

BRISTOL CITY COUNCIL

**MINUTES OF THE MEETING OF THE
PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE
HELD ON 19TH JANUARY 2009 AT 2.00 P.M.**

P Councillor Quartley (in the Chair)
P Councillor Brown
P Councillor Cole
P Councillor Crew
P Councillor Daniels
A Councillor Jackson
P Councillor Main

**PROWG
22.1/09**

APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

No apologies for absence or substitutions were received.

**PROWG
23.1/09**

DECLARATIONS OF INTEREST

Councillor Cole declared a non-prejudicial interest because Eastville ward (for which she was one of the elected representatives) abutted Whitehall Playing Fields.

**PROWG
24.1/09**

**MINUTES – PUBLIC RIGHTS OF WAY AND GREENS
COMMITTEE – 27TH OCTOBER 2008**

RESOLVED - that the minutes of the meeting of the Public Rights of Way and Greens Committee held on 27th October 2008 be confirmed as a correct record and signed by the Chair.

STATEMENTS

No.	AGENDA ITEM NO.	TITLE	NAME
1.	5.	Claimed footpath from Johnsons Lane.	Roy Uter
2.	5.	Claimed footpath from Johnsons Lane.	Kevin Davis
3.	5.	Claimed footpath from Johnsons Lane.	Roy Creasey
4.	5.	Claimed footpath from Johnsons Lane.	Rebecca Ellis
5.	5.	Claimed footpath from Johnsons Lane.	Ruth Essex
6.	5.	Claimed footpath from Johnsons Lane.	Louise Guy
7.	5.	Claimed footpath from Johnsons Lane.	Andrew Smith
8.	5.	Claimed footpath from Johnsons Lane.	Mark Sands
9.	5.	Claimed footpath from Johnsons Lane.	Collette Bourn
10.	NA	Draft Gating Order Policy – <i>please note that a copy of the Draft Gating Order Policy document referred to in this statement is available on the City Council’s website.</i>	Steve Virgin and David Mock

LATE STATEMENTS

No.	AGENDA ITEM NO.	TITLE	NAME
11.	6.	Application for Registration of Land at Ambra Vale East, Clifton Wood as a Town or Village Green.	Councillor Brian Price

QUESTIONS

No.	AGENDA ITEM NO.	SUBJECT	NAME
Q1.	NA	Legal costs incurred by the City Council.	Peter Gould

It was agreed that statement no. 10, regarding the draft Gating Order Policy, would be sent to the appropriate Executive Member for response.

PROWG 26.1/09

CLAIMED FOOTPATH FROM JOHNSONS LANE THROUGH WHITEHALL PLAYING FIELDS TO BRISTOL-BATH RAILWAY LINE

The Committee considered a joint report of the Director of City Development and the Director of Central Resources (Agenda Item No. 5) determining an application for a Modification Order under the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a footpath from Johnsons Lane through Whitehall Playing Fields to Johnsons Road/Bristol-Bath Railway Line, Easton, Bristol.

The representative of the Director of City Development introduced the report. The following points were made;

- The claim was prompted because fencing was erected around the site in 2006.
- The legal test required that the route must be used by members of the public for twenty years, without interruption. The twenty year period must be calculated retrospectively.

- A summary of the user evidence received could be found at Appendix M. The original evidence, which was listed as background papers, was available upon request.
- As there were only two witnesses who stated that they had used the route prior to 1986, there was insufficient evidence to conclude that the route had been in continuous use from 1966 to 1986. Officers had also concluded that on the balance of probabilities there was insufficient evidence to reasonably allege that the route was used without challenge between 1986 and 2006, due to the actions of the landowner in erecting a 'no trespassing' sign in 1988 and by turning people away.
- The statement provided by Mr Uter, on behalf of the City Council's department of Children and Young People's services, stated that signs were displayed around the periphery of Whitehall Playing Field from 1988 until 2004, advising that the land was privately owned. This evidence demonstrated that during that period there was no public right of way across the land. Due to the presence of these signs and evidence of forced entry, the Inspector rejected an application to register the land as a Town Green in 2005.
- Whilst the Ordnance Survey maps of 1950 and 1972 showed a path similar to the claimed route, the maps did not provide evidence as to whether this path was public or private.

