

IN RE: AN APPLICATION TO REGISTER LAND KNOWN AS NEWBRIDGE
MEADOWS, NEWBRIDGE, BATH AS A NEW TOWN OR VILLAGE GREEN

Application. No TVG10/3

ADVICE TO BATH AND NORTH EAST SOMERSET COUNCIL

1. I have been instructed by Bath and North East Somerset Council ('BANES') to advise them (in their capacity as Registration Authority) pursuant to the provisions of the Commons Act 2006 as to whether or not they should accede to an application made by Mr. John Weston dated 20th April 2010 to register land referred to as Newbridge Meadows, Newbridge, Bath as a Town or Village Green pursuant to the provisions of s.15(2) Commons Act 2006.
2. The decision as to whether the register the land or not will be taken by BANES considering only the statutory test set out in the Commons Act. It is undoubtedly the case that this application has been prompted by the intention of the Council to use the application land for the construction of the Bath Rapid Transit development ('BRT'). However the benefits or detriment of so doing, and indeed the benefits or detriment of registering

the land as a TVG are not material matters for the consideration of the Registration Authority, and must not be taken into account. The Authority must only consider what has happened in the past; not what may or may not happen in the future.

3. The basis of the Application

By Mr. Weston's application dated 20th. April 2010 he asserted that Newbridge Meadows had been used for the lawful sports and pastimes, as of right, by the inhabitants of the electoral ward of Newbridge in the locality of Bath and North East Somerset, for a period of twenty years prior to 20th. April 2010. An application to vary the basis of the application was made by Mr. Christopher Maile (a lay representative who appeared for Mr. Weston at the Inquiry), on the basis that the electoral ward of Newbridge should be regarded as a 'locality', rather than as a 'neighbourhood within a locality'. Mr. Vivian Chapman QC, who appeared on behalf of BANES acting in its capacity of land owner, did not oppose the application. I therefore advise the Authority that they should consider the application as if it were made on the basis that the users were the inhabitants of the locality of the electoral ward of Newbridge.

4. The Application has been publicly advertised pursuant to the relevant regulations on the 20th. May 2010 by an advertisement in the Bath Chronicle; notices of the application were placed around perimeter of the land on the 20th. July 2010.

5. The only objection to the application was made by BANES in its capacity of landowner, and it set out those objections in its letter of the 16th. July 2010. That objection is made under a number of heads, each amounting to a challenges to part of the statutory definition of section 15 Commons Act 2006. These were:

- (1) The land was acquired by a conveyance dated 29th. September 1943 and made between Mr. Morgan as vendor and Bath Corporation as purchaser, under the statutory purposes of the Bath Corporation Act 1925. The Objector asserts that a small part of the land (being the route of a footpath) was appropriated to the purpose of section 10 Open Spaces Act 1906 on 27th. January 1994; alternatively it was appropriated under the purposes of section 164 Public Health Act 1906. The relevance of this, says the Objector, is that where land that has been appropriated to this use, use of the land for lawful sports and pastimes is not 'as of right'.
- (2) The Objector did not admit that the neighbourhood asserted by the Applicant is a neighbourhood in fact or as described under section 15 Commons Act 2006. In view of the amendment referred to above, this is not a material issue. The Objector accepts that Newbridge Ward is a locality for the purpose of the Commons Act 2006.
- (3) Where the land has been used by the public, it has been used as a right of way not as TVG. The basis of this objection is that the land should be registered, if anything, as a highway, and not as a Town or Village Green.

(4) Part of the land (to its Southern boundary) is densely vegetated and inaccessible, and has not as a matter of fact been used for recreational purposes.

(5) Part of the land (in particular the North Eastern part) has been blocked by usage by travellers in recent years. To that extent, the land has not been used for lawful sports and pastimes throughout the relevant period of twenty years.

6. I have had the benefit of a view of the land and the surrounding areas, accompanied by representatives of both the Applicant and the Objector.

7. The Land

The land the subject of the application is some 1.55 hectares in size. It is 'U' shaped, with the central tongue of the 'U' being formed by the private property known as 135 Kelston Road and its garden. The land is bounded at the South by a large car park for a park-and-ride bus service from Newbridge to Bath. To the immediate North of the car park, and hence forming the Southern part of the application land, is a bund which is approximately 30 feet deep, and wooded. The bund is fenced off from land to the North with what appears to be quite old wire fencing. The application land to the North of the bund is then divided into two parts, the East and the West, although there is a relatively narrow grassed 'corridor' joining the two parties, immediately to the South of the garden of 145 Kelston Road, and to the North of the bund. Both areas of meadow are

substantially grassed, although there is a particularly rough area in the Eastern part. The land is broadly flat, although it rises up as one goes to the North. These meadows are not bounded to the North, but the boundary shown on the application land seems to me to be an attempt, more or less accurate, to delineate the open meadow land as distinct from the more wooded and steeply sloping land that leads further Northwards to Kelston Road. The Western boundary of the application land is a fence leading to a field and land on which a boat house is situated; the land is owned by the Trustees of the Minerva Rowing Club. The Eastern boundary is a fenced-off field.

8. Access to the Application land on foot is via either of the two footpaths that lead to each of the meadows, from Kelston Road; there is also public access from the East, along a path that runs to the North of the bund; from the Park & Ride site through the bund by way of two pathways; and from the open land to the South-West of the Application land.

9. Footpaths

The land is crossed by and adjacent to public footpaths shown as such on the definitive map kept by the local authority under section 53 Wildlife and Countryside Act 1981. These run from Kelston Road. The Western most path skirts the Western boundary of the Western meadow and the bund; the eastern most path runs from Kelston Road, through the Eastern meadow, through the 'corridor' into the Western Meadow, where it joins the Western

most path to the West of the bund. The path then proceeds to New Bridge, where it crosses under Newbridge Road, before joining the Avon Walkway leading to Bath.

10. Evidence

I conducted an inquiry at Bath between the 11th. and 14th. April 2011 at the Guildhall in Bath. I heard evidence from a number of witnesses.

11. Caroline Roberts

Ms. Roberts is one of the two ward councillors for Newbridge Ward having been a councillor since 1997, and has lived on Old Newbridge Hill since 1994. She had witnessed great numbers of people using the land, by walking their dogs at all times of day; people going on walks, and that sort of thing. She sees people using the meadows. They let their animals run free. The footpath itself is a very limited part of the land. There had been some travellers on the land in 2009, but that did not stop people using the open space. The travellers occupied one corner of the field only, and were an inconvenience. As far as the travellers vans were concerned, some people said they did not like walking past them, but others did.

12. Ms. Roberts told me about alternative available green spaces in the vicinity. There is a park opposite on the other side of Newbridge Road with a children's play area. The application land is more of a walk. It is a larger

open space, used with animals. The park is used by children for football and playing.

13. She herself had not been on the land a huge amount; perhaps once every couple of months. She tends to go to see what the state of the land is. As a councillor she often gets issues raised with people complaining about rubbish or dog mess etc. on the land. She had noticed that the grassy area was mown on occasions. From what she saw quite a few of the people were local, but she did see cars pulling up and people going from them on to the land. She could not say where their occupants come from. She accepted that the application land lies between three main roads – Newbridge Road; Old Newbridge Hill; and Kelston Road. She thought people might come from further afield. Cllr. Roberts had not seen people use the earth bund for recreation, or the wired off footpath being used as anything other than a footpath.

