

RE: APPLICATION TO REGISTER AS A TOWN OR VILLAGE
GREEN IN RELATION TO LAND AT THE REC, KEYNSHAM

INSPECTOR'S REPORT

1. I have been appointed by Bath and North East Somerset ("BANES") to conduct a non-statutory public inquiry and then report with a recommendation in relation to an application which has been made by Mrs Susan Linda Cron on 9 September 2004 to register land known as the Rec in Keynsham as a town or village green. I conducted a public inquiry on 16 and 17 October, having opened it earlier in the year at a time when, unfortunately, the documentation was not in order and it was necessary to adjourn the inquiry for it to be conducted properly. On the date of the earlier opening of the inquiry I undertook a site visit in the company of the parties. Subsequently, on 17 October 2007, I undertook an unaccompanied site visit of both the site itself and also the wider area.
2. Prior to embarking in detail upon my report, I would wish to place on record my thanks, firstly, to the excellent assistance from which the inquiry benefited, from the Public Rights of Way team at BANES on behalf of the registration authority, which greatly assisted the smooth

running of the inquiry. I would also like to register my thanks to the main parties, and all of those who gave evidence to the inquiry. I emphasised at the outset that the purpose of the inquiry was to assist me in giving the Council the best advice that I was able to. I never felt that any of the participants were doing other than their utmost to assist me and the public inquiry in achieving the correct outcome in respect of this application. The inquiry was conducted in a generous and good-humoured spirit, which reflects great credit on all concerned.

3. As I explained at the Inquiry, during the course of the evidence and submissions I kept a record of the proceedings which is appended to this report. That is not intended to be a transcript or anything other than the best note that I was able to take of the evidence which I heard. Thus, whilst I shall in due course deal with the evidence which is pertinent to the application, I wish to emphasise that, for any person seeking to appreciate all of the evidence that I have taken into account, it will be necessary to peruse the witness statements which were provided to me together with the documentation alongside my record of proceedings. What follows in the main body of this report is in essence a distillation of that material, to assist an understanding of the findings of fact which I propose to make, and to facilitate an understanding of the conclusions and recommendation which I am making to the Council.
4. In addition to the record of proceedings, I am appending to this report the agreed site description helpfully provided to me by the parties,

together with a useful chronology and index of the witnesses prepared by the objector which assists in understanding the context of the case.

Site description

5. Please refer to the attached agreed site description. All that I would wish to add to this is that, obviously, I was unable to inspect the condition of the land behind the hoardings, which currently contains the site compound associated with the reconstruction of the elderly persons' home adjacent to the land. However, for the purpose of making my recommendation, I assume that it would be reinstated and laid down to grass similar to the surrounding land subject of the application, once the temporary use as a compound has ceased.

The evidence

6. In this section, as indicated above, I propose to provide a summary of the pertinent aspects of the evidence placed before the inquiry. In reality, little of the evidence proved contentious. There are some arguments about the purpose for which the Council holds the land in respect of which I shall have to make findings, and disputes as to the proper inferences that can be drawn from that evidence. I shall deal with those matters in the next section of this report.

7. It is probably right to start with an examination of the history of the land, and how it came to be in the ownership of the Council. At page 199 of the bundle there is a deed entered into between Charles Richards Willoughby and Keynsham Parish Council. The purpose of that deed was to create a lease of land illustrated in a sketch on

page 199 of the bundle. The deed states that the Council were taking that land for the purpose of it being used as a recreation ground, in accordance with the Council's powers contained in the Public Health Act 1875 and the Local Government Act 1894. I shall turn later to the implications of that legislation.

8. The next deed in the bundle is one which was entered into on 12 October 1938 between Harry Herbert Veale and Keynsham Urban District Council. This again was a lease of land which included the land which is the subject of the application. It is, however, important to notice, that insofar as it is possible to discern from the sketch on page 199 the extent of the land which was being demised to the Council, it appears that in this subsequent deed a smaller area of land was being let. Indeed, the recorded measurement of the land is also different. This deed is silent as to the statutory powers or purposes for which the land was being let to the Council, but it does state that the purpose of the letting of the land was for the land's use as a recreation ground. Clearly, there is no evidence available from the Council's records as to what may have happened between the end of the lease from 1913 (that having been for a period of five years) and the next document dated 1938.
9. The next deed is dated 31 March 1945, and is again a lease between Mr Veale and Keynsham Urban District Council of broadly the same parcel of land for the purposes of a recreation ground. Once again,

there is no recital in the document as to any statutory powers or purposes entitling the Council to hold the land.

10. The Council's archive, following this collection of deeds, then provides minutes of a meeting of 13 December 1948, recording that Mr Veale was minded to dispose of the land and the Council resolving that they would acquire the site as use for public open space at a price in accordance with a report from the District Valuer. Following this, there is a further minute reporting that the Council, having received the advice of the district valuer, had resolved to acquire the land and recording that a decision was required as to how the purchase was to be funded. The committee resolved that, if possible, the purchase should be financed by way of revenue but, in the alternative, an application could be made to the Ministry of Health for a loan to cover the acquisition.
11. The lands were purchased by Keynsham Urban District Council on 35 March 1949. They paid Mr Veale £400 for the acquisition, and in the recitals of the deed it notes that the land conveyed "is now in the occupation of the purchasers and used as a children's playing field".
12. It is important to appreciate that there have been a number of reorganisations of local government that have affected the ownership of the lands. These are set out on page 386 of the bundle and, in essence, on 1 April 1974 all the land that had been owned by Keynsham Urban District Council became vested in Wansdyke District

Council. Subsequently, the property of Wansdyke District Council became vested in BANES on 1 April 1996.

13. The Council's archives produce a number of minutes which have some bearing on the recreation ground. In particular, it appears that in 1949 there was consideration given to restrictions on the use of the playing field, and it was determined that it was to be laid out and used essentially as a children's play area. Subsequently, it is suggested that bye-laws were made in relation to the Rec, and at page 234 of the bundle and following there is a set of bye-laws said to have been made under the Open Spaces Act 1906 and the Public Health Act 1875 in respect of this area of open space. In particular, on page 239 the Rec is identified as the Hawthorns Recreation Ground, and it is said that the bye-laws had been made under Section 164 of the Public Health Act 1875.
14. In 1991 members were asked to give permission for the Temple County Primary School to use the Rec three times per week, and that permission was granted. The only other element from the Council's archive is a dog bye-law made on 31 October 1991 in respect of, amongst other open land controlled by the Council, the open land in respect of which this application is made.
15. This history was provided to the Inquiry by Mr Reed, who had no personal knowledge of the Council's acquisition and use of the land

but had simply researched the archive to try to find any documents which might shed light on the purposes for which the land was held.

16. The evidence of those who use the land was extensive, consistent and largely uncontroversial. Indeed, in his closing submissions to me Mr Chapman on behalf of the objector helpfully accepted that there was no dispute that the Rec had been used by the public for recreation for more than 20 years. In addition, it was not disputed by the objector that the way in which the land had been used amounted to use for sports and pastimes which, in principle, could qualify under the relevant statutory test. However, notwithstanding that helpful concession, it is necessary briefly to summarise the nature and extent of the use of the land which I heard about.
17. Many of the witnesses from whom I heard have known the Rec for a very substantial period of time, and certainly in excess of the 20-year period relevant to the application. Indeed, for instance, Mrs Whittock had commenced using the Rec around 70 years ago, when she visited her aunt in Sherwood Road. This is obviously consistent with the conveyances which I have recorded above, which suggest that for a very substantial period of time the land has been being used for recreational purposes.
18. There were a wide variety of recreation activities which were described within the evidence. The witnesses spoke of dog-walking, playing sports such as football and cricket, learning to ride bicycles, picnicking

and other informal play activities. It was common for the witnesses to describe the land as being a safe place for children to play, and having visited the site on several occasions I can understand the sense of that observation. It is surrounded by property and has a high degree of passive surveillance; it is enclosed and does not have any busy roads immediately adjacent to it. It is just the kind of place where it would be appropriate to allow young children to play unsupervised a short distance from their home.

19. A large part of the focus of the evidence at the Inquiry related to the evidence available to define a neighbourhood relevant for the purposes of the application. Originally, Mrs Cron had identified a wider area as being the neighbourhood relevant to her application. The area shown on page 9 of the bundle extended to the totality of the western boundary of the town, including areas to the north and west of Charlton Road. The issue of the definition of the neighbourhood, along with other aspects of the application, was queried by the registration authority under cover of a letter of 11 February 2005 (page 13). On the second page of that letter Mr Steel on behalf of the registration authority asked Mrs Cron to clarify whether the “neighbourhood within the locality” is some smaller area such as “the land to the west of Temple Street and extending out as far as Charlton Road” or similar. Mrs Cron reconsidered her application and redrew the boundary of the neighbourhood to exclude the land which is to the north and west of Charlton Road, and to draw the boundary along Charlton Road from the north east at the high street down to the south-west corner of the

settlement. This excluded two of the respondents to her questionnaire but caught the overwhelming majority of them.

