

In the matter of:

Colston's Field, Bell Hill, Bristol, BS16 1BJ

Town or Village Green Application

Objection

1. This Objection is filed in response to a notice of an application for registration of land as a town or village green pursuant to Section 15 (1) of the Commons Act 2006 dated 28 July 2015 (originally submitted by the applicants on 10 March 2015) in respect of the land described as follows:

"Land at Colston's School Playing Fields, Bell Hill, Bristol described in the application as being also sometimes referred to as `Colston's Field, Colston's Lower Field, Field` and `Land bordered by Welsford Avenue and Rowland Avenue to the north and west, and by the River Frome to the South`"

For convenience, the land will hereinafter be referred to as **Colston's Field**.

This Objection is made for, and on behalf of, the following parties:

(i) Colston's School, formerly named Colston's Collegiate School (as the long leasehold owner – 125 years from 31 December 2003 - of Colston's Field); and

(ii) The Master Wardens and Commonalty of Merchants Venturers of the City of Bristol (as the reversionary freehold owner of Colston's Field).

2. For convenience, the parties objecting will hereinafter be referred to collectively as **the landowners** and Colston's School as **the School**.
3. In summary, the landowners object to the application on the following bases:
- i. Any use has not been by a significant number of the inhabitants of a locality, or neighbourhood within a locality;
 - ii. Colston's Field has not been used for lawful sports and pastimes as of right as any use (which is not admitted) has been *nec vi* (by force) (and also, in part at least, *nec clam* (by stealth));
 - iii. Any use has not been of sufficient extent and continuity throughout the requisite period; and
 - iv. Colston's Field was not being used in the requisite manner as at the date of the application, or in the period one year previous to the application being made.

Background

4. Established in 1710 in the centre of Bristol, the School was relocated to the former Bishop's Palace in Stapleton in 1861. For over 150 years the School has used its extensive buildings and grounds to provide an holistic education to, first, boys and, since 1984, to both boys and girls. Previously a boarding school, all of the senior school's 500 pupils and the lower school's 230 pupils are now day students, with more than 50% of them residing in the BS16 postcode area of Bristol.
5. The School is a private independent school. All 730 students benefit greatly from the situation of the campus and, in particular, the School is unique amongst Bristol independents in having its playing fields on the same site as its teaching facilities. The playing fields, both upper and lower, are in very regular use during the week and on Saturdays; although Sundays see less use nowadays. They are used by pupils aged from 3 to 18 as well as recreationally by staff and their families.
6. One of the key features of the School is the extensive on-site playing fields and sports facilities extending to approximately 30 acres. This has enabled the School to excel in the sporting arena, achieving a strong regional and national reputation. The School works closely with other local sports clubs and community groups who by formal arrangement enjoy the use of its facilities. This includes nearly 30 such groups.
7. The cost of maintaining high quality playing fields and sports facilities is significant. Clearly the use of the pitches needs to be properly regulated to avoid any unnecessary damage. Access by the general public therefore needs to be controlled and measures also need to be taken to prohibit dog walkers creating potential Health & Safety issues for pupils.
8. As with all independent schools, the onus is very much on the Board of the School to review its management, its assets and the cost of the service it provides to its families. In 2014, the new Headmaster instigated a review of the campus and found a small area of the School's lower playing fields that was not in regular use by the School. Indeed, such is the nature of the steeply sloping section of ground that it has never been used by the School for sports activities and it has been allowed to become overgrown with brambles and other vegetation. The question was asked whether this small area of land of approximately 1 acre could be released for development (for a small number of houses) without impacting on the School's provision and it was felt that this would be possible.
9. After a due selection process, Woodstock Homes was chosen to promote the proposed development and apply for planning consent.
10. Prior to submitting the application, a Public Consultation exercise was undertaken including a presentation event held at the school pavilion on 11 March 2015. Letters were hand delivered on 2 March 2015 to local residents (including those living adjacent to the proposed development) inviting them to attend the presentation event. The feedback from those attending was negative towards the proposed development largely on the grounds of visual impact and loss of views.
11. The Headmaster of the School received a letter dated 17 March 2015 from Bristol City Council advising they had received the town or village green application on 10 March 2015.
12. A high profile campaign was undertaken against the development during which references were constantly made to the impending application and suggestions the land should "remain" available for community use. On 2 September, planning permission was refused.

