

Democratic Services

Riverside, Temple Street, Keynsham, Bristol BS31 1LA

Our ref:

Telephone: (01225) 477000 *main switchboard*

Date: 15 November 2011

Direct Lines - Tel: 01225 394452

E-mail: Democratic_srvices@bathnes.gov.uk

Web-site - <http://www.bathnes.gov.uk>

To: All Members of the Regulatory (Access) Committee

Councillor Nicholas Coombes
Councillor Douglas Deacon
Councillor Jeremy Sparks
Councillor Tim Warren
Councillor Peter Edwards

Chief Executive and other appropriate officers
Press and Public

Dear Member

Regulatory (Access) Committee: Tuesday, 29th November, 2011

You are invited to attend a meeting of the **Regulatory (Access) Committee**, to be held on **Tuesday, 29th November, 2011 at 5.30 pm** in the **Council Chamber - Guildhall, Bath.**

The agenda is set out overleaf.

Yours sincerely

Jack Latkovic
for Chief Executive

If you need to access this agenda or any of the supporting reports in an alternative accessible format please contact Democratic Services or the relevant report author whose details are listed at the end of each report.

This Agenda and all accompanying reports are printed on recycled paper

NOTES:

1. **Inspection of Papers:** Any person wishing to inspect minutes, reports, or a list of the background papers relating to any item on this Agenda should contact Jack Latkovic who is available by telephoning Bath 01225 394452 or by calling at the Riverside Offices Keynsham (during normal office hours).
2. **Public Speaking at Meetings:** The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group. Advance notice is required not less than two full working days before the meeting (this means that for meetings held on Wednesdays notice must be received in Democratic Services by 4.30pm the previous Friday)

The public may also ask a question to which a written answer will be given. Questions must be submitted in writing to Democratic Services at least two full working days in advance of the meeting (this means that for meetings held on Wednesdays, notice must be received in Democratic Services by 4.30pm the previous Friday). If an answer cannot be prepared in time for the meeting it will be sent out within five days afterwards. Further details of the scheme can be obtained by contacting Jack Latkovic as above.

3. **Details of Decisions taken at this meeting** can be found in the minutes which will be published as soon as possible after the meeting, and also circulated with the agenda for the next meeting. In the meantime details can be obtained by contacting Jack Latkovic as above.

Appendices to reports are available for inspection as follows:-

Public Access points - Riverside - Keynsham, Guildhall - Bath, Hollies - Midsomer Norton, and Bath Central, Keynsham and Midsomer Norton public libraries.

For Councillors and Officers papers may be inspected via Political Group Research Assistants and Group Rooms/Members' Rooms.

4. **Attendance Register:** Members should sign the Register which will be circulated at the meeting.
5. THE APPENDED SUPPORTING DOCUMENTS ARE IDENTIFIED BY AGENDA ITEM NUMBER.
6. **Emergency Evacuation Procedure**

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are sign-posted.

Arrangements are in place for the safe evacuation of disabled people.

Regulatory (Access) Committee - Tuesday, 29th November, 2011

at 5.30 pm in the Council Chamber - Guildhall, Bath

A G E N D A

1. EMERGENCY EVACUATION PROCEDURE

The Chairman will draw attention to the emergency evacuation procedure as set out under Note 6.

2. ELECTION OF VICE-CHAIRMAN (IF DESIRED)

3. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

4. DECLARATIONS OF INTEREST UNDER THE LOCAL GOVERNMENT ACT 1972

Members who have an interest to declare are asked to state:

(a) The Item No in which they have an interest,

(b) The nature of the interest, and

(c) Whether the interest is personal or personal and prejudicial.

Any Member who is unsure about the above should seek advice from the Monitoring Officer prior to the meeting in order to expedite matters at the meeting itself.

5. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

6. ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS

At the time of publication, no items had been submitted

7. ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS

To deal with any petitions or questions from Councillors and where appropriate co-opted members.

8. MINUTES OF PREVIOUS MEETING 25/10/2011 (Pages 5 - 8)

To confirm the minutes of the above meeting as a correct record.

9. KAYNTON MEAD TVG REGISTRATION APPLICATION (Pages 9 - 88)

An Application has been received by Bath and North East Somerset Council in its capacity as Commons Registration Authority ("the Authority") to register land known as 'The Track, Kaynton Mead' in Lower Weston, Bath as a Town or Village Green ("TVG"). The Application was advertised and an objection was received from Bath and North East Somerset Council's Property Services department.

An independent expert, Mr Leslie Blohm QC of St John's Chambers in Bristol ("the Inspector") was appointed by the Authority to conduct a non-statutory public inquiry and then report with a recommendation in relation to the Application. The Regulatory (Access) Committee ("the Committee") is asked to consider the Application and the Inspector's report and to determine whether 'The Track, Kaynton Mead' should be registered as TVG.

The Committee is recommended to refuse the Application and not register the land shaded blue, green or red on the plan attached to report ("the Plan") as a TVG.

10. RUDMORE PARK TVG REGISTRATION APPLICATION (Pages 89 - 158)

An Application has been received by Bath and North East Somerset Council in its capacity as Commons Registration Authority ("the Authority") to register land known as 'The Lane, Rudmore Park' to the south of Rudmore Park in Newbridge, Bath as a Town or Village Green ("TVG"). The Application was advertised and an objection was received from Bath and North East Somerset Council's Property Services department.

An independent expert, Mr Leslie Blohm QC of St John's Chambers in Bristol ("the Inspector") was appointed by the Authority to conduct a non-statutory public inquiry and then report with a recommendation in relation to the application. The Regulatory (Access) Committee ("the Committee") is asked to consider the Application and the Inspector's report and to determine whether 'The Lane, Rudmore Park' should be registered as TVG.

The Committee is recommended to refuse the application and not register the land shaded purple or pink on the plan attached to report ("the Plan") as a TVG.

The Committee Administrator for this meeting is Jack Latkovic who can be contacted on 01225 394452.

BATH AND NORTH EAST SOMERSET

REGULATORY (ACCESS) COMMITTEE

Tuesday, 25th October, 2011

Present:- Councillor Nicholas Coombes (Chair), Councillor Douglas Deacon, Councillor Jeremy Sparks, Councillor Tim Warren and Councillor Michael Evans (In place of Councillor Peter Edwards)

Also in attendance: Maggie Horrill (Planning and Environmental Law Manager), Graeme Stark (Senior Public Rights of Way Officer) and Jack Latkovic (Senior Democratic Services Officer).

49 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer drew attention to the emergency evacuation procedure as set out on the Agenda.

50 ELECTION OF VICE-CHAIRMAN (IF DESIRED)

RESOLVED that a Vice-Chair (person) was not required on this occasion.

51 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apology was received from Councillor Peter Edwards. Councillor Michael Evans was a substitute for Councillor Edwards.

52 DECLARATIONS OF INTEREST UNDER THE LOCAL GOVERNMENT ACT 1972

There were none.

53 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

There was none.

54 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS

The Chair informed the Committee that there are 3 speakers speaking in support of the Newbridge Meadows Town and Village Green application. Each speaker will have up to 5 minutes to address the Committee.

55 ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS

There was none.

56 NEWBRIDGE MEADOWS TOWN AND VILLAGE GREEN REGISTRATION APPLICATION

The Chair invited Mr John Weston (applicant) to address the Committee.

Mr Weston said that he was delighted that the Inspector has recommended that the Committee should registered Newbridge Meadows as a Town and Village Green. He also suggested that the area could be named as 'Queen Elizabeth II fields'. Mr Weston thanked his neighbours, local Councillors and Senior Rights of Way Officer and asked the Committee to approve his application.

A full copy of the statement from Mr John Weston is available at minute book in Democratic Services.

The Chair invited Dr David Dunlop to address the Committee.

Dr Dunlop said that Bath Society continues to support the application to register this land as the Town and Village Green as recommended by the Inspector. He also supported the suggestion that the land be named as 'Queen Elizabeth II fields'.

A full copy of the statement from Dr David Dunlop is available at minute book in Democratic Services.

The Chair invited Mr Robert Page to address the Committee.

Mr Robert Page also welcomed the Inspector recommendation to register the land as the Town and Village Green and asked the Committee to support the application for the reasons listed in his statement.

A full copy of the statement from Mr Robert Page is available at minute book in Democratic Services.

Councillor Loraine Brinkhurst MBE (Newbridge Ward Councillor) said that local Councillors supported recommendation from the Inspector. Both Newbridge Ward Councillors believe that this would be the asset for Newbridge and they thanked the applicant and residents for the support. Councillor Brinkhurst asked the Committee to approve the application.

The Chair invited Graeme Stark (Senior Rights of Way Officer) to introduce the report.

Graeme Stark took the Committee through the report and explained, as per the report, which land is considered to have met the evidential test in the application and was being recommended to the Committee for registration.

It was moved by Councillor Tim Warren, seconded by Councillor Douglas Deacon, and unanimously **RESOLVED** to **REGISTER** the land as a Town or Village Green as per Officer's recommendation.

The Chair advised the applicant to contact the relevant Cabinet Member in terms of naming the site.

57 UPDATE ON DEFINITIVE MAP MODIFICATIONS ORDERS AND PUBLIC PATH ORDER WORK

The Chairman invited Graeme Stark to give an update.

Graeme Stark went through the update with the Committee Members. He informed the Members that due to the recent budget cuts the service had stopped processing most of the Diversion Orders and will be looking to use outside specialist services to take on this work.

The Chair thanked Graeme Stark for the report.

It was **RESOLVED** to note the report.

The meeting ended at 10.23 am

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

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Bath & North East Somerset Council	
MEETING:	Regulatory (Access) Committee
MEETING DATE:	29 November 2011
TITLE:	Kaynton Mead TVG Registration Application
WARD:	Newbridge
AN OPEN PUBLIC ITEM	
<p>List of attachments to this report:</p> <p>Appendix 1 – Application to register ‘The Track, Kaynton Mead’ as a Town or Village Green</p> <p>Appendix 2 –Plan of land to which the Application relates</p> <p>Appendix 3 – Inspector’s report dated 29 September 2011</p>	

1. THE ISSUE

- 1.1 An Application has been received by Bath and North East Somerset Council in its capacity as Commons Registration Authority (“the Authority”) to register land known as ‘The Track, Kaynton Mead’ in Lower Weston, Bath as a Town or Village Green (“TVG”). The Application was advertised and an objection was received from Bath and North East Somerset Council’s Property Services department.
- 1.2 An independent expert, Mr Leslie Blohm QC of St John’s Chambers in Bristol (“the Inspector”) was appointed by the Authority to conduct a non-statutory public inquiry and then report with a recommendation in relation to the Application. The Regulatory (Access) Committee (“the Committee”) is asked to consider the Application and the Inspector’s report and to determine whether ‘The Track, Kaynton Mead’ should be registered as TVG.

2. RECOMMENDATION

- 2.1 The Committee is recommended to refuse the Application and not register the landshaded blue, green or red on the plan attached at Appendix 2(“the Plan”) as a TVG.

3. FINANCIAL IMPLICATIONS

- 3.1 The potential financial implications, for the Council as landowner, of the land being successfully registered are not a legally relevant consideration in the determination of the Application.

4. THE REPORT

- 4.1 **Application.** On 1 April 2010, Vanessa Lopez of 30 Ashley Avenue, Pam Richards of 1 Station Road, Karen Hill of 117 Newbridge Road and Suzanne Davies of 29 Kaynton Mead in Bath (“the Applicants”) applied under section 15 of the Commons Act 2006 (“the 2006 Act”) to register land known as ‘The Track, Kaynton Mead’ as a TVG. The Application, excluding the user evidence forms, is contained at Appendix 1; (the user evidence forms are available upon request). The Application was made on the basis that the land qualifies for registration by virtue of section 15(3) of the 2006 Act; however, at the Inquiry detailed below, the Applicants’ advocate requested on their behalf that the Application be amended so as to bring it under section 15(2) of the 2006 Act namely that;

“...a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application”.

- 4.2 The land to which the Application was originally made included an area to the south of nos. 131 to 153 Newbridge Road which is shown shaded blue on the Plan and is hereafter referred to as “the Blue Land”; however, the Applicants stated that this land was erroneously included in the Application. On 22 May 2010 the Applicants submitted a new map and Statutory Declaration which stated that the Application only related to the land shaded green on the Plan. At the Inquiry the Applicants’ advocate sought to amend the Application further by including two strips of land shown shaded red on the Plan; there was no objection to their inclusion from any party at the Inquiry. The land to which the Application relates is therefore as shown shaded green and red on the Plan contained at Appendix 2. This land is owned by Bath and North East Somerset Council and is hereafter referred to as the ‘Application Land’.
- 4.3 The Application was accompanied by 79 user evidence forms detailing use of Application Land from 1962 up until the date of the Application. The Authority has a statutory duty under the 2006 Act to consider and dispose of the Application.
- 4.4 **Assessment and Advertising.** On 28 April 2010, Officers of the Authority made a preliminary assessment of the Application and determined that it had been duly made.
- 4.5 On 3 June 2010, the Application was advertised by placing a notice in the Bath Chronicle and on the Authority’s website and serving notice on all interested parties including Property Services, the ward members and the Applicants. Additionally, notices were placed at five conspicuous locations around the Application Land and maintained on site until 9 August 2010.
- 4.6 On 20 July 2010, Bath and North East Somerset Council’s Property Services (“the Objector”) objected to registration of the Application Land as a TVG (“the Objection”) on the grounds that;
- i. the land has been used ‘by right’ rather than ‘as of right’,
 - ii. the land has not been used by the inhabitants of the stated neighbourhood within a locality, and
 - iii. the land has been used for way of passage rather than as a TVG.

Additionally, 211 letters of support for the Application were received from members of the public during the two month advertising period.

- 4.7 On 3 August 2010, the Objection was forwarded to the Applicants to give them an opportunity to respond to the points raised. On 16 August 2010, the Applicants responded to the Objection and challenged each of the points raised. On 16 September 2010, Officers of the Authority made an assessment of the Objection and the Applicants' response to the Objection. It was concluded that there remained significant points of dispute between the Applicants and Objector and it was therefore decided that a non-statutory public inquiry should be held to assess the evidence and relevant areas of law.
- 4.8 **Non-Statutory Public Inquiry.** The Authority subsequently instructed the Inspector, who is a barrister and an independent expert in TVG law, to preside over a non-statutory public inquiry ("the Inquiry") into the Application.
- 4.9 The Inquiry was scheduled to open on 13 June 2011 and to run for four days in the Council Chamber, Guildhall, High Street, Bath, BA1 5AW. On 12 May 2011, the Inquiry was advertised by placing a notice in the Bath Chronicle and on the Authority's website and by serving notice on all interested parties including the Objector, the ward members and the Applicants. Additionally, notices were placed at five conspicuous locations around the Application Land and maintained on site until 18 June 2011.
- 4.10 The Applicants and Objector were both given the opportunity to present their evidence, call witnesses, cross-examine witnesses, make legal submissions and present their cases for and against registration. At the opening of the Inquiry, the Applicants' advocates sought to amend the section of the 2006 Act under which the Application was made as detailed in paragraph 4.1 above and to amend the land to which the Application relates as detailed in paragraph 4.2 above. The Applicants' advocate also sought to amend the 'locality' to the parish of St John's Lower Weston and the 'neighbourhood' to Locksbrook, which runs between the southern side of Newbridge Road and Westfield Park, Brassmill Lane and Locksbrook Road. The Inspector also carried out a site visit accompanied by both the Applicants and Objector. The Inquiry concluded on 15 June 2011.
- 4.11 On 29 September 2011, the Inspector issued his report on the Application and recommended the Authority should decline to register the Application Land as a TVG. On 3 October 2011, the Authority sent the Inspector's report to the Objector and Applicants and asked both parties to provide any comments they may have on the report; neither party provided any comments on the report or recommendation.

5. STATUTORY TEST

- 5.1 The statutory test under consideration is set out in section 15(2) of the 2006 Act, which states that; "...a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application". The Application is considered in full in the Inspector's report contained at Appendix 3 and members of the Committee are advised to read the report in full before reaching a decision regarding the Application. Additionally, the constituent parts of this test are considered in turn below.

- 5.2 The Authority can only consider whether the legislative test set out in the 2006 Act have been met. The Authority cannot take into account whether registration is deemed desirable nor what may or may not happen to the land in the future.
- 5.3 **“a significant number”** The Application Land must be used by a significant number of people. This does not mean ‘a considerable or substantial number’ but it does need to be a level of use sufficient to show that the land is in general use by the local inhabitants rather than just use by a few individuals or an isolated group within the community. The Inspector addresses this test in paragraphs 59 to 63 of his report.
- 5.4 The Applicants submitted user evidence forms detailing use of the Application Land during the relevant period. A number of the individuals who completed these forms attended the Inquiry to give evidence of their use of the land and were cross-examined by the Objector’s advocate and questioned by the Inspector. A number of witnesses who gave evidence stated that they saw other inhabitants of Locksbrook using the Application Land in addition to those who gave evidence to the Inquiry.
- 5.5 After the construction of Kaynton Mead in 1995 the Application Land was clearly in general recreational use by the local inhabitant. Prior to 1995, the Application Land was more wild and potentially more hidden more public view. However, witnesses stated that even prior to 1995 use of the land was substantial and the Inspector found them to be honest witnesses.
- 5.6 At paragraph 63 of his report, the Inspector states that; *“I conclude therefore that a significant number of inhabitants of the community have used the land for recreation for the relevant period of twenty years.”* This test is therefore considered to have been met.
- 5.7 **“of the inhabitants of any locality, or of any neighbourhood within a locality”**A locality, or any neighbourhood within a locality, is the area inhabited by the users of the Application Land. A ‘locality’ is an area which is capable of being defined by reference to some division of the country known to the law. A ‘neighbourhood within a locality’ is an area within a locality with a sufficient degree of cohesiveness. The Inspector addresses this test in paragraphs 52 to 55 of his report.
- 5.8 As detailed in paragraph 4.10 above, the Applicants’ advocate amended the Application to relate solely to the neighbourhood of Locksbrook within the locality of the parish of St John’s Lower Weston. Locksbrook has specific boundaries, a cohesive character and local facilities and is identified on Ordnance Survey maps.
- 5.9 At paragraph 55 of his report, the Inspector states that; *“I conclude that the general perception of the location of ‘Locksbrook’ of which I heard is a correct one, and that the claimed neighbourhood is a sufficiently cohesive area to justify that description, throughout the relevant period of twenty years.”* This test is therefore considered to have been met.

- 5.10 **“have indulged as of right”** Use of the land must be ‘as of right’ which means that use must be without force, without secrecy and without permission. The Inspector addresses this test in paragraphs 64 to 70 of his report.
- 5.11 There has been no suggestion that any use by the public has been by force, secrecy or permission. However, the Application Land has been held under section 9 of the Open Spaces Act 1906 throughout the relevant 20 year period and this gave the public the right to use the land as general open space. The Application Land was therefore used ‘by right’, rather than ‘as of right’ as required by the 2006 Act.
- 5.12 At paragraph 70 of his report, the Inspector states that; “...*usage of the land has not been ‘as of right’ as required by the statute.*” This test has not therefore been met.
- 5.13 **“in lawful sports and pastimes”** The Application Land must be used for lawful sports and pastimes which can include a wide range of activities including, but not limited to, dog walking, football and nature watching; the activities must not be contrary to the law such as prize-fighting. The Inspector addresses this test in paragraphs 56 to 58 his report.
- 5.14 Witnesses at the Inquiry gave evidence of their use of the Application Land for a wide range of activities including walking, dog walking, child’s play, riding bicycles, ball games and blackberry picking. The Inspector rejects the suggestion that the land was used as a highway and notes that the user was not of a nature as to give the landowner the impression that the land was being used simply as a through route.
- 5.15 At paragraph 58 of his report, the Inspector states that; “*In my view the usage that there was would have been substantially referable to usage for recreational purposes.*” This test is therefore considered to have been met.
- 5.16 **“on the land”** “The land’ means the Application Land as detailed in paragraph 4.2 above.
- 5.17 The lawful sports and pastimes detailed in paragraph 5.14 above have taken place on the Application Land and this test is therefore considered to have been met in relation to the Application Land. The Applicants offered no evidence in relation to the Blue Land and it has therefore not been demonstrated that this test has been met in relation to the Blue Land.
- 5.18 **“for a period of at least 20 years and they continue to do so at the time of the application”** The Application Land must be used for a full period of 20 years. The Application was made on 1 April 2010 and the Application Land must therefore have been used from this date back to 1 April 1990.
- 5.19 Witnesses at the Inquiry detailed use of the Application Land going back several decades and at paragraph 57 of his report, the Inspector states that; “...*I accept the evidence of a number of the witnesses, that the land has been used since beyond the commencement of the twenty year period for these purposes, and that the usage continues up to the present day.*” This test is therefore considered to have been met.

- 5.20 **Conclusion.** As summarised above and detailed in the Inspector's report, the Application Land has not been used as of right by a significant number of the inhabitants of Locksbrook for lawful sports and pastimes. This land does not meet the legislative tests set out in the 2006 Act. No evidence was offered in support of the Blue Land and it has not therefore been demonstrated that the Blue Land has been used as of right by a significant number of the inhabitants of Locksbrook for lawful sports and pastimes either. Therefore, neither the Application Land nor the Blue Land should be registered as TVG.