20. The discussion centred upon whether or not there was properly a neighbourhood which could be identified for the purposes of the legal test. I shall turn to the legal issue below, but wish at this stage to summarise the evidence which was provided in respect of this issue.
21. Within the evidence questionnaires completed by many of the witnesses from whom I heard and others who were unable to attend the Inquiry, at question 11 there is a question which asks “What recognisable facilities are available to the local inhabitants of your locality?” Whilst there were slight variations within the responses to this question, in essence the vast majority of the respondents identified that the area contained a school catchment and a community centre and local church or place of worship. They identified that it had a doctor’s surgery and community activities, together with a scout hut.
22. There is some further issue in relation to the evidence questionnaires arising from the fact that three different maps were attached to them, and on none of them was the neighbourhood within the locality actually identified, although people signed the form indicating that the map accompanying the questionnaire illustrated the claimed locality relevant to the application.
23. This reflected the circumstances of the area that I observed on my site visit, and it is clear that within the area defined on the plan there are a

number of facilities such as schools, churches of various denominations, a doctor's surgery and a scout hut, together with other social infrastructure and community amenities. Mr Chapman in cross-examination with each of the witnesses sought to establish whether any of the facilities was directly referable to the neighbourhood which had been defined on the plan. It became clear that, in respect of each of the facilities such as the churches or the doctor's surgery or the scout hut, whilst they served the area delineated on the map on page 18 they also provided a facility for the wider settlement of Keynesham. Thus, whilst witnesses suggested that most of the patients enrolled in the doctor's surgery would come from nearby, nevertheless the doctor's surgery was not itself referable to the defined neighbourhood. Indeed, each of the witnesses accepted that the facilities that they had identified within the area were not so referable.

24. A number of the witnesses indicated, when asked by Mr Chapman to identify what factor might unify the neighbourhood, firstly the physical geography of the area, defined as it is by natural barriers formed by the main roads. Many of the witnesses in answer to this question also drew attention to the Rec itself as being a focus for social interaction and a place where people met and friendships developed. This was the case not simply in relation to children who met whilst using the Rec, but also to their parents, who would meet through their children, in the same way as parents became friends and acquaintances through meeting at the school gate. Many of the witnesses gave evidence that the people who they would see using the Rec would all be known to

them either by name or by sight. They would almost always be people who they recognised as their neighbours and people who lived within the defined area.

25. It was accepted by many of the witnesses that the Rec would be most commonly used by those who were within approximately a five-minute walk of the land. Thus, it was accepted by many witnesses that the part of the defined area at the extreme south west including the estate associated with Longmeadow Road and Walnut Close would be far less likely to use the Rec than those who lived in Sherwood Road, Albert Road, Queens Road and Park Road. That is a matter which is also reflected in the homes of those who responded to the questionnaire.

26. A further response to Mr Chapman's enquiry as to what it was that might create any unity or cohesion in the area which had been defined on the plan on page 18 given by many of the witnesses was that there was a clear sense of community within the defined area, and that there were strong social ties between the people who lived within that area. These ties were forged by the relationships established through raising families and meeting other parents, together with worshipping at local churches or participating in local groups and activities. Many of the witnesses were very passionate about the sense of community which they felt existed with those amongst whom they lived.

27. The evidence in relation to this aspect of matters also engaged with an analysis of the history of the area defined on page 18. I saw on my site visit that the area within the demarcation was clearly constructed over a significant period of time. Whilst it is impossible to be dogmatic about the evolution of the area, it is relatively clear that towards the north end of the area the properties are probably late Victorian and Edwardian in the main. As one moves south and west, there was then obviously a substantial period of construction, which was described in particular by Mrs Venables as being accommodation for Bristol overspill. She described the middle part of the defined area as being known as the Park Estate, which comprised Queens Road at the western end, Coronation Avenue, Warwick Road, Caernarvon Road and Dunster Road. Following the completion of this, there has then been subsequent development, probably in the late 1970s or 1980s, towards the extreme south west of the area up to the boundary of the settlement.
28. Since none of these factual matters was essentially controversial, I am happy to find as facts all of the matters which are set out above. There are, however, two important inferences which are combined issues of fact and law which I shall need to address later and, for the avoidance of doubt, separate out from that general finding. The first of those is as to whether or not the Council hold the land under the statutory trusts contained in Public Health Act 1875. The second is whether or not for the purposes of the legislation the evidence establishes that there is a neighbourhood here. Those are matters which rest on inferences from

the factual evidence I have summarised above, and are combined questions of fact and law which I shall conclude upon in the final section of this report. However, the generality of the evidence which I have set out and summarised above is, as I have indicated, essentially uncontroversial as to its purely factual content, and I conclude that it provides a reliable factual matrix for the purposes of the further analysis of the issues.

The law

29. The relevant definition to be applied in respect of this application, which does not fall to be dealt with under the Commons Act 2006 but rather under the revised definition from section 22 of the Commons Registration Act 1965 amended by the Countryside and Rights of Way Act 2000 is as follows. It is necessary to demonstrate that the land is:

“Land on which for not less than 20 years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and ... continue to do so.”

30. Although it may well be very familiar territory to anyone reading this report, it certainly seems to me necessary to assist in explaining my conclusions to analyse some of the legal concepts which are embedded within that definition.

31. I focus for this exercise upon those which are contentious in the context of this application. As I have indicated above, the objector in

this case accepts that there has been use of the land for not less than 20 years for lawful sports and pastimes. The two concepts which are in dispute are whether or not in this case the application is based upon a “neighbourhood within a locality”, and whether or not the use has been “as of right”.

32. The words “neighbourhood within a locality” are a recent introduction into the 1965 Act. They have only been the subject of very limited consideration by the courts. In particular, the issue did arise in the case of R (on the application of Cheltenham Builders Limited) v South Gloucestershire District Council (tab 12). The meaning of locality is straightforward and has to relate to a recognised administrative unit such as a parish. The concept of “neighbourhood within a locality” was considered by Sullivan J in the Cheltenham Builders case. In paragraphs 45 and 46 of the judgment he observed as follows:

“45 Setting the claimant’s submissions as to the meaning of ‘locality’ on one side, it is plain that, at the very least, parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a ‘locality’. It may well be difficult to define the boundary of a ‘locality’ on a plan because views may differ as to its precise extent but there has to be in my judgement, a sufficiently cohesive entity that is capable of definition. Merely drawing a line on a plan does not thereby create a ‘locality’. In Steed, Carnwarth J said, at page 501:

‘Whatever its precise limits, it should connect something more than a place or geographical area – rather, a distinctive identifiable community, such as might reasonably lay claim to a town or village green as of right.’

Although these observations were obiter, since there was no dispute that Sudbury was a ‘locality’ for the purpose of the Act, they capture the essential characteristics of a locality.

46 There is no suggestion in the report that the area delineated by a red line with the application was a distinct and identifiable community. The completed questionnaires mention local facilities such as local shops and a doctor's surgery, but there is no information as to their location, or even as to where they are within the area edged red. As mentioned above, the boundary of the area is, for the most part, arbitrary in topographical terms. It appears to have been defined solely upon the basis that it should be drawn so as to include the homes of the 24 people who had completed questionnaires."

33. Following this exposition of locality, at paragraph 85 of the judgement Sullivan J observed as follows:

"85 It is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood. For the reasons set out above, under 'Locality', I do not accept the defendant's submission that a neighbourhood is any area of land that an applicant for registration chooses to delineate upon a plan. The registration authority have to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise, the word 'neighbourhood' would be stripped of any real meaning. If parliament had wished to enable the inhabitants of **any** area (as defined on a plan accompanying

the application) to apply to register land as a village green, it would have said so.”

34. This was considered further, albeit briefly, by the House of Lords in Oxfordshire County Council v Oxford City Council (tab 15). It was not an issue which was central to the decision which the House of Lords had to reach but, in his speech, Lord Hoffmann provided some commentary, as follows:

“27 ‘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. I should say at this point that I cannot agree with Sullivan J in R (Cheltenham Builders Limited) v South Gloucestershire District Council that the neighbourhood must be wholly within a single locality. That would introduce the kind of technicality which the amendment was clearly intended to abolish. The fact that the word locality when it first appears in subsection (1A) must mean a single locality is no reason why the context of ‘neighbourhood within a locality’ should not lead to the conclusion that it means ‘within a locality or localities’.”