14. I found Cllr. Roberts to be a particularly impressive and thoughtful witness of fact.

15. Sheena Shlichtkrull

Mrs. Shlichtkrull is a retired sub-postmistress who moved from Peasedown St. John to her present residence off Old Newbridge Hill in 1985. She has walked her dogs on the Meadows on a daily basis. She meets other dog walkers there; she has got to know a lot of them. One has a boat on the

river. She has seen a tent and the remains of a camp fire on the site. When the travellers were there she was not prevented from walking across as she normally did; they were friendly. She has seen children enjoying the area, picking blackberries. Her dogs run freely off the lead across the whole area, as do others. There is plenty of wildlife there – birds, foxes, badgers. She usually gained access to the land from Newbridge Road, near its junction with Newbridge Hill. Her usage has not changed over time, using it at different times of day. People also come into the site from down where the marina is; from Kelston Road and also from the Park & Ride, having parked first. Her routine is to enter on to the land from the footpath, and to let her dogs off the lead. Having gone round the first field, she then goes through to the next area, walking around the perimeter. She might look at interesting birds that she sees, but her function is mainly to walk her dogs, as do most people. She has seen others picking blackberries and playing with their children. When the children are not at school there are many more people on the land. There are also a lot of retired people like her there. Her family also use the land. She has seven grandchildren. The land is also used by schools. She has seen pupils from Oldfield Girls School on the land, and has a feeling they may use it as a nature trail.

16. Cross-examined, Mrs. Schlichtkrull told me that although she did not really know the land before 1985, she had seen it, and had seen it when it was a landfill site. That was about 1968, or a bit later. The Park & Ride was built in 1986. When coming from the East on to the land, she has always walked

between post and wire fences. Her usual route was to enter the first field do a circuit; and then the same around the next field. She would exit by the footpath by the boathouse. Sometimes she went on to the fields, and not simply around them. She did not remember the grass being cut. It was rough grass but not that long. The travellers were on the land for several months. She walked her normal route as far as possible, but diverted around the travellers. She did not go into the landscaped bund area adjacent to the Park & Ride.

17. Asked about the source of other users of the land, she said that she did not know precisely where the others come from. Some came from Aqua Sulis Guest House on Newbridge Road; by boat by marina; she would know anyone who lived in her immediate vicinity and that they come from the Newbridge area; the precise address she would not know. She agreed that some come by car, she did not know where from. The blackberry pickers tended to come from close by. Mrs. Schlichtkrull thought 'The neighbourhood' is the area from which most of the people who walk come from, roughly defined by Newbridge Road, Old Newbridge Hill, and Kelston Road.
18. When she was talking about school children using the land she was thinking of Oldfield Girls School, but there is also Newbridge Primary School as well. Oldfield Girls School takes children from Bath as well as Bristol. Discussing the neighbourhood, she was told that there was a church by Newbridge

Primary School. There are shops are on Old Newbridge Road in the direction of Bath; and also on Chelsea Road. She has seen beat policemen walking along Newbridge Road occasionally. The neighbourhood watch area covers the part of Newbridge Road further down from where she lives. The Doctor's surgery is up Newbridge Hill, about a quarter of a mile away.

19. Again, I thought Mrs. Schlichtkrull was a perceptive and thoughtful witness, with a good recollection of material facts.

20. John Weston

Mr. John Weston CCE MICE is the Applicant, and he has lived on Old Newbridge Hill since 1962, and before that on Wormcliffe Lane. He was responsible for the collection of statements in support of the application. Over his many years of residence he had walked over the land, usually with his dog, and more recently in the company of his cousin and her dog. Mr. Weston's cousin lives in Lower Weston, and she has walked the land for 21 years. This recreation covers the whole of the application land, and would take place weekly. They would often meet other dog walkers, and walkers enjoying the land. Mr. Weston would enjoy the land (and he described the varied flora and fauna that were visible); and pick blackberries. He had seen children and adults playing there, flying model aircraft, picking blackberries and in the winter skate on the ice ponds that would form.

21. Mr. Weston told me that he understood that the land was used before World War II for Territorial Army manoeuvres, including the construction of pontoon bridges over the Avon. In the 1960s he understood the land to have been used by a local Archery Club. He had seen people camping on the site, with attendant camp fires; he had also seen people riding mountain bikes and jumping over ramps on the land.

22. All his friends and parents have always known the land as 'The Meadows'. The Council's decision to approve Bath Rapid Transit development at the area prompted the formation of a local pressure group, 'Newbridge Matters'. The meadow has been known locally as a 'secret garden'. It lies in an Area of Outstanding Natural Beauty. Access was gained in the main from the path from Newbridge Road near the junction with Old Newbridge Hill, and from the public footpath from Kelston Road.

23. People have used the land on mountain bikes. Dogs are not kept on leads as there are no cattle on the land. Mr. Weston produced a plan showing the regular routes walked by people on the land, which is the result of a recent inspection of the land. The trackways shown are well-trodden walkways, but the land is being used fairly generally.

24. Mr. Weston explained how he went about collecting his evidence. Three people collected the evidence. They distributed our questionnaires within the locality, distributing in the region of 250-300. In the case of people that

they knew, they made contact, explained the situation and then received the questionnaires back. With other people, they collected them a week or so later. The owner of the private access garden Mr. Page, would put questionnaires in a waterproof envelope on the site, for collection by those walking past. Many of them were returned to Mr. Weston.

25. Cross-examined, Mr. Weston told me that there used to be a rubbish tip on the site. He was then working in Keynsham. He thought that it was about the width of where the car park was now.

26. It was suggested that a number of witnesses had put in evidence that appeared to relate to different parcels of land; and these parcels were larger than the land that was the subject of the application. On occasion it included the land now subject to the Park & Ride; or land to the East; on occasions the wooded and steeply banked land to the North, bordering Kelston Road . The explanation was that people had been left to draw their own plan. Some said they had used adjacent land as well; or not. They were left to their own devices as to how they filled them in.

27. Mr. Weston was taxed with the production of a number of standard letters in support of the application that were plainly concerned primarily with an allied application to have land at Kaynton Mead registered as a Town or Village Green. That land too is on the new proposed guided bus route. Mr. Weston explained that he put in the application in respect of Newbridge

Meadow, but these letters were produced in support generally. He did not suggest that these witnesses have any direct knowledge of the usage of Newbridge Meadows. They are just supporters of the application.

28. He accepted that there had been no survey of usage of the land. He did not have a list of the addresses to which the questionnaires were sent. Asked about the travellers, he said that they were there for several months in 2009. He did not agree that on the whole people skirted round the land. The travellers were very reasonable people. You could not use the land on which the caravans were sited, obviously, but otherwise the land was used as before.

29. My view of Mr. Weston is that he was transparently honest and straightforward in his evidence. No doubt as an engineer he tended to see things in black and white. I thought his evidence was reliable.

30. Colin Maggs

Mr. Maggs has lived at 8 Old Newbridge Hill since 1932; he is a retired schoolmaster and still lectures and is an author. He told me he had used the land for the last 75 years for various leisure purposes. Most of that usage as a child was typical of the period – building dens, climbing trees; but he was also taken there by his father to watch Territorial Army manoeuvres between 1934 and 1940. For the last twenty five years he has used it about six times a week for walking, blackberrying, collecting catkins and pussy

willow, and enjoying nature. He regularly met other walkers, photographers and naturalists. He noted that the hedges on the land were very special in the wildlife they harboured. The parts of the land he was taking about were the grassy parts of the land, not the footpath. He sees dog walkers, and those persons who wish to observe nature. He has been retired for 25 years. He tends to visit the land during the day, rather than in the evenings and mainly during the week. He normally sees perhaps one person, sometimes more, or a family. The principal activity of others is dog walking and exercise. They no doubt observe nature as well. He remembered the construction of the car park. The West end was built first. It was a success; then they built the second Eastern end. It reduced the area of the usable land. He recalled the travellers on the site. They were accommodating, and did not stop him from using the footpath or the land. However, he avoided going too close to the caravans; it did restrict the amount of land he could visit. He would visit the Eastern field in the main; the Western field less frequently. The field on the West side is even more rural. He did not use the land on the other side of the A4 as it is a busy road. As far as other users are concerned he could not say where they came from. If they have a dog with them or he knew them he felt they would come from within a quarter of a mile or so. He did not think they come by car. People might park in the Park & Ride and have a picnic, although he could not recall anyone doing that. Most people he knew would come from within the locality.

