

Democratic Services

Riverside, Temple Street, Keynsham, Bristol BS31 1LA

Telephone: (01225) 477000 *main switchboard*

Direct Lines - Tel: 01225 394452

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

Date: 6 November 2013

E-mail: Democratic_services@bathnes.gov.uk

To: All Members of the Regulatory (Access) Committee

Councillor Douglas Nicol
Councillor Jeremy Sparks
Councillor Peter Edwards
Councillor Mathew Blankley
Councillor Dave Laming

Chief Executive and other appropriate officers
Press and Public

Dear Member

Regulatory (Access) Committee: Friday, 15th November, 2013

You are invited to attend a meeting of the **Regulatory (Access) Committee**, to be held on **Friday, 15th November, 2013 at 5.30 pm** in the **Council Chamber - Guildhall, Bath**.

The agenda is set out overleaf.

Yours sincerely



Jack Latkovic
for Chief Executive

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

This Agenda and all accompanying reports are printed on recycled paper

NOTES:

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

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

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

Appendices to reports are available for inspection as follows:-

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

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

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

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

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

Regulatory (Access) Committee - Friday, 15th November, 2013

at 5.30 pm in the Council Chamber - Guildhall, Bath

A G E N D A

1. EMERGENCY EVACUATION PROCEDURE

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

2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

3. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** or an **other interest**, (as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer or a member of his staff before the meeting to expedite dealing with the item during the meeting.

4. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

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

At the time of publication two speakers registered their request to speak just before item 8 on the agenda (Bath Recreation Ground Town and Village Green Registration Application) – Councillor David Dixon (Chair of the Recreation Ground Trust and Local Resident) and Mr Jack Sparrow (the applicant).

6. ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS

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

7. MINUTES OF PREVIOUS MEETING (Pages 7 - 14)

8. BATH RECREATION GROUND TOWN AND VILLAGE GREEN REGISTRATION

APPLICATION (Pages 15 - 164)

An Application has been received by Bath and North East Somerset Council in its capacity as Commons Registration Authority ("the Authority") to register land known as Bath Recreation Ground, Bath as a Town or Village Green ("TVG"). The Application was advertised and seven objections were received against registration.

An independent expert was instructed by the Authority to advise the Authority as to whether or not Bath Recreation Ground should be registered as TVG.

The Regulatory (Access) Committee ("the Committee") is recommended to refuse the application and not register the land edged red on the plan attached at Appendix 1 in the report ("the Plan") as a TVG.

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

Protocol for Decision-making

Guidance for Members when making decisions

When making decisions, the Cabinet/Committee must ensure it has regard only to relevant considerations and disregards those that are not material.

The Cabinet/Committee must ensure that it bears in mind the following legal duties when making its decisions:

- Equalities considerations
- Risk Management considerations
- Crime and Disorder considerations
- Sustainability considerations
- Natural Environment considerations
- Planning Act 2008 considerations
- Human Rights Act 1998 considerations
- Children Act 2004 considerations
- Public Health & Inequalities considerations

Whilst it is the responsibility of the report author and the Council's Monitoring Officer and Chief Financial Officer to assess the applicability of the legal requirements, decision makers should ensure they are satisfied that the information presented to them is consistent with and takes due regard of them.

This page is intentionally left blank

BATH AND NORTH EAST SOMERSET

REGULATORY (ACCESS) COMMITTEE

Tuesday, 18th December, 2012

Present:—Councillors: Mathew Blankley (Reserve) (In place of Peter Edwards), Nicholas Coombes (Chair), Douglas Deacon, Jeremy Sparks and Tim Warren

Also in attendance:

11 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer drew attention to the emergency evacuation procedure.

12 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Councillor Peter Edwards sent his apology for this meeting. Councillor Mathew Blankley was a substitute for Councillor Edwards.

13 DECLARATIONS OF INTEREST

There were none.

14 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

There was none.

The Chair thanked Norton Malreward Parish Council for providing the venue for this meeting. The Chair also thanked to all members of the public who turned out at the meeting.

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

The Chair informed the meeting that 6 people registered to speak at the meeting according to the speakers list (attached as Appendix 1 to these minutes). The speakers will address the Committee on items 8 and 9 on the agenda. Each of the speakers will have 3 minutes to address the Committee. The traffic light system will show green light for 3 minutes, amber light 30 seconds and red light out of time.

Appendix 1

16 ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS

There was none.

17 MINUTES OF PREVIOUS MEETING

The Chair informed the meeting that purpose of the minutes of the last meeting is to report what happened at the meeting and give some idea why it happened. The draft of the minutes had been updated last few weeks but it remained just as draft which is yet to be approved by the Committee at this meeting.

It was **RESOLVED** that the minutes of the meeting on 30th May 2012 be approved as a true record with the following amendment:

- Page 4 of the minutes, first paragraph, should read: 'Graeme Stark replied that there is clear evidence of use but a section of the Application Route has been obstructed and the public use **a temporary permissive path, agreed with the Council**, to get from the start of the path until end.

18 MANOR FARM (NORTON MALREWARD) DEFINITIVE MAP MODIFICATION ORDER 2012 CL15/11

The Chair introduced the item and invited speakers to address the Committee.

Mr Paul Britten addressed the Committee by saying that he lived in Norton Malreward for 55 years and that he and his wife were on the Parish Council for some time, whether as Clerks or Members of the Parish Council and that he was familiar with all the information. For him this route is bridle path and it is classified as road used as a public path (RUPP) according to map from 1956.

Mr Gareth Jones addressed the Committee by saying that he is the owner of Manor Court. Mr Jones said that this order is to deal with fact and there is no evidence to demonstrate that any portion of the line from A to C on the map was ever established as Public Right of Way. Mr Jones said that, as the owner, he is more than happy to make it usable as a permissive right of way for walkers, horse riders, etc.

Mr Charles Thursby-Pelham said that he moved here around 12 years ago and part of the reason was use of the bridle path, which was used regularly by Mr Thursby-Pelham and his family. Mr Thursby-Pelham didn't realise that there was an issue of potential access to it until recently and his view is that the bridle path is a right of way, and it can be used, though if there is no access to it how it could it be a right of way. Mr Thursby-Pelham said that he doesn't think that the access should be closed until the alternative route is provided.

Ms Ann Fay (British Horse Society) said that the bridleway runs from Norton Malreward village to the B3130 a total length of approximately 1200 metres or three quarters of a mile. It starts to the north of the Church and runs for a short distance through the grounds of Manor Farm then on a well-defined track over open fields which include a small airfield before crossing the parish boundary and dropping steeply to the road. It is part of a much used circular route which passes through Pensford and Publow. If the short section covered by the Order is deleted the whole circular route will be annihilated and 1200 metres of bridleway over open fields will be rendered useless for horse riders.

Ms Fay said that the alternative would be to use a surfaced track to the south of the church which joins up to the field track of the bridleway. This path has a gate which is usually locked but if it is open it is used in preference to the designated path as it is surfaced and clean while the path through the grounds of Manor Farm is very muddy. The gate only prevents the use of a short distance of track before it joins the bridleway and does not give access to any additional property or agricultural operations. If the route were to be allowed, the locked gate could remain with a suitable gap to the side to allow access for horse riders.

Ms Jane Hanney (Solicitor representing Gareth Jones) said that on the 30th May this year the Committee unanimously voted to support the order to delete the section A to C of this bridleway. The Committee is now being asked if they are going to continue to support the order, oppose the decision or take neutral stance. Nothing else should be considered tonight in relation to this order. Mr Stark recommendation is that the Committee should oppose this order although he gave no reason for his recommendation. In conclusions set out in the paper it says there is no evidence to support such recommendation. Paragraph 4.12 concludes that none of the evidence listed provides evidence of public rights of way along the order route. These documents only provide the evidence that at least a section of order route existed. Just because the route physically exist does not mean it is public; it could be equally private right of way. Paragraph 4.13 concludes that the evidence listed does not provide evidence of whether the order route was a public rights of way – so none of the documents in the evidence provided says that the order route was public rights of way. Paragraph 4.14 concludes that on balance the order route physically existed and it was passable by pedestrians though there is no evidence to support that. In paragraph 4.15 it said that it is considered that these documents provide modest evidence of the existence of public rights over the Order Route on the Relevant Date of 26 November 1956. It does not explain how Mr Stark came to this conclusion. At the last meeting the Committee voted to support the order and the only valid reason to change this stance would be if there is new evidence to show that your previous decision was not justified. There is no such new evidence. The Committee should continue to support the order and if they don't do so than it would be perverse, irrational and open to challenge.

A full statement from Ms Jane Hanney is available on the minute book in Democratic Services.

Mr John Ives (Open Spaces Society) said that what we have here is long standing dispute about the legality of the bridleway. The applicants have to establish whether the highway authority made a mistake when the definitive map was constructed – i.e. that no rights of way existed at that time. Mr Ives doesn't believe that the applicants proved their case but the Council had a different view on it. If the order is confirmed then we are left with a bridleway with no access. Mr Ives said that there is an obvious alternative which is the establishment of the route south of the church. Mr Ives concluded that Council now must consider what to do once the result of the inquiry is known.

The Chair thanked everyone who made their statement and asked if anyone else, who was not on speakers list, would like to address the Committee. There were no other speakers.

The Chair also informed the meeting that there were no comments from the Parish Council or from Ward Councillor.

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

Graeme Stark summarised the main points for consideration. On 30th May 2012 the Committee resolved that a section of CL15/11 should be deleted from the Definitive Map and Statement. The Definitive Map Modification Order (DMMO) was subsequently made and 55 people made objection to this order. One extra objection was received after the date. Due to the outstanding objections to the DMMO the authority is required to submit the order to the Secretary of State (SoS) for determination. It doesn't have the option to abandon the order or confirm itself so the order must be submitted to the SoS. Before doing so the Committee needs to consider the objections and decide whether the authority should confirm the order, oppose the confirmation of the order or alternatively to take neutral stance and to allow objectors and supporters of the order to present their case at inquiry.

Graeme Stark informed the Committee that the order was originally recorded on DM&S with a relevant date of 26th November 1956. The DM&S process is described in Appendix 2 of the report. In 1989 the application route was the subject of re-classification order and that is described in Appendix 3 of the report. The legal test which must be considered in relation to deletion of the routes are in Appendix 4 of the report. The Committee must consider the evidence contained in Appendix 5 of the report along with the evidence in Appendices 2 and 3 and the duly made objections and representations to the DMMO are in Appendix 6 of the report. Graeme Stark drew the Committee's attention to paragraph 4.34 of DEFRA's Rights of Way Circular 1/09.

Graeme Stark concluded by saying that his assessment is that there has not been sufficient evidence to demonstrate that an error was made and that the Order Route should not therefore be deleted, although it is for the Committee to decide whether the Authority should support, oppose or take neutral stance regarding confirmation of Order No. 2.

Councillor Tim Warren asked for a clarification on what neutral stance is.

Simon Elias (Senior Legal Adviser) said that this is not a re-hearing and that the decision maker now is the Inspector. If the Committee wish to change their decision then they need to give the reasons for it. Simon Elias explained that the Planning Inspectorate's Advice Note No.1 on neutral stance is the following; "Local authorities do not always support orders that they have made. A local authority may have been directed to make an order by the Secretary of State, or new evidence may have come to light after the order was made which leads the local authority to change its view."

Councillor Tim Warren felt that the Committee should not change the decision made on 30th May 2012.

The Chair said that he would prefer neutral stance on this matter. The reason for this is that at the last meeting the Committee reviewed the evidence. The question

in front of us is was there new evidence since the route was recorded in the 1950s to suggest that the route should not have been recorded. In his view, at the time, new evidence was cited by an objector to suggest that path might not have gone through the farmyard. That is why the Committee made their decision that the order should be made to delete the section A-C. This deletion order is now going to the Secretary of State/Inspector to decide and we now must decide if we will make representations at that decision. In his view, after rereading the report, the evidence that was referred to at the last meeting persuaded me that there may be evidence on the balance of probability that the route did not exist. However, the Chair said that now, now including the vestry minutes evidence that was referred to at the last meeting, he is no longer convinced by the evidence. The Chair said that he would like to withdraw his earlier support to delete the path and that is why he feels it would be correct that the decision should be with the Inspector without the input from the Council so it should be between the applicant and objectors to argue their cases in front of the Inspector.

Councillor Jeremy Sparks agreed with the Chair's view on this matter and supported that the issue should be handled by the Inspector.

Councillor Tim Warren moved that the Committee should support confirmation of Order No. 2 which it was previously satisfied to make. This was a correct decision made by the Committee in his view.

There was no seconder to the motion. Motion failed.

The Chair moved that the Committee take a neutral stance on the Order No. 2 because in light of the evidence now available to the Committee he was no longer convinced that a mistake was made when the path was recorded.

Councillor Jeremy Sparks seconded the motion.

Voting: 4 in favour with 1 against.

Motion carried.

On a motion from Councillor Nicholas Coombes and seconded by Councillor Jeremy Sparks it was **RESOLVED** that the Committee take a neutral stance on the Order No. 2 because in light of the evidence now available to the Committee and making the Committee is no longer convinced that a mistake was made when the path was recorded.

19 HOLY TRINITY CHURCH DEFINITIVE MAP MODIFICATION ORDER INVESTIGATION

The Chair introduced the item and invited speakers to address the Committee.

Ms Ann Fay addressed the Committee by saying that it would be good to put this alternative route into use.

Ms Julia Bowman asked if one end of the bridleway is closed then would the Council improve the visibility, and accessibility, of the other end.

Graeme Stark replied that he would be happy to discuss the details with Ms Bowman after the meeting.

The Chair informed the meeting that there were no comments from the Parish Council or from Ward Councillor.

Graeme Stark said that the Committee resolved at the last meeting that officers should investigate whether unrecorded public rights exist over a route to the south of Holy Trinity Church in Norton Malreward. An investigation had been carried out by officers and the evidence detailed in paragraphs 4.9 to 4.14 of the report does not demonstrate that a public bridleway subsists or can be reasonably alleged to subsist over the section of the Investigation Route between point A and B on the Plan. Furthermore, on the balance of probabilities the evidence does not demonstrate that any section of the Investigation Route should be recorded on the Definitive Map and Statement (DM&S) as a public bridleway. Therefore, the Committee is recommended to resolve that a Definitive Map Modification Order (DMMO) should not be made to record additional public rights to the south of Holy Trinity Church on the DM&S.

Councillor Tim Warren commented that he is happy with officers' recommendation and moved that a DMMO should not be made to record additional public rights to the south of Holy Trinity Church on the DM&S.

Councillor Mathew Blankley seconded the motion.

The Chair said that he read the report, considered the evidence presented and also visited the site and his view is that there is a bridleway somewhere though he was not sure where exactly the actual way is. The Chair said that he will not support the motion from Councillor Warren and suggested that the Committee should defer their decision on this subject and wait for the report from the Inspector.

Councillor Tim Warren said that he will withdraw his motion at this time though he will not support deferral.

Councillor Mathew Blankley withdrew as seconder to the original motion.

Councillor Nicholas Coombes moved to defer the decision of the Committee and wait for the report from Inspector.

Councillor Jeremy Sparks seconded the motion.

Voting: 3 in favour with 2 against.

It was **RESOLVED** to defer the decision on whether or not a DMMO should be/not be made to record additional public rights to the south of Holy Trinity Church on the DM&S.

20 UPDATE OF DEFINITIVE MAP ORDER AND PUBLIC PATH ORDER WORK

Graeme Stark took the Committee through the report by highlighting brief details of all Definitive Map Modification Order applications and Public Path Orders (PPO) applications and current progress on each application.

Graeme Stark also informed the Committee that the Public Rights of Way Team received a Town and Village Green application for Bath Rec on Monday 17th December 2012 (which was not included in the report as the document was printed before the application was duly made).

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

The meeting ended at 7.30 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

This page is intentionally left blank

Bath & North East Somerset Council	
MEETING:	Regulatory (Access) Committee
MEETING DATE:	15th November 2013
TITLE:	Bath Recreation Ground TVG Registration Application
WARD:	Abbey
AN OPEN PUBLIC ITEM	
<p>List of attachments to this report:</p> <p>Appendix 1 – Plan of land to which the Application relates</p> <p>Appendix 2 – Application to register ‘Bath Recreation Ground’ as a TVG</p> <p>Appendix 3 – Objections</p> <p>Appendix 4 – Representations</p> <p>Appendix 5 – Applicant’s comments on the Objections</p> <p>Appendix 6 – Inspector’s Initial Advice dated 10 June 2013</p> <p>Appendix 7 – Comment on Inspector’s Initial Advice</p> <p>Appendix 8 – Inspector’s Further Advice dated 27 September 2013</p> <p>Appendix 9 – Applicant’s comments on the Further Advice</p>	

1. THE ISSUE

- 1.1 An Application has been received by Bath and North East Somerset Council in its capacity as Commons Registration Authority (“the Authority”) to register land known as Bath Recreation Ground, Bath as a Town or Village Green (“TVG”). The Application was advertised and seven objections were received against registration.
- 1.2 An independent expert was instructed by the Authority to advise the Authority as to whether or not Bath Recreation Ground should be registered as TVG.

2. RECOMMENDATION

- 2.1 The Regulatory (Access) Committee (“the Committee”) is recommended to refuse the application and not register the land edged red on the plan attached at **Appendix 1** (“the Plan”) as a TVG.

3. FINANCIAL IMPLICATIONS

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

4. THE REPORT

- 4.1 **Application.** On 16 November 2012, Mr Jack Sparrow of 43 Forester Road, Bathwick, Bath, BA2 6QE (“the Applicant”) applied under section 15 of the Commons Act 2006 (“the 2006 Act”) to register land known as ‘Bath Recreation Ground’ as a TVG. This original Application was assessed by the Authority and was found not to have been duly made. The original application was therefore returned to the Applicant to give him the opportunity to rectify the problems with the original application and resubmit to the Authority. The revised Application was resubmitted to the Authority on 18 December and following a subsequent assessment by Officers of the Authority was found to be duly made on 18 December 2012; the Authority therefore proceeded with the Application on this basis.
- 4.2 The Application, excluding the supporting evidence which is available upon request, is contained at **Appendix 2**. The Application was made on the basis that the land qualifies for registration by virtue of section 15(2) of the 2006 Act, namely that;
- “...a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application”.*
- 4.3 The land to which the Application was made is edged red on the plan contained at **Appendix 1**. The majority of the land is held on charitable trusts by the Trustees of the Recreation Ground, Bath (“the Trustees”); however, the land also includes small sections of approximately 17 privately owned gardens and sections of public highway vested in the Highway Authority. The land to which the Application relates is hereafter referred to as the “Application Land”.
- 4.4 The Application was accompanied by 10 user evidence forms and an assortment of conveyances, agreements, leases, photographs and documents relating to the charitable status of the land. The Authority has a statutory duty under the 2006 Act to consider and dispose of the Application.
- 4.5 **Advertising.** On 10 January 2013, the Application was advertised by placing a notice in the Bath Chronicle and on the Authority’s website and serving notice on all interested parties including the Trustees and all other known or suspected landowners, the ward members and Applicant. Additionally, notices were placed at 19 conspicuous locations around the Application Land and maintained on site until 26 February 2013.

- 4.6 The Authority received seven objections against the Application Land being registered as TVG; these objections are reproduced at **Appendix 3**. The Objections were based on a variety of grounds including;
- i. that use was by permission, licence or 'by right', rather than 'as of right',
 - ii. that significant sections of the Application Land is not accessible to the inhabitants on match days,
 - iii. that sections of the Application Land have not been accessible at any point during the relevant period because they have been occupied by a leisure centre or private gardens,
 - iv. that the Applicant has failed to produce sufficient evidence to prove use by a significant number of inhabitants.

Additionally, 18 emails and letters of support for the Application were received from members of the public during the advertising period (see **Appendix 4**).

- 4.7 On 25 February 2013, the Objections were forwarded to the Applicant to give him an opportunity to respond to the points raised. On 1 April 2013, the Applicant responded to the Objection and challenged each of the points raised (see **Appendix 5**). On 10 April 2013, Officers of the Authority made an assessment of the Application, the Objections and the Applicant's response to the Objections. It was concluded that there remained significant points of dispute between the Applicant and Objectors and it was therefore decided that an independent expert should be instructed to provide advice to the Authority as to how to proceed with the Application.
- 4.8 **Barrister's Advice.** The Authority subsequently instructed Mr Leslie Blohm QC of St John's Chambers in Bristol ("the Inspector") who is a barrister and an independent expert in TVG and trust law. The Inspector considered the Application, the Objections and the Applicant's response to the Objections and on 10 June 2013 provided formal advice to the Authority ("the Initial Advice") (see **Appendix 6**). The Initial Advice carefully assesses the relevant law and evidence and concludes at paragraph 71 of the Initial Advice that; *"...the Registration Authority...should dismiss the Application for Registration of The Rec, Bath as a Town or Village Green..."*
- 4.9 On 13 June the Applicant and Objectors were given the opportunity to comment upon the Inspector's Initial Advice. The Trustees and the Applicant responded accordingly (see **Appendix 7**) and the Applicant also submitted new evidence in support of their application. These comments were referred back to the Inspector and, taking the comments and new evidence into consideration, the Inspector issued further advice to the Authority on 27 September 2013 ("the Further Advice") (see **Appendix 8**). The Inspector advises at paragraph 17 of the Further Advice that:

"It follows therefore that my advice remains as it was in my earlier advice. There is no reasonable prospect of Mr. Sparrow's application succeeding even if an Enquiry is held. The Authority should therefore determine the application on the evidence before it, and (I advise) should dismiss the application for the reasons set out in paragraph 71 of my earlier advice."

- 4.10 The Applicant has provided a response to the Further Advice (see **Appendix 9**); however, the response does not raise any new issues of substance which have not already been addressed by the Inspector in the Initial and Further Advice. It now falls to the Committee to determine the Application on behalf of the Authority.

5. STATUTORY TEST

- 5.1 The statutory test under consideration is set out in section 15(2) of the 2006 Act, which states that; “...*a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application*”. The Application is considered in full in the Inspector’s Initial and Further Advice and members of the Committee are advised to read the report in full before reaching a decision regarding the Application.
- 5.2 As stated in paragraph 26 of the Initial Advice, the Authority can only consider whether the legislative test set out in the 2006 Act have been met. The Authority cannot take into account whether registration is deemed desirable nor what may or may not happen to the land in the future.
- 5.3 At paragraph 44 of the Initial Advice, the Inspector identifies three discrete issues that require particular analysis in relation to the Application. These are:
- (1) *Whether use by the public of the land for informal recreation was use ‘by right’ and not ‘as of right’?*
 - (2) *Whether use by the public of land that is in the sole control of another – and I refer here to the tennis courts, the leisure centre and other areas – is permissive and hence not ‘as of right’?*
 - (3) *Whether there is any relevant recreational use throughout the relevant period of the land demised to Bath Rugby?*
- 5.4 **Use of the land ‘by right’.** The charitable trusts which exist on almost the entirety of the Application Land grants the inhabitants of Bath the right to use the land for ‘...*games and sports of all kinds tournaments fetes shows exhibitions displays amusements entertainments or other activities of a like character...*’. Any use of the Application Land which is consistent with these categories of use, such as rounders football and fêtes, would be by virtue of a pre-existing right. This use would therefore be ‘by right’ rather than ‘as of right’ and must be discounted for the purposes of the Application. The Inspector states at paragraph 54 of the Initial Advice that: “*It is not possible to quantify with precision the [as of right] usage from the documentation that I have, although it is fair to say that my general impression of the evidence that I have is that it is not substantial.*”
- 5.5 **‘Third party’ controlled land.** Significant sections of the Application Land are occupied by third parties including Aquaterra Leisure who run the leisure centre and Bath Spa Tennis Club, Southdown Tennis Club and Bath Croquet Club who occupy the tennis courts and croquet lawns. Use of the leisure centre is by licence, unless the terms of the charitable trust applies to Aquaterra in which case use of the leisure centre will have been ‘by right’; in either scenario this would not have been use ‘as of right’. The use of the tennis courts and croquet lawns are controlled by the respective clubs and again use will have been either by licence or ‘by right’ and will not have been ‘as of right’.

- 5.6 The sections of the Application Land to which charitable trusts do not exist are the small sections of approximately 17 privately owned gardens and sections of public highway vested in the Highway Authority. The sections appear to have been erroneously included in the Application; there is no evidence of use of the gardens by the inhabitants of Bath and the sections of public highway have been used for highway purpose and not for lawful sports and pastimes.
- 5.7 **Land demised to Bath Rugby.** In paragraph 61 of the Initial Advice the Inspector states that; *“...the land so demised...has not been used for public sports and games. The only usage has been pursuant to Bath Rugby’s permission (in which case the users are licensees and the use is permissive, and not ‘as of right’)...”* It is immaterial to the determination of this TVG registration application whether or not any constraints on the use of the Application Land are within the terms of the trusts.
- 5.8 **Conclusion.** Paragraph 71 of the Inspector’s Initial Advice advises that;
“...the Registration Authority...should dismiss the Application for Registration of The Rec, Bath as a Town or Village Green pursuant to section 15 Commons Act 2006 on the following grounds:
(1) That usage of The Rec for lawful sports and pastimes ‘as of right’ has not been by a significant number of the inhabitants of Bath;
(2) That usage of the land demised to Bath Rugby plc, and of the Leisure Centre and the tennis and Croquet Courts has not been ‘as of right’.
- 5.9 For the reasons detailed in paragraph 5.8 above, the Application does not demonstrate that the Application Land has been used ‘as of right’ for lawful sports and pastimes by a significant number of the inhabitants of Bath. The Application therefore fails to satisfy the legal tests set out in section 15 of the Commons Act 2006. The Committee is recommended to refuse the Application and not register the Application Land as TVG.

6 RISK MANAGEMENT

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

7. EQUALITIES

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

8. CONSULTATION

- 8.1 *Ward Councillor; Cabinet Member; Other B&NES Services; Service Users; Local Residents; Community Interest Groups; Monitoring Officer*
- 8.2 Extensive consultation was carried out as detailed in paragraph 4.5 above.

9. ISSUES TO CONSIDER IN REACHING THE DECISION

9.1 Legal Considerations; as detailed in paragraphs 5.1 and 5.2 above.

10. ADVICE SOUGHT

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

Contact person	Graeme Stark, Senior Rights of Way Officer
Background papers	Bath Recreation Ground TVG case file Evidence appended to the Application Evidence appended to Bath Rugby plc's Objection
Please contact the report author if you need to access this report in an alternative format	

APPENDIX 1

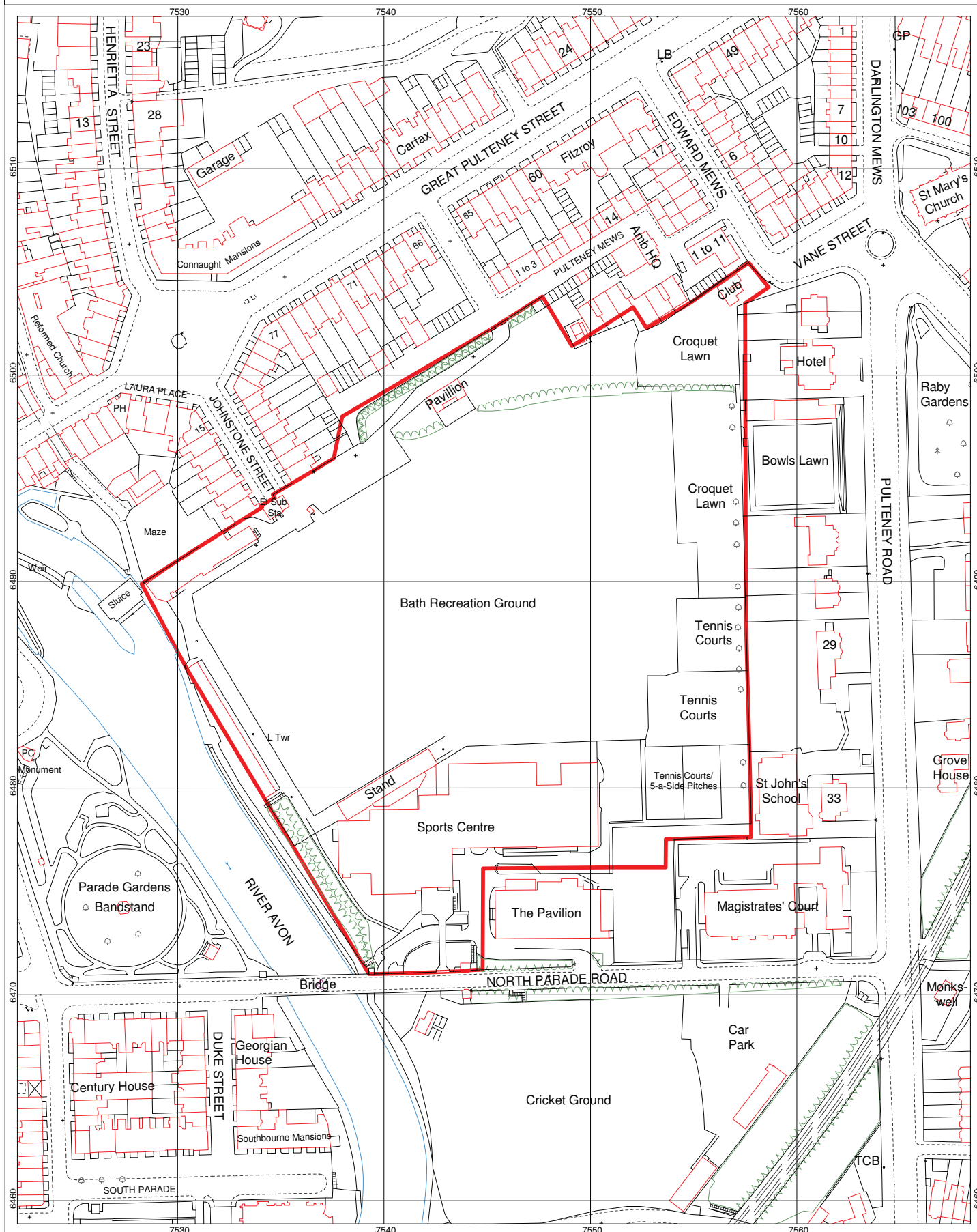
Application Land

Section 15(1) of the Commons Act 2006 Bath Recreation Ground (TVG12/1)

Land to which the application for
Town or Village Green status relates =



Scale 1:2500

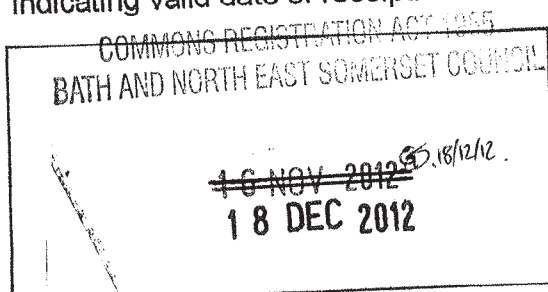


This page is intentionally left blank

Commons Act 2006: Section 15

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

Official stamp of registration authority
indicating valid date of receipt:



REGISTRATION AUTHORITY

Application number:

TVG12/1

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

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

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

1. Registration Authority

To the

Note 1

Insert name of
registration
authority.