Application

13. The application seeks the inclusion in the register of town or village greens of Colston's Field which is claimed to have qualified for registration on 10 March 2015 "*by virtue of the land*

concerned being used as of right by the inhabitants of Bristol for lawful sports and pastimes for a period of at least 20 years until the date of the application".

14. In accordance with section 15 (2) of the Commons Act 2006 (**the 2006 Act**), land is to be registered as a town or village green where:
- "(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
 - (b) they continue to do so at the time of the application".*
15. The effect of section 15 (3), as amended by the Growth and Infrastructure Act 2013, is that there is also a one year grace period for an application to be made, where qualifying use of the application land has ceased.
16. Accordingly, for an application to succeed it must be established that:
- i. The land in question has been used for lawful sports and pastimes;
 - ii. Such use has been for a period of not less than 20 years;
 - iii. Such use has been by a significant number of the inhabitants of a locality, or of a neighbourhood within a locality;
 - iv. Such use has been as of right; and
 - v. Such use was continuing as at the time of the application (or ceased no more than one year previously).
17. The burden of proving that land has become a town or village green rests with the applicants. The standard of proof is the balance of probabilities.

The statement (FS1) filed in support of the application

18. The landowners respond as follows in respect of the statement filed, although reserve their right to address these matters further in evidence if required. If a particular matter is not addressed below, this is not to be treated as the landowners' acceptance of its truth.

Paragraph 5 of the statement

- (i) Until receipt of this application, the landowners were not aware that the neighbourhood described was entitled "Colston's Estate", as is suggested;
- (ii) It was not clear from the original application, whether the applicants were suggesting that "Colston's Estate" is a "*locality*" or a "*neighbourhood*", for the purposes of the 2006 Act;
- (iii) It is submitted that "Colston's Estate", insofar as it exists, cannot possibly be considered to be a *locality* within the meaning of the 2006 Act;
- (iv) If it is assumed for one moment that the application is proceeding on the basis that "Colston's Estate" is a neighbourhood pursuant to the 2006 Act, then this is not accepted by the landowners and the applicants are put to strict proof in this regard;
- (v) It is notable that the applicants accept that this application was made "*in direct response to a proposed development*" of Colston's Field (and at paragraph 7). The application is, the landowners would submit, a cynical attempt to prevent development by means other than by the planning process, and is not a properly made claim for town or village green status;
- (vi) It would appear, from the landowners' enquiries, that the neighbourhood watch referred to at 5.7 has been in existence for approximately 15 years; and
- (vii) It is notably accepted, on numerous occasions in the statement filed and supporting evidence, that many of the alleged users of Colston's Field are in fact residents from areas

outside of "Colston's Estate" (eg "*along Stapleton Road and Glenfrome Road*" at paragraph 5.10).

Amendment proposed to paragraph 5 by email dated 10 September 2015

Subsequent to the original application, but prior to the deadline for this Objection, an email was received via the Registration Authority which now indicates in fact that the applicants seek to rely upon

"The neighbourhood of Colston's Estate within the locality of either (i) the Parish of Stapleton or (ii) Eastville electoral ward or (iii) the Greater Fishponds Neighbourhood partnership area (b) In the alternative, we simply rely upon each locality without reference to any neighbourhood within it".

It is not accepted that the applicants can rely upon multiple localities; the applicants' case is confused and unclear and supports the landowners' position that any use has not been by a significant number of the inhabitants of a locality, or neighbourhood within a locality (this is addressed in further detail below).

Paragraph 6 of the statement

(i) It is notable that numerous references are made to the fact that residents are fully aware that this is private land owned and managed by the School.

