

BRISTOL CITY COUNCIL

**MINUTES OF A MEETING OF THE
PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE
HELD ON 20TH FEBRUARY 2012 AT 2PM**

- P Councillor Abraham (in the Chair)
- A Councillor Blythe
- P Councillor Davies
- A Councillor Harrison
- P Councillor Main
- P Councillor Morgan (substituting for Councillor Blythe)
- P Councillor Jackson
- P Councillor Pickup
- A Councillor Quartley

**PROWG
23.2/12**

APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apologies for absence were received from Councillor Blythe, Councillor Harrison and Councillor Quartley. Councillor Morgan substituted for Councillor Blythe.

The Chairman welcomed all those present. He took the opportunity to announce that the Judicial Review in relation to the City Council's decision to reject the Ashton Vale Village Green application had been withdrawn. He added that the strip of land running north-south and roughly parallel to Silbury Road would be subject to a condition attached to the consent for the stadium, requiring it to be planted out and landscaped, and held as public open space, once the stadium development had been completed.

**PROWG
24.2/12**

DECLARATIONS OF INTEREST

Councillor Abraham and Councillor Jackson declared that they had non prejudicial interests in relation to agenda items 5 and 6 respectively because the sites under discussion were located within their wards.

PROWG

25.2/12 MINUTES – PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE – 3RD OCTOBER 2011

The Chairman asked Members to note that the agenda had incorrectly stated that the Committee would be asked to approve the minutes from the meeting on 5th December 2011 (that meeting had been cancelled).

The minutes of the meeting on 3rd October 2011 were agreed to be a correct record.

RESOLVED - that the minutes of the meeting of the Public Rights of Way and Greens Committee held on 3rd October 2011 be confirmed as a correct record and signed by the Chair.

**PROWG
26.2/12**

PUBLIC PARTICIPATION – QUESTIONS, STATEMENTS AND PETITIONS

Public forum business was circulated to the Committee in advance of the meeting and a copy placed in the minute book. It was noted that statements 8 and 9 had been excluded from the front index sheet due to an administrative error, but they had been incorporated in the set of papers that had been circulated to Members of the Committee prior to the meeting.

Members received verbal summaries from statement makers present at the meeting. They went on to note the responses to written questions that had been circulated before the meeting and the Chairman took supplementary questions as appropriate. The following is a summary of the responses to the supplementary questions, which were provided by the Chairman and officers;

- Members had come to the meeting with an open mind and would listen to the full debate before reaching their respective decisions.
- The City Council had a statutory duty to investigate claimed right of ways and to meet the associated costs. Budgetary pressures elsewhere could not be taken into consideration.
- The matter of whether the route had been used as a right of way for twenty years was irrelevant in this case because, as land owner, Bristol City Council had the right to dedicate the route if it so wished.

- In 2006 the Director of Planning, Transport and Sustainable Development had agreed to dedicate the public right of way for pedestrians through Old Sneyd Park, between Glenavon Park and the Portway (see route A-X-B shown on page 33 of the accompanying report). Subsequently residents raised concerns about the safety of the wall that abutted the route, so it was agreed that an alternative would be sought. If the Committee opted not to dedicate the revised route (C-X-B) the original decision would still stand and residents would be instructed to complete the necessary remedial works to repair the wall.
- The budgeted cost of making the improvements to the route was estimated to be £1,500, which included installation of steps as well as clearance works. The contractor was very experienced in maintaining/improving right of ways and had prepared the quote following a site visit with officers. As landowner, the City Council would have responsibility for maintaining the route.

**PROWG
27.2/12**

**DEDICATION OF A PUBLIC RIGHT OF WAY ON FOOT,
GLENAVON PARK TO THE PORTWAY**

The Committee considered a report of the Strategic Director, Neighbourhoods and City Development (agenda item no. 5) informing the Committee of the latest proposal concerning the matter of the dedication of a public right of way on foot through Old Sneyd Park from Glenavon Park to the Portway, and seeking approval to proceed with the dedication.