Mr Graeme Stark,
PROW,
Bath and North East Somerset Council,
Riverside,
Temple Street,
Keynsham,
Bristol,
BS 31 1LA.

Note 2

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

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

2. Name and address of the applicant

Name:

Full postal address:

43, Forester Road,
Bathwick,
Bath

Postcode BA2 6QE

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Supported by members of the Pulteney Estate Residents Association (PERA) who represent the Residents in Streets Around the Recreation Ground. See Map A.

Note 3

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

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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

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

4. Basis of application for registration and qualifying criteria

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

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

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

Section 15(2) applies:

☒

Section 15(3) applies:

☐

Section 15(4) applies:

☐

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

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

Note 5

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

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

Note 6

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

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

Name by which usually known:

Bath Recreation Ground

Location:

Central Bath
Identified on Map A and in Picture B a 1905 photograph.
The area is also identified in Appendices 1 and 2

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

Common land register unit number (if relevant) *

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

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

Central Bath known as the City of Bath in the Administrative area called Bath and North East Somerset. Map A attached shows the most adjacent streets although all Bath residents are entitled to use the Recreation Ground as Beneficiaries in the conveyance of 1956(see appendix 2). Those outside the Bath City boundary are permitted use of the facilities of the Recreation Ground but have no beneficial ownership.

Tick here if map attached: ☒

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

Note 7

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

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

The Recreation Ground was conveyed in 1922 from Captain Forester to the Bath And County Recreation Club. (Conveyance attached as Appendix 1.) In 1956 it was then conveyed to the Mayor, Aldermen and Citizens of Bath. (Conveyance attached as appendix 2). With these conveyances came a covenant, which described how the land should and should not be used. If Town Green's had existed at that time then the Recreation Ground would have been designated as a Town Green. It was to remain; an open space; be used for recreational pastimes of all descriptions; not to be used for commercial gain; not to be used for any purpose that would disturb local residents.

It is the intention of this submission that the Bath Recreation Ground should be returned to the state that existed when the conveyances and covenants were initially executed.

Only those activities conforming to these legal documents should be permitted to remain. All buildings, which were erected for commercial gain since the demise of the Amateur Rugby Club, should be demolished or returned to the ownership and control of the trustees for use by other legitimate users.

Appendix 8 attached is a fuller statement of the case.

Note 8

Please use a separate sheet if necessary.

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

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

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

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

Note 9

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

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

The owners are those defined by the 1954 conveyance namely the Mayor, Aldermen and Citizens of Bath. The land is held for them in a charitable trust and members of the B&NES Council should act as trustees on their behalf.

Current Lessee's for part of the Recreation Ground are;

Bath Rugby PLC, a professional club with a dubious 75year lease granted in 1954.

Bath Croquet Club an amateur club with a 10-year lease, which expired in 2011 and is now renewed on an annual basis including a few parking spaces.

Bath Drama Society, which have a permanent lease on one small area and their own access gate.

Whitefield Volleyball Club which have an annually renewable lease for their annual event. That is providing it does not clash with other events organised by the Rugby Club (i.e. Professional Cricket).

Bath Spa Tennis Club who now annually renew their lease for three grass tennis courts which includes a few parking spaces.

Southdown Tennis Club with a lease for two grass courts.

The Bath leisure centre now run as a not for profit organisation by Aquaterra providing both indoor and outdoor activities. It has been agreed that it can remain whilst the buildings, maintained by the Council, remain serviceable. See appendix 5.

All the above are marked on Map A

10. Supporting documentation**Note 10**

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

Please use a separate sheet if necessary.

Appendix 1 Original conveyance 1922.

Appendix 2 Conveyance of 1956 to Mayor, Aldermen and Citizens of Bath with restrictive covenants.

Appendix 3 Summary findings of the High Court in 2002.

Appendix 4 Charity Commission definition of the rules to be followed by the Bath Recreation Ground Charity Trust.

Appendix 5 Agreement saying that the Leisure Centre could remain.

Appendix 6 Original lease for 50 years to the Amateur Rugby Club

Appendix 7 Original copy of the 2002 lease for a temporary East Stand for the Professional Rugby Club.

Appendix 8 Copy of detail to be included with section 7 justifying the registration application.

Appendix 9 Applications for Buildings on the Recreation Ground

Map A An aerial map of the Recreation Ground and surrounding streets.

Map B A map of the Recreation Ground showing the public right of way.

Picture B a picture of the Recreation Ground in 1905 showing Rugby, Cricket and Football pitches co-existing with open access to the River Avon.

Appendix 10 Various Witness Statements separately numbered 10(x)

Note 11

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

Note 12

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

11. Any other information relating to the application

Appendix 9 shows all the planning applications for Buildings on the Recreation Ground the Majority of which were illegal with reference to the Conveyance and Covenant.

The Bath Rugby Club and the B&NES Council may oppose the application.

Date:

11TH NOVEMBER 2012

Signatures:

[Signature]

[Signature]

Chair

Pullerney Estates

Residents Association

(PERA)

REMINDER TO APPLICANT

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

Data Protection Act 1998

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

Statutory Declaration In Support

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

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

I. JACK SPARROW solemnly and sincerely declare as follows:—

² Delete and adapt
as necessary.

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

³ Insert name if
Applicable

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

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

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

~~4. ⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:~~

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

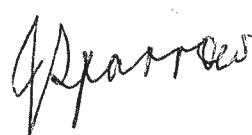
Cont/

⁴ Continued

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

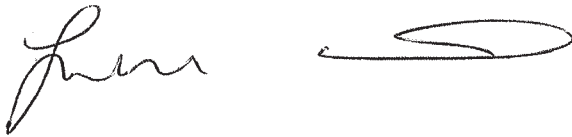
And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said)
JACK SPARROW)
at 43 FORESTER ROAD)
BATHWICK)
BATH BA26QE)
this 14TH day of NOVEMBER) 2012


Signature of Declarant

Before me *

Signature:



Address:

JULIE HARDIE
7 PIERREPONT ST BATH

Qualification:

SOLICITOR

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

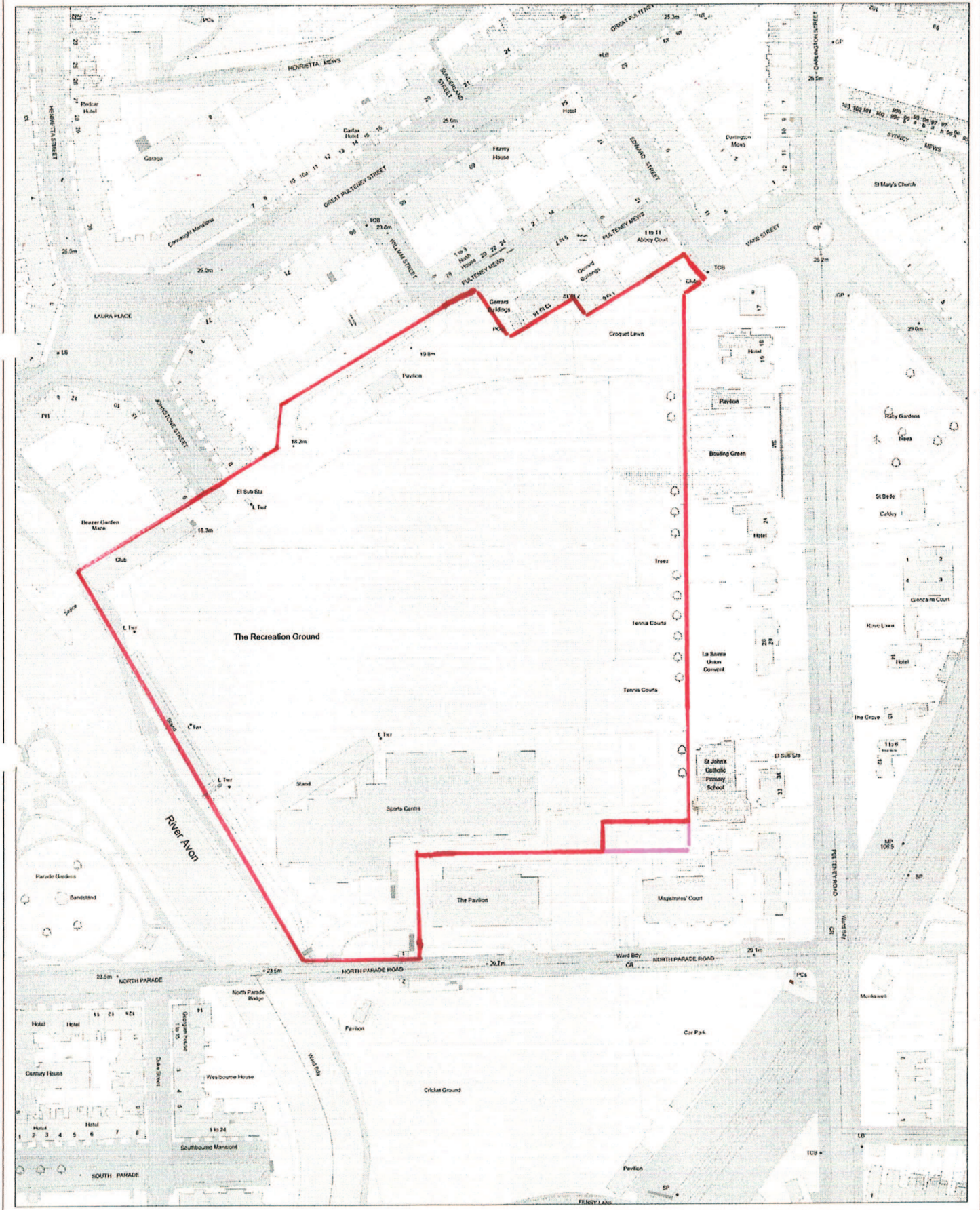
Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

Map A

Scale 1:2500



Graeme Stark

From: Sue and Darius Mehta <darius@honeysuckle-cottage.org.uk>
Sent: 15 January 2013 09:23
To: Graeme Stark
Subject: Town Green proposal for the Rec

Dear Mr Stark,

I wish to object to the proposal to register the Recreation Ground as a Town Green. As a beneficiary of the Recreation Ground Trust as defined by the High Court in 2002 such a proposal would take away the benefits enjoyed by myself and many others.

The proposal fails on the following grounds.

1. The Trustees require that all activities involving 5 or more persons require permission from the Trustees and in many cases for a charge.
2. The Leisure Centre is built on the rec and all users of that facility have to pay for their activities in that building and entry can be restricted.
3. The rugby ground is not available for access in the rugby season and on match days.
4. Other lessees of land on the rec restrict use to their members of that part of the land they have leased eg the tennis club, drama club etc.

In other words the rec has not "been used by local people for lawful sports and pastimes 'as of right' (ie without permission, force or secrecy) for at least 20 years."

Yours sincerely

Darius Mehta

Sent from my iPad

Graeme Stark

From: Zoe Tarrant <zoe@seasonsholidays.com>
Sent: 15 January 2013 10:49
To: Graeme Stark
Subject: Bath Recreation Ground
Attachments: PlanST206135.pdf

Graeme

I write on behalf of Seasons Hotel Title Ltd who have received your notice under Section 15(1) for Bath Recreation Ground as owners of The County Hotel, 18-19 Pulteney Road, BA2 4EZ.

We comment that the plan which has been submitted is incorrect on its eastern boundary and includes a strip of our land. Please find attached a copy of our Land Registry plan for your information.

There is no access to the public into this area of land as it is enclosed by a wall on the boundary between the hotel and the Croquet Lawn.

I look forward to hearing from you further.

Regards
Zoë

Zoë Tarrant RIBA
Seasons Holidays Plc
Wynchgate House, Woodlands Lane, Bradley Stoke, Bristol, BS32 4JT
Mobile: 07772 281348
Fax: 0845 280 2216



01225 486901
01225 481306
Jason.curtis@aquaterra.org

Mr. G. Stark
Senior Rights of Way Officer
Environmental Services
Bath & North East Somerset Council
Floor 2, Riverside
Temple Street
Keynsham
Bristol, BS31 1LA

4 February 2013

Dear Mr. Stark

Section 15(1) of the Commons Act 2006 – Application to register land known as Bath Recreation Ground as a Town or Village Green

I refer to your letter of 8 January 2013 enclosing the notice of application and plan relating to the above.

I note that the application relates not only to Bath Recreation Ground but also to Bath Sports and Leisure Centre in which Aquaterra Leisure has an interest by virtue of a lease from Bath & North East Somerset Council.

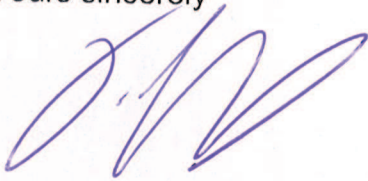
Please accept this letter as objection on behalf of Aquaterra Leisure to the proposed application for registration insofar as it relates to Bath Sports and Leisure Centre on the following grounds:

1. We do not accept that Bath Sports and Leisure Centre constitutes “**land**” for the purposes of Section 15 (1) of the Commons Act 2006. It is a building to which there is no free access by members of the public;
2. We do not accept that a significant number of the inhabitants of the City of Bath have used Bath Sports and Leisure Centre **as of right** in accordance with Section 15 (2) (a) or 15 (3) (a) or 15 (4) (a) for at least 20 years. Fees and charges are payable in respect of the use by the public/members of Bath Sports and Leisure Centre;

3. Neither Section 15 (2) (b), nor 15 (3) (b) and (c), nor 15 (4) (b) and (c) of the Commons Act 2006 applies to this case. Aquaterra has occupied Bath Sports and Leisure Centre for more than nine years;
4. Therefore, we contend that the applicant is not entitled to make application for registration on the basis that Section 15(1) of the Commons Act 2006 has not been complied with as none of subsections (2), (3) or (4) apply for the reasons stated above.

Please acknowledge safe receipt of this letter.

Yours sincerely



Jason Curtis
Head of Operations

Graeme Stark

From: Ian Wilson <iandlwilson@yahoo.co.uk>
Sent: 22 February 2013 09:10
To: Graeme Stark
Subject: Objection to Town or Village Green Application TVG12/1(The Recreation Ground Bath)

Dear Mr Stark

I would like to register my objection to the Town or Village Green Application TVG12/1 (The Recreation Ground Bath). I set out the grounds for my objection below.

My understanding is that this application fails the required criteria of "the land having been used and continuing to be used as of right by the inhabitants of the City of Bath for at least 20 years for lawful sports and pastimes" for multiple reasons including:

- All sporting activities on the Rec (formal or informal) need the permission of the Rec Trust and have to be booked through the Trust
- The Leisure Centre (which is included in the application) clearly does not have free access and is not open at all times.
- The tennis courts and other facilities on the Rec do not have open access for 'sports and pastimes'
- On rugby match days there is not free access to the pitch and stands for 'sports and pastimes'.

I also believe that the case of *Barvis v North Yorkshire Council* [2012] is relevant as this case involved a recreation ground owned by the council. An application to register it as a Town /Village Green failed and the Court of Appeal agreed with the decision. The case turned on the words 'as of right' and this was held to mean that the use had been without permission or consent i.e. a trespass. The recreation ground in question had been used with the full knowledge and consent of the Council - indeed they had maintained it as a recreation ground open for organised sporting activities for the public at large. The Court of Appeal held that the use had been 'by right' i.e. with permission and consent and therefore there were no grounds upon which to register the land as a Town or Village Green.

It seems to me that this mirrors the situation on the Rec where sporting activities are carried on with the consent of the Council as trustees i.e. by right.

I am also concerned about the consequences of making the Rec a 'Town/Village Green'. I believe that one of these consequences would be to make all the current activities on the Rec, including the Leisure Centre, unlawful with major negative impacts on the citizens of Bath. In addition the Rec Trust and B&NES Council could be left with a large financial liability which would end up with the council taxpayers of B&NES.

Regards

Ian Wilson

3 Richmond Hill
Lansdown
Bath BA15QT

Tel: 01225 315217

Subject: FW: Bath Recreation Ground TVG

From: Philip Dunning [<mailto:phildunning@me.com>]

Sent: 21 February 2013 09:56

To: Development Control

Subject: Bath Recreation Ground TVG

Anthony Crombie of the Bath Society, had a letter published in the Chronicle on the 31st January about the above application. He stated that comments on the registration of the land as a Town Green should be addressed to the Council at Keynsham. My comment is as follows:

I am Bath born and bred and have grown up on and around The Rec, watching Tattoos, Shows, It's a Knockout, Concerts, Cricket & local rugby. I consider the two main stands to be very old, in need of major repairs and no longer fit for purpose. They are an embarrassment to me and my family, particularly when we take visitors around that area. Also when the television cameras are situated there, which is many times each year, it is great to see our City and hillsides but so disappointing to see The Recreation Grounds buildings. The centre of Bath deserves better than these two corrugated sheds and any possibility that these will be replaced and the area by the river walkway enhanced, should be encouraged, providing that we don't have to pay and they are 'in keeping'.

Although I have a great deal of respect for Major Crombie and what he has achieved in looking after Bath's heritage, I am also a member of the Bath Preservation Trust, the National Trust and the Bath Heritage Watchdog. It is to these organisations, and the Bath community, that a final decision should be made under the Planning Process on any proposals for development. Surely the effect of Town Green status could mean mothballing the Rec, with financial consequences for the Council in years to come. Also to obtain Town Green status the application must show that people are free to access the land at any time. Well, even as a local resident, I know that I am unable to access the Leisure Centre at any time or the Rec itself, when Bath Rugby or Somerset Cricket have a match on.

I admit I haven't seen any plans but I do understand that any future proposals are for an arena with a maximum of 18,000, and not 25,000, as Major Crombie quoted in his letter. Also that the temporary stand will continue but only during the rugby season. The Rec is a very important open space within the city to myself, my family and my neighbours and must remain so in perpetuity for all of us Bathonians. Bath Rugby, I am sure understands this and is determined that this will remain so. The club thus agrees with Major Crombie on this and there is therefore little point in pursuing the Town Green status. The Council's taxpayers need a new arena for Concerts, Cricket and anything else that the Trustees feel appropriate for the Rec. The Recreation Ground desperately needs money spent on it but it must not become a burden on us Council Tax payers.

Based on all of the above, I therefore object to the registration of the land as a Town & Village Green and urge you to reject this application.

Phil Dunning
1 Laurel Cottages
Farrs Lane
Combe Down
Bath
BA2 5DS

TRAVERS SMITH

TRAVERS SMITH LLP
10 SNOW HILL
LONDON EC1A 2AL
TEL: +44 (0) 20 7295 3000
FAX: +44 (0) 20 7295 3500
DX 1111079 LONDON
WWW.TRAVERSSMITH.COM

Graeme Stark
Bath and North East Somerset Council
Riverside
Temple Street
Keynsham
BA31 1LA
FAO: Graeme Stark

YOUR REF:
OUR REF: SMB/SMB
DOC ID: 20207578
DIRECT LINE: +44 (0)20 7295 3290
EMAIL: sarah.butler
@traverssmith.com

By Hand

21 February 2013

COMMONS REGISTRATION ACT 1965
BATH AND NORTH EAST SOMERSET COUNCIL

22 FEB 2013
13:45

REGISTRATION AUTHORITY

Dear Sirs

Application for the registration of Bath Recreation Ground as a town or village green by Mr J Sparrow (the "Applicant") dated 16 November 2012

We represent Bath Rugby Club (the "Club"). Here is the Club's submission and evidence which is due to be filed by 25 February 2013.

We will provide a further copy to you by post, which you may use to send on to the Applicant if you wish.

Two of the statutory declarations are unsworn because the dependants are not available, but they have been approved by the dependants.

Please do not hesitate to contact us should you need any further information.

Yours faithfully

Travers Smith LLP

Travers Smith LLP

**APPLICATION MADE BY MR. J. SPARROW PURSUANT TO SECTION
15(2) OF THE COMMONS ACT 2006 TO REGISTER AS A TOWN GREEN
LAND COMPRISING THE RECREATION GROUND, BATH.**

STATEMENT OF OBJECTION OF BATH RUGBY LIMITED

Introduction

1. This statement of objection is made by Bath Rugby Limited ("BRL").
2. BRL operates the rugby grounds which forms part of the land included in the application. BRL occupies the rugby grounds through leasehold interests and a tenancy.
3. BRL objects to the application both in respect of the land in which it has a direct legal interest and generally.
4. This statement of objection should be considered together with the evidence submitted in support of it including 10 statutory declarations.

The Application and Qualifying Requirements

5. The application is made expressly pursuant to section 15(2) of the Commons Act 2006.
6. The application is dated 11 November 2012.
7. The land which is the subject of the application ("the land") is shown on Map A accompanying the application.
8. The qualifying requirements for the purpose of the application are:
 - a. that the land has been used for lawful sports and pastimes for a period of at least 20 years; and
 - b. that use has been as of right; and
 - c. use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality; and
 - d. use conforming to the above has continued to the date of the application.
9. The relevant qualifying period for all practical purposes comprises the 20 year period immediately preceding the date of the

application, namely the 20 year period between 11 November 1992 and 11 November 2012.

The Burden and Standard of Proof

10. The burden of proving that each and all of the statutory qualifying requirements are met rests with the Applicant.
11. With regard to the standard of proof, the guidance given by Lord Bingham of Cornhill in R v Sunderland City Council ex parte Beresford [2004] 1 AC 889 is relevant and in particular at paragraph 2 of his opinion where Lord Bingham advised as follows:

“As Pill LJ. rightly pointed out in *R v Suffolk County Council ex parte Steed* (1996) 75 P&CR 102, 111 “it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green ...”. It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision makers must consider carefully whether the land in question has been used by inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years’ indulgence or more is met.”

12. The Applicant is put to strict proof in respect of each and every element of the qualifying requirements.

Grounds of Objection

Ground 1

13. The land the subject of the application includes principally:
 - a fully operational leisure centre, together with ancillary space including car parking and vehicular and pedestrian circulation areas;

- formal playing pitches including a fully functioning rugby ground (including a pitch, stands¹, changing facilities, spectator boxes and a club house²³), a croquet club, tennis clubs as well as car parking and circulation space (see stat.dec of Nicholas Blofeld paras.14-21);
- an area laid to grass which is regularly marked out and used for formal sports including cricket and lacrosse⁴ and also for other events including regularly for mini-rugby (*ibid.* see also John Harrison paras.1-11 (pp.232-233), Stuart Woodington pp.238-239; Jeremy Wilton para.31 (p.27) (see also calendar of events at p.327-350, Dean Quintin para.27 (pp.51-53) and photographs at pp.153-161) Karen Gill paras.31-38 (pp.168-170, Darren Ball paras.24-32 (pp.219-221)) Richard Seaman paras.3-8 (pp.302-303). Bob Calleja paras.9-15 (pp.311-312)). A beer tent (of approx. 9 metres by 21 metres) is also erected in this area in association with home games played at the rugby ground (Nicholas Blofeld para.15 (p.4) and photograph at p.14, Jeremy Wilton para.17 (p.25) and para.33 (p.27) Den Quintin paras.4-5 (p.47))⁵. The area is used for car parking in association with matches at the rugby ground (Karen Gill para.5 (p.163) and pp.173-176) and for the siting temporarily of plant and equipment eg. floodlighting and TV camera rigs (Karen Gill paras.8-13 pp.163-164) .

14. Access and use for the purposes of qualifying lawful sports and pastimes of those parts of the land comprising built development

¹ The process of erection and dismantling of the east stand is described eg. by Jeremy Wilton at paras.5-9 (pp.21-22) and Darren Ball paras.12-22 (pp.217-219). Notices are erected requesting that people stay off the land beneath the east stand after it has been removed and while the reseeded area is establishing (Dean Quintin para.14 (p.49) and p144; see also Darren Ball para.21 (p.219 and p.229)). Darren Ball requests individuals who enter the reseeded area to leave. The area is also roped off to discourage encroachment).

² See evidence of Dean Quintin para.3 (p.47) re:use of club house.

³ See photographs of rugby ground at pp.10-14 and plan at p.326.

⁴ See eg. Jeremy Wilton para.29 (p.27), Richard Seaman para.5 (p.302) and para.8(v) (p.303), Bob Calleja paras.8-10 (p.311).

⁵ Fencing is also erected within this area to the rear of the rugby ground's east stand in order to protect the grass surface (see eg. Nicholas Blofeld para.19 (p.5) and photograph at pp.16-19).

(eg.leisure centre, rugby grounds stands, clubhouse) is not possible, and has not been possible, for any part of the relevant qualifying period.

15. The formal playing pitches and grassed area have throughout the relevant qualifying period been used frequently and regularly for the playing of team sports and other activities with the express permission of the Trust as landowner (see calendar of event at pp.327-350 and of rugby club fixtures at pp.140-142)⁶. The Trust, through its website, encourages the booking of the land by those wishing to use it for regular activities and events and provides details of how to do so. During such periods, the use of those areas for qualifying sports and pastimes has been physically prevented and was practically impossible (Nicholas Blofeld paras.14-21 p.4-5; Darren Ball paras.24-27 (pp.219-220) and para.31 (p.221); John Harrison paras.2-9 (pp.232-233) and para.12 (pp.333-334); Stuart Woodington (paras.3-11 (pp.238-239), Richard Seaman paras.3-7 (pp.302-303), Bob Calleja (paras.8-10 (p.311) (see also calendar of events at pp.327-350).
16. Access for the purposes of qualifying sports and pastimes to the rugby ground is prevented at all times. On the rare occasions that any local inhabitants seek to access the rugby pitch they are intercepted and requested to leave. For the avoidance of doubt, crossing the rugby ground as a short cut is not a lawful sport and pastimes in any event (see Nicholas Blofeld para.10 (p.3); Dean Quintin para.12 (p.49), Karen Gill para.39 (p.170), Silas Freeman para.19 (p.246) (see also Oxford City Council v Oxfordshire County Council & Robinson (2004) Ch. 253).
17. Moreover, on days when matches are played at the rugby ground, as well as at other times, access to the application land (save for the Leisure Centre and its ancillary areas) is controlled and limited to spectators and others with express permission to use the land (see eg. Jeremy Wilton at paras.10-15 (pp.22-24) Silas Freeman

⁶ The rugby ground is used for formal activities other than rugby outside the rugby season see eg. Nicholas Blofeld paras.12-13 (p.4)

paras.19—26 (246-248)). During these periods, access to the entirety of the application land is prevented (*ibid.* esp para.10(b), 12 and 15) (as indeed the Applicant seems to acknowledge and (see “Addendum to Town Green Registration TVG12/1 page 3)). Moreover, a security presence is maintained before, during and after home games and other activities at the rugby ground⁷ through Safe and Sound Limited. The function of this firm is, inter alia, to prevent access to parts of the land (see Dean Quintin para.11 (p.48), Silas Freeman pp.244-249). Notices of the presence of the security firm have been erected (see p.151).

18. The Applicant is required to demonstrate that the whole of the application land has been the subject of qualifying use for the whole of the qualifying period. In R (Cheltenham Builders Limited) v South Gloucestershire Council [2003] 4 PLR 95 held, in respect of this requirement, as follows:

“... the applicants had to demonstrate that the whole, and not merely a part or parts, of the site had probably been used for lawful sports and pastimes for not fewer than 20 years. A common-sense approach is required when considering whether the whole of a site was so used. A registration authority would not expect to see evidence of use of every square foot of the site, but they would have to be persuaded that, for all practical purposes, it could sensibly be said that the whole of the site had been so used for 20 years”.

19. By reason of the development, layout and use of the land it follows as a matter of fact that:
 - a. parts of the land at no time could or were used for lawful sports and pastimes during the qualifying period; and
 - b. the whole as well as individual parts of the land were used and operated regularly to prevent such qualifying use.
20. As such, it cannot be said either that the whole or indeed any individual part of the land has been used (or even been capable of use) throughout the 20 year qualifying period for informal recreation by local inhabitants to support sensibly any conclusion that the land

⁷ Site and Sound Limited also provide security for other events on the land – see Silas Freeman para.33 (p.249)

has been used for lawful sports and pastimes so as to meet the qualifying test.

21. The application should therefore be rejected for this basic but fundamental reason.
22. This ground of objection is reinforced by the fact that the application itself is supported by just seven witness statements, several of which are incomplete. The Applicant himself therefore fails to provide any sound or proper evidential basis for a conclusion that the land has in fact been used for lawful sports and pastimes to any material extent and plainly not by a significant number of local inhabitants.

