

In the matter of an Application to Register

Ashton Vale, Bristol as a New Town Green

APPLICANTS' SUBMISSIONS

30th November 2010

1. By report dated 26th August 2010, the Inspector concluded that the totality of the Application land qualified for registration as a town green under section 15(2) of the Commons Act 2006 as land on which a significant number of the inhabitants of a neighbourhood within a locality indulged in lawful sports and pastimes as of right for a period of at least 20 years and continued to do so at the time of the Applications.
2. On 9th November 2010, the Objectors served submissions including significant further evidence and now seek a reconsideration of the Inspector's report. Given that a "reconsideration" is requested, this must by definition be by the Inspector.

Referral back to the Inspector

3. When the Objectors first lodged their evidence to oppose the Application in May 2010, the Objectors served 17 witness statements plus documentation and submissions arguing:
 - a) The land was little used and any use was restricted to rights of way;
 - b) The land was divided by ditches and fences such that a person could not pass from field to field;
 - c) The land was not in a fit state for recreational use;

- d) The landfill continued in operation within the last 20 years.
4. At the hearing of the matter, the Objectors' witnesses entirely failed to come up to proof, with many of them in fact changing their evidence to support the Applicants' case. As the inspector found:
- a) The farmer and many of the other objectors' witnesses generally supported use. Evidence that users limited themselves to specific paths fell apart as no witness followed any user's route and could not give any evidence of routes.
 - b) Virtually all the witnesses accepted that the fields were not divided by ditches and fences and there was no hindrance to passage between the fields. This was also apparent on inspection.
 - c) The land was accepted by many of the Objectors' witnesses to be fit for use as many of them similarly used all of it. Whilst at times it would be very wet and some specific areas flooded, this never prevented use and was in fact an attraction of the area.
 - d) The land fill never prevented use of the land at all and in any event concluded more than 20 years prior to the application.
5. The Objectors' new evidence and submissions seeks to raise afresh the identical four issues upon which the Objectors failed at the hearing. The Objector seeks to raise these issues afresh with a fresh set of witnesses. What is particularly perverse and contrary to the rules of natural justice is that the Objectors seek that this new evidence:
- a) Should not be reconsidered by the Inspector, who has already heard identical and substantial evidence on the subject;

- b) Should instead be referred to the untrained members of the PROWG committee, who have heard none of the initial evidence;
 - c) Should not be subject to cross-examination, despite the fact that the almost identical prior evidence of the Objectors fell apart when subjected to cross examination.
6. Further, breaches of natural justice and general principles of fairness arise given that:
- a) A surprising quantity of the new witness evidence is obviously not true when looking at maps and photos and comparing this to what the witnesses can see. Accepting such evidence at face value is shocking and a breach of natural justice and principles of fairness.
 - b) Further, the Objectors new attack on the validity and truth of the Applicants' witnesses evidence is identical to the failed attack it made during the course of the hearing with extensive cross-examination of those witnesses. The re-raising of such an attack is misguided. Asking for it to be considered by people who did not hear the initial attack is grossly unfair.
 - c) The Objectors' principle shareholder, Mr Lansdown, quoted in the press last week claimed that the City Council has given him "all-party support from councillors to go ahead with a new stadium". In such circumstances, taking this matter away from the independent Inspector and giving the decision to such councillors is clearly inappropriate and raises issues of bias, issues which have already been raised by the conduct of Councillor Cook.
7. The Applicants' legitimate expectation that these new submissions and evidence be returned to the Inspector is supported by the High Court decision in *Chaston*

v Devon County Council [2007] EWHC 1209 (Admin) on very similar facts. Any other decision will be irrational and perverse, as found in that case.

8. The Applicants also rely upon Sullivan J's comments in *R (Cheltenham Builders Ltd) v South Glos DC* [2003] EWHC 2803 that the remedy for the absence of any fixed procedure in the Commons Act 2006 was the practice of referring the matter to an independent Inspector.
9. The Applicants had feared that such an attempt was being made on 13th October 2010 when the Registration Authority's spokesperson, James Easey, announced in the Bristol Evening Post.

"We have carefully considered the request for an extension to the deadline and have decided that both parties must make any further representations by November 9 and that either party can make comments on those further representations by November 30. We shall then assess this further evidence and either refer back to the Inspector for her consideration, or move forward with setting date for the Public Rights of Way Committee to meet."

10. The Applicants wrote to the Registration Authority immediately expressing concern that the Inspector would not be involved in the process. Mr McNamara replied the same day stating:

It is highly likely that further submissions will be referred to the Inspector - but this will depend upon their content

So:

1) the Registration Authority is not placing the media above the parties

2) there is no requirement in law that further submissions be referred to the Inspector. Imagine if a party submitted irrelevant and fundamentally irrational submissions then these would not be submitted. In this case, however, it is highly likely that the submissions will be sent to the Inspector (given the expertise of the advisors) . But I, as advisor to the PROWG committee, will not merely act as postboy and forward submissions without consideration.

3) there is no attempt to improperly exclude the Inspector at all.

11. Any failure to refer the matter back to the Inspector will obviously be unlawful. There will naturally be a suspicion that the failure was designed to benefit the commercial interests of the Objectors, a view already expressed by many councillors.