31. Cross-examined, he accepted that the map annexed to his Evidence Questionnaire showed a larger area of land than that the subject of the application. He used that land as a child. He had not used that land for recreation since the Park & Ride had been built. He would stop and look at it, although he had not been on it. He thought one could get into it. He picked the blackberries that hung over the fence. He had not climbed up the bund, nor seen anyone there. There is a fence on the Northern side of the path, but he could not remember a fence on the car park side, and thought that if there was, it was overgrown. The Archery Club had used the land about 30 years ago. The field is gated for vehicles, but it has only been locked since 2009 when the travellers came. He thought the grass may have been cut about 8 years ago but not in recent years. As at 2010 he had visited at least once a day.

32. Mr. Maggs told me that as long as he could recall the land had been called Humpty Dumpty field, because it was bumpy.

33. Mr. Maggs' evidence was helpful as to historic usage. He gave his evidence in a straightforward manner.

34. Kenneth Hampton

Mr. Hampton has lived at Greenacres, Upper Weston, Bath since 1981. Between 1931 and 1971 he lived in Kelston Rd. He played in the field as a child, and he has seen football, archery, hiking and dog walking (with dogs

running freely over the land); blackberrying, cycling, camping, picnicking and general relaxation on the land. Between 1971 and 1981 he did not live in the locality. He still visited the land regularly; but much less now in view of my health. He would see people on the land, and guessed that one half would come from within locality, and one half from outside. They were picnicking, dog walking and doing what he described as 'unmentionable things'.

35. Cross-examined, he too explained that the land he had outlined on the map annexed to the questionnaires showed the land that was historically used by him as a child. He always entered the land from the top land or from New Bridge. He agreed that the Northern boundary includes some wooded areas and some escarpment. As a child he had used this land, but in recent years the land with the trees has been overgrown. He remembered the travellers, although he did not see them on the land; only passing along on the road. By 2009 he was going much less frequently, about every 2 or 3 months. He agreed that people from Upper Weston and from outside of the Bath area would use the land. He himself had two friends from Bristol whose ashes were scattered there. The Park & Ride was built in about 1986, and since then it has been easy for anyone to drive there and walk their dog on the land. He agreed that there is also a lay-by just before the New Bridge where people park and walk their dog.

36. Marguerite Hampton

Mrs. Hampton lives in Greenacres, in Upper Weston, moving there in 1981. She had used the land between 1849 and 1971, and then from 1981 onwards. She walked there with friends and family for recreation. Access to the site was easy from the public footpaths, and she saw people walking dogs, riding bicycles, having picnics, and flying kites. If you go there during the summer or school holidays you often see school children. Near the river you see more people. Mrs. Hampton thought that nowadays the recreational use of the land has diminished. People are seen there occasionally; couples; people there in twos or threes; schoolgirls in their groups; although she tended to go when it was quieter.

37. Cross-examined, Mrs. Hampton told me that she thought that more people went to the river when the old boathouse was there, which would be from 1949 onwards. The bund is an earth mound with shrubs on top, and is part of the landscaping around the North side of the Park & Ride. She had not been on that land since it was constructed, nor had she seen anyone else go on there. The footpath leading Eastwards from the land runs between wire fences. To the North of that footpath is a private field.

38. Mrs. Hampton would consider herself as an inhabitant of the locality, and would regard the area she lives in and Weston to be part of the same locality. She often visits the land with friends. She belongs to a small walking group, and they walk on the land. When she goes with her husband to the

land, she drives. Her friends come from Weston village. She has visited over most years, and would go in particular seasons, for bird-watching for example.

39. I was of the view that both Mr. & Mrs. Hampton were reliable witnesses who were keen to assist the Inquiry.

40. Robert Page

Mr. Page has lived on Kelston Road since 2003; before that from 1985 he lived at Charmouth Road. Since 1985 he has seen the land used for a multiplicity of arrangements – flower picking; picking mushrooms; blackberrying; playing football; dog walking; (French) cricket; playing Frisbee; taking photographs; watching wildlife of all varieties; running; cycling, sunbathing; teenage parties and camping; and even demonstrations of cardiac resuscitation. The sports were not team sports, but *ad hoc*. He played fetch with his dogs; a number of dogs are walked on the land, not just the footpaths. He usually went down at about 7:30 a.m. It was an opportunity to let dogs off of the lead. That is what people used this land for. The rowing club which has moved onto the land to the West of the application land in recent years use the land for circuit training. BANES had the grass mown several times a year, until 2007. He thought that that few people from outside the immediate area used the land because it is hidden from view. It is peaceful and very pleasant. There was a 'weedy' area at the Eastern boundary of the land, where local children dug BMX bike jumps

in 2004 and 2005. They relocated to the woods in 2006 and 2007. There was a den to the North East in 2004 to 2006, used by young people. When the travellers first arrived he went to speak to them and told them it was a nature reserve. The relationship was originally cordial but problems arose when they let their dogs roam the woods. Some Irish travellers came for a fortnight in May 2009. They took up position towards the bottom of his garden. They all moved off just before the garden opened to the public. They could have come in winter 2008. They stayed for much of the year, he would guess for 9 months. A number – most - left for the pop festival at Pilton. The number of people going across it would be reduced but not extinguished. Some Irish travellers came for a fortnight in May 2009. They took up position towards the bottom of his garden. They all moved off just before the garden opened to the public. There was no doubt that people would stick to the footpath if they had a job to do and are walking the dog. If they have time they will be all over the land. Children would be less likely to stick to the paths than adults. He saw few other people there, but was usually on the land very early in the morning. He had assisted Mr. Weston with his questionnaires.

41. Cross examined, Mr. Page told me that he knew some of the people on the land as neighbours. Others he recognised as parents of children from Newbridge School. He thought he would now recognise most people who we saw on the land as locals. These would be people from the Penn Hill

area, mainly South of the Hospital at Newbridge Road, where there is a large housing estate.

42. When he lived in Charmouth Road, he went to the field once every ten days, usually with his family. He would tend to go at weekends during the daytime in the main.

43. I thought that Mr. Page was a particularly knowledgeable, astute and helpful witness, whose evidence I could rely on.

44. David Palcynski

Mr. Palcynski has lived at Old Newbridge Hill with his family since 1995. His family used the land for various activities including walking dogs over the whole area, playing ball games, and bike riding. He walks there for pleasure. There are slow worms and grass snakes there. Deer sometimes appear there. He has seen people exercising dogs on the land without leads, playing ball games, walking and general relaxation. Material was put down, to attract slow worms and grass snakes. He assumed the local schools had put it down.

45. He had seen some circus performers in the West field. They did not stay there long, perhaps a few weeks. He could not say when it was. There were four or five caravans.

46. He used the land in the evenings, when the children were small. There was not a large number of people there – perhaps half a dozen. There were two or three groups of a couple of people; not small children. He went on the land at the weekend. It was probably busier in the weekends but he was not sure. His use was different in say 1995 as it was a better place for him to take young children. Now he goes less often because his children are old enough to go there without him, which they do.

47. Cross-examined, he told me that the site is much rougher and more overgrown now than it used to be.

48. Andrew Palczynski

Mr. Andrew Palczynski, the son of David Palczynski, was born in 1984 and has lived at Old Newbridge Hill with his parents since 1995. He has taken dogs for walks there; picked blackberries for the Scouts; played games, walked around it; launched fireworks from the site in November; gone sledging on the field. He has seen people sleeping there in tents; horse riding in a safe environment; mountain bike riding over jumps; dogs being exercised and walking. He had seen people from the 'Elderly persons estates' using the land for meeting other like-minded people, exercise and relaxation. He used to go out on his bike. He went there once or twice a week; he could not say who else he saw although he did see other people use the land. Now he sees children there, coming down from Oldfield

School. The children do now what he used to do as a child. He had never seen anyone mowing it.