Ground 2

23. The land as a whole is held by Bath and North East Somerset Council on trust pursuant to powers now contained within the Local Government (Miscellaneous Provisions) Act 1976 (see Bath and North East Somerset Council v A-G [2002] EWHC 1623 (Civ) at paras. 50 to 56). The land was acquired and trust created by a conveyance of 1 February 1956.
24. Section 19 of the 1976 Act provides that a local authority “may provide, inside or outside its area, such recreational facilities as it thinks fit” (see s.19(1)) and, in particular, without prejudice to that general power a local authority may provide “outdoor facilities consisting of pitches for team games, athletics grounds, swimming pools, tennis courts ...” (s.19(1)(b)). By section 19(2) of the 1976 Act a local authority may make such facilities available for use “by such persons as the authority thinks fit either without charge or on payment of such charges as it thinks fit”.
25. The Trustees have made available certain parts of the land for use by certain sports clubs and other associations both permanently (in the case of the rugby ground) and temporarily.
26. However, outside such times informal recreation by local inhabitants would as a matter of law be “by right” and not “as of right” by reason of both the statutory power under which the land is

held and the trust created expressly by the conveyance of 1 February 1956 (see R (Barkas) v North Yorkshire County Council [2012] EWCA Civ 1373⁸).

27. As such, any informal recreation by local inhabitants cannot amount to qualifying use.

Ground 3

28. As submitted within ground 1, the land has been managed such that by reason of formal sports and other activities and through the regular controlling of access points by the landowner or others with legal interests in the land, the access to and informal recreation on the land and each part thereof by local Inhabitants has been restricted.
29. That the landowner controls and regulates access is also apparent from:
- a. the practice during certain parts of the qualifying period of locking the gates to the land each evening and the maintenance of notices to this effect (see Dean Quintin paras.23-26 (p.51) p.150 (notice on William Street Gate); see also Darren Ball para.33 (p.221) (see also minutes of the meeting of the Board of Trustees of 16 January 2008 (p.404), 14 October 2009 (p.440), 14 July 2010 (p.499).
 - b. the erection of notices stating inter alia that "no dogs allowed in this area" (p.38)⁹ and "No Dogs No Golf" (located close to the William Street Gate);
 - c. the erection of notice by Bath and North East Somerset Council which states that the Recreation Ground is closed at dusk (p212).
30. Moreover, those supporting the application acknowledge that they have been excluded from the land frequently (see evidence of

⁸ This decision is currently the subject of an application for permission to appeal to the Supreme Court.

⁹ See minutes of meeting of Board of Trustees held on 16 January 2008 p.404

Mr.Greenwood and Mrs.Kilner, p.3 of addendum to application of 15 December 2012 and Appendix 8 to application pages 3-4).

31. Access to the land by local inhabitants for informal recreation at times other than when excluded by the landowner or by others with its permission amounts to use by implied permission and is therefore not use as of right (see R (Mann) v Somerset County Council [2012] EWHC B14).
32. As such, and if, contrary to ground 2, it is held that local inhabitants do not enjoy a general right to use the land for sports and pastimes (when not in other use licensed by the landowner), such use for sports and pastimes is nevertheless with the implied permission of the landowner and therefore not as of right.

Ground 4

33. It appears from part 6 of the application form that the Applicant is relying upon the City of Bath as a neighbourhood within the administrative area of Bath and North East Somerset. The Objector accepts that the administrative area of Bath and North East Somerset is capable of amounting to a locality. The Objector reserves its position as to whether the City of Bath is capable of being a neighbourhood within the meaning of the Commons Act 2006.
34. However, and in any event, the Applicant has failed to produce any reliable evidence to demonstrate use by a significant number of local inhabitants, either numerically or geographically.
35. As a matter of law, to meet the requirement for use by a “significant number” of local inhabitants the evidence must demonstrate “general use by the local community for informal recreation, rather than occasional use by individuals as trespassers” (see R (Alfred McAlpine Ltd) v Staffordshire CC [2002] 2 PLR 1). Moreover, the use is required to be by a significant number of inhabitants “of a neighbourhood” thereby requiring a spatial spread of uses from throughout the neighbourhood or locality relied upon.

36. The evidence submitted in support of the application is entirely inadequate to meet these tests.

Disposal of the Application

37. On the grounds set out above, it is submitted that the application is fundamentally flawed and, as such, the Registration Authority is entitled to and should reject the application at this stage.
38. If however the Registration Authority determines that the matter should be referred to an independent inspector and a public inquiry before determining the application, the Objector requests that the process be expedited such that the application is determined finally before August 2013.
39. The Objector, subject to the outcome of the deliberations of the Charities Commission, intends to advance proposals to improve the rugby ground and wishes to complete these improvement works in advance of the Rugby World Cup in 2015. As such, for the reasons set out in the statutory declaration of Nicholas Blofeld, this application must be determined finally before August 2013. The Registration Authority is therefore requested to convene a public inquiry, if minded to do so, expeditiously and to determine the application before August 2013.

Travers Smith LLP.
10, Snow Hill,
London. EC1A 2AL.

Application of Bath Rugby Club pursuant to Section 15(2) of the Commons Act 2006 for registration of Bath Recreation Ground as a town or village green dated 16 November 2012

THIS BUNDLE HAS BEEN PAGINATED ON THE BOTTOM RIGHT HAND CORNER OF EACH PAGE

**INDEX OF DOCUMENTS SUBMITTED BY BATH RUGBY CLUB TO BATH & NORTH
EAST SOMERSET COUNTY COUNCIL**

DOCUMENT	PAGE
BUNDLE 1	
1. Statutory declaration of Nicholas James Blofeld and Exhibits NJB1- NJB4	
2. Statutory declaration of Jeremy Richard Talbot Wilton and Exhibits JRTW1 – JRTW4	
3. Statutory declaration of Dean Quintin and Exhibits DQ1- DQ10	
4. Statutory declaration of Karen Jane Gill and Exhibits KJG1 – KJG13	
5. Statutory declaration of Darren Ball and Exhibits DB1- DB4	
6. Statutory declaration of John Harrison and Exhibits JH1	
7. Statutory declaration of Stuart Woodington and Exhibit SW1	
8. Statutory declaration of Silas Freeman and Exhibit SF1- SF12	
9. Statutory declaration of Richard Alan Seaman and Exhibit RS1	
10. Statutory declaration of Bob Calleja and Exhibit BC1	

BUNDLE 2

11. Application for registration of land as a town or village green pursuant to Section 15(2) of the Commons Act 2006 dated 16 November 2012 (the "**Application**")
12. Plan showing the Application land edged in red
13. Plan showing Bath Recreation Ground and Bath Rugby Club
14. Ticketing plan for Bath Rugby Club
15. B&NES Calendar of Events at Bath Recreation Ground (from 26/01/09 to 09/13)
16. Bath Rugby Club Fixtures 2010-11, 2011-12 and 2012- 2013
17. Aerial photographs of Bath Recreation Ground:
 - 29 August 1999;
 - 5 September 2004;
 - 8 June 2006;
 - 1 June 2009; and
 - 23 April 2010.
18. Trustee Committee Minutes from 13 December 2005 to 21 November 2012

Lead Advisor, Bath Recreation Ground Trust
Guildhall, High Street,
Bath BA1 5AW
Telephone: 01225 477300
Facsimile: 01225 477377
E mail: Andrew_Pate@bathnes.gov.uk
www.bathnes.gov.uk

Date: 25 February 2013
Our ref: PF45
Your ref: TVG12/1

Mr Graeme Stark
Public Rights of Way
Bath and North East Somerset Council
Riverside
Temple Street
Keynsham BS31 1LA

Dear Graeme,

**Application to register land at Bath Recreation Ground as a Town or Village
Green (TVG12/1)**

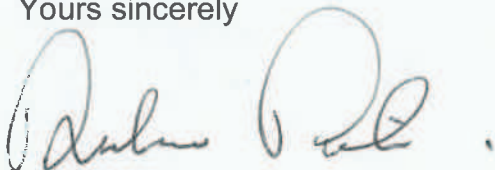
I refer to your notice dated 10 January informing me that Bath Recreation Ground has been the subject of an application to register it as a town or village green.

Bath and North East Somerset Council is the sole trustee for the Recreation Ground Trust. I have been authorised by the Trust Board that governs the land, to make representations in this matter.

I can confirm that the Council as trustee objects to the application to register this land as a town or village green on the bases set out in the attached notice.

We have gained advice from Counsel on the application. On the basis of this advice it appears that the matter is sufficiently clear for the application to be settled on paper without need for an Inquiry.

Yours sincerely



Andrew Pate
Lead Advisor Bath Recreation Ground Trust

In the Matter of
An Application to Register
The Recreation Ground, Bath,
As a New Town or Village Green

OBJECTION STATEMENT
of BATH AND NORTH EAST SOMERSET COUNCIL
as SOLE TRUSTEE
of THE RECREATION GROUND, BATH TRUST

25th February 2013

Andrew B. Reed
Property Manager, Solicitor,
Bath and North East Somerset Council.
ref VRC/13/5/wp/S4/Recreation Ground Bath Objection Statement

In the Matter of
An Application to Register
The Recreation Ground, Bath,
As a New Town or Village Green

OBJECTION STATEMENT
of BATH AND NORTH EAST SOMERSET COUNCIL
as SOLE TRUSTEE
of THE RECREATION GROUND, BATH TRUST

25th February 2013

Introduction

[1] This is the objection statement of Bath and North East Somerset Council (B&NES) to the application dated 11th November 2012 of Mr. J Sparrow to register the Recreation Ground, Bath as a new town or village green (TVG) pursuant to s. 15(2) of the Commons Act 2006 (CA 2006). In this matter the Council is acting in its role as Sole Trustee to the Recreation Ground, Bath Trust.

[2] This objection statement is a holding objection since this objector's enquiries into the relevant facts are still continuing. A supplemental objection statement will be served in due course unless the application is in the meantime rejected on paper consideration.

[3] The onus of proof lies on the applicant for registration of a new TVG, it is no trivial matter for a landowner to have land registered as a TVG, and all the elements required to establish a new TVG must be "properly and strictly proved"¹.

[4] This objection statement will address the requirements for registration under CA 2006 s. 15(2) in the following order:

- The "locality/neighbourhood" requirement
- The "significant number" requirement
- The "lawful sports and pastimes (LSP)" requirement
- The "20 years" requirement, and
- The "as of right" requirement.

¹ *R v Suffolk CC ex p Steed* (1996) 75 P&CR 102 at p 111 per Pill LJ approved by Lord Bingham in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 at para. 2

The “locality/neighbourhood” requirement

[5] Although the answer to Q6 of the application form confuses the issue of who uses the application land with the issue of who is entitled to use the application land, it is thought that the applicant intends to rely on the City of Bath as the relevant locality or alternatively the relevant neighbourhood with the locality of B&NES. This objector does not dispute that the City of Bath is a neighbourhood within the locality of B&NES.

The “significant number” requirement

[6] Persons who use the application land for LSP by virtue of leases or tenancy agreements granted to sports clubs etc. or by attending events organised or authorised by B&NES as Trustee are doing so by permission of B&NES as Trustee and are not qualifying users for TVG purposes. They must be discounted in applying the “significant number” test. The application must rely on unauthorised users of the Recreation Ground for informal recreation. Even if, which is denied, these residual users are qualifying users, this objector does not accept that they amount to a significant number of the inhabitants of the City of Bath. The evidence adduced by the applicant falls far short of proving this proposition. It consists of the statements of only seven witnesses, three of which are incomplete, and none of which satisfactorily addresses the volume of qualifying use. Further, no evidence is adduced of the population of the City of Bath from which it is possible to form a view as to whether the users constitute a significant number of the inhabitants of the City of Bath.

[7] Further, many substantial parts of the application land, such as the leisure centre, clubhouse, grandstands and rugby pitch are and have not been available for unauthorised informal recreation. They cannot have been subject to any qualifying use at all.

The “lawful sports and pastimes (LSP)” requirement

[8] This objector accepts that informal recreation as well as formal sports and games amounts to LSP.

The “20 years” requirement

[9] This objector does not accept and puts the applicant to proof that there has been qualifying use throughout the relevant 20 year period (1992-2012). The few statements adduced in support of the application are insufficient to prove such use. Indeed, the statements recognise that the claimed qualifying use has been interrupted: see para. 11 below.

The “as of right” requirement

[10] Any unauthorised use of the closed parts of the application land, such as the buildings, must have been forcible and not as of right.

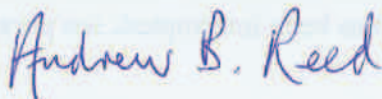
[11] Any use of the application land by virtue of the leases and tenancies to sports clubs or by authority of B&NES as Trustee has been permissive and not as of right. Further, the applicant's witnesses themselves confirm that they have been excluded from the application land on frequent occasions each year. See for example the answers to Qs 30-31a of the EQs of Mr. Greenwood and Mrs. Kilner, page 3 of the Addendum to the application signed by the applicant and dated 15th December 2012 and pages 3 and 4 of Appendix 8 to the application. Such an exclusion, whether relating to the whole or part of the application land, gives rise to an implied grant to the public of permission to use the land when not so excluded: *R (Mann) v Somerset County Council* [2012] EWHC B14 (Admin). Such impliedly permissive use is not "as of right".

[12] In the alternative, insofar as such use has not been permissive, it has been "by right" as opposed to "as of right". The application land is held by this objector on the trusts of the 1956 Conveyance forming Appendix 2 to the present application. These trusts were construed by the High Court in *B&NES v HM A-G* [2002] EWHC 1623 (Ch). The overriding nature of the trust is a charitable trust for public recreation. Insofar as the exercise of the trustee's powers and duties has resulted in the application land's being available for informal public recreation, the public have a right under the charitable trusts to use the land for such recreation. There is a close analogy with the public use for informal recreation of a recreation ground provided by a local authority under housing powers: *Barkas v North Yorkshire County Council* [2012] EWCA Civ 1373. No valid distinction can be made between legal rights conferred by statute and legal rights conferred by a charitable trust. In both cases, the landowner is given a power to make land available for public recreation. In both cases, prescription is inappropriate in view of the existence of a legal right (under statute or a trust) to carry out the relevant activity.

Conclusion

[13] It is submitted that, for the reasons explained above, the application is bound to fail and should be rejected on paper consideration. If the CRA does not feel able to reject the application on paper consideration, there are issues of fact to be resolved which require consideration at a non-statutory public inquiry.

Signed for and on behalf of B&NES as Sole Trustee to the Recreation Ground, Bath Trust

Signature: 

Name: Andrew Reed

Position: Property Law Manager, B&NES – Trust Adviser

This page is intentionally left blank

10, Gerrard Buildings,
Pulteney Mews,
Bath. BA2 4DQ.
Friday, 11 January 2013

Graeme Stark,
Senior Rights of Way Officer,
Bath & N.E Somerset Council,
Bath.

Dear Mr. Stark,
**Section 15 (1) of the Commons Act 2006. Application to Register
Land known as Bath Recreation Ground as Town or Village
Green.**

Thank you for your letter of the 8th. January and I wish to record that I am fully in favour of the Application.

In my personal opinion this Application in addition to all the time and cost of the proposed expansion by Bath Rugby Ltd. should never have been necessary if the Trustees of the Rec had carried out their obligations and responsibilities on behalf of ALL the residents of Bath, and opposed it in the first place.

As has been stated by me and hundreds of other residents including some Rugby fans, this is not against rugby or it's present situation, but only to the proposed expansion which will have a major effect on surrounding private residents (and in contravention of protective covenants in our leases) plus an increase in the traffic problem which has been a thorn in our sides for years.

It is inconceivable that the proposed expansion should be approved.

Yours sincerely,



Reg Midwinter

P.S. A RECEIPT WOULD BE HELPFUL.
Thank you.

13 Gerrard Buildings
Pulteney Mews
Bath
BA2 4DQ

Tel: (01225) 426991
E-Mail: richardsonwande@btinternet.com

21st January 2013

Mr G Stark
Senior Rights of Way Officer
Bath and North East Somerset Council
Riverside
Temple Street
Keynsham
BS31 1LA

Dear Mr Stark

Bath Recreation Ground

I write to say that I am in full agreement with the application to register Bath Recreation Ground as a Town or Village Green. under Section 15 (1) of the Commons Act 2006.

I am keen on this change because I feel the alternative plan, which is being considered by the Charity Commission, to be a very bad and unjust idea. The main outcome if it were to succeed would be to enable a businessman to make money from development of the land to the detriment of the local population.

Yours sincerely



W E Richardson

Feb 12

Ferrand LeBlond
Patterson Mass

Bath 12-1-13

Dear Mr Smith,

The Recreation Ground

When we first arrived in Bath in 1947 we lived, first of all, in the Wilton area.

We were told that the subject ground was a gift to the citizens of Bath for their use or entertainment of amateur sporting activities of all descriptions.

This "purpose" until the annation (now for ^{recreational}) subject ground was given its use - first of all on a part time basis.

We would most positively object to the present professional Bath Rugby Team given any change in occupation of any part of our Recreation Ground or if anything interfered with our direct access to the River or use of the riverside.

The land should in our opinion most positively be registered as a "Town or Village Green". This is a matter of concern to all Bath citizens who should be consulted.

We also have views on the manner in which the use of the Recreation Ground has been 'marginalised' in the past 20 or so years.

Yours sincerely

ARE Maunders

(ARE MAUNDERS)

and

(ARE MAUNDERS)

Matthew Smith Esq
Divisional Director
Environmental Services
Bath

GERRARD BUILDINGS (BATH) LTD

Graeme Stark,
Senior Rights of Way Officer,
Bath & N.E Somerset Council,
Bath.

Dear Mr. Stark,

**Section 15 (1) of the Commons Act 2006. Application to Register
Land known as Bath Recreation Ground as Town or Village
Green.**

This company, Gerrard Buildings (Bath) Ltd. is the owner of the freehold of Gerrard Buildings which contains 18 leasehold apartments. It is immediately adjacent to the Bath Recreation Ground and as beneficiaries of the covenants relating to its use, we write to support the above Application by Mr. Jack Sparrow to register this Ground as a "Town or Village Green."

Yours sincerely,



Roy Hatch
Director.

Cc Jack Sparrow
PERA

Graeme Stark
Bath and North East Somerset Council
Riverside
Temple Street
Keynsham
BA31 1LA

Thomas Burnford
Flat 1
6 Lansdown Road
Bath BA1 5EE

4th February 2013

RE: Planning Application for registration of land as a Town or Village Green, ref TVG12/1

Dear Mr Stark

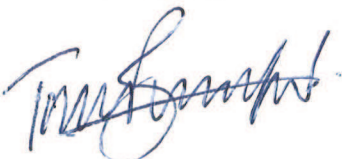
I am writing with reference to the application to convey town or village green status to the Recreation Ground area in the centre of Bath, as instigated by Jack Sparrow or Forrester Road, Bath.

In my capacity as a beneficiary of the land in question, **I would like to state my support for the proposal.**

It has become apparent through the current confusion over the future status of the Recreation Ground that the current management structure and occupiers of the land have deviated from the conditions originally conveyed on to it by law. I also believe these deviations have been detrimental to the land's capacity to be utilised in the way set out by these regulations.

As such, its designation as a town green with its accompanying legal structures and framework would assist in keeping the land in the condition it was always intended to remain, as encapsulated in the 1922 covenants.

Yours sincerely



T Burnford

Graeme Stark

From: Sally Roche <sallyjarman@btinternet.com>
Sent: 10 February 2013 21:40
To: Graeme Stark
Subject: Bath Recreation Ground - support Town Green Application

SECTION 15 (1) of the COMMONS ACT 2006 – APPLICATION TO REGISTER LAND KNOWN AS BATH RECREATION GROUND AS TOWN OR VILLAGE GREEN

Please register my support for the above application to register the Bath Recreation Ground as a town green.

**Sally Roche
11 Northampton Street
Bath BA1 2SN**

sent from my iPad

Graeme Stark

From: Sally Roche <sallyjarman@btinternet.com>
Sent: 10 February 2013 21:42
To: Graeme Stark
Subject: Bath Recreation Ground , town green application

SECTION 15 (1) of the COMMONS ACT 2006 – APPLICATION TO REGISTER LAND KNOWN AS BATH RECREATION GROUND AS TOWN OR VILLAGE GREEN

Please register my support for the above application to register the Bath Recreation Ground as a town green.

**Stephen Roche
Flat 2
Abbey Court
Edward Street
Bath BA2 4X**

Graeme Stark

From: simonrichardjones@gmail.com on behalf of Simon Jones <simon-jones@simon-jones.com>
Sent: 14 February 2013 06:16
To: Graeme Stark; j@gooders.co.uk; osie.carne@yara.com; Penelope Bennet
Subject: APPLICATION TO REGISTER LAND KNOWN AS BATH RECREATION GROUND AS TOWN OR VILLAGE GREEN

Dear Mr Stark,

I write as the owner of Flat 7 10 Johnston St Bath BA2 4DH which is a property adjacent to the Rec

I support the move to make the Rec as a village green.

Open spaces matter to communities. The use of the rec for Rugby in the 1950's may have been appropriate in the low-key amateur nature of the game then, I believe in the high-revenue professional mode of the game it is inappropriate for such activities to occur on what is essentially a resource for the community.

There are many places where a high-quality rugby ground can be placed. A historic space in the centre of a UNESCO-listed city is not one of them and it is timely and prudent to once again assert the original and intended purpose for the Rec.

It does not seem to me to be an issue of the majority opinion for the use of the Rec. Democracies are about minority rights just as much as they are about majority rule. Bath is a historic city and the historic nature and the rec and its use needs to reflect that,

Accordingly I endorse and support the register of the Rec as a village green.

Yours sincerely

Simon Jones

1 Gerrard Buildings
Pulteney Mews
BATH
BA2 4DQ

9 February 2013

Mr Graeme Stark
Senior Rights of Way Officer
Bath and North East Somerset Council
Floor 2, Riverside
Temple Street
Keynsham
BRISTOL
BS31 1LA

Dear Sir

I am writing in reply to your communication with regard to the Application to Register Land Known as Bath Recreation Ground as Town or Village Green.

As a resident I am totally in agreement with Jack Sparrow of 43, Forester Road, Bathwick, Bath BA2 6QE Application.

When Bath Rugby hold matches here on a Saturday it is very disruptive with the many people who attend not only with the traffic who take up every space available here but the way they park their cars right in front of all our windows and especially the noise sometimes until late in the evenings. Although we all have double glazing we have to keep the windows shut on warm days because of all the noise from the crowds. What will happen if the capacity is increased substantially?

The children who are here on a Saturday and Sunday to practise rugby, football, lacrosse etc, are lovely to see and are no problem at all. Also some schools who have their sports day activities are a joy to see.

For the Rugby Club to suggest that the families could go to the Lambridge Ground at a weekend is just ridiculous as with all the traffic on the London Road they just won't bother and it would deny them all the opportunity that they now have.

Yours faithfully

S M Withey

Mrs S M Withey

Peter and Rosalind Prest
19 High Bannerdown
BATH
BA1 7JY
Tel: 01225 851547

email: peterhprest@btinternet.com

10th February 2013

Graeme Stark
Bath and North East Somerset Council
Riverside
Temple Street
Keynsham

Dear Sir,

Re: TVG12/1

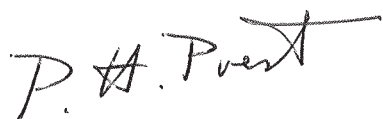
We are writing to support this application to include Bath Recreation Ground in the Register of Town Greens. We have lived in Bath for 40 years and have known the Rec as an open space, with access from both William Street and the river pathway, for use by members of the public for a variety of sports activities.

However, since becoming a professional club in 1996, Bath Rugby has increasingly encroached upon and dominated the Rec, to the detriment of other lawful and legitimate users. It is well-known that the land was to given to all the citizens of Bath. The 1956 conveyance set out that the land was to be used for all types of recreation and not for commercial gain. The terms of this conveyance were upheld by a High Court ruling in 2002, but are flagrantly disregarded by Bath Rugby.

A Premier Rugby Club operation is the antithesis of communal usage of publicly owned space. A large stadium (as intended by the club) holding up to 25,000 would further deny free access to the citizens of Bath. In a game of rugby only 30 people are participating in sporting activity, all the others are mere spectators; since the change to professional status, it has become increasing unlikely that any of the players originate from Bath.

Furthermore, the Trustees of the Rec are failing to uphold the 2002 ruling and Charity Commission rules, allowing amateur activities to be squeezed out, and commercial advertising for the profit of Bath Rugby. Advertising banners around the rugby pitch can be seen from the Grand Parade and on TV broadcasts, advertising like this is not permitted anywhere else in the centre of Bath. The 'land swap' procedures have been desperate and ridiculous, and further illustrate a dereliction of duty on the part of the Trustees. The Rec needs urgent protection in order for local residents to fully enjoy their local space for their own active pastimes. Town Green Status would allow Bath citizens to reclaim full access and usage of their land.

Yours faithfully,



P. H. PREST

Page 66

R. I. PREST

**9 Abbey Court
Edward Street
Bath
BA2 4DX**

01225 464091

10th February 2013

Mr Graeme Stark
Senior Rights of Way Officer
BANES Council
Floor 2
Riverside
Temple Street
Keynsham
Bristol
BS31 1LA

**SECTION 15 (1) of the COMMONS ACT 2006 – APPLICATION TO REGISTER LAND
KNOWN AS BATH RECREATION GROUND AS TOWN OR VILLAGE GREEN**

Dear Mr Stark,

I have seen details of this planning application attached to the railings around the Rec, and have also read articles and letters in the Bath Chronicle relating to the matter.

As a resident of the Pulteney Estates area of Bath and a near neighbour of the Rec, I wish to register **my support for this application** to register the land as a Town/Village Green. This action will protect the Recreation Ground as an open space in perpetuity and allow its continued use by amateur outdoor sports and charitable events as specified in the 1956 constitution of the Bath Recreation Ground Trust.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter AN Carne', written in a cursive style.

Peter AN Carne

Flat 6, Abbey Court,
Edward Street,
Bathwick
Bath BA2 4DX

Mr Graeme Stark
Senior Rights of Way Officer
BANES Council
Floor 2
Riverside
Temple Street
Keynsham
Bristol
BS31 1LA

**SECTION 15 (1) of the COMMONS ACT 2006 – APPLICATION TO REGISTER
LAND KNOWN AS BATH RECREATION GROUND AS TOWN OR VILLAGE
GREEN**

Dear Mr Stark,

I have seen details of this planning application attached to the railings around the Rec, and have also read articles and letters in the Bath Chronicle relating to the matter.

As a resident of the Pulteney Estates area of Bath and a near neighbour of the Rec, I wish to register **my support for this application** to register the land as a Town/Village Green. This action will protect the Recreation Ground as an open space in perpetuity and allow its continued use by amateur outdoor sports and charitable events as specified in the 1956 constitution of the Bath Recreation Ground Trust.

Yours sincerely,

Barbara H. Mosse

Graeme Stark

From: David Greenwood <david.greenwood25@gmail.com>
Sent: 21 February 2013 10:01
To: Graeme Stark
Subject: Town/Village Green Application ... The Recreation Ground

Good Morning Mr Stark.

We are residents of Great Pulteney Street but are away in New Zealand until early April. For this reason we are not able to quote any reference number that may have been allocated to the application

We write in to FULLY SUPPORT the application that has been lodged to have the Recreation Ground, which is behind our property declared a Town/Village Green.

Having lived in the city for over 18 years we regularly use the Recreation Ground , WITHOUT RESTRICTION, for the purpose of walking around, playing games with our family's children including cricket, rounders, football , badminton. There is nothing to prevent free access and the road gate is only closed on the 15 or so days of the year when the Rugby Club play on the pitch.

I would happily state that we make use of the Ground at least once per week.

We first visited the city back in the late 1960s and have always known the Recreation Ground to be an Open Space available to all. We have never sought permission and have never been challenged.

Whilst part of the Ground is available to specific clubs ... tennis, bowls, croquet the vast majority of the land is open and freely available. The only restriction that we know of is that no dog walking is allowed.

I would ask you to put these points to whoever will be considering the application

Yours sincerely David and Caroline Greenwood

18th February, 2013.

8, Pulteney Ness,
Bath, BA2 4JS.

Mr. Graeme Stark,
Senior Rights of Way Officer,
Bath Council, Floor 2,
Riverside, Temple St,
Keynsham, Bristol, BS31 1LA.

Dear Mr. Stark,

Application to register land known as Bath
Recreation Ground as Town or Village Green.

As a resident of the Pulteney Estates area of Bath and, living near the Recreation Ground, I want to register my support for this application for the land as a Town/Village Green. This action will protect the Recreation Ground as an open space in perpetuity and allow its continued use by amateur outdoor sports and charitable events as specified in the 1956 constitution of the Bath Recreation Ground Trust.

Yours sincerely,
Sylvia Evans (Mrs)

Graeme Stark

From: Agnes Melling <agnesmelling1@gmail.com>
Sent: 22 February 2013 16:23
To: Graeme Stark
Subject: APPLICATION TO REGISTER BATH RECREATION GROUND AS TOWN OR VILLAGE GREEN

Dear Graeme,

I am writing in support of this application.

I do so on the grounds that the Recreation Ground was bequeathed to the people of Bath as an area for their recreational use by Captain Forrester almost 100 years ago. I know of no authority that has rescinded this situation.

The present attempt by Bath Rugby plc to acquire a large piece of land for building on is completely contrary to his wishes. It only reflects the greed and arrogance of Bath Rugby. It will necessitate the removal of sporting activities by local people.

The registration of the Rec as a village or town Green would reverse this.

I am disappointed that you did not ask in your letter for people who supported the application to express their opinion.

If this is normal practice, I would ask you to consider "doing it better" by asking for opinion on both sides.

Yours,

Agnes Melling (Mrs)

1 Gerrard Buildings

Bath BA2 4 DQ

22Feb.2013

The Reverend Neil Cocking

**Barnard House,
6 Vane Street,
Bath BA2 4DZ**

Graeme Stark,
Senior Rights of Way Officer,
Bath & North East Somerset Council,
Environmental Services,
Floor 2 Riverside,
Temple Street,
Keynsham,
Bristol **BS31 1LA**

22nd February 2013

Dear Mr. Stark,

**RE: SECTION 15 (1) of the COMMONS ACT 2006 – BATH RECREATION
GROUND - APPLICATION REFERENCE TVG12/1**

I write as a beneficiary of the charitable objectives of the Bath Recreation Ground Trust in support of an application made by Mr. Jack Sparrow of 43 Forester Road, Bathwick, BA2 6QE under Section 15 (1) of the Commons Act 2006 and in accordance with the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 for the inclusion in the register of town and village greens of the land as described and commonly known as the Bath Recreation Ground in the City of Bath.

