**In the Matter of**

**An Application to Register**

**The Recreation Ground, Bath,**

**As a New Town or Village Green**

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# OBJECTION STATEMENT

**of BATH AND NORTH EAST SOMERSET COUNCIL**

**as SOLE TRUSTEE**

**of THE RECREATION GROUND, BATH TRUST**

**25th February 2013**

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**Andrew B. Reed**

**Property Manager, Solicitor,**

**Bath and North East Somerset Council.**

**ref VRC/13/5/wp/S4/Recreation Ground Bath Objection Statement**

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## 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.

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[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: Andrew B. Reed

Name: Andrew Reed

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