

GOODENOUGH RING

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Our ref: COT00147
Your ref: IE0/1415

6 November 2024

Dear Sir,

Application for a Modification Order to add public footpaths at Stoke Lodge to Bristol City Council's Definitive Map and Statement under Section 53 of the Wildlife and Countryside Act 1981

1. Thank you for your letter to Cotham School in the above matter. We are instructed to respond on behalf of the School.
2. We have instructed specialist Counsel to review the material and report and draft what would be objections to the confirmation of the Order if it were to be made. We reserve the right on behalf of the School to expand or vary the grounds of objection if the Council were nevertheless to make the Order.
3. As the evidence does not establish that it would be reasonable to allege that the routes have become public highway by operation of s.31 Highways Act 1980 or otherwise, it would not be reasonable to make the Order because there has not been a discovery within the meaning of s.53 Wildlife and Countryside Act 1981, see: *R v Secretary of State for the Environment, ex parte Bagshaw* (1994) 68 P & CR 402.
4. The report of Robin Carr FIPROW, MAE has avoided considering the conclusions previously drawn about the evidence in the applications by Mr David Mayer and Miss Katharine Wellham to register the land as a new green under s.15 Commons Act 2006. The Council provided a copy of that report on 9 October 2024; however, section 12.18

was redacted. On 23 October 2024, we requested this information on behalf of the School under the Environmental Information Regulations 2004 ("EIR"). On 24 October 2024, the Council refused to provide this information, relying on the exception under (Regulation 12(4)(d) EIR) i.e., the information concerns material that is still in the course of completion. On 28 October 2024, we requested an urgent internal review of that decision and requested that the Council respond by 4 November 2024 to provide time for any response to be incorporated into our response to the report. On 6 November 2024, the Council refused this request, concluding that the public interest in maintaining the exception relied upon outweighs the public interest in disclosing the requested information. The Council described the redacted section as relating to the recommendation of Robin Carr based on the evidence provided so far. As such, the School has not had the benefit of reviewing the entirety of the report before providing its comments on said report.

5. The conclusions of the Council, insofar as they are relevant to the questions the Council must ask under s.31 Highways Act 1980, are obviously material considerations to which the Council is legally obliged to follow when deciding whether to make this Order unless it first (i) has regard to the desirability of consistent decision taking and (ii) supplies cogent reasons for taking a different view, see: *North Wiltshire DC v Secretary of State for the Environment* (1993) 65 P & CR 137, 145:

"He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision."

6. The obviously important considerations from those previous village green decisions are:
 - a) The consistent conclusion that the members of the public did not use the land in the nature of a right of way, rather wandered all over the land in the nature of a village green right.
 - b) The signs on the land rendered the use by the public contentious and not as of right.
7. Insofar as the Council took a contrary view of the latter point in its Public Rights of Way and Greens Committee meeting on 28 June 2023, that conclusion is under active challenge before the High Court in *Cotham School v Bristol City Council* (PT-2024-BRS-000009), which is listed to be heard between 27-31 January 2024 (with closing submissions on 10 February). The judgment in that matter will resolve important questions of relevance to this matter (in particular the meaning and effect of the signs). Accordingly, the Council may think it appropriate to await the outcome of that process before resolving whether to make this Order.
8. We therefore invite the Council to resolve not to make the Order or to place the matter into abeyance pending the outcome of the village green litigation.

Yours faithfully,

Goodenough Ring Solicitors

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