

July 12th 2018



By Email

To: Councillors Development Committee A, Development Committee B and the PROW and Greens Committee; as listed in annex 1.

CC:

Darren Jones MP

Bristol City Council: Gary Collins, Nancy Rollason, Peter Insole and Zoe Willcox.

Dear Councillors

Re: Stoke Lodge

We are delighted that we have been invited to a meeting with Cotham School (Cotham), to be facilitated by Darren Jones MP, on the 20th July. We very much hope and trust that Cotham will be open to discussing a range of alternative solutions to fencing that would enable use of the fields in September by pupils without any further, unnecessary expense to Cotham or the Council.

The community have researched many solutions and ideas to bring to the table as alternatives to fencing – such as the use of hedging. Therefore if the school still believes that the perimeter needs to be strengthened, more appropriate and cost-effective solutions can be implemented.

However, in the interim, we understand that Cotham continues to argue that it can erect a 2m perimeter fence around Stoke Lodge without consent. We believe Cotham has very recently reiterated their intention to commence works during August 2018. We also understand that Bristol City Council (BCC) has previously instructed Cotham to take no action pending its decision on other matters, including applications for public rights of way which have now been validated and require consideration through the appropriate channels.

We write as the voice of over 750 local residents represented via the We Love Stoke Lodge group to express our concerns, position and set out our understanding on this matter.

Executive summary

Legal advice has been provided (letter from Earlsfield Town Planning (ETP) dated 26 May 2018) which confirms that planning permission and Listed Building Consent is required in relation to Cotham's proposal as a result of restrictions on development affecting the curtilage of a listed building. Recent case law confirms that the curtilage or 'setting' comprises all the land within the boundaries of the historic Stoke Lodge estate: it is not a matter of discretion for BCC as to whether planning permission and Listed Building Consent is required; it is a matter of law that this is the case.

In addition, consent is required under the terms of Cotham's lease before any structure may be erected on the leased land. Whether or not to grant this consent is a matter for BCC's discretion, to be exercised taking into account all relevant factors.

As such, we assume that BCC would, both as the landowner and under its planning enforcement remit, take action to injunct any attempt to erect a fence without such consent. However, if the Council failed to do so, the local community is fully prepared to take legal steps to ensure that Cotham observes proper process.

This letter explains why planning permission is a legal requirement; outlines the criminal offences that are relevant to the situation, and comments on BCC's rights and duties as the owner of Stoke Lodge. Annex 2 sets out a non-exhaustive list of considerations that would be relevant to (a) the consideration of any application for planning permission, and (b) any decision by the Council to consent to development in its capacity as landowner.

Planning permission is a clear legal requirement

The pitches/playing fields at Stoke Lodge are not a 'school' as defined in the General Permitted Development Order 2015 (as amended) and Cotham cannot therefore claim permitted development rights in relation to its fence proposal. In any case the GPDO does not remove the requirement to secure Listed Building Consent under the Planning (Listed Buildings and Conservation Areas) Act 1990 where the proposed development is within the curtilage of a listed building or if the fence forms a boundary with a listed building or its curtilage.

Sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 require that in considering whether to grant listed building consent or planning permission for development which affects a listed building or its setting the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. National planning guidance states that 'the setting is often an essential part of the building's character, especially if a garden or grounds have been laid out to complement its design or function' (PPG15, para 2.16). The curtilage is treated as part of the listed building.

Government guidance confirms that:

'Setting is the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage. All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not... The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance.'

A 2017 High Court decision, *Steer v SSCLG*, is directly on point - the Court in this case considered that a proposed development site formed part of the setting of a listed building because of the 'historical, social and economic association between the hall and its former agricultural estate', even though there was no visual connection between the two.

The judge agreed with Historic England's submission that setting is defined as 'the surroundings in which [the asset] is experienced. Views, while they may be an important part of this experience and clearly identify the presence of a setting, do not constitute its totality, or even the greater part of it...'. In other words, a physical and visual connection (which are

both present in the case of Stoke Lodge) are important factors, but so are historical, social and economic factors.

