

WILDLIFE AND COUNTRYSIDE ACT 1981

**THE BRISTOL CITY COUNCIL DEFINITIVE MAP & STATEMENT
MODIFICATION ORDER NO.7 2024**

PINS REF ROW/3363939

PROOF OF EVIDENCE OF JOANNE BUTLER
(on behalf of Cotham School)

8 September 2026

CONTENTS

1.	Witness name and qualifications	3
2.	Purpose of proof	3
3.	Governance of the School	4
4.	Relevant factual background	5
5.	Duties of the School in relation to student welfare, safeguarding, standards of premises including outdoor space and the provision of physical education	12
6.	Consequences for the School if its Playing Fields are confirmed to have public rights of way across them	24
7.	Summary	26
8.	Appendices	29

1. **WITNESS NAME AND QUALIFICATIONS**

- 1.1 My name is **Joanne Butler**, Headteacher of Cotham School, Cotham Lawn Rd, Cotham, Bristol BS6 6DT.
- 1.2 I am the Headteacher of Cotham School ("the **School**") and have been since September 2015 (appointed in January 2015).
- 1.3 As to my qualifications, I have a BA (Hons Fine Art), Post Graduate Certificate in Education (PGCE), National Professional Qualification for Headship (NPQH), MA (Educational Leadership).
- 1.4 I am also a contracted Ofsted Inspector inspecting education standards in England. This is a matter of public record. For the avoidance of doubt, this proof of evidence sets out my views solely as the Headteacher of the School. I do not seek to speak for Ofsted, and nothing in this proof should not be construed as such.
- 1.5 This proof of evidence has been prepared on behalf of the School. The evidence which I have prepared and provided for in this proof of evidence is true. I confirm that the opinions expressed are my true and professional opinions expressed in my capacity as the Headteacher of the School. I have no other interest in the outcome of the DMMO.

2. **PURPOSE OF PROOF**

- 2.1 The purpose of this proof is to set out:
 - a) The governance of the School;
 - b) The relevant factual background, including the School's use of the Stoke Lodge Playing Fields, Stoke Bishop, Bristol, BS9 1BN ("**the Playing Fields**");
 - c) The duties of the School in relation to student welfare, safeguarding, standards of premises including outdoor space and the provision of physical education; and
 - d) The consequences of confirming the DMMO on the use of the land for educational purposes.
- 2.2 In relation to the last point, the Judge in *Cotham School v Bristol City Council* [2025] EWHC 1382 (Ch) ("the **Judgment**") [BCC's Appendix 5] at para 194 held:

'Ms Butler is in a peculiarly advantageous position to give such an opinion. An expert witness is one qualified by learned knowledge, or practical experience, of doing a

thing. She is both a trained and an experienced teacher, appointed (no doubt after a competition) as the head teacher, and charged with the responsibility of protecting the schoolchildren. I would accordingly regard her as someone capable of giving an admissible expert opinion on this point.'

3. GOVERNANCE OF THE SCHOOL

- 3.1 The School is a comprehensive secondary state school that became an academy on 1 September 2011. It is rated by Ofsted as "Good".
- 3.2 It is a nine-form entry school with 1699 pupils on the roll. Pupils come from a very diverse and very large number of primary schools (40-50 each year). The School has 17 of 18 possible ethnic groups. Children from non-white backgrounds – the largest being Black African (Somali), Pakistani and Other Black African - make up approximately 66% of our pupil population. 60 languages other than English are spoken by our pupils, and the proportion of pupils with English as an Additional Language is 52% (this is in Quintile 1, School Inspection Data Summary Report ("**IDSR**")¹. The pupil population is highly diverse, with stark contrasts between the socially and economically advantaged and disadvantaged. The School's catchment reaches into areas with very high levels of deprivation, e.g., St Paul's and Easton. Over 50% of pupils are in the very highest category of deprivation, evidenced by the Income Deprivation Affecting Children Index ("**IDACI**")² indicators. The number of pupils now in receipt of Pupil Premium Funding³ (at 39.5%) is higher than National (Quintile 2, IDSR).
- 3.3 The School is on a restricted site and does not have sufficient land on its main site to meet the statutory requirements for outdoor space. It is therefore necessary to provide pupils with access to suitable off-site provision.
- 3.4 As an academy, the School is run by a not-for-profit academy trust, which is a company limited by guarantee and has exempt charity status (Cotham School Ltd). The academy is independent from the local authority. It is regulated and funded by the Department for Education ("**DfE**") and provides free-at-the-point-of-use education for young people who reside in Bristol.

¹ This is a DfE document used/ referenced by Ofsted when they inspect schools. <https://www.gov.uk/guidance/school-inspection-data-summary-report-idsr-guide>

² IDACI stands for Income Deprivation Affecting Children Index. It measures the proportion of all children aged 0 to 15 living in income deprived families in different local areas (called 'lower-layer super output areas', or LSOAs) across England.

³ Funding to improve educational outcomes for disadvantaged pupils in state-funded schools in England (<https://www.gov.uk/government/publications/pupil-premium/pupil-premium>)

- 3.5 The academy trust is in all respects a charity and operates under its charitable objects. The School is a single academy trust (meaning that it was set up to run one school) – the board of directors are also its charity trustees, and they are often referred to as 'the Governors' or 'the Governing Body'. It also has a separate group of individuals who are the 'Members' - who are sometimes referred to as 'the custodians of the constitution'. The academy trust's Articles of Association require that a majority of the Members must not also be Governors. As a charity, it cannot operate for private gain, and there are restrictions set out in the Articles of Association (the constitution of the academy trust) preventing payments from being made to its Members and Governors. The Articles of Association are at Appendix 40, Part 3, pages A1047-1093.
- 3.6 There is a funding agreement between the School and the Secretary of State for Education, which regulates the funding which the School receives. Owing to the public nature of the funds, the Agreement imposes a large number of obligations regulating how the academy trust is operated. The Agreement was varied on 1 September 2022, and this most recent version is at Appendix 32, Part 3, pages A719-870. The Agreement also requires a restriction to be entered on the title at HM Land Registry in relation to its land assets, prohibiting any disposition of such assets without the consent of the Secretary of State.
- 3.7 The academy trust is also required to act in accordance with the Academy Trust Handbook (see Appendix 88).
- 3.8 The conversion to an academy required two leases, one for the main School site and the other for the School's Playing Fields. Both leases are based on the DfE model 125 lease, which is entered into between the local authority, in this case, Bristol City Council ("**BCC**") and the academy (the School).
- 3.9 The lease relating to the School's Playing Fields is dated 31 August 2011 ("the Lease") and is at Appendix 28, Part 3, pages A646-687. The Judgment addresses the Lease and its terms at paras 21 onwards. I do not repeat that content, as I understand it to be agreed by BCC to be accurate.
- 3.10 I append the HM Land Registry entry for the freehold of Stoke Lodge Playing Fields, Shirehampton Road, Bristol under title number BL100993, which is held by BCC (see Appendix 89) but possessed by Cotham School by virtue of the Lease I mentioned above (see Appendix 90 for the HM Land Registry entry for the leasehold).
4. **RELEVANT FACTUAL BACKGROUND INCLUDING USE BY THE SCHOOL OF THE PLAYING FIELDS**