New evidence

12. For the reasons set out below in detail, the Applicants' argue that:
- a) It is too late procedurally for new evidence and new submissions to be made.
 - b) Any change to the procedure to allow further submissions and evidence would be unfair and irrational and potentially unlawful.
 - c) In any event:
 - i) The new evidence does not challenge the Inspector's primary findings of fact;
 - ii) the submissions are largely if not entirely a repetition of the submissions made before the Public Inquiry;
 - iii) a significant proportion of the "new" evidence was before the Inquiry and the remainder was available;
 - iv) a surprising proportion of the new evidence (particularly the local witness evidence) is obviously incorrect or untrue;
 - d) The challenge to the Applicants' evidence is the same as the challenge made under cross-examination of the witnesses at the Inquiry and is in any event misguided. It failed once and the Objectors should not be given a second chance.
 - e) In the event that new evidence is to be permitted, then the Inquiry will have to be reconvened, new witnesses cross-examined and old witnesses recalled. The Applicants would require a considerable period of time to

respond to the expert evidence in particular if that is the case. The Applicants therefore repeat points (a) and (b) above as to why this should not occur.

- f) The Applicants will be greatly prejudiced by any new hearing. They will lose the benefit of much of the cross-examination of earlier witnesses due to the passage of time. The Objectors will have a second chance to coach their witnesses to give appropriate answers (coaching being an issue which arose in the initial hearing). The Applicants also have limited resources compared to the Objectors.

Procedural History

13. The Applicants wrote to the Registration Authority on 16th October 2008 indicating their intention to bring a Town Green application. The two Applications were dated 22nd and 26th October 2009. They were filed with the Registration Authority on 28th October 2009.
14. Whilst the duty to make a decision cannot be delegated by the Registration Authority, from the earliest stages of this matter the Registration Authority resolved to appoint an external independent Inspector to decide the matter by way of non-statutory public inquiry. This is the same procedure which the Registration Authority has chosen for all its recent town green applications. Further, this was the procedure adopted by the Registration Authority when the Objector submitted further evidence in Whitchurch and Filwood Town Green Applications. It is also the procedure recommended by Sullivan J in *Cheltenham Builders* and Carnwath J in *R v Suffolk CC ex p Steed* [1995] 70 P&CR 487.
15. The fact that the Registration Authority chose this procedure is evidenced by Miss [REDACTED]'s email dated 4th November 2009 which stated:

With reference to the TVG application, I am hoping to arrange a non-statutory inquiry, and have provisionally booked an Inspector for the entire week beginning the 15th of February, 2010. Please could you confirm as soon as possible that the applicants, their representative,

and witnesses will be available to attend that week.

16. On 17th November 2009, Miss [REDACTED] wrote:

I have now arranged that two weeks will be allowed for the inquiry, the weeks beginning the 8th and the 15th of March. It is a matter for you and your legal advisers whether or when you are represented, but at least one of the applicants will be expected to attend throughout. I suggest the applicants also consult their legal advisors as to which witnesses to call and how many. The Inspector will be Miss Ross Crail. Please advise as soon as possible as to availability from the 8th to the 19th of March inclusive. I look forward to hearing from you.
Regards,

17. At the meeting of the Registration Authority's Overview and Scrutiny Management Committee meeting of 20th November 2009, the minutes record the following:

In relation to the town green application which had been lodged in respect of the proposed stadium site, it was reported that the Football Club's barrister would be available in March 2010 so the hearing by a planning inspector was likely to take place then with a decision by the end of the month. The inspector could accept or reject the application or agree that a green be created on only part of the site. The PRW&G Committee would have to accept the inspector's decision unless it considered it to be flawed.

18. On 12th January 2010, the Inspector made directions which provided that the period for Objections would end on 2nd February and all evidence must be submitted by 24th February 2010.
19. On 8th February 2010, the Inspector held a pre-Inquest meeting at which the Applicants argued for an extension of time to serve their evidence as the directions provided only a 3 week period between end of objections and the date for filing evidence. Represented by [REDACTED] QC, the Objectors opposed the extension of time and argued, very plainly, that their evidence was ready – both documentary and witness.
20. Evidence was submitted by both sides on 3rd May 2010.

21. The public inquiry took place between 17th May and 3 June 2010, over a total of 10 days. The hearing involved live witness evidence from 22 witnesses for the Applicants and 14 witnesses for the Objectors. All the witnesses were subjected to extensive cross-examination. Both sides were represented by counsel. Hundreds of pages of documents were considered and were put before witnesses.
22. The Registration Authority provided the parties with copies of the Inspector's Report under cover of a letter dated 16th September 2010. The letter asked that if either party had any submissions to make on the Report, these be made within 21 days of the letter.
23. The Objectors' solicitor wrote to the Registration Authority by letter dated 23rd September 2010 and stated that "*... given the length of the Inspector's Report, the number and complexity of our concerns and the need to deal with each of our concerns in detail in consultation with Counsel, the 21 days for submissions will not be sufficient time ...*".
24. The reasons expressed for the extension were the length of the report and also the availability of their chosen counsel. These same reasons, particularly the limited availability of their counsel, were repeated in an email from the Objectors' solicitor to the Registration Authority dated 28th September 2010.
25. The Registration Authority replied by email to the Objectors' solicitor apparently compromising with a final date for submissions of 9th November 2010. The Applicants were not copied into this correspondence and found out about the extension of time by reading about it in the Bristol Evening Post on 29th September 2010.
26. Following an email complaint, the Applicants were supplied with the correspondence and, by email dated 1st October 2010 copied to the Objectors, the Applicants agreed to withdraw any opposition to the extension of time, subject to having a right to reply to the submissions by 30th November 2010.

