

**Graeme Stark**

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**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

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**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



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:

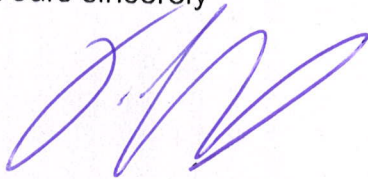
1. We do not accept that Bath Sports and Leisure Centre constitutes “**land**” for the purposes of Section 15 (1) of the Commons Act 2006. It is a building to which there is no free access by members of the public;
2. We do not accept that a significant number of the inhabitants of the City of Bath have 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

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**From:** Ian Wilson <iandwilson@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

## Graeme Stark

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**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

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

COMMONS REGISTRATION ACT 1965  
BATH AND NORTH EAST SOMERSET COUNCIL

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

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, stands<sup>1</sup>, changing facilities, spectator boxes and a club house<sup>23</sup>), 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 lacrosse<sup>4</sup> 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))<sup>5</sup>. 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

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<sup>1</sup> 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).

<sup>2</sup> See evidence of Dean Qunitin para.3 (p.47) re:use of club house.

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

<sup>4</sup> 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).

<sup>5</sup> 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)<sup>6</sup>. 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

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<sup>6</sup> 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 ground<sup>7</sup> 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

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<sup>7</sup> 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 1373<sup>8</sup>).

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)<sup>9</sup> 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

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

<sup>9</sup> 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**

<b>DOCUMENT</b>	<b>PAGE</b>
<b>BUNDLE 1</b>	
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](mailto:Andrew_Pate@bathnes.gov.uk)  
[www.bathnes.gov.uk](http://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)**

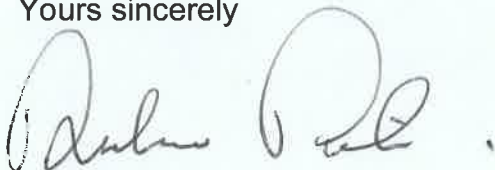
I refer to your notice dated 10 January informing me that Bath Recreation Ground has been the subject of an application to register it as a town or village green.

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**

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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**

**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**

**25<sup>th</sup> February 2013**

**Introduction**

[1] This is the objection statement of Bath and North East Somerset Council (B&NES) to the application dated 11<sup>th</sup> 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"<sup>1</sup>.

[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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<sup>1</sup> *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.

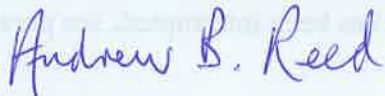
[11] Any use of the application land by virtue of the leases and tenancies to sports clubs or by authority of B&NES as Trustee has been permissive and not as of right. Further, the applicant's witnesses themselves confirm that they have been excluded from the application land on frequent occasions each 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 15<sup>th</sup> 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