Yours sincerely,

The Rev'd Kermode Neil Cocking.

Telephone 01225-442448 Mobile 07850-790747 email: neilcocking@waitrose.com

&

4 Wilkie House, Cureton Street, London SW1P 4EH

0207828 9848
Page 72

**The Garden Flat
8 Johnstone Street
Bath
BA2 4DH**

Tel: 01225 481515
Mobile: 07836 584789
E-mail: Rosie.Carne@yara.com

22nd February 2013

Mr Graeme Stark
Senior Rights of Way Officer
BANES Council
Floor 2
Riverside
Temple Street
Keynsham
Bristol
BS31 1LA

**SECTION 15 (1) of the COMMONS ACT 2006 – APPLICATION TO REGISTER LAND KNOWN AS
BATH RECREATION GROUND AS TOWN OR VILLAGE GREEN**

Dear Mr Stark,

Your ref: TVG12/1 Response sent by E mail.

Thank you for your letter of 8th January 2013 inviting me to comment on the above application. You only asked for OBJECTIONS TO REGISTRATION, but correspondence in our local newspaper 'The Bath Chronicle' has suggested we should also inform you of **SUPPORT TO THE REGISTRATION**. Hence my letter to you today.

I am in total support of this application and am sure there are no factual grounds not to register this land as a 'Town Green'. It is actually just formalizing its current status. I sincerely hope as 'Senior Rights of Way Officer' that you do have the authority to evaluate this application and come to your own conclusion as I AM MOST CONCERNED THAT THE STATED VIEWS OF OBJECTION BY COUNCILLOR DAVID DIXON WILL BE MADE TO INFLUENCE YOUR DECISION. I am sure his stated views have been brought to your attention, but just in case (as you are based in Keynsham) Councillor David Dixon is quoted as saying: " *This is merely a stalling tactic, an application which in my view fails on many accounts as a town green. Not least there is a leisure centre in existence and people are not free to access the land, as all sports and activities are to be booked and paid for through the Trust.*

Mr Sparrow and his colleagues simply do not want the Trust to resolve the outstanding issues. Do not want more land brought under the Trust's management in order for it to meet its objectives of making space available for sports, recreation and events. How much longer they want the issues the Trust face to go unresolved who knows? This is now 11th year and this is the year to resolve issues one way or another". Reading such disingenuous comment

such as this that from a man as powerful and seemingly biased as Councillor Dixon, I hope underlines my concerns of undue influence on your decision process!

As a resident of the Pulteney Estates area of Bath adjacent to the Rec and with vaults opening on to the Rec to which I have vehicle access - and therefore a beneficiary of the Bath Recreation Ground Trust - I wish to register my strong support for this application as it will protect the Recreation Ground as an unrestricted open space in perpetuity and allow its use by amateur outdoor sports and charitable events as specified in the 1956 constitution of the Bath Recreation Ground Trust. Support further confirmed by the High Court in 2002 which appears to have continued to be abused by the Trustees of the Trust – latterly lead by Councillor Dixon as Chairman of Trustees.

It is the aims laid out in the 1956 constitution - and confirmed by the High Court in 2002 - and its use at least since 1956 as an unrestricted public open space which should drive all decisions to ensure it is now listed as the 'Town Green' which in essence it always has been.

Any illegal developments which have been allowed in error (I refer to the issues of the building of the Leisure Centre by Bath City Council in 1975 on Trust land and its subsequent management and the illegal leases granted to the professional sports company Bath Rugby plc in violation of the unrestricted open space qualification laid down in the constitution) which have contributed to the misuse and abuse of the Rec Trust's land as a public open space with unrestrictive public access and **rights of way** must not now be allowed to deter this application. The legal covenants on the **rights of way** for an unrestricted "Open Space" need strengthening. I agree with Councillor Dixon that unresolved issues need resolving and approving this application would enable the process to achieve this to start.

If the presence and problems caused by Leisure Centre and other illegal activities do prove material to you in approving this application I would ask you to note that I would be prepared to contact the applicator Mr Sparrow (who I have not met) to ask him to consider the possibility of amending the area of the 'Town Green' application until such difficult issues can be resolved. Alternatively the illegally built sports centre could be demolished and the Cy Pres (scam to change the charitable objectives to accommodate indoor sport and commercial retail activities in a stadium) nonsense withdrawn as its original purpose for an unrestricted public open space in perpetuity would be restored. I am fearful previous illegal misuses and their management practises could affect this laudable application which should effectively protect the rights of way of the beneficiaries of the Bath Recreation Ground Trust as the 'Town Green' it was intended to be in perpetuity.

Yours sincerely



Rosemary S N Carne

Mr Graeme Stark
Senior Rights of Way Officer
BANES Council
Floor 2
Riverside
Temple Street
Keynsham
Bristol
BS31 1LA

Flat 4
28 Great Pulteney St
Bath
BA2 4BU

**SECTION 15 (1) of the COMMONS ACT 2006 – APPLICATION TO REGISTER
LAND KNOWN AS BATH RECREATION GROUND AS TOWN OR VILLAGE
GREEN**

Dear Mr Stark,

I have seen details of this planning application attached to the railings around the Rec, and have also read articles and letters in the Bath Chronicle relating to the matter.

As a resident of Bath and therefore a beneficiary of the Bath Recreation Ground Trust I wish to register **my support for this application** to register the land as a Town/Village Green. This action will protect the Recreation Ground as an open space in perpetuity and allow its continued use by amateur outdoor sports and charitable events as specified in the 1956 constitution of the Bath Recreation Ground Trust.

Yours sincerely,

Marion M. Whitaker (Mrs)

This page is intentionally left blank

**Response by J Sparrow to the objections raised to the Town Green Application for the
Bath Recreation Ground**

- 1. General statements that should be read in conjunction with the later specific responses to the individual objectors.**

Before writing my response to the seven letters of objection I thought it would be useful to itemise the fundamental issues on which my application is based. I will then consider each objection letter with respect to these issues referred to as A, B, C and D below and refer to the relevant section or appendix accompanying the application if appropriate.

- A. The original conveyance and associated covenants from 1922 and 1956. These can be seen in full in appendices 1 and 2 of the application.**

These documents are the primary source against which all aspects of the Recreation Ground should be tested. The documents outline by whom, the citizens of Bath and what the Recreation Ground can and cannot be used for, the covenants. If Town Green status had existed in 1956 then the Recreation Ground would already be registered as such. It conforms with all the requirements of a Town Green as a local open space for residents to enjoy legal sports and pastimes (LSP), cause no disturbance to the local residents and provide 'as of right access' at all times. This should have existed for the past 57 years!

- B. The High Court ruling of 2002 see appendix 3 of the application for a summary and refer to case no. HC 01012125 for the full document.**

In 2002 B&NES Council wished to break the covenants so that they could exploit the Recreation Ground in inappropriate ways. In this they failed, at high cost to the taxpaying residents and their action resulted in the High Court judgement which confirmed not only that the Recreation Ground is subject to covenants, which restrict what can and cannot be done with and on the Recreation Ground but also that it should have been run from 1956 as a charitable trust. Since that time the Council have continued to operate as though they own the Recreation Ground and in my view is thus in contempt of the High Court ruling. This view is largely confirmed by noting that it is B&NES officers, as advisors to the Trustees, who have made objection number 6 to the Town Green application.

- C. The rules for the Recreation Ground Trust set up by the Charity Commission in 2002 following the High Court ruling. See appendix 4 of the application.**

Following the High Court judgement the Charity Commission became involved to set the rules by which the Trustees should run the Bath Recreation Ground Trust. These rules incorporated all those previously defined in A and B above. At this stage a number of buildings and/or activities were found to be in breach of the rules and thus illegal. Although this was 11 years ago nothing has been done by the Council, the Trustees or the Charity commission to rectify the situation. In fact in many ways they have made the situation even worse as will be explained later.

The most important thing, amongst many others, is that all A, B and C above state that the Recreation Ground must be retained as an Open Space in perpetuity.

The 1956 conveyance in particular was to the Mayor, Aldermen and Citizens of Bath. This now equates to some 80,000 residents. Being located in a City of this size it was appropriate that it should be described as a Town, not a Village, Green. The original open space was to be made available to the citizens at all times and as of right. In this respect it clearly meets the locality/neighbourhood requirement of a Town Green and the significant number who might wish to use the facilities for a variety of legal purposes. Many of the ways citizens have used the recreation ground are identified in the witness statements in appendix (10x) to the application. In the theoretical possibility that a very significant number of citizens might wish to use the open space at the same time it is sensible to ensure that large gatherings for sporting events; festivals; charitable functions etc. should be co-ordinated so that clashes of use could be avoided. The Mayor and Aldermen as referred to in the conveyance were the obvious personnel to achieve this but have never been involved in this way.

This state of affairs was achieved quite successfully for many years, as witness statements presented as appendices 10(x) to the application indicated, in some cases for over 45 years. No restrictions were ever placed on individual or small groups of people having access as of right throughout this period.

Two illegal events however caused this situation to change dramatically;-

- a. The illegal erection of the Leisure Centre on the open space by the Council.**
- b. The introduction of Professional Rugby in 1995/6 and the erection of more illegal buildings.**

The leisure Centre only prevented access over a small section of the Recreation Ground but did not prevent ‘as of right’ access through the underground car park or via either side of the building. It provided citizens with indoor facilities to be enjoyed mostly in daylight hours.

The Commercial Rugby introduction spoilt both the access to and the inability to use the grass open space, which they then surrounded by large extra stands both permanent and temporary enclosing the playing area and making it inaccessible to citizens, not only for their matches but at all times. The main pitch is only used at most for 20 premier matches but the whole area is denied access for the months of September to May every year and during the summer months other activities run or sponsored by the Rugby Club prevent citizen access to the playing area. The witness statements in appendices 10(x) clearly show this to be true. They cut off one of the access points around the Leisure Centre in their push to treat their pitch as though it was Fort Knox. Some of the statements included, in objection 7 from the Rugby Club, even refer to young children being asked to leave the pitch area as though they could do more damage to it than 30 heavy men playing on a match day!

The very people, initially the Council and latterly the Trustees, who should have been ensuring the open nature of the whole Recreation Ground were directly responsible for breaking all the rules set out in A, B and C above. In one case a senior officer and a legal representative of B&NES Council have produced one of the objections to the Town Green application! The Recreation Ground has had open access for over 70 years, well over the 20 years required for Town Green status and furthermore, it has only been compromised by illegal activities since 1996.

It is sensible practice for those permanent sports facilities, which need playing areas to be marked out and maintained, to be protected by small boundary fences providing they

maintain an open membership to any person who wishes to enjoy the sport. This is true of all groups except the Rugby Club.

In a similar fashion it is sensible for the whole Recreation Ground to be closed at nights to avoid any damage or unsociable activities taking place under cover of darkness. In my opinion the Recreation Ground cannot be said to be not an open space when sensible precautions are taken to preserve it for all to use.

The High Court in particular made it clear that the current B&NES Council do not own the Recreation Ground but only hold it in charitable trust.

D. The Trustees and the Charity Commission both agree that the Rugby Club's occupation and the Leisure Centre building are both illegal entities on the Recreation Ground according to A, B and C above. See the Trustees recent submission for a 'scheme'. So I am referring to this as D in the responses.

Those deciding the case should dismiss any objections to the Town Green Application, which rely on the presence of the illegal Leisure Centre Building or the Rugby Club, for support, especially concerning access and 'as of right' entry. It is difficult for me to understand how B&NES Council can be involved at all with the decision making process on the Town Green application given their close relationship with the Recreation Ground and their inability over many years to ensure that the rules affecting its use are obeyed. I would suggest that an independent body is required from the outset to determine the validity or otherwise of the Town Green application.

The law, in my opinion, is very straight forward. Matters are either legal or they are not. Rather like pregnancy where a woman is either pregnant or not.

In 2003 the situation regarding the Leisure Centre was clarified between the B&NES Council, the Charity Commission, various residents and confirmed by the High Court. See appendix 5 of the application. It should no longer be termed illegal but it should not be used as support for objections.

It may also be of interest to know that there were also eighteen letters supporting the application although the notification posted by the Council only requested letters of objection. Several people enquired as to whether this was a correct practice on behalf of the Council. Others have contacted me privately to offer their support and I believe have sent letters to Mr. Stark.

The Town Green Application if approved will help ensure that the rules set out in A, B and C above will be satisfied and D will be resolved. It will not affect any current or future legitimate users of the Recreation Ground, by individuals or groups and the Recreation Ground can remain a Charitable Trust.

Since the current and previous Trustees and their Advisors from B&NES Council have failed to abide by the rules, set out in A, B and C above and agree D is true, it has become necessary to apply for Town Green Status to redress the situation and return the Recreation Ground to the open space as it was originally conveyed.

All but one of the 7 objectors use the illegal presence of the Rugby Club and to a lesser extent the Leisure Centre to show, in their view, that a free access and access ‘as of right’ has not been possible over the past 20 years. I cannot see that something, which is illegal, can be used in evidence to object to a perfectly legal Town Green application.

I need to make a correction to the Map that was displayed with the council notice of the application. It was necessary for me to outline the area I wished to register as a Town Green on a 1:2500 scale map in the original application. Since I have no map drawing software I drew a red outline around the area described as The Bath Recreation Ground. In doing so I made a few minor mistakes with my felt tipped pen. When this map was reproduced for the application notice it showed some minor errors on the north and eastern boundary of the land to be registered. Since I was not sure that I could improve on this with the tools available to me I agreed to let the situation stand and would rectify it at a subsequent stage. This I am doing now by attaching a copy of the land to be registered hatched in blue, in a similar fashion to the map published by the Council. I would stress that in all the written text the correct designation of ‘The Bath Recreation Ground’ was used to define the area for registration. If this has caused any confusion then I apologise. I believe that the area defined as ‘The Bath Recreation Ground’ is registered properly with the land commission.

There are three new issues that have arisen since the application made in November 2012. They are all relevant to the Town Green application and should I think be considered by those determining the outcome of the application. The issues are:-

- a. ‘Scheme’ proposed by the Trustees/ Charity Commission.**
 - b. The Core Strategy being devised by B&NES Council.**
 - c. The issuing of a document to local residents by the CEO of Bath Rugby Ltd.**
- a. In late November 2012 the Trustees and their advisors proposed a way forward for the Recreation Ground which they claimed would overcome the illegalities that exist. Only one month was given for citizens to respond and only 3000 leaflets were made available when all 80,000 beneficiaries should be consulted. It arose over one year after a flawed consultation in 2011 in which only 4515 responses were obtained, the vast majority from unknown addresses. None of this information was presented or discussed at Trustee meetings throughout 2012. It was only made available on the Trust’s website after, or just before, the closing date of 31st December 2012 so that responders could not use the information it contained in their responses. If it were to succeed then the Rugby Club would not even be a tenant of the Trust but a sub tenant of an off shore company! I suggest that those deciding the future of the Town Green application obtain a copy of the Trust proposal and the communication with the Charity commission dated 23rd December 2011. The trustees further compounded their felony by claiming the ‘scheme’ was put forward by the Charity Commission! The document did not report that an agreement had already been entered into by the trustees and their advisors in early November 2011 to lease a larger plot of Recreation Ground land to the owner of the Rugby Club in order that he could develop it, using an off shore company Arena 1865, based in the Bahamas. This is clearly not allowed by the conditions laid down in A, B and C above. If further proof is needed this shows how illegally the Trustees have been in running the Recreation Ground.**
- b. B&NES Council are quite rightly attempting to produce a new core strategy document after the previous one was rejected. They are attempting to get the Recreation Ground designated as a development area, against all that is laid down in A, B and C above,**

primarily so that the Rugby Club can develop a new Stadium to seat 18 to 25,000 supporters on what should be our Town Green. This is yet another reason why I believe that B&NES Council should play no part in deciding the Town Green application.

- c. In March 2013 the CEO of Bath Rugby issued a document, to some but not all residents who live close to the Recreation Ground asking if they would support an attempt to break the covenants on the Recreation Ground despite the fact that the High Court had already ruled on this matter in 2002. Apart from being issued by an illegal occupant of the Recreation Ground it was possibly illegal in other respects. It asked for a yes/no response to whether the respondent supported or not another attempt to go to the High Court, indicating some level of contempt for the previous adjudication, but also requested legal reasons for saying no in case this could be used subsequently in any court case that might arise. This caused upset, fear, disgust and general concerns amongst the small section of citizens contacted by unsolicited mail. This is another example of the Rugby Club intimidating members of the public and to date no action has been taken by the Trustees to address the issue showing how ineffective they are in representing the Citizens interests. Again I would suggest that those deciding on the Town Green need to appraise themselves of this intimidating document.

On the grounds above, I believe that those examining the application should reject the objections and agree that the Recreation Ground should become a Town Green. In future any Trustees should ensure that the conditions included in A, B and C are complied with rigorously.

To comply with the request from B&NES council I respond individually to the 7 objections below.

2. Objection Letter 1 from Darius Mehta.

- a. He does not give his address so it is impossible to know if he is a true citizen of Bath and thus a beneficiary or not. He needs to live in the city of Bath to qualify as a beneficiary.
- b. The limit of 5 or more persons is an unnecessary, probably illegal, self-imposed limit by the trustees. It is not stipulated in any of A, B or C above. Many families have more than 5 members. For larger events it is clearly a sensible arrangement if the Recreation Ground needs any preparation for the facilities to be enjoyed or may clash with other large ongoing legal users. The designation of a Town Green would not change this. Local residents have certainly held picnics and played games with more than 10 people present without being challenged or restricted.
- c. I addressed the situation regarding the Leisure Centre in appendix 5. It is not unreasonable that persons using expensive indoor facilities would need to contribute and clearly the building itself require locking outside operating hours. Payment for participative activity is valid within the covenant rules. Persons can still enter the Recreation Ground from North Parade Bridge road unless they are prevented from doing so by permission that the Trustees have given for a large charitable event. Town Green status need not change these arrangements.
- d. Since the Rugby Club became a professional and commercial organisation in 1996 the Trustees and the Charity Commission declare its use of the Recreation Ground illegal, see D above. They would need to vacate the Recreation Ground if Town Green status is approved. There would be no restriction on amateur rugby being played, as it was for many years prior to 1996, providing it abides by the rules and keeps the Recreation Ground as an open space. Restricting access is illegal but the Trustees and the Charity Commission, against A and C above, have supported this since 2002 despite it being illegal.
- e. I addressed the issue of the croquet club and the tennis clubs in an addendum to the application. All these groups are open to new members and clearly need to protect the lawns and courts from damage and the other users of the Recreation Ground from their balls. They all pay annual or longer-term lease fees to the Trust for the upkeep of their facilities and this would not need to change following Town Green acceptance. The use of the Recreation Ground with or without charge is acceptable according to the covenants. See Appendices 1, 2 and 4.
- f. The only sport or pastimes that have been preventing access for extensive periods since 1956 are Professional Rugby and to a much lesser extent the Leisure Centre. The position of the latter has been resolved, see appendix 5, and the Town Green Application would overcome the Rugby illegality, by forcing them to move elsewhere.
- g. If access has been denied then this is due to the Trustees not operating the Trust in an appropriate manner since 2002, breaking the rule of keeping the Recreation Ground as an open space as defined in A, B and C above.

3. Objection letter 2 from Zoë Tarrant, Seasons Holidays PLC

- a. If the plan you have seen suggests that any land owned by you is included in the Town Green Application then this is an error on my part. The plan included with the application required that the area requesting Town Green status needed to be edged in red on a scaled plan 1:2500. Not having access to map drawing facilities I edged the Bath Recreation Ground in red by hand as Map A. This map was redrawn by Mr Stark, to the one shown in the posted advert around the Recreation Ground. With full map drawing facilities this exaggerated any minor errors in my hand drawn version. I could not be sure that I would not make a similar minor error if I did it again so I allowed it to go ahead.
- b. You will find in the full application that all references to the area concerned are described correctly as 'The Bath Recreation Ground'. It appears with this name on all the ordinance survey maps and is referred to in the legal documents supplied as appendices 1 and 2. I believe it has been registered as such with the Land Registry.
- c. The Town Green Application includes the croquet lawn up to but not beyond the wall that separates it from your hotel boundary.
- d. Unfortunately there was no copy of your land registry entry included with the objection letter copy sent to me but I can assure that there is no intention to include any of your land within the Town Green Application.
- e. Please see a copy of the attached revised Map A for the Town Green Application drawn in a similar fashion to the one posted with the application around the Recreation Area.

4. Objection letter 3 from Jason Curtis of Aquaterra

- a. The Leisure Centre is built on land owned by the Recreation Ground Trust.
- b. B&NES Council erected the building prior to the Trust being set up in 2002 when they were acting as if they owned the land rather than it being held in a charitable trust. The High Court ruling in 2002 confirmed that B&NES Council did not own the land but only held it only in a charitable trust for the owners, namely the Citizens of Bath.
- c. Since 2002 the building has been illegal according to both the Trustees and the Charity Commission see A, B and C above.
- d. However since 2003 it was agreed, between the B&NES Council, the Trustees and the Charity Commission that the Leisure centre can remain for its natural life provided, it is maintained by the Council and removed by them at the end of its natural life, at no cost to the Trust. See appendix 5.
- e. Aquaterra do not deny access to the building. Quite to the contrary they encourage as many of the public to use it as possible to cover costs. Locking the building out of hours is a necessary security precaution.
- f. The land remains in the ownership of the trust, including the car parking area and access is freely available to the Recreation Ground through the car park and around the building at ground level.
- g. As with other leaseholders of the Recreation Ground, since 2002 the lease should be with the Trust with any monies paid going to the Trust. At present if your lease is still with B&NES then you are only sub-tenants and B&NES should pass the lease charged to the Trust.
- h. It is within the agreed covenants that fees can be charged for use of the facilities see A and C. This is the case with all the other amateur users of the Recreation Ground who hold annual or longer leases with the Trustees (i.e. The Drama Club, the Croquet Club and the Tennis Clubs). It also applies to the Rugby Club but they are illegal because they run a commercial and professional club unlike yourselves who deal with amateur sports and are a not for profit organisation.
- i. None of the current arrangements would need to change if the Town Green Application is approved and the above conditions are observed.
- j. The registration concerns the land. Any buildings on it must be legal under the conveyance conditions and covenants of 1956, see appendix 2. Buildings on the land are not allowed by the regulations in A, B and C or they would have to be removed! In the case of the Leisure Centre this has been resolved. See appendix 5.
- k. Objections based on the Leisure centre's presence should not be acceptable, see D above.

5. Objection letter 4 from Ian Wilson

- a. The only sporting activities that should need prior approval are large amateur or charitable events, which may need facilities to be prepared by the Trust or checked that they do not prevent other users from accessing the open space.
- b. If the Trustees are going beyond and above this then they are in breach of A and C above.
- c. There is acceptance in the covenants that users of the Recreation Ground with appropriate agreement can charge for their activities. This is usually included in the leases granted by the Trustees and covers preparation of playing areas, laying out such areas. Fees paid by those enjoying the various sporting activities are a contribution to the lease charge. See the addendum to the original application.
- d. However since 2003 it was agreed, between the B&NES Council, the Trustees and the Charity Commission that the Leisure centre can remain for its natural life provided, it is maintained by the Council and removed by them at the end of its natural life, at no cost to the Trust. See appendix 5. The land however remains in the Trust.
- e. It is within the agreed covenants that fees can be charged for use of the facilities see A and C. This is the case with all the other amateur users of the Recreation Ground who hold annual or longer leases with the Trustees (i.e. the drama Club, the croquet Club and the Tennis Clubs). All these amateur clubs are open to new members but clearly must protect their playing or performing areas. See the addendum to the application, which dealt with this particular aspect.
- f. The Rugby Club's use of the Recreation Ground is illegal and agreed so by both the Trustees and the Charity Commission. This has been the case since 1996 when they became professional and in 2002 when the charitable status of the Recreation Ground was established. See B and C above.
- g. The illegal presence of the Rugby Club should not be used by objectors against the Town Green Application, see D above
- h. The Trustees are at fault in closing the whole Recreation Ground on match days when the Rugby Club only lease part of the area and the rest should be left as open space. They should only exercise this responsibility for sports or other events, which satisfy the covenants and charity objectives in C above.
- i. Barvis v North Yorkshire Council is irrelevant because the High Court have already ruled that the Council do not own the land but only hold it in trust. See B above.
- j. If the Trust, via the Trustees, and the Council before them had held the Recreation Ground in the way you suggest then there would have been no need for the Town Green Application to be made.
- k. The Town Green approval would not affect any of the present or future legal amateur activities. The Leisure Centre's future for the natural life of the building is assured, providing that B&NES Council honour their commitment to maintain it and demolish it when it is no longer viable to maintain. See appendix 5.
- l. The only risk to the Leisure Centre is if the Council fail to honour this agreement.
- m. The only activity at risk is the illegal Rugby Club. They run a commercial professional organisation in buildings, which should not have been authorised under A and C. Both B&NES Council and the Trustees are guilty of contravening the rules set up in A and C above. Being illegal the Rugby Club should relocate elsewhere.

6. Objection letter 5 from Phillip Dunning

- a. I do hope that Mr Dunning read the full application in addition to the letter in the Bath Chronicle.
- b. All the events mentioned would be able to continue if the Town Green Application was successful.
- c. Amateur local Rugby could still be played as it was quite successfully before 1996. It would of course have to obey the rules identified in A and C above. When Rugby became professional and grew rapidly into a large commercial organisation, it became illegal, which is against the regulating documents in A and C above.
- d. The old west stand which you find an embarrassment is probably the only official building, with the possible exception of the original club house, that are a legal under the conditions of A and C above.
- e. The TV cameras are part of a commercial development, which is also against the regulations.
- f. Currently there are no plans for the public to see how any new buildings satisfying the rules can be developed. Developments in general are not permitted within the rules set by A, B and C.
- g. The Rugby Club have had secret discussions with the Trustees but the beneficiaries of the Recreation Ground have not been party to these discussions nor have they been presented with any legal plans. You have clearly found the same problem.
- h. Granting Town Green Status to the Recreation Ground would not mean that progress could not be made but that it would have to satisfy the rules set out in A, B and C above.
- i. Cooperation with all the organisations of which you are a member could be helpful in this respect. They could perhaps provide members of a new and properly independent set of trustees.
- j. It is clear that the present Trustees are unable to carry out their duties within the rules as they have shown over the past twelve years.
- k. Part of the problem is that the trustees appointed arbitrarily by the council represent no one but the Council and the Rugby Club. They cannot be described as independent as they should be for a charitable trust.
- l. Unfortunately because the planning committee are too strongly influenced by trustee councillors, or are not fully made aware of the rules in A, B and C above, they have tended to approve illegal developments, almost on the nod, as can be seen in appendix 9 of the application.
- m. Access to the Leisure Centre building is easy, providing you are prepared to pay a small charge for the benefit of using the equipment and supervision provided by Aquaterra. This is acceptable under the rules outlined in A and C and would remain so after Town Green approval. Locking the building at night is clearly a necessary security issue in this day and age. Access is still permitted to the Recreation Ground, unless gates are closed for security purposes when a large charity event is taking place on the Recreation Ground. Since the building was erected illegally it cannot be used as an objection to the Town Green application, see D above.
- n. When Bath Rugby is holding home matches the Recreation Ground should not be closed for access by the public except for the area which they currently lease illegally. Extending their use of the Recreation Ground is even more illegal, if such a concept is a reality! The trustees are clearly at fault and should restrict the Rugby

Clubs use to the area they currently lease illegally, until that situation is resolved by them moving elsewhere.

- o. Town Green Status has only been proposed to ensure the Open nature of the Recreation Ground demanded by A, B and C above.
- p. I am afraid the Rugby Club proposals only demand that a further 35 metres across the whole width of the Recreation Ground will be needed for their illegal expansion plans. Open access for the rest of the legal users will be at Lambridge instead!
- q. If the Recreation Ground trust were to be provided with all the money owed to it by past misdemeanours and ineffectively collecting fees due to them then there might be sufficient funds to develop the plans that you find most desirable if they can be achieved within the rules outlined in A, B and C above.
- r. Town Green status does not mean the end of the charitable status for the Recreation Ground but it really does need a better set of Trustees to run it.

7. Objection number 6 from Andrew Pate and Andrew B Reed of B&NES

- a. Since both these objectors are senior members of B&NES their objection clearly demonstrates a strong conflict of interest, since it is B&NES, as I understand it, which will initially decide the outcome of the application.
- b. Messrs Pate and Reed are the current advisors to the Trustees but are employees of the B&NES Council.
- c. Since 1956 the Council ran the Recreation Ground as if they owned it, which was clearly identified as being wrong by the High Court. During this time they failed to adhere to the clear covenant rules laid down in the Conveyance to the Citizens of Bath. They erected the Leisure Centre illegally, which they now accept.
- d. Since 2002 the Recreation Ground should have been run by the Trustees under the rules and regulations prescribed by A, B and C. This they have clearly failed to do by breaking every covenant and denying the owners of the land, the citizens of Bath, open access to all of their Recreation Ground.
- e. Both before 2002 and after, I produced as evidence in the application two leases that had been agreed with the Rugby Club. Even the first, see appendix 6 with the application, which was for legal amateur Rugby shows that only brief reference was made to the conveyance of 1956 and its accompanying covenants, see appendices 1 and 2. It still permitted buildings to be extended, an illegal temporary east stand, albeit much smaller than the present one and it prevented open access to the Recreation Ground all against A, B and C above. The second is a copy of the original lease to the professional rugby club for the 'temporary' East stand, see appendix 7. This was against A and C above and has been made worse over the past 10 years by being granted annually in ever increasing size. Further more it was signed by the Council and not the Trustees and Mr Reed was the named Council employee!
- f. The Rugby Club and the Leisure Centre's presence on the Recreation Ground are declared illegal by the Trustees, their B&NES Advisors and the Charity Commission so using them in arguments to support objections to the Town Green should not be acceptable, see D above.
- g. What I find unacceptable is that the Leisure Centre building is regarded as illegal yet all the Rugby buildings are not. This surely shows undue preference to the Rugby Club and yet another broken covenant.
- h. The advisors may be acting for the Trustees but this only demonstrates that the trustees are not independent of the Council as they should be.
- i. It is clear that most of the material produced by the trustees is actually written by senior council employees, who do not recognise the authority of the High Court nor do they abide by the rules laid down in A, B and C above. B&NES Council still behave as though they own the Recreation Ground, which the High Court ruled in 2002 is not the case. Clear evidence of this can be seen in the flawed consultation of 2011 and the more recent 'scheme', which the trustees appear to want to pass off as a Charity Commission proposal.
- j. If the application is not approved following proper advertising and a significant case being made then it will need to be decided by a higher authority and Mr. Pate is wrong to suggest otherwise. If there are any failings in the application, particularly concerning access 'as of right' and openness, then this is entirely due to the failings of the Trustees and their advisors over many years. Their failure is a catalogue of disaster from day one but particularly since 1996 when professional rugby started. This will only been exacerbated by their futile attempts to regularise the situation in

the land swap scam. Even if this illegal process were to go ahead the Recreation Ground would still be in existence, with all its associated rules and regulations, which it appears the Trustees, their advisors and the B&NES Council are only too willing to ignore. B&NES and their advisors to the trustees are not impartial so any decision on the application should be undertaken by an independent person or body from the outset.