- 4.1 The Judgment in *Cotham School v Bristol City Council* [2025] EWHC 1382 (Ch) [BCC's Appendix 5] sets out the relevant facts at paras 14 onwards, and I do not disagree with that summary insofar as the matters are within my own knowledge.
- 4.2 Prior to entering into the Lease with the School in 2011, BCC had since 1947 held the Playing Fields in possession for educational purposes [Judgment para 14].
- 4.3 It is my understanding that the Playing Fields were laid out as playing fields by 1963 at the latest for the use of Fairfield Grammar School and Cotham Grammar School (the predecessors to Cotham School).
- 4.4 I also understand that there is evidence of the Playing Fields being used for sports prior to 1963.
- 4.5 In September 2000, I understand that Fairfield Grammar School ceased using the land, as it was too big for that school's needs. Instead, Cotham Grammar School, which needed more sports/recreational space than Fairfield, began to use the land for sports activities [Judgment para 137].
- 4.6 I understand that in 2001, the School started using the Playing Fields as outdoor education space and has maintained the Playing Fields ever since.
- 4.7 In 2011, the School formally leased the Playing Fields from BCC for a period of 125 years [Judgment para 21 onwards and the Lease is at Appendix 28, Part 3, pages A646-687].
- 4.8 The Playing Fields are accurately described in the Judgment at paras 101 onwards. They are about 3 miles from the School (the shortest route is 2.7 miles and the longest is 3.5 miles), so a school bus is needed to transport the pupils there from the School.
- 4.9 The use by the School up to the end of November 2013 is noted in the Judgment at para 156 onwards:

'The school itself used the land on four mornings a week, and used about three pitches simultaneously for most of the morning. Between September and November, and February and May, the school also used the fields on two, or sometimes three, afternoons a week from about 3.30 pm to 5 pm. The games played included rugby, rounders, softball, soccer and hockey. The pupils arrived in school clothes and changed in the pavilion. There were also school sports days in June, held over two days so that junior and senior pupils competed separately. The evidence to the 2016 inquiry (both from school staff and local inhabitants) was that local inhabitants did not go on to the pitches during, or otherwise interfere with, school games. Dogs, however, were a different matter.'

4.10 As recorded in the Judgment at paras 157-158:

'By March 2013 an increase in dog fouling on the land had been noticed. In October 2013 incidents of dogs interfering in school activities were reported in these terms:

"We had some major disruption today with dogs coming into the lesson. One dog came in and ran off with cones and chased students. Many of the students are anxious around dogs. The owner offered no apology but simply stated 'I suppose this is what you get when you have a dog walking area and a school using the park'. I asked the woman if she could put her dog on a leash. Another 2 dogs came running into the lesson, again the owners seemed to have no control of their animals."

In November 2013 there was another incident:

"Please find attached a video of 3 dogs that came into my year 9 rugby lesson today and towards the end of the clip you see one of the dogs doing a poo on our pitch."

This video clip was played before me at the trial. So far as I could see, none of the dogs concerned was on a leash.'

4.11 That video was taken by the School's then Head of Physical Education ("PE") and it was felt to be the last straw. The video can be viewed here: <https://hgrlaw.egnyte.com/dl/XdilQqlDyY> and I request that this be played at this Inquiry (I append this as Appendix 96).

4.12 The Judgment then continues on this issue from paragraphs 159-162, which I will set out here for the ease of reference:

'159. On 27 January 2014 there was a meeting of the Stoke Bishop Neighbourhood Open Forum, at which the claimant was represented by two persons, including the then headteacher, who explained the claimant's concerns, particularly in relation to dogs. To judge from the minutes of the meeting, there was little sympathy expressed for the claimant at the meeting. Comments included one that the claimant "had never bothered to attend" meetings of the Stoke Lodge Preservation Working Group, another that "facilities for walking dogs are just as important as for playing games", a third that the claimant "objected to the TVG so there could hardly be a partnership now", a fourth that the lease had "123 years left, and they do not pay anything for it", and a fifth that the claimant "should be prepared to work with the community". A sixth person said that the land was much cleaner than before, and a seventh that the claimant "was exaggerating the dog problem". David Mayer is recorded in the minutes as saying a number of things at that meeting. One was:

"DM voiced his fears that, because of Cotham's views on health & safety they will want to exclude areas of Stoke Lodge by fencing."

160. However, following a meeting of the Stoke Lodge Preservation Working Group (of which David Mayer was then the chair) on 18 March 2014, the minutes gave an account of the Neighbourhood Forum meeting in January which was at odds with the minutes of the Forum meeting itself. For example, the minutes of the Working Group said that "there was a sympathetic response [at the Forum meeting] to the problems of fouling and dogs off lead". But the only recorded mention of these problems in the Forum minutes is in remarks attributed to the then headteacher (saying the problem was getting worse), and a remark from the floor (that the school was exaggerating it). On the other hand, "there was criticism from the floor about the tone of [the claimant's] written objections to the TVG application". It is clear both that the claimant's opposition to that application was known, and also that some feared that the claimant wanted to exclude the public from access of some parts of the land.

161. The claimant carried out its risk assessment over the next few weeks. On 21 March 2014 the assessment was complete. It concluded that there were risks which meant the claimant should not use the land for sport purposes. In particular, it stated that the signs on the land were insufficient to negate the risks identified by the report. (Contrary to the second defendant's submissions, I do not read this report as an admission that the signs were insufficient to prevent user "as of right". The report was not dealing with that legal question, but with the practical one of risk to the children, and how to mitigate it.) On 24 March 2014, the Governors' Finance Property and General Purposes Committee resolved that the claimant should not use the land before September, whilst the health and safety risks were considered and mitigated. (In November 2014 the Finance Property and General Purposes Committee noted that there was a need to revisit the risk assessment and the possibility of returning to the land. In fact, with the exception of two games played on the land on 14 January 2016, referred to below, where the hosting school had booked these pitches, the claimant did not return to use the land until March 2019.)

162. As for the problems about dogs, at the Neighbourhood Forum meeting on 23 April 2014, Mr Mayer is recorded in the minutes as saying that "Anxieties raised by [the claimant] about dog fouling and 'attacks' needed to be proved by them." And PCSO Claire Fisher is reported to have said that "no reports of any attacks had been reported over the last six years and [the claimant] had not accepted invitations to meet her." I do not doubt the good faith of neither Mr Mayer or PCSO Fisher, but I am satisfied on the evidence that the concerns of the school about dogs were both real and substantiated.

163. The video that I saw of the dog on the pitch in November 2013 is particularly eloquent in this respect. Another example took place on 14 January 2016, when teams from

the claimant school were supposed to be playing "away" against Bristol Free School ("BFS"). That school normally played at Coombe Dingle, but on that day they found that no suitable pitches were available, and so Coombe Dingle allocated them pitches at Stoke Lodge. During the games a big dog ran loose on the pitches, and there were a number of other dogs not on leads, as well as a lot of dog faeces present on the ground. To the extent that these concerns need to be for present purposes, they have been proved as real and substantiated concerns. On the other hand, what the consequences should be in terms of the claimant's future use of the land are not a matter for me. I note in passing that various options were thereafter considered by the claimant. But they do not affect the legal questions which I have to decide.'