27. However, in that same email, the Applicants raised a concern that comment coming from Bristol City Football Club both directly and through the Bristol Evening Post was that this extension of time was in fact an attempt by the Objectors to provide new evidence out of time. Neither BCFC nor the BEP was an Objector to this case and neither sought to lodge any notice of Objection. No comparable comment has ever been made by the Objectors either directly or via their solicitors.
28. The Applicants argued in the 1st October 2010 email that it would be entirely inappropriate for further evidence to be submitted now, not only after close of submissions but after completion of the Inspector's report.
29. Following the email of 1st October 2010, at no time have the Objectors clarified that they in fact did in fact seek to serve further evidence.
30. On 9th November 2010, the Objectors served a substantial quantity of new evidence. The Objectors have not served any submissions at all from [REDACTED] [REDACTED] QC.
- A. It is too late for new evidence and new submissions to be made and for substantial changes to be made to the procedure.**
31. The Objectors are seeking to misrepresent the nature of the original Inquiry. By press release dated 17th November 2010, the Objectors stated:

When the independent inspector held her enquiry earlier in the year, those in favour of the "village green" submitted various statements in support of the application. Following her surprising recommendation that the site should be designated as a 'village green', the landowners have been working very hard over the last few weeks to contact local residents and other concerned parties in order to properly present their case. A compelling dossier of new evidence that was not available at the time of the first hearing has now been compiled, and this was delivered to the Council last week.

32. The above is a gross misrepresentation of the truth. The original hearing offered the Objectors full opportunity to bring their own evidence and challenge the Claimants' evidence.
33. The following matters prevent any new evidence from being considered:
- a) At the outset, the Registration authority decided that the matter should be decided by a public inquiry presided over by an independent inspector. Having made such a decision, there is no justification for departing from the decision by allowing a reopening of the hearing or a second chance for the Objectors to submit their case.
 - b) The original procedure did not envisage that either side should have a second opportunity to re-open the original case after the hearing has concluded.
 - c) Contrary to the Objectors' statement, all of the evidence now submitted was available to the Objector prior to the Inquiry.
 - d) This is clearly an attempt by the Objectors to move the goalposts.
34. The real test of procedural fairness is whether the Registration Authority would have considered permitting the Applicants at this stage to change the procedure and reopen an apparently concluded report. It is unlikely that the Applicants would have been entertained in this manner by the Registration Authority. In fact, when adjourning the original hearing, the Registration Authority made plain that the matter had to be concluded by August 2010 so that the Objectors could begin building the stadium and so no further delays would be permitted. It appears that the need for finality only arose in the event that the Applicants lost and not if the Objectors lost.
35. Further, by press release dated 19th November 2010, the Objectors stated:

"A lot of new evidence about the site that was previously unavailable is now in the hands of Bristol City Council. We believe that there is evidence in there that deals a fatal blow to the applications, and that shows the inspector to have been wrong in reaching the conclusions she reached in her report. It will certainly be hard for the council to register the land as a village green in the face of the compelling new evidence, but we await confirmation from them as to what the next steps will be.

36. Having fought and won the case once, it is grossly prejudicial and unfair to the Applicants to be made to fight what appears to be an identical case the second time. Many of the Applicant witnesses faced more than 3 hours of cross-examination, such examination along the same lines as that now put forward as being "new" and "compelling" is in effect the same argument put forward previously.

B. Any change to the procedure to allow further submissions and evidence would be unfair and irrational and potentially unlawful.

37. It is apparent from the Objectors' correspondence that:
- a) The Objectors were ready for the Inquiry on 8th February 2010 and expressed no desire at that time to gather further evidence.
 - b) There is no excuse proffered for the failure to provide this evidence in time for the Inquiry.
 - c) There is no evidence now submitted which could not have been submitted to the original inquiry.
 - d) Much of the new evidence in fact was before the Inquiry.
 - e) Much of the new evidence seeks to raise matters which have already been the subject of extensive submission and cross-examination of the Applicants' witnesses by the Objectors' counsel.

f) There is no other reason why the agreed procedure of evidence, hearing, decision should be subverted in this way.

38. The Registration Authority published the Inspector's decision on its website on 16th September 2010. The page containing the links to the Report contained the following quote (placed prominently upon the page):

Councillor Simon Cook, Deputy Leader of the Council, and Executive Member for Culture, Sport and Capital Projects, has said:

"I am shocked and disappointed at the independent inspector's conclusion. Although I respect the fact that she has found that there is a case for awarding a village green, designating the whole 42 acres in question seems utterly unreasonable. The new stadium, a possible arena, redevelopment of Ashton Gate and Bristol's World Cup Host City status are at serious risk. This amounts to around £150m worth of investment, promising at least 1,000 extra full and part-time jobs and thousands of construction jobs. It also means we risk losing the economic impact of hosting the World Cup amounting to possibly £150m. It would be devastating to the regeneration of south Bristol and highly damaging to the image of the city."

"I pay tribute to the club for their tenacity and determination - despite some differences, we have a shared vision for a stadium on this site. We are determined to chart a positive way forward so that the interests of some local people in continuing to have an open space on which to walk their dog are balanced with the wider economic benefits. The law behind this application is a complete nonsense, but I am utterly determined to find a way through it."

39. It is apparent that many who work for and otherwise serve the Registration Authority are keen for the Applicants' application to fail so that commercial development may go ahead. The Applicants are concerned that Councillor Cook and others being "*utterly determined to find a way through it*" are the reasons for this desire to change the procedure.

C. The new evidence does not challenge the Inspector's findings

40. The "new" submissions not drafted by Mr [REDACTED] QC are fairly similar to those drafted by Mr [REDACTED] QC for the hearing. The Applicants therefore refer to and repeat all prior written submissions in response.

41. The "statistical" interpretation of the evidence is rejected entirely by the Applicants as false, misguided and meaningless. The author(s) are unknown and unidentified but seek to give evidence in a completely unacceptable format.

42. The Objectors' new evidence seeks generally to show two things:
- a) The land tip was still in operation 20 years prior to the Application;
 - b) The land is not used significantly, the Applicants have exaggerated use and any use was restricted to paths.

