

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 ones 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