- k. Access to the land not leased by the Rugby Club is currently restricted illegally on match days and residents have been refused access through the gate by the river and the main turnstile gate. This is an illegal practice which occurs some 20 times per year. However for the remaining 345 days there is no restriction! This illegal practice is supported by the Trustees!
- l. Access is freely available through the turnstile gate, the river entrance, the roadway entrance at the end of Pulteney mews and around the Leisure Centre. There has never been anything to restrict access, except on Rugby match days, which is against A and C above. Nor have there been any notices to say that restrictions are in place, apart from illegal parking. This implies that the Trustees and their Advisors know that to place any such notices would be against the rules laid down in A and C above.
- m. The footpath from William Street to the River entrance is also illegally closed on Rugby match days.
- n. It is interesting to note that this objection is written on B&NES headed notepaper and does not appear to have any supporting evidence from the Trustees themselves. B&NES claim to be the sole Trustee but the Trust board members should represent the citizens of Bath. The trustees after all are supposed to represent all the owner beneficiaries, i.e. the citizens of Bath. Town Green status would achieve this position and bring the Recreation Ground back to the original objective of the conveyance in 1956.
- o. I sincerely hope that there will be other members of B&NES Council who will need to decide the way ahead and that they will not be biased by the views of council employees and trustee councillors who have failed to obey A above from 1956 and B and C above since 2002. It would of course be preferable that independent assessment was possible from the outset of the evaluation.
- p. In the next paragraphs I will also refer to the numbered sections in Mr Reed's objection. This is yet another member of the same B&NES Council who will be deciding the initial outcome of the application!
- q. [1] The Council has shown in numerous ways that it still operates as though it still owns the Recreation Ground rather than allowing the Trust to act for all the beneficiaries identified in A above.
- r. [2] I too reserve my position to provide more information when other details are put into the public domain. These would cover any developments proposed and any valuations concerning the Recreation Ground. Including those suggested, but not included in the trustees 'scheme'. I have suggested in my general section that those evaluating the proposal should obtain copies of the correspondence between the Trustees and the Charity Commission dated 21st December 2011. Although the 'Heads of Terms' relating to the 'scheme' have now been put up on the trust website no dates are included and the valuations are not there. This is not surprising as I doubt anyone in Bath would believe that Lambridge is seen to be more valuable than the Recreation Ground. If Mr Reed disagrees he could always publish the valuations from Jonas Drivers Deloitte in the Bath Chronicle and wait for the outburst!
- s. [2] Since it is possible that the Council are still trying to designate the Recreation Ground as a development area, against all the rules pertaining to A, B and C, in their

new core strategy. This too may need a further submission. See appendix 8 with the application. I understand that this is of course not within their remit, since they do not own the land in question, see B above.

- t. [3] I believe to the best of my ability, with the information available in the public domain, that I have done just that. Trustees and their advisors, who do not provide access to relevant information relating to the Recreation Ground, like leases to illegal users and holding private discussion at Trustee meetings, to which the public, i.e. the beneficiaries are excluded, is less than helpful to say the least.
- u. [5] The conveyance of 1956 defines the citizens of Bath as the beneficial owners. The public at large are entitled to use the open space provided it does not conflict with the conditions specified in A, B and C. I cannot see how you believe other than that the Recreation Ground is located in central Bath!
- v. [6] Residents of Bath and those from further around use the Recreation Ground, 'as of right' without consulting the Trustees or B&NES on a regular basis. Clearly larger gatherings need to ensure that they will not conflict with other larger gatherings at the same time. Town Green status would not change this arrangement. Families often go onto the Recreation Ground without seeking permission so the arbitrary lower figure set by the Trustees is inappropriate, even if not another illegal practice. I do not believe that there is anything mentioned in A, B or C to support this view. The evidence produced to support the application was in fact the same as the number of objections. If you add in the 18 unsolicited letters of support to the application and those that have contacted me privately and I believe written to Mr. Stark then the number grows. You will appreciate that the application is done in conjunction with the Pulteney Estate Resident Association (PERA) who represent several hundred residents local the Recreation Ground. Numbers do not seem so important when Trustees and Advisors carry out their so-called consultations! Only 5 citizen objectors out of a possible 80,000 means, on the Trustee way of measuring success, the majority must be in favour of the application! The 2 remaining ones from the B&NES Advisors to the Trustees and the Rugby club should be discounted on the grounds of conflict of interest and illegal use of the Recreation Ground respectively.
- w. [7] I have dealt with the situation regarding the Leisure Centre, which was built illegally by the Council in appendix 5 to the application. The Rugby Club is still illegally using areas of the Recreation Ground, which they lease, as agreed by Trustees and the Charity Commission. The removal of the Rugby Club, which would be necessary if Town Green Status was achieved, would remedy this illegality overnight, something that Trustees and their B&NES Advisors have failed to do over the past 11 years. Furthermore the Trustees permit them to use, or rather misuse, the whole Recreation Ground on their match days. All the stands you mention are also illegal structures according to A and C above clearly preventing the open space being used as it should be. Just out of interest I think you will find in the days of amateur rugby on the Recreation Ground locals not only played on the rugby pitch but used it also for other activities. This did not cease until 1996 when rugby became a professional and commercial organisation with no right to remain on the Recreation Ground. Since the Trustees and the Charity Commission agree that the Rugby Club usage is illegal any arguments using them for support must be spurious, see D above.
- x. [8] I am glad we can agree on something although I do not accept professional Rugby in my definition of legal usage.
- y. [9] The only reason that there has been breakage or non-qualifying requirement in the past 20 years is because first the Council and then the Trustees and their Advisors did not adhere to the legal specifications in A, B and C.

- z. [10] The same comment as [9] above applies to the “as of right”. The buildings are illegal and this is accepted by the Council and the Trustees who are attempting to rectify this by a ‘scheme’ with the Charity Commission, which would push legitimate users of the Recreation Ground to an inferior site on the edge of Bath while extending the illegal use by the Rugby Club on the Recreation Ground! At the same time they wish to put costs associated with the Leisure Centre onto a new Trustee Board, without observing the agreements that were made earlier between the Council, the Charity Commission and the Trustees. See appendix 5 of the application. I note that this agreement was referred to in minutes of the Trustee meetings, which were supplied by the Rugby Club solicitor as part of their objection.
- aa. [11] All the refusals mentioned by witnesses to the application, relate to the illegal use by the Rugby Club, which supports my view that the Trustees and Advisors are abusing their powers and not adhering to A, B and C above. As a result, as shown in D, this should not be used to support the objection to the application. I doubt, that in the case of Somerset County Council EWHC B14, a High Court had ruled that the Council did not own the land and that it was and is subject to a Charitable Trust, see B above.
- bb. [12] I understand that the High Court ruled that the Recreation Ground should be treated as a charitable trust and that the trustees need to conform to the conveyance and covenants set out legally in A and as restated in C above. The Recreation Ground should only be used for legal sports and pastimes, festivals and charitable events and remain as an open space in perpetuity, providing ‘as of right’ access at all times to the beneficiaries. All the restrictions are clearly set out in the covenants in A and C above. In 2002 the Council attempted unsuccessfully to break these covenants on the pretext of requesting clarification. They got the clarification, which did not go the way they had hoped but, in my view, have decided to ignore it ever since. A matter of contempt of the High Court quite possibly! If only the current and all previous Trustees and their advisors had followed this ruling and the rules of the charity, subsequently established by the Charity Commission, the application for Town Green status would have been unnecessary.
- cc. [13] In my view your arguments based largely on the inappropriate way the Recreation Ground has been managed, relying heavily on limitations imposed by illegal users, should mean the application should be passed. If the CRA, whoever they may be, do not pass it on the paper submission then it may well require a public enquiry when all the relevant facts will emerge.

8. Objection number 7 from Travers Smith LLP representing the Bath Rugby Club

- a. I see that the objector is based in London but I am sure that he will be aware that the Rugby Club's occupation of the Recreation Ground is illegal. This is the view of all the bodies associated with the activities on the Recreation Ground, namely B&NES Council, the Charity Commission and the Trustees of the Recreation Ground Trust.
- b. It is confirmed by the Rugby Club themselves who are engaged in a flawed 'scheme', with the Trustees and the Charity Commission, to make the situation regular by swapping inferior land at Lambridge, which they did not own until 2012, with more space on the Recreation Ground to carry on their illegal activities. In my view this cannot be seen to change the present illegal use into a legal one.
- c. On the basis of the Rugby Club's illegal use of the Recreation Ground any objections raised, based on this illegal use, are inappropriate, see D above. Even more so from the organisation that is itself illegal!
- d. The objector claims to have a legal lease for their use of part of the Recreation Ground. It is my understanding that an organisation that is illegal cannot have a lease to operate, which is legal!
- e. If such a lease exists, signed by the Trustees and not the Council, then it would have been more valuable to include in the package than most of the material submitted. It would show just what had and had not been agreed by the Trustees and just how much abuse of the rules specified in A, B and C were being broken by the Trustees and the Rugby Club.
- f. Trustees have spoken about various leases at various times that have been cancelled, replaced and sold on from one owner of the Rugby Club to another without ever providing a specimen, which beneficiaries could have seen at any regular Trust meeting. The Trustees get out clause is that it contains confidential commercial information but I cannot accept that as an excuse. The lease is about fees for the lease, which should be declared in the annual accounts and restrictions placed on the club so that they conform to the rules under A, B and C above. None of this affects the commercial running of the organisation, although running a commercial professional sporting business on the Recreation Ground is not permitted, especially as it clearly shows preference for one particular sport, breaking yet another of the rules in A and C.
- g. The size of the file attached to these illegal objections, more than 3 inches thick and 855 pages, was clearly designed to intimidate the applicants. This is a tactic which I believe has been used in the past by the Rugby Club but on this occasion it will not succeed. It has recently been used yet again by Mr. Blofeld, in his recent communication to some residents living near the Recreation Ground wanting their support to overcome covenants that have already been ruled valid by the High Court see B above and suggesting legal action might follow if they disagree.
- h. If the club were legally entitled to use the Recreation Ground then only the first 9 pages of the objection are really relevant.
- i. These objections are similar to those expressed by the B&NES advisors in their objection, which I have already dismissed as not permissible because they arise only from the illegal use of the Recreation Ground, primarily by the Rugby Club.
- j. The sections q[1] to cc[13] in my response above, to Mr Reed, a B&NES advisor to the Trustees, equally apply to those by Travers Smith. Other specific points raised I address in the following paragraphs with the objectors number included.

- k. [8] The land has been used lawfully since 1956 for sports and pastimes allowed by A and C above. Only since 1996 have unlawful events and practices been undertaken by the professional and very commercial Rugby Club.
- l. [11] I doubt that in the case referred to a High Court judgement has been made to ensure that the land is designated for charitable use and described in legal documents to be maintained as an open space in perpetuity.
- m. [13] All the sports and pastimes mentioned here are legal except those relating to Rugby. All other users of the Recreation Ground who have leases also have open membership to enable their sport to be enjoyed at low cost. Premier Rugby is not open in this way and involves expensive contracts to be placed, mostly if not entirely, from players with no initial contact with the area. There is no participate rugby by locals only highly priced supporter activity from stands which are illegally constructed according to A and C.
- n. [15] The trust allows legal sporting events to take place and the marking out is well within the conditions laid down. The trust do not own the land they only operate it as trustees for the owners who are the Citizens of Bath, see A above. The rugby club does not even allow junior mini rugby to use their 'legal' area or even the ladies. Could the latter be classed as sex discrimination?
- o. [16] This practice is definitely against the conditions laid down in A and C above.
- p. [17] This too is a breaking of the conditions laid down in A and C above. If it is done with the agreement of the Trustees then they too are at fault for the same reason.
- q. [18] It is only the illegal use by the Rugby Club that has prevented the open access defined in A, B and C above.
- r. [19] Apart from the original west stand and the original club house all the remaining buildings do not conform to the rules set out in A and C. This is partially responsible for all the authorities involved, including the Rugby Club, to declare the Rugby presence on the Recreation Ground as illegal.
- s. [20] Since 1956 the only period when access has been denied is since the start of Professional Rugby in 1996. Prior to that time the amateur rugby pitch was used in the summer months to erect tents for other legal participants to enjoy their sports on the remainder of the area or for other types of entertainment. There is thus a period of 40 years when the Recreation Ground was used as an open space for all to enjoy.
- t. [22] Equally there were only 7 objections. If you discount those from B&NES and the Rugby Club, who in my view are clearly the major offenders in preventing open access, add in the 18 who wrote in support although not requested to do so the balance in favour of the application increases.
- u. [23] The land was conveyed in 1956 but the Trust was not set up until after the High Court ruling in 2002. The council should have been running it as a trust but were not doing so until 2002 after the High Court ruling. Nevertheless between 1956 and 2002 local residents had full and free 'as of right' access to the whole of the Recreation Ground. Only professional Rugby destroyed this from 1996 onwards.
- v. [24 to 27] The rules of usage are set out in A and C above.
- w. [28 to 32] These are either sensible arrangements in this day and age to prevent inappropriate actions taking place after dark or are illegal practices by the Rugby Club and/or the Trustees.
- x. [29b] Erection of notices about dogs and golf practice should be for the owners, the citizens of Bath, to decide and to my knowledge they have never been asked. For my part I would recommend dog walking, with high financial fines for those who do not 'pick up' but not golf practice, since this could be fatal in a public open space. Dog walking has been done in past years and whilst not perhaps classed as a sport, it is

exercise for both the dog and the handler. Elderly persons who cannot walk very far, I am sure, would appreciate the dog walking option returning in an open and green area.

- y. [30] Many residents have been denied access by the Rugby Club on match days so now they exercise sensible precautions it not attempting access in defiance of persons manning the main entrance! Some legal users wanting to access the croquet or tennis courts or just cross to the Leisure Centre have also been denied. The footpath from William Street to the river Avon is also denied on match days, another illegality.
- z. [33] The 1956 conveyance refers to the Citizens of Bath as the owners. The city of Bath is a well defined area and one to which our local MP is elected. My addendum, to the application, listed the wards which are included in this definition.
- aa. [37 to 39] It is not for the Rugby Club to attempt to bring any pressure to bear on the proper evaluation of the application, this is for others to determine. If the dates of August 2013 and 2015 are so critical can I suggest that the Rugby Club do the honourable thing and move their activities elsewhere? There are two obvious sites, both of which they own, at Lambridge and Farleigh Hungerford. Neither of these sites would have the problems that they encounter at the Recreation Ground namely the present area is too small; they are illegal occupants and they have insurmountable development problems to overcome.
- bb. The remainder of the bulky objection is largely padding but it does throw up some interesting points, which help to support the application for Town Green status.
- cc. The next major section, from page 1 to 301, consists of statements from most of the senior employees of the Rugby Club. They appear to be little more than job descriptions, which whilst of possible interest to a future employer, provide little other evidence other than confirming the illegal use being made of the Recreation Ground by the Rugby Club.
- dd. The statements include some interesting pictures showing just how dominant Rugby is on the Recreation Ground and how it destroys the area for all the genuine users.
- ee. Page 10 shows the East stand, which now dominates the Recreation Ground appearing to be larger than any of the remaining stands. It is of course illegal under the conditions of the conveyance and covenants. It virtually bisects the open area and its back presents an ugly view for all the other legal users.
- ff. Page 14 shows the back of the East stand. Not only does it provide an ugly view but some of the area behind it, not leased to the Rugby Club, is completely churned up and unusable. This of course is in addition to the area under the stand, which has to be reseeded each year because the stand has damaged the surface. Pages 16 and 19 show an even more shocking picture of a similar area. If the Trustees give permission for this extra space then again they are in breach of A and C.
- gg. Pages 32 to 41 show pictures of the security fences and gates erected to protect the commercial interests of the club. Not what you would expect to see on charitable land that should be open to the public, for access at all times.
- hh. Pages 43 and 57 show pictures of many beer barrels, which are not a pretty sight for what should be an open space. The Council and the Trustees should be concerned because one of their main reasons for falling over backwards to keep Rugby at the Rec. is because it brings trade to the pubs and restaurants on match days. These pages show clear evidence that much of the trade goes directly to the Rugby Club and into its coffers.
- ii. Pages 59 to 138 list events, which have taken place in the clubhouse. Again this is trade, which is taken away from the general providers in Bath who pay B&NES very high rents, rates, council taxes and/or leases. How much of the clubs profits go to the

trust for illegally permitting this commercial activity to take place on charitable land? Does the lease, that no one has seen, cover this activity and ensure that the Trust benefits? The items from the Trustee papers included which show some very simple accounts do not refer to any such item!

- jj. Page 148 shows a picture of parking restriction on the Recreation Ground. How many parking permits does the Rugby Club have? Does the income from them go to the Trust rather than the Council as it should? The trustee accounts shown later do not make this clear. This parking area, used mainly on match days, clearly ruins the surface of the grass for other users in the area they access at all times. Who gave planning permission for this? It is not included in appendix 9 of the application, a list of all planning permissions on the Recreation Ground despite the fact that most of those included are illegal developments according to the rules in A and C above.
- kk. Page 150 seems a more appropriate car parking notice by the trustees.
- ll. Page 153 is a picture more of what the Recreation Ground should be, a green open space with no large illegal rugby stands and free access for all.
- mm. Pages 155 and 161 I assume are pictures of the seating for a charity concert allowable under the rules. I only hope that the profits made at the clubhouse were donated to the appropriate charity!
- nn. Pages 169 and 170 show that other legal activities take place on the Rec, but not in the rugby area, which is controlled rather like Fort Knox. Even the mini rugby seems to use only the general area although I feel that the young players would love to play on the ‘hallowed turf’ as should be their right. Town Green status with professional rugby moved elsewhere would give them that right. So too the ladies rugby that the commercially run operation only permits them to play at Lambridge!
- oo. Pages 231 to 242 relate primarily to the voluntary running of mini rugby by John Harrison and Stuart Woodington. This would still be possible under Town Green status but they could also use the area barred to them by the professionals and not need to use Lambridge at all.
- pp. Pages 243 to 313 gives more credibility to the fact that Rugby on the Recreation Ground is big business and has no right to be occupying a charitable location, which is primarily for local residents to enjoy all manner of pastimes. The fact that they want to obtain an even larger footprint on the Rec. indicates that they have outgrown the area and should move elsewhere and return the Recreation Ground to its rightful owners.
- qq. There are no longer any local residents playing in the professional rugby team unlike the days when it was amateur and most, if not all the players, were local and often more successful than at present. Professional Rugby is now only a supporter exercise, at very high cost, with no local active participation as was originally envisaged in A above. This could be enjoyed at any other location.
- rr. Pages 315 to 343 are just copies of the application without all the supporting appendices. Surprising as the appendices would have made the Travers submission even bigger!
- ss. Pages 359 to 854 appear to be copies of Trustee meetings and some of their accounts. As these are all in the public domain I am not sure what they were supposed to add to the objection.
- tt. As far as I am concerned they show an organisation well out of its depth, who make very little progress between their meetings and whenever contentious matters are raised the public, mainly citizens of Bath, to whom the Recreation Ground was conveyed, are asked to leave. The most important matters concerning the future of the Rugby Club, negotiations with the Charity Commission and trust financial

matters are kept well away from the prying eyes of the public they are supposed to represent and inform.

- uu. Pages and pictures that I have not referred to are either more job descriptions or duplicate pictures, which padded out the folder but did not really add anything to the objection except to confirm why it was necessary to make the application in the first place.

Bath Recreation Ground needs a new set of Trustees who will follow the rules set out in A, B and C above and a successful Town Green application would be the first step in that direction.

I urge whoever or whatever body is to determine the next stage in the Town Green process take note of my response to the objections above and progress the application favourably.

**Jack Sparrow
31st March 2013**

IN RE: AN APPLICATION BY MR. J. SPARROW TO REGISTER THE BATH
RECREATION GROUND AS A TOWN OR VILLAGE GREEN PURSUANT TO
SECTION 15 COMMONS ACT 2006

AND IN RE: APPLICATION NUMBER TVG12/1

ADVICE

Instructions

1. I have been asked to advise Bath and North East Somerset Council ('BANES') as to the manner in which it should deal with an application made on 18th. November 2012 by Mr. J. Sparrow to register land at the Recreation Ground, Bath, as a Town or Village Green ('TVG') pursuant to section 15 Commons Act 2006. BANES is a Registration Authority pursuant to the provisions of the Commons Act 2006.

Application

2. Mr. Sparrow's application pursuant to section 15(1) Commons Act 2006 asserted that the inhabitants of the City of Bath had used the land 'as of right' for lawful sports and pastimes for the twenty years preceding the application; and that it should therefore be registered as a TVG.

The Land

3. The land the subject of the application is known generally as 'The Rec', and a significant part of it presently forms the home stadium of Bath Rugby Football Club. It is approximately 15 acres in area and situated in the centre of Bath. It is shown on the application plan as being broadly bounded to the West by the River Avon; to the North by Johnstone Street and Pulteney Mews; to the East by the Bowling Green and St. John's Catholic Primary School, and to the South by North Parade Road, The Pavilion and the Magistrates Court.

4. The usage of the land is shown on a plan annexed to the application and marked Map A/3. It shows that the Rugby Club is situated on the Western part of the land, adjacent to the River Avon. I shall refer to the usage made of the land by the rugby club in more detail below. The Sports and Leisure Centre is a substantial built structure to the South of the land close to North Parade Road¹. The North Western part of the land is marked 'Croquet Club' whilst the South Western part is marked 'Tennis Club'. The middle of the land has been marked 'Lacrosse and Volleyball'. To the East of the area marked 'Lacrosse and Volleyball' are three buildings situated in a slight arc². The main area is also used for cricket from time to time.³

¹ It is best shown on the photograph at A3 annexed to Mr. Sparrow's application..

² The tennis courts, croquet lawn and stands are helpfully shown on the plan NJB.1 annexed to Mr. Blofeld's witness statement.

³ See for example the statutory declaration of Darren Ball, paras 24 & 25.

Evidence

5. The Application has been supported by seven witness statements that assert recreational usage of the land from the 1930s to the present day. These statements are substantially in the standard form provided by the Open Spaces Society, and whilst they set out information of usage in a helpful tabular form, such pro-formas tend to be lacking on details of use – for example, as to which parts are used when – unless the witnesses have deliberately set that information out. A further sixteen letters of support have been received since the application, of which two refer to factual recreational user on the land; the remainder simply approve the application.
6. BANES publicised the application by circulating it in a local newspaper and publishing a notice of the application on 10th. January 2013. These notices required any person who wished to object to the application to make representations to BANES.
7. Objections to the Application have been received from Mr. Darius Mehta; Ms. Zoe Tarrant RIBA on behalf of the Seasons Hotel, Bath; Mr. Jason Curtis on behalf of Aquaterra Limited; Mr. Ian Wilson; Mr. Philip Dunning; Mr. Andrew Pate on behalf of BANES as trustee of the Recreation Ground Trust; and Messrs. Travers Smith LLP on behalf of Bath Rugby Limited. Where I refer to BANES in its capacity as objector, I shall refer to it as 'The Trustee'.

8. Bath Rugby Limited have also filed a large number of witness statements setting out in particular the factual usage made by that entity of the part of the Land used by them in recent years.

Position of BANES

9. It will be noted that BANES is both the registration authority tasked by statute with determining the validity of the application, and an objector to the application. Mr. Sparrow has complained that this should preclude BANES from taking any part in the determination of the application⁴. However, a conflict of interest is not that uncommon a situation with such applications, where the local authority may be both the registration authority and have an interest in the application, either by reason of ownership of the land or by reason of some other more strategic interest in a development of the land contrary to that which could occur if the application were resolved in any particular way. Despite this potential conflict, a registration authority is obliged to make such decisions as are required by the Commons Act 2006 and subordinate legislation. It will however seek to ensure so far as is possible that any reasonable concern as to a conflict of interest is removed prior to any final decision being made.
10. As I understand it BANES has taken steps to ensure that those officers who are involved with the determination of the application are in no way involved in the running of the trust, or the objection to the application. The decision to ask for my advice, as a specialist practitioner in the area of TVG registration, in private practice

⁴ Counter-response, p.3.

and independent of the parties, is also a means of ensuring that any perception of a conflict of interest is removed. But I stress that although I have been asked to advise BANES on the steps it should take to determine this application, and I do so below, the duty for making that determination remains that of BANES.

The Grounds of Objection

11. Although the objectors have set out their objections in, in some cases, considerable detail, I set out my summary of them as follows.

Mr. Mehta

12. Use of the land has been permissive, in that the land is held by Trustees whose consent to its usage is required, and who charge for its use. It has been built on as to part by the construction of a Leisure Centre which allocates or charges for usage; and the land cannot be used when used for other pastimes (such as rugby or tennis).

Seasons Hotel

13. Ms. Tapper objected solely on the basis that the land as shown on the application map included a strip of land owned by the Hotel and was enclosed by a boundary wall and to which there was no public access.

Aquaterra

14. (1) The application land is not 'land' for the purposes of section 15 Commons Act 2006 as there is a building on it; and

(2) Use has not been 'as of right' as use of the Leisure Centre has been permissive and charged for.

Ian Wilson

15. (1) Sporting activities on the Rec have been with the permission of the Trust, and therefore the usage is not 'as of right'.

(2) The Leisure Centre is not open to the public at all times;

(3) The tennis courts and other facilities do not have free public access;

(4) At periods when the pitch is in use, access to the pitch and stands is also restricted.

Philip Dunning

16. Mr. Dunning deprecated the current state of the sports buildings at the Rec, and suggested that the application should be rejected and proposals for an improved arena pursued.

The Trustee

17. (1) Those parts of the land which are subject to built structures are either inaccessible to the public, or are used pursuant to the permission of the Trustees. In the first case there has been no usage at all; in the latter there has been no usage 'as of right'.

(2) There has not been qualifying usage of the land for lawful sports and pastimes by a 'significant number' of the inhabitants of the claimed locality, the City of Bath.

(3) Usage by tenants or licensees of the Trustees has been by permission, and not 'as of right'.

(4) There are occasions during the year when members of the public have been excluded from part of the land by the owners or lessees, for example during rugby matches. This periodic exclusion means that insofar as the public have access to other parts of the land at other times, they do so by implied permission of the Trustee – see R v. Somerset County Council (oao Mann) [2012] EWHC B14 (Admin).

(5) The land is held by the Trustee on the trusts of a conveyance dated 1st. February 1956. This document created a charitable trust of which the public were beneficiaries, and the trust is a trust for public recreation. The usage of the land by the public for informal recreation is therefore 'by right' and not 'as of right'.

Bath Rugby Ltd

18. (1) Informal public access to that part of the property comprising the built development (leisure centre, sports stands, clubhouse) is not possible and has not taken place;

(2) Formal usage of the sports pitches is with the permission of the Trust and hence not as of right.

(3) Access to the rugby ground is controlled and informal recreation prevented.

(4) Any usage that has taken place has been in the nature of a short cut, rather than for recreational purposes. Such usage is not qualifying use for the purposes of TVG registration (see Oxford City Council v. Oxfordshire County Council [2004] Ch. 253).

(5) During rugby match days and at other times, access to the application land is controlled and permissive only.

(6) The whole of the site has not been used 'as of right' or indeed at all;

(7) The land is held pursuant to a charitable trust created by the conveyance of 1st February 1956. The statutory powers are now those contained within section 19(1) Local Government (Miscellaneous Provisions) Act 1976. Although that Act confers a power on the Trustee to provide recreational facilities for permissive use, other recreational use by members of the public amounts to use 'by right' and not 'as of right' – see R. v. North Yorkshire CC oao Barkas [2012] EWCA Civ. 1373.

(8) The frequent exclusion of the public from part of the land by the landowner indicates that on those occasions when the public do use the land for informal recreation, they do so by implied permission of the landowner – R v. Somerset CC oao Mann (*supra*.)

(9) Usage is not by a 'significant number' of inhabitants of the claimed neighbourhood, as required by statute.

19. As I have mentioned above, Bath Rugby Ltd. has also filed a large number of witness statements dealing with the use of the Rugby Ground and to a lesser extent the remainder of the land. It has also served a large number of documents including but not limited to what appear to be the complete minutes of the Committee of the Board of Trustees from 2005 to 2102. Unsurprisingly, it details the usage that it made of the rugby ground, including the dismantling at the end of each season of two dismantlable stands, and the usage that is made not only of the Rugby ground, but of ancillary areas outside of it such as the beer tent and various practice pitches. This evidence seeks to demonstrate that the usage of the land let to the Rugby Club is different in nature (to the extent that it occurs at all) to that occurring on other

parts of the Rec. It states that any public usage of that land is limited to access across the land as if in the nature of a footpath; and that any public access to the pitch or the stands out of season or other than on match days has been deterred by club officers and employees.