49. John Carnegie

Mr. Carnegie is 27 years old. From 1986 he lived on Newbridge Road; from 1996 at Apsley Road. He has used the land since he was old enough to walk there, walking his dog over the whole area, and letting them run. He would meet his friends there and play football, take bikes and generally have fun. He flew his kite there. Children used their bikes to make jumps. He went there to watch bats, badgers and deer. Lots of families picked blackberries on the site. He was six in 1990 and using the land then. When very young he went with his parents. As soon as he was thought old enough he would go to pick blackberries. He would go with friends and take a football, cricket bat, or frisbee, he would see other families; he would take his cousins down there who also lived in Bath. He now uses the land less than he did as a young child. His family had a radio-controlled car that they used on the land. During weekends and summers' evenings they would play with their dog there. They no longer have a dog.

50. Mr. Carnegie identified what he described as the two old persons' estates – there is one either on Brassmill Lane, Meadow Court, or possibly around 281/283 Newbridge Road. He was not so sure where the other one is, but it is close enough to walk to. The number of elderly people on the land is such that he thought they must have come from the estate.

51 Mr. Lee Centamore

I then heard from Lee Centamore who has lived on Kelston Road since 2003. Between 1965 and 1978 he lived at 20 Newbridge Hill. He used the meadow with his brother. He was a member of a young ornithologists' Club with his brother. His brother bred butterflies, and collected eggs and caterpillars. He went to Newbridge School, and visited the meadow with his friends. He moved back in 2003, when his daughter was 14 whilst his son was 5 years old. He visited every day, day and night with the dog. He regularly uses the meadows. He thought that it is used regularly by local people. He recognises a lot of people especially now that his son has started the reception class at the local school. He is getting to know the parents who walk their dogs there. His access was mainly from the top path downwards. Occasionally, he will do a couple of circuits with this dog, walking the dog in the morning, late afternoon or early evening, but mostly after the school run. He saw a large number of elderly people on the land, some with dogs. Many faces are familiar and he thought local. He thought that people who lived in Upper Weston would find it more convenient to go to the Recreation Ground opposite, where there are children's facilities as well, or the racecourse at Weston.

52. Debra Palczynski

Mrs. Palczynski has lived at Old Newbridge Hill since 1995, and has used the land for various activities including dog walking. The area was safe and suitable for children. They used it for blackberry picking, ball games, bike

riding and walking for enjoyment. It was also used for sledging in the winter. She said that there is plentiful wildlife in the area – badgers, deer, woodpeckers, buzzards and many other birds, as well as bats, newts and slow worms. She had seen people camping in small tents for short period; bike riding; children riding around a makeshift BMX course; dogs allowed to exercise off of the lead; ball games; recreational walking; families kite flying. She had not seen any maintenance work to the land. When she had used it with her children, about ten years ago, there would be three or four people on the land. In recent years neither she nor the children went there so much, about once a month. Before 2000 she would visit once or twice a week. She was not aware of any mowing.

53. Laura Palczynski

Ms. Palczynski has lived at Old Newbridge Hill since 1995. She used the land a lot when younger, going with an adult to feed the donkeys in the neighbouring field. When older she went by herself or with friends. She would play games and explore the area. On one occasion she saw that someone had built ramps on the field for bikes. On one occasion she went sledging with her family. More recently she walked her cousin's dog in the area. She would let her dog off the lead as there was no traffic or livestock. In the snow earlier this year she went over there for snow fun. Although presently at University she spends time on the land when at home. There were quite often dog walkers and people walking there. She did not pay

that much attention to others. She went to Newbridge Junior School and Hayesfield Secondary School in Oldfield Park.

54. Jane Carnegie

Mrs. Carnegie has lived in Newbridge Road since 1986. Since when she has used the land, between 1991 and 2009 walking her dog twice a day over the whole area. More recently she has walked her daughter's dog there. The dog is let off the leash. She saw children camping out there, and bonfires being lit. In her mother's last years she took her to see the wildlife down on the land. She has seen children flying kites, and watching people fly model aircraft. Teenagers created jumps for their bikes there. She would go with her children to watch bats at dusk. She has picked lots of blackberries over the years, and often met fellow blackberry pickers. It is sociable; you catch up with the neighbours. She has seen school children on the land, eating their lunches, and playing there on their way home. She uses the land a lot. She walks her dog at all different times of day. She would usually meet three or four other dog walkers. She sees teenagers camping there; her daughters' friends, who lived at Apsley Rd. on several occasions. Others she did know where they came from. The bike ramps are presently overgrown.

55. Mrs.Palczinski thought that the 'local community' ran along Kelston Road, Old Newbridge Hill, the Apsley Road area; she thought that it was the closest piece of wild land you can take the dog on for some distance. The

community ran as far East as Chelsea Road; and would also include the old peoples' housing at Brassmill Lane.

56. Helena Carnegie

Miss Carnegie is twenty five years old. She lived in Newbridge Road and Apsley Road between 1986 and 2009. She was taken by her parents to see the wildlife in the area, recalling going there with her parents from the age of three or four. Then she would visit with her older younger and sister; from the age of ten she went there with her school friends, four or five of them. She used to walk the family dog there; she presently takes her own dog there. They run off the lead. Miss Carnegie went to Oldfield School, and would play on the land with her friends on their way back from school. She had seen children cycling over the application area, using the uneven ground for ramps. She would enjoy picnics on the land. She picked blackberries there; many families did the same. She would camp on the land with some friends, every couple of weeks in the Summer. As they grew up, younger people would themselves start to enjoy the land. Nowadays Miss Carnegie would visit her mother two or three times a week, and on each occasion would take her dog for a walk on the land. She had seen elderly people from the sheltered accommodation at Brass Mills land taking exercise on the land. She knew quite a few of the residents from seeing them on the field. Being a local person, she would know the elderly people because they would be related to friends of hers.

57. Miss Carnegie was not aware of children being dropped off at the Park & Ride to walk to Oldfield School. Children from the school would play on the land, mainly at the end of the day. They finished at 3.15 p.m. and would stay on the land until it was dark. The school may have organised something to do with orienteering there, but she was not part of it. The catchment for the school was both towards Bristol, and immediately around her home.

58. Leonard Router

Mr. Router has lived at Old Newbridge Hill since 1966, and is a retired former higher professional and technical officer with the Ministry of Defence. The land he said was used for fêtes in the Royal Wedding and the Silver Jubilee. He and his wife let their dog run on the area; he had seen others using the area for dog walking, and had seen kite and model aircraft flying. They had gone dog walking and blackberrying. They took their children to the area. About five or six years ago Mr. Router became unable to walk on the land. Before that he would be on the land once or twice a month. It was not heaving with people. Sometimes there would be no-one, but normally one or two people. Mr. Router retired in 1991, and visited the site in the afternoon. Mr. Router did not recall the land being used as a rubbish tip prior to 1968, although he may not have used it for a few years after moving in. He thought that the Marina/Caravan Site was a rubbish tip.