35. Turning away from issues related to the definition of “neighbourhood within a locality”, the other contentious issue is the question of whether or not the use of the land has been as of right or by right. The meaning of the statute when it refers to as of right was considered by the House of Lords in R v Oxfordshire County Council ex parte

Sunningwell Parish Council (tab 10). It had been thought that use as of right required the subjective belief in the user in the existence of the right to use the land. The House of Lords concluded that this was not the case. In the leading speech in the House of Lords, Lord Hoffmann concluded that the use of the land should be “nec vi, nec clam and nec precario”: that is to say without compulsion, secrecy or licence. There was no additional requirement of subjective belief that the right to use the land existed. In the present case, it is accepted that the land was used without compulsion or secrecy: the issue is whether or not it has been used by right rather than as of right. The objector’s argument in this respect relies upon the contention that it can be inferred from the evidence that the land is held by the Council under an implied statutory trust for public recreation. This is an issue which I shall analyse in the next section of this report, but at present I propose to set out the essence of the legal argument.

36. Section 164 of the Public Health Act 1875 provides as follows:

“164 Any urban authority may purchase or take on lease layout plant improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks or pleasure grounds provided by any person whomsoever. Any urban authority may make byelaws for the regulation of any such public walk or pleasure ground, and may by such byelaws provide for the removal from such public walk or pleasure ground of any person

infringing any such byelaw by any officer of the urban authority or constable.”

37. By virtue of Section 8(1)(d) of the Local Government Act 1894, a parish council acquired the power to exercise the powers under Section 164 of the 1875 Act. As an alternative to this statutory provision, the objectors draw attention to Section 10 of the Open Spaces Act 1906, which provides as follows:

“10 A local authority who have acquired any estate or interest in or control over any open space or burial ground this Act shall, subject to any conditions under which the estate, interest, or control was so acquired:-

(a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose; and

(b) maintain and keep the open space or burial ground in a good and decent state,

And may enclose it or keep it enclosed with proper railings and gates, and may drain, level, lay out, turf, plan, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be requisite for the purpose aforesaid or any of them.”

38. The nature of the statutory obligation under Section 164 of the 1875 Act was considered in Hall v Beckenham Corporation (Tab 7), in which it was held, albeit in a case to do with an action for nuisance, that where a local authority held land under Section 164 of the 1875 Act it was held upon a statutory trust for the benefit of the public. Thus, it is contended by the objectors that, if the land is held pursuant to those statutory powers, whether under the 1875 Act or the 1906 Act, the use of the land will be by the public exercising their right to do so under the statutory trust for public recreation and therefore would be “by right” rather than “as of right”.

Conclusions

39. As I have already stated, there is no dispute in this case but that some of the statutory requirements for registration have been satisfied. Insofar as the objector maintained the requirement for the Applicant to strictly prove her case, which of course she is required to do as the burden of proof rests upon her, I am clear that the following matters are indisputable. Firstly, it is clear that the number of people from within the defined area from page 18 who have used the land is significant. I am also entirely satisfied that their use has been for in excess of 20 years and has been continuous. I am further satisfied that the activities in which they have indulged on the land have amounted to lawful sports and pastimes which potentially qualify for registration. There are, in my judgement, only two issues around which the decision on this case revolves. The first is whether or not the area defined on

page 18 amounts to a neighbourhood within a locality. The second is whether the use has been “as of right” or “by right”.

40. Of all the issues which I have had to consider in this case, the question of whether or not the area defined on page 18 of the plan amounts to a neighbourhood within a locality for the purposes of the legislation has been the most difficult. The guidance from the authorities which I have cited above is of little practical help. All that I can divine from that are the following propositions. Firstly, in including this language within the statute, Parliament was providing for a “deliberate imprecision” within the language of the statute. Secondly and on the other hand, it is clear that a neighbourhood cannot be comprised by any line drawn on a plan in an arbitrary way without reference to any particular features that might comprise a neighbourhood. Thirdly, following the Cheltenham Builders case, it is necessary in order to give meaning to the inclusion of the word within the statutory definition to be satisfied that the area alleged to be a neighbourhood has “a sufficient degree of cohesiveness”. Whilst the recitation of the Oxford English Dictionary definition derived from the Court of Appeal decision in Northampton Borough Council v Lovatt cited by the Applicant is some context I have not derived a great deal of assistance from it since it arises in a different statutory context. In any event it does not in my view take the discussion much beyond the authorities which I have referred to above which deal directly with the relevant statutory test.

41. It is clear to me that in order to address and resolve the question of whether or not the area defined on page 18 is a neighbourhood, it is necessary to look at a number of ingredients within the evidence to establish whether or not the existence of a neighbourhood has been established. In my view, the following features within the area defined satisfy me that the requirements of the statute have been met. It is clear on the evidence that within the area there is a significant community spirit bonded by social ties which revolve around the various elements of social infrastructure contained within the area. By that I refer to the schools (which create friendships between parents and children), the churches (which create social ties between the members of their congregations) and the users of the land itself, which it appears is in and of itself a significant social focus.
42. I do not consider that when Parliament included this additional language with its necessary imprecision it was the intention to require that the area defined for the purposes of registration for instance had a name, or comprised properties of a similar age of construction such as a housing estate, or contained facilities that were solely referable to that particular part of the settlement. Whilst it is common within smaller settlements such as villages or small towns to have a school or a church which is dedicated to that particular settlement, it is clear that in other urban situations there will be churches and schools which provide a service for both the area within which they sit and also for a wider area. Thus, there will be facilities which have in effect a core catchment, but there will be a penumbra around the catchment

comprising an area in which the flows of people to the services or facilities on offer within the settlement are in several directions. Moreover, the facilities may very well provide principally for their immediate environment but be equally accessible to those within the wider settlement. The use of the language of neighbourhood, therefore, is not, in my judgement, intended to preclude areas of the kind with which this case is concerned within an urban area which comprises facilities principally used by those who live nearby but not exclusively so.

43. In my judgement, these matters are questions of degree. In this instance, we have an area which contains a variety of community facilities which clearly serve the area which has been defined. It has been defined by reference to clear physical features, and contains those properties which would principally rely upon those facilities including the Rec. The fact that those facilities may also be open to residents of other parts of the town does not, in my view, make this area any less capable of amounting to a neighbourhood. There will inevitably be shading of the extent of use of the facilities as measured against the distance from them. However, in my view that does not preclude the identification of a neighbourhood for the purposes of the Act.
44. Finally, I heard a significant weight of evidence from a number of witnesses who quite clearly identified closely with the locality and closely with their neighbours. What is a neighbourhood, if not a collection of people within an area who recognise one another and

interact socially with one another? The evidence which I heard demonstrates that this is an area within which many people are acquainted or indeed friends with one another, and that in some measure the Rec provides a focus and a forum for that interaction and neighbourly behaviour. It clearly has in my judgment the requisite cohesive quality required by the statute. In those circumstances, I am satisfied that the statutory requirement in respect of identifying a neighbourhood within a locality has been met.

45. The final question for me to consider is whether the land has been held upon the statutory trusts under 1875 or 1906 Acts since, if it has, then the use of the land has been by right rather than as of right. It does not appear to be contested that if I am satisfied that it is held pursuant to those statutory trusts then it is incapable of being registered.

46. A number of points are raised by the Applicant in response to this contention. It is unnecessary to deal with all of them, but I do propose to address the principal contentions. Firstly, it is contended that in particular the 1949 conveyance does not refer to the statutory powers which it is now alleged the land is held pursuant to. Indeed, the only document in which those powers are cited is the 1913 lease. Consistent with that, it is contended by the Applicant that the bye-laws which have been exhibited are of no assistance. There has never been any notice on the land either suggesting that it is open space or referring to the bye-laws governing the use of the land. Furthermore, when I asked Mr Reed about it, the Council were unable to produce a properly

executed copy of the bye-laws, and thus they are probably unenforceable as things stand at present. Indeed, one of the witnesses, Mrs Ryan, gave evidence about the difficulty of obtaining any information about the bye-laws from the Council. It appears that it came as a complete surprise to the people using this land that it was subject to any of those bye-laws.

47. In addition to these points, the Applicant draws attention to the fact that the bye-laws were not referred to when Temple County Primary School was granted permission to use the Rec and, indeed, it was unclear why they needed any permission to use it if, as contended by the Council, the land was used by right as open space. In the light of this, it was further contended that no suggestion had been made that the land was held subject to these statutory trusts until the application to make the village green had been made, and thus it was highly convenient that this assertion was now made with a view to defeating the village green application.

48. There is in my judgement a fundamental difficulty with these submissions. That is that, if this land is owned by the Council, it can only do so as a creature of statute pursuant to some statutory power or obligation to do so. It cannot, like a private individual, hold the land for an unspecified purpose not covered by statute, in particular since there is no general power of competence provided to a local authority by statute. Whilst there is some forensic force in many of these points, in my judgement the inescapable conclusion on the balance of the

evidence is that this land must be held by the Council under the statutory trust under Section 164 of the Public Health Act 1875. My reasons for so concluding are as follows.