Response

20. Mr. Sparrow responded to these objections on 1st. April 2013. The letter is lengthy, and so I summarise its material parts.

- (1) The terms of the 1956 conveyance cannot prevent the land from gaining TVG status, as the land should have acquired TVG status prior to 1956;
- (2) The trust established by the 1956 conveyance in any event requires the Trustee to retain the land as open space for the benefit of the citizens of Bath.
- (3) The decisions taken by the Trustee and/or the Charity Commissioners since a ruling by Hart J. as to the meaning and effect of the covenants in the 1956 conveyance⁵ have been illegal or contrary to the terms of the Court's judgment;
- (4) The construction of the Leisure Centre, the usage of the land by Bath Rugby Club as a professional organisation, and the construction of spectator stands⁶ were all illegal acts, contrary to the terms of the charitable trust set up under the 1956 conveyance.
- (5) The restriction of use of the land against the public on the match days is also illegal.

⁵ *BANES v. A-G* [2002] 5 ITELR 274

⁶ I understand this not to refer to the original West stand, or to the original clubhouse. – Counter response, para. 8r,

- (6) The intermittent closure of the land for example at night time is not inconsistent with usage by the public of the land 'as of right'. It is instead consistent with a desire to prevent vandalism and inappropriate usage.
- (7) The usage of the Leisure Centre is not permissive; it is rather usage coupled with payment to compensate for the cost of running the centre. Such payment falls within the terms of the 1956 conveyance. The building is open to use by the public.
- (8) Usage of the croquet and tennis pitches amounts to usage by the public because although the clubs control entry on to and usage of those pitches, they are open to new members and those members may be inhabitants of the City of Bath.
- (9) Mr. Sparrow appears to accept that there has been no factual qualifying use of the land subject to the Rugby Club's lease since 1996⁷

21. Mr. Sparrow has also sought to amend the plan annexed to his application to exclude the land owned by Seasons Holidays PLC.

22. Mr. Sparrow has raised three further matters that he asserts are relevant and should be taken into account in determining the application. First, he states that the Trustee and/or the Charity Commissioners have presently proposed a scheme for the sale, leasing and/or development of the land, which he suggests would be contrary to the terms of the 1956 conveyance. Secondly, he asserts that BANES are wrongfully seeking to have the Recreation Ground designated as a development area. This is a reason why BANES should have no part in determining the TVG

⁷ See Section 8[s][u][y][gg]

application. Thirdly he has referred to a circular issued by the CEO of Bath Rugby Club⁸ to certain residents of the vicinity which is said to ask for a positive or negative response as to whether the recipient supported a further attempt to make application to the High Court. This was said to be intimidatory behaviour causing 'upset, fear, disgust and general concerns amongst the small section of citizens contacted by unsolicited mail.'

Disposal of the Application

23. The 2007 Regulations⁹ govern the procedure for determining this application. They do not set out the procedure for resolving a dispute where the Authority considers that an application has been 'duly made'. It is not uncommon for the matter to be referred to an independent advisor to conduct a further hearing to resolve the dispute, and to give directions to all interested parties to provide for the efficient holding of an inquiry.

24. Such an inquiry would normally involve the hearing of evidence, and the resolution of disputed matters of fact. Where the dispute is a legal one, however, such a hearing may not be necessary. It may also not be necessary where the evidence is purely documentary, or where the Registration Authority is fairly of the view that the evidence does not realistically satisfy the statutory requirements. It is necessary first to consider what the inquiry has to decide, and then to consider whether the

⁸ I have not seen this document.

⁹ Commons (Registration of Town and Village Greens)(Interim Arrangements)(England) Regulations 2007/457

nature of the dispute requires a hearing; and if so, what is the appropriate form of hearing to direct.

Section 15 Commons Act 2006

25. Section 15 Commons Act 2006 provides that:

“(1)Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2)This subsection applies where—

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

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

26. It is important to bear in mind that this test is a purely factual test, which considers historical matters only. It is immaterial to the success or failure of an application whether it would, in the overall scheme of things be better for the community if the application succeeded, or for that matter if it failed. Indeed, a registration authority would be acting improperly if it allowed its consideration of the application to be coloured or swayed by such matters.

Land Ownership and Usage

27. By an Indenture dated 6th. April 1922 Captain Francis Forester conveyed the land to The Bath and County Recreation Ground Limited for a consideration of £6,050.

28. The Bath and County Recreation Ground Limited conveyed the land to The Mayor Aldermen and Citizens of the City of Bath by a conveyance of 1st. February 1956, for a consideration of £11,155. The habendum sets out the basis on which the Corporation was to hold the land:

"TO HOLD the same unto the Corporation in fee simple upon trust that the Corporation for ever hereafter shall manage let or allow the use with or without charge for the whole or any part or parts of the property hereby conveyed for the purpose of or in connection with games and sports of all kinds tournaments fetes shows exhibitions displays amusements entertainments or other activities of a like character and for no other purpose and shall maintain equip or lay out the same for or in connection with the purposes aforesaid as they shall think fit but so nevertheless that the Corporation shall not use the property hereby conveyed otherwise than as an open space and shall so manage let or allow the use of the same for the purposes aforesaid as shall secure its use principally for or in connection with the carrying on of games and sports of all kinds and shall not show any undue preference to or in favour of any particular game or sport or any particular person club body or organisation AND SUBJECT TO and with the benefit of the Leases ... the short particulars of which are set out in the Schedule hereto."

The Schedule included a Lease dated 17th. October 1933 of the Bath Football Ground to two gentlemen on behalf of the Bath Football Club. It is plain from the contract dated 2nd. January 1933 that the Bath Football Club was a rugby football club¹⁰.

29. On the 9th. January 1973 the Corporation and the Trustees of Bath Football Club executed a Surrender and Lease. This document surrendered the remaining term existing on the 1933 lease. It then granted a new lease of part of the Recreation

¹⁰ See clause 11.

Ground, being the part of the Rec historically used as a Rugby Football Ground, together with the West and North stands and the clubhouse¹¹. The demise of the land together with ancillary rights was for a term of 75 years from 1st. September 1972, at a rent of £475 per annum with a rent review every fifteen years. The lease contained covenants:

- against using the premises for any purpose other than for playing practising or watching the game of rugby football under the rules of the Rugby Football Union (cl. 4(2)).
- against the use of the Ground (other than the Clubhouse) for any other matches than Bath Football Club matches without the consent of the Corporation but such consent would not be unreasonably withheld (cl. 4(8)).

30. In about 1975 BANES constructed the Leisure Centre on the Southern part of the land.

31. It appears that Bath City Council granted Bath Football Club leases of the rugby football ground on 23rd. May 1995 and 25th. March 1996¹². I have not been supplied with copies of these leases. Mr. Nicholas Blofeld states that Mr. Sparrow has them¹³. Mr. Sparrow for his part has complained that no copies of any post 1973 leases to Bath Rugby plc have been made available by the Trustees despite a number of

¹¹ Which appears to have been a chattel if it was not a tenant's fixture (see cl.5(a)(b)).

¹² Evidence of Nicholas Blofeld, para. 7.

¹³ Witness statement, para. 8.

requests on the basis that they are commercially sensitive documents¹⁴. For the reasons I set out below, I have no reason to believe that the content of these leases is of relevance to the application; their existence is common ground between the parties, although their legal relevance to this application is not. Bath Rugby plc is the assignee of the leases¹⁵.

32. Legal title to the freehold land passed to BANES in 1996. Bath had become assimilated in Avon County Council as part of the 1974 local government re-organisation, although I understand that legal ownership of the land passed to Bath City Council. In 1996 a further re-organisation resulted in Bath becoming a part of BANES¹⁶ and legal title to the freehold of the land passed to BANES, who presently hold it.

33. In 2002 BANES entered into an express tenancy at will with Bath Rugby plc of an additional part of the Rec, some 555 square metres in area. Unfortunately the plan noted as being¹⁷ annexed to the copy of the document supplied by Mr. Sparrow has not been supplied. The extent of the land was sufficient to (and intended to) permit the siting of a metal stand adjacent to the rugby pitch on its Eastern side. A manuscript note on the front of the document states 'Terminated 14.05.03'. I

¹⁴ Application, Appendix 8. In the particular passage Mr. Sparrow suggests that no such leases have been made available to the Trustees. I assume that is a slip, as the Trustees as parties to any such lease (or their successor in title) should have them anyway.

¹⁵ Judgment of Hart J. in BANES v. A-G [2002] 5 ITELR 274 para [5]

¹⁶ The devolution is set out in BANES v. A-G para. [3].

¹⁷ See clause 1.4 of the tenancy at will

understand that since then the Trustee has granted the Rugby Club an annual lease of that land so as to enable the East stand to be erected¹⁸.

34. In 2002 BANES¹⁹ brought proceedings against the Attorney General seeking declaratory relief as to the basis on which it held the land pursuant to the 1956 conveyance. In an illuminating judgment, Hart J. held that BANES as successors to Bath Corporation held the land on charitable trusts, although it is plain from the judgment that his Lordship found the analysis uncertain²⁰. His Lordship also found, although again not without some hesitation, that the statutory power that permitted Bath Corporation to declare such a trust was to be found in section 4(4) Physical Training and Recreation Act 1937²¹:

“A local authority may contribute towards expenses incurred by another local authority, whether under this or any other Act, or by a voluntary organisation, in providing or maintaining within the area of the contributing authority, or on a site where it will benefit any of the inhabitants of that area, anything mentioned in subsection (1) of this section, or a swimming bath or bathing place.”

Section 4(1) gives a local authority power, inter alia, to acquire, lay out and maintain land for the purpose of gymnasiums, playing fields, holiday camps etc., and to let them at a nominal or other rent for any such purpose.

35. What prompted the application to the Court was a proposal for:

¹⁸ Witness statement of Mr. Nicholas Blofeld para. 5.

¹⁹ Acting not as registration authority but simply as the owner of the land.

²⁰ See the conclusion at [47] – [48]

²¹ Judgment para. [55]

'a redevelopment of the recreation ground so as to provide, inter alia, a modern stadium in which professional rugby and association football can be played and the creation, partly on the site of the recreation ground and partly on the adjoining land owned by the claimant of a new Sports and Leisure Centre with conference facilities. These proposals, first given publicity in March 2000, raise a wide range of sensitive planning, environmental and traffic issues. They have excited considerable local opposition, particularly from residents in the immediate locality who have already been troubled in various ways by the perceived consequences of the commercial use of that part of the Recreation ground now let to Bath Rugby plc...under a 75 year lease granted in 1995.'²²

The learned judge made it plain that he was not deciding whether the Council's historic use of the land, or the 1995 lease, were compatible with the charitable trusts²³.

36. According to Mr. Sparrow's addendum to his application²⁴ "Throughout the year the rugby pitch and all the permanent stands on three sides of the pitch are out of bounds, unless permission is given by the Rugby Club and fees paid to them and not the Trust. From September to May a 'temporary' stand is erected on the fourth side of the pitch, which has the effect of bisecting the Recreation Ground and making it inaccessible to all but employees of the Rugby Club."

Other Uses

²² Judgment para. [5].

²³ At para. [49].

²⁴ Dated 15th. December 2012

37. Both in the application and in his addendum Mr. Sparrow has set out the identity of the other occupiers/leaseholders of parts of the Rec, as he understands the position.

I list those entities as follows:

- Bath Croquet Club – ‘an amateur club with a 10 year lease which expires in 2011 and is now renewed on an annual basis including a few parking spaces’
- Bath Drama Society – ‘which have a permanent lease on one small area and their own access gate’
- Whitefield Volleyball Club – ‘which have an annually renewable lease for their annual event...providing it does not clash with other events organised by the Rugby Club (i.e. professional cricket)’
- Bath Spa Tennis Club – ‘who now annually renew their lease for three grass tennis courts which include a few parking spaces’.
- Southdown Tennis Club – ‘with a lease for two grass courts’
- Bath Leisure Centre, run as a not for profit organisation by Aquaterra.

Discussion

38. Some of the assertions made by the Applicant and the Objectors do not take the decision that BANES must make any further to a conclusion. The three matters referred to by Mr. Sparrow in his response²⁵ are in my view of no relevance to the issues to be determined:

- (1) The plans for the Trustee or the Charity Commissioners as to the future use of the land cannot affect the extent, nature and quality of the use prior to the date

See para. 22 herein.

of the application, which is the scope of the test under section 15 Commons Act 2006

(2) The suggestion that BANES should not consider the application I have dealt with above. In my view the steps taken by BANES thus far are correct and it is fully entitled and indeed obliged to consider the application.

(3) Lastly I am in no position to conclude as to whether apparently lawful circulars distributed by Bath Rugby are intimidatory or otherwise. But on the basis of the information supplied Mr. Sparrow there is in my view no reasonable ground for suggesting that these circulars have had any material effect on the application.

39. Equally, the suggestion that the application should necessarily be dismissed insofar as it relates to buildings is not correct. There is nothing in the wording or structure of the Act to indicate that such rights cannot accrue in respect of a built structure, although the circumstances in which a regulated and enclosed space could be used 'as of right' for twenty years must be rare indeed.

40. Next, I consider Mr. Sparrow's suggestion that BANES should only have regard to usage, certainly as regards the Rugby Ground, and possibly as regards the land as a whole up to the date of the 1956 conveyance; or from 1996 when game played at the Rec became professional. As I understand it the argument here is that because the letting or usage was unlawful (in breach of the term of the charitable trust) and that as a consequence the public were prevented from using part of the Rec for lawful sports and pastimes, it would frustrate the intention of Parliament if a claim under section 15 could be defeated by such acts. Therefore section 15 should be interpreted so as to exclude

the practical consequences of such wrongful acts. Mr. Sparrow has not set out his reasoning in this way, but it seems to me that this is the legal argument that he puts forward.

41. Whilst I understand why Mr. Sparrow would come to this view, in my view it is not a correct analysis of how section 15 Commons Act 2006 operates. I come to this conclusion for the following reasons:

- Any town or village green that was not the subject of registration under the Commons Registration Act 1965 by 1970 was deemed not to be a town or village green – see section 1(2)(b) *Ibid.*
- Thereafter, a town or village green would only come into being if there were twenty years recreational usage continuing up until the date of application – see sections 13, 22 *Ibid.* and Oxfordshire County Council v. Oxford City Council [2006] 2 AC 674 at [44] per Lord Hoffmann.
- It follows that even if under the 1965 Act a Registration Authority should have considered registration of the Rec as a TVG by reason of 20 years usage prior to 1970, as no application to register had been made by then, Parliament considered that the Rec was certainly not a TVG.
- It is unlikely that Parliament intended, in enacting section 15 of the Commons Act 2006, that land that had formerly been deemed not to be TVGs should be reinvestigated by reference to their pre- 1970 historic usage. There is no indication in the Act that it was intended to have this effect, save in respect of matters falling within certain specified circumstances (which this application does not).

- By way of contrast, Parliament has made provision for certain periods to be ignored in assessing the twenty year period. Those periods include periods of usage by permission (see section 15(7)(b)); and where usage is precluded by statute (see section 15(6)). The Act does not permit periods of wrongful or unlawful exclusion on the part of the landowner to be ignored.
- In the present case, an application being made under section 15(2), the qualifying activity must be demonstrated to occur during the twenty years prior to the date of the application. If it does, then the land should be registered as a TVG; if it does not, it should not. This is what the statute requires.
- In order to qualify, usage must be 'as of right'. Usage which is contentious is not 'as of right' (see Newnham v. Willison (1987) 56 P&CR 8). It does not matter that the opposition to the usage is itself, in some manner, unlawful. It is sufficient that the opposition exists. It follows therefore that Parliament intended Registration Authorities to have regard to periods of time during which the possessor of the land prevented public usage, even if that prohibition was itself unlawful.

42. There are a number of issues raised that may not be readily resolvable on the documentation. These are:

- Whether the use of part of the land for restricted recreation (e.g. by the creation of a beer tent) impliedly indicates that use of the remainder of the land at other times is by the license of the landowner. This was considered in R v. Somerset CC oao Mann [2012] EWHC B14 (Admin). HHJ Robert Owen QC sitting as a High Court Judge refused to overturn a factual finding by an Authority that

intermittent licensed use of part of the application land gave rise to the inference of a license in respect of public recreational use over the remaining parts of the land at other times. However, whether such a license should be inferred at all in any particular case will normally require consideration of all of the evidence.

- Whether recreational usage of the land has been by a significant number of the inhabitants of the locality. This test is not satisfied merely by comparing the number who give evidence of usage with the total number of inhabitants in the locality, but is a nuanced assessment of fact – see Sullivan J. in R v. Staffordshire County Council ex p. McAlpine [2002] 2 PLR 1 at 15-16. Where there is a serious dispute between the Applicant and Objectors, it will normally be necessary to adduce evidence at an informal inquiry, so that the evidence relied upon by both sides could be properly challenged.
- Whether recreational usage of the land is in the nature of highway, rather than village green usage. Again, the boundary between the two types of usage may be indistinct, and detailed examination of the evidence may be necessary before a conclusion can be drawn.

43. The issue arises as to whether the application can be resolved on the present documentation, without the need for such a further inquiry. Any Applicant is under a burden to prove each element of the statutory test set out in section 15 (see R v. Suffolk County Council ex p. Steed [1997] 1 EGLR 131). So the matter can be put in this way – is there any particular aspect of the Application on which it appears that it must necessarily fail? If the answer is 'yes', then the Authority ought to dismiss the

application now, subject to the Applicant being able to remedy the difficulty either by the production of evidence, or by submission, or by amendment.

44. There appear to be three discrete issues that might be susceptible to such analysis.

These are:

- (1) Whether use by the public of the land for informal recreation was use 'by right' and not 'as of right'?
- (2) Whether use by the public of land that is in the sole control of another – and I refer here to the tennis courts, the leisure centre and other areas – is permissive and hence not 'as of right'?
- (3) Whether there is any relevant recreational use throughout the relevant period of the land demised to Bath Rugby?

It is also necessary to stand back and consider the merits of the application in the light of the proper consideration of these issues.

Use of the land 'by right'

45. Where the use of land that is relied upon to constitute a TVG is use that the public have an existing right in law to perform, then that use is not 'as of right' as required by section 15 Commons Act 2006, but (in contrast) 'by right'. In R. v Sunderland County Council ex p. Beresford [2004] 1 AC 889 the House of Lords considered, *obiter*, that the existence of such a right would preclude usage consistent with it as being user 'as of right' - see Lord Bingham at paras. [3] & [9]; Lord Scott at para. [30]; Lord Rodger at para. 62; and Lord Walker at para. [86] onwards.

46. Since Beresford the Court of Appeal has considered the existence of the 'by right' defence in R v. North Yorkshire County Council oao Barkas [2012] EWCA Civ. 1373. There, the Court held that land held by a landowner pursuant to section 80(1) Housing Act 1936 was held for the purposes of public recreation, and that public recreational use of the land was 'by right' and not 'as of right'. Most recently, in R v. East Sussex County Council oao Newhaven Port and Properties Limited [2013] EWCA Civ 213 the Court of Appeal has again accepted, *obiter*,²⁶ that use 'by right' is inconsistent with use 'as of right' (per Richards LJ at [82] to [85]).

47. I understand that permission to appeal to the Supreme Court has been sought in Barkas and granted²⁷, but I am not aware of the basis that it would be sought to argue such an appeal. I therefore advise the Authority that as the law presently stands, where recreational usage of land by the public is referable to an existing right so to do, then that usage must be treated as being 'by right' and not 'as of right'.

The position of a charitable trust

48. None of the authorities that I have referred to above were cases involving the existence of a charitable trust. There is no present binding legal authority that establishes that a public right of recreation arising from a charitable trust is such a right that will prevent use from being 'as of right'. A charitable trust differs from a proprietary right, or a statutory right, in that in the former case (i.e. a proprietary

²⁶ That is, in a part of the decision that is not binding on other courts. It was not binding in Barkas because the parties agreed that the 'by right' defence did exist in law.

²⁷ UKSC 2013/0035, permission granted 3rd. May 2013

right) the individual member of the public may enforce his right; and in the latter case (i.e. a statutory right) he may enforce it (by judicial review) if he has sufficient standing, or interest in the right, to do so. In the case of a charitable trust members of the benefitted class are not beneficiaries of the right. Indeed, there are no 'beneficiaries' in the conventional sense that that word is used when referring to a trust. Equally, those members of the public who would benefit from it cannot enforce it (see Hauxwell v. Barton-on-Humber UDC [1974] Ch 432). There is a right to bring 'charity proceedings' by a person interested, if authorised by the Charity Commission (see section 33 Charities Act 1993). The right to enforce a charitable trust is vested in Crown, acting through the Attorney-General – see A-G. v. Cocke [1988] Ch 414 at 419 per Harman J.

49. Does this make a difference? It seems to me that the basis of the 'by right' defence can be put in either of two ways. First, that where the user is entitled to carry out his recreational activities on the land, the freeholder is unable to prevent him from doing so. The basis of the acquisition of rights by long usage is acquiescence by the landowner in long-asserted rights (see R v. Oxfordshire County Council ex p. Sunningwell Parish Council [2000] 1 AC 335 per Lord Hoffmann at 351 B-D; 353A-B). Where the user has his right, it would not only be pointless, it would be illegal for the landowner or possessor of the land to intervene to prevent it. In those circumstances, for such non-intervention to result in the creation of a TVG would be absurd. All parks would become TVGs, and that would not be a rational view of the intention of Parliament. The alternative way of putting it is that the quality of use 'as of right' is that it demonstrates the assertion of the claimed right; and a landowner

would not perceive such use to be the assertion of a right of a TVG against him, because he would assume, understandably, that the public activity was being carried on pursuant to that existing and acknowledged right. As he would have no rational reason to intervene to prevent usage, then his failure to do so would not indicate or evidence the existence of any further TVG type right, beyond the existing right.

50. Whichever way the 'by right' defence is put, in my view it does not matter that the right asserted arises under a charitable trust. In such a case the right of the public to carry out lawful sports and pastimes, if interfered with, can be enforced by the Attorney General. The interference would still be a wrong. The public would, in that broad sense, have the 'right' to be there. It would be a very formalistic approach to consider that Parliament intended use within charitable trusts to give rise to TVG status because the rights of the public could only be vindicated by a third party. There is support for this view in the approach taken to the statutory 'right' of the public to enter upon land that is held as public open space under section 164 Public Health Act 1875 – see Hall v. Beckenham Corporation [1949] 1 KB 716 at 728 per Finnemore J., as approved by Lord Walker in Beresford (*supra*) at [86]. The statutory right is not a proprietary right, but a right not to be treated as or considered as a trespasser, and appears therefore to be analogous to the rights arising under a charitable trust. I therefore advise the Authority that where the activities relied upon are justified by the terms of a charitable trust, then those activities will not amount to use 'as of right' within section 15.

Do the public have a right to use the land for recreation?

51. In BANES v. A-G Hart J. concluded that the 1956 conveyance did create an effective charitable trust of the land. The conveyance provides that the land shall be held:

“.....for the purpose of or in connection with games and sports of all kinds tournaments fetes shows exhibitions displays amusements entertainments or other activities of a like character and for no other purpose and shall maintain equip or lay out the same for or in connection with the purposes aforesaid as they shall think fit but so nevertheless that the Corporation shall not use the property hereby conveyed otherwise than as an open space.....”

There is in my view no doubt that the purposes declared by the conveyance impose a duty on the Trustee to provide the land for the public recreation specified, subject to a power to manage the use of the land. The next question, therefore, is whether the use made of the land by the public insofar as it falls within the description of 'lawful sports and pastimes' falls within the scope of the charitable purpose. If it does, it is 'by right'; if not, then it may be 'as of right'.

52. The charitable purpose provision in the conveyance can be divided into two parts.

The second is I think a little easier to construe than the first. The second part is: “tournaments fetes shows exhibitions displays amusements entertainments or other activities of a like character”. These are all references to more or less formal performances on the land. Even an 'amusement' requires a degree of public interaction. 'Games and sports of all kinds' is a wide definition of recreational activity, and is capable of including informal as well as formal games and sports. However there is a limit to the sort of activity that falls within its scope. It need not

be competitive itself, but as an activity it must be competitive in some form. Thus, solitary running is a 'sport', on the footing that competitive running is a sport. A game must also be competitive, although the competition may be solitary – against oneself. It must have some rules.

53. In these circumstances it seems to me to be readily apparent that the vast majority of the activities referred to in the questionnaires provided by the Applicant's witnesses are 'games and sports'. Any form of team game, however informal, would be 'by right'. Kite flying would also be a sport. Fetes and community celebrations would fall within the second part of the charitable purpose.

54. In Sunningwell the House of Lords held that 'lawful sports and pastimes' extended to very informal recreation, such as dog walking (see per Lord Hoffmann at 357B-E). The various activities referred to in the Open Space Society questionnaires supplied in support of the application refer to some informal recreational usages that do not fall within the scope of the charitable purposes. It is not possible to quantify with precision the usage from the documentation that I have, although it is fair to say that my general impression of the evidence that I have is that it is not substantial. Question 23 of the evidence questionnaires has not been filled in so as to give any impression of the quantity or frequency of the various activities at all. I have put the evidence of usage into a table which I annexe to this Advice as Annex A.

55. In my view it follows from the above analysis that where members of the public have carried out lawful sports and pastimes on the land where that land is not under

the control of the Trustee, then such usage is usage 'by right' and not 'as of right'. I would add that this is consistent with the approach adopted by Mr. Sparrow. Mr. Sparrow asserts that the effect of the 1956 conveyance is that the public should have the right to carry out lawful sports and pastimes on the land. It seems to me that his analysis is correct; the 1956 conveyance did entitle the public to carry out such activities on the land. However the consequence of this is that those activities were 'by right' and hence not 'as of right'. I next consider the effect of the existence of third party rights of possession of the land, and in particular Bath Rugby.

Land in the Possession or Occupation of third parties

56. The land is in the possession or occupation of various third parties. First, the Leisure Centre is run by Aquaterra, and usage of the Leisure Centre is controlled by Aquaterra, to the extent of permitting members of the public to use the Leisure Centre and charging for such use. Secondly, there are other bodies, a tennis and a croquet club, that occupy specified and demarcated areas of land. Access to and use of those areas of land appears to be limited to members of the various clubs or those permitted by the clubs to use the land on an *ad hoc* basis. Thirdly Bath Rugby plc occupies a significant part of the land under one or more tenancies.

The Leisure Centre

57. Use by the public of the Leisure Centre is at first glance a classic example of use by way of a license or permission, and hence for that reason is not use 'as of right'. I have no reason to consider that the manner in which the public use the Leisure Centre is not the conventional one, namely that the management of the Leisure

Centre (let to Aquaterra) is contacted by the user who asks to use part of its facilities, and if Aquaterra agrees, does so. The license will almost certainly be a contractual license, which may contain provisions for payment, and otherwise will contain terms as to conduct in respect of the use of the facilities. But even if there are no specific obligations imposed on the public, the use would be pursuant to a license. The user would not be a trespasser because, although he was entering a regulated and controlled environment, he was doing so with the consent of Aquaterra.

58. Mr. Sparrow's response is a subtle one: that members of the public do not use the Leisure Facility by reason of the consent of the Trustee, but because of their entitlement or right arising under the 1956 conveyance. I doubt that this is right. If Aquaterra operate the Leisure Centre under a lease from BANES (even a not-for-profit lease) then unless Aquaterra is itself bound by the terms of the trust²⁸, or it has so committed itself to act pursuant to a covenant in the lease or other agreement, Aquaterra would be free to decline to permit usage of the Leisure Centre as it saw fit. But even if Aquaterra was bound by the terms of the trust, and Mr. Sparrow's analysis were correct, then usage would be 'by right', and for the reasons I have set out above would not be 'as of right'.

Croquet Pitches & Tennis Courts

²⁸ Pursuant to the provisions of the Land Charges Act 1972, or the Land Registration Act 1925 or 2002 depending on whether title to the land was registered when the lease was created.

59. The Croquet Pitch and Tennis Courts are I understand in a slightly different position.

I do not know the basis on which they occupy their respective premises²⁹. But it appears to be plain from the evidence supplied that the only persons who use their designated areas or pitches for sport are those who do so pursuant to their regulation and with their consent. In my opinion such users are either licensees or (if Mr. Sparrow's contention is correct) users of the land 'by right'. In each case they do not use the land 'as of right'.

The Rugby Club

60. I first consider whether the 'by right' defence can operate as regards the land that is let to the club for the duration of the lease, assuming the lease to be valid. I am of the view that it does not. Although the public may have a right to carry out sports and games as against the freeholder, it does not have such a right as against the leaseholder unless the leaseholder is itself bound by the terms of the charitable trust. If the leaseholder is bound by the charitable trust, then, again, it would follow that any public use of the land so demised in a manner authorised by the charitable trust would be 'by right' and not 'as of right'.

61. However, the evidence that I have been supplied with, and Mr. Sparrow's application, indicates that the land so demised (and this would appear to extend to the area of land demised for the East Stand) has not been used for public sports and games. The only usage has been pursuant to Bath Rugby's permission (in which case the users are licensees and the use is permissive, and not 'as of right') or use for the

²⁹ The suggestion from Mr. Sparrow is that they are lessees, but the Council has not given particulars of the occupation.

purposes of footpath type access along the riverside. In my view, that sort of access is plainly usage in the nature of a footpath³⁰, and not usage that is referable to use of land as a TVG.

Usage over the Rec as a whole

62. In some circumstances, the fact that all of the land over which a TVG is asserted is not directly used for lawful sports and pastimes will not prevent those other parts from being registered. One example, given by Lord Hoffmann in Oxford City Council v. Oxfordshire County Council (*supra*) at [67] is that of ornamental flower beds in a green. Although there is no recreational activity on the flower beds, the recreation that takes place occurs by reference to those flower beds; they are part of the recreational activity.