Waste tip

43. The new evidence and submissions from the Objectors does not deal with the following:
- a) The vast majority of the Application land remained in use throughout the period of the landfill. Access to fields 2-6 and the North of Field 1 remained unrestricted at all times.
 - b) The raised embankment at the northern end of field one was never subject to tipping and remained untouched throughout the landfill. This has now been admitted by Mr Newcombe in his new statement (page 6 near the bottom).
 - c) A strip running alongside the brook was never tipped to avoid contamination of the water course. This has now been admitted by Mr Newcombe in his new statement (page 7 near the top).
 - d) The mound near the Silbury Road entrance was for screening and not to prevent access. The April 1988 aerial photograph shows that the mound left ample space for people to walk around it. People also walked over it. Bizarrely, the Objectors' new submissions at para 43(b) argue that "*the bund that bounded the landfill had sheer sides and was of a [4 metres] height and so the evidence regarding people walking along it must be disregarded*". Such a submission could only be made by someone who did not attend the inquiry, did not see [REDACTED]'s photo of her and her

infant children on top of the bund nor the aerial photographs showing easy routes over and around the bund.

- e) People did walk around and play on the landfill and the areas around it and there was nothing to prevent such access.
44. Perhaps one point of interest is the report of Christine Cox dated 8th November 2010 providing expert evidence on the aerial photographs. It does appear that the Objectors have reverted to the ruse used during the Inquiry of requiring witnesses to address very small scale versions of photos when much larger ones were available. However, the expert's analysis of the black and white dated 18th June 1989 is interesting given Mr [REDACTED] evidence to the inquiry that this showed the landfill to be concluded by that date.
45. In respect of this photo Christine Cox states: *"In June 1989 the land within field 1 is in the process of landfill ... The light toned level surface indicates that a subsoil type substrate has been deposited and levelled . Dark toned material, possible top soil, is being spread over the area and this process is in progress at the time of photography. ... The surface is bare substrate and there are no visible vegetation types or land visions on the surface of the field."*
46. The evidence is quite clearly nonsense.
- a) A letter dated 19th May 1988, more than a year before this photo from Newcombe Estates states *"the grass on most of phase III and part of phase IV is now getting quite long and should be grazed or cut for hay in order to keep the site as tidy as possible"*. How can Christine Cox possibly say that there is no visible vegetation on field 1 given the contemporaneous letter.
 - b) Mr [REDACTED] argued in his original statement that grazing did in fact take place during this period. Even more bizarrely, a new statement from Mr [REDACTED] also seeks to argue that *"During the landfill operations, those fields were excluded from the letting but Mr [REDACTED] was offered*

free grazing on those parts of them landfill which had not yet been tipped or had already been re-grassed. This was done in order to keep the grass short and the site looking as tidy as possible.”

- c) It was of course the evidence of Mrs [REDACTED] and Mr [REDACTED] that no grazing in fact took place despite the offer.
47. The evidence of Christine Cox is obviously wrong on this issue. Cross examination may reveal all of her evidence to be incorrect. As might challenge by another expert. But the key issue is that her evidence that the landfill was still continuing on the evidence of the June 1989 aerial photograph is blatantly flawed. Further, it is difficult to understand why she is looking at such a small copy of the photo nor how she can tell such matters as vegetation from a black and white photo.
48. Christine Cox also states “*three distinct heaps of dark toned materials are visible at the northwest part of the area*”. When observed on the full scale sized photo available to the initial inquiry, no such heaps are visible.
49. As regards the remainder of the Objectors’ new evidence concerning the land fill and generally:
- a) The evidence of the Newcombe Estate’s witnesses [REDACTED] and [REDACTED] is simply repetition of the evidence given to the Inquiry by the Newcombe Estate’s witness [REDACTED]. There is no justification for this new evidence. Allegations relating to the existence of fences has been adequately dealt with in the Inquiry and disposed off. There were no fences. Mr [REDACTED] had ample time to give his evidence and his evidence was of poor quality.
- b) The evidence of Mike Nutting, Robin Smythman and Rob Turvey is expert evidence on what should or would occur on a landfill site. The Objector has already had the benefit of evidence from [REDACTED] about what DID occur on the landfill site. These experts are of similar

qualification to Mr [REDACTED] but cannot be in any position to contradict his witness evidence as to what actually occurred.

- c) The licensing files produced by Rob Turvey were available to the original inquiry and had in fact been disclosed by the Objectors to the Applicants in December 2009. His evidence as to what may be “implied” from various documents is of no use to the Inquiry given the evidence of Mr [REDACTED] and the contemporaneous letters which show the actual progress of the tip.

Use of the land

50. The Objectors’ new submissions and evidence on use do not begin to challenge the Inspector’s findings.

51. In particular:

- a) the Objectors do not seek to challenge the evidence of Mrs [REDACTED]. She visited the Application Land most frequently of all the Objectors’ witnesses. She states to the Inquiry that she saw people all over the land.
- b) There is no challenge or comment on the existence of gates onto the Application land from so many of the houses which border the land. The evidence of Christine Cox seeks to assert that there is no evidence of such gates on the aerial photographs but their existence is obvious and this further discredits Christine Cox.
- c) Lord Roger in Redcar at para 85 “*Since ... Sunningwell it has been settled law that dog walking and playing with children count as lawful sports and pastimes. Since both activities can and do take place on almost any and every open space near centres of population, the scope for applying to register land as a village green is correspondingly wide. Owners of land are taken to be aware of this chapter of the law and of the need to take appropriate preventative steps if they see a risk of circumstances arising in which an application could be made and their land become*

registered as a village green. If they fail to do so, they are treated as having acquiesced in the inhabitants indulging in sports and pastimes on their land "as of right"". The use of the land for informal recreation given the ease of access and its proximity to housing is obvious and impossible to refute. The landowners assert that they took no such preventative steps and have clearly acquiesced.