6 RISK MANAGEMENT

- 6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

7. EQUALITIES

- 7.1 A proportionate equalities impact assessment has not been carried out as the Application must be considered solely in relation to the test set out in the 2006 Act.

8. CONSULTATION

- 8.1 *Ward Councillor; Cabinet Member; Other B&NES Services; Service Users; Local Residents; Community Interest Groups; Monitoring Officer*

- 8.2 Extensive consultation was carried out as detailed in paragraphs 4.5 and 4.9 above.

9. ISSUES TO CONSIDER IN REACHING THE DECISION

- 9.1 Legal Considerations; as detailed in paragraph 5.1 above.

10. ADVICE SOUGHT

- 10.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	Graeme Stark, Senior Rights of Way Officer
Background papers	'The Track, Kaynton Mead' TVG casefile User Evidence Forms Joint Evidence Bundle Joint Bundle of Authorities
Please contact the report author if you need to access this report in an alternative format	

Commons Act 2006: Section 15

Application for the registration of land as a Town or Village Green

Official stamp of registration authority
indicating valid date of receipt:

COMMONS REGISTRATION ACT 1985
BATH AND NORTH EAST SOMERSET COUNCIL

01 APR 2010

REGISTRATION AUTHORITY

Application number: TVGIO/I

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

Note 1

Insert name of
registration
authority.

1. Registration Authority

To the

Bath and North East Somerset Council
The Guildhall
High Street
BATH BA1 5AW

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

2. Name and address of the applicantName:

Full postal address:

Postcode

Telephone number:
(incl. national dialling code)Fax number:
(incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if anyName: Firm:

Full postal address:

Post code

Telephone number:
(incl. national dialling code)Fax number:
(incl. national dialling code)

E-mail address:

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**: ☐

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies: ☐

Section 15(3) applies: ☒

Section 15(4) applies: ☐

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

5th April 2008

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

** Only complete if the land is already registered as common land.*

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

The Track, Kaynton Mead

Location:

Kaynton Mead, Lower Weston, Bath

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

The neighbourhood of Lower Weston and Newbridge is situated in the localities that comprise the electoral wards of Newbridge and Kingsmead of Bath and North East Somerset District Council

Tick here if map attached:

☐

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

The land has been used by the inhabitants of the locality as described and set out in Section 6 above for a period of 20 years from the 5th April 1988 until the 5th April 2008 (and continue to do so) for lawful sports and pastimes, which are set out in greater detail within the accompanying statements (Appendix E) and supporting evidence, as of right, and in the belief that the land was and is a village green for the purposes of prescription obtained at Common Law and of the relevant Act and Regulations.

A significant number of the inhabitants both past and present have used the village green for a range of sports and pastimes which are set out in brief within the supporting statements from residents attached at Exhibit B to this application.

The Applicants and others will and do aver that they have used the land as a village green as of right without let or hindrance, except to the extent set out in the accompanying statement of support (Exhibit G).

As such the Applicants believe that all relevant criteria required to be demonstrated in order for the land to be entered in the register of village green has been met.

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

Bath and North East Somerset Council
The Guildhall
High Street
BATH

BA1 5AW

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

10. Supporting documentation

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

See attached list of supporting documents Appendix A Section 2

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

11. Any other information relating to the application**Note 12**

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

1st March 2010

Signatures:

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

APPLICANTS

Section 2 of application form.

The names and addresses of those applying for the registration of The Track at Kaynton Mead are:

Applicant 1:

Vanessa Lopez
30 Ashley Avenue
Lower Weston
BATH
BA1 3DS

Applicant 2:

Pam Richards
1 Station Road
Lower Weston
BATH

Applicant 3:

Karen Hill
117 Newbridge Road
Lower Weston
BATH

Applicant 4:

Suzanne Davies
29 Kaynton Mead
Lower Weston
BATH

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name
(and address if not
given in the
application form).

I, Vanessa Lopez,¹ solemnly and sincerely declare as follows:—
30 Ashley Avenue
Bath
BA1 3DS

² Delete and adapt
as necessary.


1.² I am ~~((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (one of the applicants))~~ 

³ Insert name if
Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in
the case of
voluntary
registration (strike
through if this is not
relevant)

~~4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:—~~ 

~~(i) a declaration of ownership of the land;—
(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have~~



Cont/

4 Continued

~~been received and are exhibited with this declaration; or~~
~~(iii) where no such consents are required, a declaration to that effect.~~

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said Vanessa Lopez

at 29 Kipling Avenue Bortn

this 28th day of March 2010.

Signature of Declarant

Before me *

Signature:

Address: 29 Kipling Avenue Bortn

Qualification: Solicitor

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

EXHIBIT A



This is the exhibit referred to in the Statutory Declaration of Vanessa Lopez.

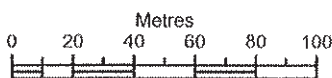
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The representation of a road, track or path is no evidence of a right of way.

The representation of features as lines is no evidence of a property boundary.



Scale 1:2500

Supplied by: **Latitude - Southampton**
Serial number: 03085300
Centre coordinates: 372835.5 165006.75

Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey website:
www.ordnancesurvey.co.uk

email:

nessauk@aol.com

30 Ashley Avenue
BATH BA1 3DS

24th May 2010

Dear Graeme,

Please find enclosed my replacement map and statutory declaration. These replace those submitted with the original Village Green application for the land at Kaynton Mead, Bath.

I hope that I have understood correctly the advice you sent me via email on how to rectify the error I made when I drew the outline of the Village Green land on the original application.

Yours sincerely,



VANESSA LOPEZ

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name (and address if not given in the application form).

I, Vanessa Lopez,¹ solemnly and sincerely declare as follows:—
30 Ashley Avenue
Bath
BA1 3DS

² Delete and adapt as necessary.

1.² I am ~~((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) ((³ one of the applicants))~~ [REDACTED]

³ Insert name if Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application, and is produced in substitution for the plan attached to my Statutory declaration sworn on 28th March 2010. ("my original declaration")

⁴ Complete only in the case of voluntary registration (strike through if this is not relevant)

~~4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:—~~

- ~~(i) a declaration of ownership of the land;—~~
- ~~(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have~~

4. In all the respects I confirm that my original declaration shall remain in full force and effect. Cont/

4 Continued

~~been received and are exhibited with this declaration; or~~
~~(iii) where no such consents are required, a declaration to that effect.~~

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said Vanessa Lopez

at 29 Kipling Avenue
Bath

this 22nd day of May 2010

Signature of Declarant

Before me *

Signature:

Address: 29 Kipling Avenue Bath

Qualification: Solicitor

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit



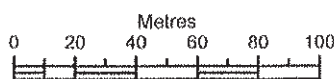
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The representation of a road, track or path is no evidence of a right of way.

The representation of features as lines is no evidence of a property boundary.



Scale 1:2500

Supplied by: **Latitude - Southampton**
Serial number: 03085300
Centre coordinates: 372835.5 165006.75

Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey website:
www.ordnancesurvey.co.uk

*This is the exhibit - plan
referred to in the
Statutory declaration of
Venera Lopez dated
22nd May 2010*

APPENDIX A

VILLAGE GREEN REGISTRATION

"THE TRACK" KAYNTON MEAD, LOWER WESTON, BATH

INFORMATION NOTES FOR INCLUSION IN FORM 44

1. Note on Section 4

(In setting out both the above date and the section in 4 above we would remind you of the advice of DEFRA in that such information can be amended at a later date if it is found to be appropriate to do so. And therefore your authority should if it is dissatisfied with that date for any reason should in the first instance seek clarification from the Applicant in order that if need be the relevant section and date can be amended.)

2. List of attached documents Section 10

Additional information unable to be included within the application form due to space restraints (in no particular order):

Exhibit A: Map of Village Green site

Exhibit B: Further Statements of Support from 79 local residents who collectively have used The Track for lawful pastimes as of a perceived right since the 1960s until the present day and continue to do so.

Exhibit C: Letter and additional evidence from Pam Richards.

Exhibit D: Further evidence – newspaper article dated 28th May 1998

Exhibit E: Witness statements of support from the applicants:

Exhibit E1: Witness Statement of Vanessa Lopez

Exhibit E2: Witness Statement of Pam Richards

Exhibit E3: Witness Statement of Karen Hill

Exhibit E4: Witness Statement of Suzanne Davies

Exhibit F: Photographic evidence showing resident use of The Track dated 28th April 2008

Exhibit G: Supporting Statement on behalf of the applicants.

Village green application – Linear Park behind Kaynton Mead

My husband and I have lived in Station Road, Locksbrook for over 35 years.

In the late 1970s we were involved in a Bath City Council planning consultation exercise which culminated in 1980 in the Western Riverside Area Plan. Objectives of this exercise for Locksbrook were to tackle the traffic problems caused by industrial traffic in narrow streets, increase and improve the landscaping and recreational space and to safeguard and consolidate the residential area. Amongst the recommendations was a proposal to construct a cycle path and walkway along the old railway line and to enhance this with landscaping. Although the cycle path has not been built, there has been access to the reserved strip and the adjacent land since that time and this has been informally used by local people.

In the early 1989 a planning brief was written for the development of the old BT depot (development of social housing now called Kaynton Mead). The brief stresses the need to retain and enhance the embankment as an important landscape feature and to improve access for local residents. The planning application (ref.113696-1) was submitted and granted in 1995 .

Documentation relating to the planning application demonstrates that the old railway land had been used by residents for sometime before the negotiations re: the new development commenced. Drawings by the architect Aaron Evans show several properties in Newbridge Road and Clarence Place with gates giving access on to the land. A letter dated 07.02.1995 from the Council's landscape architect states that 'Public pedestrian access can be gained already through an especially designed 'gap' in the fence.' It is via these access points that local residents gained access to walk dogs, gather blackberries, build dens etc. on the 'village green' area.

The planning application report for Kaynton Mead states that -
'The railway embankment was originally designated as providing the route of the cycle path. In view, however, of the difficulties in gaining control over the land to the west to provide a continuous route, this designation was recently amended to 'public open space'. Policy LR8 seeks to protect such open space from development and Policy LR13 seeks through tree planting and landscaping on open spaces to enhance the conservation area. Thus since the early 1990s the 'village green' area has been designated public open space.

Pam Richards
1, Station Road
Lower Weston
Bath BA1 3DX

the general principles for its development. At that time, it was anticipated that elderly persons dwellings would be provided, in view of the general need for such accommodation at that time and the locational advantages (level site, proximity to bus services, local shops etc). The Brief also indicated that both of the existing accesses should be retained, that landscape proposals for the site should be included and that the future of the disused railway embankment should be considered in conjunction with the development. At that time, it was envisaged as a wildlife corridor, planted with trees which would provide part of the cyclepath network.

Of particular note is the Brief's aspiration to address the issue of on-street parking in the area, and it states in paragraph 4.8 that rear access to the properties in Locksbrook Road and Clarence Place should be provided in any redevelopment proposals.

Policy H(a) in the Draft Replacement Plan sets out general criteria for residential development.

Policy H4 seeks to achieve housing development at a density appropriate to the character and amenity of the area.

Policy H(c) states however that the Council may grant permission for higher densities in appropriate circumstances where the proposal provides affordable on special needs housing but not if this should conflict with other standards or policies.

The site is located within the Conservation Area and hence policies C2, and C4 generally seek to ensure that development proposals enhance and preserve its character.

The railing embankment was originally designated as providing the route of the cyclepath. In view however of the difficulties in gaining control over the land to the west to provide a continuous route, this designation was recently amended to 'public open space'. Policy LR8 seeks to protect such open space from development and Policy LR13 seeks through tree planting and landscaping on open spaces to enhance the Conservation Area. Policy T(a) seeks to ensure that development proposals achieve a high standard of road safety.

Consultation Responses

Director of Highways

The internal scheme is now in a form that can be recommended. However, having considered a number of external off-site proposals the County Council have come to the view that the existing traffic pattern must remain in place with clarification of one way status of Locksbrook Road being reinforced into signs down to the westerly access as shown on the revised drawings.

It is noted that all parking is communal, as it has been provided at 150 percent and that the elderly persons units have substandard provision. An agreement will have to be entered into in respect of these units to limit age to 60 years and above.

Wessex Water

No objection in principle.

It is likely that surface water drainage from at least half of the site may drain by gravity to the existing public surface water sewer. It will be necessary for our precise requirements to be ascertained regarding the particular public surface water sewer to which connection can be permitted and the method to be used in connection.

Department of Property and Engineering Services

The development will be subject to a Section 38 Agreement for highway adoption

Bath City Council



Department of Environmental Services
Colin Fudge B.Arch, MA, MRTPI

Trimbridge House, Trim Street
Bath BA1 2DP
Tel: Bath (01225) 477000
Fax: Bath (01225) 477674

Margaret Maxwell Planning

Memorandum

Extension: 7586
Your Ref:
Our Ref: CJC/GCL/S244
Date: 7 February 1995

To: Alison Hayes - DPES

LOCKSBROOK ROAD - BT DEPOT AND ADJACENT OPEN SPACE (REAR OF NEWBRIDGE ROAD)

I am responding to your memorandum of 20th January 1995. I have delayed response in the hope of being able to give you definitive answers, but this is not possible in all areas.

As you may be aware my team are working with Aaron Evans to try and resolve a satisfactory arrangement (in landscape design terms) between the proposed residential area and the open space comprising the old railway line behind Newbridge Road. This has been undertaken with the agreement of David Littlewood, on whose behalf we have also been working.

In order to provide an appropriate area of open space for the residential development (as required by our Planners), it has been accepted that access to and improvement of the old railway line, as an open space and footpath link, should be pursued. This aspect of developing the BT site was flagged up in the Planning Brief for the site, dated March 1989.

Whilst a scheme has been prepared for the design of the whole park by Phillip Black of my team and has, in part, been incorporated into Aaron Evan's drawings, Margaret Maxwell is negotiating still with the developers regarding how much of that scheme can be paid for or undertaken as part of the development proposed. It is not anticipated that the whole design will be implemented in this way. However, as the City Council has no matching funding, nor budgets in existing programmes to complete the scheme, anything paid for by the developer needs to "stand alone", work in functional and visual terms and mitigate any impact of the development being played here and taking advantage of the open space provision.

In my view, the fencing of the northern boundary is important (although difficult to resolve) and Jonathan Peters (DLTED Parks) has recently confirmed his agreement. However, as this is something that cannot be resolved quickly and cannot be directly attributable to the effects of the proposed development, it is unlikely we would be seeking a contribution to its erection from the developers. Nevertheless, it is a matter which the City Council should pursue in the longer run. I believe we could lose valuable open space land if we do not, as we have elsewhere in the city.

The current scheme prepared by Phillip Black, indicates the need to resolve the boundary between the park and the development site. Some of the hard surfacing proposed is part of the park. However, in places it is debatable as to where the residential open space ends and the park begins. If anything, under the existing scheme, the park is encroaching more onto the residential area than the other way round. We were about to seek advice on the conveyancing

issue ourselves. The scheme has been agreed with Jonathan Peters including the implications of boundary resolutions. However, I should point out that we are about to embark on a revision to the scheme to reduce estimated costs. This is likely to affect the area in question. Until a final scheme is settled, details of any boundary issues cannot be taken forward.

It is anticipated that long term maintenance of the open space will remain with DLTED, although obviously it will have to change. Jonathan Peters has provided us with an estimate of annual costs, which could provide a basis for any commuted payment, should this be decided upon.

Public pedestrian access can be gained already from Station Road through an especially designed "gap" in the fence. This will probably need amending to reflect the upgrading of the footpath, but arrangements will still have to be made to prevent any vehicular access other than for maintenance. This is a design issue which can be resolved easily. I do not see it as a problem.

You mention a storage compound. Have the developers requested using the open space area specifically for storage? Personally I think this should be resisted strongly. My understanding is that they wish to gain access to the open space to secure works to the boundary and are therefore proposing to include parts of it within the site compound for safety and security reasons. All access would be from the development site. In addition I shall be advising our planners that access to our land should be limited only to allow this work to proceed and only if work cannot be reasonably done from the residential site side.



CHERRILL COPPERWHEAT
Principal Landscape Architect

cc: Rosie Bowyer - DOH
Martin Flowers - CSS
Jonathan Peters - DLTED
Margaret Maxwell - DES (Planning)

FR27981

war veterans. The flag was set alight in London as

many. She said they were reduced to tears in a German war

statement had to find out for themselves. She said: "Those who are not interested know nothing."

Community First and Rural Action. It was supported by the organisations

Thursday May 28 1998

Bath News

CLUE BENEDICT

12 RESOURCES ARCHIVES - 31/3/08

Family Announcements

952 Thank You

WHITE, Chalky

and Teresa

Would like to thank all family and friends for a super party and all the presents and cards. Once again, thank you very very much. And if you missed it, unlucky!!!

959 Deaths

PALMER, Joyce, passed peacefully away on Monday, May 25, 1998 at St Martin's Hospital, aged 74. Dearly loved wife of Pat and Mother of the late Glyn. Will be sadly missed by us all. The funeral service will be held at Haycombe Cemetery Chapel on Thursday June 4 at 2.30 p.m. followed by interment. Flowers and enquiries to G.F. Hunt Funeral Directors - Telephone 01225 424376. WILLIAMS, Jean, in loving memory of a dear wife and friend. Forever in my heart. Alex.

WILLIAMS, Jean. My dear loving Mum, my thoughts for you will never end. Your peace is our peace. Good-bye and God bless. Your Son, Chris and Lisa. Kisses.

WILLIAMS, Jean. My Mum my best friend, you were the wind beneath my wings. I'll always love you. Your Daughter Jackie. Son in Law John.

WILLIAMS, Jean. Dear Mum, and Nan, you were one of the best, greatly missed by all of us. Your Daughter Nicola, Andrew, Bradley and Jodie.

WILLIAMS, Jean. Mum, a long battle bravely fought. Until we meet again. Much love Kim, Duncan and children.

WILLIAMS, Jean. To my Mum, your pain has now gone. I'll always miss you and love you forever. Rest.

954 Birthday Greetings

40

BURNS, Jer

Happy 40th Birthday May 28th, 1958. Lots of love Donna, Jack, Samuel, Freddie.

For all your Family Announcements

Whatever the Occasion!

*Acknowledgments

*Anniversaries

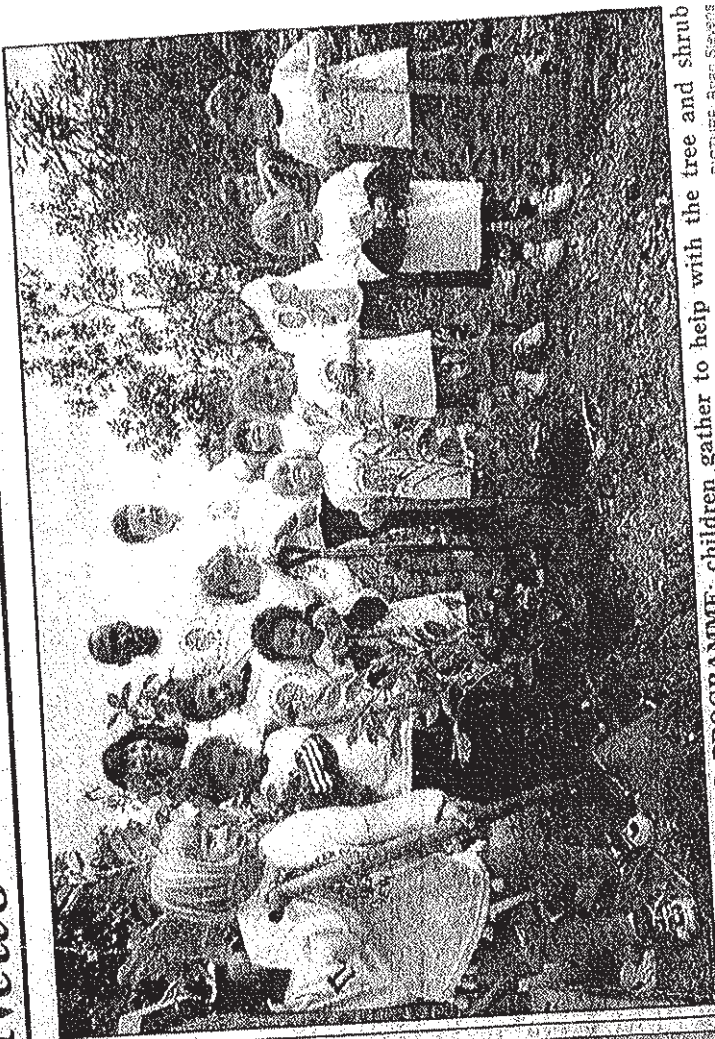
*Births

*Birthdays

*Congratulations

*Engagements

*Marriages



LANDSCAPING PROGRAMME: children gather to help with the tree and shrub planting at Station Road

PICTURE: Brian Stevens

Planting to develop community pride

By Crispin Gillbard
Chronicle correspondent

A SCHEME to encourage local children to appreciate their environment more fully has been started in Lower Weston, Bath.

The old railway track at Station Road has been turned into another linear walk for the city. Under the guidance of Bath and North East Somerset councillor Lorraine Brinkhurst, and community policeman Bob Hope, trees and shrubs are now being planted along the route.