Peter Insole, Principal Historic Environment Officer, has confirmed that the grounds around Stoke Lodge were developed as a landscaped garden for the house and form its curtilage; historical evidence confirms that the entire estate between the Shirehampton Road and Ebenezer Lane boundaries was operated as a single entity including farming use and, later, hospitality and entertainment provided by councillors, Merchant Venturers and other local dignitaries who lived in Stoke Lodge mansion at various times, for local Bristol societies and groups. Several of the trees were specifically chosen and planted as specimen examples, and are located across the estate so as to underline the unity of the whole.

Various schools and other community groups played team sports at Stoke Lodge both before and after the Council purchased the estate in 1947 (for example, a cricket ground existed and is marked on pre-1946 maps, which clearly was not intended for the private use of the owners).

The creation of Cotham's leasehold interest does not affect this analysis. In fact, Cotham's lease was expressly made subject to community use precisely because of concerns about proposals to erect a fence, and following a 2010 Cabinet decision (which still stands) that Stoke Lodge should remain unfenced. Cotham gained no additional rights to develop the curtilage of a Grade II listed building merely because their use of the land was formalised in a lease in recognition of unrelated external factors (namely, Cotham's transfer to Academy status in 2011).

Erecting a fence without permission would be a criminal offence

Works within the curtilage of a listed building which affect the setting and character of a listed building require Listed Building Consent. It is a criminal offence, with a possible unlimited fine and two years in prison, to carry out works that require Listed Building Consent without such a consent being obtained. The offence is committed by the person who carried out the works and by anyone who caused them to be carried out.

In addition, other criminal offences may be committed in the course of any attempt to erect a fence, including wilful damage to protected trees and offences under the Protection of Badgers Act 1992.

BCC's rights and duties in its capacity as landowner

In addition to planning issues, erection of a fence by the leaseholder would be a breach of Cotham's obligations under the clause 3.5.2 of the lease dated 31 August 2011. As such, it would require BCC's specific consent as landowner. Whether to grant this consent would be a separate matter for exercise of BCC's discretion, but any decision must be made in a transparent manner and with due regard for all relevant factors, some of which are indicated in the Appendix and which are also relevant planning considerations.

As stated above, we assume that BCC would, both as the landowner and under its planning enforcement remit, take action to injunct any attempt to erect a fence without all appropriate consents. We note that following any such action by the school without BCC's consent as landowner, BCC could consider taking legal steps to forfeit the lease for breach of covenant.

While this is not a desired outcome, it would provide an opportunity for BCC to negotiate a new lease on more commercial terms with Cotham or another party, and to clarify issues around community use of the land. Alternatively, the community is actively gathering evidence on successful community trust models used elsewhere for similar purposes and would be happy to engage with the Council in relation to developing an approach along these lines to maintaining the grounds and keeping them fence-free and open to public access.

Summary

As community users of Stoke Lodge, and with the support of over 700 local residents, we would like to emphasise again that community and school/community sports use coexisted peacefully at Stoke Lodge for nearly 70 years of Council ownership before Cotham chose to move its sports provision to Coombe Dingle in 2014 (this was confirmed in the findings of the inspector in relation to the TVG application).

The community wants to see this coexistence restored. However, on the basis of the both the law and the detrimental impact of Cotham's proposal, we ask the Council to reject any proposal, application or actual attempt to erect a perimeter fence at Stoke Lodge.

Yours sincerely

Emma Burgess, Fiona Evans and Helen Powell
Writing as the voice of the We Love Stoke Lodge Group

Annex 1- Distribution List

Councillor Carla Denyer
Councillor Celia Phipps
Councillor Chris Windows
Councillor Clive Stevens
Councillor Donald Alexander
Councillor Fabian Breckels
Councillor Fi Hance
Councillor Harriet Bradley
Councillor Harriet Clough
Councillor Jo Sergeant
Councillor Jon Wellington
Councillor Lesley Alexander
Councillor Lucy Whittle
Councillor Margaret Hickman
Councillor Mark Wright
Councillor Mike Davies
Councillor Mike Langley
Councillor Olly Mead
Councillor Peter Abraham
Councillor Richard Eddy
Councillor Stephen Clarke
Councillor Sultan Khan
Councillor Tim Kent
Councillor Tom Brook
Councillor Tony Carey