- 4.13 To summarise, by the end of December 2013, I understand that the School had stopped using the Playing Fields. On 24 March 2014, I understand that at a meeting of the Governors, the formal decision was made to cease use of the Playing Fields unless the boundary could be secured and controlled due to safeguarding concerns, namely: open access to the site; uncontrolled dogs; dog excrement on pitches; potential risk of harm to pupils and staff from uninvited members of the public, and the risk of pupils having considered the risk assessment undertaken by Mel Sperring and Nathan Allen; health and safety risks were to be further assessed and options considered.
- 4.14 Alternative provision had to be made by use of the University of Bristol Coombe Dingle Sports Complex, about 500m away from the Playing Fields. There had been historic use of the Coombe Dingle Sports Complex by the School in combination with the Playing Fields including for the purpose of tennis and football on astroturf pitches (needed when the Playing Fields flooded). This became subject to an agreement between the University of Bristol and the School, whereby the School used Coombe Dingle, the University maintained the School's Playing Fields which were then used by the School, the University, and community sports groups. In view of escalating costs, this agreement came to an end, and the School reverted to using the Playing Fields. At no time did the use of the Playing Fields cease.
- 4.15 When I was appointed Headteacher in January 2015, I agreed with the risk assessment in place at the time that, unfenced, the Playing Fields did not provide a safe environment for the School's pupils to carry out PE. A single teacher supervising a school class of 30 could not coach, supervise, clear the field of dog excrement, deal with dogs off leads chasing children, strangers approaching the children, children absconding, excluded parents approaching children, dogs and strangers in the changing rooms. Another factor is the distance between the School and the Playing Fields - if an incident were to occur on the unfenced Playing Fields, it would take some time for other members of staff to reach the location to help with the situation. The Playing Fields even though detached from the School's main site, are deemed part of the School's premises and need to be secured to ensure a safe environment – the Playing Fields are in effect outdoor classrooms.

- 4.16 In 2011 an application had been made to register the Playing Field as a town or village green. A public inquiry sat in June and July 2016 for 8 days and heard 28 witnesses (see the Judgment at para 29 onwards). I attended the inquiry and gave evidence. Both the School and BCC advanced the case that the land should not be registered because (inter alia) the use of the land by the public was contentious. Against the recommendation of its appointed Inspector in his report of 14 October 2016, on 12 December 2016, BCC's Public Rights of Way and Greens Committee (PROWG) resolved to register the Playing Fields as such, the Committee being split 3:3 (see the Judgment at para 30 onwards and also para 173).
- 4.17 The School applied for judicial review of that decision, commencing proceedings on 9 March 2017. BCC's decision was quashed by the High Court on the basis in his judgment dated 3 May 2018 that there had been (i) an error of law by the authority in concluding that the use of the land by local inhabitants between 1991 and 2011 was "as of right", and (ii) its failure "to provide adequate and sufficient reasons" for that conclusion ***R (Cotham School) v. Bristol City Council*** [2018] EWHC 1022 (Admin) (BCC Part 1, Appendix 4, pages 35-63).
- 4.18 On remission for reconsideration, BCC resolved on 25 June 2018 not to register the Land on the basis that the signs made the use by the public not "as of right".
- 4.19 Following the School's successful judicial review, the School decided to fence the Playing Fields. This work began on 14 January 2019 (see the Judgment at para 178 onwards) and was completed in March 2019.
- 4.20 A plan showing the extent of the fencing is set out in the Judgment after para 178. After the erection of the fencing, the School used the Playing Fields from about 8.45 a.m. to 1 pm every school day if conditions allowed (for example, on some occasions the fields became too waterlogged to use). The School day starts at 8.30 a.m. and the pupils would arrive at the Playing Fields at about 9.00 a.m. (school transport and traffic conditions permitting); the pupils would leave at about 12.50 p.m. to get back for lunch at 1.05 p.m. There would be two double lessons of two hours each.
- 4.21 In the meantime, a further application to register the Playing Fields as a town or village green was made in 2018. BCC's PROWG Committee decided to register the Playing Fields as a town or village green on about 11 September 2023, once again, against the advice of its appointed inspector. The School on 20 November 2023 issued its claim in the High Court under section 14 of the Commons Registration Act 1965, challenging the registration of the Playing Fields as a town or village green.
- 4.22 Pending the outcome of the section 14 proceedings, the School made the decision to unlock the gates. It should be noted that fence panels around the Playing Fields were then removed by persons unknown. The site was attended on 10 November 2023, and a complete video of

the perimeter was made. Photos showing the 53 missing fence panels and 20 posts were extracted from the video and were included in the risk assessment (see the Judgment at para 179).

4.23 Further vandalism occurred on the weekend of 2nd and 3rd September 2023, when a pair of football goal nets was removed from the posts by persons unknown and cut into pieces. The nets were scattered all over the floor around the pitch. The Site Services Team attended the week commencing Monday 4 September 2023, to install a replacement pair of goal nets from our store to the posts.

4.24 The hearing of the Section 14 claim took place between 27-31 January 2025 and 10 February 2025 before HHJ Paul Matthews, sitting as a Judge of the High Court. The Judge heard submissions from Counsel Ashley Bowes for the School, Douglas Edwards KC for BCC and Andrew Sharland KC for the village green applicant, Katharine Welham. The Judge heard from witnesses of fact as set out in his Judgment at para 80 onwards i.e. for the School: myself, Allison Crossland (Director of Finance and Resources), Nathan Allen (former IT Manager and later Facilities Manager at the School). The Judge heard on behalf of the applicant: the applicant Katharine Welham, John Goulandris (local councillor), Susan Mayer (wife of the applicant in the first application in 2011), Emma Burgess (applicant in the second application) and Helen Powell (local resident). BCC called no witnesses.

4.25 The Judge observed on the cross-examination of the witnesses as follows:

81. I carefully observed all of the witnesses called whilst they were being cross-examined. I may say at once that, in my judgment, all of them were attempting to assist rather than to mislead the court. They told me what they believed to be true. I therefore reject any suggestion that any witness was deliberately telling lies. Nevertheless, I think that some memories were better than others, and on a few occasions I thought that one or two witnesses had convinced themselves that what they mistakenly believed to have happened had actually happened. This is a common phenomenon, and is frankly is not unexpected in any case where the witness has had a long time to think about what happened about events that happened many years ago. False memories can easily take the place of genuine ones, and be as convincing as any to the witness. Part of my function is to bring a measure of objectivity to the evaluation of the evidence.

4.26 On the Inspector's recording of the evidence in 2016, the Judge accepted that what the Inspector recorded was an accurate account of what he was told [93].