49. Firstly, albeit that that power has never been specified in any of the legal documentation, it is clear that the land has always been used as a recreation facility. Thus, that is clearly the most obvious statutory purpose for which the Council would hold it. Indeed, no other alternative statutory purpose or object of the local authorities who have owned or controlled this land has been suggested. I should say that, whilst the Applicant was concerned to point out that the fact that the land was in public ownership would not preclude village green status, I did not understand the objector to rely upon its status as a local authority in itself as a ground for defeating the application. Rather, it was the purpose for which, as a local authority, it held the land.
50. I accept that the bye-laws do not add anything particularly meaningful to the Council's case. They clearly have never been drawn to anyone's attention and, indeed, if anyone was to infringe them it appears clear that, as presently formulated, a prosecution could fail owing to the failure to prove the existence of them. Given the state of the evidence in relation to those bye-laws, I place little reliance upon them.
51. The fact that there was a report in relation to the Temple County Primary School's use of the land asking for permission does not in my view materially detract from the central point as to the purpose of

ownership which I have set out above. I have little doubt that the person drafting that report did not understand the details of the purpose of ownership of the land that were discussed at the Inquiry, and undoubtedly the school thought that it was appropriate and a courtesy to seek the consent of the local authority prior to making use of the land. The fact that the issue has been raised in response to the village green application and does not appear to have been given a great deal of thought or consideration since the land was acquired in 1949 does not, in my view, go behind the central issue, namely that the land has been held pursuant to the statutory power in the 1875 Act.

52. In her supplementary skeleton the Applicant referred me to the recent decision of the House of Lords in Godmanchester Town Council v Secretary of State for Environment Food and Rural Affairs as supporting her contention that if the Objector were going to rely upon this argument then it would have been necessary for it to have informed the users of the Rec that they were being permitted to use the open space as an overt act. I do not accept that submission as it is clear that the Godmanchester case was addressing a different statutory test, namely the one which is posed by section 31 of the Highways Act 1980. That section deems that the use will have been as of right unless there is sufficient evidence that dedication was not intended. Thus, unlike the statutory test in the Commons Registration Act with which I am concerned, it is understandable that there would be a need for positive objective evidence on the question of whether the use was by right rather than as of right. The argument in the present case under the

test in section 22 of the Commons Registration Act is simply whether or not the inhabitants of the relevant area already have a legal right to use the land, not whether they have such a right and have been told about it. If they have a legal right then the use has been “by right” rather than “as of right” and the test is not satisfied.

53. It follows from that that the use of the land has been, in my judgement, during the relevant period for the purposes of the application “by right” rather than “as of right” and pursuant to the statutory trusts under the 1875 Act. I shall therefore be recommending that the application is refused.

54. I appreciate that that will be a considerable disappointment to the Applicant, given firstly the concerns which gave rise to the application in the first place, and secondly the extent of the effort, determination and skill which has gone into the preparation, submission and prosecution of her application. It is only therefore appropriate that I should add a few words in respect of the future of the land. Clearly, the motivation for the application was the concern of those living within the neighbourhood that the site was being suggested as a potential development site for a replacement school. There was concern that it could ever be thought appropriate for this area of open space to be deployed for that purpose. In my view, whilst the village green application should not be approved, nonetheless the exercise of considering the application has thrown a number of matters into sharp relief.

55. Firstly, since the land is held under the statutory trusts under the 1875 Act, if there were ever any intention to appropriate it to another use apart from open space it would be necessary for that to be advertised and consulted upon by the Council, and it could not be done without public involvement.
56. Secondly, it is clear and obvious from the weight of the evidence which was heard that this area of open space provides an invaluable green lung for the community which it serves and has, as I set out above, considerable advantages in terms of security and surveillance as an area for children's play. Thus, in my view, it is a very important piece of open space, and I have little doubt but that the Council, in the light of the evidence gleaned at the Inquiry, would regard it as being wholly inappropriate for it to be lost to other uses. Indeed, in a planning context, my report would be a material consideration in assessing whether or not the land should be lost to some other use. I therefore feel confident that, whilst I have to recommend that the application should be dismissed, the principal purpose behind the application being made in the first place will be achieved, and that through the public exercise of examining the application it has become clear that this piece of open space has a value which should be safeguarded for the foreseeable future in the public interest.

Recommendation

57. I recommend that the application is refused.

IAN DOVE QC

No 5 Chambers
Birmingham • Bristol • London

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CHRONOLOGY

In this Chronology “A” refers to the applicant’s bundle, “O” to the objector’s bundle & “C” to the consolidated bundle

<u>Date</u>	<u>Document/Event</u>	<u>Bundle</u>
16-07-13	Lease between (1) CR Willoughby & (2) Keynsham PC * leased for purpose of use as recreation ground under PHA 1875 and/or LGA 1894	O/199-205 C/199-205
1931	OS map	O/206 C/206
12-10-38	Tenancy Agreement between (1) HH Veale & (2) Keynsham UDC	O/207-213 C/207-213
31-03-45	Tenancy Agreement between (1) HH Veale & (2) Keynsham UDC	O/214-218 C/214-218
13-12-48	Keynsham UDC Highways & Parks C’ee * Resolution to acquire Rec. for use as public open space	O/219 C/219
21-02-49	Keynsham UDC Finance & Rating C’ee * Resolution to finance purchase of Rec. by revenue or by loan from Ministry of Health	O/220 C/220

25-03-49	<p>Conveyance between (1) HH Veale & (2) Keynsham UDC</p> <ul style="list-style-type: none"> statutory power of acquisition not specified land described as “used as a Children’s Playing Field” 	<p>O/221-224</p> <p>C/221-224</p>
1949?	<p>Keynsham UDC property register</p> <p>* Council’s interest described as “Recreation Ground”</p>	<p>O/225</p> <p>C/225</p>
31-08-49	<p>Keynsham UDC Finance & Rating C’ee</p> <p>* resolution to fund purchase out of revenue</p>	<p>O/226</p> <p>C/226</p>
19-09-49	<p>Keynsham UDC Highways & Parks C’ee</p> <p>* Officers instructed to prepare report on lay-out & use of Rec. it being understood that the primary use is for a playground for the younger children</p>	<p>O/227</p> <p>C/227</p>
17-10-49	<p>Keynsham UDC Highways & Parks C’ee Report & Minute</p>	<p>O/228-229</p> <p>C/228-229</p>
17-06-57	<p>Keynsham UDC Highways & Parks C’ee Minute</p>	<p>O/230-231</p> <p>C/230-231</p>
17-07-57	<p>Keynsham UDC Highways & Parks C’ee Minute</p> <p>* discussion of improvements to Temple Street Playing Fields</p>	<p>O/232</p> <p>C/232</p>
14-04-58	<p>Keynsham UDC Highways & Parks C’ee Minute</p> <p>* discussion of improvements to Temple Street Playing Field</p>	<p>O/233</p> <p>C/233</p>
01-04-74	<p>Property of Keynsham UDC vested in Wansdyke DC</p>	<p>C/386</p>
18-07-78	<p>Byelaws made by Wansdyke DC under s 164 PHA 1875 in relation to Hawthorns Recreation Ground</p> <ul style="list-style-type: none"> Byelaws replace byelaws made in 	<p>O/234-239</p> <p>C/234-239</p>

	<p>1969 by Keynsham UDC [O/238]</p> <ul style="list-style-type: none"> • Byelaws are still in force [A/259-261] 	
1989	Temple Infants Sports Day	A/211 O/179 (better copy)
July 1991	Temple Infants Sports Day	A/212 O/180 (better copy)
19-09-91	<p>Wansdyke Council Leisure & Amenities C'ee Report & Minute</p> <p>* permission given to Temple County Primary School to use Hawthornes Public Open Space for sports</p>	O/240-241 C/240-241
31-10-91	<p>Wansdyke Council Leisure & Amenities C'ee Report</p> <p>* proposing poop scoop byelaws for Hawthornes, Keynsham described as Recreation & Sports Grounds, open space areas</p>	O/242-3 C242-243
01-04-96	Property of Wansdyke DC vested in Bath & North East Somerset District Council	C/386
06-12-01	"District" removed from name of BANES	C/386
09-09-04	Application to register The Rec. as new green	A/32-O/1-12 C/1
10-03-05	Amendment to application	A/42 O/16-18 C/16
29-04-05	Advertisement of application	O/19-20 & 22 C/19

09-06-05	Objection of Keynsham Town Council	O/189 C/189
10-06-05	Objection of B&NES	O/190 C/190
08-05-06	Supplemental Objection of B&NES	O/191 C/191
March 2007	Photographs	C391-397
20-06-07	Keynsham Town Council withdraw objection	C/380

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SKELETON ARGUMENT
FOR BATH & NORTH EAST SOMERSET COUNCIL

In this skeleton “A” refers to the applicant’s bundle, “O” refers to the bundle of this objector and “C” refers to the consolidated bundle.

Introduction

[1] This is the skeleton argument for Bath & North East Somerset Council (“B&NES”) in opposition to the application by Mrs. S Cron to register the Hawthornes Recreation Ground (“the Rec.”) as a new town or village green. This skeleton is accompanied by (a) a Chronology [tab 2], (b) an Alphabetical List of Witnesses [tab 3] both cross-referenced to the inquiry bundles, and (c) copy authorities cited [tabs 4-22].