It is hoped that these will promote a sense of pride and responsibility towards what local people say could be a charming backdrop.

"The planting day is designed to bring the whole community together for this venture," said Cllr Brinkhurst.

SUBMITTED: transfer to Western Riverside

Commons Act 2006


Application to Register Land as a Village Green Under Section 15(1)
KAYNTON MEAD TRACK, LOWER WESTON, BATH

WITNESS STATEMENT OF VANESSA LOPEZ

I VANESSA LOPEZ of 30 ASHLEY AVENUE, LOWER WESTON, BATH make the following statement in support of the application to register the land known as KAYNTON MEAD TRACK as a village green.

1. The land facing the homes in Kaynton Mead has been used for at least 20 years as a recreation area.
2. I have lived in this area for 9 years and in that time have only ever known the Track at Kaynton Mead as a local recreational green space.
3. I have seen local residents' children regularly using the land for play activities.
4. I and other local residents have used the area for observing wildlife and similar educational and relaxation purposes.
5. I have attended resident-organised November 5th bonfire night celebrations at this location.
6. I regularly see local residents using the area to exercise their dogs.
7. For all of the above reasons I ask that the registration authority enter into the register of village greens the land set out in this application.

I believe that the contents of this statement is to the best of my knowledge and believe a true statement of the facts therein set out.

Signature  Date: 04/03/2010

Vanessa Lopez

Commons Act 2006

Application to Register Land as a Village Green Under Section 15(1)

KAYNTON MEAD TRACK, LOWER WESTON, BATH

WITNESS STATEMENT OF PAM RICHARDS

I PAM RICHARDS of 1, STATION ROAD, LOWER WESTON, BATH make the following statement in support of the application to register the land known as KAYNTON MEAD TRACK as a village green.

1. I have lived in Station Road for 36 years and since the late 1980s the old railway line facing what is now Kaynton Mead has been accessible by local residents for recreation.
2. Several houses in Newbridge Road and Clarence Place have or had gates giving access to the land.
3. I have seen local residents' children regularly using the land for den-making and play activities. My own children came blackberrying with me on this land when they were small.
4. I and other local residents have used the area for walking and enjoying the trees and wildlife.
5. I regularly see local residents using the area to exercise their dogs.
6. For all of the above reasons I ask that the registration authority enter into the register of village greens the land set out in this application.

I believe that the contents of this statement is to the best of my knowledge and belief a true statement of the facts therein set out.

Signature  Date: 04.03.2010

Pam Richards

COMMONS ACT 2006

**APPLICATION TO REGISTER LAND AS A VILLAGE GREEN UNDER
SECTION 15(1)**

KAYNTON MEAD TRACK, LOWER WESTON, BATH

**I KAREN HILL OF 117, NEWBRIDGE ROAD, LOWER WESTON, BATH
MAKE THE FOLLOWING STATEMENT IN SUPPORT OF THE
APPLICATION TO REGISTER THE LAND KNOWN AS KAYNTON MEAD
TRACK AS A VILLAGE GREEN.**

This aforementioned land has been used for more than 20 years as a recreational area.

I and other local residents have used this land to congregate for parties and festivals
e.g. Summer bbq's, the Queens Jubilee and annual Bonfire Night Celebrations.

Children use the land to play, explore, make dens and enjoy the natural outside
environment, both alone and with their friends and parents.

The abundance of wildlife has meant the land has been used to observe and learn
about nature, to relax and enjoy the tranquil surroundings away from busy nearby
main roads, and to observe peaceful moments alone.

The land is used to walk dogs and for exercise.

Please register the land set out in this application as having Village Green Status, to
protect it for the local residents.

I believe the contents of this statement to be true.

SIGNATURE



DATE

1st March 2010

Commons Act 2006

Application to Register Land as a Village Green Under Section 15(1)

KAYNTON MEAD TRACK, LOWER WESTON, BATH

WITNESS STATEMENT OF Suzanne Davies

I SUZANNE DAVIES of 29, KAYNTON MEAD, LOWER WESTON, BATH make the following statement in support of the application to register the land known as KAYNTON MEAD TRACK as a village green.

1. The land facing my home in Kaynton Mead has been used for at least 20 years as a recreation area.
2. I have lived in this area for 13 years and in that time have only ever known the Track at Kaynton Mead as a local recreational green space.
3. My children and my neighbours children regularly use the land for play activities.
4. I and other local residents have used the area for observing wildlife and similar educational and relaxation purposes.
5. Kaynton Mead Resident's association held a Jubilee Celebration Party there which was attended by the then Mayor of Bath.
6. I have attended resident-organised November 5th bonfire night celebrations at this location.
7. I regularly see local residents using the area to exercise their dogs.
8. For all of the above reasons I ask that the registration authority enter into the register of village greens the land set out in this application.

I believe that the contents of this statement is to the best of my knowledge and believe a true statement of the facts therein set out.

Signature *Suzanne Davies*

Date: March 24th 2010

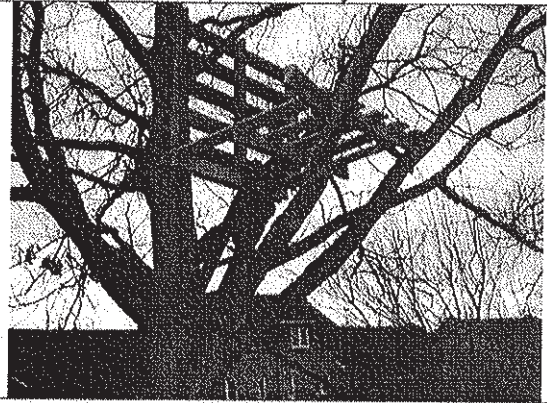
Suzanne Davies

EXHIBIT F

Photographic evidence showing community use of The Track



Local residents cleaning up the Track on Sunday 28th April 2008. Note newly planted trees in the photos to the left and below – many were planted by local children.



The remains of an old tree house on the Track.

Commons Act 2006

Application to Register Land as a Village Green Under Section 15(1)
KAYNTON MEAD TRACK, LOWER WESTON, BATH

SUPPORTING STATEMENT ON BEHALF OF APPLICANTS

The following statement is submitted in support of the application to enter into the Register of Village Greens the land known as **KAYNTON MEAD TRACK**

The land has been used by the inhabitants of the locality as described and set out in Section 6 of Form 44 which accompanies the application for a period of 20 years starting from the 5th April 1988 until and including the 5th April 2008 for lawful sports and pastimes, as set out below and contained within other supporting evidence submitted with the application, as of right, and in the belief that the land was and is a village green for the purposes of prescription at Common Law and of the Commons Act 2006 and The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.

1. A significant number of the inhabitants of the locality both past and present have used the village green for a range of sports and pastimes which are set out in brief within the Statements of Support at Exhibit B (*but is not exclusively limited to the uses therein set out*) to the application.
2. It is the case of the Applicants then they are not required to demonstrate every use on every occasion, or that such use is exclusively by inhabitants of the locality, therefore the evidence submitted with the application is such that it is intended to be viewed solely as examples of the use and extent of that use. Such evidence can and will be submitted by the Applicants if such information is requested by the Authority, and/or through an oral presentation of evidence at a local inquiry before an inspector appointed by the Authority.
3. The Applicants and others will and do aver that they have used the land as a village green as of right without let or hindrance, except to the extent set out in the accompanying statement of support. As a fact it is the case of the Applicants that on no occasion have the owners or controllers of the land challenged their use of the land, or the use of the land by any other inhabitant of the locality.
4. The Applicants rely in chief on the evidence contained within the attachments to the application, the witness statements of the applicants and other letters of support, which does not require further expansion within this statement other than to set out the general thrust of the case being forwarded.
5. The application land has been used by the inhabitants for recreational and leisure purposes going back to the 1970s, this use has included formal and informal sports, the walking of dogs, other walking activities, for play of younger members of the community, as a picnic area by families as well as for kite flying, blackberry picking (in season), watching of wildlife and various other uses. These uses continued and heightened during the period from 05/04/1988 to 05/04/2008, and continue to this day, with natural fluctuations based upon seasonal usage.
6. As such the Applicants believe that all relevant criteria required to be demonstrated in order for the land to be entered in the register of village green has been met.

Signature

..... date..... 4th March 2010

Name VANESSA LOPEZ

'the Plan'

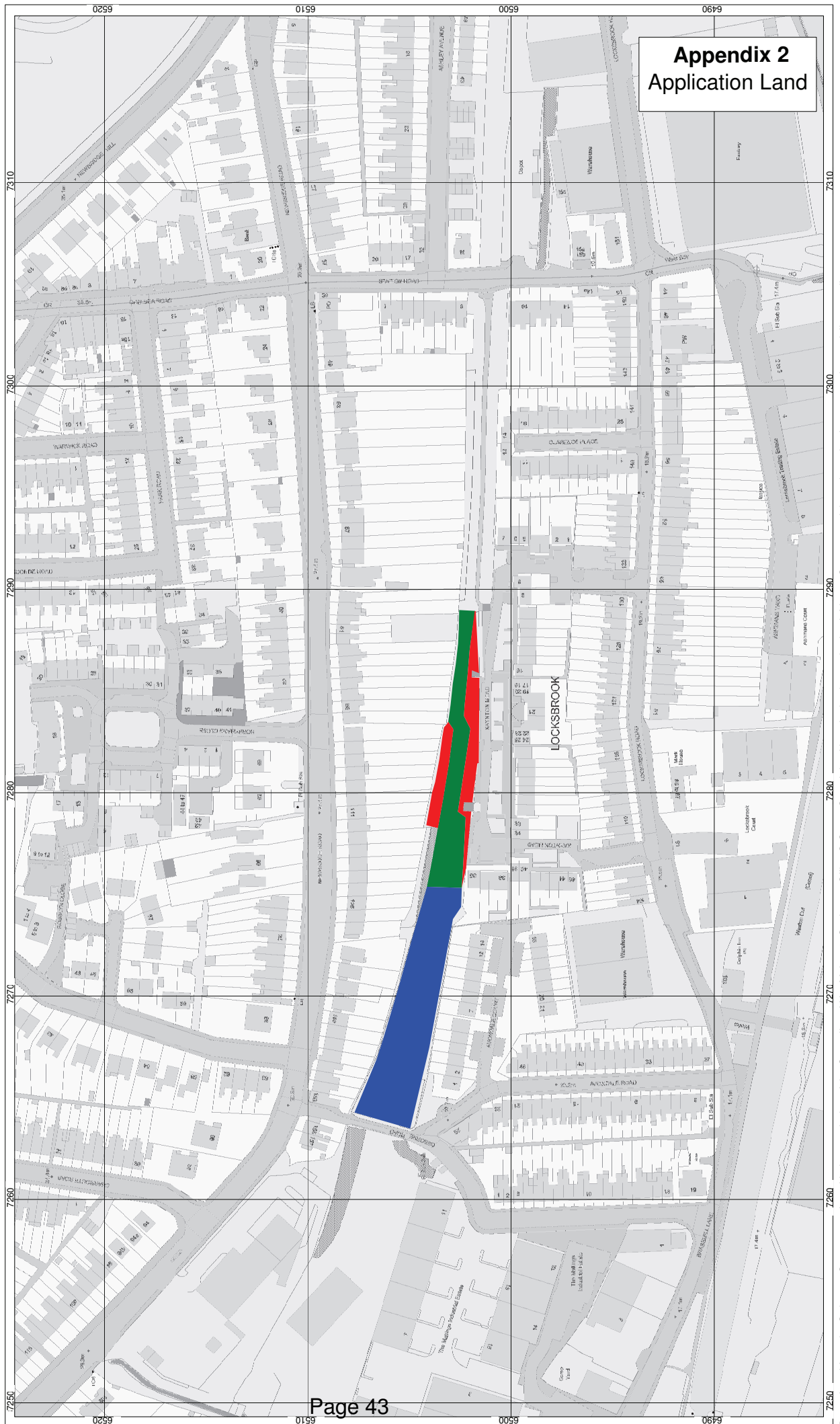
Land identified in statutory declaration dated 22 May 2010

Land erroneously included in original application ('the Blue Land')

Land added to application at the Inquiry on 13 June 2011



Scale 1:2500



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IN RE: AN APPLICATION TO REGISTER LAND KNOWN AS THE TRACK,
KAYNTON MEAD, LOWER WESTON, BATH AS A NEW TOWN OR VILLAGE

GREEN

OPINION

Introduction

1. Bath and North East Somerset Council ('BANES') are the Registration Authority for their area under the provisions of the Commons Act 2006. An application made by Ms. Vanessa Lopez, Ms. Pam Richards, and Ms. Karen Hill to register land known as 'The Track' at Kaynton Mead, Newbridge, Bath, as a Town or Village Green under the provisions of section 15 Commons Act 2006 was received by BANES on 1st. April 2010. BANES advertised the application on 3rd. June 2010 pursuant to The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. It was advertised in Form 45 in the Bath Chronicle; and notices placed around perimeter of site on 9th. August 2010.

2. As well as being the Registration Authority, BANES is also the freehold owner of the application land. As such, it made an objection to the application on 16th. July 2010. Because BANES both has the responsibility of deciding whether the application should be permitted, and an interest in objecting to the application, it instructed me to hold an inquiry, and to advise it as to whether it should accede to an application. Where I refer to BANES in its capacity as Registration Authority, I shall refer to it as 'the Authority', and where I refer to it in its capacity as landowner, I shall refer to it as 'the Objector'. If I refer to its historical activities, I shall refer to it as 'BANES'.
3. The application was made on the basis that the application land had been used by the inhabitants of the neighbourhood of Lower Weston and Newbridge in the electoral wards of Newbridge and Kingsmead for a period of twenty years until the 5th. April 2008 as of right for lawful sports and pastimes. The application was made under the provisions of section 15(3) of the 2006 Act.
4. BANES made its objection by letter dated 16th. July 2010. It objected to the registration for the following reasons:

- (1) The Application Land was acquired by BANES by a conveyance dated 21st. September 1987 from the British Railways Board to Bath County Council. The Objector contends that the land was acquired, and subsequently held by BANES under the statutory purposes of the Open Spaces Act 1906. The consequence of this, asserts the Objector, is that the usage of the land by the local inhabitants for lawful sport and pastimes was not 'as of right'.
- (2) It did not admit that the neighbourhood asserted in the application is a valid neighbourhood within the meaning of the Commons Act;
- (3) It asserted that the application land was used as a right of way, and not as a Town or Village Green.

5. The Applicants responded on 27th. August 2010, stating that they did not admit that the application land was held for the purposes of the Open Spaces Act 1906. They stated that the Authority had to consider all of the evidence that was available in order to discover the power under which the land was held. Moreover, they suggested that even if the land was held under the purposes of the Open Spaces Act 1906, the consequence of such a finding had not been conclusively decided in the Courts.

6. The Applicants have amended their application by substituting a map for the map original served with the application showing the extent of the land that was to be subject to the application. The purpose of the Amended map was to reduce the area of land that was subject to the application, and in particular to exclude a fenced area that was part of Hartwells motor dealership, and indeed was fenced off.

The Inquiry

7. I held a public inquiry into the application over three days. At the Inquiry the Applicant was represented by Mr. Christopher Maile of Planning Sanity, a pressure group. The Objector was represented by Mr. Vivian Chapman QC. I also held an accompanied view of the site and its surrounding area.
8. At the outset of the Inquiry Mr. Maile applied to make amendments to the application. The first was again to alter the area of land the subject of the application. It was suggested that the amended plan excluded two narrow strips of land that ran between obvious fences¹, and they should be included. Mr. Chapman indicated that he had

¹ They are shown on the plan at page 18A in the trial bundle.

no objection to that course of action, so long as the Applicant confirmed that the new areas of land fell within the land firstly conveyed by the 1987 conveyance to BANES. The Applicant, through Mr. Maile, confirmed this was so. In those circumstances the amendment was uncontroversial, and I would advise the Authority to allow it accordingly.

9. Next, Mr. Maile sought to amend the definition of 'neighbourhood' and 'locality' relied upon. He wished to rely on the locality of the parish of St. John's Lower Weston; the neighbourhood was described as 'Locksbrook' which runs between the Southern side of Newbridge Road and Westfield Park/Brassmills/Locksbrook Road². Again Mr. Chapman did not object to this amendment, and it seems to me that in the circumstances it is an amendment that the Authority should consider. I should stress that on behalf of the Objector Mr. Chapman made it plain that the proof of the amended neighbourhood remained very much in issue.

10. Thirdly, Mr. Maile took up the objector's assertion that the usage had continued up to the date of the application, and sought to amend the application so as to formally bring it under section 15(2) of the

² The area is shown hatched in black on the plan at 18B in the trial bundle.

Commons Act 2006. Mr. Chapman did not object to this, and again I advise the Authority to permit this amendment to be made. The consequence is that the relevant twenty year period runs from 1st. April 1990.

11. Mr. Chapman suggested to me that the Applicants were under a factual difficulty in proving their case in that this application is one of three linked applications (the others being at Newbridge Meadows and Rudmore Park); and that the evidence might be something of a 'job lot' (although he did not put it as inelegantly) where supporters of one application land their names to the others. This is an aspect of the evidence that I have been aware of throughout the three Inquiries. I would add that the Inquiries have also thrown up similar issues - as to whether residents recreational usage of land can be, as the statute requires, 'as of right' where a local authority holds land for the purposes of the Open Spaces Act 1906; whether the land designated as a neighbourhood is such as a matter of fact. I have born in mind that legal questions should be answered consistently, and I have written my advices to the Authority after the conclusion of the last hearing of the three. However although issues as to 'neighbourhood' are similar in the three applications, they are not

identical. I must therefore treat each of these applications quite separately in this regard.

The Land

12. The land is approximately 0.15 acres in size. It is substantially a length of the former Midland railway line running from Bristol into Green Park Station, Bath. The general lie of the surrounding land is that it rises slightly from South to North. The track bed itself is reasonably level. The northern boundary of the application land is a rough fence line running near the bottom of houses to the South of Newbridge Road. There are some gates leading to various gardens. The boundary of the land to the South is the modern housing development of Kaynton Mead. Access can be obtained up a bank, but the main means of access lies up two flights of stairs, each leading to a part of Kaynton Mead. The Western boundary of the land is a mesh fence separating the land from Hartwells Garage. The surface of the land is grassed, with a narrow gravel path running through the Eastern part of the land. The path becomes more rough as one travels progressively Westwards. There is no public right of way shown on the definitive map held by BANES under the provisions of the Wildlife and Countryside Act 1981, although one runs immediately to the South of the land at Kaynton Mead.

Ownership of the Land

13. As I indicated above, before the 1960s the land was part of a functioning railway line. It appears that it closed at the end of that decade, and for much of its length it has been converted into a cycleway. The part of the line used as a cycleway leaves the former railway line at a point to the west of Newbridge, and then proceeds into Bath by way of other highways and paths.
14. By a conveyance dated 21st. September 1987 the land, together with other land, was conveyed by the British Railways Board to the Bath City Council, BANES' predecessor in title. The conveyance conveyed three categories of land. That which was described as 'First' in the conveyance was said to be held for the purposes of the Open Spaces Act 1906.

The Oral Evidence

15. I set out below not a complete record of the oral evidence that I heard, but sufficient for the Authority, and anyone interested, to follow the reasoning and recommendation that I make at the conclusion of the Opinion. Mr. Chapman on behalf of the Objector did not suggest to any witness that they had deliberately sought to embellish their evidence, although he noted that some were central

to the application to register, and plainly committed to that end. Rather than commenting on the evidence of each, I advise the Authority that I found all of the witnesses, both for and against the application, to be honest witnesses.

16. Pam Richards is one of the Applicants, and has lived in Station Road for 37 years. She told me that houses in Newbridge Road and Clarence Place had their own gates giving access on to the application land. She has seen local residents children regularly using the land for den-making and play, and more generally for walking and dog-walking. Her own children played there. She, as did a large number of witnesses, stressed that the land was a haven for wild life such as birds and foxes. I note that the amenity value to the environment of the land is not a ground for registering it as a TVG, but of course if an area is a 'haven for wildlife', then that may assist in a conclusion that for some local people that would be an attractive feature, and they would go on to the land in order to see the wildlife as part of the rural feel of the land. For my part it seems that the strip of land was something of a green corridor, being in part open and to the margins wooded. What would make it attractive to young children would also make it attractive to wildlife. Neither Mrs. Richards nor any other witness was cross-examined on this point. I accept Mrs.

Richards' evidence on this point as accurate, and it is for that reason that I will not refer to the similar evidence given by other witnesses in my review of the evidence.

17. Mrs. Richards said that when she moved in to her address, she was told that her postal address was 'Locksbrook'. The postal address now is more often referred to as Lower Weston. The land has had three fences – when it was disused railway land although it was used for recreation, there was no through route. When the Council acquired land and Kaynton Mead was developed, which she thought was in or after 1994, an access to Kaynton Mead was put in. Wessex Water put new sewerage work in 2004. Some play equipment was removed at that time and not replaced. There was a rain shelter and a bar you could balance on, and a picnic table that were put there by Soma Housing. The land was not reinstated in the same way – it was more bumpy. The community activities that took place were firework parties in November; the Queen's Jubilee; and a sports day. They were largely organised by the local community with support by the local councillors. She thought that the land was mainly a children's area. Her neighbours use it on a daily basis.