63. It is a question of fact and degree whether areas of land that are not used for lawful sports and pastimes are to be regarded as part of a single TVG. In the present case the various separated areas of land – the Rugby pitch and stadia; the Leisure Centre; the tennis courts and croquet pitches; are separate and distinct areas that are treated differently as far as their usage is concerned to the remainder of the Rec. As those areas are certainly not used 'as of right' for lawful sports and pastimes, I advise the Authority that even if the remainder of the Rec were to be registered as a TVG, those areas should be omitted from registration.

³⁰ Indeed the route is shown at Mr. Sparrow's Appendix 9.

Assessment of qualifying usage

64. It is more convenient to consider what is not qualifying usage under the evidence supplied, and then to assess what is left. The following is not qualifying usage:

- (1) Usage of the footpath alongside the River Avon;
- (2) Usage of the Rugby pitch and stadia, leisure centre, tennis or croquet pitches;
- (3) Use of any part of the Rec for organised team games;
- (4) Use of any part of the Rec for informal games;
- (5) Any informal use of the Rec ancillary to games and sports.
- (6) Any performance or entertainment on the Rec, including bonfire parties.

65. The only usages that are referred to in evidence that might qualify as lawful sports and pastimes are:

- Strolling with family and friends/walking (Mr. Greenwood; Ms. Kilner; Mr. & Mrs. Deacon; Mr. White)
- Drawing and painting (Mr. Greenwood; Ms. Kilner; Mr. White)
- Picking blackberries (Mr. Greenwood; Ms. Kilner; Mr. & Mrs. Deacon).

66. Of these I doubt whether picking blackberries is anything other than trivial, and is not of itself a sport or pastime. It may however be something that occurs whilst there is general recreation going on.

67. The applicable test is whether there has been usage of the Rec for lawful sports and pastimes by a significant number of the inhabitants of Bath, which is the asserted locality. There is no mathematical test or yardstick to satisfy, but the usage has to

be sufficient to demonstrate (to the reasonable landowner) that the land is in general use by the local community³¹. The difficulty arises where, as here, land is substantially used by the local community for uses that are 'by right', the application must succeed or fail by reference to such further recreational usage as can be established that is not 'by right', but is 'as of right'.

68. Bearing in mind that the burden lies on the Applicant to establish his case, even having regard to the possibility of drawing inferences as to usage, it is my view that the extremely limited evidence adduced in support of the application does not establish even an arguable case of use of the Rec as TVG by the inhabitants of Bath which goes beyond local usage of this land as a ground for public events, games, sport and recreation. Rather, the evidence that has been adduced demonstrates that save to the extent of the land demised to Bath Rugby, the land has been used by locals as a sports ground, pursuant to the terms of the 1956 conveyance.

69. Should the matter be referred to an inquiry? On the evidence so far adduced it appears to me to be of no utility. I am of the view that the Authority should determine the application on the evidence before it, and that plainly fails to establish the statutory criteria.

70. Should a decision be made now? As I have indicated, Barkas is due to be heard on appeal by the Supreme Court. The Authority may therefore decide not to make a decision until after that appeal has been heard. However, as I have said above I am

³¹ See Leeds Group plc v. Leeds City Council [2011] 2 WLR 1010 at [32] per Sullivan LJ; R v. Redcar and Cleveland BC ex p. Lewis [2010] AC 70.

presently unaware of the scope of the appeal; and I would not suppose that any appeal would be heard for a year or so. The Applicant in that case (who was the appellant to the Court of Appeal) has not argued that the 'by right' defence is simply inapplicable, and whilst the Supreme Court is not bound by concessions of law made in lower courts, it does render it unlikely that some wholesale change in the law is being argued. My advice is that the Authority should make its decision on the basis of the law as it presently exists. If prior to the making of that decision I become aware of any more relevant information regarding the appeal (and I have made enquiries of the parties involved), I will advise those instructing me.

Advice

71. I therefore advise the Registration Authority that it should dismiss the Application for Registration of The Rec, Bath as a Town or Village Green pursuant to section 15 Commons Act 2006 on the following grounds:
 - (1) That usage of The Rec for lawful sports and pastimes 'as of right' has not been by a significant number of the inhabitants of Bath;
 - (2) That usage of the land demised to Bath Rugby plc, and of the Leisure Centre and the tennis and Croquet Courts has not been 'as of right'.
72. This advice should be supplied to the Applicant and the Objectors, who should have an opportunity of commenting upon it before the Authority makes any final decision.

73. If I can assist those instructing me in any respect, they should not hesitate to contact me in chambers.

Leslie Blohm QC

10th. June 2013

St. John's Chambers,

101 Victoria Street,

Bristol,

BS1 6PU.

J Sparrow's response to Mr. Leslie Blohm QC's advice to the B&NES Registration Authority dated 10th June 2013.

Section 1. Do these instructions summarise the brief given to you by B&NES Registration Authority? They do not include any instructions either to the applicants or the objectors as to the form of any additional information that may be required.

Section 2. The application was based on the original conveyance to the Mayor, Aldermen and citizens of Bath in the conveyance of 1956 with associated covenants. **As owners of the Recreation Ground, through the conveyance, the Citizens of Bath expect full 'as of right' access to their own property at all times. This covers the whole period from 1956 to date and not just the last 20 years. Any prevention of this right must only have been via the illegal actions of various Councils, various Trustees and illegal operations on the Recreation Ground perpetrated by these same bodies. If you do not accept this interpretation of English Law then the whole of the conveyancing process in this country is suspect. As owners of property we all demand open 'As of right' access to our own gardens! The Recreation Ground is effectively the community garden of the Bath Citizens as provided by the conveyance of 1956.**

Section 3. The land is described accurately but **the occupation by the professional and very commercial Rugby Club as their home Stadium is illegal. This is not just my view but that of the B&NES Council, the current and past Trustees of the Recreation Ground and the Charity Commission!** For the past 12 years they have been unsuccessfully attempting to make it legal since the high Court ruling in 2002 and the Charity Commission setting up the rules of the Charity. **So far all they have done is make it more illegal if such a concept is possible.**

Section 4. **As stated above the use by the Rugby Club is illegal. The Leisure centre too is illegal as agreed by all the parties mentioned above.** The Croquet Club lawns and the Tennis courts are marked out and protected from damage and are subject to **legal leases set up now by the Trustees but originally by the Council of the time.** All these leases should contain clauses which identify the covenants which apply to the whole of the Recreation Ground and if they do not then even their legality must be suspect. 'As of right' access to these areas is possible but sensible and considerate Bath Citizens would not wish to exercise this right whilst the games were being played. The area marked for Lacrosse and Volleyball is not permanent but only used when annual tournaments are played.

The main area marked for cricket has been used for many years both for local matches and for Somerset CCC. Only in recent months has it been demoted to the 'Junior Pitch', by the current Trustees despite it being used annually for county and international cricket during the annual cricket festival for 100 years. See the book by Gavin Turner 'A Century at Bath, over one hundred years of Somerset County Cricket at the Rec'. During this festival period of one week per year the cricket organizers used the pavilion near the main entrance in William Street, put up several marquees and placed seats all around the boundary. **This was all perfectly legal and within the 1956 rules and did not**

prevent general access for more than the period when matches were being played. This is quite different to the Rugby situation where access is denied illegally in total, for the months of September to May and to the pitch area and permanent stands throughout the year, despite matches being played only for a few days per annum.

The alternative pitch created in the past two years, in the area of the Rugby Pitch, has been described by Somerset CCC as not fit for purpose! **Incidentally although the annual cricket was defined legitimately as a festival for many years the players were mostly gentleman and thus amateurs so it was acceptable on both counts.** Again the considerate residents and those enjoying the matches would not interfere with the play by exercising their 'as of right' access but they were entitled to do so.

Section 5. The significant fact about the seven witness statements is that they cover an extensive period and not just the past 20 years when there has been serious abuse of how the Recreation Ground is used. The sixteen letters of support were unsolicited because the application when posted did not request letters of support only of objection. This I queried at the time but I was told it was standard practice although clearly biased! Since then a number of other letters or emails have been sent in support some identifying use by the residents. I attach these as further evidence of support. Of course one only has to walk by or in the Recreation Ground, especially at weekends, to see many other Bath Citizens enjoying their green lung and **I doubt any have sought permission from anyone.** Any who have dared to walk on or near the Rugby pitch have of course been illegally hounded off!
It should not have been necessary for Bath Citizens to write witness statements at all since they already have 'as of right' access from the 1956 conveyance.

Section 6 **I have already mentioned that only asking for objections is very biased and of course it was a very small number.**

Section 7. **You list the 7 objectors but with few exceptions they relied on the illegal presence of the Rugby Club and the Leisure centre to support their views.** There was no objection from B&NES itself only from two officers of the Council who described themselves as operating as Advisors to the Trust. **This shows only too clearly that there is really no separation between B&NES and the Trustees.** The Trustees are always drawn from the seven councillors who effectively control council activities and they are advised and get most of their work done by the B&NES advisors. There is no independence of Trustees as there should be and they do not act in the interest of the owners of the Recreation Ground, the Bath Citizens, as they should. **They act more like employees of the Rugby Club!**

Section 8. **The Rugby Club objection clearly showed all the illegal use that is made by the Rugby Club, the main perpetrator preventing 'as of right' access** and in several instances they openly admitted to driving off legitimate residents in one case a two year old child! Running commercial ventures as a trade or profession is not permitted by the Recreation Ground rules.

Section 9. **B&NES were not objectors in their own right.** It was officers acting in their capacity as advisors to the Trustees who raised the objection. Because of the closeness between the two this obviously caused you some confusion. **I still believe that B&NES should not have been involved in the decision making process.**

Section 10. I have to accept what you say but my experience over several years with this Council still makes me very suspicious. **I would expect B&NES to accept your final recommendation when you have taken all the new evidence into account** and properly examined all the late information you were not provided with by the Council.

Section 11. I believe that I responded to each objector in full and only used repetition because I expected each objector to see a copy of my response to their own objection.

Section 12. I dealt with all these points.

Section 13. I agreed my map was slightly incorrect and I corrected it in my response. This really leaves only six objectors.

Section 14. The land on which the Leisure Centre is built is part of the Recreation Ground and remains part of the Trust. The other points I dealt with in full. **The Leisure Centre building is illegal.**

Section 15. I dealt with all these points fully. **I reiterate that Bath Citizens have all had 'as of right' access since 1956.**

Section 16. This gets us into the area of future development, which must conform to the rules and provide 'as of right' access for the Bath Citizens. **I believe you should have examined the proposals now contained in the extra information I am providing BEFORE making your preliminary recommendation to B&NES.**

Section 17. All the points made here were fully covered in my response to the objection and clearly illustrate how illegally the trustees have been operating since 2002 when the trust was set up. **The Trustees and the Council ignored the conveyancing and covenants of 1956 and the Charity Commission rules of 2002.** The 1956 documentation gave Bath Citizens, the beneficiaries, full 'as of right' access whilst other members of the public can use the facilities and thus have 'by right' access.

Section 18. **All the prevention of 'as of right' access to Bath Citizens by the Rugby club is illegal. The trustees, who have never signed a valid lease because they cannot, have colluded with the rugby club in this illegal prevention of 'as of right' access!**

No where has 'a significant number' been defined? Even if only one owner has exercised his/her right to 'as of right' access this could be termed significant. Of course in practice many more citizens have enjoyed 'as of right' access. **All Bath Citizens are entitled to exercise their 'as of right' access whenever they choose but of course they will respect usage by other legal users and not interfere with their recreational activities.**

Section 19. I dealt with the 855+ pages of this objection at length but not with an equivalent number of pages. **Most amounted to job descriptions and a confirmation that they were not obeying the rules set out in the 1956 conveyance and the 2002 Charity conditions.** The only stand they now take down each May is the East Stand. The remaining so called temporary stands remain throughout the year along with an ugly, from the rear, large TV screen. **The extra usage that they make outside the area they illegally lease only goes to show with what contempt the Rugby Club hold English Law and Charitable Trust conditions.**

There is a public footpath from the main entrance in William Street to the exit at the River Avon side through the Rugby club area which they close off illegally on match days.

Section 20. If you felt my response was lengthy what did you think of the Rugby one as you did not comment on its length? My response was fully addressing all the points made by the objectors. I regretted the duplication but this was largely because the objectors were making the same points over

and over again and each objector deserved its own response. The Rugby Club did not need to duplicate so much as they were only a single objector.

My point was that if TVG's had existed in 1956 then the conveyance should have been sufficient in its own right to get it registered.

Point 9 is that there has been no use of the Rugby Club illegally leased land **because they and the Trustees have prevented it by their illegal usage and locking up the area rather like Fort Knox.** All the witness statements show that, as Bath Citizens, they have been illegally prevented from using the Rugby pitch area contrary to their rights. **Open 'as of right' access to those parts not held illegally has been going on continuously from 1956 to the present time.**

Section 21. I did amend the plan because I accepted that I had made a small mistake in my original hand drawn version.

Section 22. Since my response further information has come to light which I have addressed fully in the attached document entitled 'Barrister evidence on Town Green Application'. Again you may find it lengthy but this only reflects the importance that I and others attach to the future of our Recreation Ground and the essential open space and green lung of Bath city centre. I have in this document explained where you can obtain all the relevant information. **You should have been given this information and examined it BEFORE you gave your preliminary advice. Unfortunately it was not available to me or I would have made you aware of it sooner. I did however reserve my position in my response to the B&NES trust advisors that if new information came to light I would wish to submit it. See page 13 r{2} of my response to the objectors.**

Section 23. **This is what I was advised would be happening hence my surprise, mentioned in my letter to you of 20th June 2013, when you apparently decided unilaterally to take a different course.**

Section 24. There are certainly legal issues relating to this application and I feel all the applicants and the objectors should be heard in an evidential process. **The Registration Authority B&NES have not been adhering to the rules pertaining to the Recreation Ground and should therefore not be involved in the Town Green decision.**

Section 25. Again we meet the significant number without any attempt to define it. The only true way of determining this would be to properly consult all the owners defined in the 1956 conveyance. This would be available using B&NES facilities but is of course beyond the resources of the applicants. I have recently received a copy of the Connect magazine which goes to all those council tax payer households in B&NES. A sub set defined by the Bath Constituency would thus be easy to achieve by the council. This is something the Trustees should have done in 2011 and 2012 when they carried out their flawed consultations. **I believe in law that any change to the 1956 conveyance would only be possible if all the Bath Citizens agreed, which is most unlikely.** This means to my interpretation that the future should be determined by the rules as they stand, not by any arbitrary solution that suits the council, the trustees or the charity commission. **I do not need to remind you that I believe the Town Green approach, eliminating all the illegal activities is the only proper way ahead.**

Section 26. **This reads almost as though the authority can decide the outcome despite the facts! It would be interesting to know what you think would influence this authority. My belief it is purely the future of illegal professional rugby on the Recreation Ground.**

Sections 27 and 28. **I believe this is the real substance of the conveyance that should determine all that happens on the entire Recreation Ground. The intention was clearly for the corporation to organize and run the activities on the Recreation Ground for the benefit of the Citizens and to respect the permitted practices but not the other illegal activities.** The most important elements are;-

- i. Should be kept as an open space.
- ii. Show no undue preference to a particular game, body or organization.
- iii. The open space should be in perpetuity no matter who the corporation might become.
- iv. No workshops, warehouses or factories or other buildings for trade or business.
- v. Nothing to be built, which might grow to be a nuisance to the local neighbours.

On all these counts the professional Rugby Club fails the test and the organization by the Trustees and the Council before them does not comply with the rules. All these covenant conditions were confirmed by the High Court ruling in 2002 and incorporated in the Charity Commission's objectives when it was set up in 2002. Since 2002 there can thus be no excuse that the Council and the Trustees did not understand the rules! **You appear to accept that these covenants are valid but you do not act on them!**

You are correct the lease of 1933 was to a Rugby Club but an **AMATEUR** one in which Bath Citizens both participated and supported.

Section 29. This lease too was to an **AMATEUR** club who did not run a commercial business and complied with the rules. **They had very limited stand capacity and a small clubhouse.** They did not cut off the pitch area to residents and they erected and took down their own small temporary stand. **Open 'as of right' access was available at all times except when play was taking place. Since the sport was enjoyed by Bath Citizens, both playing and supporting, no problems ensued as regards being thrown out by Rugby Club members nor did they prevent 'as of right' access to other parts of the Recreation Ground.** This situation continued until the club became a professional one running a commercial business, in 1996. **During the Volleyball and Lacrosse annual festivals I believe some participants even camped out on the rugby pitch!**

Section 30. **The Leisure Centre building has been declared illegal by the Council, the past and present Trustees and the Charity Commission.** It is built on trust land and is thus relevant in my view to this application. This aspect is covered more fully in the attached document 'Barrister evidence on Town Green'.

Section 31. These documents are discussed more fully in the attached document. **Mr. Blofeld has never supplied a lease to anyone as far as I know and certainly not to me.** The only version available in part was put onto the Bath Recreation Ground Trust website around the 18th January only because one had been leaked to a member of the public by a B&NES employee. **The lease document is only partially complete are not properly signed and various dates included disagree. The seal copy in the Council seal book, I believe, was entered one year before the partial document was produced! If true this is remarkable. The partial copy on the Trust web site has two dates; on the outside 1995; on the inside back dated to 1994, another odd situation.** In the attached document I have explained in more detail why this lease issued to the **AMATEUR** club is not valid when transferred to the professional club in 1998. No evidence from the trustees or the Rugby Club which rely on this lease can be acceptable as I understand the situation. **In my view their evidence should be discounted when deciding the Town Green application.**

You are correct about the slip. **No leases were made available to the BENEFICIARIES until January 18th 2013 but equally no leases, involving the professional Rugby Club, have been signed by any Trustees.**

You will also see that the first 75 year lease to the Amateur Club ended up costing £10,000 pa but the latest one was charged at only £5,000pa just before the Club became professional!

I believe you should review all this latest information before you coming to a final recommendation. If you feel this is beyond the remit you have been given then you should recommend a Public Enquiry when all the facts should emerge.

Section 32. All that has happened during reorganizations is that the Council has changed its name. **This, in my view, does not change the validity of the conveyance and covenants of 1922 and 1956. You clearly believe this since you listed the main covenant restrictions in your own sections 27 and 28.** It only means that the one who organizes the recreation ground for approved activities has a different title. Now that the Recreation Ground is a charitable trust even this should not happen under any future administrative reorganization of the Council area. The Mayor, Aldermen, now councilors and the Bath Citizens all remain intact and have done so throughout all the various local authority changes!

Section 33. There was a plan attached to the original 2002 East Stand application but I agree it is not very clear. Again this was only obtainable from the Council archives. **The Council or the Trustees should be able to get you a copy and all the eleven others, which must exist since they have to be agreed annually.** This helps to confirm the illegality of the approach or one lease would have been set up at the outset to run automatically from year to year! **All these leases are illegal. The one attached to the application was not properly signed nor was it executed by the Trustees who by that time had been appointed albeit without any voting procedure in place.** There is more detail in the attached document.

Section 34. **I believe the most important aspect of the High Court ruling is that the Council do not own the Recreation Ground but only hold it in trust with the original conveyance and all the covenants intact.** It was following this ruling that the Charity Commission set up the Bath Recreation Ground charitable trust number 1094519. The objectives of this new charity were shown in my appendix 4 of the application. **The section 4(1) you refer to was already included in the 1956 conveyance.**

Section 35. **What prompted the application was an attempt by the B&NES Council to break the 1922 and 1956 covenants so that the Council could do just what it liked. This would have included allowing professional Rugby to operate a commercial business enterprise against all the prevailing covenants. Fortunately, for the Bath Citizens, the Council failed but still carried on regardless in contempt of the High Court ruling! Yet another reason why the Council should not be involved in the determination of Town Green status.**

Section 36. **You are correct that 'as of right' access to Bath Citizens has been denied by the Rugby club as another illegal act.**

Section 37. I did say that I thought the Southdown Tennis club may no longer be operating.

Section 38.

- (1) **I disagree simply because it is these bodies that have prevented the proper use of the Recreation Ground as an open space with 'as of right' access by the Bath Citizens for the past 12 years.** If their illegal practices are not curtailed by Town Green status approval this is only likely to continue and get even worse. I believe that you should have read all the emerging documentation referred to in my attachment **before** reaching your conclusion because it makes this situation very clear.
- (2) **I cannot accept your and the Council' assurance on this because history would suggest otherwise. B&NES have after all been breaking the law since their original creation!**

(3) They would if they achieved their objective of breaking the 1922 covenants and allow Bath Rugby to do just what they like. As an organization they already act as though they own the Recreation Ground! In reality they are only illegal lease holders. I cover this in more detail in the attachment.

Section 39. **I strongly disagree. It is the illegal presence of the buildings which has affected the 'as of right' access by the citizens, granted through the conveyance of 1956.** The Leisure Centre built in 1975 and the commercial buildings put up by the Rugby Club all come under this category. The Rugby buildings are primarily to provide further means of carrying out trade and commercial practices, which the rules do not allow and are certainly not in the spirit of a Recreation Ground for all Bath Citizens to participate in. **Perhaps you should obtain from the Rugby Club the price list for their hospitality suites and even the price of ordinary seat.**

Section 40. **I certainly believe that it is the inappropriate action by the Council's and the granting of rights to the Rugby club that have undermined the 'as of right' access. I find it most alarming that you, as a senior lawyer, can consider the breaking of English Law and Charity rules so unimportant in processing the application. The granting of the lease breaks both the 1956 conveyance and the objectives for the charity set up in 2002.**

Section 41. I accept that no registration was ever attempted, to my knowledge, up to 1965 but I still maintain that the conveyance and conditions laid down in the 1956 documents would have made it an excellent candidate.

The present application has become necessary largely because those undertaking the requirements specified in the 1922 and 1956 conveyances have seriously been deficient in their administration. This relates to all the Councils involved, the Charity Commission and all the unelected trustees who have been 'in charge' since 2002.

I do not understand your assertion that because no application had been made prior to 1970 that one at a later date should not use evidence which goes back to the land acquisition in 1956. It is after all the 1956 conveyance and covenants which define the use of the Recreation Ground

Clearly many of the witness statements supplied, whilst not to your liking, did involve interactions with the Recreation ground over a period well in excess of the last 20 years and throughout this period with 'as of right' access! It gave not only their own experiences but also listed other permitted activities of which they were aware.

Parliament, as in many other cases, has clearly got it wrong if it does not or cannot accept that non lawful activities can prevent registration. **In general Parliament recognizes English Law under which the 1956 documents were drawn up.**

Section 42. In many places you talk about the landowner as though it is the Council. I believe that the High Court ruled that the Council was not the landowner but simply held the land in trust for the beneficiaries as defined in the 1956 conveyance. **No beneficiaries have ever been asked, nor have they given their permission for all the items that I and others have declared are illegal. They certainly have not given up their 'as of right' access.**

If this can only be resolved by consideration of all the evidence then we need a Public Enquiry.

Section 43. You have been provided with only limited information and have come to a preliminary conclusion without all the evidence being presented. I believe you have thus dismissed the application without hearing more evidence of usage and more evidence of abuses. **If you had followed your own advice mentioned in section 2, this would have avoided your premature decision.**

Section 44.

- (1) The use by Bath citizens has been 'as of right' throughout. **No one I have ever met has said they had to ask permission of any one to enter the Recreation Ground. Only the Rugby Club personnel have excluded them illegally unfortunately all too often with the illegal agreement of the Trustees.**
- (2) The above applies to the tennis courts, the leisure centre. The only exception is the Rugby Club area where officers of the club request, not always politely, for persons venturing onto 'their' pitch to leave. You will find a number of these incidents identified in the objection material from the Rugby Club. **Including the expulsion of a toddler because he might damage the playing area!**
- (3) **There had been free access to the Rugby area during its occupation by the AMATEUR club but virtually none since the illegal occupation by the PROFESSIONAL club.** Some 42 years of the former and 14 years of the latter. Your use of the word demised is interesting but I suspect incorrect. **The Club does act as though they own the Recreation Ground but in practice they only illegally occupy a portion of it!**

Section 45. The Bath Citizens have 'as of right' access but when a large group wish to play organized sport or leisure activities it is sensible and practical to have this organized and any playing area laid out accordingly. **This should not mean that the 'as of right' granted via the conveyance is lost.** This is of course permitted within the 1956 conveyance. I refer you to my example of an ordinary garden in section 46.

Section 46. Without seeing the whole Beresford case it is difficult to draw comparisons so I will draw a comparison, which I think illustrates my point.

If a large garden is conveyed to me then I believe I have, along with my family, 'as of right' access and usage of the garden. If I decide to hold a sporting function, tennis, croquet or similar with a marquee then those who attend are using the garden with my permission 'by right' but it does not change the fact that I have 'as of right' access at all times. The Recreation Ground is the Bath Citizens community garden with 'as of right' access by them but they allow organizations or groups to use it 'by right'. It is some Bath Citizens who have applied to have their 'garden' categorized as a Town Green to maintain their control over what happens in their 'garden'. In perpetuity as specified in the original conveyance to be an open space.

Section 47. This is an interesting appeal but I doubt there are many similarities with our case where the whole land in question was conveyed to a large number of local persons for their enjoyment in perpetuity.

Section 48. The establishment of the Charitable Trust in 2002 was following the High Court ruling which stated it should have been a trust from the outset. The Charity Commission set up the objectives of the trust using the 1956 conveyance and the High Court ruling as the controlling guide. **This then did not change the 'as of right' access for all the Citizens but it did reiterate all the covenants and the rules to be followed by all users of the Recreation Ground. It specifically stated that the use should be for AMATEUR sport probably to ensure that no commercial practices could be operated illegally so defying the covenants.**

It was of course the Attorney-General who supported the Bath Citizens in their case against the Council in 2002.

Section 49. There has never been any intention of the Bath Citizens, the freeholders in this case, preventing lawful pursuits according to the conveyance, covenants and the Charitable Trust. **They do however expect the law and charity rules to be followed by those administering the Recreation Ground on their behalf. I would also expect you to uphold these rules in your deliberations concerning the Town Green application.**

As I understand it general parks are owned by the appropriate local authority and managed under their control. Unless the park was conveyed to other than the council they would have to be the ones applying for TVG status, which would clearly not be necessary or practical. **I believe B&NES are the landowners of the parks in Bath but the situation with the Recreation Ground is different.**

Section 50. **The Attorney General would have no reason to interfere with the Recreation Ground as a trust UNLESS the Trust was being abused, which it clearly is in this case. If the Town Green application fails it is likely that the Attorney General will need to carry out another judicial review to bring all the offenders into line.** Since the professional Rugby Club have no legal right to be on the Recreation Ground in my view they could be termed trespassers.

Section 51. **I think here you have confirmed that the High Court upheld all that was in the 1956 conveyance with its associated covenants. The high Court also confirmed that the Recreation Ground should be kept as an open space. Your present conclusion to dismiss the Town Green application is at the very least extremely puzzling.**

Section 52. All of which you include in this section is within the rules and does not in my view contradict the 'as of right' use by the Bath Citizens, Many of them participate in and enjoy the various public and charitable events as my friends did in my 'garden' analogy. Those participating in or just enjoying the events may be there 'by right' but it should not affect the 'as of right' status applying to the Bath Citizens.

Section 53. **I agree that team games or sports that need some form of preparation are for that time 'by right' if participants are from the general public I but 'as of right' for any Bath Citizens who may be involved.** Only public use by individuals or small groups requiring organization is 'by right'.

Section 54. **If we had been privy to a directions meeting then far more detailed information could have been produced. Unfortunately when one visits one's own garden it is unlikely that an account will be kept of how long, how often and for what purpose. This is the case with the witness statements which cover an extensive period but were used to illustrate the type of use that was made of the Recreation Ground. As I said earlier it really is not necessary for Bath Citizens to quantify their usage, when they have 'as of right' access at all times through the 1956 conveyance. They must of course obey the covenants as should any user of the Recreation Ground, Council or Trustee.** There is no Annex A in the copy of the advice I have been sent but I of course have a copy of the original statements.

Section 55. If I gave you this impression then this was not my intention as I think you will gather from this response. The 1956 conveyance was to the Citizens of Bath not the General Public. The former have 'as of right' access, whilst the latter, if they are not Bath Citizens have only 'by right' access.

Section 56. The leisure Centre is an illegal building on Trust land. The activities inside would be within the rules if executed outside. I doubt any members of the public or the Citizens have ever been turned away from the Centre. In contrast they are always trying to encourage more to use the facilities on offer.

The charging is permitted within the rules since it is all **amateur** activity and primarily for B&NES residents who are entitled to use it 'by right'. The Leisure Centre is in use throughout the year and only closed at night for obvious security reasons.

The Tennis and Croquet clubs are amateur open to all and restricted only so they do not interfere with other recreational facilities in the adjacent area. To my knowledge there have been no incidents of Citizens or the public in general being refused entry or asked to leave. In no way do they contravene the rules of the 1956 conveyance nor the charity objectives of 2002.

Bath Rugby on the other hand breaks all the rules and certainly refuses access to anyone not an officer or player at the club or high paying supporters on match days, some 20 times per annum. Although in use for sporting activity so sparsely throughout the year they illegally prevent either 'as of right' or 'by right' to the Bath Citizens and general public throughout the year! Further more on match days their exclusion stretches to the whole of the Recreation Ground, they dominate the parking at the Leisure Centre and illegally permit car parking on the Recreation Ground itself. All this is against the rules, as well as being illegal.

They may also be chargeable under the sex discrimination act since they do not permit their female teams to play on the pitch, they illegally hold, on the Recreation Ground!

Section 57. The Leisure Centre, on trust land, was illegally built by the council in 1975. It does not prevent 'as of right' access by the Bath Citizens except to that solid part of the building at ground level. Use of the building has been permitted by the Council but since the building is illegal this should not be used to prevent our 'as of right' access. As it is open to the general public it should be classed as 'as of right' for citizens and 'by right' for all others. The Council should have a lease from the Trust as a tenant, which they can choose to sub let to Aquaterra as a sub tenant. The Council or Aquaterra should be paying a lease fee to the Trust account as well as the fees collected for the car parking, which is using trust land. This was covered in my appendix 5 to the application and has largely been confirmed in the latest 'scheme' from the Charity Commission.

