

BRISTOL CITY COUNCIL

**MINUTES OF A MEETING OF THE
PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE
HELD ON 1ST MARCH 2010 AT 2.30 P.M.**

- P Councillor Kent (in the Chair)
- A Councillor Crew
- P Councillor Cole
- P Councillor Harrison
- P Councillor Havvock
- P Councillor Holland (substituting for Councillor Jackson)
- A Councillor Jackson
- P Councillor Jethwa
- P Councillor Quartley
- P Councillor Main

PROWG

13.3/10

APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were received from Councillor Crew and Councillor Jackson. Councillor Holland substituted for Councillor Jackson.

PROWG

14.3/10

DECLARATIONS OF INTEREST

There were no declarations of interest.

PROWG

15.3/10

**MINUTES - PUBLIC RIGHTS OF WAY AND GREENS
COMMITTEE - 3RD AUGUST 2009**

RESOLVED - that the minutes of the Public Rights of Way and Greens Committee held on 3rd August 2009 be confirmed as a correct record and signed by the Chair.

PROWG**16.3/10****PUBLIC PARTICIPATION - QUESTIONS, STATEMENTS AND PETITIONS**

AGENDA ITEM NO.	SUBJECT	NAME	STATEMENT NO.
NA	Public Right of Way 163	Bill Martin	1.
"	"	Peter Gould	2.
5.	Claimed Footpaths, South Purdown	Sue Flint	3.
"	"	Peter Gould	4.

The Chairman agreed to accept the following late statement;

AGENDA ITEM NO.	SUBJECT	NAME	STATEMENT NO.
NA	Public Right of Way 163	Mr Mock	1.

In response to the statements regarding Public Right of Way (PROW) 163, it was agreed that officers would look into the concerns raised about the legality of delegating decisions regarding gating and would inform Members of the findings in due course. The Chairman requested that the relevant statement makers be advised of the outcome.

PROWG**17.3/10****CLAIMED FOOTPATHS, SOUTH PURDOWN**

The Committee considered a joint report of the Director of City Development and the Director of Central Resources (agenda item no. 5) regarding three applications for Modification Orders under the Wildlife and Countryside Act 1981, to modify the Definitive Map and Statement by the addition of three footpaths to the network of existing PROW running through the public open space area known as South Purdown in Lockleaze.

A summary of the methodology used to evaluate the user evidence was circulated (a copy of which could be found on the City Council's website and also in the minute book). The Committee was asked to note that the addendum didn't include any new information, but had been prepared to provide additional

clarification regarding officers' conclusions about whether evidence demonstrated recreational or highways use.

The representative of the Director of City Development introduced the report, informing Members that;

- The fundamental point was whether residents had used the claimed routes at South Purdown 'by right' (with permission) or 'as of right' (without permission). If the applications were to be granted, Members would need to be satisfied that the public had used the claimed routes for a period of at least 20 years as of right.
- The evidence relating to the application was very complicated, but the claimant had been given the opportunity to consider and comment on officers' findings (see appendix 26c).
- After very careful consideration of all of the evidence, officers had concluded that the predominant public use of the land at South Purdown was with permission, and there was insufficient use as of right. Details of officers' conclusions could be found on pages 50 to 56 of the report.

During the debate that followed the introduction, Members and officers made the following comments;

- The Committee was advised that if one or all of the applications were granted, a series of formal legal stages would follow, and at the final stage a decision would be made on whether or not to confirm the orders. If confirmed, the claimed routes would become PROW.
- Members were concerned that evidence that supported use of the claimed routes for both highway and recreational purposes (for example taking a dog to the local shops) had been categorised as recreational in too many cases. In response, officers confirmed that where ambiguous evidence had been given (that being evidence showing both highway and recreational use), they had tried to establish the predominant use, and where possible had conducted interviews with those who had given evidence. The Committee noted that the case law quoted within the report (Oxford County Council v Oxford City Council 2004 (paragraphs 66 and 68)), stated that if primary use could not be established, the authority should classify the evidence in whichever way was the least onerous, but did not agree that this was satisfactory.
- Officers asked the Committee to note that not all highways and recreational use would be concurrent, so could be assessed and quantified separately, as illustrated by the addendum. Officers clarified that where there was evidence of highway use it had not been discounted, but officers concluded that the volume of

highway use as opposed to recreational use was significantly lower and that in their view was insufficient to satisfy the presumption.

