

Public Forum - Public Rights of Way and Greens Committee - 11th September



2023

Members of the Public Rights of Way and Greens Committee

Councillors: Tessa Fitzjohn (Chair), John Goulandris (Vice-Chair), Andrew Varney, Jude English, Jonathan Hucker, Philippa Hulme, Christopher Jackson, Tim Ripington, 1 x vacancy



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Number	Name	Subject
1	Alan Preece	ROW application on Stoke Lodge
2	Emma Burgess and Helen Powell on behalf of We Love Stoke Lodge	Stoke Lodge Playing Fields and draft Minutes of the PROWG meeting 28 June 2023

1. Statement for PROW&G Committee 11th September 2023.

I see from the briefing notes that the ROW application on Stoke Lodge is being put out to contractors for consideration in March next year. The evidence submitted back in 2018 and in 2019 included photographs and drone video footage to show the evidence of worn footpaths leading to established entrances.

In addition, the PROW team insisted they needed to collect for themselves albeit this was after the fence had been closed, and mowing and scarifying would have reduced the appearance of trackways. In the 4 years since the fence this evidence has now vanished.

May the applicants be assured that not only the original application evidence is made available to the contractors, but will include the evidence collected by the BCC PROW team shortly after the fence construction? There now is very little evidence on the ground.

Alan W Preece

2. Public Forum statement: Public Rights of Way and Greens Committee, 11 September 2023 Emma Burgess and Helen Powell, on behalf of We Love Stoke Lodge

2a)

We are delighted that Stoke Lodge Playing Fields were registered as a Town or Village Green on 22 August 2023.

However, we regret to report that Cotham School has indicated, via its solicitors, that it does not intend to remove the fence it erected in 2019, even though this encroaches on, and interrupts use of, the village green.

It has been clear throughout this process that once the land was registered, the fence erected by Cotham School would have to be removed, as a result of the following statutory provisions:

- Section 12 of the Inclosure Act 1857 provides that the 'interruption of the use or enjoyment' of the green 'as a place for exercise and recreation' is a criminal offence. Action may be taken against both the person interrupting the use and the person in whom the land is vested.
- Section 29 of the Commons Act 1876 provides that encroachment on or inclosure of a town or village green, and any erection on the green 'which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground' is a public nuisance and a criminal offence.



Separately, we believe that Bristol City Council also has a duty to ensure that Cotham School takes prompt action to end this criminal breach of the law, both (a) as landowner and lessor (the school's lease requires it to comply with the law) and (b) as local authority, since there is a statutory duty to investigate and stop or prevent public nuisances such as the inclosure of a village green.

We request that the Committee, via the Commons Registration Authority, either

- takes steps (a) to remind Cotham School that prompt removal of the fence is required, and (b) to enforce that requirement if no action is taken by the school; or
- confirms which part of the Council will take this matter forward (for example, it might be more appropriately dealt with by officers tasked with investigating and ending public nuisances).

It is open to the police, the Council or the local community to take action on these matters via the magistrates' courts, but we hope that our interests are aligned with those of the Council in seeking the removal of the fence at the earliest possible opportunity and without criminal proceedings being necessary.

2b)

We are providing this statement to the Public Rights of Way and Greens Committee as the applicants for registration of Stoke Lodge Playing Fields as a Town or Village Green. We note that the minutes of that meeting are due to be approved at the next meeting on 11 September prior to the Public Forum section of the meeting. We request that Councillors on the Committee consider the draft minutes in light of the following comments.

We appreciate that a draft of the minutes has already been published. However, having reviewed the recording of the meeting, we believe that two important aspects have not been given sufficient weight in the draft and request consideration of the following changes.

First, it is apparent from the recording of the meeting that Councillors were very aware that they were being asked to look at the facts of this application and to apply the law (as set out in both *Taylor v Betterment* and *Winterburn*) to this site. At the moment the minutes do not reflect the attention Councillors paid to *Taylor v Betterment*, nor the importance they gave to the many unsigned entrances and exits, and to the witness statements from members of the public that they were unaware of the signs.

We request that Councillors consider adding the underlined text in Reason 1:

Councillors had carefully considered the advice provided to them on both the *Taylor v Betterment* and *Winterburn v Bennett* cases, and applied the law to the factual context of Stoke Lodge and the evidence provided. There were some fourteen entrances (plus residential gates) to Stoke Lodge Playing Fields, a 23-acre site, at the majority of which there had never been any signage. On the facts of this case, the majority of Councillors considered that 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.

Secondly, in the list on page 3 of points raised in the debate, there is no mention of the comparisons that were made between the *Winterburn* car park and Stoke Lodge. We note that this was expressly referenced in the minutes of the December 2016 meeting in relation to TVG1 ('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'.)

In view of the time spent discussing this specific issue, including the aerial map of Stoke Lodge with the car park overlaid on it, demonstrating that Stoke Lodge is 200 times bigger and with many more entry and exit points, we believe that an equivalent paragraph should be included in this part of the minutes.

In addition, we note that the final paragraph of the minutes states that '...the Head of Legal Services confirmed that the second application from Emma Burgess could lapse. The Committee accepted this position'. Given the absence of any vote or response on this point from Committee members we suggest that it would be more accurate to delete the final sentence.

Finally, there is an incorrect reference near the top of the third page to 'Stoke Road Playing Fields', which should be corrected to 'Stoke Lodge Playing Fields'.

We hope that the above points are helpful to Councillors in considering the draft minutes.