4.27 The Judge by Order dated 12 June 2025 ordered the village green register to be rectified so as to delete the registration because (as set out in his Judgment) public use was: (i)

incompatible with the educational purposes for which the Land was held, (ii) rendered contentious by notices and conduct and either (iii) displaced by the School's use of the Land or (iv) contrary to the provisions of education legislation. See the Judgment ***R(Cotham School) v. Bristol City Council*** [2025] EWHC 1382 (Ch).

- 4.28 Following the Judgment of HHJ Paul Matthews, the School has again erected perimeter fencing to protect its property, students and staff.
- 4.29 In September 2025, following the High Court's Judgment in the s.14 proceedings and the reinstatement of the fence, the School returned to using the Playing Fields for PE. The School day starts at 8.30 a.m., when gates to the Playing Fields were closed and pupils would arrive at the Playing Fields at about 9.00 a.m. (school transport and traffic conditions permitting); there would be two double lessons of two hours each. The gates were then opened at 1 p.m. as the pupils would have left by about 12.50 p.m. to get back for lunch at 1.05 p.m. During the school holidays and weekends, the gates were left open.
- 4.30 However, following significant criminal damage and intimidation of staff and pupils, we had to keep under review the hours when we felt it was safe to leave the gates open for unfettered public access.
- 4.31 The public use of the Playing Fields was reduced as a result of crime and vandalism. The gates were therefore not opened first thing in the morning before our PE lessons, on weekdays after PE, or during term-time weekends. We had previously attempted to allow access during these periods for a couple of weeks. However, this proved unsuccessful, as members of the public would refuse to leave the field when requested to do so by our School staff. This created difficulties for staff and prevented the School from using the Playing Fields safely and as intended.
- 4.32 It should also be noted that public access around the perimeter of the site remained available outside the School's fenced area. The Playing Fields were open throughout the recent summer holidays.
- 4.33 After speaking to our Deputy Director of Finance and Resources, I understand that the cost arising from the criminal damage to the fields and associated property has had a significant financial impact, amounting to £143,837.00. This expenditure has diverted valuable funding from the provision of educational services and resources for students. In light of the extent of the financial impact and the need to prevent further incidents of criminal damage, the School ultimately took the decision to close the Playing Fields and restrict public access during term time.

5. **THE DUTIES OF THE SCHOOL IN RELATION TO PUPIL WELFARE, SAFEGUARDING, STANDARDS OF PREMISES INCLUDING OUTDOOR SPACE AND THE PROVISION OF PHYSICAL EDUCATION**

PUPIL WELFARE AND SAFEGUARDING

- 5.1 The School has safeguarding duties in relation to the use by children of land used for education purposes. The School has to ensure that children can play safely, protected from strangers, dog attacks and from risks to health, including from dog faeces.
- 5.2 The Judgment sets out accurately the relevant education law from para 53 onwards, including reviewing the standards for schools as they apply to schools maintained by local authorities such as BCC and those for academies maintained by the Secretary of State. For maintained schools the position is as follows:

‘...the relevant regulations are the School Premises (England) Regulations 2012 (SI 2012/1943), regulation 10(1) of which provides that

“Suitable outdoor space must be provided in order to enable—

(a) physical education to be provided to pupils in accordance with the school curriculum; and

(b) pupils to play outside.”

Next, there is safeguarding. Section 175 of the Education Act 2002, as amended, relevantly provides:

“(1) A [local authority] shall make arrangements for ensuring that [their education functions] are exercised with a view to safeguarding and promoting the welfare of children.

(2) The governing body of a maintained school shall make arrangements for ensuring that their functions relating to the conduct of the school are exercised with a view to safeguarding and promoting the welfare of children who are pupils at the school.”

That deals with local authority schools. Under the Academies Act 2010, section 1, the Secretary of State may enter into “Academy arrangements” with any person, under which the other person gives the undertakings (i) to establish and maintain an educational institution in England which meets the requirements of (amongst other things) academy schools, and (ii) to carry on, or provide for the carrying on, of the institution.

Because section 542 of the 1996 Act does not apply to academies, there are equivalent regulations made under section 94 of the Education and Skills Act 2008, namely, the Education (Independent School Standards) Regulations 2010 (as amended in 2014), regulation 3 and paragraph 7 of schedule 1 of which provide that:

“The standard in this paragraph is met if the proprietor ensures that—

(a) arrangements are made to safeguard and promote the welfare of pupils at the school; and

(b) such arrangements have regard to any guidance issued by the Secretary of State.”

The claimant is inspected under section 108(1) of the 2008 Act for compliance with the standards, and there are consequences for failure to comply, ultimately involving potential criminal liability.’

5.3 The Judgment considers safeguarding at para 189 onwards.

5.4 Safeguarding at schools has evolved over time.

5.5 In the School Inspections Act 1996, there was no requirement for an inspector’s report to include consideration of pupil safety or wellbeing. However, when the Education Act 2005 was introduced, at section 5 (5) (f), it contained provision for the inspector’s report to report on “the contribution made by the school to the well-being of those pupils.”

5.6 In 2011 amendments (section 5 (5A) (d)) to the Education Act 2005 changed the focus to: “the behaviour and safety of pupils at the school” instead of the contribution to well-being.

5.7 In April 2014, the DfE published ‘Keeping children safe in education’ (KCSIE), which is statutory guidance from the DfE for schools and colleges in England on safeguarding children and safer recruitment issued under s175 of the Education Act 2002 as amended. It was first published by the DfE in April 2014 and came into force on September 3, 2014. KCSIE has since been updated annually to reflect changes in legislation, best practices, and emerging issues in safeguarding. Extracts of the 2025 version is at Part 3, Appendix 35, Pages A882-897. ‘Schools and colleges in England **must** [i.e. legally required] have regard to it when carrying out their duties to safeguard and promote the welfare of children.

5.8 Under (KCSIE), headteachers and schools have a duty to ensure the health and safety of students and staff at all times. This would include offsite activities such as physical education lessons at a playing field located 3 miles away from the main school site.

- 5.9 The Education (Independent School Standards) Regulations 2014 (as amended) (see Appendix 94) replaced the Education (Independent School Standards) (England) Regulations 2010 and imposes on the School the duty to ensure that arrangements are made to safeguard and promote the welfare of pupils at the school, such arrangements having regard to any guidance issued by the Secretary of State. The School must also ensure that (a) the welfare of students at the school is safeguarded and promoted by the drawing up and effective implementation and (b) appropriate action is taken to reduce risks that are identified⁴.

STANDARDS OF PREMISES

- 5.10 In relation to the standard of premises, the School is under a duty to ensure that suitable outdoor space is provided in order to enable—(a) physical education⁵ to be provided to students in accordance with the school curriculum; and (b) students to play outside⁶. Changing accommodation and showers are also to be provided for students aged 11 years or over who receive physical education⁷.
- 5.11 Guidance issued by the Secretary of State includes the DfE's 'Advice on standards for school premises' March 2015 ("the 2015 Premises Guidance") (Part 3, Appendix 29, pages A688-703), which gives guidance on meeting the requirements of the premises regulations for all types of schools in England and states as follows:

'The Education Act 1996 places a duty on the Secretary of State to prescribe standards for the premises of all maintained schools in England and Wales. Those for England are set out in The School Premises (England) Regulations 2012 (SPRs) and they apply to all existing and new schools maintained by a local authority.