18. Mrs. Richards described the neighbourhood as the area where you know your neighbours and share communal activities and characteristics. Locksbrook is constrained by the river and Newbridge Road. It is a mixed area, both with private and social housing, and a lot of industry. There is a local pub – the Dolphin. There were two corner shops but they have now gone. Mrs. Richards is a sociologist by qualification, and regards the area as a neighbourhood. 'Locksbrook' derives its name from Locksbrook Road, which pre-dates 1900. There is a Locksbrook Trading Estate nearby, and many businesses call themselves 'The Locksbrook something'.
19. Mrs. Richards accepted that Locksbrook Cemetery is a Victorian cemetery in the proximity of Locksbrook, very close to the end of Locksbrook Road. Brassmill Lane is within Locksbrook. The Dolphin pub is by the junction of Avondale Road and Locksbrook Road. There used to be a shop and off license at the corner of Ashley Avenue and Station Road; and a shop-come-general store in Locksbrook Rd. At the Eastern end there was a newsagents, but that is now closed. There is no local police station, but there is a community police officer.

20. I then heard from the Revd. Dora Frost, who has lived in Clarence Place since 1964. She told me that the land was taken up for recreational use soon after the cessation of the railway use. She walked her dogs there, and picked blackberries; as did many others. Children have played there and make bonfires on November 5th. Locksbrook is a residential area between two industrial sites.
21. Cross-examined, Revd. Frost told me that she thinks of the area as Locksbrook. When she bought her house in Clarence Place the area was scheduled for industrial development. She and others set up a residents' association to fight the proposals, and that brought them together as a community between two industrial trading estates. The neighbourhood was bounded by the river on the South and the road to the North. She accepted that this Residents Association covered the whole of Newbridge. As time went on those residents in the Locksbrook area realised they needed to get together to deal with local problems – such as traffic in Locksbrook Rd. She did not regard the cemetery as being within Locksbrook, although Locksbrook Road ends near there. Rudmore Park is on the fringe of Locksbrook.
22. Ms. Jane Larcombe lived in Kaynton Mead between 1996 and 2004. Her children played with others from the nearby area on the land.

There could be up to 50 on the land during school holidays. A sports day was held there one year (of which there were photographs³), as well as a Jubilee party arranged by the Kaynton Mead Residents Association, but other locals attended. She described meeting dog walkers and runners, commenting that the track was a 'very nice cut through' to Station Road. There was a balancing log and a covered table on the land, installed by Knightstone Housing Association or the Council.

23. In Mrs. Larcombe's view 'Locksbrook' is a neighbourhood. It takes in Rudmore Park, but there are few houses to the western end. She did not think it extended to the North of Newbridge Rd. She did not regard Locksbrook Cemetery as being in Locksbrook. Locksbrook was bounded and cut off by the road and the river.

24. Suzanne Davies lives in Kaynton Mead, and has done so for thirteen years. Her children, other children, and local residents regularly use the land for recreation; she remembered to bonfire night events, organised by the residents, and the Jubilee celebration party. There were snowball fights and snowmen during the winter. When Kaynton Mead was constructed the builders put in a balancing pole; a table;

³ Bundle, p.118A.

a rain shelter and bench on the land, all made with timber logs The only time use was restricted was when Wessex Water dug it up to lay a pipe.

25. Ms. Davies refers in conversation to 'Locksbrook' as an area, and that is a term that is generally used. On Station Road there is a gym, a dog-grooming and a post-office on the corner. It is a sub-post office – it is a general store. The area 'Locksbrook' was historically nothing to do with the lock that restricts part of the Avon nearby. The High Street at Weston Village was fed by 6 streams, which formed Loxbrook – it came out at what is now Locksbrook Cemetery
26. Vicky Drew lived in Kaynton Mead from 2001 to 2007. Her mother lived there for much of that period, and would walk her dog over the land, letting it off the lead. She would meet many dog walkers from Locksbrook there. The land was very beneficial to the residents of Kaynton Mead because they did not have a great deal by way of garden attached to their flats. Besides dog walking and children's play, she had seen children riding bicycles on it, using the undulating land as jumps. This must have been after the Wessex Water work took place. She is a member of the RSPB – lots of people went to the land to see the wildlife. The Lane was for her also the shortest route to the

shops; pupils from the local school would also use the track as a short cut to houses in the neighbouring areas.

27. Ms. Drew would describe Kaynton Mead as being in Locksbrook. She thought that people tended to put 'Locksbrook Rd.' into their address. In her view 'Locksbrook' did not extend as far to the West as it was shown on the Applicant's amended application⁴. The boundary was she thought by Avon Park, although that may have been because she herself would go no further. She thought Locksbrook cemetery is in Locksbrook.

28. Karen Hill has lived in Newbridge Road since January 1990. At the time she had two young children, and told me that the family, neighbours and friends played all sorts of games on the land. She witnessed significant use of the land by local people of all ages, playing and walking. She would gain access to the land via the footpath at Station Road, or from Locksbrook Road via Kaynton Mead. She had never given her 'neighbourhood' a name, but she sometimes thought of it as Newbridge, sometimes as Lower Weston. Her neighbourhood comprises the people she mixes the most with; in her case, it ran from the clock works by the Post Office, up to Mr. Gill's

⁴ Bundle, p.18B.

corner shop at Osborne Road. Behind her house her neighbourhood comprised Locksbrook Rd and continuation of the road to Newbridge Rd at either end. She thought Avondale Rd and Station Rd were the boundaries, but said that the neighbourhood obviously larger than that because there are industrial units and factories as well, besides those places that are where your neighbours live.

29. Mark Price has lived on Ashley Road since February 2001. He has walked a friends' dog on the land, letting them run off of the lead there. He does that because it is the area with no 'through traffic'. When He took the dog there it might be as part of a journey; or it could be to let the dog run around. He has seen other people walking their dogs there, and he sees children play there. He picks blackberries from the bushes on the land. He had been to three bonfire night parties, which were very well organised. The residents of Kaynton Mead invited other people to come along. It was quite well known function in the area. His neighbourhood is to the South of Newbridge Road, extending to the river. To the East it is where Locksbrook Road joins Newbridge Road. To the West it is where Brassmills Lane joins Newbridge Road. 'Locksbrook' is interchangeable with 'Newbridge'. They are similar and they overlap a great deal. He thought the area shown on p. 18B of the bundle was

a fair description He thought that Locksbrook Cemetery was outside the neighbourhood.

30. Steve Richards has lived in Station Road since 1973. At that time the land that is presently occupied by housing at Kaynton Mead was a British Telecom depot. He used the land since he moved to the area, originally obtaining access through a gap in the perimeter fencing. The occupiers of houses that back on to the land at Newbridge Road have made their own individual accesses on to the land. In 1973 the old level crossing gates were still in place, and people would go over or round them. The fence only appeared some years later. Mr. Richards presently goes on to the land for recreation once or twice a month. In the past it was more often. He would see people exercising dogs, blackberrying; children playing; it was overgrown and exciting for the children. One would walk thought to the end. The usable space was larger at the time. Kaynton Mead was constructed in 1996. The community use of the land really started then; prior to that, the usage was by individuals and families. As far as other available public open space was concerned, there is a small playing field to the South of Brassmill Lane and to the West of Osborne Road., by the weir. To people living in the Western end of the neighbourhood there is some land at Rudmore Park.

31. Mr. Richards did not see the neighbourhood in which he lived as having a very precise boundary, and had described his address as Locksbrook or Lower Weston. 'Locksbrook' as an area is smaller than Lower Weston. Locksbrook is to the South of Newbridge Road, includes the cemetery and extends to Brassmill Lane. He referred me to a Victorian parade of houses adjacent, Locksbrook Terrace. The central part is from Station Road to Osborn Road. He thought that there was a feeling of cohesion about the area relied on as a neighbourhood in the application. Prior to that it was very much a case of individuals and families. All the families there would send their children to Newbridge schools; they would all use the shops in Chelsea Road; and a lot will work at the Royal United Hospital.

32. Dr. Fiona Mayne has lived in Clarence Place since 2007, and for the previous 16 years lived elsewhere in Bath, visiting the area regularly. She uses the land regularly for walking, describing her usage as 'meandering' over the land, and sees and talks to people who walk their dogs there. Dr. Mayne picks blackberries on the land. She has seen children playing, hiding, and riding bicycles there. After school there is usually a small group of children there, depending on the weather. She would call her neighbourhood Locksbrook. It is situated

North of the river; West of Station Road; South of Newbridge Road and up to the point where Brassmill Lane meets Newbridge Road. She acknowledged that the supporters of the application had discussed the issue of 'neighbourhood' before she gave her evidence, but only as to its name, not its boundaries. She would not regard Locksbrook Cemetery as being in Locksbrook because it is on the other side of the main road.

33. Len Davey lives on Newbridge Road and has done so since 1992. He has gone on to the land regularly during that period, to pick blackberries and to watch wildlife. His children used the land in the past for recreation; his grandson still does. Children use the uneven parts of the land for BMX jumps. People walk their dogs on the land. At any time after school there can be between five and twenty children there. Mr. Davey told me that before the area to the South of the land was allocated for the housing estate at Kaynton Mead, the land itself was a lot more rugged than it presently is, but children found that attractive. Before Kaynton Mead was constructed the land was more overgrown but it was accessible and used – very definitely.

34. His neighbourhood runs between Newbridge Road and to Brassmill Lane, going towards Locksbrook. It might extend as far as Locksbrook Road. He would regard Rudmore Park as being within my neighbourhood. He uses the shops in Chelsea Road and would regard them as being in his neighbourhood.
35. Alice Rigby has lived in Newbridge Road since 1984. She has used the land since 1984, walking her dog there. Her children and other children play on the land. She too mentioned the BMX jumps. She picks blackberries there. Her access to the land is either from Station Road or from Kaynton Mead. Her own children made tree houses. Mrs. Rigby told me that the land was used a lot before Kaynton Mead was built. She can hear the children playing as well as see them from her garden; it is very busy on weekends. Her neighbourhood is to be found North of the river, as far as The Weston public house, to the South of Newbridge Road and then as far West as Brassmill Lane. She uses the shops on Chelsea Road, but does not think that they are part of her neighbourhood. Her 'neighbourhood' is the area that she walks with her dog, and also describes the facilities she uses in her everyday life.

36. Mrs. Vanessa Lopez is the applicant for registration, and has lived on Ashley Avenue since February 2001. She told me that local residents considered their application to register the land as a TVG in response to BANES' proposal that it be incorporated into the proposed Bus Rapid Transit system to be constructed and serving the West of Bath, in March 2008. She produced a basic questionnaire for use by potential witnesses. She said that she and her partner have used the land for blackberrying, watching firework displays and photographing the natural environment. She went on to the land every couple of months or so. Children use the land for ball games, and hide and seek type games. She had been told by the older residents of the area that, before the construction of Kaynton Mead, access to the land was via the back gardens of many residents of Newbridge Road, who used it for blackberrying, teaching their children to cycle and observing wildlife. At present it is accessed either from Station Road or from Kaynton Mead. Many residents use it as a through-route to the post office and shops in Chelsea Road. There is a strong sense of neighbourhood in the area, with local shops and facilities.

37. Richard Morris has lived on Newbridge Road since 1975. He has used the land since then, as a footpath getting to and from his place of

work on the Lower Bristol Road. His children played there when they were growing up. Other children played there, and dogs were exercised there. He has seen children cycling there, and using the land for bike 'jumps'. Until recently he could access the land from his garden. Before the estate at Kaynton Mead was built, it was occupied by British Telecom. At that time the land was quite wild. But one could find a dozen or more people down there from time to time. The use of the land increased after Kaynton Mead was built; it opened up the Southern boundary.

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38. Mr. Morris's neighbourhood is Locksbrook you would call it, from Station Road to the Dolphin Pub, and between the main road and the river, extending from Station Road in the East to Osborne Rd in the West. He did not regard the cemetery as being in Locksbrook as it is on the other side of the main road. 'Locksbrook', 'Lower Weston' and 'Newbridge' are overlapping areas. 'Locksbrook' was a more common description years ago, but it is still used to describe an area nowadays.

39. Margaret Gore-Langton has lived in Ashley Avenue since 1982. She used the land for recreation since then, in the early years with her young daughter, playing and riding her bicycle. She walks friend's

dogs there nowadays, letting them run off of the lead. She has seen children from Kaynton Mead play there. In the early morning and evening one sees other dog walkers there. There is usually someone about. Mrs. Gore-Langton thought that Lower Weston, Newbridge and Locksbrook are all in the same neighbourhood, from church at one end to school at the other. It would extend to Locksbrook Cemetery in the East; Charmouth Road, Hartwells Garage, in the West.

40. Marion Page also lives on Ashley Avenue, having lived there since July 1989. She and her late husband used the land for walking their dogs; and picking blackberries. She had seen other people, adults and children, play there. She did not recall having access to the land prior to the building of the Kaynton Mead estate. Children had played on the green part of the land – there were some wooden erections for the children to play there. She had friends in Kaynton Mead and in Locksbrook Road. The old school is now a WRVS area. Locksbrook is a community. Her neighbourhood runs to the end of Brassmill Lane, where it reaches the end of Newbridge Road. I think Locksbrook could extend to the end of Brassmill Lane. The area at the end of Westfield Park she would probably call Newbridge. She would

not say where it starts. 'Locksbrook' refers to the Lock; the Brook is a culverted stream at Station Road.

41. Susan Greco has lived on Newbridge Road since 1980. Since then she has used the land as a footpath to walk from her home to Station Road. Her children played on the land when small; she has seen people walking their dogs there and children playing ball games and riding bikes there. Her property bounds the land, and there is a wire fence separating the two. If she wants access she simply lifts the fence up. When Kaynton Mead was developed she saw a lot more activity on the area from the children at Kaynton Mead. She still uses the land for blackberry picking, and takes her grandchildren there.

42. Cllr. Lorraine Brinkhurst MBE has lived at Newbridge Road since 1977. Her house backed on to the land, and her children played there since 1977. They built a tree house there. Her grandchildren now play there. She used to walk her dog there, before his death, and now walks her partner's dog there. She would go on the land every day at different times, and would pass half a dozen people every time; people with children, people walking dogs. You would see children on the land during school holidays. In 1999 as the Ward Councillor she organised a 're-planting' day on the land. Local children re-planted

the land, in conjunction with work from the Parks Department. Those helping came from Newbridge Rd as well as Kaynton Mead. A picnic was also organised, and play equipment was (either then or earlier) installed. A further re-planting occurred in 2008 consequent upon the pipe works carried out by Welsh Water on the land. The residents of Kaynton Mead held a Jubilee party there in 2002. Councillor Brinkhurst uses the path to get to her office in Locksbrook Road; and many residents use the path to get to the Chelsea Road shops.

43. The land was used before Kaynton Mead because one could access it from Station Road. It was not accessible from Locksbrook Road. It was only accessible from the one area. The land was not publicly accessible from the Western end. People could go on to the land via the private gardens to the North. Before Kaynton Mead was constructed, as far as the public were concerned, Station Road was the only access.

44. Nadine Geary lived on Hungerford Road between 1993 and 1999, and since then on Ashley Road. Ms. Geary owns large breed rescue dogs, and exercises and trains them there daily. There are no cyclists passing through and the boundaries are secured by some hedging. She has seen picnics taking place there, and children playing in tree-

houses and dens. It is the only available green space nearby. There are usually several dogs down there. Depending on the weather there could be half a dozen dogs and children. There may be five or six children, some in their dens. Ms. Geary always referred to the area as Locksbrook. She did not think that Locksbrook cemetery would be in Locksbrook. She would not regard Rudmore Park as being in my neighbourhood.

45. Ms. Lee Paget has lived at Kaynton Mead since 2001, and since then she and her family have used the land for informal recreation. In the morning there may be 20 people using the track – dog walkers; the trees give shelter and there are children's' dens there. It is safe for children to play on. Her neighbourhood is Kaynton Mead, and she would consider Locksbrook Rd to be part of her neighbourhood.

46. Robert Andrew Scott BSc FRICS is employed as a Client Services Manager by BANES, and was called by them to give evidence. He told me that the land lies within the Newbridge Ward of the City, and is about 1.25 miles from the city centre. He produced a number of helpful photographs and maps of the area. He also analysed the addresses of the supporters of the application, locating their addresses on a map, and calculating that those claiming personal

use of the land represented only 1.06% of the claimed neighbourhood. At the time that Mr. Scott's witness statement was produced, the neighbourhood was said to be that of Lower Weston and Newbridge. Mr. Scott also produced an analysis from historical documents and his personal understanding of the locations of Lower Weston and Newbridge. In view of the amendment made to the application by Mr. Maile, this analysis could be of background use only. Mr. Scott has lived in Fairford Park and Alton Park. He told me that he did not think he had heard of the area of Locksbrook before this Inquiry, but accepted it was possible it did exist. Mr. Scott's evidence was not challenged by Mr. Maile.

47. Simon Memory is a Parks and Green Spaces Officer employed by BANES. He produced documentation showing the work carried out by the Council to the track. The grassed area was cut once a month with hedge and shrub maintenance being carried out once a year. Litter bins are provided by the steps leading to Kaynton Mead which, suggested Mr. Memory, was consistent with the land being made available for use by the public for recreational purposes. They are emptied 2 or 3 times a week.

48. I also heard from Mr. Andrew Reed who is a Solicitor and employed as a Property Law Manager for BANES. He took me through the documentation held by BANES in connection with its acquisition of the land and its subsequent dealings with it⁵. His evidence was accepted by Mr. Male.

Written Evidence

49. I have been supplied with a quantity of written evidence in this case, the bulk of which is in the hearings bundle. I have also been supplied with more documentation as the hearing has continued; this has been numbered and inserted into the hearing bundle as we proceeded. The written documentation is divisible into two categories. The first relates to formal, historic documentation. There is no dispute about the validity of this documentation, although its meaning may be subject to debate. The second is more immediate documentation that has been produced for the purpose of this inquiry, such as evidence questionnaires or letters. Although that is evidence that the Authority must have regard to in so far as it is relevant in assessing whether the statutory test has been made out, I have to bear in mind that it has not been tested by cross-examination. It may therefore not be appropriate to give it the same

⁵ Hearing bundle, pp.444 and following.

weight as evidence that has been tested. Insofar as documentary evidence is of particular assistance or relevance, I shall refer to it in the course of this Advice.

Other Inquiries

50. As I have mentioned above, this Inquiry is one of three linked Inquiries, the other two being concerned with land at Newbridge and at Rudmore Park. It is necessary for the Authority to consider its decision as regards each application separately. Success or failure of any one or more application does not necessarily mean that the others will succeed or fail. For this reason I have written three advices to the Authority, each one dealing with a separate application.

The Standard and Burden of Proof

51. The practical consequences of registration are substantial, and restrictive of the possibilities of future use. It is not to be regarded as a trivial matter to have a TVG registered over land. It is necessary for the Applicants to strictly and properly prove their claim. To do so they must establish his claim by the production of evidence leading to the conclusion on the balance of probability that each element of the statutory test set out in section 15(2) of the Commons Act 2006 has been established. Section 15(2) states:

“(2)This subsection applies where -

(a)a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b)they continue to do so at the time of the application”

A Neighbourhood within a Locality

52. Mr. Chapman accepted that the claimed 'neighbourhood' falls within a 'locality'. The first issue is whether the claimed neighbourhood exists as a neighbourhood, or not. The neighbourhood within the locality that is relied upon is 'Locksbrook' as defined on the plan at p.18B of the Inquiry Bundle.

53. Mr. Chapman contended that because registration as a TVG confers rights on the inhabitants of the neighbourhood, the neighbourhood must have a fixed boundary, and a landowner must be able to determine at any time whether any particular person is entitled to use the land for recreation. It therefore followed that if the boundaries are vague, the claimed neighbourhood would not qualify.

54. I do not agree with that analysis. In Oxfordshire County Council v. Oxford City Council [2006] 2 AC 674 Lord Hoffmann said (at [27]) that the phrase:

“‘Any neighbourhood within a locality’ is obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries’

Where an area does not have legally significant boundaries, it is likely to follow that there may be factual disputes about its precise bounds. As a matter of common English, a 'neighbourhood' is an intrinsically uncertain area. I do not think it matters whether the boundary is precise. It may, after registration, be necessary for someone to work out where the boundary is (if the neighbourhood is simply described by name) but in the present case we have a description of a neighbourhood that is precise. The issue is whether that area is properly and fairly described as a neighbourhood.

55. Having considered the evidence, and seen the area for myself, I am of the view that the area described by Mr. Maile is a 'neighbourhood' within the meaning of the Commons Act 2006. I come to this view for the following reasons:

(1) The area has obvious and defensible boundaries; particularly Newbridge Road to the North and the River to the South. There is little in the way of residential accommodation between the Southernmost roads running adjacent to the river and the river itself.

(2) The character of the area is artisanal. There remains industry especially in the Western end; Kaynton Mead is the site of a former BT depot; houses to the East of Kaynton Mead are quite modest; those abutting the line of the former railway line appear later in date - perhaps early Victorian, and a little more grand.

(3) The area is served by public houses and a post office. There were general stores in the area, but they appear to have shut in relatively recent years. Local shopping is now carried out on Chelsea Road and Newbridge Road.