BCC:

Gary Collins, Bristol City Council
Nancy Rollason, Bristol City Council
Peter Insole, Bristol City Council
Zoe Willcox, Bristol City Council

Darren Jones MP

Annex 2

Summary considerations relevant to planning and landowner consent decisions

1. No requirement for fencing from a safeguarding perspective.

The Council will be aware that HMI Kathy Maddocks of Ofsted confirmed in her letter dated 8 June 2018, that Ofsted does not require the playing fields at Stoke Lodge to be fenced. As noted in Ofsted's most recent inspection report, Cotham has had appropriate arrangements in place for safeguarding during sports activities using the facilities at Coombe Dingle (which are also open to public access at all times when the school use them). Many schools, the university and community teams play sports on the Downs and other facilities, which are unfenced and open to public access, including off-lead dogs.

There is no substance to Cotham's argument that a fence is necessary in order to safeguard children playing sports at Stoke Lodge, many of our schools across Bristol (and the UK) today use unfenced facilities (in higher crime areas with higher ratios of at risk pupils) and are able to safeguard their pupils effectively.

2. Health and safety implications.

No assessment has been made of the health and safety implications of erecting a fence, including both access for emergency vehicles onto the pitches during school use and the documented increase in risks of injury to students created by metal fencing close to pitches. Many schools we have engaged who use open fields today cited run off injuries into fencing as a greater risk than any of those identified by Cotham's Risk Assessment to support a fence.

From a community perspective, narrow unlit corridors outside a metal fence create entirely unnecessary public safety risks. In a wider sense, fencing the community out of the last remaining open space in Stoke Bishop could have serious implications for physical and mental well-being in the community. You will no doubt already be aware of the significant benefits of open green space, for example as published by the Fields In Trust and ratified by Government.

3. Equality Impact Assessment (EIA)

An EIA has not been completed on the proposed perimeter fence, including the ability of either students or community users with disabilities to access and use Stoke Lodge. Locked gates and narrow overgrown pathways outside a perimeter fence are likely to have a disproportionate impact on these members of the community. This is a vital consideration and a legal requirement.

There are many specific examples of community users of all ages from many local areas who use or have used Stoke Lodge for recuperation and rehabilitation from challenges presented by many protected characteristics and difficulties of all kinds, as well as for recreation and relaxation.

4. Commitment to shared use and access

Cotham's lease is expressly subject to community use; multiple communities from a range of Bristol wards have used this parkland for recreation over decades (as established by evidence in relation to the TVG application). The Council has formally recognised Stoke

Lodge as important open space and took a Cabinet decision in 2010 that it would never be fenced in and that the parkland would be a flagship for shared use and access.

Cotham's 'offer' of shared access is a 2m walkway 'around' the outside of its proposed fence (though this only applies to a limited part of the perimeter) plus access through a single gate when the pitches are not in use or hired out. However, Cotham is on record as anticipating use potentially from 0800-2200 on weekdays and 0900-2000 at weekends, all year round. In practice this restricts community access to a negligible level. We note that no Community User Agreement has been forthcoming for the proposed fence or as requested by Sport England in prior Pavilion planning applications.

5. Protected trees:

Irreparable damage will be caused to protected trees from erecting a fence close to the perimeter and within the tree canopy/root protection area. Under the terms of the lease, the Council has indemnified Cotham against **all liability whatsoever** in relation to the trees on the parkland, so that consequential costs arising from Cotham's erection of a perimeter fence would be borne by the Council (and taxpayers more widely). It would be entirely inappropriate to risk public funds in this way, particularly since multiple trees are the subject of protection orders and are listed as 'notable' or 'veteran' trees on the national Ancient Tree Inventory.

6. Wildlife impact

A perimeter fence would have a severely detrimental impact on wildlife including at least one active badger sett on Stoke Lodge, current evidence of which can be provided. Badgers have significant statutory protection and actions that disturb, destroy or block access to a sett or disturb badgers in their setts carry criminal penalties.

7. Setting and character

The proposed 2m high black mesh fence would cause significant and irreparable harm to the setting and character of a Grade II listed building and sever it for the first time from its historic estate, which is renowned for its open character and visual amenity.