Similarly, the Education Act 2002 empowers the Secretary of State to prescribe standards for the premises of independent schools, which include Academies (including alternative provision Academies) and Free Schools. These are set out in Part 5 of The Education (Independent School Standards) (England) Regulations 2010 (ISS).

While there continue to be two sets of school premises regulations in place, their requirements are now identical and all types of schools now have to meet the same standards. This guidance therefore applies to all types of schools in England.

⁴ The Education (Independent School Standards) Regulations 2014, Schedule, Part 3, para 16

⁵ Ibid, Schedule, Part 5, para 29(1)(a). Physical education includes the playing of games – see para 31

⁶ Ibid, Schedule, Part 5, para 29(1)(b).

⁷ Ibid, Schedule, Part 5, para 23(1)(c)

Land and buildings covered by the regulations

A school's premises comprise all the land and all the buildings provided for the school, including both permanent and temporary buildings *and detached playing fields.*' [Emphasis added]

5.12 On health, safety and welfare, the 2015 Premises Guidance advises that the regulations are 'specifically about maintaining school premises so that the health, safety and welfare needs of pupils are safeguarded'.

5.13 On outdoor space, the 2015 Premises Guidance advises that:

'Physical education (PE) includes the playing of games. There are two types of outdoor space used for PE, sports pitches and hard surfaced games courts. Sports pitches, grass and/or all-weather, are used for team games such as football, hockey and cricket, and for athletics. Games courts are for sports such as netball and tennis and are usually provided as a multi-use games area, with additional courts in larger schools. Outdoor space is also needed for informal play and socialising, and this is usually both hard and soft surface.

On-site and off-site provision

Schools often need to maximise the use of their sites in order to provide the variety of spaces needed. Advice on the sizes of spaces can be found in the area guidelines. Some schools will be on restricted sites and will not have enough outdoor space to meet requirements. In these situations students will need to be provided with access to suitable off-site provision.

Protection of school playing fields

Playing fields at maintained schools are protected under section 77 of the 1998 School Standards and Framework Act. Playing fields at Academies, where the land is owned by the local authority (and, as is usually the case, is leased to the Academy) and has been used as a playing field in the last 10 years, are also protected.'

5.14 **Building Bulletin 103** (BB103)⁸, sets out the space standards, including playing fields, that a secondary school should have. On page 38 of BB103 there is Figure 21 showing gross and net site area for secondary schools, the top graph showing zone U: soft outdoor PE. This shows 7500 + 37N. This means that the maximum soft area for PE should be calculated as 7500m squared plus 37m squared per pupil in a secondary school. The School currently has

⁸https://assets.publishing.service.gov.uk/media/5f23ec238fa8f57acac33720/BB103_Area_Guidelines_for_Mainstream_Schools.pdf

1699 pupils on roll, and on that basis they would be expected to have 70,363m squared of soft PE space (1699 x 37+7500).

- 5.15 I refer to a map which I append as Appendix 91 showing the area of the School's Playing Fields within the School's fencing line. I understand from discussing this with the School's Deputy Director of Finance and Resources that this area is 63,038 m squared.

School and College Security Guidance

- 5.16 In July 2026, the DfE produced updated 'School and college security guidance' (see Appendix 92). This guidance places great emphasis on schools needing to have a suite of policies from Safeguarding, Health and Safety, Emergency Management and up-to-date risk assessments to ensure the school is aware of any risks it might face and is ready to deal with them. The School has such policies in place. The guidance also suggests that schools should establish and maintain relationships locally and work in partnership with the police, local authority and others in the wider community to gather and share security-related information. We have developed good relationships with the local police, who have recorded all recent incidents and investigated where possible. We have also kept BCC informed.

Protection of school playing fields

- 5.17 Playing fields of maintained schools are protected under section 77 of the 1998 School Standards and Framework Act. Playing fields at Academies, where the land is owned by the local authority (and, as is usually the case, is leased to the Academy) and has been used as a playing field in the last 10 years, are also protected.
- 5.18 The School's curriculum for physical education is the national curriculum ("**NC**"). The aims of the NC for PE are 'to ensure that all pupils:
- develop competence to excel in a broad range of physical activities
 - are physically active for sustained periods of time
 - engage in competitive sports and activities
 - lead healthy, active lives'⁹

- 5.19 The School has chosen to provide physical education in accordance with the NC, in common with the majority of other academy schools; PE is a compulsory subject under the NC at all

⁹ Statutory guidance - National curriculum in England: physical education programmes of study - Published 11 September 2013 (see Appendix 95)

key stages. There is a statutory requirement under the Education (Independent School Standards) Regulations 2014 to provide suitable outdoor space for both PE and for pupils to play outside (Schedule, Part 5, para 29); it is strongly encouraged that there be outdoor space rather than inside.

- 5.20 Ofsted has indicated in its Main Findings of its 'Levelling the playing field: the physical education subject report' (20 September 2023) (Part 3, Appendix 29, Pages A688-703) that 'enough time' for PE is 2 hours per week and not less:

"Many schools visited have enough time in the timetable to teach a broad and ambitious PE curriculum. Most primary schools teach PE for 2 hours per week. Around half of secondary schools teach PE for 2 hours per week for both key stage 3 and key stage 4."

- 5.21 The School has a child protection and safeguarding policy, which is updated every year. The 2026 policy is at Part 3, Appendix 39, Pages A1011-1046. Previous iterations of this policy (from 2015 and 2010) were referred to in the Inspector's Report dated 14 October 2016 in relation to TVG1 (David Mayer) at paragraph 257:

'This reflected how attitudes to school security had changed over the years, starting with the Dunblane Primary School shootings in 1996. There had been high profile incidents in Bristol that had highlighted the concern, and Ofsted had shown increasing interest in the issue.'

- 5.22 In the light of security incidents nationally, beginning with the Dunblane school shootings in 1996, attitudes to school security have changed considerably. As a result, at the School, there is no open access for strangers at the main School site - all access is gated, and lanyards have to be worn. However, prior to fencing the Playing Fields, access to that land was completely open.

- 5.23 As a headteacher, I am responsible for (amongst other things):

- 1) ensuring that risks are managed effectively including health and safety matters;
- 2) implementing health and safety policies;¹⁰
- 3) ensuring that staff and pupils can work and learn in a safe and secure environment.

- 5.24 The question of security within school premises is ever-changing and needs to be kept under constant review, with measures implemented to target identified areas of risk and remedial actions implemented to address them.