[2] This application raises issues of considerable general importance in this area of the law. If the Rec. is a registrable green, it is likely that many other municipal recreation grounds and public open spaces in the country are equally registrable.

[3] B&NES requires A to prove her case. B&NES takes two specific points in opposition to the application:

- Recreational user of the Rec. has been by the general public and not “*by a significant number of the inhabitants of any locality or of any neighbourhood within a locality*”
- Recreational user of the Rec. has been pursuant to a legal right and not “*as of right*”

History of the Rec.

[4] In 1913, what is now the Rec. formed part of a larger parcel of land (OS 531) which was leased by the landowner to Keynsham Parish Council (“KPC”) for a term of 5 years [O/199, C/199]. The land was described as “*pasture land*”. The lease was expressed to be “*Together with full power for the Council to lay out plant improve and maintain the said land for the purpose of being used as a Recreation Ground according to the powers contained in the Public Health Act 1875 and or the Local Government Act 1894 or any other act or authority*”. PHA 1875 s. 164 gave an urban

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ALPHABETICAL LIST OF WITNESSES

In this List of Witnesses “A” refers to the applicant’s bundle, “O” to the objector’s bundle and “C” to the consolidated bundle.

<u>Name</u>	<u>Address</u>	<u>Bundle</u>
Susan Adams	55, Sherwood Road, Keynsham, BS31 1DA	A/20 A/92-99 A/100 O/74-79 (duplicate) O/80 (duplicate) C/74-80 C/194Q
Victoria Adams	Sherwood Road (presumably 55)	A/25 C/194V
Sandra Brazier	47, Albert Road	C/346
Andrew Buckley	Not stated	A/26 C/194W
Rachel Buckley	Not stated	A/26 C/194W
Adele Christensen	6, Albert Road, BS31 1AA	C/345
Phyllis Cook	1a, Farleigh Road, BS31 2QF	C/382
Marjorie Cox	12, Charlton Park, Keynsham BS31 2 ND	A/202 O/170 (duplicate) C/170
Susan Cron	47, Sherwood Road, Keynsham BS31 1DA	A/3 A/42 A/85-91 O/67-73 (duplicate) C/67-73 C/194

The Rec, Keynsham: Record of Proceedings

Abbreviations: A=Applicant; O=Objector; K=Keynsham; XX=Cross-examination; ReX=Re-examination; I=Inspector

OPENINGS

APPLICANT

Written opening provided

OBJECTOR

A must show that people have used the land in accordance with the definition. We accept that the Rec is land within the definition but she is required to prove that all of it has been used. We accept it has been used for 20 years and more and by a significant number of persons and that it has been used for lawful sports and pastimes and so used since 1913. We take 2 legal points. Firstly it has not been as of right. Not by force or secret or by permission but pursuant to a legal right to use it as it is subject to a statutory trust since it was purchased under s164 Public Heath Act 1875. That is the main legal point. The second is 2 interlinked threads. Firstly recreation use has been by the general public not by inhabitants of a specific locality or neighbourhood. Secondly the neighbourhood selected is not capable in law of constituting one because it lacks the cohesive quality necessary and required by the legislation.

EVIDENCE

APPLICANT'S EVIDENCE

JONATHAN RICHARDS

P38, P194I

I have seen a number of people I know personally and others who I know live within the defined neighbourhood on the Rec and I would class them as local. I never thought I needed to ask permission to use the Rec. My wife confirmed she did not receive permission to use the Rec with her Badger group. I have never seen any signs and didn't know about any bye-laws before this case.

XX

P38: this was signed by me and my wife. P44 is the map. There is a cross where I live. 47 Queens rd was a previous address where we moved in August 1988. We lived there until 1992, rented for 6 months and then moved into Sherwood rd. Queens rd is within the defined neighbourhood and we lived at the Albert rd end of it just beyond

Prince's close. We also rented within the neighbourhood as defined in Courtlands for the 6 months. We have always lived within 5 minutes walking distance of the Rec.

P38: Map A doesn't show the whole of the neighbourhood. The map clearly defines the area of land and shows the land of the Rec. I wouldn't agree that it shows the area of the defined neighbourhood but I did answer yes on the form to say that it did. Q11: the school catchment area I mentioned related to St John's primary school shown on the edge of the map on p44 to the west of Park rd. There is also a school at Kelston rd which is south and east of Charlton rd. There is also Castle primary school which is in the south of the town. There are 4 primary schools within the defined neighbourhood. I don't know the precise catchments of the schools. Temple school will have a catchment which extends to the east of temple street and K school would also perhaps have a catchment which went beyond the defined neighbourhood. There are a number of schools which have appear to have a catchment within the neighbourhood but I cant definitely confirm that.

There are a number of churches within K but in this case we have the Elim Pentecostal church within the defined neighbourhood in Balmoral Rd to the south of the Rec, St Francis Church at Warwick rd and Queens rd Methodist church at the Caernavon rd end of queens rd. The Elim Pentecostal church is the only such church in the area and therefore people would come from all over K to that church. St Francis church is part of the K parish. The main parish church is in the high street. It is a small local church within the parish with a more local catchment. The church doesn't have any other outlying church to the west of Charlton Rd. People could come to the church for convenience from the west of Charlton rd. There is another Methodist church in the high street but not one to the west of Charlton rd. Probably none of the churches are referential to the defined neighbourhood.

Sports facilities I referred to were the local sports facility at the K leisure centre and playing fields at Queens rd near the Methodist church. That was what I was referring to. The Queens rd playing fields are referential to the area. It is close to Charlton Rd. I don't know if it is used as much by the people to the west of Charlton rd.

The shops were the small rank of shops in Queens rd near to 47 and also in Temple street near Carpenters lane. Temple street shops will be patronised as much by people from the east as from the west of Temple street. Queens rd shops: I cant recall if there are any shops to the west of Charlton rd. They would be closer than the high street if you lived to the west of Charlton rd. There are some further to the south.

The doctors surgery is on Temple st within the neighbourhood together with another one at park rd known as the Westview practice on the corner of Hawthorns lane. Temple st patients will come from both directions. Hawthorns patients come from the area around the Rec.

The Scout hut is in Ashton Way. I don't know the scout group name. I couldn't say if they are referential to the area. I would think that the scouts would come from either direction, both within and beyond the defined neighbourhood.

I agree that none of the facilities are referable to the defined neighbourhood but they are facilities which are available to people who live in the neighbourhood. What are the factors which unify the selected neighbourhood? It is defined within physical barriers which are natural barriers formed by the main roads. A lot of activities occur within the boundaries. It is primarily geographically defined but there are the local facilities alluded to which help to make up the life of that neighbourhood. The land we are discussing is itself a unifying factor because it is used by many local features and is seen as an important open space. I know of people within the defined neighbourhood that use the Rec and continue to do so. Predominantly it is used by people within the locality. It isn't just the streets within a 5 minute walk but people from a wider area. There would be fewer people who use it from Longmeadow rd and that estate. It is quite possible that most of the people come from within 5 or 6 minutes walk from the Rec.

I have always known it to be a public open space and available to the public to use.

KAREN RYAN

P158, P194P

I have seen children and people walking their dogs on the Rec and I know 99.9% of them. I met those people through my children and I am a child minder and know other child minders. We use it for recreational use football rugby and picnics etc. Weather permitting we use it very often. I feel the children are safe there because people are looking out for them. You occasionally see a stranger but not often. I never thought I had to ask for permission to use the Rec. We have a gate onto the Rec and I just assumed that I could just let the children out the gate to play. I didnt know about any bye-laws. When I heard O was saying there were bye-laws I went down to Banes and asked to see the bye-laws. The receptionist rang upstairs and nobody knew where to get the bye-laws from. A few days later I rang up and spoke to a lady and she said she would try and find them and put them in the post and a few days later they were hand delivered to me at home.

XX

P158 All my knowledge comes from the 11 years that I have lived in Sherwood rd. before that I lived on the east side of the town. Q3a: the map is on p163. I must have thought that this map accurately showed the area from which the users of the Rec came. Q11 I ticked the same boxes as Mr Richards. I know people from out of the neighbourhood go

to the scout hut. People will travel to the Dr they feel happy to see. I cannot help further with the churches. My children could not travel too far without an adult and so it is a nice safe area for them to meet their friends and play which is why it is used by local people. It maybe predominantly used by the people from the streets round the Rec but other children do come down from streets further away. Longmeadow rd: it would be rare from people from there to come unless they had a school friend who brought them to the Rec. I have always regarded the Rec as a public open space.

RACHEL BUCKLEY

P194W

We use the Rec on a daily basis to walk the dog and for activities with children cricket and football and they use it independently as I feel it is safe to do so. When I am out I recognise most of the people. You do see people on the other side. I never thought I needed to ask permission to use it and I didn't know of any bye-laws. My children went to Temple school. The people who the children they play with are generally local. The streets furthest away would be Albert Rd, Westview Rd, St Clements rd and Balmoral Rd.