The representative of the Strategic Director of Neighbourhoods and City Development introduced the item, summarising the key events in relation to the claimed route, as outlined on page 19 and 20 of the accompanying report. Members asked for additional information in a number of areas. The following summarises the responses given;

- The contractors had quoted just over £1300 to make the proposed route safe and accessible. The company had been appointed to maintain rights of way throughout the former Avon area. Officers had no reason to conclude that the total cost of the works would exceed the estimate, which had included full itemisation of all the charges.
- It was possible that individuals could choose to leave their vehicles in Cavendish Gardens when accessing the nearby Park and Ride site but if they did so they would need to make their journey on foot

using a muddy path, which was unlikely for the majority of office workers.

- If the dedication was not approved and the original route (A–X–B) became the default, the improvements might not be implemented immediately as it was the more costly option.
- The distance between points C and B on the map was approximately 300 metres.

During the debate that followed it became clear that Members would find it beneficial to visit the site before making a decision about the route. It was therefore agreed that the matter be deferred until a formal site visit had taken place and that the report would be brought back for consideration at the meeting at 2pm on 15th March 2012.

RESOLVED - that the report be deferred until the meeting on 15th March 2012 to allow a site visit to take place prior to the decision.

**PROWG
28.2/12**

APPLICATION TO REGISTER LAND AT FILWOOD AS A TOWN AND VILLAGE GREEN UNDER THE COMMONS ACT 2006, SECTION 15(2)

The Committee considered a report of the Strategic Director of Corporate Services (agenda item no. 6) requesting that the Committee consider the recommendation to refuse the application to register the land at Filwood Park as a Town and Village Green (TVG) in pursuance of the Commons Act 2006.

The representative of the Strategic Director of Corporate Services introduced the report, highlighting the key points in the findings of the independent inspector, Vivian Chapman QC (as summarised on pages 36 onwards in the accompanying). She went on to respond to questions from Members. The following is a summary of the information provided;

- In this case Bristol City Council could not voluntarily declare the land a TVG because they had sold it to English Partnerships in 2008 (now known as the Homes and Communities Agency (HCA)). It was not known whether the HCA planned to develop the land, but the Inspector had concluded that the future of the site was not relevant to determination of the TVG application.

- After consideration of all the evidence the Inspector had found that the land had been used by the public for 20 years 'by right' not 'as of right', so the TVG application did not meet the legal test for approval.
- The Inspector had taken the view that the decision made at the Full Council meeting on 14th May 1985 to spend £20K on developing the park suggested that Bristol City Council had implied appropriation of that land as public open space (see page 103 of the accompanying papers).
- The Committee were not obliged to follow the recommendation of the Inspector, but if minded to grant the TVG application Members would need to provide sound reasons for their decision.

The Committee went on to consider the information provided. The following comments arose during the ensuing debate;

- In previous cases the Inspector's recommendation had not always been upheld. It should be noted that the Inspector had changed his initial conclusion that the TVG application be approved after he allowed Bristol City Council to submit additional evidence in relation to the appropriation.
- The TVG application had failed on the basis of implied appropriation, but the evidence to support this was very tenuous. It was difficult to accept that Bristol City Council would have sold land that had been designated as a park.
- There would be very few examples of instances of documentation that explicitly recorded the intentions of the relevant local authority with regard to appropriation of the land.
- Local residents understandably had a desire to preserve open space in their neighbourhood and this sentiment would be shared by many elected Members. However, the Committee should base their decision on the relevant legal arguments, which had been fully explored by the Inspector, leading to his recommendation that the TVG application be rejected. The Committee had a duty to protect Bristol City Council (and the public purse) from a costly legal challenge.

The legal advisor to the Committee asked Members to note that the process by which Bristol City Council was permitted to submit additional evidence in relation to the implied appropriation was entirely proper. The Inspector was entitled to invite the objectors to submit additional evidence where appropriate.

Following the debate, Councillor Abraham moved that the TVG application be rejected in accordance with the recommendation from officers. He was seconded by Councillor Pickup. On being put to the vote 4 Members were in favour, 1 was against and there was 1 abstention.

