

Bristol City Council

Minutes of the Public Rights of Way and Greens Committee



28 June 2023 at 2.00 pm

Members Present: -

Councillors: Tessa Fitzjohn (Chair), Jude English, John Goulandris, Jonathan Hucker, Philippa Hulme, Chris Jackson, Tim Rippington, Christine Townsend, Andrew Varney

Officers in Attendance: -

Nancy Rollason (Head of Legal Service) and Tom Dunsdon (Solicitor)

Key representative(s) in attendance: Douglas Edwards KC (Legal Advisor to CRA)

This meeting was electronically recorded and can be viewed on the Youtube link below.

[Public Rights of Way and Greens Committee - Wednesday, 28th June, 2023 2.00 pm - YouTube](#)

1 Welcome, Introductions and Safety Information

The Chair welcomed all parties to the meeting, and everyone introduced themselves.

2 Apologies for Absence and Substitutions

Apology for absence was received from Councillors Fitzgibbon who was substituted by Councillor Christine Townsend.

3 Declarations of Interest

Councillor Townsend declared an interest due to being involved with education for 20 years and during that time had been in contact with Cotham school before and after it became an academy but did not consider that this constituted a conflict of interest as this matter was about a separate piece of legislation not connected with education.



4 Public Forum

Members of the Committee had received Public Forum Statements in advance of the meeting regarding agenda item no.5 - Application to Register Land at Stoke Lodge as a Town and Village Green under the Commons Act 2006, Section 15(2). The statements were taken fully into consideration prior to reaching a decision.

The Chair outlined the procedure that would be followed for hearing public forum statements and following that the procedure for the meeting –

- 1) Regarding public forum there would be five statements from interested groups with each being allowed to speak for 5 minutes each. In addition, there would be an additional 5 minutes to allow 8 speakers in favour of the TVG and 2 speakers against the TVG, as this was proportionate to the number of statements received.
- 2) Regarding the procedure leading to the decision-making process the Head of Legal Services, representing the Commons Registration Authority (CRA), would present the Council's report. Mr Edwards, KC, advising the Committee would then give a legal overview of the matter. This would be followed by a general debate by committee members and following that a motion would be put and seconded, and this would be put to the vote for decision.
- 3) The Committee was required to give its reasons for the decision. If the Committee accepted the Inspector's recommendation, for the reasons he had given in his report, then the Committee must make that clear. Conversely if the committee rejected the Inspector's recommendations, they must provide clear reasons for doing so.

5 Applications to Register Land at Stoke Lodge as a Town and Village Green under the Commons Act 2006

The Committee received a report of the Commons Registration Authority regarding the TVG applications duly made under the Commons Act 2006 in relation to Stoke Lodge playing fields.

The Commons Registration Authority (CRA) had received two applications from Emma Burgess and Katherine Welham, to register a site known as Stoke Lodge Playing Fields, Stoke Bishop, Bristol as a Town, or Village Green. The Applications were the subject of consideration and a report by an Inspector appointed by the CRA.



The Head of Legal Services clarified that the committee on behalf of the CRA had a statutory duty under the Commons Act 2006 to determine objectively whether or not the land in question should be registered as a Town or Village Green having full regard to the relevant statutory requirements and whether those requirements had been met.

The CRA officers' view was that the Inspector had fully examined the applications and the process under the Commons Act 2006, and that the advice and recommendations made were correct in fact and law. Therefore, the recommendation was that the Committee adopted the recommendations of the Inspector and that the land should not be registered as a Town or Village Green.

For clarification Bristol City Council's interest as landowner and as an objector of the applications was wholly separate and independent from its role as CRA. The separation of interests and of functions had been carefully maintained throughout the process. The CRA was satisfied that a clear separation of functions and interests had at all times been maintained and procedure properly followed.

Mr Edwards KC then gave a summary of the legal context as it applied to both applications. The burden and standard of proof was explained as were the statutory qualifying requirements. The Committee was advised that the burden of proof rested solely with the applicant and that the Committee needed to be satisfied that all of the qualifying requirements were met on the balance of probabilities. The Committee was advised that it needed to have and to give good reasons for rejecting the Inspector's conclusions and for departing from conclusions which it reached in rejecting the town/village green application concerning Stoke Road Playing Field in 2018, on issues which are common to the current applications.

The Committee then debated the applications and the Inspector's findings and, during the debate sought clarification from Mr Edwards KC about various points of law.

During the debate there was wide ranging discussion and questions asked including and in particular about the sufficiency of the signage that had been erected on the site at various points in time. Along with other key factors the following points in particular arose during the debate -

- 1) Cotham school had claimed that the 1985 Avon County Council signage and the sign erected by Bristol City Council in 2009 made the position sufficiently clear that use of the site was contentious and not 'as of right'.
- 2) Some members felt that due to the size of the site, circa 23 acres, there was not sufficient number of Avon County Council or Bristol City Council signs to render use of the site contentious and not 'as of right' and this had been exacerbated by Avon County Council ceasing to exist.
- 3) It was considered that Cotham school's management of the land and that of previous landowner had sent contradictory signals in challenging use of the site.



4) In respect of Avon County Council becoming defunct it was recognised that the inspector concluded that irrespective of this the signs were sufficient to render the use of land as contentious and not 'as of right'.

5) It was important to acknowledge that the merits of continued use of the land and the neighbourhood's wish to continue to use the land were not relevant considerations. If the committee was influenced by these points, it would be acting unlawfully.

After full consideration of the facts and their legal context Councillor Goulandris moved that the Inspector's recommendation be rejected and that the first application to register the land at Stoke Lodge as a Town or Village Green be granted. Councillor Varney seconded the motion. Each Councillor then set out their view.

On the Motion being put to the vote there were 6 in favour, 1 against, 2 abstentions.

The reasons given by the committee were –

1. There were some fourteen entrances to Stoke Lodge Playing Fields, a 23-acre site, and the signs placed on the land by Avon County Council in the mid-1980s were not sufficient in number or in locations to render use of the land contentious during the relevant period. The replacement sign erected by Bristol City Council in 2009 was not sufficient to render use of the land contentious either. Overall, the extent of signage was not sufficient to render the use contentious and not as of right.
2. Furthermore, Bristol City Council and Cotham School took no further action to dissuade people from using the land. The conduct of the Bristol City Council/Cotham School throughout the relevant period for this application was consistent with acquiescence to informal use by the community rather than that use being contentious.
3. The public inquiry in 2016 was not well publicised and it was anecdotally known that there were many such public inquiries in the city and people were often not aware of them. This was clearly the case with the Stoke Lodge public inquiry, therefore the City Council and the Schools objection to the village green application on this basis carried limited weight in terms of making the use contentious thereafter.
4. The Inspector's conclusion that statutory incompatibility was not relevant in this case should be accepted for the reasons set out in his report.

After the vote had been taken to grant a TVG the Head of Legal Services reminded members that there were two applications and the vote had only been about the first application from Ms Welham. Legal clarification was sought regarding the status of the second application, it was noted that the qualifying period ended later than the first application.



After due consideration and given that the Committee had accepted and passed the first application to register the TVG, the Head of Legal Services confirmed that the second application from Emma Burgess could lapse. The Committee accepted this position.

Resolved – That the Committee reject the Inspector’s recommendation and that the application by Ms Welham to register the land at Stoke Lodge as a Town or Village Green be granted.

Meeting ended at 4.50 pm

CHAIR _____