(4) Locksbrook is identified as a neighbourhood on the Ordnance Survey. That the name is placed near Locksbrook Cemetery and Locksbrook Terrace (which are both a little to the East of the claimed neighbourhood) is not altogether surprising. The Ordnance Survey does not plot neighbourhoods save in the most general manner, and one would expect to see the neighbourhood plotted about those places that bear the name. From the evidence that I have heard it does seem that historically Locksbrook may have been thought of as an area extending to and based in the East of that presently

claimed. I am satisfied however that over time the perception of the area has been sited further West. It may be that the explanation from this arises because 'Locksbrook' was originally named after streams running into the Avon, and people now associated it with the lock at a canalisation of the river. Be that as it may, although I have hesitated over this evidence because it was acknowledged that a number of the witnesses had, shortly before the Inquiry, discussed the neighbourhood they wanted to establish; and because a number of them described their neighbourhood as simply the area they were familiar with (which is not the correct test) I conclude that the general perception of the location of 'Locksbrook' of which I heard is a correct one, and that the claimed neighbourhood is a sufficiently cohesive area to justify that description, throughout the relevant period of twenty years.

For twenty years for Lawful Sports and Pastimes

56. There is no doubt that informal recreation of the sort described here - walking, dog walking, children playing, riding bicycles, ball games, blackberrying - is sufficient user to engage the requirement that the land be used for 'lawful sports and pastimes' for the relevant period - see R v. Oxfordshire County Council ex. p. Sunningwell P. C. [2000] 1 AC 335 at 357 per Lord Hoffmann. Litter picking or tree planting is not

of itself a sport or pastime, although it may be evidence that indicates that the local community viewed the land as a community resource, from which one might infer that it was used by local residents.

57. In the present case I accept the evidence of a number of the witnesses, that the land has been used since beyond the commencement of the twenty year period for these purposes, and that the usage continues up to the present day. Indeed, it did not appear to me that Mr. Chapman contended to the contrary.

58. Mr. Chapman did contend however that if the use of the land was referable to the use of the land as a highway, it should not be registered as a TVG; for such use would only at best establish footpath use. Whilst I accept that this submission is based on a correct premises (see the judgment of Lightman J. in Oxfordshire County Council v. Oxford City Council [2004] EWHC 12 (Ch) at paras. [102] to [103]), I do not accept that the user in the present case would have given the landowner the impression that the land was being used as a footpath. Whilst some of the witnesses referred to the land being used as a through route, to get to shops or to some other convenient place, the great majority of evidence as to user related

to usage for recreational purposes. Before Kaynton Mead was constructed in the early 1990s, the land would only have been a through route to those passing to private back gardens on Newbridge Road, or through holes in the fencing by the BT depot. After that date the land was laid out in part as a play area, and I have no doubt was used as such. In my view the usage that there was would have been substantially referable to usage for recreational purposes.

By a significant number of the inhabitants of the neighbourhood

59. There is no requirement that any particular number, of the majority of inhabitants of the neighbourhood, have used the land during the relevant period. According to Sullivan J. in R. v. Staffordshire County Council ex p. Alfred McAlpine Homes Ltd. [2002] EWHC 76, considering what usage by 'a significant number' of inhabitants meant;

“...what matters is that the number of people using the land in question has to be significant to indicate that their use of the land signifies that it is in general use by the local community for informal recreation”.

It is a question of impression from the evidence available to the Inquiry as to whether this test is satisfied; it is not necessary that the

number of users from the neighbourhood be considerable or substantial. In coming to my conclusion I am not limited to the evidence of the users themselves; I can draw inferences from the character and location of the land as to likely use. Nor am I limited to their evidence of their own use. Indeed it is noteworthy that many of those who gave evidence themselves stated that the land was used by others. For these reasons I derive little assistance from Mr. Scott's statistical ratio of users to inhabitants, even if modified to refer to the neighbourhood finally claimed in the application.

60. I do bear in mind that the pattern and degree of usage must have changed on the construction of Kaynton Mead (which took place in 1995, within the relevant twenty year period). This both established a residential community immediately to the South of the land, which had little in the way of garden and improved the land with play facilities it seems in recognition of this; and it opened up access to the land to the South and West. Before 1995 the only access to the land was via Station Road. The access to the houses from the gardens at Newbridge Road was access of a private, not a public nature. Whilst some people might have gained access through broken fencing to the South, that must have been a very limited number. Lastly it appears that the land was much less cultivated and

more wild at that time. Whilst I have no doubt that this would have made the land attractive to some, it would also have had the effect of making it less attractive, or even hiding it, from others.

61. If land is in general use by the local community, that is the impression that must be given; the opposite is that user is a series of intermittent trespasses. It is a question of fact and degree.
62. I have no doubt that after 1995 and the construction of Kaynton Mead BANES would have been of the view, had they enquired after the position, that the land was in general recreational use by the local community. I also think that had they made enquiries, that local community would have been considered to be approximately the neighbourhood that presently asserts the right. This would not have surprised BANES, given that the land was laid out for recreation in 1995, and re-planted to that end subsequently.
63. Matters are far more difficult and finely balanced when it comes to usage before 1995. For obvious reasons, only some of the witnesses had a direct recollection of matters and usage that far back. I therefore specifically asked them what they could recall of the usage. With one exception, their evidence was that usage was

substantial even during that period. I bear in mind that the land had been disused since the late 1960s (although I do not know when the rails were lifted). Access to the land from the East was unobstructed, and would have been known in the community. Given that these were in my view honest witnesses, whose evidence did not appear unreliable, I do not think that I would be justified in preferring my own doubts arising from the surrounding circumstances to their direct testimony. I conclude therefore that a significant number of inhabitants of the community have used the land for recreation for the relevant period of twenty years.

As of right

64. Mr. Chapman argues that where land is held by a local authority under the provisions of section 9 Open Spaces Act 1906, the local authority holds it on trust for the purpose of permitting the public to use it; and subject to effective by-laws being enacted the public is so entitled to use it. Next, where the public does something on land that they are entitled to do, their usage is not 'as of right', because that means 'as if of right', and here they already have that right right. The consequence of this, analysis, he submits, is that applicants cannot succeed in a claim to register a TVG where the land has, during the

relevant twenty year period, been held by a local authority under the provisions of section 9 Open Spaces Act 1906.

65. Mr. Maile accepts that the land was acquired under the provisions of the Open Spaces Act 1906. He contends that the fact that land was acquired under that Act does not necessarily mean that a trust for recreational use arises. He contended that this only arose where the land was covered with buildings. Next he contends that the purpose for which the land was acquired by the Council in 1987 was for use as a footpath, and not as a general open space for the public. Lastly, he contends that comments of various of the law lords in R v. Sunderland City Council ex p. Beresford [2004] 1 AC 889 are not binding. The law has changed by reason of the introduction of the Commons Act in 2006. There is no evidence of the local authority licensing or giving the public any right to go on to the land.

66. In my view Mr. Chapman's submissions are correct as a matter of principle:

(1) Section 15 Commons Act 2006 requires the public's user to be 'as of right'. The same requirement is to be found in the corresponding provisions in section 13 Commons Registration Act 1965. It is to be

presumed that Parliament used the same terms expecting them to have the same meaning.

(2) The meaning of 'as of right' was considered by the House of Lords in R v. Oxfordshire County Council ex p. Sunningwell PC [2000] 1 AC 335, which considered that it bore the same meaning (in the commons registration legislation) as it did in legislation dealing with prescription and deemed dedication of a highway by virtue of section 31 Highways Act 1980. Their Lordships also considered that the concept underlying prescriptive rights was that of acquiescence by the landowner. Plainly, where the claimant already has a right to do the thing he is doing, the landowner cannot stop him from doing so. It follows that the landowner does not 'acquiesce' in the use.

(3) User 'as of right' has frequently been judicially described as 'as if' of right, the inference being that no right to do the act otherwise exists.

67. Mr. Maile is correct to state that the comments of their Lordships in Beresford to the effect that where a claimant to a prescriptive-type right already has the right to do the act, his use cannot be 'as of right' were not part of the reasoning of the case, because they were not necessary for the decision. However, they were considered comments and are entitled to great weight. They have not been

judicially doubted. In my view the Authority should be guided by them.

68. The next issue is whether the land was acquired under the provisions of section 9 of the 1906 Act. In my view it was, for the following reasons:

(1) It is immaterial that there were no buildings on the land. Under section 20 of the 1906 Act land may be acquired as open space where it has not more than one-twentieth of its surface area covered with buildings. This land had less.

(2) It is a question of construction of the documentation to ascertain what power the council exercised when it acquired the land. The obvious documentation that is pertinent to this task is the conveyance, and the conveyance here plainly stated that the land was acquired under the 1906 Act. The land was transferred to the local authority either under the provisions of section 7 of the 1906 Act, or under the provisions of section 9 *ibid*.

(3) The contemporaneous documentation indicated that this land was being acquired for public open space purposes⁶.

⁶ See the Council minute for the Land and Buildings Committee, 7th. January 1986 at bundle pp.449-450.

69. If that is so, as I advise that it is, the next issue is whether that created a right in the local inhabitants to use the land for the purposes of recreation. I am of the view that it did. Where land is held by a local authority under the 1906 Act, section 10 states that it holds it in trust to allow the enjoyment of it by the public as an open space. The consequence of that is that user is not 'as of right'. There is substantial authority to this effect - see Beresford *supra*. at paras. 3 & 9 per Lord Bingham; para. 11 per Lord Hutton; para 29 per Lord Scott; para. 62 per Lord Rodger; and paras 72 and 87 per Lord Walker. See also section 122 Local Government Act 1972 (as amended) that assumes that land held under the Open Spaces Act 1906 establishes a trust to this effect. There is no need for the fact of that trust to be communicated to the residents. Their right arises as a consequence of the land being held as it was.

70. I conclude therefore that local inhabitants were at all times during the relevant twenty year period, until and appropriation of the land for highway purposes, entitled to go on to the land for the purpose of carrying on lawful sports and pastimes. It follows that their usage of the land has not been 'as of right' as required by the statute.

Conclusion

71. I conclude therefore that the Authority should decline to register this land as TVG. The reason for not registering the land is that the usage of the land has not been 'as of right' but has been by virtue of the land being held during that period by BANES on the trust contained in section 10 Open Spaces Act 1906.

72. As a postscript I should note that Mr. Chapman had a further argument in his locker. Although the Applicants apply under the Commons Act 2006, that Act superseded in different terms the provisions of the Commons Registration Act 1965, which had itself been amended by the Countryside and Rights of Way Act 2000. That amending Act allowed applicants to rely on usage by the inhabitants of a neighbourhood to establish a TVG, whereas they had previously been limited to relying on the usage of inhabitants of a locality. The argument is that the present Commons Act does not allow an applicant to rely on usage by inhabitants of a neighbourhood where the usage, as here, predates the coming into force of the 2006 Act. Had the applicants' case otherwise succeeded, I would have made further enquiries as to whether and when the Court of Appeal might have heard the argument, and I would have considered advising the

Authority to defer its decision until judgement was given. But in the circumstances it is pointless to delay matters further.

73. Lastly, can I extend my thanks to Mr. Simon Elias and Mr. Graeme Stark who facilitated the hearing and took care of all of the parties at it. I am very grateful also to Mr. Chapman and Mr. Maile for their helpful, thoughtful and measured submissions throughout.

29th. September 2011

Leslie Blohm Q.C.

St. John's Chambers,
101 Victoria Street,
Bristol,
BS1 6PU

Bath & North East Somerset Council	
MEETING:	Regulatory (Access) Committee
MEETING DATE:	29 November 2011
TITLE:	Rudmore Park TVG Registration Application
WARD:	Newbridge
AN OPEN PUBLIC ITEM	
<p>List of attachments to this report:</p> <p>Appendix 1 – Application to register ‘The Lane, Rudmore Park’ as a Town or Village Green</p> <p>Appendix 2 –Plan of land to which the Application relates</p> <p>Appendix 3 – Inspector’s report dated 21 September 2011</p>	

1. THE ISSUE

- 1.1 An Application has been received by Bath and North East Somerset Council in its capacity as Commons Registration Authority (“the Authority”) to register land known as ‘The Lane, Rudmore Park’ to the south of Rudmore Park in Newbridge, Bath as a Town or Village Green (“TVG”). The Application was advertised and an objection was received from Bath and North East Somerset Council’s Property Services department.
- 1.2 An independent expert, Mr Leslie Blohm QC of St John’s Chambers in Bristol (“the Inspector”) was appointed by the Authority to conduct a non-statutory public inquiry and then report with a recommendation in relation to the application. The Regulatory (Access) Committee (“the Committee”) is asked to consider the Application and the Inspector’s report and to determine whether ‘The Lane, Rudmore Park’ should be registered as TVG.

2. RECOMMENDATION

- 2.1 The Committee is recommended to refuse the application and not register the landshaded purple or pink on the plan attached at Appendix 2 (“the Plan”) as a TVG.

3. FINANCIAL IMPLICATIONS

- 3.1 The potential financial implications, for the Council as landowner, of the land being successfully registered are not a legally relevant consideration in the determination of the Application.

4. THE REPORT

- 4.1 **Application.** On 1 April 2010, Jo McCarron of 25 Rudmore Park, Peter Burns of 3 Avon Park and Josè Ash of 28 Brassmill Lane in Bath (“the Applicants”) applied under section 15 of the Commons Act 2006 (“the 2006 Act”) to register land known as ‘The Lane, Rudmore Park’ as a TVG. The Application, excluding the user evidence forms, is contained at Appendix 1; (the user evidence forms are available upon request). The Application was made on the basis that the land qualifies for registration by virtue of section 15(3) of the 2006 Act; however, at the Inquiry detailed below, the Applicants’ advocate requested on their behalf that the Application be amended so as to bring it under section 15(2) of the 2006 Act namely that;

“...a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application”.

- 4.2 The land to which the Application relates lies to the southwest of nos. 25 to 48 Rudmore Park and land is owned by Bath and North East Somerset Council. The land is shaded purple on the Plan and is hereafter referred to as the ‘Application Land’. The Application also originally included an area of land which is fenced off and in the ownership of Oakhill Group Ltd. This land is shown shaded pink on the Plan and is hereafter referred to as “the Pink Land”. On 27 August 2010, the Applicants stated that the Pink Land was erroneously included in the Application and no evidence was presented in support of registering this land as TVG.
- 4.3 The Application was accompanied by 45 user evidence forms detailing use of Application Land from 1966 up until the date of the Application. The Authority has a statutory duty under the 2006 Act to consider and dispose of the Application.
- 4.4 **Assessment and Advertising.** On 28 April 2010, Officers of the Authority made a preliminary assessment of the Application and determined that it had been duly made.
- 4.5 On 20 May 2010, the Application was advertised by placing a notice in the Bath Chronicle and on the Authority’s website and serving notice on all interested parties including Property Services, the ward members and the Applicants. Additionally, notices were placed at five conspicuous locations around the Application Land and maintained on site until 20 July 2010.
- 4.6 On 16 July 2010, Bath and North East Somerset Council’s Property Services (“the Objector”) objected to registration of the Application Land as a TVG (“the Objection”) on the grounds that;
- i. the land has been used ‘by right’ rather than ‘as of right’,
 - ii. the land has not been used by the inhabitants of the stated neighbourhood within a locality,
 - iii. the land has been used for way of passage rather than as a TVG, and
 - iv. the Pink Land had not been used for lawful sports and pastimes.

Additionally, 59 letters of support for the Application were received from members of the public during the two month advertising period.

- 4.7 On 14 July 2010, the Objection was forwarded to the Applicants to give them an opportunity to respond to the points raised. On 27 August 2010, the Applicants responded to the Objection and challenged each of the points raised. On 16 September 2010, Officers of the Authority made an assessment of the Objection and the Applicants' response to the Objection. It was concluded that there remained significant points of dispute between the Applicants and Objector and it was therefore decided that a non-statutory public inquiry should be held to assess the evidence and relevant areas of law.
- 4.8 **Non-Statutory Public Inquiry.** The Authority subsequently instructed the Inspector, who is a barrister and an independent expert in TVG law, to preside over a non-statutory public inquiry ("the Inquiry") into the Application.
- 4.9 The Inquiry was scheduled to open on 23 May 2011 and to run for four days in the Council Chamber, Guildhall, High Street, Bath, BA1 5AW. On 26 April 2011, the Inquiry was advertised by placing a notice in the Bath Chronicle and on the Authority's website and by serving notice on all interested parties including the Objector, the ward members and the Applicants. Additionally, notices were placed at five conspicuous locations around the Application Land and maintained on site until 27 May 2011.
- 4.10 The Applicants and Objector were both given the opportunity to present their evidence, call witnesses, cross-examine witnesses, make legal submissions and present their cases for and against registration. At the opening of the Inquiry, the Applicants' advocates sought to amend the section of the 2006 Act under which the Application was made as detailed in paragraph 4.1 above and to amend the land to which the Application relates as detailed in paragraph 4.2 above. The Applicants' advocate also sought to amend the 'locality' to the electoral wards of Newbridge and Kingsmead and the 'neighbourhood' to Lower Weston. The Inspector also carried out a site visit accompanied by both the Applicants and Objector. The Inquiry concluded on 25 May 2011.
- 4.11 On 21 September 2011, the Inspector issued his report on the Application and advised the Authority that they should dismiss the Application. On 3 October 2011, the Authority sent the Inspector's report to the Objector and Applicants and asked both parties to provide any comments they may have on the report; neither party provided any comments on the report or recommendation.

5. STATUTORY TEST

- 5.1 The statutory test under consideration is set out in section 15(2) of the 2006 Act, which states that; "...a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application". The Application is considered in full in the Inspector's report contained at Appendix 3 and members of the Committee are advised to read the report in full before reaching a decision regarding the Application. Additionally, the constituent parts of this test are considered in turn below.

- 5.2 The Authority can only consider whether the legislative test set out in the 2006 Act have been met. The Authority cannot take into account whether registration is deemed desirable nor what may or may not happen to the land in the future.
- 5.3 **“a significant number”** The Application Land must be used by a significant number of people. This does not mean ‘a considerable or substantial number’ but it does need to be a level of use sufficient to show that the land is in general use by the local inhabitants rather than just use by a few individuals or an isolated group within the community. The Inspector addresses this test in paragraphs 36 to 45 of his report.
- 5.4 The Applicants submitted user evidence forms detailing use of the Application Land during the relevant period. A number of the individuals who completed these forms attended the Inquiry to give evidence of their use of the land and were cross-examined by the Objector’s advocate and questioned by the Inspector. A number of witnesses who gave evidence stated that they saw other inhabitants of Lower Weston using the Application Land in addition to those who gave evidence to the Inquiry.
- 5.6 At paragraph 45 of his report, the Inspector states that; *“I am of the view that the usage by local residents has been by a significant number of the inhabitants of the claimed neighbourhood.”* This test is therefore considered to have been met.
- 5.7 **“of the inhabitants of any locality, or of any neighbourhood within a locality”**A locality, or any neighbourhood within a locality, is the area inhabited by the users of the Application Land. A ‘locality’ is an area which is capable of being defined by reference to some division of the country known to the law. A ‘neighbourhood within a locality’ is an area within a locality with a sufficient degree of cohesiveness. The Inspector addresses this test in paragraphs 36 to 45 of his report.
- 5.8 As detailed in paragraph 4.10 above, the Applicants’ advocate amended the Application to relate solely to the neighbourhood of Lower Weston within the locality of the electoral wards of Newbridge and Kingsmead. Although there was common ground between all parties that Lower Weston is a recognised neighbourhood, there were disagreements at the Inquiry as to the precise boundaries of Lower Weston.
- 5.9 However, at paragraph 43 of his report, the Inspector states that; *“...making allowances for the undoubtedly fuzzy and indistinct boundaries of Lower Weston as it is popularly perceived, I am of the view that the area set out in the application is a neighbourhood within the meaning of the Commons Act 2006.”* This test is therefore considered to have been met.

- 5.10 **“have indulged as of right”** Use of the land must be ‘as of right’ which means that use must be without force, without secrecy and without permission. The Inspector addresses this test in paragraphs 46 to 51 of his report.
- 5.11 There has been no suggestion that any use by the public has been by force, secrecy or permission. However, the Application Land has been held under section 9 of the Open Spaces Act 1906 throughout the relevant 20 year period and this gave the public the right to use the land as general open space. The Application Land was therefore used ‘by right’, rather than ‘as of right’ as required by the 2006 Act.
- 5.12 At paragraph 51 of his report, the Inspector states that; *“I therefore conclude that the land has, at all material times, been held by BANES as public open space, and that usage of the land by local residents has not been ‘as of right’ for the purposes of the Commons Act 2006.”* This test has not therefore been met.
- 5.13 **“in lawful sports and pastimes”** The Application Land must be used for lawful sports and pastimes which can include a wide range of activities including, but not limited to, dog walking, football and nature watching; the activities must not be contrary to the law such as cockfighting. The Inspector addresses this test in paragraphs 30 to 35 of his report.
- 5.14 Witnesses at the Inquiry gave evidence of their use of the Application Land for a wide range of activities including dog walking, building dens, ball games and blackberry picking. The Inspector rejects the suggestion that the land was used as a highway and notes that the user was not of a nature as to give the landowner the impression that the land was being used simply as a through route.
- 5.15 At paragraph 35 of his report, the Inspector states that; *“...I have considered the usage made of the land as a whole went substantially beyond that referable to mere usage of land as a footpath, and would clearly have indicated to the landowner that the land was being used for general recreational purposes.”* This test is therefore considered to have been met.
- 5.16 **“on the land”** “The land’ means the Application Land as detailed in paragraph 4.2 above.
- 5.17 The lawful sports and pastimes detailed in paragraph 5.14 above have taken place on the Application Land and this test is therefore considered to have been met in relation to the Application Land. The Applicants offered no evidence in relation to the Pink Land and it has therefore not been demonstrated that this test has been met in relation to the Pink Land.
- 5.18 **“for a period of at least 20 years and they continue to do so at the time of the application”** The Application Land must be used for a full period of 20 years. The Application was made on 1 April 2010 and the Application Land must therefore have been used from this date back to 1 April 1990.