XX

I didn't do an initial questionnaire. Temple school is split over 2 sites. One at the corner of Temple street and Albert street and the other is to the north east of Bath hill. It backs on to the memorial park. I have one child at the infants site in Temple street and one at the juniors on Bath hill. They are closing and the school is being re-provided on one site. All the rds I mentioned are within 5 minutes walk of the Rec.

The map I am referring to in my statement is not attached to the statement. The boundaries of the neighbourhood were Temple st, Charlton rd and St Clements rd.

The unifying factors are the sense of community where we can meet especially outside work and school hours. The unifying factor is the use of the Rec itself. I cant say I have seen people from those rds farther away using the Rec although I do know people from those areas. I cant say if they would know that it was there. It is the people more locally who use it regularly. It is mainly used by people who live within 5 minutes of the Rec. I have always regarded the Rec as a public open space.

ReX

I would assume a public open space is for anyone to use without anyone giving permission to do so.

JODIE DEASON

P194U

I now at 2 Lansdown Rd Salford and I moved from Sherwood rd in June. I lived in K all my life always within the neighbourhood and have used it for play and as a short cut to the High st. I was allowed to go there on my own as a child as it was regarded as safe. As a parent I allowed my children to play there. We used to exercise our dogs on the Rec. I first lived in Willow Walk and when I was 5. We then moved round to Queens Rd and I always used the Rec to play with my friends. I never thought that I needed permission to do so and never saw any notices on it. Before the application I didn't know that there were any bye-laws on the Rec.

XX

For he first 5 years of my life I lived in Willow Walk and we played around Willow Walk at that time. We then moved to Queens Rd and I lived there from 5 to 21. We were between Tintagel rd and Albert rd and about 5 minutes walk from the Rec. From 21 I went to Switzerland met my husband lived in London a short while and then came back and was about 25 when we moved into Sherwood rd. My use hasn't only been when I was within 5 minutes away because I would be joined by friends who lived 10 to 15 minute walk away and who would join me and then we would go to the Rec. I would visit them but not as often as they would call for me.

ReX

I know when we lived at Willow Walk my mum would walk to the High st through the Rec but I cant say that I went there regularly. Willow walk is more than a 5 minute walk away from the Rec.

JOANNA PAGE

P194O

I use the Rec on a daily basis to go to the shops to walk the dog and taking nieces and nephews and friends children out to play. Most of the people out there I know and have known for many years. I never thought that I needed permission to use it and I never saw any signs on the Rec. I have used it for 26 years and I have lived all that time in Sherwood Rd.

XX

P122 I signed this jointly with Jill and John Dekany. P127 is a map and we signed on the back. I signed to say that the map showed the claimed locality. It is a map which shows the whole of K. We

concentrated more on the Rec itself rather than the locality when we were using the map. The map does show an area which includes the whole of the Hawthorns but we only intended to include the green area. The map doesn't accurately show the Rec or the area containing the people who have used it. P123 Q11: the central feature which we had in mind would have been the Rec itself. In relation to the other identified features there is nothing that I can add to what the earlier witnesses said. It is predominantly used by the people within a 5 minute walk. I am familiar with the neighbourhood which is claimed. It is the geographical features which unifies the area. You see the same people at the Drs and they are recognisable from that part of K rather than from the other side of K, Wellsway, which is in the east and bounded by the Bath rd and Wellsway or the Somerdale part of the town which is to the North of the town. There probably isn't one factor which you could pinpoint as a unifying feature like a school which is within that area.

JOY WHITTOCK

P194J

I omitted to say in my statement that I walk the dog on the Rec. I started using it when I was 5 and that was 70 years ago when we visited my aunt in Sherwood Rd and played there because it was safe to do so. I brought my children to the Rec regularly when we lived in Temple st. My grandchildren also always want to play football on the Rec. I never thought that I needed permission to use it and I was not aware of any bye-laws which cover the Rec. I have used it as far back as I can remember all my life.

XX

P194J: in para 2 I refer to a map and it isn't attached but it is akin to the area on p18. I lived at Compton Dando about 3 miles from K and I went to school there Then when I was 11 I went to school at Broadlands in K. I had an aunt who lived in Sherwood rd and I looked forward to playing on the swings on the Rec. I lived in 2 cottages in Temple street (40 and 82) and then moved up to Albert Rd in 1965. I had 2 children by then. I took them to play on the Rec very often. The cottages were on the west side of Temple st. I have lived in Albert rd at my present address since 1965.

Apart from the geography I have little to add to what has been said in relation to what unifies the area. I did make friends through the use of the Rec. The Methodist churches are united and they have a common service on a Sunday evening but all the churches work together throughout K and have a service together if there is fifth Sunday in the month. I often recognise people and lots of the children but I cant say how far afield the people live who use it. I have lived in Albert rd 42 years. I know quite a few people who live round and about and when I

walk the dog I recognise their dogs if not them. I always see someone. It is better to walk to the Rec than try to go by car. Not a lot of people come by car but they could park in Temple street. I cant think of anyone who drives to the Rec off hand.

JOHN DEKANY

P194M

I have used the Rec for walking, dog walking and for the grandchildren playing football. I use it daily and sometimes twice a day. If people there are local I know them and some of them I know by sight but not their names. I never thought that I needed permission to use it and no-one has ever approached me and I assumed therefore that I didn't need permission. I have never seen any signs on the Rec and didn't know of any bye-laws before the application. I used it on and off since 1964. At that time it had play equipment on it.

XX

P122 is a joint evidence questionnaire which I signed with Jill Dekany and Jo Page. I also signed the map. Lincoln Close is off Charlton Rd near Caernavon rd, on the eastern side of Charlton rd. I took the children down to the Rec from Lincoln Close because that was the nearest playing field. Q3a I did sign the map which includes the Hawthorns which was always understood to be a part of the Rec although the nursing home was built on the Rec. It was once allotments but they built the nursing home on part of it. We never used the nursing home for children to play on. I was referring to the open green land. I wasn't asked to mark the neighbourhood on the map.

Q11 the central feature which we ticked was the Rec. It is a point where people come together and meet and where people have social intercourse. The unifying feature is the Rec which people come together upon and they use it as a short cut and then people meet as well. Apart from the Rec and people coming together for recreation there I cant think of any other unifying feature. The features are the geography and the interaction on the Rec.

P128 is our statement. I live in Sherwood rd and that is why I picked on the children in that rd. It is also the nearest rd to the Rec. My children had other children call for them and you can you let them out and you would know that they are safe and you cant say that very often.

JENNIFER VENABLES

P194K

I live at 57 Sherwood rd. I use the Rec to exercise our dog and I used it as a child on the play equipment and meeting up with friends and our

children learned to ride a bike and go conkering there. We use it daily and I never believed that I needed permission. I thought it was for the benefit of the people of K. Before Sherwood rd I lived in Coronation Avenue and I used the Rec when we lived there. I have a vague memory of bonfires there. We lived opposite the junction of Coronation rd with Warwick rd. We would go as a gang and you would always meet people from that area. It was more than 5 minutes walk from Coronation avenue to the Rec.

XX

P129 is the questionnaire that I completed and p135 is the map. I lived from 1954 to 1968 in coronation rd and in 1977 moved to Sherwood rd. We lived outside K from 1968 to 1977 and my mother still lived in K. I didn't use it from 1968 to 1973 because the children were too young to bring them on the bus visiting. I used it the whole time. I did use the land between 1973 and 1968. I put my addresses whilst I was in K and didn't think that the addresses outside K were relevant. Q3A is signed and map A is on p135. I did believe that the area shown on the map is the area of the locality showing the people who use the land.

Q11: the resident association is the residents association for the flats in Sherwood rd but I cant recall the name of it. It is for the inhabitants of the flats and their friends and neighbours. It is probably not for the whole of the claimed neighbourhood but it probably covers a large area of Sherwood rd and Sherwood close. I have nothing to add to what the others have said. The facilities add to the community feel of the whole area. I am familiar with area claimed as the neighbourhood. I think that the area was called Bristol overspill and the area grew up from there and acquired its community spirit. Charlton rd has old houses in and people who live there are the children of the people who lived in the area originally. It was what they called the Park estate and those that grew up on the Park estate now live in the older houses. Park estate is Queens rd at the west end, coronation ave, Warwick rd, Caernavon rd and Dunster rd. That occurred as post war development. Longmeadow rd is a more modern estate. It is Victorian at Charlton rd and park rd, queens rd sees the transition from the older houses to the post war development and then modern development around longmeadow rd which was developed about the 70's I think. The age of property isn't the unifying factor it is rather the actual community itself. It isn't a unified estate either but a collection of estates but the community spirit has brought these estates together. When I am out walking most of the faces are familiar and that is the factor which is the unifying factor. People meet in the schools and the churches and that unifies the community. When I walk the dog I recognise the people that I see in schools and churches and a large majority are living in the area. We go to Queens rd Methodist church. This church and St Francis church are in the hub of the community area. There isn't one unique factor it is the churches and schools and the feel of the area around us.