Paragraph 8 of the statement

(i) Paragraph 8 is denied generally. It is expressly denied that Colston's Field has been used continuously for 20 years or more for lawful sports and pastimes as of right, and that this use continued to the date of the application (this is addressed in further detail below);

(ii) Paragraph 8.2 refers to use by a significant number of the inhabitants of "*the locality*". The landowners aver that "Colston's Estate" is not a locality;

(iii) The statement that the gates to Colston's Field "*are kept open, and therefore no force has been used to gain entry*" is plainly incorrect. This is dealt with further below.

Paragraph 10 of the statement

(i) It is suggested that granting Colston's Field town or village green status "*would have no impact on the current use of the land by Colston's School*" and "*it would merely preserve the status quo*". This is plainly incorrect. The effect of registration would seriously hamper, and possibly prevent altogether, the School's ability to use its own playing fields, would lead to very serious issues in respect of security and the children's welfare and inevitably lead to further acts of vandalism (even without considering the effect of the Inclosure Act 1857 and the Commons Act 1876, both of which would thereafter be applicable in the event of registration);

(ii) The local residents do not have "*an equitable relationship*" with the School and do not act as "*self-appointed guardians*" as is suggested. The School has had, for approximately 30 years, to deal with numerous acts of vandalism and trespass by persons unknown.

Paragraph 11 of the statement

(i) If this matter proceeds to Inquiry, then these matters will need to be addressed further in evidence, but it is notable that much of the evidence is:

- from recent years (and not for a period of 20 years);
- from more than 20 years previous;
- relates to people who are not local inhabitants – eg Lockleaze school's cricket matches;

- is in respect of "persons unknown" which could, for example in respect of people playing golf, actually relate to members of staff;
- in respect of either trivial use (children playing) or sporadic use (ie seasonal activities, such as blackberry picking); and in any event
- relates to use which is "out of hours"; ie, only when the School is not using its own playing fields.

The landowners' grounds for objection

Significant number of inhabitants

19. It is acknowledged that "significant" does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that the land is in general use, by the local community, for informal recreation, rather than just occasional use by individuals as trespassers (*R. (McAlpine) –v- Staffordshire County Council* [2002] EWHC 76 (Admin)).
20. There is now attached as appendix A, a colour plan which plots the location of those giving evidence in support of the application.

It is submitted that in fact the vast majority of people who have filed evidence in support of this application live in houses which back onto Colston's Field, or nearby and this application is in fact not one made for the benefit of the neighbourhood claimed as "Colston's Estate" (or indeed the other purported localities).

Locality or neighbourhood within a locality

21. Even following the proposed amendment to the applicants' case (as above), the applicants' position in this regard is unclear and confused.
22. It would now *appear* that the applicants are maintaining that "Colston's Estate" is a neighbourhood within a locality.
23. It is submitted that it cannot possibly be a locality and, furthermore, it is not accepted that "Colston's Estate" is a neighbourhood within the meaning of the 2006 Act.
24. It is apparent that much of the evidence filed in support of the application relates to people from outside of "Colston's Estate" using Colston's Field and such evidence must of course be disregarded (*Oxfordshire and Buckinghamshire NHS Trust v Oxfordshire County Council* [2010] EWHC 530 (Admin)).
25. There is reference in the notice served (paragraph 4 above) to the application being by virtue of the land concerned being used as of right by "*the inhabitants of Bristol*". The landowners assume that the city is not being claimed as the benefitting locality; as if so, this would plainly be unsustainable.
26. Insofar as it is claimed that the locality claimed is "*either (i) the Parish of Stapleton or (ii) Eastville electoral ward or (iii) the Greater Fishponds Neighbourhood partnership area*" it is denied that any use has been by a significant number of the inhabitants of any of these localities (insofar as they constitute a locality within the meaning of the 2006 Act, which is not accepted).