RESOLVED - that the application to register the land at Filwood Park as a Town and Village Green in pursuance of the commons Act 2006 be rejected.

**PROWG
29.2/12**

REPORT ON PUBLIC CONSULTATION ON THE PROCEDURE FOR DETERMINATION OF APPLICATIONS FOR REGISTRATION OF NEW TOWN AND VILLAGE GREENS IN PURSUANCE OF THE COMMONS ACT 2006, SECTION 15

The Committee considered a report of the Strategic Director, Corporate Services (agenda item no. 7) requesting consideration of the outcome of the public consultation that ended on 13th December 2011, and approval of the revised procedure.

The representative of the Strategic Director of Corporate Services provided the Committee with a brief introduction to the report. She went on to suggest that the comments made by Bristol Parks Forum in their public forum statement, relating to amendments to clause 3 and clause 6 were helpful, so consideration should be given to including the revisions in the final procedure. The relevant extract from the statement is as follows;

'We suggest that clause 3 should be replaced with a revised clause as below

The Commons Registration Authority (CRA) checks the application documents:

Ensures the form complies with the Regulations and is procedurally correct, relevant sections are completed, all supported documents referred to are present, and that the plan complies with Regulation 10. It then gives preliminary consideration (Regulation (5 (4))) to the application and to the evidence and reaches a decision as to whether to;

(a) reject the application at this stage due to it being incomplete or not in compliance with the regulations;

- (b) reject the application at this stage based on the evidence;*
- (c) call for additional information;*
- (d) proceed with the application.*

Before any application is rejected under clause (a) the applicant will be given reasonable opportunity of taking action to put the application in order. Before any application is rejected under clause (b) the applicant will be given a reasonable opportunity to put forward further evidence of arguments which the CRA will then consider. The CRA will give reasons for rejection under clause (b) to the applicant. If the applicant does not accept the CRA rejection the application will be referred to the Public Rights of Way and Greens (PROWG) Committee by the CRA. Having considered the report of the CRA and any representations from the applicant the PROWG Committee may decide to allow the application to proceed to the full process or confirm rejection.

Members agreed that the suggested amendments from Bristol Parks Forum should be incorporated into the proposal.

The Committee noted that an independent Inspector would automatically be appointed in TVG inquiries where Bristol City Council was the relevant landowner and agreed that this was appropriate. However, they also agreed that the decision regarding whether an independent Inspector was appointed for all other applications should be made by the PROWG Committee because they did not feel it was appropriate for officers to assess the level of contention. The Committee felt that the associated additional administration was acceptable if it resulted in decision making that was fair and transparent. Officers were asked to re-write clause 6 and circulate the revised wording to Members for approval.

It was noted that the revised procedure would only apply to new TVG applications.

RESOLVED - that the proposed procedure, with the amendments detailed above, be approved.

**PROWG
30.2/12**

**CURRENT CLAIMS INQUIRIES AND MISCELLANEOUS
RIGHTS OF WAY**

The Committee considered a report of the Director of City Development (agenda item no. 8) reporting for information on the present position with regard to Wildlife and Countryside Act applications; public inquiries; and miscellaneous rights of way orders, agreements and legal proceedings.

The representative of the Director of City Development confirmed that there had been no updates since the last update report in October 2011.

RESOLVED - that the report be noted.

**PROWG
31.2/12**

CURRENT APPLICATIONS FOR REGISTRATION OF LAND AS TOWN OR VILLAGE GREENS

The Committee considered a report of the Commons Registration Authority (agenda item no. 8) noting the present position with regard to Town or Village Green applications.

RESOLVED - that the present position with regard to Town or Village Green applications be noted.

**PROWG
32.2/12**

URGENT BUSINESS

There was no urgent business.

**PROWG
33.2/12**

DATE OF THE NEXT MEETING

RESOLVED - that the next meeting of the Public Rights of Way and Greens Committee be held at 2pm on Thursday 15th March 2012.

(The meeting ended at 3.45m)

CHAIR