False and untrue evidence

52. Perhaps of greatest interest in the Objectors' new evidence of use is the evidence of new witnesses who apparently live in properties bordering the land. The Applicants' witnesses whose houses overlook the land (from some 50 – 60 houses) gave evidence of seeing people on the land, at all points and at all times. Never in large numbers, but throughout the day and every day. These people gave the best and most relevant evidence of use. They were on the spot and gave the evidence that a present landowner could have given – [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and many others whose statements are contained in section 4 of the Applicants bundle.

53. It is apparent that the equivalent evidence from the Objectors' witnesses is largely dishonest. Not a single witness in fact has any decent view of the land, despite claiming to the contrary.

a) [REDACTED] (■ Silbury Road), [REDACTED] (■ Silbury Road) and [REDACTED] (■ Silbury Road), [REDACTED] (■ Silbury Road) all state that that they have clear view of the fields from their front windows down through the Silbury Road cul de sac. Simply by looking at the map of the land, it can be seen that this cannot be true. Numerous photos referred to by [REDACTED] (nos 30-36) show that there is at best a very limited view of the land in winter and no proper view of the fields at all in summer. The houses are distant from the land and have their views of the fields blocked by other houses and extensive trees and bushes. [REDACTED] who

lives at [REDACTED] Silbury Road confirms that in summer when the trees are in leaf, the fields cannot be seen at all.

- b) [REDACTED] ([REDACTED] Silbury Road) states *"My bedroom looked out onto the fields and the only people my wife and I saw were those using the footpath in field 1"* His house is on the wrong side of the road to have a view of the fields. His view is blocked by numbers [REDACTED] and [REDACTED] Silbury Road and the trees behind them. At best, he can see a sliver of field 1. This is confirmed by [REDACTED]'s statement and photographs 30-31. His evidence is exaggerated at best.
- c) [REDACTED], [REDACTED] and [REDACTED] live at [REDACTED] Silbury Road. Of all the Objectors' new witnesses, these are the only ones whose house actually borders the land. [REDACTED] states *"From my back windows I have the perfect view of the site. The fields are my back panoramic view and I can see all the fields from my back and side windows"*. This is astonishing evidence given that the [REDACTED]' house is surrounded by 30 foot high Leylandii hedge on 3 sides (see photos on pages 10-29). The evidence is clearly untrue, confirmed by the photos and by [REDACTED]'s statement and by [REDACTED]' statement, who lives next door, who confirms that the Leylandii block almost all of the view. See also [REDACTED]'s evidence. Photos 76-77 show the [REDACTED]' dogs being walked off the path in fields 3-4. [REDACTED] states the dogs are only ever walked on the paths.
- d) [REDACTED] lived at [REDACTED] Ashton Drive and claims that he *"could view the fields from my house in Ashton Drive and have definitely not seen any activity apart from the use of the footpath"*. He does not mention that his house was on the incorrect side of the road with his views blocked by a terrace of three houses opposite and more houses to either side. He may have had a sliver of a glimpse of field 5 but there is no way he could see the footpath on field 1 (see photos 38-39). The evidence is clearly untrue. [REDACTED], who lived at the house, confirms that the land could barely be seen. [REDACTED], the owner of the house, confirms it. [REDACTED]

█ have taken photos from the bedroom window at █ Ashton Drive and these show how limited the view is (see photos 38-39).

- e) █, █ and █ (█ Silbury Road) claim to have good views of the fields from their house. In fact, they are distant from the land with two rows of houses and banks of trees blocking their view of the site. A statement from their neighbour █ confirms this, as do the photos taken by █ (photos 1-9). There is no view of the fields from their house and the evidence is not true. The evidence of the children that they do not use the land is also challenged. See the witness statement of █, who has seen the children playing on the land.

54. As regards the remainder of the evidence, this is largely repetition of previous asserted facts that have been rejected:

- a) The land is always too wet to walk upon (not true);
- b) The land is too rutted and dangerous to walk upon. Many witnesses claiming that it poses a risk of breaking an ankle (this is obviously untrue).
- c) The land is too covered in cow pats to walk upon (obviously untrue).
- d) Witnesses claiming they stick to the paths when using the land, despite no paths being visible or marked. Several witnesses state that they stick to the paths otherwise they could not avoid the cow dung, a remarkable statement given the cows have no way of knowing where the paths are.
- e) Witnesses also claim to avoid the land due to the amount of dog faeces everywhere. And then state that dog walkers don't use the land!

55. Robert Hunt gives similar contractor evidence to the many contractors who gave evidence to the inquiry. His evidence adds nothing to the evidence that was previously before the Inquiry from such witnesses. In any event, his

evidence is contradictory. He states (base of page 2) *“the footpaths around the edge of the site, however, are much used by local people for walking, dog walking etc”*. He then states (base of page 3) *“during all my visits the only people I ever observed were a few individuals, on a few occasions, walking their dogs along the footpath from Silbury Road”*.