59. Marie Perkins

Ms. Perkins has lived at Apsley Road for the last 18 months. She lived in Bristol for 12 years before that but she lived in Bath before, in Southdown. Ms. Perkins attended Oldfield Girls School, and used to walk to school, through the land, playing there. There were a group of four or five children who played there. She remembered the dog walkers from about twenty five years ago. The children used to play in the woods on the way down – hide and seek. This would be more used in the better weather and the lighter days. In the last 18 months she had used the land for dog walking and taking children there. She thought it a secure area. The area to the South of the A4 is not so suitable for dogs. Her dog is kept on a lead. She had seen people flying kites on the land; tents (although she did not know who camped there); and children playing in the woods. There are always other dog walkers out. Most of the other dog walkers are local; a lot of people living on her road use it. People who are on holiday on the nearby camp site use it as well. She had seen people who she assumed had parked in the park and ride picking blackberries – they had carrier bags. She thought it cheeky. She agreed that she had seen some people walk their dogs having parked their car, but she thought there were more people from the area using it.

60. Ray Kelly

Mr. Kelly lives on Apsley Road. He has used the land for 18 months. He previously knew of it but never went there. He takes his children and his dog

for a walk there, depending on his work schedule once a day. He has seen other dog walkers on a regular basis. He often sees people walking through who he vaguely recognises them and they acknowledge him. He has seen children playing there and people camping there; flying kites and playing frisbee. It is safe and enclosed.

61. Pippa Page

Ms. Page lived in Charmouth Road from 1985; she now lives with her family in Little Cleves, which is the property in the tongue of the 'U' between the two meadows forming the land, in 2003. She has used the land for walking training and playing with dogs, and playing with children. Between 1988 and 2001 she was employed as a childminder, and would take her charges to the land. One could walk around it with a buggy when it was mown. Her family trained their dogs there. Until 2003 they would go on to the land every day. Sometimes she would go to the land across Newbridge Road, but the problem was that you could not take dogs to the childrens' play area. After 2003 she still used the land for training and walking dogs and picking blackberries. She would jog through it. There is more use of the land in summer than winter. You get quite a few groups of girls there. Ms. Page is a governor of the local school, and they tend to be local girls from the school. The children that hang around are from Bath – those from the South of Bath tend to go to Hayesfield School; those from Bristol have to catch the bus. Lots of people use the land for dog walking. She knows of some people from the Newbridge area who have limited mobility who drive to the Park &

Ride and let their dogs on to the field. She is aware of people from the old peoples' complexes who visit. In summer one is more likely than not to meet people. Some schoolgirls used to be let out at lunchtime they would go to the land, but that was stopped two and a half years ago. In the blackberry season there would be a few people picking blackberries. In the evening there are more dog walkers. People from the boats walk their dogs. At weekends you will see family groups playing with frisbees and dogs, more so when it was mown, which was from at least 1985 to about 2007. There used to be children on the BMX bike jumps, but they have not seen for a few years. Groups of teenagers just sit around and chat on the land. There is more litter in the summer. Some local residents besides themselves clear up. Sometimes the litter is thrown into their garden.

62. Robert Scott

Mr. Robert Scott FRICS is employed as a client services manager by BANES. He described the land that is the subject of the application as part meadow or rough grassland, and part wooded and shrubbed bund or long mound, running along the Northern edge of the Park and Ride site, and to the South of the meadow land. This landscaped area is some 0.46 hectares in area. The Council owns the land under registered title ST227621, which also includes the Park & Ride land; the wooded land between the application land and Kelston Road; and land to the North of Kelston Road and to the North and west of Oldfield School. He produced copies of the definitive map for public paths in the area; photographs of the Meadow

land and the Park & Ride; and maintenance records Mr. Andrew Chard, who is employed in parks. The maintenance records relating to the landscaping around the Park and Ride show each tree individually numbered. He suggested that the land was maintained, the grass being cut four times a year, although he accepted that documentation showing when the grass cutting started was not available. His evidence was that the land had been maintained in a manner which made it available for casual use for leisure activities. This was a reference to its mowing. Litter was picked up monthly. Mr. Scott gave evidence that the predominant use of the land was as a route to and from school for the pupils of Oldfield School. He also said that in 2009 the Eastern meadow was in part occupied by a varying number of vehicles of 'New Age Travellers' for over seven months. During May 2009 a group of Irish travellers occupied part of the land for two weeks.

63. Mr. Scott also gave me some statistical evidence that was relevant to the issue as to whether usage had been by a 'significant number' of the inhabitants of the locality. There were 120 witness statements in support of the application. Of those, 95 were resident within the ward of Newbridge. The estimated population of the ward between 2001 and 2009 was 5,793, and therefore the relevant witness statements represent 1.65% of the population. Mr. Scott also supplied a map showing the location of the home addresses of the Applicant's supporting witnesses, and commented that they were either clustered about the application land and Park & Ride; and to the East of Newbridge Ward.

64 Written Evidence

As is common in applications of this sort, the Applicant has supplied a large quantity of letters, statements and questionnaires in support of the application from people who did not or were not able to attend the Inquiry. That documentation is contained in the bundle supplied to the Inquiry. I have read the documentation supplied, and I will take it into account in coming to my advice. Insofar as the content of that documentation relates to matters in dispute, the fact that it has not been tested by cross-examination does mean that it may not have as much weight as it might otherwise have had.

65. I note the point made by the Objector that some of the letters in support appear to have been produced by persons who are really more interested in applications to register other areas of land on the line of the proposed Bus Rapid Transport proposal; a point that Mr. Weston acknowledged in his evidence.

66. I also received a letter from Ms. Janet Parr of Kelston Road, stating that she had walked on the meadow between 2-5 times a week since May 2007, when she moved to Bath.

67. I directed that the Objector disclose copies of all documents in its possession relevant to the issue of the statutory basis on which the Council

held the land. The Objector disclosed these documents, together with an explanatory note. Bath Corporation, which is the predecessor body to BANES, acquired the land, which was part of a parcel of approximately 36 acres of farmland, by conveyance dated 29th. September 1943. The conveyance does not set out the statutory powers under which the land was purchased. The contemporaneous documentation relating to that acquisition has, I am told, been lost on re-organisation of archives and documentation. There is no evidence of committee meetings discussing the purpose for which the land was acquired; some surviving minutes of the Corporate Property Committee record the Chairman authorising the Town Clerk to buy the land, described as pasture land, at auction.

68. The Council kept a paper record of its landholding on a card system, known as a terrier card. In the present case the terrier card describes the land as 'land at Kelston Road & Newbridge Rd (Formerly Warlands Estate)'. It describes the purpose for which the land was now held as 'investment'. The card also includes references to land being appropriated to other purposes. A relevant piece of information on the terrier is a note that on the 27th. January 1994, a parcel of land was appropriated to a public open spaces purpose under section 10 Open Spaces Act 1906. An instruction card shows that to be a triangular parcel 355m². in size to the North of Newbridge Road and to the East of the Park & Ride. A further Instruction for Appropriation records that the application land (with the exception of land immediately to the South of 145 Kelston Road and the bund) but together

with land to the West was appropriated from purposes under section 129(1) and (6) of the Local Government Act 1972 to Planning Purposes under Part 9 Town & Country Planning Act 1990. On the same day an Instruction for Appropriation in respect of the Park & Ride land (including the bund) was made, again from powers under the Local Government Act 1972 to powers under Part 4 of the Road Traffic Regulations Act 1984. This appears to be part of the activity leading to the creation of the present Park and Ride, which plan was set out in a Report of the City engineer to the Public Protection and Works Committee of Bath City Council in May 1985.

69. Submissions of the Objector and the Applicant.

I was addressed by Mr. Chapman QC on behalf of the Objector. He suggested that the plans of the Council to expand the Park and Ride into the Land as part of the Bus Rapid Transit scheme was relevant in considering whether any supporters of the application have an ulterior motive on the registration, and should be considered when weighing up their evidence.

70. Mr. Chapman suggested that there were three important matters that are common ground. First, the application was based on proof of use by the inhabitants of a locality. Secondly there was no material use of the Park & Ride landscaping (the bund) for lawful sports and pastimes. Thirdly, the use of the footpath to the North East of the landscaping has been in the nature of footpath use.