Section 58. **If the Leisure Centre is being used by Bath citizens without them being seen to have 'as of right' access then this is yet another breach of the 1956 conveyance and should not prevent the Town Green application from being successful!** All users register and pay a fee at the main desk, which is well within the rules. Registration is for safety reasons and the small payment is for use and maintenance of the equipment.

Section 59. The Croquet and Tennis courts are usable by Bath Citizens and the public. The courts are laid out and protected by legitimate usage of the covenant rules. To pay for the preparation and care of the respective areas the individual members pay a small annual fee. This is then used to fund the lease charged by the Trustees for maintenance and laying out the area allowable under the 1956 conveyance. There is no restriction on membership and Bath Citizens retain their 'as of right' usage whilst other members of the public would have 'by right' access.

Section 60. **Your assumption that the Rugby Club lease is valid is, I believe, far from the truth. I explain in more detail in the attached document.** If they had a valid lease then it should be drafted in such a way as to preserve the rules of the conveyance and restrictions of the covenant. **This it clearly does not, since the professional Rugby usage breaks virtually all the rules. If this were not the case they would not have embarked on their attempt to get the 1922 covenants revoked despite the fact that they were carried forward in 1956 and confirmed by the High Court in 2002.** There is more on this action in

the attachment. No use by any organization that breaks the rules should be used to justify their claim that use of the Recreation Ground by citizens is not 'as of right'.

Section 61. **Your observations in this section, I believe, only confirm that the Rugby usage on the Recreation Ground is illegal.** My attachment shows where you can find a copy of the lease, which I and many others, believe is illegal. I feel that you should have seen all the additional information I have provided in the attachment before you passed your opinion.

The footpath I referred to is not along the river but from the William St. main entrance to the River Avon. There is another less used but valuable short cut from William St to the Leisure Centre. Both these paths are made inaccessible when Rugby matches are being played and the Rugby Club, with the agreement of the Trustees, illegally closes the whole Recreation Ground to the Bath Citizens. Not only is this illegal but it is unnecessary.

Section 62. The whole Recreation Ground is not available to those entitled to 'as of right' access only because of the illegal actions of the Council, the trustees, the Charity Commission and the Rugby Club. The former three have inappropriately permitted the Leisure Centre and the Rugby Club to break the rules. Granting Town Green status to the whole of the Recreation Ground would enable all these illegalities to be properly addressed.

Section 63. **I disagree.** All the areas you so designate are all part of the full area conveyed in 1956 to the Bath Citizens and should remain complete as an open space in perpetuity. They should all conform to the rules laid out in the conveyance and associated covenants of 1956 and, with the exception of the 'rugby' area and to a lesser extent the 'Leisure Centre' area, they do.

Section 64.

- (1) As I pointed out above the footpaths concerned are from the William St. main entrance to the River Avon and to the Leisure Centre side of the Recreation Ground.
- (2) I believe that since only the Rugby pitch and its associated buildings and the Leisure Centre buildings are illegal this should be addressed and the situation returned to its original intention when conveyed in 1956.
- (3) Organised team games are accepted within the rules and would still be permitted if Town Green Status was achieved.
- (4) Informal games are certainly within the rules and would remain so if Town Green status was approved subject only to these rules being obeyed.
- (5) Again within the permitted rules.
- (6) Again specifically allowed within the 1956 rules.

Apart from (2) I believe these activities are fully compatible with Town Green status and well within the rules that must pertain to the Recreation Ground whatever the future holds.

Section 65. **These are just amongst the many activities which Bath citizens would expect to enjoy 'as of right' whether the Recreation Ground was designated as a Town Green or not.**

Section 66. Picking blackberries is something that HAS taken place in the past. Illegal developments and the felling of mature trees and removal of hedges for illegal building has destroyed this and other more casual pastimes. Just refer to the picture I included taken in 1905 to see just what our open space was like before illegal practices were permitted to destroy it (Picture B in the original application).

Section 67. **The Citizens of Bath should not need to demonstrate how much or how little they have used their local facility. It was conveyed to them to take whatever pleasure they wanted within the prescribed rules. Although you say there is no mathematical test that can be used to satisfy your criteria I think the evidence from those giving witness statements shows use has been made over a very large number of years. It is only in the recent 12 years that their 'as of right' access has been prevented by illegal practices. There is nowhere in the rules that suggests citizens should record and log every time they go into the Recreation Ground, since they know it was left to them to enjoy for whatever purpose , as long as they obeyed the rules under which it was conveyed. Whatever use is and has been made since 1956 is 'as of right' and any reduction in this access arising from illegal actions should be undone.**

Section 68. The main evidence is that the Recreation Ground was conveyed to the citizens in 1956 to use 'as of right' for all purposes allowed under the covenanted rules. The seven witness statements were provided only to give a flavour of what had been carried out by Bath Citizens over many years and to show that they were all within the rules laid down when the land was conveyed to them.

Section 69. **A public enquiry might be the only way in which the abuses that have been perpetrated on the Recreation Ground could be exposed and the land returned to the original intention as expressed in the 1956 conveyance. Since B&NES Council and the Trustees appointed by them are the main abuses of the rules it seems to me quite inappropriate that they should be the ones to decide the future of the Recreation Ground. I think you need to see more evidence of the abuse before deciding to advise for dismissal and I request you look in more detail at the documents that have emerged since my application to ensure yourself that you have properly considered all the evidence.**

Section 70. Not knowing anything of the Barkus case I have no knowledge of its relevance. **Knowing that the Recreation Ground was conveyed to the Bath Residents in 1956 giving them 'as of right' access would in my opinion be enough to consider taking the present case much further before a decision to dismiss was made.** The law seems very clear to me with the original conveyances of 1922 and 1956, the confirmation by the High Court in 2002 and the Charity Commission objectives set in 2002 defining all the principles for the Recreation Ground to be registered as a Town Green.

Section 71. From all the points made above and the additional information that has come to light since the application I feel that your decision was premature and that it should be reconsidered.

- (1) 'as of right' access has always been available to Bath Citizens since 1956.
- (2) Bath Rugby is illegal and as such they have no rights at all.

Section 72. **I would have preferred to provide more evidence prior to your making a judgement as I fully expected. However I appreciate that even at this late stage you have permitted me to make my comments on your advice which I hope will cause you to review your decision.**

Section 73. I have been advised that I should not contact you directly but only through the Registration Authority. Whilst I regret this, I will abide by the rules and will seek assurance from the Registration Authority that they have passed all my comments and additional information on to you.

Please consider all the points I have made above and properly review all the additional documentation before you make your final decision.

Jack Sparrow

15th July 2013

Date:
Our ref:
Your ref: TVG12/1
Direct line: 01225 477300
E Mail: Andrew_Pate@bathnes.gov.uk

Graeme Stark
Public Rights of Way
Bath and North East Somerset Council
Riverside
Temple Street
Keynsham BS31 1LA

Dear Graeme,

Application to register land at Bath Recreation Ground as a Town or Village Green (TVG12/1)

Thank you for the opportunity to comment on the Advice of Mr Leslie Blohm QC dated 10th June 2013.

The Trust agrees with the recommendation of Mr Blohm, in paragraph 71 of his Advice, that the application should be rejected by the commons registration authority on paper consideration, for the reasons given by Mr Blohm in that paragraph.

However, there is one part of Mr Blohm's Advice which the Trust would question, although it makes no difference to his conclusions.

In his analysis of the wording of the 1956 Conveyance, Mr Blohm concludes that the 1956 Conveyance confers on the public a right to use the Recreation Ground for "games and sports of all kinds" which he construes as meaning activities which, albeit informal or solitary, are "competitive in some form". Thus he concludes that an informal children's game of football or solitary running would be a use of the Recreation Ground that was "by right", whereas use for solitary walking, drawing, painting and picking blackberries would be lawful sports and pastimes which fell outside the scope of the charitable trusts of the 1956 Conveyance.

It is the Trust's submission that the 1956 Conveyance must be construed so as to create a workable trust. The only way of doing so is to construe the 1956 Conveyance as authorising use of the Recreation Ground for informal recreation at such times as it is made available by the Trustee for informal games and sports.

It is submitted that there are three routes to such a construction:

- The most straightforward route is simply to construe “games and sports of all kinds” widely to include informal recreation generally. Once one accepts that the activity itself need not be competitive provided that it is “competitive in some form”, almost any type of informal recreation is capable of being competitive in some form.
- The second route is to regard informal recreation as being necessarily ancillary to use of the Recreation Ground for “games and sports of all kinds”. The Trustee cannot in practice make the Recreation Ground available for informal “games and sports of all kind” without at the same time making it available for all kinds of harmless informal recreation.
- The third route is to be found in paragraph 48 of the judgment of Hart J. He found that it was necessary to read into the 1956 Conveyance the words “to maintain the same as a recreational facility available for the benefit of the public at large.” If one does read in those words, the trusts are clearly wide enough to include non-competitive informal recreation.

I look forward to your confirmation of the next steps in the process to deal with this application.

Yours sincerely

Andrew Pate
Trust Adviser
For The Bath Recreation Ground Trust

This page is intentionally left blank

IN RE: AN APPLICATION BY MR. J. SPARROW TO REGISTER THE BATH
RECREATION GROUND AS A TOWN OR VILLAGE GREEN PURSUANT TO
SECTION 15 COMMONS ACT 2006

AND IN RE: APPLICATION NUMBER TVG12/1

FURTHER ADVICE

Instructions

1. On 10th. June 2013 I advised Bath and North East Somerset Council ('BANES') acting as registration authority under the Act, that it should, on the evidence presented to it, refuse to register the Recreation Ground, Bath, as a Town or Village Green ('TVG') pursuant to section 15 Commons Act 2006. I also advised BANES that my advice should be circulated to all interested parties, who should have the opportunity to comment upon it before BANES made its final decision.
2. BANES circulated my Advice to the objectors and the Applicant, and asked that any further submissions be made to them by 19th. July 2013. I have received the further communications that were sent to BANES. I have been instructed to consider this further information and to (if appropriate) re-consider my Advice.

Further Information

3. I have been supplied with the following documents:

(1) a letter from Mr. Steve Osgood RTPI RIBA, which asserted:

- (i) That any decision taken by BANES should not pre-date the first meeting of the new Board of Trustees of the charitable trust, in the light of the Decision Review of the Charity Commission dated 20th. June 2013¹.
- (ii) The advice overlooked the fact that use as of right by the beneficiaries of the charitable trust over the last twenty years had in fact been restricted by BANES' erection of permanent or temporary boundaries, in particular the barring of free access from the popular riverside walk to the West.

(2) An E-mail from the Applicant Mr. Sparrow dated 15th. July 2013. This enclosed:

- (i) Mr. Sparrow's response to my advice. I set out the gist of that information separately below.
- (ii) Additional information coming to light after November 2012;
- (iii) A copy of the a Lease dated 23rd. May 2013 of part of the Rec from Bath City Council to The Trustees of Bath Football Club;
- (iv) The Heads of Terms for the Rugby Club (being the indicative basis of the Recreation Ground Trust's proposals for the Rec).
- (v) The Heads of Terms for the Leisure Centre (being the indicative basis of the Recreation Ground Trust's proposals for the Leisure Centre).
- (vi) Further documents in support of the application from Robin Davies, Susan Macdonald, Susan Johnson, Steve Cossey, Mike Hare, Vanessa

¹ The decision was in fact dated 12th. June 2013. It can be found at:
http://www.bathrec.co.uk/bathrec/images/Future_of_the_Rec/20130612_-_Decision_document.pdf.
The scheme that was approved can be found at:
http://www.bathrec.co.uk/bathrec/images/Future_of_the_Rec/20130612_-_Bath_Scheme.pdf

Light², Reg Midwinter³, Roland Griffiths, Vanessa Poole, Sally Roche, William Williamson, and Eleanor Swift.

(3) An undated letter from Mr. Andrew Pate, the Trust Advisor to The Bath Recreation Ground Trust. Although this does not dispute the conclusion that I came to, Mr. Pate suggested that my analysis of the terms of the Charitable Trust Deed⁴ was too narrow, and it should have been construed, or interpreted, as permitting informal recreation. If that was so, then the consequence would be that there would be a further and alternative ground on which to refuse the application – namely that there was no relevant use ‘as of right’ at all on the land during the relevant period.

4. The indicative Heads of Terms sent to me by Mr. Sparrow appear to have been overtaken by the Charity Commission’s proposal for the Scheme, and the decision review subsequently carried out⁵. In very broad terms, the Scheme will vary the terms of the trust to give the trustees certain additional powers to deal with the trust property in future. It does not validate past dealings to the extent that they were in breach of trust. The Review acknowledges that the 1995 Lease if effective was not in accordance with the terms of the trust; as was the construction of the indoor sports centre in part on trust land⁶.

² On behalf of Mrs. Diana Light

³ On behalf of Gerrard Buildings (Bath) Ltd and Mr. Roy Hatch.

⁴ Advice, paras. 51 to 53

⁵ It is possible that that decision will be subject to further challenge. For that reasons I have set out in this further advice, that will not have any effect on the outcome of this application.

⁶ Para. 1.5. Hart J in the BANES case did not make such a finding – see para. [49].

Mr. Sparrow's Comments

5. Mr. Sparrow's covering letter sets out his broad view which is that if (as he contends) the terms of the 1995 lease are inconsistent with the terms of the charitable trust, then the lease is invalid, and the local inhabitants have full 'as of right' access to the Rec.
6. Mr. Sparrow's formal response is 13 closely typed pages long. I annexe it to this Advice as Annexe B. For convenience and ease of reference I would summarise the various points that Mr. Sparrow makes in that document as follows:
 - (1) The 1956 conveyance gave the local inhabitants rights to enjoy sports and pastimes on the Rec. The 1995 Lease, all subsequent leases and the construction of the Leisure Centre were all illegal acts, being contrary to the terms of the 1956 Conveyance⁷. Therefore, the residents of Bath have had 'as of right' access since 1956. Other persons who have carried on sports and pastimes on the land have had 'by right' access. Mr. Sparrow has made specific submissions to me referring to the 1922 and 1956 conveyances; Hart J.'s judgment in 2002; and the subsequent scheme set up by the Charity Commission in respect of the Rec.
 - (2) I should have regard to the proposals being made for the future development of at least part of The Rec before coming to my conclusion; Mr. Sparrow suggests that if I am unable to consider these matters I should recommend that a Public Enquiry be held, at which such matters can be ventilated.

⁷ The assertion of illegality, and a contention that virtually all of the dealings with the Rec that related to Bath Football Club after that date were both illegal and (either on occasion or throughout) made in bad faith is to be found developed by Mr. Sparrow in his Document 2: 'Additional information on the Town Green Application for the Bath Recreation Ground for consideration by the Barrister'.

- (3) My advice should uphold the charity rules relating to the Rec; and if it fails to do so then the Attorney-General will be obliged to bring further proceedings against the BANES.
 - (4) Because BANES have been responsible for illegal dealings with the Rec, they should not be part of the process of determining this application.
7. I propose to consider the additional information and submissions in the following sequence:
- (1) Mr. Sparrow's objections to the approach adopted in determining this Application;
 - (2) Bath Rugby's submissions as to the scope of permitted recreation under the 1956 Conveyance;
 - (3) Consideration of the merits of the Application in the light of further evidence submitted.

The Correct Approach to the Application.

8. Any use of or development on the Rec has potentially engaged three areas of law. There may be more but for present purposes these are the relevant ones. The first is that any development on the property should have complied with the relevant planning legislation. The local planning authority is supposed to supervise breaches of that legislation, and to consider applications for planning permission. The second arises because the Rec is subject to charitable trusts. The person in whom the land is vested may either be restricted in the manner in which he can lawfully deal with the land; or obliged to deal with it in a certain way; or certain persons might have

particular rights in respect of the land. The third is that because the Rec is to a large extent open land, TVG status may have been acquired in respect of it.

9. There may be a degree of overlap between these areas of law. Thus, in the present case, those citizens of Bath who carry out sports or games on the land may do so (whether they know it or not) pursuant to the charitable trusts on which the land is held. That, in turn, may affect whether the land should be registered as a TVG, or not. But it would in my view be quite wrong to assert that because certain activity is in breach of the charitable trust, then it necessarily follows that it is relevant to the question as to whether it should be registered as a TVG. Whether it does, or does not, depends solely on what Parliament has laid down as the test for a TVG, and whether that test is satisfied.
10. If it does not matter for the purposes of the present TVG Application whether the complained about activity was or was not a breach of trust, then it would be unhelpful for me to try to come to a decision as to whether it was a breach of the terms of the charitable trust. My view would not matter, and it might well be made on incomplete evidence. The remedy, if a citizen of Bath is aggrieved by what is said to be a breach of trust, is for the trustees to take action; and if they will not, for the Attorney-General to bring proceedings if he thinks fit.
11. There is no basis for the Authority to act other than in a manner that I advised in my previous advice. Specifically:

- (1) The Authority must not take into account the consequences of any prospective future development. That is immaterial to its considerations. That is not part of the statutory test contained within section 15 of the Commons Act 2006.
- (2) The Authority should not have regard to whether the construction and use of the Rugby Stadium and/or the Leisure Centre amounted to a breach of the terms of the charitable trust. That too is immaterial to its decision. The Authority is required to consider what use was made of the Rec by the inhabitants of the locality, and to the extent that it was made, why it was made; not why use was not made of the Rec.
- (3) The Authority is under a statutory duty to consider this application, and to do so fairly and properly. But decide it, it must.
- (4) The Authority, acting as TVG Registration Authority, does not have a general power to refer the historic and/or future use of the Rec to a public enquiry. If the Authority is of the view that there should be a public enquiry for the specific purpose of its deciding whether or not to register the land as a TVG (and such an enquiry would be for the purpose of considering the extent and quality of use of the land, and not a general review of matters such as the propriety of the leasehold arrangements entered into between Bath Rugby and BANES) then it may do so.

12. There are some aspects of Mr. Sparrow's further submissions that flatly contradict the legal advice that I have given the Authority. Whilst I might simply say that my legal advice stands, it may be that my advice was not have been as clearly expressed

as it might have been. Therefore, in respect of certain legal matters raised by Mr. Sparrow, I advise as follows:

- (1) Mr. Sparrow has confused the terms 'by right' and 'as of right'. This is understandable as these are legal terms of art, and they do not bear the meaning that they might be thought to have if used in ordinary speech. 'As of right' refers to the quality that the use of the land must have in order for it to count towards the test for registration. It means 'as if of right', or to put it another way, in the same manner as a person would use the land if he was entitled to do so. It presupposes that the person doing the act does not have a right to do it at that time. 'By right' by contrast means 'by reason of a pre-existing right'. Therefore, if a person already has a right to use the land for recreation, then the law does not allow him to count his usage towards use 'as of right'. Mr. Sparrow suggests that citizens of Bath who are beneficiaries of the charitable trust have a right to carry out sports and games on the Rec, and that therefore their use should be considered to be 'as of right'. That is not correct. Their use of the Rec for such purposes would be 'by right' and not 'as of right'.
- (2) By contrast, Mr. Sparrow suggests that those who use of the Leisure Centre use it 'by right', because they had the right to use the land pursuant to the charitable trust. The fact is that they used the land because they were permitted to do so by the proprietors of the Leisure Centre. They were, considered objectively, to be entering on to that part of the Rec by virtue of a license, either express or implied. Because they were licensees, then their use of the land could not be 'as of right'. I would add that even if Mr. Sparrow's analysis were correct, and the

users of the Leisure Centre were to be treated as being on the Rec 'by right', then their use of the land would also not be 'as of right' – see (1) above.

- (3) Mr. Sparrow suggests that the effect of the construction and use of the Rugby facilities after 1995, and the construction of the Leisure Centre, should be ignored because they were contrary to the terms of the charitable trust. Section 15 of the Commons Act 2006 can only be satisfied if there has been appropriate qualifying use of the land over the relevant twenty year period. If not, it does not (in my view) matter why there has been no sufficient use over that period.

The Construction of the 1956 Deed

13. I turn next to consider the terms of the charitable trust arising under the 1956 Deed. Mr. Pate contends that the 1956 Deed should be construed so as to extend to any form of informal recreation at such times as it is made available by the Trustees for informal games and sports. The basis of this contention is the suggestion that (in the alternative):

- (1) The right to carry out 'games and sports of all kinds' should extend to informal recreation. All recreational use is in some form 'competitive';
- (2) Informal recreation is ancillary to the right to use the land for 'games and sports of all times'. The trustees cannot in practice prevent such informal recreation taking place;
- (3) In BANES v. A-G at [48] Hart J held that it was necessary to read into the 1956 conveyance the words 'to maintain the same as a recreational facility available for the benefit of the public of large'. On that basis, the trust is wide enough to include non-competitive informal recreation.

14. In my view:

- (1) The express provisions of the 1956 conveyance permits the carrying on of games and sports. On its true construction those are the only expressly permitted uses. The phrase 'of any kind' indicates that this is to be construed widely. A wide construction is not sufficient to make the words refer to conduct that is not in its nature at least potentially competitive in the manner that I indicated in my previous advice.
- (2) It is right that informal recreation may be ancillary to an authorised use, and if so it is 'by right'. Thus, if the public attend to watch sport or a carnival and in the course of so doing have a picnic, that would I think properly so called an ancillary use. However, the public do not have a right (for example) simply to have a picnic on the land, or to conduct a *passagiata*⁸ per se. It is a question of fact whether any particular act of informal recreation falls within the scope of the 1956 conveyance, either by being within the expressly authorised uses, or ancillary to them.
- (3) The description of the land as a 'recreational facility' in BANES was not used by Hart J. as a means of defining the charitable purpose arising under the 1956 conveyance. The case did not consider the precise limitation on the trusts in question, and in my view Hart J. uses the description as shorthand for a facility for the carrying out of sports and games of all kinds.

⁸ A stylish and leisurely ramble – noted as a potential feature of TVG use by Lord Hoffmann in R v. Oxfordshire County Council ex p. Sunningwell PC [2000] 1 AC 335.

The merits of the Application in the light of further evidence submitted.

15. There is some further evidence of use of the land that might not (on my analysis of the scope of the 1956 conveyance) fall within permitted user of the land, and which might therefore be use 'as of right' and not 'by right'. This is contained within Mr. Sparrow's Document 7, and I have tabulated it at Annex C to this Advice. It should be read together with Annexe A of my earlier Advice.
16. Having considered the evidence afresh, I remain of the view set out at paragraphs 64 to 70 of my earlier Advice. Indeed, the additional evidence supplied in my view seems to confirm it. The character of the Rec is plainly that of a ground for sports, games and public functions. The usage of the Rec for lawful sports and pastimes falling outside of the authorised 'by right' uses under the charitable trust appear to me to be minimal. That may in part be explained by Mr. Griffiths' evidence that the Rec is a dog-free environment. In many such applications, often in respect of rougher ground than one finds at the Rec, dog-walking forms a substantial part of the basis of the claim. That is absent here.
17. It follows therefore that my advice remains as it was in my earlier advice. There is no reasonable prospect of Mr. Sparrow's application succeeding even if an Enquiry is held. The Authority should therefore determine the application on the evidence before it, and (I advise) should dismiss the application for the reasons set out in paragraph 71 of my earlier advice.

18. If there is any matter arising from this further advice that the Authority would wish to have clarified or explained, please do not hesitate to contact me in chambers.

Leslie Blohm QC

27th. September 2013

St. John's Chambers,

101 Victoria Street,

Bristol,

BS1 6PU.

Response to Mr. L Blohm's second advice for consideration by Mr. Stark

It is clear to me that the use of plain English and the legal interpretation of English are quite different. It is thus not surprising that normal folk find it difficult to follow legal interpretations. The phrases 'as of right', 'by right' and 'as if of right' cause such confusion.

I propose from now on to use yet another phrase, which I do not think can be misinterpreted, namely **'THE RIGHT'**. It is my view, and that of many other lay people, that all the Bath Citizens have **'The Right'** to access their own Recreation Ground, given to them through the conveyances of 1922 and 1956. Their only restriction should be to act within the covenants contained in these two documents and the pre conveyance contract of 1956. **I would thus propose that in all of my previous correspondence the words 'as of right' are replaced by 'The Right'**. Only users not covered by the 1956 conveyance, i.e. other users outside the City of Bath, would then have other rights of access. The Rugby Club, and to a much lesser degree the Leisure Centre, deny the Beneficiaries **'The Right'** of access.

Any other restrictions imposed by those illegally using the Recreation Ground, by not adhering to the covenants, should not be used to deny the Bath Citizens their rights! This equally applies to the Council, who only hold the land in trust, alongside the Bath Citizens and the Recreation Ground Trustees, who should operate within the same rules for the main benefit of the Bath Citizens. **This means that the objections from the Council's advisors to the Trustees, the illegal Professional Rugby Club and the illegal Leisure Centre should all be dismissed.**

All the other objectors, with the exception of the Hotel in Pulteney Road, used the illegal presence of the Rugby or the Leisure Centre to support their case. **It is interesting that neither the Council nor the Trustees themselves made any direct objections!**

To the contrary, all the supporters gave evidence, which should not have been necessary, since they were all beneficiaries and they only pointed out the restrictions to their right of access by the offending bodies. However some of those who wrote independently, although not invited to do so by the Authority, gave more examples of the use by Bath Citizens in support of my original application (see Mr. Blohm's annex C).

Most locals do not record every entry they make to the Recreation Ground nor for what purpose since they all carry out their activities well within the rules under the conveyance and covenant conditions. These same rules should be adhered by all other users and most especially by the Trustees. **It is after all the fact that the Trustees are breaking the rules, which prevents Bath Citizens and others from enjoying the open space and the various recreational facilities throughout the year as is 'Their Right'.**

I think that Mr. Blohm has read the legal documents, which should control what happens on the Recreation Ground, with very limited vision. **Nowhere do the rules state that sport must be**

competitive. Equally I do not believe for the Recreation Ground to be designated as a Town Green do sports and pastimes need to be competitive! Even Mr. Pate appears to agree with me on this point, although why Mr. Blohm feels this would make it less likely to gain Town Green Status eludes me.

Many forms of exercise such as friendly football matches with coats to indicate the goal posts, or more formalized games amongst friends, are sport but for pleasure and not recognized as competitive. The rules of course do allow for competitive sport, with the Trustees arranging to mark out the appropriate pitches. These include Lacrosse, Volleyball, Cricket and Mini Rugby alongside Croquet and Tennis.

Nowhere do the rules state that dog walking is not a suitable pastime and certainly it is a form of recreation for the elderly, disabled, young and old to exercise themselves and their pets. This is considered by most health professionals as very worth while activity and well within the rules pertaining to the Recreation Ground. For some persons a level walking area on grass and away from traffic is most necessary and desirable. Bumpy ground is not what the elderly, very young or mothers with pushchairs would desire alongside their dog walking activities.

Dog walking is only prevented largely by notices put up by the Council saying dogs are not allowed. This may well be against the intentions of the original conveyance especially as they do not own the land but only hold it in trust. **In other recreational areas of Bath dogs are allowed and the warning signs only say that their excrement should be picked up, with fines for disobeying the acceptable rules. This should apply to the Recreation Ground. The footpath through the Recreation Ground from the William Street entrance to the River Avon is one area that is certainly used by dog walkers, despite the Council's and the Rugby Club notices, and rightly so!**

The extra information I supplied was primarily to show that the way in which the Trustees were operating was outside the rules. It remains to be seen, which of these proposals sees the light of day, since the charity Commission scheme is still being challenged and the views of the new non B&NES Trustees are not yet known. The Charity Commission, in setting the objectives for the Recreation Ground Trust, following the High Court ruling in 2002, clearly stated that both professional Rugby and the Leisure Centre, for different reasons, were illegal and did not conform to the Trust's rules.

I am sorry if my earlier response was too long but this is an important issue for Bath Citizens and needs full exposure. In this technological age it is easy to enlarge the type face, if necessary, as was done by Mr. Blohm in reproducing my response as his Annex B. **I do not believe that Mr. Blohm dealt adequately with all my points. I was after all, only responding to each of his paragraphs. I can only hope that Mr. Stark will deal with all the points, all of which are valid, more fully in his report to the Authority.**

I do not believe there is any doubt about who the land was conveyed to. This was set out as The Mayor, Aldermen and Citizens of Bath. This was referred to in the body of the conveyance as the 'corporation'. If the conveyance was only to the Council at the time then the conveyance would have been to the Bath City Council but I believe the vendor had the foresight to ensure that whatever council took over in the future the Bath Citizens would still be recognized as the main beneficiaries.

The local planning authority have certainly not obeyed the rules, since the Leisure Centre is illegal and so too should be the various buildings around the rugby pitch erected since 1956.

The land has certainly been a trust since its creation in 1956 but this was only recognized by the Council and the Charity commission through the High Court ruling in 2002. **The only restrictions on the beneficiaries are what is laid out in the conveyance and covenants. As conveyed in 1956 the land should have been seen to have Town Green status with all the Bath Citizens having 'The Right' of access.**

Whilst the Authority may not take account of any possible future developments in coming to their decision, I do believe it should take account of all the wrongs, which have occurred to date.

If Bath Citizens have been prevented from making use of their Recreation Ground over the past 20 years, by illegal users, then I believe this should be taken into account in making the final decision on Town Green Status.

If all sport has to be competitive, as Mr. Blohm suggests, then those taking part are legitimate but those purely watching would not be so. Thus the 12,000 or so who purely watch competitive illegal professional Rugby would not be legitimate, unless they purchased food and drink from a commercial vendor, not permitted within the conveyance rules and then decided to eat and drink as though enjoying a picnic preceded or followed by some competitive sport on their own behalf!

Perhaps the local rugby supporters do not realize they are breaking at least three rules, which pertain to how the Recreation Ground should be used. Additionally they are paying highly to enjoy only part of their Recreation Ground, some fifteen times a year, to which they should have 'The Right' of full and free access at all times!

I urge Mr. Stark to take all my points into account, along with those made by Mr. Blohm, in recommending the way forward to the Authority in their decision making process.

J Sparrow

15th October 2013

This page is intentionally left blank