56. Many of the local witnesses give [REDACTED] type evidence; witnesses from the far end of Ashton Vale stating that they do not use the land and, despite this, claim that they “know” that no one else does (eg [REDACTED] who states he last used the land in the 1940s, [REDACTED] who has never been on the land).
57. [REDACTED] claims to view these fields every day as his sister lives very near to the fields, at [REDACTED] Avebury. He lives at [REDACTED] Ashton Vale. He cannot cross or pass the fields to view them on such a journey within Ashton Vale. His evidence is not true (see photo 37).
58. [REDACTED] (who has lived in the area for 2 ½ years) claims that it is well known at Ashton Vale Primary School that the fields are to be avoided due to their danger. This is contradicted by the Headteacher’s letter to the Inquiry in the Applicants’ evidence at page 1133 and 1133(a). It is also contradicted by [REDACTED], [REDACTED] and [REDACTED], whose knowledge of the school and the community is many times greater than [REDACTED].
59. Several witnesses claim to view the whole of the land from David Lloyds sports centre. The topography of the land makes this impossible as the highest point of the land blocks the view from David Lloyds to fields 2-6 and to most of field 1. Further, the edge of field 1 nearest to David Lloyds is also out of view as it is too low. Further, photographs from David Lloyds show that there are no views from most parts of David Lloyds and at best very limited views of part of field 1. A high wall around the centre obscures the view. [REDACTED] and [REDACTED] confirm that the land cannot be seen well at all, if at all and only really from the fire exit gate or if standing on tiptoe at the edge of the swimming pool, looking over the fence. [REDACTED]’s statement covers this in detail.

60. The David Lloyd [REDACTED] claims he has a clear view of the land from his window. Not only is his window small, but it does not look out onto the fields. He looks onto the wall which surrounds the swimming pool. There is also a blind in the window. At best, there is a very limited view of a very small part of the land over the top of the wall, if he is standing up right in front of his window.
61. [REDACTED] claims he can see the land from Long Ashton church and farm. He cannot. See witness evidence and photos of [REDACTED] and [REDACTED] (see photos 75-75). The evidence is not true.
62. [REDACTED] and [REDACTED] ([REDACTED] Ashton Vale) claim to use the land rarely. But photographs of [REDACTED] on the land are by chance included in the Applicants' bundle at pages 1277 (fishing for tadpoles) 1300 (top left – playing with her children), 1313 (top left with deckchairs, family and dogs), 1316 (bottom two photos, with children, dogs, buckets). [REDACTED] is a football hooligan (see documents). Many of the Applicants' witnesses say they see them frequently on the land (eg [REDACTED]). Their evidence is not true.
63. [REDACTED] claims that he and about 20 other Ashton Vale dog walkers use the Ashton Vale playing fields. This may be true. But the Applicants submitted evidence of more than 70 daily dog walkers on the Application land.
64. [REDACTED] claims to use the fields regularly with his guide dogs. But none of the daily Ashton Vale dog walkers have ever seen him (see statements of [REDACTED], [REDACTED], [REDACTED]). Nor those whose houses back onto the land he claims to use. Had they seen him, they would have added such matters to their evidence of use. Further, he is describing a remarkably convoluted and long route to reach the land, about 1 hour's walk each way. He may be describing another field.

65. [REDACTED] and [REDACTED] claim to be able to see the fields from the Boys Club. There is no view of the land from the Boys Club (see photos 72a and 73 and statement of [REDACTED]). The evidence is not true.
66. Many witnesses claim that everyone on the land sticks to the paths, when there are no marked paths and the witnesses don't follow the people they see to see where they are going. This type of evidence was also given repeatedly to the Inquiry and rejected by the Inspector. It is suspicious that it arises again.
67. It is quite shocking how high a proportion of the Objectors' evidence from local witnesses is obviously untrue. It is apparent that many are connected to the football club or have been encouraged to give evidence through campaigns.

The Applicants' evidence

68. The Applicants submitted 188 statements detailing extensive and varied use of the land over the course of 50 to 60 years, many describing three, four and even five generations of a family using the land over time (e.g. [REDACTED]). The evidence is not damaged.
69. The Objectors have served a length "commentary" on the Applicant witnesses' correspondence with the council. The correspondence was largely disclosed by the Applicants as part of their evidence to the Inquiry. Further, [REDACTED] QC cross-examined the witnesses at length upon it. Despite this, the Objectors are seeking to reopen this cross-examination.
70. The essence of the Objectors' approach is that:
 - a) When writing to oppose the waste license, the witnesses do not refer to use of the land but instead focus on waste issues;
 - b) When writing to oppose the planning applications for the land, the witnesses do not focus on use but on planning matters;

c) Suddenly, when giving evidence on a Town Green application, the evidence is all about use.

71. The explanation is obvious and covered in detail in the additional statement of [REDACTED]. The Applicant witnesses were following the advice of those knowledgeable about planning matters as to what evidence was relevant for which matter. There was no point in adducing evidence of use to oppose a planning application at it was not relevant. Similarly, the Applicants did not adduce evidence relevant to planning in the town green hearing. Alderman [REDACTED] [REDACTED] similarly gives a statement on this issue that he advised the Applicants witnesses not to mention use in their letters concerning planning.
72. The honesty of the Applicants' witnesses was demonstrated under cross examination at the original hearing. Large numbers of locals give evidence of using the land. Their witness evidence was given honestly. Time and time again when challenged on their evidence, later documents or evidence showed they were telling the truth – e.g. :
- i) the absence of fences on the tip,
 - ii) the bund not being a barrier to access – see photos at App p1276 and and overhead enlarged photo at Obj p322
 - iii) the route around the back of the tip and the pre-existence of a raised platform across the north east boundary of field 1 ([REDACTED] witness evidence and photo on page 1194),
 - iv) the access into field 2 from field 5 – see photo App B1, p195A
 - v) the access into field 2 from field 1 – supported by Mrs [REDACTED] and Mr [REDACTED] and [REDACTED] and by others who clearly did access the field;
 - vi) calling the stile a stile – supported by Mrs [REDACTED], Mr [REDACTED] and [REDACTED].