71. There were then four legal issues to be considered. First, had the application land been used for Lawful Sports and Pastimes for 20 years before the date of the application? Secondly, was such use as of right? And thirdly, has use been by a significant number of inhabitants of the locality of Newbridge Ward? Fourthly, Mr. Chapman suggests that the Authority may have to ask whether use before 2001 was predominantly by the inhabitants of the locality of Newbridge. This question arises because the Court of Appeal is, it seems, about to consider the effect on periods of use prior to the amendment of the Commons Act 1965 by the Countryside and Rights of Way Act 2000.
72. Dealing with the first issue, the bund was not used for recreation, and importantly it was not part of the larger land that was subject to the application; that is a question of fact. That land is divided off from the rest of the application land by fencing. Insofar as the grassed areas include woodlands, that land has not been used for recreation.
73. Mr. Chapman then turned to the paths. The fenced footpath to the North East of the landscaping is not part of a wider area used for recreation. It is a distinct path leading to the meadow area. The shorter paths which run from North to South through the landscaping are plainly used as paths. Mr. Chapman referred me to the judgment of Sullivan J. in R v. Secretary of State ex p. Laing Homes [2003] EWHC 1578 (Admin) at [101], as approved

by Lightman J. in Oxfordshire County Council v. Oxford City Council [2004] Ch 253 at [103]. The path that runs between the landscaping and the garden of Mr. Page's house also looks like a path joining the two meadows. Then there are other paths – both public and informal which simply cross the meadow land. These were shown in the plan Mr. Weston produced to the hearing (Plan A.2).

74. Mr. Chapman accepted that the two meadows have been used by the public for recreational purposes. However he made the following qualifications. First, the Northern boundary is somewhat obscure. It has been drawn on the line on an Ordnance Survey map showing some physical feature which no longer exists. It is not clear on the site whether the area used for such recreation extends to his line or not. The only clear features on site are the informal footpaths that run along the Northern side of both meadows. There has been user to the South of that; to the North evidence of usage is unclear. Secondly, the traveller 'invasion' in 2009 lasted for about seven months. It has not been established that the area occupied by the travellers has been used to any appreciable extent for any lawful period. Some gave them a wide berth; others (he noted Mr. Page) were friendly. It was not clear whether the area of the traveller encampment was being used for recreation. If not, that would, suggested Mr. Chapman, be a material interruption, notwithstanding the recent decision of the Supreme Court in R v. Redcar & Cleveland BC ex p. Lewis (No.2) [2010] 2 AC 70.

75. The next issue is whether user was 'as of right'. User which is 'by right' is not user that is 'as of right', referring me to the discussion of the topic by members of the House of Lords in R v. Sunderland City Council ex p. Beresford [2004] 1 AC 889. Here, the land is subject to ownership by the local authority pursuant to certain statutory holding powers. Section 18 of the Bath Corporation Act (which was repealed in 1972) gave the Corporation the power to acquire land for any of its powers or duties or for the benefit of the city. The land was acquired in 1943, and no statutory powers were mentioned in the conveyance. The minutes concerning the acquisition described it as 'pasture land' and the purchase was charged to the Capital Reserve Fund. In 1985 the Report of City Engineer recommended construction of the Park & Ride. Now, land at Kelston Rd is held under s.120(1)(b) LGA 1972 which is a general power of acquisition, to Planning Purposes under Part 9 Town and Country Planning Act 1990. This, said Mr. Chapman, is the purpose for which the land is presently held, save that land to the East of Newbridge Park & Ride was appropriated to open space use, under section 10 Open Spaces Act 1906. The schedule did not identify what land was subject to what appropriation, but in the absence of evidence to the contrary I should assume that it has been validly appropriated, applying the maxim - *Omnia praesumuntur rite esse acta*.

75. The land appropriated to the Open Spaces Act 1906 includes the footpath to the North on the East side of the landscaping. The North-East footpath between the landscaping and the donkey field has been appropriated to

Public Open Space use since 1994 and it follows that use of that footpath since then has been by right rather than as of right.

76. The meadows were appropriated to planning purposes in 1994. The meadows have been maintained as an amenity area until 2007 by grass cutting and litter-picking. He referred me to evidence of the documentation as to maintenance and Mr. & Mrs. Page's evidence. Although the land is (and since 1994 has been) held for planning purposes, it was not required for that purpose. Therefore BANES could temporarily use it for other lawful purposes – A-G v. Teddington UDC [1898] 1 Ch 66. It must be the case that this temporary use must have been under a statutory power, and the only applicable statutory power would be section 164 Public Health Act 1875, or section 10 Open Spaces Act 1906. He accepted that the Objector could not point to any decision saying that the land shall be used for amenity purposes, but from the facts that the land was mowed, that litter was picked, and that it was left open to the local public, it necessarily followed that the land was used as a public amenity land. This point was, said Mr, Chapman, not dealt with in Beresford. The public should not be regarded as trespassers.
77. Alternatively, appropriation to public open space purposes could be implied. The intention of the Council was to treat the land as amenity land to which the public were to have access.

78. The third issue is whether user was by a significant number of inhabitants of Newbridge ward. Mr. Chapman referred me to the evidence of Mr. Scott. If one removed usage by the supporters from Kaynton Mead, who had been inadvertently included in this application, the user has been by a very small proportion of the electoral ward of Newbridge.
79. The fourth issue only arises if the Court of Appeal considering the Leeds case, or indeed any other Court that comes to consider the point should conclude that an applicant relying on historical periods of usage must satisfy the legal test that was in existence at that time. This was not Mr. Chapman's primary case, and I did not get the impression that he thought that reasoning would be correct. But if it was, Mr. Chapman said that the Applicant would have to show that usage was predominantly by the inhabitants of Newbridge, up to 2001. There was no survey carried out to show where users were from. I should not be satisfied of predominance on the balance of probability.
80. I then heard from Mr. Maile. He accepted that the land was acquired under the Bath Corporation Act, but he did not accept it was acquired for amenity purposes. It was originally used as a refuse tip. Mr. Maile suggested that the comments of their Lordships in the Beresford case would not have been made had the House of Lords been considering section 15 of the Commons Act 2006. The mere fact that land owned by a local authority was tidied up by them on a regular basis does not mean that it was held for

the purposes of public recreation. Beresford decided that the mere fact that a local authority owns land that is used for recreation, and that they encourage it, does not mean that user is not 'as of right'. Mr. Chapman's argument would make it implicit that local authorities that tolerated public recreational use would in almost all cases be able to argue that they had impliedly authorised such use, such that the recreational use was 'by right' and not 'as of right'. That was inconsistent with the decision in Beresford.

8.1 Mr. Maile submitted that the question of the effect of land being held on trust for recreational purposes was to be considered in other Court cases in the future, but was unable to give me any details of this, save that one was a potential judicial review of a decision by Poole Borough Council.

82. The usage of the bund and the footpaths were part and parcel of the use of the open land for recreational purposes. It was artificial to divide them off. Mr. Maile relies on the comments of Lord Hoffman in Oxfordshire County Council v. Oxford City Council [2006] 2 AC 674 at para. [66] where predominantly scrub land, that was 75% inaccessible, was registered as a TVG. The bund was a haven for wild life and an integral part of the land. As a matter of fact, usage was not simply attributable to informal footpaths around the perimeter of the fields. Many routes criss-cross the land. The impression that a landowner would receive is simply of recreational use of the land.

