

BRISTOL CITY COUNCIL

**MINUTES OF A MEETING OF THE
PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE
HELD ON 26TH APRIL 2010 AT 2.00 PM**

- A Councillor Crew
- P Councillor Cole
- A Councillor Harrison
- P Councillor Havvock
- P Councillor Jackson
- P Councillor Jethwa
- A Councillor Kent
- P Councillor Kitson (substituting for Councillor Kent)
- P Councillor Main (arrived at 2.05pm)
- P Councillor Quartley (in the Chair)

PROWG

21.4/10

APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were received from Councillors Kent, Harrison and Crew. Councillor Kitson substituted for Councillor Kent.

PROWG

22.4/10

DECLARATIONS OF INTEREST

There were no declarations of interest.

PROWG

23.4/10

**MINUTES - PUBLIC RIGHTS OF WAY AND GREENS
COMMITTEE - 1ST MARCH 2010**

RESOLVED - that the minutes of the Public Rights of Way and Greens Committee held on 1st March 2010 be confirmed as a correct record and signed by the Chair.

PROWG**24.4/10****PUBLIC PARTICIPATION - QUESTIONS, STATEMENTS AND PETITIONS**

Councillor Main arrived at the meeting.

AGENDA ITEM NO.	SUBJECT	NAME	STATEMENT NO.
5.	Friary Road Enforcement Action	Dr P Kilne	1.
"	"	Matthew Barton	2.
"	"	Sally Jenny Poppy	3.
"	"	Melanie Robbeck	4.
"	"	T Foster	5.
"	"	Angela Joyce	6.
"	"	Mr and Mrs Dixon	7.
"	"	A Hudson	8.
"	"	J Toman	9.
"	"	Deirdre Jones	10.
"	"	LA Butchast	11.
"	"	Mrs Barbara Dixon	12.
"	"	Mrs SJ Cownie	13.
"	"	Clive Stevens, Bishopston, Cotham and Redland Neighbourhood Partnership	14.
"	"	Simon Grant	15.
"	"	Peter Hearn	16.
"	"	Mrs Elizabeth Mason	17.
"	"	V Leatherdale	18.
"	"	Mrs Katherine Chalmers	19.
"	"	E Petition - lead petitioner Mrs Christine Blackwell	20.
"	"	Councillor Bev Knott	21.
"	"	Mrs Christine Blackwell	22.

The Chairman agreed to accept the following late statements;

AGENDA ITEM NO.	SUBJECT	NAME	STATEMENT NO.
5.	Friary Road Enforcement Action	Sheila Campbell	1.
"	"	Carmen Grima	2.

**FRIARY ROAD ENFORCEMENT ACTION, HIGHWAYS ACT
1980**

The Committee considered a report of the Director of City Development (agenda item no. 5) seeking approval to undertake enforcement action and to remove the obstruction within public right of way 585, a restricted byway, known as Friary Road; and to brief members as to the obstructions on the public right of way.

During the introduction from the representative of the Service Director City Development, Members were advised that;

- In July 2007 a decision was made by the Public Rights of Way and Greens Committee to make a modification order to add Public right of Way 585 to the Definitive Map. The Order was confirmed by an Inspector appointed by the Secretary of State in October 2008.
- The City Council had a statutory duty (in accordance with the Highways Act 1980) to ensure that public right of way 585 be returned to the condition it was in before the public's right was called into question in 2000 by the erection of a wall/Heras fencing and the addition of banked up earth. The wall and Heras fencing had already been removed, but the deposits of soil remained, which constituted an obstruction of the highway.
- Three trees (a Birch, Rowan and Purple Leaf Plum) were in situ on the verge in question prior to soil being added to alter the ground level. The advice of the City Council's Arboricultural Team was that excavation of the verge should be conducted using an air spade. However, there was no guarantee that the trees could be preserved because it was difficult to predict the exact nature and location of any new roots in the bank. The Arboricultural Team had advised that 2 new trees should be planted as mitigation if the existing trees were damaged during the works.
- The City Council had a statutory (and therefore non-discretionary) duty to prevent obstruction of the highway, so the Committee were urged to support the recommendation to take enforcement action in order to restore the right of way to the level which existed prior to 2000.

Following the introduction, Members asked Officers to provide additional information in a number of areas. The responses given were as follows;

- A restricted byway was one in which access was open to

both cyclists and pedestrians. Friary Road was a public right of way with private vehicular rights.

- The decision to make an order to add public right of way 585 had been made by the Public Rights of Way and Greens Committee (and later confirmed by the Inspector following a hearing) because Members were satisfied that the evidence supplied met the requirement to prove 20 years continuous use of the verge. Appropriate legal advice had been provided to the Committee when they reached their decision.
- The judgement from the Secretary of State could be challenged by an objector, but only if an appeal was lodged within 6 weeks of the Secretary of State's decision.
- Any individual could serve a notice on the City Council under section 130A of the Highways Act 1980 to request that the obstruction of the right of way be removed. The potential cost to the City Council of litigation in this respect could be relatively modest. However, costs would increase if the matter was referred to the High Court. The City Council would probably be ordered to pay costs in the event of a successful challenge.
- It was important to reduce the gradient of the verge to restore public access. It was not possible to seek a compromise between removing the obstruction and protecting the trees because any attempt to level the ground carried a risk of damage to the trees.
- The City Council was unable to sell the verge because the highway would need to be extinguished, which would require proof that the route was not required for public use. This was a highly unlikely outcome given the decision by the Secretary of State.
- A new footpath couldn't run adjacent to the existing verge because this would narrow the road and prevent cars from turning. Furthermore, the cost of adding a new footpath would be prohibitive.
- An application to extinguish part of right of way 585 had recently been submitted.

During the debate that followed, the Committee commented that;

- As the trees presented no risk to health and safety it was vital that they be protected. Whilst the air spade recommended by the Arboricultural Team would cause less damage than a traditional spade, excavation of the bank could cause the trees to destabilise and eventually collapse.
- It was a great concern that the City Council could incur costs through failing to maintain the right of way. However, this risk should be balanced against the need to protect the

trees.

- It could be argued that the benefit of restoring the right of way was negligible because there was a footpath for pedestrians on the other side of Friary Road.
- The further expense that would be incurred in pursuing the removal of the obstruction of the right of way could be significant, which didn't seem a sensible use of Council resources.

Councillor Main moved that approval not be given for a notice to be served under Section 149 of the Highways Act 1980 to remove the obstruction. He was seconded by Councillor Havvock.

On being put to the vote, 5 Members were in favour and 2 abstained.

RESOLVED - (1) that approval not be given for a notice to be served under Section 149 of the Highways Act 1980.

**PROWG
26.4/10**

CURRENT CLAIMS, INQUIRIES AND MISCELLANEOUS RIGHTS OF WAY/TOWN AND VILLAGE GREEN MATTERS

The Committee considered a joint report of the Head of Legal Services and Director of City Development (agenda item no. 6) on the present position with regard to claims under the Wildlife and Countryside Act 1981 Section 53; town or village green applications; public inquiries; and miscellaneous rights of way orders, agreements and legal proceedings.

RESOLVED - that the report be noted.

**PROWG
27.4/10**

DATE OF NEXT MEETING

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

(The meeting ended at 3pm)

CHAIR