car park to create an external perimeter walkway around the field.

Cotham claim that because the fence will be 2 metres high it will not require planning permission and is allowed under “permitted development rights” hence they intend to start work shortly with the intention of using the field for school sport in September.

Cotham confirmed that formal sports clubs will be invited back to use the field.

Cotham confirmed that when they, or the formal sports clubs, were not using the field the community would be permitted to use the whole of the field including the land leased to them. Importantly, this use would not extend to dog walkers within the land leased and fenced by them.

The process for determining how the community would gain access to the land inside the fence is yet to be determined but they did say that gates could be unlocked at that time and hence keys would not be required. They stressed that access would be subject to compliance with a strict code of conduct and some kind of access agreement yet to be defined.

Cotham invited us to consider our response to these proposals.

Following the meeting we felt the first course of action, before responding to this request, should be to take professional advice as a matter of urgency on whether Cotham can proceed to install a fence without planning permission and whether Permitted Development Rights are applicable in this location, or if restrictions on permitted development rights apply e.g.

*There are a number of permitted development rights that do not apply to listed buildings and which will require express planning permission from the local planning authority. An example is the erection of a building, enclosure (ie. fencing), pool or container within the curtilage of a listed building.”*

Would any member who has not responded to our request to confirm their agreement for us to hold their contact details, in accordance with the new Data Protection legislation, please do so before the 25<sup>th</sup> May to prevent us from having to strike them from our records.

**Kind regards**

**David Mayer**

**Chairman – Save Stoke Lodge Parkland**



**1. The fence would harm the character and appearance of this Grade II listed building, its curtilage listed buildings and its parkland setting, and would damage the significance of Stoke Lodge as a heritage asset.**

Historical records show that the curtilage of the Stoke Lodge listed building is the boundary of the Stoke Lodge open space. *Stoke Lodge A Brief History* by Brian Little M A notes that Plots 523 - 528 on J P Sturge's plan of 1817 were used for Stoke Lodge, and that "The man who built Stoke Lodge, and who no doubt intended it as a spacious set out-of-town residence, was William Munro." The house was completed in 1836. The 1844 - 1888 O S plan shows that the house had a lodge on Ebenezer Lane (now 1 and 2 Stoke Lodge Cottages) and that parkland trees had been planted throughout the grounds and alongside Shirehampton Road (many of which are still in existence). The house and grounds have remained in single ownership since they were built and landscaped, and are now all owned by Bristol City Council. Stoke Lodge was Grade II listed in 1994 and is therefore an important heritage asset.

No Heritage Statement has been submitted showing an understanding of the significance of this heritage asset and the impact of the proposed fence on it. However, it is clear that the fence has no historical justification and its siting would physically and visually separate the house from its curtilage and parkland setting as described above. Its height, design and materials would also be out of keeping and inappropriate, harming the character and appearance of the house, its curtilage listed buildings (the gazebo, garden walls, outbuildings and boundary walls to Shirehampton Road and Ebenezer Lane) and its parkland setting. Consequently the proposal would damage the significance of Stoke Lodge as a heritage asset.

**2. The fence would prevent access by badgers to the grassland for foraging and feeding on earthworms and insects, and harm their future in the locality.**

The open grassland of Stoke Lodge is a vital foraging and feeding area for badgers. For many years the badgers have been studied by the University, and three of the larger social groups (from Druid Stoke Avenue, Coombe Bridge Avenue and the halls of residence) rely on the grassland for feeding on the large numbers of earthworms and insects that come to the surface of the ground on warm wet nights. One badger can eat several hundred earthworms from the Stoke Lodge grassland in one night in these ideal conditions. Badgers use the grassland nightly; only on very rare nights in extreme weather conditions do they not use it. Following the housing development of the Clifton High School and National Smelting Company playing fields, Stoke Lodge is now the only area of grassland left in Stoke Bishop for the badgers to feed on. They depend on having open access to it.

No report on the use of the land by the badgers and the effect the proposed fence would have on their future has been submitted. I have been told that Professor Stephen Harris (an internationally-recognised authority on mammalian studies who has done much work on badgers in particular) has stated that the fencing of the Stoke Lodge grassland would be disastrous for wildlife. Also that he considers that the provision of badger gates in the fence would not be practical because of the complicated travel routes all over the grassland from a very large number of entry points (badger gates are only normally used on specific badger paths). The proposed fence would therefore harm the future of the local badger population by preventing them accessing their essential feeding grounds.

**3. The fence would result in the loss of trees protected by Tree Preservation Orders Nos. 451, 1236 and 1192 and cause serious harm to public visual amenity.**

No account has been taken of the effect of the fence on the trees protected by the Tree Preservation Orders. On the application form the answer given to Q 15 "Are there any trees or hedges on the proposed development site?" is No. The proposed site plan for the fence does not show the accurate location and spread of all the trees protected by the three Tree Preservation Orders, many of which are special because they are either unusual, very old or both. However, it is clear from looking at the protected trees on site that the fence would either go through the trunks of some of them, or the fence post footings would be built within their rooting areas contrary to BS5837 Trees In Relation To Design, Demolition Or Construction (as would be the case for the splendid aged oak tree at the Cheyne Road entrance.) None of these protected trees would survive, and the loss of visual amenity to the public would be huge.

In her letter of objection of 13th December 2016 the Neighbourhood Partnership 3 Tree Champion Stephanie French gives detailed information about the protected trees and the threat to them by the proposed fence.

**As a result the proposed fence would be contrary to Policies DM31 Heritage Assets, DM19 Development and Nature Conservation and DM17 Development Involving Existing Green Infrastructure of the Council's Site Allocations and Development Management Policies 2014, and should be refused permission.**