RICHARD CRON

P194B

I would like to clarify I have been a local inhabitant for far more than 40 years and I only moved out for 4 years. I first moved in 1955 to Donnington walk by Queens rd shops then Queens rd shops and then to Kenilworth close off Warwick rd by Coronation avenue. We moved to Whitchurch for 4 years when I got married and came back 20 years ago. I used the Rec and played on it as I was growing up. We would as children meet up and go down to the Rec and play. I use the Rec to play with the children and all sorts of sports and recreation. I know most of the people out there and I know the area that they came from I never thought that I needed anyone's permission and no-one ever challenged me. Previous to the application I thought that the land had been left to the people of K and I didn't know of any bye-laws.

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P46 there are more addresses I didn't have space to fill in. Q3a p51 is map A. It shows the whole of K. It shows the locality but it hasn't been outlined. I couldn't say anyone else on the map didn't go to the Rec.

Q11 the community centre referred to the Key centre at the bottom of Charlton rd and there used to be a K youth club. I don't know what the Key centre did but I knew it was a community centre. I wouldn't say that it was used by the neighbourhood any more than other parts of K. I have seen neighbourhood watch stickers in the windows of houses but I didn't belong to it. It would be very few streets or just a street not a wide area. I have nothing to add to what the others have said about unifying the neighbourhood. The park estate was a part of Bristol overspill.

JAMES DAY

P194X

Wellsway is a school on the east of the river. By and large to the east of the river is the catchment for the school and that is referred to as the Wellsway side. I live on the corner of Charlton rd and Charlton Park in one of the Victorian houses. Charlton rd is a boundary for an area. I would not allow my children to cross Charlton rd. My children went to St Johns and we all played on the Rec. From my house to the Rec would be about 10 minutes. My family use the Rec every weekend and the children on school days about 3 times a week. I took the children there to learn how to ride a bike fly kites and play. My oldest child is now 15 but I took him there when I was 4. He made friends with children from as far west as Dartmouth walk and Coronation avenue and as far south as Park rd by the allotments. Once he went to school he made other friends and went to the Rec to play with them. He still

plays football there and when he plays with boys from the Wellsway side he has to tell them where it is because they don't know. My middle son started playing when he was of school age and his friends all come from the neighbourhood but not all from the same school. Charlton rd is a barrier because of the difficulty of crossing the rd. I have never seen signs on the Rec and never been approached by anyone for using and I was not aware of any bye-laws prior to the application.

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Wellsway and Broadlands are the only 2 secondary schools in the town. Wellsway has a primary catchment of K and Salford and some of the outlying villages. Broadlands has a catchment to the west of the Chew and includes parts of Bristol. You can elect to apply to either. It throws no light on the issue of locality. But few who live on the Wellsway side know of where the Rec is. The river does divide the town for a leisure walk. St Johns is immediately opposite an entrance to the Rec. You can walk straight through. Children at St Johns are very close to the Rec but the school has its own playing fields around the school. I didn't fill in an evidence questionnaire.

The Rec is the focus for a lot of people's childhoods and parents bringing up their children. The catchments are related in part to the Rec. There is a community spirit but it is focussed on the Rec. The facilities will be used by people from the wider K area but also by people in the neighbourhood. The St Johns ambulance meeting hut is used by the neighbourhood for childrens parties and jumble sales and you can rent it out. The Scout hut has been used rented out for community events or meetings. I think I rented it for K round table.

STEPHEN ROBBINS

P194D

I have used the Rec as a child myself. My grandfather lived in the house that I now live in. When we visited him I would exercise the dog and I then moved into the house that he lived in and my children played out on the Rec as they have grown up. The vast majority of the people I see on it I know as local people. It never occurred to me that I should ask for anyone's permission. I helped to compile a survey p284. We asked people who lived within the locality and then people who lived outside it including people who lived outside K. We found that most people in the locality had heard of the Rec those that lived outside K hadn't heard of it and a lot of the people who lived in K but outside the neighbourhood hadn't heard of the Rec. The conclusions of the survey are on p319 and p322.

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The survey was carried out after the application and probably about a year ago and went on for a period of time. We visited and knocked on doors in the local area and people from Bath were asked by people who worked in Bath. We didn't set ourselves up to survey actually on the Rec. We spoke to people we were friends with and Mrs Cron gave them to friends of hers and others were asked to send them on to friends of theirs and we then collected the ones we got back. It was a selected sample in the sense that it wasn't a random sample of people on the High street or anything like that. P318 is the map. There were 32 responses to the survey but they aren't all on the map. The results would have been the same if we had applied the questionnaires to the original neighbourhood. It would have been the same if we had added in the whole of K north of the Bath rd.

P94 Q3a p100 is the map and it shows a smaller area. It doesn't show the area of the people who use the Rec. I signed it as a map of the area which we were claiming as the Rec rather than as the locality. I obviously didn't read the questionnaire carefully enough.

Q11: I mentioned the area police officer because I knew who the beat officer was because I am a police officer. There is a police station in K. I bumped into him in our area. The community activities I was thinking of was the pantomimes which we have at the church hall attached to the Methodist church. It is a group associated with the church. It is mainly people who live closer to the Queens rd church and therefore not exclusively but mainly people who come from the local area. I have been to watch them and they are people who I recognise from the shops and it is my impression they come from the local area but I couldn't give a list of names and addresses. I would not say that it was referential to this particular area. There is no one particular thing which is but my wife was involved with a playgroup which met in the Methodist church hall but I cant say that that is referential to this area over and above any other area of K.

SUSAN CRON

P194

The people who we meet on the Rec come from what I class as the neighbourhood. All the friends who my sons played with there came from the area or have been told about it because my sons have told them. The people there are people I recognise and I know them from playgroup and school. My elder son had some friends at the top of Queens rd. and others come right from the top of there. I have met them at playgroup and at the school. The children are safe playing on the Rec. It is surrounded by houses or elderly people's bungalows. I have never thought that I needed permission and I always thought that it had been left to the people of K. It was one of the attractions when

we moved in. I have never seen any signs either prohibiting or granting permission to use it. I moved in in 1987 and have used it since then.

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I first made the application, then got the questionnaires and then sought to amend the application.

P67 the map at p73 is not signed I don't know why. I got the evidence questionnaires from the Open Spaces society. Q3a: I put together the maps for the questionnaires. I don't think that it did mean to set out on the map the locality. I have not used the best map I could have and I think at the time we were trying to agree the area of the Rec and I hadn't addressed the detail of the locality for the application. I must have had some neighbourhood in mind when I answered Q11. At this time I thought that K came in 2 parts divided by the river and my part of K was the part to the west of the river. I have nothing to add to what others have said. I am not clear whether these things have to be exclusive to our neighbourhood: in fact they aren't. I meant community activities of the sort organised by the PTA at St Johns school.

P6 and p6 identified the locality as K west of the river. p9 is the map. When I first made the application this was the locality which was my side of K which is what is on this map. The people that use the Rec came from the area marked on the plan. The boundary of the river was one side although strictly speaking as drawn it is the High st. The red crosses are the respondents to the evidence forms and their locations were in my mind when I drew the boundary. I spoke to my neighbours and friends and people that I knew at school and from the playgroups and handed out an awful lot more than came back in. We didn't advertise at that stage and I gave friends copies that they could pass on to other friends of theirs. They were people who I considered would be part of the neighbourhood. I didn't stop people on the Rec. I didn't have a planned mail shot of particular streets.

P16 I amended the application to p18. I had received a letter from the registration authority of some things that I had to clarify which is on p13. I did look at the letter and looked back at the map and I didn't fully appreciate what the locality was when I made the application and I thought that there was the opportunity to clarify where the neighbourhood was. Charlton rd is a busy rd and it does split off that side of the area. It had the effect of cutting off 2 of the evidence questionnaires. When I looked at it again it was obvious. I decided that would be the area I would rely upon.

The obvious factor is the geographical relationship which forms the neighbourhood and I felt it represented a community which I knew very well. It was my sense of community from bringing up my family and the adult relationships I had with the parents of other children. Whether a school function or a party it seemed to be repeating the same group of people who lived in the area. None of the schools are exclusive to this

neighbourhood. I was going on my own experience. I have nothing to add in relation to the survey. I helped as well. I had an acquaintance which worked in Bath. I thought about standing in the street in Bath but that didn't seem a sensible option to obtain the evidence. Most of them lived within the authority but not in K. We tried to prove that if you lived outside K or even on the Wellsway side of K you would not know about the Rec.

ReX

I did feel I hadn't done the map correctly for them and that was in ignorance and never imagined we would end up here today. I don't know what I thought would happen but I was incensed that this piece of green would be lost. It was accepted as a valid application.