- Members queried why the City Council's education department had only objected to part of one of the claimed routes (G-H-I) and were informed that this was because the remainder of the relevant site was owned by the Neighbourhoods department (Parks/Landscape/Heritage Estates).
- The Committee noted that claimed route G-H-I would terminate in open ground following diversions to PROW 223 that were made in 1976 and 2008. However, officers advised that there was no legal reason why a PROW couldn't be a cul-de-sac. The Committee was interested to know whether the diverted route for path 223 could be substituted with an alternative, but were advised that if changes were to be made a new application would need to be submitted. Because route G-H-I didn't lead anywhere, Members agreed that it had probably been used for predominately recreational use.
- The Committee noted that route G-H-I had moved over time, which was demonstrated by the photographic evidence at appendices 12 to 19. Members agreed that 20 years use of the same route could therefore not be proven.
- Regarding routes J-K and L-M, the Committee felt that use had predominately been highway because the paths allowed access between housing areas, the school and the local shops. However, the Committee agreed with officers' conclusion that route J – K could not have been used with the frequency claimed because it was overgrown and had therefore been impassable for a significant period. Members commented that the City Council, as landowner, should have ensured that PROW 223 was accessible at all times.
- After careful consideration of the user evidence relating to route L-M, Members concluded that use by right had been proven. They also felt that highways use had been too readily discounted in dual purpose evidence. Members agreed that should route L-M be granted, consideration should be given to improving safety, because part of it included an alleyway that was associated with anti-social behaviour.

When making their decision, Members considered each of the claimed routes individually. The discussion was as follows;

Route J - K;

Councillor Kent moved that the officers' recommendation relating to route J to K be upheld, so the application be rejected. He was seconded by Councillor Harrison. On being put to the vote, the

Committee was unanimously in favour.

There was a ten minute comfort break.

Route G-H-I;

Councillor Kent moved that the officers' recommendation relating to route G-H-I be upheld, so the application be rejected. He was seconded by Councillor Cole. On being put to the vote, the Committee was unanimously in favour.

Route L – M;

Councillor Kent moved that the officers' recommendation relating to route L – M be overturned due to the weight of user evidence in support of access as of right, and was seconded by Councillor Havvock. On being put to the vote, 4 Members were in favour, 3 were against and 1 abstained. As part of the route was a secluded alleyway, Members requested that officers take appropriate steps to improve safety.

RESOLVED - that;

- 1. the applications for Definitive Map Modification Orders in respect of routes J-K and G-H-I over land at South Purdown be refused and no orders be made on the grounds that the majority of the user evidence is considered to be use by permission and therefore there is insufficient evidence to raise the presumption of dedication contained in Section 31(1) of the Highways Act 1980.**
- 2. the application for Definitive Map Modification Order in respect of route L-M be granted and that orders be made on the grounds that the majority of the user evidence was considered to support use as of right. Officers should take appropriate steps to improve the safety of the alleyway section of the route.**

DEFINITIVE MAP MODIFICATION ORDER APPLICATIONS - POLICY REVIEW

The Committee considered a report of the Director of City Development (agenda item no. 6) receiving information about the current policy governing applications for Definitive Map Modification Orders under Section 53 of the Wildlife and Countryside Act 1981, and providing a comparison with other local authority's published policies for the purpose of reviewing the current policy in the light of best practice.

Following a brief introduction from the representative of the Director of City Development, Members considered the information provided and asked officers for additional clarification in a number of areas. The following summarises the discussion;

- Officers confirmed that the City Council had powers to prioritise an application if a claimed route was under threat (for example due to development works).
- One Member suggested that applications be assessed using a points system, so that appropriate weight could be given to those that were urgent. However, it was noted that the system could be difficult to administer.
- Members generally supported officers' recommendation that the City Council participate in the Joint Authority Review of Definitive Map Policy and Strategy, but felt that a procedure should be in place to ensure that any urgent or contentious issues could be accelerated whilst that review took place. Members agreed that in order to maintain fairness and transparency, the decision to fast track an application should be made by the Public Rights of Way and Greens Committee.

Councillor Harrison moved that the officers' recommendation be approved, providing that whilst that review took place any urgent applications be referred to the PROWG Committee to allow Members to decide whether fast tracking was appropriate. He was seconded by Councillor Kent. On being put to the vote, it was unanimously;

RESOLVED - that option (C) be endorsed, so that officers participate in the Joint Authority Review of the Definitive Map Policy and Strategy, and consult this Committee and the City Council's stakeholders on the outcome of that

review. Until the review had been concluded, any urgent applications should be referred to the PROWG Committee to allow Members to decide whether fast tracking was appropriate.

**PROWG
19.3/10**

UPDATE REPORT - RIGHTS OF WAY

The Committee considered a joint report of the Head of Legal Services and Director of City Development (agenda item no. 7) reporting 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.

Members noted that dedications with regard to Argyle Place, Clifton Wood; Barracks Lane, Shirehampton; and Dundridge Farm, St George had been approved by the relevant Service Directors so would shortly be in place. The Committee welcomed the positive developments.

RESOLVED - that the report be noted.

**PROWG
20.3/10**

DATE OF NEXT MEETING

RESOLVED - that the next meeting of the Public Rights of Way and Greens Committee be held on Monday 26th April 2010 at 2.00 pm.

(The meeting ended at 3.30pm)

CHAIR