

Bristol City Council

Minutes of the Public Rights of Way and Greens Committee



12 December 2016 at 2.00 pm

DISCLAIMER

The attached Minutes are DRAFT. Whilst every effort has been made to ensure the accuracy of the information and statements and decisions recorded in them, their status will remain that of a draft until such time as they are confirmed as a correct record at the subsequent meeting.

Members Present:-

Councillors: Peter Abraham (Chair), Tim Kent (Vice-Chair), Donald Alexander, Charlie Bolton, Chris Jackson and Mike Langley

Officers in Attendance:-

Anne Nugent (Legal Officer), Tom Dunsdon (Solicitor), Duncan Venison (Network Operations Manager) and Louise deCordova (Democratic Services Officer)

1. Welcome, Introductions and Safety Information

The Chair led the welcome and introductions.

The Chair stated that he was the ward councillor for the Stoke Lodge area and would not be declaring an interest.

The Chair confirmed that he was open minded, would listen to the arguments presented and that being the local councillor did not preclude him from taking part.

2. Apologies for Absence and Substitutions

Apologies were received from Councillor Wellington.

3. Declarations of Interest

There were no declarations of interest received.

4. Minutes of Previous Meeting



The Committee Resolved:

That the Minutes of the Public Rights of Way and Greens Committee AGM held on 19 September 2016, be confirmed as a correct record.

5. Public Forum

Statements

Members of the Committee had received Public Forum Statements in advance of the meeting.

Due to the exceptionally high number of statements received, the Chair asked attendees in the public gallery to select representatives from their number to speak to the statements.

The Statements were heard before the application and were taken fully into consideration by the Committee prior to reaching a decision. (A copy of the public forum statements are held on public record and can be accessed via Democratic Services).

6. Application to Register Land at Stoke Lodge as a Town and Village Green under the Commons Act 2006, Section 15(2)

The Committee considered the report of the Commons Registration Authority, Application to Register Land at Stoke Lodge as a Town and Village Green under the Commons Act 2006, Section 15(2). The Solicitor introduced and summarised the report.

- a. The Committee noted that the applicant's request for a deferment (*Recommendation 1*) had been withdrawn. The Committee was asked to determine the application to register a site known as Stoke Lodge Playing Fields, Stoke Bishop, as a Town Green. (*Recommendation 2*)
- b. The Committee noted that the following sentence had been omitted from the covering report *...(ref. para 407 of the Inspectors report).*

However the law was not then the same. Before it was amended by the Growth and Infrastructure Act 2013, section 15 (3) provided for a two year grace period. So if the applicant had called it differently on 7 March 2011 and applied under section 15 (3) and it was subsequently held that use had ceased in 2009 after 26 March 2009, he would have been in time.

In response to a Member's question the following point was clarified:



- c. The application was not out of time (*ref. Para 407*). The Solicitor confirmed that the law had not been the same at that time and therefore now was the correct time for Committee to look at the matter. The relevant date being the date of the application.

The Committee noted the conclusion of the inspector:

I recommend that the land be not registered as a town or village green because in the relevant twenty year period use by local people has not been as of right. Otherwise my recommendation would have been that the land should be registered. I do not think that any of the other reasons argued for by the objectors should lead to the rejection of the application.

The Committee noted that all but one leg of the test had been satisfied.

The Committee noted that the numbering in the officers report was incorrect after para. 43 and needed to be amended.

In response to Members questions the following points were clarified:

- d. The scope of the decision to be determined excluded all but the statutory test (*para 14 of the report refers*).
- e. The Inspector had previously recommended approval of the application in 2013, but the law had been clarified by the *Winterburn vs Bennett[2016] EWCA Civ 482* case and therefore impacted the inspector's current recommendation to reject the application.
- f. The issue of a waste bin on site, that appeared to be in the Council's ownership, did not feature in the inspector's report and Officers were not aware of it or how long it had been on the site. Officers confirmed that this would not affect the statutory test.
- g. Officers were unable to provide additional details outside of those detailed in the inspector's report with regard to the court transcript or judgement of the *Winterburn vs Bennett* case in relation to the use of visibly clear signage or to the amount of signage at the entrance to the carpark.

During the debate there was wide ranging discussion over the weight applied to the signage at the site and Members raised the following points:

- h. Members agreed that in 1985 Avon County Council signage had made the position sufficiently clear that use of the site was contentious and not 'as of right' and some members agreed with the inspector that the sign erected by Bristol City Council in 2009 had not been sufficiently clear.
- i. Some Members considered that this had changed over time and due to the size of the site, circa 22 acres, there was not sufficient number or sufficiently clear, Avon County Council or Bristol City



Council signage to affect public perception that use of the site was contentious and not 'as of right' and this had been exacerbated by Avon County Council ceasing to exist.