OBJECTORS CASE

MARTIN EVANS

P198

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I am happy that this is all of my statement. My knowledge goes back no more than 15 years. I had conversations with a Carol Tucker who knew the site for longer and from those conversations I know that there was child play equipment on the site. When I lived in K I knew of the Rec's existence. I lived in Lockingwell Rd in K. I didn't use the Rec and I don't think that my children did. I confirm para 4 of the statement. I didn't know of any bye-laws on the Rec and knew of nothing to prevent anyone from using it.

ANDREW REED

P195

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This is the whole statement. I confirm that p199-205 is a lease for 5 years to K Parish Council. The next document is a lease from Mr Veale to the urban district council in 1938. I can therefore confirm that there is no evidence of the change of ownership or in relation to the Rec between 1918 and 1938. I don't say such evidence doesn't exist I have only provided what is on our files. The leases are for different sized areas and I cant make the plans all tally. I became aware that Wansdyke made some bye-laws about 1996 but I would not have known which locations they related to and didn't know until the time of this application. I don't know that the bye-laws have ever been tested either by enforcement or in a court of law. I have never seen a sealed version of the bye-laws. We don't know if they have ever been sealed.

The 18th July 1978 is that date that the bye-laws were made. P323 states that the SoS then approved them. I cant explain why the Temple school were granted permission if the site was subject to a statutory trust. I don't know what would have happened if they had exceeded the permitted times. I cant explain why no consideration of this occurred when the permission was granted. The site visit was my first visit to the Rec and I saw no signs then. I accept that because of its location hidden away there it is not likely to be used by people from beyond the neighbourhood.

I accept that it would not be possible to successfully prosecute someone for breach of the bye-laws in the absence of a sealed version of them being available. The document in the bundle is a conventional copy of the bye-laws with a circle showing where the seal was placed.

CLOSING SUBMISSIONS

OBJECTOR

3 parts: firstly the evidence, secondly the skeleton and thirdly the supplemental skeleton.

The evidence

Not disputed by O that the Rec has been used by the public for recreation for more than 20 years. Not disputed that that amounts to lawful sports and pastimes. Not disputed that it has been used by the public without force secrecy or permission.

We say evidence showed the Applicant has failed to prove that the area edged green on p18 constitutes a neighbourhood. We say we are entitled to look to the neighbourhood which the Applicant has put forward and meet the case presented. It is interesting to note the sequence of events which led up to the selection of the neighbourhood. Process started with A collecting evidence questionnaires and they all required the person to verify a map A which showed the claimed land and the claimed locality which used the land and there were 3 different maps used for that purpose: p44 is the most common one showing a relatively small area around the Rec, the second one used is at p59 and that shows the whole of K both east and west of the river and the northern part as well which is the second most popular map used and then p100 is the third version of map A which is the least used map. What is striking is that no one appears to have had any problem with using any of these 3 maps or say that it is too small or too large. It shows that nobody had in mind any particular locality of neighbourhood certainly there cannot have been any common understanding that of course people who use it come from this particular sector of the town. How useful are the evidence questionnaires in identifying where the users of the application land live? You could assemble questionnaires to identify where the users came from. You could survey actual users

of the Rec over 4 or 5 sample days. The other way would be to take sample streets and see whether the evidence questionnaire showed a different picture for each street. What emerged was that the questionnaires were not really assembled on any scientific basis but at random with friends and contacts. What we have is an arbitrary selection of people who filled them in and it is not a reliable guide to where the users of the Rec actually live. The highest you can put it is the closer that you live to the Rec the more likely that you are to use it.

The next stage was the application. Map c as originally drawn showed a blue/green line around what was the western part of the town. A must have thought that this line in some way distinguished those who used the Rec from those who didn't use it. It is a rough and ready line but it must have been her perception at the date of the application. Certainly she did not think that the people lived to the south of Charlton rd. On 11 Feb the Registration authority wrote to her and Mr Steel asked for further clarification of a number of issues and the third was the question of locality. Mr Steel was trying to assist A because the line on the plan did not seem to be the locality and he was not sure if it was the intended neighbourhood. A took up that suggestion in the amended application which follows Mr Steels example of neighbourhood. There is no independent concept of the neighbourhood springing up from the residents. The suggested neighbourhood comes from the prompt of the registration authority.

The next stage was the survey and it emerged that the survey was not done on any scientific basis such as by surveying actual users of the site or by surveying a selection of streets but by distributing survey forms to contacts and by sending them to some acquaintances at Bath. P318 the map which summarises the results of the survey the yellow blobs is only one in the extreme SW corner and the red blobs are clustered around the Rec and predominantly to the south and the blue blobs are only the Wellsway and the people who live out of town. The survey results would have been exactly the same if the original neighbourhood definition had been used or the area north of the Bath rd had been included. Thus the survey is useless as a guide to where the people who use the Rec come from.

The evidence about the facilities came from Q11 in the questionnaires. I make no criticism of the peoples answers: they directly asked the questions which had been posed. But none of them were referential to the claimed neighbourhood. A school or church may be physically within the neighbourhood but it could not be said to be referential to the neighbourhood which had been put forward.

The history of the claimed neighbourhood did not give rise to a coherent history of the claimed neighbourhood. It ranges from Victorian houses to inter war housing and then post war estates and then 1970's development towards the south together with infilling between those sectors. There is no coherent estate which was identified. It is extremely diverse as an area built over a long period of time.

I asked all the witnesses to identify the common factors which united the neighbourhood and there were in the end only three factors. One was the geography because the area can be conveniently delineated by the busy roads which bound it. You cannot create a neighbourhood simply by geography otherwise any area defined geographically could amount to a neighbourhood. The second was use of the Rec. There are 2 problems with that. Firstly the evidence was that the closer that you lived to the Rec the more you were likely to use it and some witnesses accepted that it was mostly used by those in the 5 minute walk. The difficulty of that test is that it doesn't lead to any particular boundary. The other difficulty is that you are using the existence of the Rec in order to define who are the users of the Rec. It was common to use a compass to create an arbitrary line but that never succeeded. The third factor was a sense of community. That is easy to assert but to test it you have to see whether there is any overt evidence of that community like residents associations neighbourhood watches and all the facilities in Q11. If you take a family in the Victorian houses and one in the 1970's estate why do they feel a sense of community which they don't feel with someone who lives on the other side of Charlton rd. The truth is that the claimed neighbourhood is arbitrary.

The only test is the requirement is that it has some cohesive quality which binds it together as a neighbourhood. In Oxfordshire all agreed that registration created a right to use the land for recreation see para 45, 50 and 69. Thus neighbourhood cant be any line that you draw on a map and therefore you should be able to distinguish between a neighbourhood and what is an arbitrary line on a map and the way that is done is to find some cohesive element. Then it becomes a question of fact.

Skeleton argument and documents.

Supplementary Skeleton

Para 1. I rely on the earlier submissions made I relation to the identity of the neighbourhood in relation to doc 1. Doc 2 from the District councillor also does not contain any material to identify the cohesive factor for the identification of the neighbourhood. The baptist church is as he says outside the neighbourhood. He describes his ward as virtually the whole of the neighbourhood and therefore it is different in an unspecified respect from the neighbourhood. Doc 8 p383 provides a definition of the boundary which does not include the whole of the chosen neighbourhood.

Para 2. The Northampton case is a landlord and tenant case. P15-16 of the report. For the purpose of this test the neighbours were the residents of the immediate housing estate. This doesn't help much in the present case because in that context you only need to prove nuisance to neighbours which is a different test from the one in the CRA which does require it to be possible to identify a person from

within or without the neighbourhood. It is being used in a different context.

Para 3. Acknowledges that the area doesn't have a name but talks of "old K". It is hard to see how it could be in the light of the spread of the ages of the properties. It doesn't equate with the ward of K south. Walking through to the shops doesn't count for the purpose of lawful sports and pastimes. It is more in the nature of use as a right of way: see [2004] EWHC 12 para 96-105 Lightman J at first instance in the Oxfordshire case.

Para 4. Godmanchester is a case on s31 of the Highways Act where the issue turned on sufficient evidence that there was no evidence to dedicate and they held that it had to be communicated by overt acts and if it kept it to himself that wasn't good enough. That is a different question from the issues in the present case. A would like to say that O cant rely on the by right argument unless the point has been communicated to the users. That is not the law in relation to the CRA laid down in Beresford which decided the issue is whether they were acting as of right or by right is the issue not whether they knew about it. Conceptually they are different animals because the proviso only kicks in if the users have established the 20 years use as of right. We are simply saying has there been 20 years use as of right.

Para 5. Peartree Green: the tests which were set out have now been overtaken by the decisions of the House of Lords since. Implied permission has been overtaken by the Beresford case. But it isn't a case of use by right.

Para 6. Fordington green: the case was heard in 1973 and therefore there was no argument in relation to the 20 years use arising and it was registered because it was held that it was a customary green. In para 3 the commissioner was clear that land held under s164 was not itself registerable as a town or village green. He must have been aware of the argument in relation to public trust.

APPLICANT

Written closing submitted.