In response to questions asked by Members, the representatives of the Director of City Development and Director of Central Resources informed the Committee that;

- Members should ensure that their decision be based on material considerations, i.e. the evidence before them.
- For the application to be granted, it was important that the evidence demonstrated that the claimed route shown between A to E on Appendix (5) A had been used by members of the public. It was not sufficient to demonstrate that the playing fields had been used for general walking.

- Members should note the difference between a route being used 'as of right' and 'by right' because only those used 'as of right' were a matter for consideration by the Committee.
- The law stated that members of the public needed to prove that they accessed the claimed route without force, permission or secrecy. However, in this case, Officers had concluded from the evidence presented at the Town and Village Green Inquiry (see Appendix (5) P) that some access to the playing fields was the result of force.
- Footpaths illustrated on Ordnance Survey maps of the area did not provide evidence as to their status. Only recorded Public Rights of Way were shown on the Definitive Map.
- Members of the public had the opportunity to highlight any concerns about the content of Committee reports via public forum.
- As the City Council followed best practice guidelines, the applicant and the landowner had been consulted on the content of the draft report in early December 2008.
- Should the application be refused, the applicant had the right to appeal to the Secretary of State. Conversely, the City Academy, as the relevant landlord, could object if the application was successful and an order was made and advertised.

On being put to the vote three Members abstained, one voted in favour and two voted against. The application was therefore refused.

RESOLVED - that the application for a Definitive Map Modification Order be refused.

APPLICATION FOR REGISTRATION OF LAND AT AMBRA VALE EAST, CLIFTON WOOD AS A TOWN OR VILLAGE GREEN UNDER THE COMMONS ACT 2006

The Committee considered a report of the Head of Legal Services (Agenda Item No. 6) considering the recommendation to grant the application for registration of land at Ambra Vale East, Clifton Wood as a Town or Village Green under the Commons Act 2006.

The representative of the Director of Central Resources (Head of Legal Services) introduced the report. The following is a summary of the main points;

- The relevant land, at Ambra Vale East, Clifton, covered an area of 290 square meters.
- The application had been advertised in accordance with the requirements and no objections had been received.
- A total of 148 items of evidence in support of the application had been submitted. The user evidence referred to activities such as gardening and community activities. The evidence showed that members of the public had used the land, without force, secrecy or permission, for a period of at least twenty years.
- In Officers' opinion, the applicants had demonstrated that the land met the requirements of the statutory definition of a Town Green.

In response to questions asked by the Committee, the representative of the Director of Central Resources (Head of Legal Services) stated that;

- The land was the former site of buildings that had been bombed.
- Despite extensive searches, it had not been possible to identify the current owner of the land. This was partly because prior to the 1960s it was not a requirement that land be registered.
- If the land was declared a Town Green, its status would be protected under current legislation.

Members were impressed by the range of activities that had taken place on the land, particularly as many of them would have appealed to local children. It was also felt that the evidence provided was of a very high standard.

On being put to the vote, Members voted unanimously in favour of granting the application.

RESOLVED - that the application be granted.

**PROWG
28.1/09**

UPDATE REPORT

The Committee considered a joint report of the Director of City Development and Director of Central Resources (Head of Legal Services) (Agenda Item No. 7) noting the report for information on the present position with regard to Wildlife and Countryside Act applications; town or village green applications; public inquiries and miscellaneous rights of way orders, agreements and legal proceedings.

The representatives of the Director of City Development informed the Committee that;

- Friary Road, Bishopston - an appeal had been lodged with the High Court, but was in the very early stages.
- Argyle Place, Clifton Wood - a 'snagging' report in respect of the adoption of the land as public open space, was being completed by Officers from the City Council's Leisure Services department.
- Applications were generally considered in the order in which they were received, but Officers had discretion to vary the order if the land was affected by a planning application. The Definitive Map Modification Order (DMMO) applications at South Purdown and Barracks Lane were being given priority due to pending planning approvals. If more resources were available, the waiting time for DMMO applications could be reduced, but due to decreasing budgets this was unlikely.

RESOLVED - that the report be noted.

**PROWG
29.1/09**

URGENT BUSINESS

There was no urgent business.

**PROWG
29.1/09**

DATE OF THE NEXT MEETING

RESOLVED - that the next meeting of the Public Rights of Way and Greens Committee be held at 2.00pm on Monday 6th April 2009.

(The meeting ended at 3.10pm)

CHAIR