- j. Members agreed that the judgement reached in the Winterburn case set out the law to be applied on signage.
- k. Some Members considered that the size and nature of the site in the *Winterburn vs Bennett* case could not reasonably be compared to the Stoke Lodge site. A photograph of the car park in the Winterburn case was shown.
- l. A Member commented that the Council's management of the land had sent subtle and contradictory signals which undermined the weight and authority of the signage by not enforcing the signs or challenging use of the site, by installing a bollard which stopped vehicles but not pedestrians, installation of a Bristol City Council dog waste litter bin and by developing a playpark, examples of actions which had allowed the public to re-establish their rights over time.
- m. A Member commented that the inclusion of community use within the 125 year lease between the Cotham School and Bristol University implied that community use was allowed.
- n. A Member commented that it was very clear that the burden of proof had been on the applicant to prove that there had been 20 years of use 'as of right'.
- o. Some members considered that the signage was sufficiently clear between 1991 and 1996 and in addition some entrances to the site had other obstacles such as bollards or felled trees to deliberately block the entrance and identify to people that they were 'forcibly' entering the land which was under private ownership and therefore that access to the site would be 'contentious' and not 'as of right'.
- p. Some Members considered that it was not reasonable to expect a Local Authority to have to fence off the land or erect additional signage to indicate that the site was under private ownership. The site had been leased to another organisation and did not have the character of a site that was being used 'as of right'. It had the character of a site that had permitted people to use it but had clearly demonstrated that it was under private ownership.
- q. Members recognised the importance of children's safety, in respect of controlling ingress and egress from the site and in respect of prevention of dog fouling but noted the inspector's response that this was outside of the qualifying period in respect of the application.

In response to some of the points raised in debate Officers clarified the following points:

- r. Committee must be careful not to consider the Councillors' comments as evidence.



- s. The inspector carried out the investigation, took into account all the facts, heard evidence over 9 days , had visited the site twice and the inspector had concluded that the erection of three signs, the size of the signs and the location of the signs in prominent positions on the land, at principle entrances would have been considered reasonable enough by a land owner to render the use of the land contentious.
- t. That it was not what was in the minds of the individual to interpret the wording on the signs which determined whether they had entered the land by force.
- u. The inspector had concluded that current activity by the landowner was not sufficient to render use of the site contentious but the qualifying period was the 20 years from 1991 to 2011.
- v. The inspector had noted that the judgement in the Winterburn case made it clear that the signs could be sufficient by themselves. The Winterburn case had set out clearly that neither protests nor further actions were necessary and it was enough that signage made it clear that the use of the land is contentious.
- w. In respect of Avon County Council becoming defunct the inspector concluded irrespective of whether or not the Council became defunct that the signs which were sufficient to render the use of land contentious were in place at the beginning of the 20 year period in 1991 and that such use was contentious until at least 1996.
- x. With respect to the tree trunk felled at one of the site entrances the inspector concluded that not much significance should be attached to this.
- y. With reference to complaints received by the parks department and other issues other than signage the inspector did not find in favour of the objectors on these issues.
- z. The contents of the lease did not fall within the 'test' relevant to the Committees decision.

Cllr Bolton moved to reject the inspector's recommendation and grant the application to register the land at Stoke Lodge as a Town and Village Green. Cllr Kent seconded the motion.

On being put to the Vote

The Committee Resolved: (3 against, 3 for, the Chair exercised a casting vote)

That the Committee reject the inspector's recommendation and that the application to register the land at Stoke Lodge as a Town and Village Green be granted.

Reasons:



- (i) Other than the “as of right” element the Committee accepted the inspector’s findings that all the elements of the statutory test were proven on a balance of probabilities.
- (ii) That between 1991 and 1996 there were three Avon County Council signs attempting to make the use of the land contentious.
- (iii) In Winterburn the Court of Appeal found that landowners can prevent rights being acquired by third parties by displaying clear visible warning signs that the land is private.
- (iv) Three members of the Committee considered that the facts in Winterburn v Bennett [2016] EWCA Civ 482 were not the same as the facts of this case. Unlike the car park in that case Stoke Lodge Playing Fields is a large piece of land (about 22 acres) and there were only three signs. The small number of signs on such a large site was not sufficient to make the use of the land contentious.

7. Town or Village Green applications update

The Committee considered an information report of the Commons Registration Authority, which outlined the present position with regard to Town or Village Green (TVG) applications duly made under the Commons Act 2006 and the annual external spend for TVG applications.

The Committee Resolved to note the report.

8. Public Rights of Way Update

The Committee considered an information report of the Service Director for Transport, which outlined the present position with regard to claims under Section 53 of the Wildlife and Countryside Act 1981; public inquiries; and miscellaneous rights of way orders, agreements and legal proceedings, presented by the Network Operations Manager.

The Committee Resolved to note the report.

Meeting ended at 4.10 pm

CHAIR _____