As of right

27. The applicants are required to show that the land has been used "as of right" which means, without force, without secrecy and without permission (*nec vi, nec clam, nec precario*).
28. It is the landowners' position is that any use has been by force (ie, not *nec vi*) (and in part by stealth – *nec clam*).

29. The landowners will rely, amongst other witnesses, on its Head Groundsman, Mr Anthony Shaw, who has been employed by the School since 1985. He will evidence, amongst other matters, the following facts:

(i) since February 1988 a number of signs – on posts - have been in place around the perimeter of Colston's Field in prominent positions – and facing onto the houses in question - that would (or should) have been obvious to local inhabitants and which said "*Private No Unauthorised Access to Playing Fields*";

(ii) that he, and his colleagues, have for 30 years been mending and replacing various parts of the perimeter fence (in particular near the houses in question) as a result of repeated and numerous acts of vandalism;

(iii) Metal sign posts built at the time can still be seen as at today's date although earlier on this year a number of the actual signs were removed by persons unknown;

(iv) Further signs were earlier on this year erected by the School in prominent positions on the perimeter fence which read "*Private Property No Public Right of Way*" as well as signs which say "*No Dogs except Guide Dogs*". Some of those signs have however since been vandalised by persons unknown;

(v) There have been throughout the period from 1988 numerous acts of vandalism, not only to the fencing but also for example the cricket pavilion which was destroyed by an arson attack and subsequently rebuilt;

(vi) All of the gates to Colston's Field have been locked and closed during the relevant period save for the main gates. These gates have on occasions been left open because of the need for regular access for pupils and staff but it is submitted by the landowners that due to their proximity (away from the residents' houses), it is very likely that any access has been gained by climbing over or through the fence adjacent to the footpath (which runs alongside Colston's Field);

(vii) Mr Shaw, who has been employed since 1985 (to today) and not only working but also living within the vicinity of Colston's Field (in the caretaker cottage), has on only a few occasions seen trespassers; and

(viii) When he has, he has told them that it is private property and that they must leave.

30. In all the circumstances, the landowners submit that any use of the land has been by force.

31. Furthermore, it would appear that much of the alleged use must have been out of school hours and is therefore not only not continuous but also "by stealth". Any use, it is, suggested, has been designed to ensure that the landowners remain largely unaware of the land being used.

Use of land for lawful sports and pastimes

32. It is denied that any activities on the land have been of a sufficient extent and degree throughout the requisite 20 year period to enable town or village green rights to be established. It is plain even from the evidence submitted in support of the application that much of the alleged use relates to persons who do not live in "Colston's Estate", much is sporadic and/or trivial in nature, much relates to recent periods of time (or more than 20 years previous to the application) and the use itself has not been continuous in nature (being that the use has been outside of the School's use).

33. For an application for town or village green status to be successful, the land in question must have been used and available for use when needed. Given that the School has throughout the requisite period used Colston's Field as its lower playing fields (on numerous and regular occasions throughout term time, and indeed outside of term time for holiday clubs) this is clearly not the case and any continuity of use (which is in any event denied) will have been broken by the School's habitual use of Colston's Field.

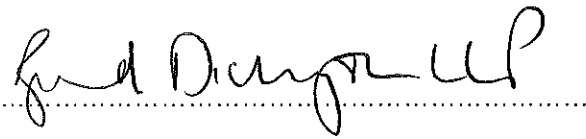
Use was not continuing as at the time of the application (or ceased no more than one year previously)

34. Furthermore, it is expressly denied that Colston's Field was being used in the requisite manner as at the date of the application, or in the period one year previous to the application being made.

Conclusion

35. In all the circumstances, there are, the landowners' submit, numerous and compelling reasons why the Registration Authority should reject this application.

Dated this 16th day of September 2015

A handwritten signature in black ink, appearing to read "Bond Dickinson LLP", is written over a horizontal dotted line.

Bond Dickinson LLP

Solicitors for, and on behalf of, Colston's School and the Master Wardens and Commonalty of Merchants Venturers of the City of Bristol