¹⁰ Health and safety: responsibilities and duties for schools – GOV.UK – Appendix 31, A707-718

- 5.25 Health and safety guidance from the DfE ('Health and safety: responsibilities and duties for schools' updated 5 April 2022 at Part 3, Appendix 31, Pages A707-718) explains that the employer in a school is accountable for the health and safety of staff and pupils. The day-to-day running of a school is usually delegated to the headteacher and school management team, which includes health and safety. The Guidance goes on to say that health and safety law (which includes the Health and Safety at Work etc. Act 1974) requires schools to assess risks and put in place proportionate control measures. This includes anything related to the school premises or delivery of its curriculum, whether on or off-site.
- 5.26 Ofsted inspects how schools keep pupils safe, and I have to ask myself whether our arrangements are adequate to successfully keep pupils safe and free from harm.
- 5.27 I refer to Ofsted's Inspection Toolkit 2025 at Part 3, Appendix 36, Pages A898-978. The safeguarding standards have been developed from the requirements of 'Keeping Children Safe in Education 2025' and 'Working together to safeguard children 2025'. Ofsted Inspectors will always make a written judgement in their report about whether safeguarding has been met - safeguarding will either be MET or NOT MET.
- 5.28 Safeguarding is 'met' when all the following apply (page 8 - A906):
- 'Leaders have established an open culture in which safeguarding is everyone's responsibility. Multi-agency working is effective. There is strategic oversight of all aspects of safeguarding and promoting the welfare of pupils. Leaders actively try to learn from safeguarding cases and incidents and take any action needed.
- Pupils are kept safe and feel safe. Their voices are heard, including the voices of pupils who are not on the school site (whether long term, temporarily or for part of the school day). Teaching pupils about how they can stay safe and when they may need help is embedded across the curriculum. Pupils and parents know who to go to for support.
- All staff are vigilant and carry out their responsibilities effectively to keep pupils safe. Staff understand the signs of possible safeguarding concerns. They respond by following the school's systems confidently and consistently.
- Leaders fulfil their responsibilities in relation to child-on-child violence. This includes (but is not limited to) bullying, physical abuse (including physical assault and harm (or the threat of harm) with a weapon), sexual violence and harassment, and domestic abuse in pupils' own intimate relationships (teenage relationship abuse).
- 5.29 In addition to the School's Safeguarding Policy, the School has undertaken risk assessments of the use of the Playing Fields. I note that at a meeting between BCC and the School on 3

August 2018, which I append a note of as Appendix 93, BCC 'confirmed it has reviewed Cotham's risk assessment of using the playing fields at Stoke Lodge and confirmed that they feel Cotham School undertook a fair and measured approach to the risk assessment and the options/actions for mitigation'.

5.30 The School's current risk assessment dated 31 March 2026 (Part 3, Appendix 38, Pages 1002-1010) identifies the following risks at the School's Playing Fields:

- Dog faeces (causing serious health issues) – Low Risk due to fencing. Risk rises due to out-of-hours use.
- Dog attack (causing major injury through dog bites) – Medium Risk due to fencing
- Violence and aggression from trespassers – Low Risk due to fencing
- Exposure to drugs and paraphernalia – Medium Risk as signs of users of alcohol and drugs have been at Stoke Lodge
- Vehicles on site – Medium Risk
- Travellers or other trespassers with the intent to be resident for any period of time – Medium Risk
- Antisocial Behaviour, vandalism and arson to grounds, trees and buildings – High Risk - Vandalism of the fence itself and signage relating to the School is evident; this risk likelihood remains high due to existing evidence of an issue. All issues of vandalism or antisocial behaviour are to be reported to the police.
- Drones or Model Aircraft – Low Risk
- Rubbish Dumping and litter – Low Risk
- Unauthorised Events – Medium Risk
- Students Absconding from site – Low Risk as Playing Fields enclosed

5.31 The risk of a dog attack or an infection from toxic dog faeces cannot be ignored by the School (as endorsed by the Judge at para 195 of the Judgment).

5.32 School premises are not public places, they are private property. People do not have an automatic right to enter. This is clearly set out in DfE Guidance, 'Controlling access to school premises' (27 November 2018) at Part 3, Appendix 30, Pages 704-706. Parents have an "implied licence" to come onto school premises at certain times, and it is up to the school to decide what these times are. A number of people may have good reason to be on the school premises and therefore possess an "implied licence" i.e. registered pupils of the school during school hours or by agreement of the Headteacher e.g. after school clubs and sports, parents or guardians responsible for a pupil at the school, Governors, Ofsted inspectors, Local Authority staff, contractors, those using facilities provided as part of a school "let" etc.

However, anyone who enters the school premises without permission is trespassing, which is a civil offence. The Guidance referred to above states that:

'2. Barring individuals from school premises

Trespassing is a civil offence. This means that schools can ask someone to leave and take civil action in the courts if someone trespasses regularly. The school may want to write to regular trespassers to tell them that they are potentially committing an offence.

Schools can bar someone from the premises if they feel that their aggressive, abusive or insulting behaviour or language is a risk to staff or pupils. It's enough for a member of staff or a pupil to feel threatened.

The school should tell an individual that they've been barred or they intend to bar them, in writing. Letters should usually be signed by the headteacher, though in some cases the local authority, academy trust or proprietor may wish to write instead. The individual must be allowed to present their side. A school can either:

- bar them temporarily, until the individual has had the opportunity to formally present their side
- tell them they intend to bar them and invite them to present their side by a set deadline

After the individual's side has been heard, the school can decide whether to continue with barring them. The decision should be reviewed within a reasonable time, decided by the school.

The Department for Education (DfE) does not get involved in individual cases.

3. Removing individuals from school premises

Section 547 of the Education Act 1996 makes it a criminal offence for a person who is on school premises without legal permission to cause or permit a nuisance or disturbance. Trespassing itself does not constitute a criminal offence.

To have committed a criminal offence, an abusive individual must have been barred from the premises or have exceeded their 'implied licence', then also have caused a nuisance or disturbance.

If a school has reasonable grounds to suspect that someone has committed an offence, then they can be removed from the school by a police officer or a person authorised by the appropriate authority such as the:

- governing board
- local authority
- proprietor of that school"

5.33 Without fences around school playing fields, even when the fields adjoin school sites, it is very difficult to ensure the health, safety and safeguarding of pupils and staff.

5.34 'The Key' (a national information service which supports school leaders and school governors by providing practical, expertly researched answers to their questions) contacted a representative at the DfE who highlighted the importance of addressing safeguarding issues.

I recall that the DfE representative said it is normal to secure at least part of the school site and access to the buildings so that trespassers cannot easily get past the secure line; and he added that, in some cases, it may also be necessary to introduce security measures in order to prevent vulnerable pupils from leaving the school site without permission. I can't, however, now find a copy of that communication.

5.35 The DfE Guidance on potential security threats and preventative measures updated 3 July 2026 at Part 3, Appendix 34, Pages 876-881 states:

'While it is difficult to be prescriptive regarding the security threats faced by individual schools or colleges there are certain preventative measures which can be taken according to individual requirements arising from the security risk assessment.

.....

Preventative measures could include:

.....

- CCTV to monitor and record activity within and around the estate
-
- intrusion detection systems, for example effective perimeter fencing to protect against intruders, security lighting and security glazing, intruder alarm systems.'

5.36 I am aware that the applicant in this case will say that Ofsted does not require schools to take specific steps with regard to site security, nor do they require fencing of school playing fields. That is correct, but neither does Ofsted nor the Government rule it out either.