In what was an intimidating environment for lay people, the consistent truth of the evidence under direct challenge is a credit to the local inhabitants. This contrasts sharply with the evidence of [REDACTED]

██████████ and, at times, Mr ██████████. It is of note that ██████████
██████████'s oral evidence back tracked from most if not all of the facts used
to challenge the locals' witness evidence.

73. The Applicants repeat their submissions on use which were made to the Inquiry. There is abundant evidence of informal recreation which does not simply involve walking along (unmarked) footpaths. The body of evidence is of significant depth and involves extensive corroboration. The various uses which will count as "lawful sports and pastimes" include:

- i) Watching the balloon fiesta – see photos on 858-9, 1271, 1297 and statements generally eg 417, 534, 594, 1016, 1019, 1059. This is admitted by both Mrs ██████████ and Mr ██████████ as having taken place since summer 1990 (the first event within the relevant 20 year period);
- ii) Walking with dogs, particularly off the lead – in addition to statements given to the Inquiry by ██████████, ██████████, ██████████, ██████████, ██████████, ██████████ see additional statements at pages 76b, 222, 231, 274, 294, 317, 325, 346, 348, 362, 368, 371, 379, 409, 411, 420, 436, 451, 457, 483, 502, 517, 524, 526, 534, 543, 553, 561, 564, 567, 572, 578, 580, 594, 596, 613, 621, 651, 694, 715, 734, 771, 780, 805, 835, 844, 878, 910, 919, 922, 939, 956, 962, 972, 980, 993, 1022, 1031, 1034, 1060, 1061, 1116, 1124 and photos on 1285, 1286, 1289, 1291, 1293, 1295, 1277, 1301, 1303, 1306, 1307, 1309, 1310, 1311, 1312, 1317, 1318 – more than 70 regular dog walkers and many more occasional or ex dog-walkers.

It is of note that Mr ██████████ gives evidence that even when operating 3 large drills with diesel engines, using compressed air to carry out percussion drilling, generating smelly waste from landfill rubbish which had been sealed for more than 20 years, in persistent rain, in cold February and early March, mid-morning and mid-week and

having warned the locals by letter that this was taking place, he still witnessed dog walkers walking the land. It is no surprise that they walked briskly;

- iii) Dog training – 410;
- iv)
- v) Walking without dogs, enjoying the fresh air and countryside – in addition to statements given to the Inquiry by [REDACTED], [REDACTED], [REDACTED] and [REDACTED] see page 277, 302, 394, 403, 468, 486, 510, 610, 684, 709, 717, 724, 757, 821, 829, 1079, 1130 and photos on 1292, 1308, 1319;
- vi) Children’s play and exploring – den building as well as football, kite flying, cycling, camping and general running around (with or without sticks) - in addition to evidence given to the Inquiry by [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] see additional statements at pages 87, 172, 207, 228, 240, 248,257, 254, 285, 310, 332, 428, 444, 474, 532, 570, 578, 652, 662, 802, 841, 862, 901, 909, 952, 954, 965, 996, 1003, 1042, 1056, 1057, 1086, 1089, 1113 and photos on 151, 1274, 1275, 1276, 1280, 1282, 1285, 1287, 1288, 1299, 1300, 1302, 1305, 1313, 1314.

[REDACTED] in particular gave evidence of use of the land in association with use of the Boys’ Club/Youth Club.

In addition, the Applicants’ witnesses give evidence that the land tip was played upon extensively during the 1986-88 period it was in operation – [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. This fact was admitted by [REDACTED] in oral evidence.

- vii) Fishing for fish and tadpoles – see statements on 909, 919, 1048 and photos on 1277, 1283, 1298, 1304, 1316. [REDACTED], [REDACTED] and [REDACTED] all give evidence of carrying this out and witnessing others doing so;
- viii) Watching varied wild life and birdlife – particularly in fields 2-6 – in addition to the evidence of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] see statements page 137, 211, 265, 291 (and photos on 292), 340, 570, 637, 684, 742, 788, 888, 895, 901, 928, 1025 and photos on 1278, 1305
- ix) Flying birds of prey – in addition to the evidence of S [REDACTED], [REDACTED], see additional statements on 742 and photos on 1279, 1290, 1296, 1297;
- x) Exercising and running – in addition to the evidence of [REDACTED], [REDACTED] see statements on 1091, 1099 and photos on 1293, 1294, 1315. Many of the witnesses mentioned seeing people running on the land. It is no surprise given runners' obsessions with laps and circuits;
- xi) Picnicking – see photos page 272, 1313, and statements such as 218;
- xii)
- xiii) Blackberry picking – see statements at 76f, 409, 646, 1058 – and evidences of witnesses generally;
- xiv) School children's trips and projects – see statements on 237, 794, 885, 934 and the Head teacher's letter at p1 133;
- xv) Ice skating/sliding in winter – 313, 540, 802 – and witnessed generally;

- e) Mrs ██████ recognised that the all of the land was used by locals. Her presence is fairly transitory compared to the locals but she did recognise this. She stated clearly that:
- i) She knew people had access to all of the land and she saw them all over the land;
 - ii) She was always happy for them to do so;
 - iii) Fences and gates were to keep cattle in not to keep people out. The gate was never locked when it was shut. She had no problem with people climbing over fences carefully;
 - iv) She saw dog walkers in all fields and going in all different directions – and this had not really changed over time
 - v) A lot of people used the lower fields;
 - vi) She saw people looking at birds and lakes;
 - vii) She was aware of bonfires and tents;
 - viii) She knew of the use of the fields at the balloon fiesta from 1990;
 - ix) She was aware of ball play and bicycle riding;
 - x) She was aware of the presence of house gates and opening at back of houses for 20 years and more. She stated that she thought most houses had gates or openings;
 - xi) She encouraged use as it helped her with injured and lost animals;
 - xii) The relationship between her and the residents has always been good;
- f) Mr ██████ was rarely present on the land, perhaps 1 occasion per year from 1995. However, his evidence demonstrates:
- i) Knowledge of gates and openings at backs of houses onto land for more than 20 years;
 - ii) Knowledge of trespass around and from field 1 in 2003 – see Obj p172;
 - iii)