5.19 Witnesses at the Inquiry detailed use of the Application Land going back several decades and it was not disputed by the Objector that the Application Land was used throughout the relevant period. This test is therefore considered to have been met.

5.20 **Conclusion.** As summarised above and detailed in the Inspector's report, the Application Land has not been used as of right by a significant number of the inhabitants of Lower Weston for lawful sports and pastimes. This land does not meet the legislative tests set out in the 2006 Act. No evidence was offered in support of the Pink Land and it has not therefore been demonstrated that the Pink Land has been used as of right by a significant number of the inhabitants of Lower Weston for lawful sports and pastimes either. Therefore, neither the Application Land nor the Pink Land should be registered as TVG.

6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

7. EQUALITIES

7.1 A proportionate equalities impact assessment has not been carried out as the Application must be considered solely in relation to the test set out in the 2006 Act.

8. CONSULTATION

8.1 *Ward Councillor; Cabinet Member; Other B&NES Services; Service Users; Local Residents; Community Interest Groups; Monitoring Officer*

8.2 Extensive consultation was carried out as detailed in paragraphs 4.5 and 4.9 above.

9. ISSUES TO CONSIDER IN REACHING THE DECISION

9.1 Legal Considerations; as detailed in paragraph 5.1 above.

10. ADVICE SOUGHT

10.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	Graeme Stark, Senior Rights of Way Officer
Background papers	'The Lane, Rudmore Park' TVG casefile User Evidence Forms Joint Evidence Bundle Joint Bundle of Authorities
Please contact the report author if you need to access this report in an alternative format	

Commons Act 2006: Section 15

Application for the registration of land as a Town or Village Green

Official stamp of registration authority
indicating valid date of receipt:

COMMONS REGISTRATION ACT 1965
BATH AND NORTH EAST SOMERSET COUNCIL

01 APR 2010

REGISTRATION AUTHORITY

Application number: TVGIO/2

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

Note 1

Insert name of
registration
authority.

1. Registration Authority

To the

Bath and North East Somerset Council
The Guildhall
High Street
BATH BA1 5AW

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicantName:

Full postal address:

Postcode

Telephone number:
(incl. national dialling code)Fax number:
(incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number:
(incl. national dialling code)Fax number:
(incl. national dialling code)

E-mail address:

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**: ☐

If the application is made under **section 15(1)** of the Act, please tick one of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies: ☐

Section 15(3) applies: ☒

Section 15(4) applies: ☐

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

5th April 2008

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

** Only complete if the land is already registered as common land.*

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

The Lane, Rudmore Park

Location:

Behind Rudmore Park, Newbridge, Bath

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

The neighbourhood of Lower Weston and Newbridge is situated in the localities that comprise the electoral wards of Newbridge and Kingsmead of Bath and North East Somerset District Council

Tick here if map attached:

☐

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

The land has been used by the inhabitants of the locality as described and set out in Section 6 above for a period of 20 years from the 5th April 1988 until the 5th April 2008 (and continues to be so) for lawful sports and pastimes, which are set out in greater detail within the accompanying statements (Exhibit J) and supporting evidence, as of right, and in the belief that the land was and is a village green for the purposes of prescription obtained at Common Law and of the relevant Act and Regulations.

A significant number of the inhabitants both past and present have used the village green for a range of sports and pastimes which are set out in brief within the supporting statements from residents attached at Exhibit C to this application.

The Applicants and others will and do aver that they have used the land as a village green as of right without let or hindrance, except to the extent set out in the accompanying statement of support (Exhibit K).

As such the Applicants believe that all relevant criteria required to be demonstrated in order for the land to be entered in the register of village green has been met.

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

Bath and North East Somerset Council
The Guildhall
High Street
BATH

BA1 5AW

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

10. Supporting documentation

See attached list of supporting documents Appendix A Section 2

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

Note 12

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

11. Any other information relating to the application

Date:

29th March 2010

Signatures

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

APPLICANTS

Section 2 of application form.

The names and addresses of those applying for the registration of The Lane behind Rudmore Park are:

Applicant 1:
Jo McCarron
25 Rudmore Park
Newbridge
BATH

Applicant 2:
Peter Burns
3 Avon Park
Lower Weston
BATH

Applicant 3:
José Ash
28 Brassmill Lane
Lower Weston
BATH

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name
(and address if not
given in the
application form).

I, Joanne McCarron,¹ solemnly and sincerely declare as follows:—
25 Rudmore Park
Bath
BA1 3JA

² Delete and adapt
as necessary.

1.² I am ~~((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (one of the applicants))~~— [REDACTED]

³ Insert name if
Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

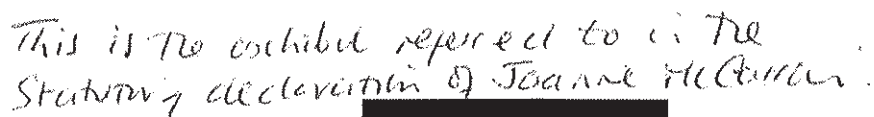
3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in
the case of
voluntary
registration (strike
through if this is not
relevant)

4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:— [REDACTED]

~~(i) a declaration of ownership of the land;—
(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have~~ [REDACTED]

Cont/



Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey web site:
www.ordnancesurvey.co.uk

Continued

~~been received and are exhibited with this declaration; or~~
~~(iii) where no such consents are required, a declaration to that effect.~~

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said Joanne McCarron

at 29 Kipling Avenue
Pati

this 28th day of March 2010

Signature of Declarant



Before me *

Signature:



Address: 29 Kipling Avenue Pati BA2 4RB

Qualification: Solicitor

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

APPENDIX A

VILLAGE GREEN REGISTRATION

"THE LANE" RUDMORE PARK, NEWBRIDGE, BATH

INFORMATION NOTES FOR INCLUSION IN FORM 44

1. Note on Section 4

(In setting out both the above date and the section in 4 above we would remind you of the advice of DEFRA in that such information can be amended at a later date if it is found to be appropriate to do so. And therefore your authority should if it is dissatisfied with that date for any reason should in the first instance seek clarification from the Applicant in order that if need be the relevant section and date can be amended.)

2. List of attached documents Section 10

Appendix '1' Additional information unable to be included within the application form due to space restraints (in no particular order):

Exhibit A: Map of Village Green site

Exhibit B: Supporting Statement on behalf of the applicants.

Exhibit C: Further Statements of Support from 45 local residents who collectively have used The Lane for lawful pastimes as of a perceived right since the 1960s until the present day and continue to do so.

Exhibit D: Further Supporting evidence: Correspondence from the council dated 02/09/1988 to J.Ash of the then Lower Weston Residents' Association with relevant section highlighted (page 2).

Exhibit E: February 1989 edition of Lower Weston Residents' Association newsletter detailing community use of The Lane

Exhibit F: Newspaper coverage of community event on the Lane dated 1st March 1989

Exhibit G: Correspondance inviting James Ash to tree planting event on The Lane with Chris Patten MP dated 23rd February 1989

Exhibit H: Letter from Chris Patten MP dated 27th February 1989 after the tree planting event on The Lane

Exhibit I: Photographic evidence showing community use of The Lane dated May 2008

Exhibit J: Witness statements of support from the applicants:

Exhibit J1: Witness Statement of Joanne McCarron

Exhibit J2: Witness Statement of Peter Burns

Exhibit J3: Witness Statement of Josè Ash

Commons Act 2006

Application to Register Land as a Village Green Under Section 15(1)


THE LANE, RUDMORE PARK, NEWBRIDGE, BATH

SUPPORTING STATEMENT ON BEHALF OF APPLICANTS

The following statement is submitted in support of the application to enter into the Register of Village Greens the land known as **THE LANE, RUDMORE PARK**

The land has been used by the inhabitants of the locality as described and set out in Section 6 of Form 44 which accompanies the application for a period of 20 years starting from the 6th April 1988 until and including the 6th April 2008 for lawful sports and pastimes, as set out below and contained within other supporting evidence submitted with the application, as of right, and in the belief that the land was and is a village green for the purposes of prescription at Common Law and of the Commons Act 2006 and The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.

1. A significant number of the inhabitants of the locality both past and present have used the village green for a range of sports and pastimes which are set out in brief within the Statements of Support attached at Exhibit C (*but is not exclusively limited to the uses therein set out*) to the application.
2. It is the case of the Applicants then they are not required to demonstrate every use on every occasion, or that such use is exclusively by inhabitants of the locality, therefore the evidence submitted with the application is such that it is intended to be viewed solely as examples of the use and extent of that use. Such evidence can and will be submitted by the Applicants if such information is requested by the Authority, and/or through an oral presentation of evidence at a local inquiry before an inspector appointed by the Authority.
3. The Applicants and others will and do aver that they have used the land as a village green as of right without let or hindrance, except to the extent set out in the accompanying statement of support. As a fact it is the case of the Applicants that on no occasion have the owners or controllers of the land challenged their use of the land, or the use of the land by any other inhabitant of the locality.
4. The Applicants rely in chief on the evidence contained within the attachments to the application, the witness statements of the applicants and other letters of support, which does not require further expansion within this statement other than to set out the general thrust of the case being forwarded.
5. The application land has been used by the inhabitants for recreational and leisure purposes going back to the 1960s, this use has included informal sports, the walking of dogs, other walking activities, for play of younger members of the community, as a picnic area by families as well as for kite flying, blackberry picking (in season), watching of wildlife and various other uses. These uses continued and heightened during the period from 06/04/1988 to 06/04/2008, and continue to this day, with natural fluctuations based upon seasonal usage.
6. As such the Applicants believe that all relevant criteria required to be demonstrated in order for the land to be entered in the register of village green has been met.

Signature...  date... 1st April 2010

Name JOANNE MCCARRON

EXHIBIT D

Bath City Council



Department of Environmental
Services
Abbey Chambers, Bath BA1 1NT

Director of Environmental
Services
L. T. Sparks Dip. Arch.,
Dip. T.P., RIBA., MRTPI., FRSA.

0225 641111 Ext 2503
If calling please ask
for Chris Pound

CP/HAB/S82

September 2, 1988

Ms Josie Ash
29 Brassmill Lane
Bath

Dear Josie

Brassmill Lane Improvements

You will remember at the last meeting of your committee we discussed a number of issues on the Brassmill Lane Area. I have prepared a report for the Housing and Environment Committees which introduces these issues to the Committees.

You will see that this brings us closer to an exhibition in the next few weeks. When Lynda returns from holiday it would be useful to meet to discuss how best we can organise the exhibition. We shall contact you shortly.

Yours sincerely



Chris Pound
Assistant Director (Policy and Conservation)

cc. Lynda Peacock, DEM

*Pg 1 item 5 - ref to
valuable opportunity
to wildlife!*

REPORT OF THE DIRECTOR OF
ENVIRONMENTAL SERVICES TO
THE HOUSING COMMITTEE AT
ITS MEETING ON THE 8TH OF
SEPTEMBER 1988

ENVIRONMENTAL IMPROVEMENTS AT BRASSMILL LANE

INTRODUCTION

1. At its meeting on the 12th of September the Environment Committee will consider a report on environmental improvements on the former railway land. The report invites the Committee to agree to consult the residents in the area on a wide range of matters which extends further than the landscape work on the former railway land.

AVON PARK ESTATE

2. The residents in the area have established the Lower Weston Residents Association. Amongst a number of issues which they wish to pursue is the problem of parking in the Avon Park Estate. In undertaking environmental improvements in the area there may be an opportunity to bring forward a solution to this problem.
3. The Committee will note this issue in the Environment Committee's report in paragraph 12. The Committees should also note other matters which relate to this estate in paragraphs 11 and 13.

THE ENVIRONMENT COMMITTEE

4. If the Environment Committee agrees to extend a consultation exercise to illustrate these additional matters then there is an opportunity to include any views the Housing Committee might wish to put forward.

RECOMMENDATION

5. The Committees views on these issues are invited.

BRASSMILL.2CP/JSJ/S82
19th August 1988

REPORT OF THE DIRECTOR OF
ENVIRONMENTAL SERVICES TO
THE ENVIRONMENT COMMITTEE
AT ITS MEETING ON THE
12TH OF SEPTEMBER 1988

ENVIRONMENTAL IMPROVEMENTS AT BRASSMILL LANE

INTRODUCTION

1. The Council agreed that part of the Conservation Budget for this financial year should be allocated to landscape work along the former railway line at Brassmill Lane and Locksbrook Road. In the autumn we wish to consult the residents on landscape proposals for the railway land. In the last few months a Residents Association has been formed amongst the residents of this area. They have raised a number of issues and other possible improvements to the area. This report introduces these issues and suggestions and seeks the committee's agreement to pursue a consultation exercise on them.

THE RAILWAY LAND

2. The land shown on the plan A has been acquired by the Council from the British Rail Property Board. This was subject to the City Council undertaking the landscape works that the Board had been required to do as part of their planning permission to tip in the former railway cuttings.
3. The budget for this year includes £25,000 to undertake the landscape work. In bringing forward the proposals for the landscape it has become apparent that a number of other issues will influence them.
4. It has been a long term policy to extend the "cycle path" along the full length of the railway land from Brassmill Lane to Station Road and the acquisition is a step towards achieving this. However a key length of this proposal cannot be implemented until temporary planning permissions for parking fall in and a path negotiated with the landowner.

LANDSCAPE WORKS

5. The acquisition of this land has also secured for the City part of a linear feature with considerable existing and potential landscape merit and which provides valuable opportunities to wildlife. Its potential to link with other landscape features and potential wildlife habitats is of particular importance.

6. On receipt of the former railway land from British Rail the City Council agreed to undertake landscape works which were required as part of British Rail's planning permission to tip in the former railway cuttings. It is partly to satisfy this requirement that £25,000 have been allocated within this years Conservation budget for landscape works on the site. The sum anticipated a need to re-grade some of the tipped material to more positive effect and to re-seed and plant a mixture of indigenous trees and shrubs.
7. However, the time lapse since tipping ceased has allowed the areas to become well grassed over and the peripheral vegetation to recover, although gappy in places. Levels generally tie-in with surrounding properties and although not entirely smooth and even are not dangerous, eroding or bare. The areas are not unattractive although on the edges they are attracting some fly-tipping.
8. In bringing forward proposals for the landscape works it has become apparent that:-
 - a) Until such time that a link can be negotiated between the two parts of the former railway land it would not be desirable to actively encourage people into the spaces by laying out (or even preparing ground level for) the cyclepath. Attracting people into well vegetated "dead-end" areas with the inherent risk to personal safety is obviously irresponsible. Other routes from the sites might be negotiated (see later in report) but this is not likely to achieve results within this financial year.
 - b) It would not be cost effective to undertake ground levelling works at this stage which might prejudice the final layout of the cycletrack and to disturb an acceptable landscape for short term aims.
 - c) It would not be cost effective to undertake substantial tree and shrub planting works to maximise the areas landscape and wildlife potential whilst awaiting use as a cyclepath, since a lot of planting would eventually need removal to accommodate earth shaping for the cyclepath and other issues, which are aired later in this report, might be prejudiced as a result.
9. There is scope to undertake immediate minor tree and shrub planting, general tidying up and filling of peripheral vegetation. This will not require the whole of the £25,000 allocated.

LOWER WESTON RESIDENTS ASSOCIATION

10. The Lower Weston Residents Group established itself in March. Their committee have discussed a broad range of problems and issues of their area. Amongst these are some which will effect the emerging landscape proposals, these are shown on Plan B. Other problems might be resolved.

11. The principal matter which the Association is pursuing is building a community centre. The western end of the railway land is a potential site for such a building. Should the landscape works take this into account?
12. There are problems of finding car parking spaces in Avon Park estate. One possible solution is to provide a few spaces on part of the existing allotments. However most of these allotments are well used and loss of some would be likely to be resisted. However, a few allotments could be relocated on the former railway land but this is difficult to achieve satisfactorily.
13. There have been requests for a North South path linking Brassmill Lane, Rudmore Park to Newbridge Road. The Council owns some land but it is in allotment or other uses. However a link is possible on land owned by ARC. Should the landscape proposals be extended to secure and lay out this path?

NEWBRIDGE ROAD RESIDENTS

14. Although not in the Lower Weston Residents Association some residents in the Newbridge Road north of the eastern length of railway land have asked if it is possible to lay out rear access. Whilst this is possible, it will reduce the area of open space available for landscape works. Also it is not possible at one end without the removal of a significant hedge and trees.
15. The land to the south of the railway land is the British Telecom depot which has been identified for development. It might be possible to compensate for the loss of the existing vegetation by providing it in the development. However, this will also reduce the potential of the site for housing development. A brief on this will be brought to the Planning Committee at their October meeting. At this stage we do not know how many residents wish to make use of such a rear access and will be willing to either contribute to it or buy an access from it if the Council were to lay out the road.
16. A related request has been to examine whether a car park can be provided on land for shoppers using the nearby Chelsea Road Shopping Centre. It is possible to provide a car park and this would be consistent with the Council's policy T22 in the draft City Plan. However as yet we do not know whether this will be acceptable to the residents. Funds for this might need to be found from a different budget because this is not strictly a landscape matter.

CONSULTATION

17. The issues described above have been examined only briefly but they do impinge on the landscape scheme. As yet we have no opinion from the residents on their implications. It is suggested that we consult the public on the ideas at this stage and to indicate to them how much landscape works we can implement this year without prejudicing any other proposals.

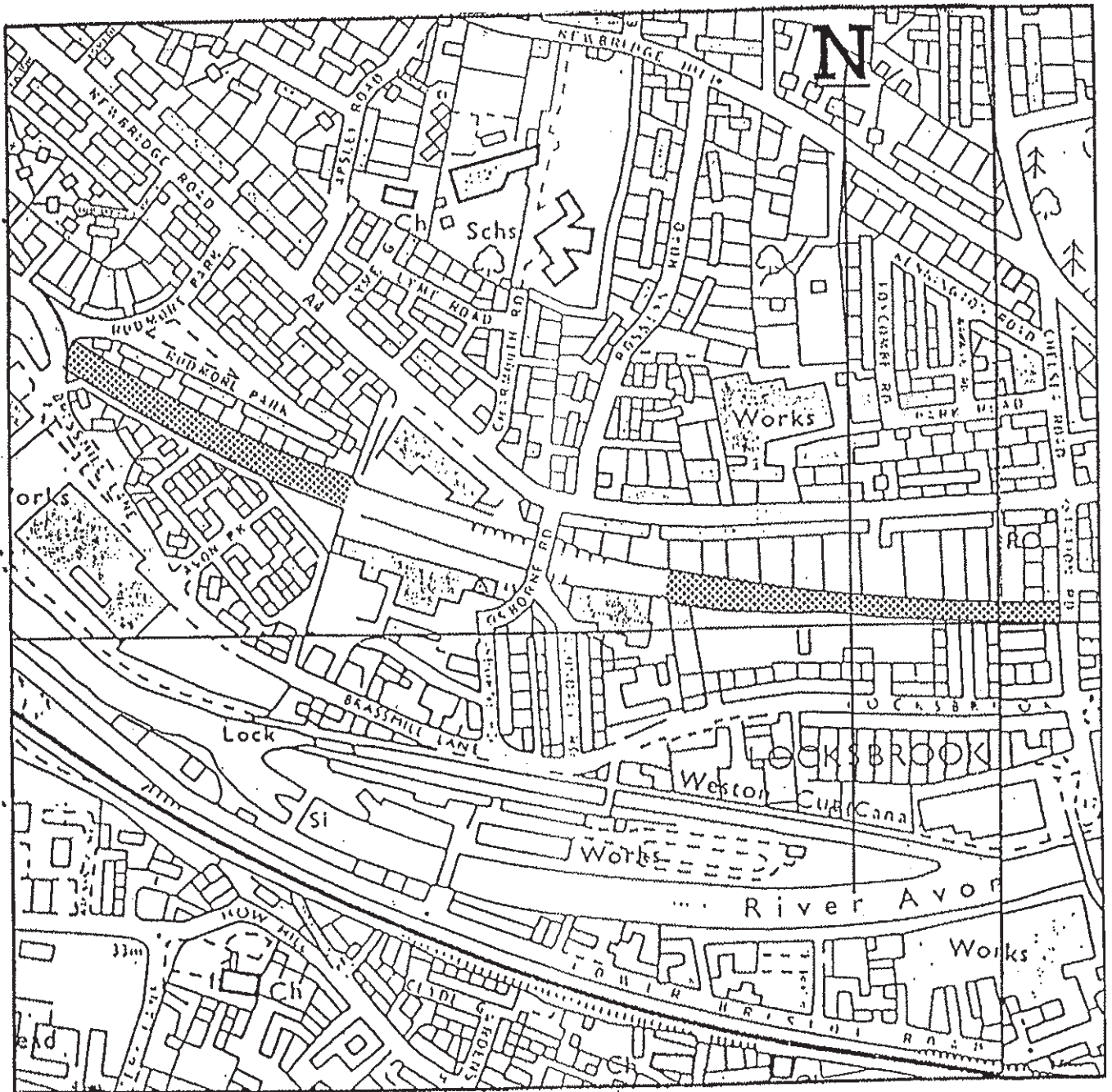
18. If in the light of the comments received on the ideas set out above the committee agree that additional proposals should be brought forward over and above the existing landscape works to these matters then there may be budgetary implications.