83. The evidence of usage of the land was sufficient for the purposes of the statute. It was only a representative part of the entire usage. These were plainly not the only users – see R v. Staffordshire County Council ex p. McAlpine Homes Ltd. [2002] EWHC 76 (Admin) at para. 72. The users came generally from the area; they do not have to be proportionately spread throughout the neighbourhood.
84. The interruption by the travellers' usage of the land was minimal, of a small area of land, and not exclusive. In the context of this case it is immaterial. If it was relevant it would lead to a small piece of land only as being excluded from registration.
85. If there is an appropriation for a temporary purpose, there must be evidence of it. There is none here. The mere fact that the land was subject to occasional mowing and litter picking does not indicate that the land was held (temporarily) for amenity purposes. 'Open land' does not mean that the public have the right to go on it. It must be held for that purpose. It may be left fallow, without any real purpose.
86. If the 'predominant number of local inhabitants' test applied to usage before 2001, then that would be satisfied in this case.

87. Burden and Standard of Proof

The burden of proving the facts asserted in the application lies on the Applicant. The application must be properly and strictly proved (R v. Suffolk County Council ex p. Steed (1996) 75 P & CR 102 at 111 per Pill L.J.), which means that the facts must be proven by evidence that is put before the Authority, and that the facts in dispute must be proven to the civil standard; that is, that it is proven as being more likely than not.

88. Consideration of the Evidence

Having heard the witnesses, and heard them cross-examined, I am of the view that all of them were doing their best to recall their usage of the land. That is not to say that they were all necessarily accurate. However I do find that they were all truthful. On occasion I have made specific comment about my view of witness when setting out their evidence above. I have commented on the documentary evidence, and my approach to it, above. I turn next to the findings I make based on the totality of that evidence.

89. User of the land for twenty years

I have no doubt that there has been use of the land described as the meadow land for a period in excess of twenty years prior to the date of the application, for lawful sports and pastimes. I accept the evidence of the Applicants' witnesses that this land, which was essentially pasture land, has been used by children playing; for dog walking; for recreational walking;

and to a more limited extent for the picking of blackberries, for cycling, including the riding of BMX bikes over the uneven parts in the Eastern meadow, and children camping on the land. The land is easily accessible from neighbouring housing. It is traversed by public footpaths and other informal paths. It is not far away from the river, which is a pleasant recreational facility. Since its acquisition by the local authority, with the exception of the landscaping works that were carried out to the bund for the purpose of the construction of the Park & Ride, the application land appears to have been unused by BANES. It has been open meadow throughout. There have been suggestions from some witnesses that the land was historically used as a rubbish tip or waste dump. However the evidence is not clear as to whether, if this did take place, it was a use that related to any part of the application land. It is clear that any such use ceased substantially in excess of twenty years ago, and the land affected must have been landscaped and reinstated subsequently. I conclude that such usage is not material to the determination of the issue in the present application.

90. I do accept Mr. Chapman's contention that, as far as the land that forms the bund is concerned, that has not been used to any material degree by any persons for recreation. It is bounded from the meadow land by an historic wire fence which gives no impression of having been trampled or forced, although it has deteriorated over time. The bund is wooded, and although it may well be the case that children might play there, as they

may do with any wooded area, it is close to the car park; the Southern half of it would be visible from the car park and it is not an obvious location for a den.

91. Mr. Maile submits that the bund can be viewed as part of the application land, pointing to the factual situation underlying the land the subject of the application for registration and the comments of Lord Hoffmann in Oxfordshire County Council v. Oxford City Council (*Supra*).

92. It seems to me that it is a question of fact and degree whether an area of land that is not in fact entered upon is part of a larger area of land, considered as a whole. Flower beds are plainly parts of parks, even though they are rarely if ever walked over for recreation. They exist as ancillary to the usage of the park. Equally in the Oxfordshire case one can understand why a rough or wooded area might be regarded as a Town or Village Green when the recreational use related to walking through it, even though large parts of it were not passable. In those circumstances the area as a whole was the attraction.

93. In the present case, but contrast, the landscaped area/bund is not in my view part of the recreational area, any more so than the wooded areas to the North or the fields to the East and West. It is quite distinct, and physically separated, from the Meadow land. It is also evidently a landscaped feature, and would apparently be a barrier between the urban

construction of the Park & Ride and the more rural area to the North. It no doubt makes the Meadow land more attractive (because it screens it from the cars and buses), but that alone is not a basis for treating it as part of a Town or Village Green.

94. I conclude that the bund in its entirety has not been used as a Town or Village Green, and is not an integral part of or ancillary to the exercise of lawful sports and pastimes where they have been used, namely over the Meadow land.

95. I turn next to the usage of part of the Eastern meadow by travellers, new age and otherwise, in 2009. The occupation of part of the meadow land by new age travellers prevented usage taking place over some of the application land by their very physical presence. Some people were deterred from approaching them; others were not. They do not appear to have been difficult neighbours. The basis on which the Objector suggests that such an event prevents Town and Village Green rights from accruing in respect of the land used by the travellers is that the usage by the local inhabitants has been interrupted. In this regard it seems to me that the analysis of the Court of Appeal in R v. Redcar & Cleveland BC ex p. Lewis (No. 2) [2009] 4 All ER 1232 is still good law, notwithstanding the overturning of the decision by the Supreme Court. I bear in mind also that that case concerned intermittent use by the landowner, whereas here we have use by an unlicensed third party. Dyson LJ said (at para. 41):

“In my judgment, there is no more a "principle of interruption" (as contended by Mr. George) than there is a "principle of deference" (as Sullivan J suggested when granting permission to appeal in the present case). Neither "principle" finds expression in section 15 of the 2006 Act and its predecessors. But "interruption" and "deference", which are aspects of the "amount or manner" of the use (to adopt the words of Lord Hope), may be relevant to a determination of whether the user has been sufficient to bring home to the reasonable owner that the local inhabitants have been asserting a right to use the land.”

I am of the view that any reasonable person, or landowner, being aware of the use of the land, would conclude that the Meadow land part of the Application land had been used as a whole for the purpose of lawful sports and pastimes for the requisite period of twenty years, notwithstanding the usage of part of it by new age travellers.

96. The usage by Irish travellers for a very short period in 2009 seems to me to be *de minimis*, and for so short a period (the suggestion was a fortnight) as to be immaterial.

97. Turning to the location of the Northern boundary of the application land, the likelihood would be that the fields would have been used to the extent that they were relatively flat and grassed – that is to say, not in their wooded area to the North. That however is an uncertain boundary, and it appeared to me from the site view that the land shown on the plan annexed to the Application is smaller than this. If that is so, then the Authority should not register a larger area of land than that sought by the

application, but should simply register the area of meadow land encompassed by the plan.

98. As of right

There is a dispute between the parties as to whether land that is held by a local authority for the purpose of permitting public recreation can be used by the public for lawful sports and pastimes 'as of right'. I have no doubt that the Objector is correct in its submissions on this point. Speeches made in the House of Lords in R v. Sunderland City Council ex p. Beresford (*Supra*), admittedly as *obiter dicta*¹, indicate plainly that land held for the purposes of section 10 Open Spaces Act 1906 cannot be used 'as of right' for these purposes. Moreover in Hall v. Beckenham Corporation [1949] 1 KB 716 Finnemore J considered that land held by a local authority as a pleasure ground under section 164 Public Health Act 1875 was held in trust for use by the public, such that a member of the public could not be a trespasser there. If a member of the public has a right to be on the land and doing what he is doing, then he is there by right; and not 'as of right', or as it has been described 'as if of right'.

99. Mr. Maile's suggestion that there are or may at some time in the future be pending some legal decision at which this issue may be further considered by the Courts is wholly uncertain. I advise the Authority that it must consider

¹ Comments not strictly necessary for the judgment – and hence not binding, but persuasive only.

the application on the basis of the law as it presently understands it to be. There is no realistic basis for deferring the making of a decision.