- iv) Knowledge of trespass to fields 2 and 5 in 2008 – see his statement para 30 on page 123;
 - v)
 - vi) Knowledge of trespass to fields 5 and 6 in 2003 – see Obj page 181.
75. Many of the features described by the Objector as barriers to use of the land are in fact attractions:
- a) The extensive scrub is (to the extent it remains) used by children to build dens. The scrub is also a haven for wildlife. Many local inhabitants use the land for watching birds in particular and also other wildlife (see eg Applicant’s bundle pages 291-292).
 - b) The land is boggy and flooded in sections after heavy rains but not so at other times. Part of the southern end Field 5 remains wet at all times, but the northern end is often dry [see colour map at App p1221A]. Between 1988 and 2003, a lake would form in winter in fields 3, 4 and 6. The outline of this can be seen clearly on the aerial photo at Obj p329. Since 2003, this lake is limited to part of field 3 (agreed by Mr [REDACTED]). The witnesses also describe ponds in field 6 which have now gone.
 - c) The wetland areas are (were) an attraction of the site given that they attract wildlife. It is of note that the site is an SNCI, with involvement from wildlife authorities since 1982 – page 1333S
76. Part of the land was used as a waste tip for a period of time – 1986 to 1988. However, following the viewing of the large scale overhead photos, the oral evidence of Mr [REDACTED] and the additional maps and plans, it is now clear that:
- a) The access to field 1 remained open at all times from both Silbury Road and via fields 3 and 2 – see large overhead photo at Obj p322 and numerous witnesses;

- b) There were no fences— see large overhead photo at Obj p322 and accepted by [REDACTED] and [REDACTED]'s photo at App page 1194 and numerous witnesses;
- c) There was no grazing of cows between 1985 and 1990 – evidence of Mrs [REDACTED] and Mr [REDACTED] plus health regs referred to on Obj page 132
- d) The earth bund was no barrier - see photo at App p1276 and overhead at Obj p322 and numerous witnesses;
- e) There remained a embankment of land at the north of field 1 which was never subjected to tipping – Drawing KF1 and Obj p154 and witness evidence of [REDACTED] plus her photo in App p1194
- f) the waste tips were covered with earth and grass in stages such that only a small proportion of the land was subjected to tipping at any time – less than perhaps 1/6 of field 1 at a time (taking into account embankment and land too close to brooks to be tipped);
- g) The covered parts of the tip were compacted such that a person could safely walk upon them – oral evidence of [REDACTED]. Accordingly, they could have been walked prior to grass being planted or grown;
- h) The new grass was not fenced – see photos Obj p325 and the oral evidence of [REDACTED];
- i) The landfill was largely completed by April 1988 and expected to be finished by that time – see Obj page 162, para 4.3
- j) By May 1988, the grass on phase 3 and parts of phase 4 was getting quite long – Obj p 156

- k) Phase 4 was not extended beyond the stage visible in the April 1988 overhead – Obj p322 and Obj 325 and accepted by [REDACTED] – and it never ran close to the edge of the field;
 - l) By June 1989, the last section was covered, compacted and grassed – oral evidence of Mr [REDACTED] upon Obj overhead p325. By this time, he accepted that the landfill had finished. In all likelihood, this landfill was completed and covered by late 1988 or early 1989 at the very latest.
 - m) and has remained completely available for public recreation since at the very latest June 1989.
77. In any event, the Applicants don't need to show an absence of deference or an absence of interruption or active interference with the landowners use of the land to succeed. The evidence of dozens of witnesses (including many oral witnesses) is that use of the land continued throughout the landfill period by simply walking around or through the landfill site.
78. In any event, recreational use of the landfill itself continued at all times when it was not in operation. As with the golfers in *Redcar*, the children played when the landfillers withdrew – [REDACTED], [REDACTED], [REDACTED] and [REDACTED].
79. The argument that the Applicants are simply seeking to stop development should be rejected for many reasons.
- a) The purpose and policy of the Act is to prevent development of land used by local inhabitants for informal recreation. The purpose of the Act is contrary to the interests of landowners.
 - b) It is the very fact that landowners have been so efficient in turning green space into tarmac and concrete that this Act and earlier Acts were necessary.

- c) These Objectors purchased green belt land on a speculative basis, seeking planning permission so as to turn a profit on the land. This is the worst type of development. The prevention of speculative development of open space such as this is the very reason the Act was created.
 - d) Town green status will not prevent or inhibit in any way the historic use of this land as low grade grazing land for cattle or for taking of grass crops.
 - e) If town green status is not granted, then the impact on the local inhabitants will be catastrophic. Their locality will become entirely surrounded by large and largely fenced industrial development. The purpose of the Act would be frustrated.
80. The Applicants do not seek to create new rights which override those of the owner. They seek only the protection of their existing rights to use the land, which they can then continue to use in the manner in which they have always done. As such, and in common with Lord Hoffman's conclusions in *Trap Grounds* at para 59, the owner retains his right to use the land in the manner in which he has always done, and the statutory purpose of the preservation of open spaces for the public is maintained.