RECOMMENDATIONS

19. That the Committee note the issues raised so far by the residents in Lower Weston and Newbridge Road and agree to consult them on these matters as outlined in this report.

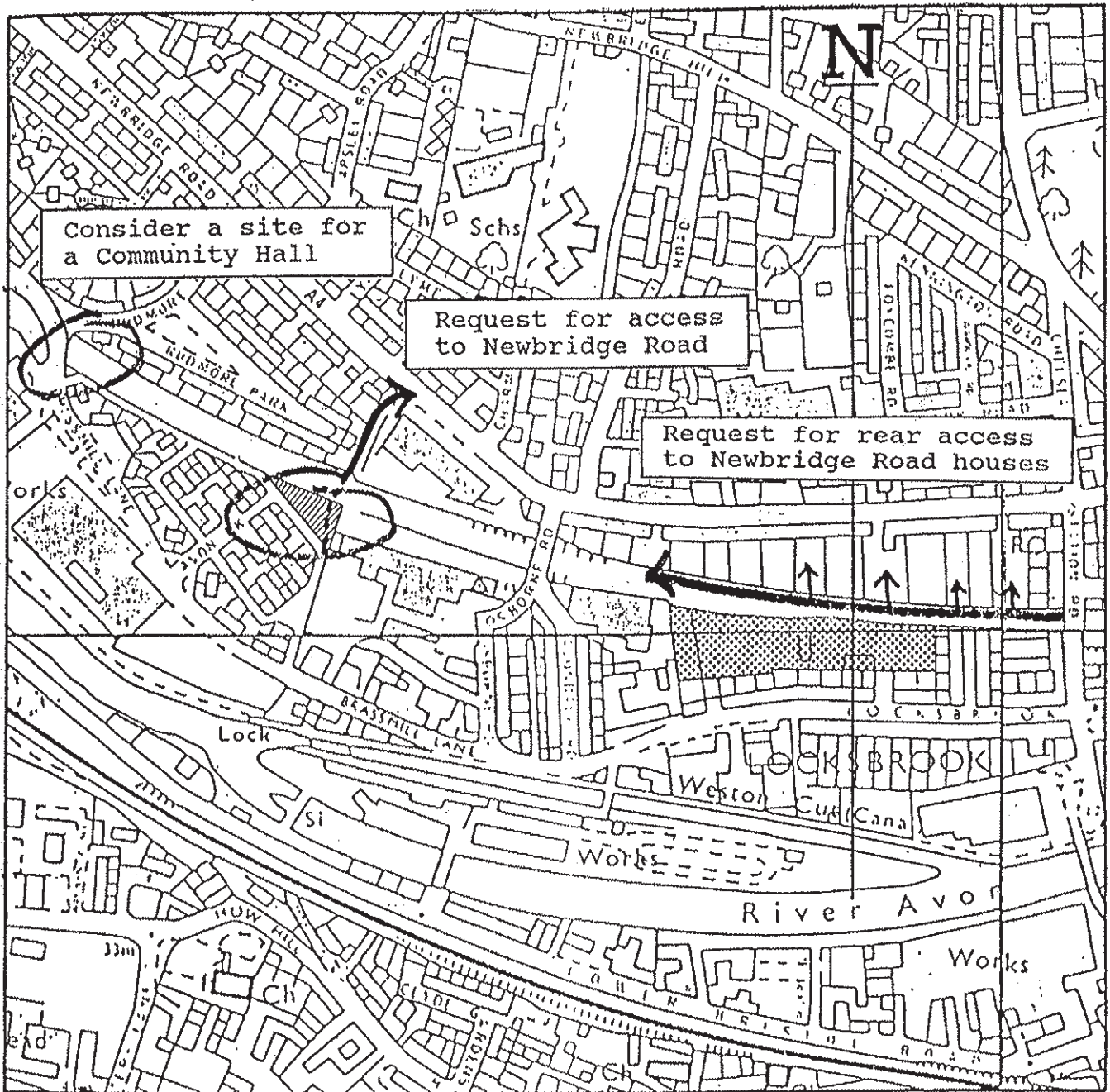
BRASSMILL.CP/AK/S82
31st August 1988

Brassmill Lane A



Land acquired from British Rail

11



Depot site subject of forthcoming Brief

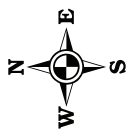


Allotments which may provide space for parking

'the Plan'

The Application Land

The Pink Land



Scale 1:1250



Appendix 2 the Plan

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IN RE: AN APPLICATION TO REGISTER LAND KNOWN AS THE LANE,
RUDMORE PARK, NEWBRIDGE, BATH AS A NEW TOWN OR VILLAGE GREEN

REPORT TO BATH AND NORTH EAST SOMERSET COUNCIL

Introduction

1. I have been asked to advise Bath and North East Somerset Council ('BANES') as to whether it should accede to an application to register land at Rudmore Park, Bath as a Town or Village Green pursuant to the provisions of section 15 of the Commons Act 2006 ('the Act').
2. BANES is a Registration Authority for the purposes of the Act. By application number TVG10/2 made by Joanne McCarron, Peter Burns, and Jose Ash and received by BANES on 1st. April 2010, the Applicants sought the registration of a plot of land referred to as The Lane, Rudmore Park, as a Town or Village Green on the basis that local inhabitants had indulged in usage that qualified for registration pursuant to Section 15(3) of the Act. The relevant neighbourhood from which the inhabitants came was said to be 'Lower Weston and Newbridge', in the electoral wards of Newbridge and Kingsmead

within BANES. It was said that qualifying usage ceased on 5th. April 2008.

3. BANES advertised the making of the application by published public notice pursuant to the Commons (Registration of Town or Village Green)(Interim Arrangements) (England) Regulations 2007 on 20th. May 2010.
4. The only objection to the application in response to the advertisement was itself provided by BANES. BANES is the freehold owner of the land, and therefore both has a practical interest in the future use of the land, and a statutory duty as registration authority under the Act to consider the application properly and fairly. As I understand it, it is for this reason, and to remove the possibility, so far as is possible, that the decision reached might be perceived to be affected by any conflict of interest, that BANES has sought my advice as an independent barrister, on the merits of the application. I would stress however that this document is my considered advice to BANES. The statutory duty to make the decision belongs to BANES.
5. Where I refer below to 'the Authority' I am referring to BANES in its capacity as registration authority under the Act. Where I refer to 'the

Objector' I am referring to BANES in its capacity as landowner and objector to the application. Where the context is indiscriminate, I have simply referred to 'BANES'.

6. In its written objection, the Objector put forward a number of specific reasons why the application should not be granted. These were:
 - (1) that the land was acquired by the Objector under the statutory purposes of the Open Spaces Act 1906. The consequence of this, says the objector, is that use of the land for lawful sports and pastimes by local inhabitants is not 'as of right' as required by the Commons Act 2006; instead it is 'by right';
 - (2) Secondly, it does not admit that the land specified in the application as a 'neighbourhood' is in fact a neighbourhood;
 - (3) Thirdly, the land is used as a right of way, and not as a Town or Village Green. If that is right, say the objectors then whether or not the usage is sufficient to lead to the creation of a footpath over the land, it is not sufficient to register a Town or Village Green over it;
 - (4) Fourthly, part of land shown on map is in the ownership of Oakhill Group Ltd. has been fenced off at all material times, and has not been used for recreational purposes.

7. The Applicants filed a Response on the 27th. August 2010 which accepted that the land shown on the application plan as subject to the application included a parcel of land owned by Oakhill Group Limited that was fenced-off as part of its business; and that this small parcel of land should be excluded from the application. Otherwise it did not accept the points made by the Objector.
8. I was instructed by the Authority to hold a public inquiry into the application; to receive and consider any relevant evidence; and to advise the authority as to whether it should acceded to the application. A public inquiry was held at the Guildhall, Bath on 23rd & 24th. May 2011. The Applicants were represented by Mr. Christopher Maile, a lay representative from the organisation 'Planning Sanity', whilst the Objector was represented by Mr. Vivian Chapman QC. As part of that inquiry I have viewed the site accompanied by the parties' representatives.
9. At the outset of the inquiry Mr. Maile applied to amend the application to change the neighbourhood on which reliance was being placed. He sought to rely on a neighbourhood described as 'Lower Weston' in the locality of Newbridge, which is an electoral ward within the ambit of BANES. It is bounded to the South by the

River Avon; to the North by Newbridge Road; as far West as the New Bridge over the Avon, and as far East as Chelsea Road. Mr. Chapman did not oppose this application, and I advise the Authority that it should consider the application as if it had been made in respect of the inhabitants of Lower Weston as so defined.

10. Mr. Chapman made the point that the application appeared to have been made under the wrong sub-section of the Commons Act 2006. It was made under section 15(3), which is apt where use has come to an end or been interrupted within two years prior the date of the application (see section 15(3)(b) *ibid.*); whereas the usage appears to have been continuing up to the date of the application. Mr. Maile applied to amend the application, so as to assert that usage continued up to the date of the application. There was no opposition to this, and it seems to me to be appropriate for the Authority to treat the application as being made under section 15(2), which relates to applications made where usage is so continuing.
11. The land that is the subject of the application is part of the former track bed of a long-disused railway line of the former Midland Railway between Bath and Bristol which led to Green Park Station in Bath. The line closed at the end of the 1960s. The application land, as

amended, runs at its Western end along an elevated embankment from Brassmills Road. The adjacent land to the Northern boundary rises as one passes further Eastwards along the application land. The land also widens out as it extends Eastward. The application land (as amended) ends at a mesh-link fence separating BANES' land from that occupied by Hartwell's Garage. The land is bounded to the North by the embankment, fencing, hedging, and the rear gardens of dwellings at Rudmore Park. To the South of the land is the housing of Avon Park, with an area of allotments at the Eastern end. Access to the land from the West lies from the Southern boundary, up some steps at the Western end of the land, and up a made access at roughly the mid-point of the land. At the Eastern end access is gained by the North-Eastern corner of the land, by which the public footpath running through the land exits it, leading on to Newbridge Road. The land is roughly grassed.

Evidence

12. What follows is not intended to be a complete summary of the oral evidence that I heard, but rather an indication of the evidence that makes the conclusions that I have drawn easier to follow.

13. I heard evidence from the Applicant Joanne McCarron, who lives at Rudmore Park. Her garden backs on to the land. She has used the land from 2004 for picnics, during community events such as picnics and parties, as a children's play area, as a location for children's dens, and for fruit picking. She has played badminton there. She hears children playing there, and she regards the area as a safe place for children to play. Ms. McCarron had organised a party on the land on one occasion, and about 20 or 30 people turned up. It was more than a street party. Her evidence was that the land was frequently used for general recreational purposes by young and old alike; it was convenient for people to walk their dogs, and for children to play. She accepted that there had been some dumping of rubbish on the land, but maintained it was still an enjoyable and attractive plot of land. Indeed, that was my impression of it during the site visit. She said that she regarded herself as living in the neighbourhood of Lower Weston. Ms. McCarron told me that Rudmore Park is part of Lower Weston, but she could not say where the boundaries of Lower Weston were. Residents considered it to be below (to the South of) Newbridge Road, and she thought that the residents would consider Lower Weston to extend into Kingsmead Ward. There is an Upper Weston which is above Newbridge Road. Whilst she accepted that the application had been prompted by

BANES' proposal to create a bus rapid transit route along the land, she denied that her evidence was exaggerated as a result. I found Ms. McCarron to be a straightforward witness whose evidence was presented reasonably.

14. Mr. Peter Burns lives at Avon Park. The area all around the land was all one parish called Weston. The border between Weston and Twerton was the river. When the area became so big with the construction of the gas works, it was split into two parishes – Weston and Lower Weston. St. John's Church is the parish church of Lower Weston. The gas works is to the South of the river, just above Twerton Cemetery. St. John's Church is by Cork Place. He has used the land since 1966, for walking and for picking blackberries. He had seen people use the land since trains stopped running over the tracks. Children do 'general adventure stuff'. Their numbers have varied, depending on the generations. He had seen children camping there. Recently two friends of his had seen children from Newbridge School doing nature trails there. He visits the land several times a day. Sometimes it is a short cut across the road. I had no reason to doubt Mr. Burns' evidence.

15. Ms. Jose Ash lives at Brassmill Lane, and has done so since 1977. She described the use that she and her family and other children made of the land since 1983. There is wildlife there, and blackberries for picking. Local people picnic there. There has been a community clear-up of litter on the land. She sees up to half a dozen children on the land at any one time, although it depends on the weather. Ms. Ash has an allotment nearby, and could see children on the land from her allotment. One would get more children there in the school holidays. Some residences nearby have little if anything in the way of gardens, and so the land is valuable for those children in particular. The people she sees walking around appear to be doing so for exercise, rather than to get to any particular place. She had always known the surrounding land as 'Lower Weston', running between Newbridge Road and the River and as far East as Locksbrook Road. People refer to Lower Weston in conversation. Ms. Ash would put it on her addresses. She had always known the claimed neighbourhood as such. The local Post Office (which is a stationers' shop and a sub post office) refers to itself as in Lower Weston.

16. Cllr. Loraine Brinkhurst MBE lives on Newbridge Road, near the land, having previously until 1977 lived at Widcombe Hill. She has been a ward councillor for sixteen years. Her family has used the land for

recreation since 1977, her children playing on the land, as had other families and children. The site in question has houses on either side of it, and in the councillor's view, the land serves the community well. She referred me to the fact that play equipment for children had been put on the land in 1996, the funding being received from the developers who constructed the housing at Kaynton Mead to the South. Planting schemes for shrubs and trees were carried out in 1997, and again in 2006 (following the disturbance of the ground by the installation of a water pipe). Fun days and picnics have been held there. Children appreciate it as part of their environment.

17. Councillor Brinkhurst had always known the area as Lower Weston. As such it was part of her address. She had understood the area to be a part of Weston, which is a prominent village at the other side of the Royal United Hospital. Newbridge and Lower Weston are regarded as the same area. The councillor had a clear interest in her local environment, and was a measured and reliable witness.
18. Mr. Colin Harding lives on Brassmill Lane, and has used the land for various purposes, such as walking, dog walking, bird watching, and picking blackberries, as has his wife. The land has been so used by him and others since 1992. The land has always been well-used by

children. He has seen a dozen or more children there at various times. They tend to be running around, hiding in bushes and making dens. There is also a fair amount of dog-walking on the land. Those people who do go there with their dogs usually take dogs up there and let them off the lead. This is a safe practice, and there is no risk of the dogs running on to a main road. People go there specifically to walk and exercise their animals.

19. Mr. Norman Rosser lives on Rudmore Park. He and his family have used the land for over thirty years for recreation. It is a much-used area of land. It is not just used for walking; people sit on the grass. His garden backs on to the land, and in consequence he sees a lot of people going on to the land with their children. Many people go up and down with their dogs enjoying themselves; children play ball games. It is mainly children, but there are sometimes grown-ups. He would do the same sort of thing with his grand children at weekends. In effect it is a playground to the local children.

20. Karen Hill lives on the Newbridge Road. She has used the land for recreational walking, blackberrying and playing with her children since 1987. More recently she went on a May Day picnic and barbeque about three years ago. A gazebo was put up by the local

residents. Most people were from the gardens backing on Rudmore Park and Avon Park and a few from Newbridge Road. People brought items of food, and there were some informal games as well. In her view, local residents have used this land for at least two generations.

21. I then heard oral evidence in opposition to the application. Mr. Robert Scott FRICS is employed as a Client Services Manager by BANES, working in Property Services. Much of Mr. Scott's evidence comprised of helpfully giving background information, and uncontentious description. I deal with the paper material relating to the acquisition separately below. Mr. Scott also produced some statistical analysis of the inhabitants of Lower Weston and Newbridge, and I will deal with that when I consider the issue of 'neighbourhood' below. In part, that analysis was superceded by the amendment obtained by Mr. Maile, but it remains relevant.

22. Mr. Scott produced a plan of the public footpaths in the area. A footpath runs from Newbridge Road Southwards. It enters the land at its Eastern end, and then runs westwards until it reaches a point adjacent to 35 Rudmore Park. At that stage it leaves the land to the South, and joins a network of footpaths which run variously alongside

the allotments to the East; alongside the land to Brassmill Lane; and to Avon Park. He pointed out that there is open land in the near vicinity, being a triangular open green area at Rudmore Park. He could not tell me whether this was publicly accessible open space, although on my inspection I saw nothing to indicate that it was private, and my inference would be that it was open to the public, or at least treated as such.

23. Mr. Scott was also re-called to give evidence as to the extent of the neighbourhood of 'Lower Weston'. He told me he had heard of such an area. In his view it was centred around the around the Royal United Hospital. To the North stood Upper Weston and Weston Village and below that Lower Weston, which was sometimes described as Newbridge. In his experience it extended as far East as the Royal Victoria Park, as far North as the Hospital, as far South as the River as far West as the end of town, although some people call the area around Newbridge Park Newbridge. I thought Mr. Scott was doing his best to assist the Inquiry in giving this evidence, and I accept it as his perception of the extent of 'neighbourhoods' in Bath.

24. I next heard from Mr. Andrew Reed, who is a Property Law Manager employed by the Council. Has prepared a helpful document that

itemised BANES' acquisition of the land, showing how the decision was taken. He was asked by Mr. Maile whether he knew or could assist as to the precise purpose for which the land was acquired, within the overall description 'open space', but he could not.

25. Lastly, I heard from Mr. Simon Memory, who is a Parks and Green Space officer with BANES. He produced documentation that indicated that the Council had regularly collected litter, cut the grass and maintained the hedgerows on the land. In summary, he said that the Council had maintained the land as an informal open space for the benefit of the public.

26. I turn next to the relevant documentation presented to the Inquiry. On behalf of the Applicant, this comprised a number of witness statements in substantially *pro forma* format, which gave fairly basic information as to the use that was made of the land – name, address, period of usage and type of usage. Mr. Chapman cautions me against giving much weight to this evidence given that such samples tend to be self-selecting; the evidence is not tested by cross-examination; and it is on occasion unclear whether the person in question is referring to usage of this land, or to the usage of open land nearby which is also subject to the proposed Bus Rapid Transit

development. These are reasonable and appropriate comments. However, such documentation may be useful both in corroborating or disputing contested oral evidence, and in buttressing or fleshing out or contradicting relatively limited oral evidence. I do not think it can be disregarded.

Acquisition of the Land

27. The application land formed one part of two parcels of land at Lower Weston, Bath, conveyed by the British Railways Board to Bath City Council on 21st. September 1987. The habendum states that the land was conveyed to the Council:

“TO HOLD unto the Council in fee simple as to the property first hereinbefore described for the purpose of the Open Spaces Act 1906 and as to the property secondly hereinbefore described for the purposes of section 120(2) of the Local Government Act 1972.”

Although the copies supplied are poorly coloured, the original conveyance plan was produced at the Inquiry. The application land formed part of the ‘property first hereinbefore described’, being land coloured blue and blue hatched yellow.

Subsequent Dealings with the Land

28. Part of the land has been advertised by BANES as land that it intends to use for purposes of a Bus Rapid Transport System. As I have said before, BANES' intention to use the land for this purpose is not relevant to the merits of the application. Equally the consequences of registration are not material to the application.

Burden and Standard of Proof

29. The practical consequences of registration are substantial, and restrictive of the possibilities of future use. It is not to be regarded as a trivial matter to have a TVG registered over land. It is necessary for the Applicant to strictly and properly prove his claim. To do so he must establish his claim by the production of evidence leading to the conclusion on the balance of probability that each element of the statutory test set out in section 15(2) of the Commons Act 2006 has been established. Section 15(2) states:

“(2) This subsection applies where -

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they continue to do so at the time of the application”

Although the issues set out in the notice of objection were restricted to four specific heads of objection (see para. 6 above) Mr. Chapman indicated that the Objector put the Applicant to proof of all matters necessary to establish the right claimed.

Issues - Use of the land for lawful sports and pastimes

30. The sort of activity relied on to establish the TVG is informal recreation, such as walking or dog walking or playing with one's children. With a caution that certain types of walking in certain circumstances may not have the effect of producing a TVG because it may instead be referable to the existence of a public highway (which I deal with below), such use falls within the statutory definition – see R v. Oxfordshire County Council ex. p. Sunningwell P. C. [2000] 1 AC 335 at 357 per Lord Hoffmann. Litter picking or tree planting is not of itself a sport or pastime, although it may be evidence that indicates that the local community viewed the land as a community resource, from which one might infer that it was used by local residents. I am of the view that picking blackberries may, in the correct context, amount to recreation or part of recreational use;

although it may also amount to the exercise of a *profit a prendre*¹ in law.