100. I turn then to consider the basis on which the Application land is held by the local authority. The evidence is very scanty. The only assistance that we have is from the terrier card, which states that the land is held as 'Investment Estate'. This may mean that it was held in order to produce an income; or that it was held in the broader sense of investment, in the sense of being held for development in the future, or for planning purposes. The Objector have suggested that the land may have been acquired under the powers contained in section 18 of the Bath Corporation Act 1925. That provides that:

"18. (1) The Corporation notwithstanding that the same may not be immediately required may by agreement purchase or acquire or take on lease and hold any lands which in their opinion it is desirable the Corporation should acquire for or connected with the purposes of their undertakings powers or duties or for the benefit improvement or development of the city..."

This provision does not narrow down the purpose for which the land was acquired. However, for whatever purpose the land was acquired, at some stage it appears that on the repeal of the 1925 Acts the land was held for the purposes under section 120(1)(b) Local Government Act 1972. That provides:

"120. **Acquisition of land by agreement by principal councils.**

(1) For the purposes of—

(a) any of their functions under this or any other enactment, or

(b) the benefit, improvement or development of their area,
a principal council may acquire by agreement any land, whether situated inside or outside their area."

The likelihood therefore appears to be that the purpose for the original acquisition was 'for the benefit improvement or development of the city', and this was then described by reference to the purposes under section 120(1)(b) Local Government Act 1972 (and in the main, and subject to appropriation for other purposes – see below – for planning purposes). In consequence, this is a use that does not permit public recreation, and does not of itself prevent recreational user from being 'as of right'.

101. I turn next to the relevant express appropriations from the land. The material appropriation is that which occurred on 27th. January 1994 appropriating the triangular piece of land to the East of the Park and Ride to usage under section 10 Open Spaces Act 1906. The land so appropriated includes the pathway running along the North of the bund from the triangle in a Westerly direction until it reaches the Southern point of the Eastern meadow. In my view that pathway is held on trust for recreational use by the public, and in consequence use of it for lawful sports and pastimes cannot be usage 'as of right' for the purposes of this application.

102. I turn next to consider the Objector's contentions as regards the Meadows; that use for public recreation is either to be Implied; or alternatively that the Council is permitting using the land to be temporarily used for recreational

purposes, and during that period usage is not trespass and hence not 'as of right'.

103. In Oxy-Electric v. Zainuddin (1990) (unrep.) Mr. Terence Cullen QC held, *obiter*, that one can imply an appropriation to a specific statutory purpose where that is a necessary inference to be drawn from an act by a local authority. In those circumstances the appropriation is implicit. That is in my view a correct legal principle.

104. The difficulty here is that there is no evidence of any decision on the part of the Council from which such an appropriation may be inferred. The only material that is pertinent is the decision on the part of the Council to maintain the land in the sense of mowing it and having occasional litter-picking. There is no evidence as to why such a decision was taken as regards the Meadow land. As far as litter-picking is concerned that may have simply been to provide for a public health function. Mowing is in my view wholly equivocal. I note that in Beresford the land was mowed by the landowner. Whilst the precise point in issue was not taken, I would doubt that their Lordships would have missed an answer as plain as the present, if mowing local authority land that was being used by the public for recreational purposes amounted to an implicit appropriation of the land for public recreational use. I conclude that the acts relied on by the Objector are not sufficient to impliedly appropriate the Meadow land to public recreational use.

105. Turning next to the issue of temporary use, a local authority has the power to use land for an alternative non-inconsistent use if they have no present need for the land pursuant to the appropriated use. In these circumstances, two issues arise. The first is whether such temporary usage for recreational purposes will prevent the usage being 'as of right'. The second is whether the Council is, in fact, using the land for that purpose.

106. Turning to the first issue, a local authority may not lawfully perform any act that it not authorised by statute. If a local authority decides to use land that it owns for a temporary use, that use must be a lawful one. The argument is that the consequences of such temporary use must be the same as if the land was appropriated for such use. The Objector's argument is that if land is being used for such a temporary purpose, the Council must have held the land under a relevant holding power (being either section 10 Open Spaces Act 1906, or section 164 Public Health Act 1875). In my view, if it is implicit in the right to acquire land for a purpose that a council may use land temporarily for that purpose, then the status of the users must be the same in each case. If they are using the land 'by right' where the land is appropriated to that use, it must also be 'by right' during the period of temporary usage.

107. However, the mere fact that the Council have mowed the land, picked up the litter; and that the public in fact use for recreational purposes is not

sufficient to demonstrate that the Council made any decision in fact that the Meadow land would be used for public recreation purposes. There is no evidence of any such express decision-making on the part of the Council. Had the Council indulged in any capital expenditure showing that they intended that the land would be used as a recreational facility for the time being, matter may have been different, but they did not. The acts of the Council have been equivocal, and I cannot conclude that it came to any conclusion that this land would be used for the time being for public recreation purposes.

108. In the absence of any conclusion that user of the Meadow land was usage 'by right', I conclude that it was 'as of right'. There is no suggestion that any public usage has been by force, secrecy or permission.

109. For lawful sports and pastimes

I have indicated above that the evidence shows that the Meadow land has been used for lawful sports and pastimes. I do not accept the Objector's submission that, as far as the Meadow land is concerned, the user is user in the nature of footpath or highway user. There is no evident route across the meadow by way of public footpath. I accept the evidence of witnesses who in the main indicated that they wandered about the land, or let their dogs off the leach to run about. This land was a destination in itself, and not simply, in the majority of cases, a route of passage to a destination.

110. By a significant number of the residents of a locality.

The relevant test is that the number of people using the land in question must be sufficient to indicate that their use of the land signifies that it is a general use by the local community for informal recreation, rather than occasional use by individuals as trespassers:

- R v. Staffordshire County Council ex p. Alfred McAlpine Homes Ltd. [2002] 1 PLR 1 at [71] per Sullivan J.

I have considered the evidence of user, and in particular the plan produced by the Objector showing the distribution of those persons supporting the Applicant. I also take into account the fact that the application land is available and accessible rough land than is within reasonable walking distance of most parts of the claimed locality. It is an obvious open space for dog walking, and for rougher exercise. It is not surprising in the circumstances that most of the direct evidence of usage comes from houses in reasonable proximity to the land; that is what one would expect.

111. I have considered the statistical analysis of Mr. Scott, but I would say that although it is relevant for what it states, consideration of such statistics may be misleading. There is no statistical threshold or test under the Commons Act 2006. Such an analysis also does not take into account the evidence of those who do give evidence that they have observed other people and

other local people carrying out lawful sports and pastimes on the land. I have taken that evidence into account in coming to my conclusions.

112. I conclude therefore that there has been user by a significant number of the inhabitants of the locality of Newbridge Ward of the Meadow land for the relevant period for lawful sports and pastimes.

113. 'Predominant usage'

If it should be relevant, it is I think a matter of impression as to whether usage of the land is predominantly by occupiers of the neighbourhood. Whilst some users of the land will come by car – and the Park & Ride is easily suited for this; or be children at the local school which has a catchment area going beyond the neighbourhood, I conclude that the majority of usage came from inhabitants of the relevant locality.

114. Conclusion

I conclude that on the evidence that I have heard and seen, the Applicant has demonstrated user 'as of right' for the relevant period of twenty years by way of lawful sports and pastimes of the Eastern and Western meadows, and the 'corridor' between them, by inhabitants of the locality of Newbridge Ward.

115. Advice and recommendation

I therefore advise the Registration Authority that they should register part only of the application land, being the Eastern and Western meadows and the 'corridor' between them only, as a Town or Village Green pursuant to the provisions of section 15 Commons Act 2006.

116. Lastly, can I extend my thanks to Mr. Simon Elias and Mr. Graeme Stark of BANES for their diligence and care in organising the Inquiry, and all matters of administration arising from it.

23rd. August 2011

Leslie Blohm Q.C.

St. John's Chambers,
101 Victoria Street,
Bristol,
BS1 6PU