5.37 It will also be said that some schools do not fence their playing fields, including in Bristol. That is true for no doubt lots of varying reasons. I do note, however, the constant refrain of schools and clubs complaining about safeguarding as well as dogs and dog faeces on their playing fields, for example:

- a) [Varndean School, Brighton - School can fence off playing fields from public](#)
- b) [Stannington school in Sheffield wants boundary fence to protect pupils and stop dog fouling on fields;](#)
- c) [Four Cs Academy Trust \(operator of Ken Stimpson Academy\) has leased part of Werrington Fields for sports provision which it plans to permanently fence off to safeguard pupils;](#)

- d) [The Ridings High School in Winterbourne put up a six foot barrier on its Hoopers Farm playing field to protect its pupils from hazards such as dog mess, broken glass and golf balls;](#)
- e) [Oswestry School closes its playing fields due to dog owners failing to pick up their pets' mess;](#)
- f) [A Cardiff rugby club has said 'dog fouling on its playing fields is a huge problem';](#)
- g) [Hay St Mary's football club in Hay-on-Wye said dog fouling was an ongoing problem and will no longer be tolerated;](#)
- h) [Calls for police action over dog fouling at Penrith playing field;](#)
- i) [Rugby player ends up in hospital after falling in dog faeces;](#)

5.38 Recently, we have experienced some new challenges, for example, on 6 August 2026, while working at the Playing Fields, I was informed that an off-lead dog approached a groundsman and jumped up at him repeatedly, resulting in scratches to his neck. The School's employee reported that the dog was not under effective control and that there was no attempt made by the owner to recall it.

5.39 On 14 August 2026, I was informed that a groundsman was line marking at the playing field. They discovered that someone had maliciously filled in a football net post socket with concrete. This is now hampering the preparation of the Playing Fields for the autumn season.

5.40 Together with the School's governing body, we are personally responsible for safeguarding the children in our care, not anyone else. We are the ones who have to make decisions about acceptable risk. In light of all the circumstances and guidance, we have come to the considered view that the School cannot effectively use the Playing Fields as playing fields for school purposes unless they are fenced.

5.41 As the Judge said of my safeguarding evidence in the section 14 proceedings at para 195:

195. My view overall is that Ms Butler was giving precise, careful and above all truthful evidence, which I accept. There is no doubt that the claimant has an important duty to safeguard and protect the schoolchildren in its care, and that in the performance of that duty the claimant has produced a policy which is intended to protect against various perceived risks, of greater or lesser likelihood. Even a theoretical risk is still a risk, and the consequences of serious harm resulting from, say, a dog attack, or an infection from toxic dog faeces cannot simply be ignored. If a child died from such a cause, and a school

accepted that it did not take the risk into account because it was just “theoretical”, I am sure that the political, as well as legal, consequences would be significant. Opinion evidence of this kind is inherently a matter of assessment and evaluation. It is not a precise science. But, in my judgment, in the context of our society as it is now, Ms Butler’s approach had ample justification.

5.42 I also note the situation if the Playing Fields ever reverted to BCC, they would still be held for education purposes, and the same PE and safeguarding duties would apply.

6. CONSEQUENCES IF NEW RIGHTS OF WAY ARE MADE OVER THE STOKE LODGE PLAYING FIELDS

6.1 If the School’s Playing Fields are confirmed to have public rights of way across them as defined in the Order, I am told that the School would be unable to obstruct members of the public from passing and repassing along the defined routes. I am also advised that the scope of the public’s right may extend beyond mere passage to include stopping to rest and refresh, to view something of interest or even peaceful assembly and demonstration. I understand that it would be a criminal offence to obstruct the public’s lawful use of the rights of the way, even if that meant disrupting the School’s use of the land. I understand that, consequentially, the School would be unable to fence the Playing Fields, to the extent that the fencing disrupted the use of the rights of way.

6.2 It has been explained to me the distinction between the right sought in the village green application (i.e. a right to indulge in lawful sports and pass across the entire land) and the rights under consideration here (i.e. a more limited right to pass and re-pass along the defined routes). I have carefully considered this distinction when preparing my evidence. I have studied the Order Map and note the routes criss-cross the site and intersect with sports pitches and athletics tracks.

6.3 Given the legal consequences which would follow from the Order being confirmed, I consider that if the Order were to be confirmed, the School would be unable to use the site for any practical educational purposes for the following reasons:

- a. the School would be powerless to prevent a person from walking right across, without warning, the middle of a game of football or cricket, or a PE lesson, or an athletics track if they were on an Order Route because that person would have an absolute legal right to be there at any time;
- b. consequently, the School’s efficient delivery of the curriculum would be subject to unpredictable disruption which would render the land useless for its intended purpose;

- c. dog walkers would be able to come onto the Fields with impunity, allowing their dogs to defecate and/or interfere with the students and staff;
- d. it would not be possible to develop facilities (e.g. clubhouse/changing facilities) which intersected with one of the routes;
- e. importantly, the School would not be able to regulate the use of the land, specifically, it could no longer require people to leave the Playing Fields (as part of the School premises) because they would have a legal right to be there;
- f. the School would be unable to fence the land, with the consequences that:
 - i. dangerous dogs would have direct access to the students and staff;
 - ii. pupils would more easily be able to abscond; and
 - iii. potentially dangerous adults would have direct access to the students and staff.

6.4 As I set out above, these are not hypothetical issues. These problems were the real-world experience of the School when access to the land by the public was unrestricted. I therefore consider it is not merely foreseeable but is a virtual certainty that, if the Order routes were to be confirmed, there would be an irreconcilable conflict between the use of the land for its educational purposes and the rights of the public along the Order routes. I cannot foresee that the land could be used, consistent with the legal duties I have outlined above, for any educational purposes consistent with the public's rights of access defined by the Order.

6.5 As a result, the School would have to look for alternative PE provision with another off-site lease arrangement, which would be financially unsustainable. BCC has confirmed to the School that a viable alternative option to the Playing Fields does not exist.

6.6 Given the duties in respect of safeguarding on a school maintained by the local authority are, in substance, the same as those on the academy such as Cotham, I consider the same conflict would be reasonably foreseeable even if the land were today possessed by BCC for use by one of its maintained schools.

6.7 Essentially, the significant expansion of safeguarding duties in recent years means that unrestricted public access to School premises is no longer sustainable. However, even setting safeguarding duties to one side, the spread of the Order routes across the Playing Fields in this case would make it impossible to make any practical use of the land for their intended educational purposes, given that any plans to use the land could be disrupted, without warning, by members of the public asserting their lawful right to criss-cross the land at any

moment. Accordingly, in light of the safeguarding and practical implications, I am of the view that the land could not be used for educational purposes consistent with the Order routes being public rights of way. As I explain above, that situation would present a very significant problem for the School, given that it is tightly restricted to only use the land for educational purposes (by the governing documents, the Lease and the funding arrangement with the DfE). Ceasing to use the land for education purposes would be incompatible with the objects of the School and its Agreement with the DfE.