Use of the land as if it were a public footpath

31. As I have set out above, the land is broadly linear in shape (although it widens to the West). The Western end has a public footpath running through it. The Objector argues that use of the land is referable to (or 'proves') the use of the land as a public footpath only, and not as a TVG. It also argues (relying on the decision of the House of Lords in DPP v. Jones [1999] 2 AC 240) that once a footpath is in existence, then any usage by the public of that land that does not amount to a nuisance, either to the landowner or to the other users of the footpath, is lawful and permitted. If such activity was lawful, it followed that such user was not 'as of right' but 'by right', and not within the scope of section 15(2) Commons Act 2006. It would I think follow that the practical effect was that a public highway could not be registered as a TVG, and possibly that all public highways could be used as TVGs (although they would not have the legal status of such) so long as they did not cause a nuisance by obstructing the highway. As far as the part of the land not covered by the highway was concerned Mr. Chapman's argument was again that the use by

¹ A right to take produce of the soil from the land of another.

the inhabitants looked like the sort of use that one would see giving rise to the deemed creation of a footpath, and not a TVG.

32. Mr. Maile's submissions on the point were broadly to the effect that even if Mr. Chapman's submissions were well founded (which I do not think he admitted) the footpath only extended for half of the length of the application land, and that it would not affect the remainder.

33. I agree with Mr. Chapman that the law of the topic is set out in the judgment of Lightman J in Oxfordshire County Council v. Oxford City Council [2004] EWHC 12 (Ch) in terms which were not disapproved when the case was appealed:

"[102] The issue raised is whether user of a track or tracks situated on or traversing the land claimed as a Green for pedestrian recreational purposes will qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a Green. If the track or tracks is or are of such character that user of it or them cannot give rise to a presumption of dedication at common law as a public highway, user of such a track or tracks for pedestrian recreational purposes may readily qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a Green. The answer is more complicated where the track or tracks is or are of such a character that user of it or them can give rise to such a

presumption. The answer must depend how the matter would have appeared to the owner of the land: see Lord Hoffmann in Sunningwell at pp 352H-353A and 354F-G, cited by Sullivan J in Laing at paras 78-81. Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. *Use of a track merely as an access to a potential Green will ordinarily be referable only to exercise of a public right of way to the Green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential Green may be recreational use of land as a Green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land.* (my emphasis). If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a Green).

[103] Three different scenarios require separate consideration. The first scenario is where the user may be a qualifying user for either a claim to dedication as a public highway or for a prescriptive claim to a Green or for both. The critical question must be how the matter would have appeared to a reasonable landowner observing the user made of his land, and in particular whether the user of tracks would have appeared to be referable to use as a public footpath, user for recreational

activities or both. Where the track has two distinct access points and the track leads from one to the other and the users merely use the track to get from one of the points to the other or where there is a track to a cul-de-sac leading to (e.g.) an attractive view point, user confined to the track may readily be regarded as referable to user as a public highway alone. The situation is different if the users of the track e.g. fly kites or veer off the track and play, or meander leisurely over and enjoy the land on either side. Such user is more particularly referable to use as a Green. In summary it is necessary to look at the user as a whole and decide adopting a common-sense approach to what (if any claim) it is referable and whether it is sufficiently substantial and long standing to give rise to such right or rights.

[104] The second scenario is where the track is already a public highway and the question arises whether the user of the track counts towards acquisition of a Green. In this situation, the starting point must be to view the user as referable to the exercise (and occasional excessive exercise) of the established right of way, and only as referable to exercise as of right of the rights incident to a Green if clearly referable to such a claim and not reasonably explicable as referable to the existence of the public right of way.

[105] The third scenario is where there has been a longer period of user of tracks referable to the existence of a public right of way and a shorter period of user referable to the existence of a Green. The question which arises is the effect of the expiration of the 20-year period required to

trigger the presumption of dedication of a public highway on the potential existence after the full 20 years qualifying user of a Green. During the balance of the latter 20-year period the user of the path will prima facie be regarded as referable to the exercise of the public right of way (cf. para 104 above). The question raised is whether the user during the previous period should likewise be so regarded because the presumed dedication as a public highway dates back to the commencement of the 20 year period of user of the way. In a word, does the retrospective operation of the dedication as a public highway require that the user of the path throughout the 20 year period giving rise to the dedication should be viewed retrospectively as taking place against the background of the existence throughout that period of a public footpath? In my judgment the answer is in the negative. Over the period in question the user of the path was in fact "as of right" and not "of right". It is totally unreal to view user as taking place against the background of the existence of a public right of way at a time before that right of way came into existence. Where a public right of way comes into existence during the period of potentially qualifying user for the existence of a Green, in determining whether the qualifying user is established it is necessary to have in mind that at least some of the user must have been referable to the potential (and later actual) public right of way. But that does not mean that acts of user may not also or exclusively be referable to qualifying user as a Green. I do not think that anything said by, let alone the decision of, Sullivan J in Laing should be read as to the contrary effect. The

question must in all cases be how a reasonable landowner would have interpreted the user made of his land.

In the present case user relates (as to broadly the Eastern part of the land) to land over which a public footpath runs, and hence the principle set out by Lightman J. at para. [104] applies. Although the footpath was only created in 2006, the issue relates to the appearance of usage throughout the relevant period of twenty years. I remind myself that there is land at the Western end that has been used together with the land at the East, and which does not appear to me to fall within the extent of the footpath dedicated to public use; also that in assessing the appearance of usage to a landowner, one must bear in mind that there was a substantial period of time before the dedication of the footpath where no footpath was in existence. To that extent the position is not as neat as Lightman J.'s categorisation might make it. To that part of the land over which no footpath runs, the principle set out at paras. [102-3] applies. Before considering those principles I need to make two preparatory comments. First, at the Inquiry I asked if I could be supplied with information of the width of the public highway over the application land. The footpath was created by the Bath and North East Somerset Council (City of Bath Definitive Map and Statement Modification Order)(No.5 – Newbridge) 2006 Order on 15th.

November 2006. That document specifies the width of the way as it traverses the application land as 1.8 metres. The application land is substantially wider than that throughout (I would estimate 10m at its narrowest). The way is not fenced or marked where it runs through the application land. Secondly, although different tests apply to different parts of the application land, in truth the appearance of usage to the landowner would relate to usage of the land as a whole.

Findings as to Usage - Footpath or Recreation

34. I have no doubt that some of the usage of land that has been described would be 'to and fro' walking, either actually for the purpose of access, or giving the impression that it was the sort of usage that one might typically see on a footpath. However I am satisfied that the majority of the usage, by a fair margin, would be recreational in nature. The evidence of dogs being let off of the leash; playing with children (which in my view is a significant part of the usage of this land); the use of ball games on the land; playing on the wider area at the western end of the land, and playing in dens in the undergrowth, indicates that a landowner would have been well aware that the recreational usage of the land went outside and differed from what one might typically expect to see on a mere

footpath. I would add first that from my site view it seemed to me that the public footpath leading from Newbridge Road to the Western end of the application land was not easy to traverse adjacent to Newbridge Road, and singularly unattractive. As a matter of fact it is unlikely that the footpath would be used as a through route save in the relatively limited circumstances of someone needing to pass from the housing to the South to that part of Newbridge Road or vice versa. It is (in my view) more likely that the network of footpaths would be used to get to the application land. Secondly I note that the housing to the South of the land does not appear to be well served in terms of garden space. There is the River to the South, but in the vicinity it has been built up to; and there is Rudmore Park to the North. But especially where children are concerned it is likely that they will head to the closest available open space, and for that housing this would be the application land. Thirdly, the construction of facilities for play in about 1996, at the time of the construction of Kaynton Mead, was some recognition that this land was at the least suitable for play by children, and recreation by local residents. I found Cllr. Brinkhurst's evidence on this point helpful.

35. Applying the test set out by Lightman J at paragraphs [102-3] of his judgment set out above to the land at the Eastern half of the land

subject to the application, I am satisfied that a reasonable landowner would have concluded that this land was being used for sports and pastimes. Applying the test set out at paragraph [104] to the Western half, the usage of this part of the land, and in particular the wide area at the Western end, would clearly be referable to an apparent belief in the existence of TVG rights, and not to the mere usage of a footpath over part of the land. I have carefully considered Mr. Chapman's submission based on DPP v. Jones. That argument was considered by Lightman J. in Oxfordshire at [101], and his Lordship considered that the wide view relied on by Mr. Chapman was that of Lord Irvine LC alone. Given that Lightman J gave a considered view as to the effect of the existence of a right of way, and the view expressed by Lord Irvine in DPP v. Jones, it is my advice to the Authority that it should be guided by the advice given by Lightman J. I would repeat that on the evidence I have considered the usage made of the land as a whole went substantially beyond that referable to mere usage of land as a footpath, and would clearly have indicated to the landowner that the land was being used for general recreational purposes.

**Usage by a significant number of the inhabitants of the neighbourhood of
Lower Weston**

36. The next issue is whether the Applicant has succeeded in proving that the neighbourhood that has been asserted exists. The objector does not contend that Lower Weston is not a neighbourhood. Its point is that it is a larger neighbourhood than that which the Applicant contends for. The point is that the larger the neighbourhood (in terms of the number of inhabitants), the smaller a proportion of it will the proven users be. But the first point that Mr. Chapman makes is that if the neighbourhood is as a matter of fact larger than the area alleged by the Applicant in the Amended Application, then the application must fail.

37. A neighbourhood has to be a cohesive area, which people would or could identify, although it need not be definable with absolute precision – see the comments of HHJ Behrens in Leeds Group plc v. Leeds City Council [2010] EWHC 810 (approved in the Court of Appeal at [2010] EWCA Civ. 1438), and the comment of Lord Hoffman in Oxfordshire County Council v. Oxford City Council [2006] 2 AC 674 at [27] that the phrase:

“‘Any neighbourhood within a locality” is obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries’

The argument put forward by Mr. Chapman is that the finding of a TVG results in all of the inhabitants having a right to exercise the rights of lawful sports and pastimes. Therefore it is necessary to find exactly where the boundary of the neighbourhood lies. If the neighbourhood put forward by the applicant is not accurate, then the application must fail.

38. In my view the correct question here is whether the area designated by the applicant can be fairly said to be a neighbourhood. It does not matter that others may come to a different view as to where the boundaries of that neighbourhood may be, so long as the attribution put forward by the Applicant is a reasonable one. Otherwise one may have the position, as is argued here, that on an objective view of the evidence the 'true' neighbourhood is of a slightly different size and shape than that set out on the application map. Unless the applicant was 'spot on' with his application, or his amendment (if allowed) as the hearing progressed, the application would be defeated. That seems to me to be an inefficient and unfair way of formulating the issues, which harks back to the rigid formalism that applied when the only available area was the locality, and which the definition of 'neighbourhood' was intended to avoid.

39. Lower Weston, as is plain from the evidence of Mr. Scott and the map evidence submitted to the Inquiry, does exist as a recognised area in West Bath. However, there is little agreement as to precisely what it comprises. In part, it seems to me that problems have arisen because the Applicant has both described his neighbourhood (as 'Lower Weston') and defined it by reference to a plan. The Objector has argued that the area of 'Lower Weston' is different from that described by the Applicant. If so, that may render the issue of proof more difficult, but it does not mean the application fails. It would instead mean that, to most people, 'Lower Weston' was not the area identified by the Applicant as a neighbourhood. It would not necessarily mean that the area defined by the Applicant was not a neighbourhood, although it may make it more unlikely to be true as a matter of fact.

40. The description 'Lower Weston' appears on the plan provided by the Objector to plot the dwellings of those giving evidence in support of the application². It is referred to as part of the postal address in a number of application forms. After the Inquiry closed I received (with the consent of the Objector) a letter from Mr. Peter Burns which contained a map showing the parish boundaries from the history of St. John's Church, Lower Weston. The Southern boundary follows the

² Although it is placed to the East of Chelsea Road.

River Avon, as far West as Cleeve Hill and as far East as Royal Victoria Park. The Northern boundary runs along Kelston Road, and then to the South of the Royal United Hospital. The parish is therefore significantly larger than the claimed neighbourhood; in particular it includes the land to the North of Newbridge [Road] Hill about Locksbrook Cemetery; and land to the West of New Bridge, although that land is not urban.

41. Whether the area claimed as a neighbourhood qualifies as such depends upon whether it is sufficiently cohesive. It is also important that it is perceived as a neighbourhood by those who live within it. The land to the South of the claimed neighbourhood is to a large extent industrial; the Brassmill Trading estate and the Locksbrook Trading estate comprise light industrial units. To the North are streets of what might be termed artisans' dwellings, with larger housing to the North of the former railway line. There are shops along Newbridge Road, although they tend to be on the Northern side. There are also what appears to be a few former general stores in the neighbourhood. One is closed; another has become a dog-grooming centre. There are public houses on Newbridge Road, and on the Avon. Although the housing stock is generally Victorian, there are more recent enclaves, notably the development at Kaynton Mead.

42. The boundaries of a claimed neighbourhood need not be distinct.

On the evidence I have heard, I conclude that Lower Weston is a cohesive area that is broadly recognised locally; is bounded by the River Avon to the South; and extends as far West as the New Bridge. I doubt that it is clearly bounded by Newbridge Road; although Newbridge Road is a busy road and a clear boundary, I think it likely that some residents to the North side of that road would regard themselves as living in Lower Weston. Equally I think it likely that it extends a little further to the East than that. The fact that the parish of Lower Weston may be an historic locality does not necessarily mean that the perceived neighbourhood is of the same bounds. However, making allowances for the undoubtedly fuzzy and indistinct boundaries of Lower Weston as it is popularly perceived, I am of the view that the area set out in the application is a neighbourhood within the meaning of the Commons Act 2006.

43. The next issue is whether the usage of the land is by a significant number of the inhabitants of the neighbourhood. According to Sullivan J. in R. v. Staffordshire County Council ex p. Alfred McAlpine Homes Ltd. [2002] EWHC 76 considering what usage by 'a significant number' of inhabitants meant:

“...what matters is that the number of people using the land in question has to be significant to indicate that their use of the land signifies that it is in general use by the local community for informal recreation”.

It is a question of impression from the evidence available to the Inquiry as to whether this test is satisfied; it is not necessary that the number of users from the neighbourhood be considerable or substantial. In coming to my conclusion I am not limited to the evidence of the users themselves; I can draw inferences from the character and location of the land as to likely use. Nor am I limited to their evidence of their own use. Indeed it is noteworthy that many of those who gave evidence themselves stated that the land was used by others.

44. I have no doubt from the evidence that I have heard and read that that the land has been subject to substantial and regular recreational usage by local residents. In the main this usage has comprised recreational walking and dog walking by adults, and ball and other games by children. Although there is other open land available for recreation nearby at Rudmore Park itself, that land is quite open. The application land is more interesting land, and I can

fully understand why for some recreational activities it should be preferred to the open land at Rudmore Park.

45. I have born in mind the statistical analysis carried out by the Objector which analyses the witness evidence (both oral and written) against the extent and population of the claimed neighbourhood. I note that the analysis does not take account of the extent of family usage referred to in the witness evidence (where witnesses refer to the usage by spouses or children) nor third party usage. I note the lack of land available nearby for recreation save for Rudmore Park; and the two parcels of land that are also subject to applications for TVG registration at Newbridge and Kaynton Mead. This land has been available for recreation use at least since it was acquired by BANES, and probably for significantly longer than that. I do not consider that the Objector's analysis, although intended to be helpful, is properly representative of the use that I find to have taken place on the land. This usage was plainly more than intermittent acts of trespass by local residents; it was regular usage for recreation by a relatively large number of residents. It is not surprising that the users are more strongly clustered around the land; that is what one would expect. Access from the claimed neighbourhood is reasonably straightforward. I am

of the view that the usage by local residents has been by a significant number of the inhabitants of the claimed neighbourhood.

User 'as of right'

46. Mr. Chapman argues that user is only 'as of right' if there was at the time no legal right to do the lawful sport or pastime relied upon. He says that 'as of right' should be thought of as meaning 'as if of right'. He then argues that as BANES held the land at all material times since 1987 pursuant to the provisions of the Open Spaces Act 1906, section 10, it was obliged to allow the local inhabitants to carry out their informal sports and pastimes on it; to put it another way, they had a right to do so. In those circumstances says Mr. Chapman their usage was not 'as of right'. He relies on comments made by various members of the House of Lords in R v. Sunderland City Council ex p. Beresford to establish these propositions, although he accepts that these comments were not strictly necessary for the decision in the case.

47. Mr. Maile contends that it does not matter what power the land was acquired under; what matters is the power for which the local authority use the land. In the present case the only use that the local authority have made of the land has been for footpath or highway

use. Such use does not permit usage as sports and pastimes; therefore local inhabitants' use for such purposes is 'as of right'.

48. Usage is traditionally regarded as 'as of right' if it is without force, secrecy or stealth. It has been judicially commented that it is really use that is 'as if of right' – with the appearance of being entitled to carry out the usage. Relatively recently, and particularly in the context of TVGs, Courts and Registration Authorities have considered that there is a further requirement to add to that definition, that the usage must not be 'by right'. To put it another way, the whole doctrine of usage 'as of right' exists to create a legal right or status where none existed before. It explains why people did what they would otherwise have no right to do. So, in the case of a right of way that is claimed to exist by long usage, if it is the case that the owner already had been granted a formal right of way, even one which will expire at some short time in the future, there will be no need for him to rely on his alleged right by long usage. In the same way, if the public in this case had a right to use the land for recreation, then their usage would be by reference to that right, and not 'as [if] of right'. The proposition underlay the comments of Lords Bingham, Scott and Walker in Beresford.

49. In my view all local authorities can only use land in the long term for the purpose for which they hold it. They can use land for a temporary purpose if their intended long-term use is not one that can presently be realised; but unless that is the case, they must use it if at all for the purpose for which they hold the land – see the comments of Sir Thomas Bingham in R v. Somerset County Council ex p. Fewings [1995] 1 WLR 1037 at 1042 and decision of the Court of Appeal in Attorney-General v. Poole Corporation [1938] 1 Ch 23. I do not think that it is inconsistent with a decision to hold land for the purposes of public open space that a local authority should decide to dedicate a public highway through the land. Such a usage is ancillary to the use of the land as public open space, as it assists in the passage of the public to and through the land. I would also add that from the evidence before me there is no case that BANES either decided to, or did, hold the land temporarily for any other purpose pending its eventual use as public open space. I am of the view that it has been held as, and used by BANES as, public open space since 1987.

50. The next question is, if land is held for the purpose of section 10 Open Spaces Act 1906, what rights to use the land are conferred on the public? I agree with Mr. Chapman's submissions that where a local authority so holds land, the consequence is that it holds it on trust to

permit the local residents to use that land for recreational purposes. Although the comments of law lords in Beresford on this point amount to *obiter dicta*, they are the considered views of a number of senior law lords. They are consistent with earlier authority (see Poole Corporation supra and Hall v. Beckenham Corpn. [1949] 1 KB 716) and the view of Parliament (see section 122 Local Government Act 1972 as amended, which refers to the discharge of trust arising under section 10 of the Open Spaces Act 1906 and section 164 Public Health Act 1875 on appropriation of land to another use) and in my view are correct as a matter of principle.

51. I therefore conclude that the land has, at all material times, been held by BANES as public open space, and that usage of the land by local residents has not been 'as of right' for the purposes of the Commons Act 2006.

Conclusion

52. I therefore advise the Authority that they should dismiss the application, because the recreational use of the land by local inhabitants has not been 'as of right', the land being held by BANES at all material times pursuant to the provisions of the Open Spaces Act 1906, section 10.

53. As a postscript I should note that Mr. Chapman had a further argument in his locker. Although the Applicants apply under the Commons Act 2006, that Act superceded in different terms the provisions of the Commons Registration Act 1965, which had itself been amended by the Countryside and Rights of Way Act 2000. That amending Act allowed applicants to rely on usage by the inhabitants of a neighbourhood to establish a TVG, whereas they had previously been limited to relying on the usage of inhabitants of a locality. The argument is that the present Commons Act does not allow an applicant to rely on usage by inhabitants of a neighbourhood where the usage, as here, predates the coming into force of the 2006 Act. I did not think Mr. Chapman thought much of this argument, and he put it forward because in the recent Leeds case the Court of Appeal indicated that they would deal with it in a subsequent hearing. Had the applicants' case otherwise succeeded, I would have made further enquiries as to whether and when the Court of Appeal might have heard the argument, and I would have considered advising the Authority to defer its decision until judgement was given. But in the circumstances it is pointless to delay matters further.

54. Lastly, can I extend my thanks to Mr. Simon Elias and Mr. Graeme Stark who facilitated the hearing and took care of all of the parties at it. I am very grateful also to Mr. Chapman and Mr. Maile for their helpful, thoughtful and measured submissions throughout.

21st. September 2011

Leslie Blohm Q.C.

St. John's Chambers,
101 Victoria Street,
Bristol,
BS1 6PU

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