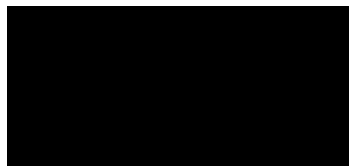
7. SUMMARY

- 7.1 My name is Joanne Butler. I am the Headteacher of Cotham School and have held that post since September 2015. This proof of evidence is given on behalf of the School and sets out my professional opinion; it does not represent the views of Ofsted, for whom I also act as a contracted inspector.
- 7.2 This summary condenses my proof of evidence, which addresses: the governance of the School; the factual background to its use of the Playing Fields; the School's statutory duties relating to pupil welfare, safeguarding, school premises and physical education; and the consequences for the School if the Playing Fields are confirmed to be crossed by public rights of way as defined by the Bristol City Council Definitive Map & Statement Modification Order No.7 2024.
- 7.3 The School is a large, diverse and academically successful academy of 1,699 pupils, with 66% of pupils from non-white backgrounds, 52% with English as an additional language, and over 50% of pupils in the highest category of deprivation. As an academy trust, it is a charity regulated by the Department for Education, bound by a funding agreement and Articles of Association that require its land to be used only for educational purposes. It leases the Playing Fields from BCC for 125 years under a Lease dated 31 August 2011.
- 7.4 The School's main site does not have sufficient outdoor space to meet statutory requirements, so it relies on the Playing Fields, about three miles away, for physical education. The Playing Fields have been used for school sport since before 1963 and continuously by the School, the University of Bristol, and community sports groups since 2001.
- 7.5 The Playing Fields were unfenced until 2019. Between 2013 and 2016, the School experienced an escalation of serious problems with uncontrolled dogs, including dogs entering PE lessons and defecating on pitches, which were recorded in contemporaneous complaints. Following a critical incident in late 2013, the Governors resolved in March 2014 to stop using the unfenced land, and the School used the University of Bristol's Coombe Dingle facility as an interim measure.

- 7.6 The land was the subject of two applications to register it as a town or village green, in 2011 and 2018. Both were successful before BCC's Committee, against the recommendation of the appointed Inspector on each occasion, and both registrations were ultimately overturned by the High Court: the first by judicial review in 2018, and the second in 2025 following proceedings instituted under Section 14 of the Commons Registration Act 1965, in which the Judge found that public use had been incompatible with, or displaced by, the School's educational use of the land.
- 7.7 The School fenced the Playing Fields in 2019, following its first successful legal challenge. This significantly improved safety and allowed the School to resume regular, structured use of the site for PE. Fencing was removed by unknown persons in 2023 pending the second set of proceedings, and further vandalism (including to goalposts) occurred in 2023, 2025 and 2026.
- 7.8 In 2025, following the High Court Judgment of HHJ Paul Matthews in *Cotham School v Bristol City Council* [2025] EWHC 1382 (Ch), the School's fence was reinstated. The School has continued to experience trespass, criminal damage, and intimidation of staff, and has had to restrict public access during term-time hours as a result, notwithstanding that the Playing Fields remain open during school holidays.
- 7.9 I set out the School's statutory duties. Schools, whether maintained or academies, are subject to equivalent statutory obligations to safeguard and promote pupil welfare (Education Act 2002, s.175; the Education (Independent School Standards) Regulations 2014), and to provide suitable outdoor space for PE and outdoor play (School Premises (England) Regulations 2012; the Education (Independent School Standards) Regulations). Statutory guidance, including 'Keeping Children Safe in Education' and the DfE's Advice on Standards for School Premises 2015, confirms that these duties extend to detached playing fields and to off-site provision.
- 7.10 Safeguarding standards have evolved substantially since the 1990s, and Ofsted now requires schools to demonstrate an active, whole-school safeguarding culture, failing which a school will be judged as not having met the required standard. As Headteacher I am responsible for ensuring that pupils and staff can work in a safe and secure environment, including during off-site PE at the Playing Fields, three miles from the main site and beyond the immediate reach of other School staff in an emergency.
- 7.11 The School's current risk assessment (31 March 2026) identifies risks at the Playing Fields including dog attacks and dog fouling, trespass, drugs and antisocial behaviour, vandalism and arson, and pupils absconding. These risks are substantially mitigated by fencing but remain higher outside fenced hours. The Judge in the 2025 Judgment accepted my evidence on these risks as precise, careful and truthful, and endorsed the view that even a theoretical

risk of serious harm, such as a dog attack or infection from dog faeces, cannot properly be disregarded by a school.

- 7.12 School premises are private property, and members of the public generally have no automatic right of entry; unauthorised entry is trespass, and causing a nuisance or disturbance while on site without permission is a criminal offence under s.547 of the Education Act 1996. Fencing is an established, DfE-endorsed preventative security measure.
- 7.13 Turning to the consequences of confirmation of the Order, I explain that if the routes shown on the Order Map, which cross sports pitches and an athletics track, were confirmed as public rights of way, the School would be legally unable to obstruct the public's use of them, including stopping, resting or peaceful assembly, and could not fence the land where fencing would intersect the routes. This would replicate, and likely worsen, the safeguarding and operational problems the School experienced before 2019: unpredictable interruption of lessons and matches, uncontrolled dogs and dog fouling on pitches, inability to exclude trespassers or regulate access, and increased risk of pupils absconding or of contact with potentially dangerous individuals.
- 7.14 In my opinion these are not hypothetical risks but ones the School has already experienced in practice when the land was unfenced. I consider it a virtual certainty that if the Order Routes are confirmed, it would create an irreconcilable conflict between public rights of passage and the School's ability to deliver PE and safeguard pupils on the Playing Fields. BCC has confirmed that no viable alternative site exists, and any such alternative would in any event be financially unsustainable for the School. I consider the same conflict would arise even if the land were held today by BCC for use by one of its own maintained schools, since the safeguarding duties involved are substantially the same. For these reasons, I do not consider the land could be used for its intended educational purposes if the Order Routes were confirmed as public rights of way.



.....
JOANNE BUTLER

8 September 2026

List of Additional Appendices

Page Number	Appendices Part 6 – Further documents relevant to the proof of evidence of Jo Butler
A1197-1264	Appendix 88 - Academy Trust Handbook
A1265-1269	Appendix 89 - HM Land Registry entry for the freehold of Stoke Lodge Playing Fields, Shirehampton Road, Bristol
A1270-1274	Appendix 90 - HM Land Registry entry for the leasehold of Stoke Lodge Playing Fields, Shirehampton Road, Bristol
A1275	Appendix 91 - Map showing the area of the School's Playing Fields within the School's fencing line
A1276-1295	Appendix 92 - Department for Education updated 'School and college security guidance' July 2026
A1296-1297	Appendix 93 - Note of meeting between Bristol City Council and Cotham School on 3 August 2018
A1298-1325	Appendix 94 - The Education (Independent School Standards) Regulations 2014
A1326-1331	Appendix 95 – Department for Education – National curriculum in England: physical education programmes of study 11 September 2013
A1332	Appendix 96 – Video of three dogs off-lead at the Playing Fields in November 2013 https://hqr1aw.egnyte.com/dl/XdilQqlDyY