

Public Forum

Audit Committee
4 March 2024



1. Members of the Audit Committee

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Mike Oldreive	Stepping Up Programme



Chair,

Members will have noted with concern Bristol City Council's recent failed attempt to persuade a judge that the Council could split like an amoeba and be both claimant and defendant in legal action being brought by Cotham School to challenge the decision taken by the Public Rights of Way and Greens Committee to register Stoke Lodge Playing Fields as a village green.

Apart from the reputational damage to the Council, clearly a lot of money has been spent by the Council as landowner on litigation - barristers' fees and costs and very considerable officer time.

What is of particular concern is that the land in question is a freehold reversionary interest valued at £6,650 according to a FOI response. This low value is due to the encumbrance of a 125 year lease with nil rent and ongoing Council liability for maintaining and insuring boundary walls, hedges and trees.

'Prima facie' the Council appears to have spent substantially more on litigation than the actual value of the land, which makes no financial sense.

I would ask the Audit Committee to investigate :

1) How much has been spent by the Council as landowner on external legal advice /support/representation etc over the past 12 months on this matter?

2) How much officer time/costs have been incurred over the last 12 months?

3) Given the obvious lack of value for money, who politically approved this expenditure /use of officer time and on what basis?

Thank you

**Councillor John Goulandris
Bristol City Councillor for Stoke Bishop Ward
Vice Chair Public Rights Of Way & Greens Committee**

Dear Members of the BCC Audit Committee,

I wanted to let you know about a matter of concern regarding the expenditure by Bristol City Council (BCC) as a landowner, specifically concerning its actions concerning Stoke Lodge.

As you may be aware, BCC has been involved in expenditures "protecting its educational asset" – attempting to litigate against itself to reverse the Village Green (TVG) status for Stoke Lodge. This is a particularly pertinent issue given that the asset in question holds no functional value to the Council for educational purposes until 2136.

I would like the Audit Committee to consider the implications of this expenditure on Council resources, including barristers' fees and officer time, especially in light of the information provided about the recognition of Stoke Lodge in BCC's accounts. As stated in the accounts, academies are not considered maintained schools under the Council's control, and the land and building assets are either not owned by the Council or let on a long-term lease (125 years), therefore, not included in the Council's Balance Sheet.

In previously raised concerns about Stoke Lodge, the Audit Committee indicated that "the Council's residual interest is not material" and that "there is no value to the City for the term of the lease." It is concerning to note that officers were devoting time and scarce resources to pursuing a course of action that you deemed of no value to the City. It raises questions about the rationale behind their decisions and who ultimately approved such actions.

It is essential for the Audit Committee to scrutinise the value for money realised by officer decision-making about Stoke Lodge. It is imperative that public funds are utilised efficiently and effectively, and tangible benefits to the community must justify any expenditure.

I'd like to encourage members of the Audit Committee to consider these points and to reflect on the prudent use of Council resources. Your scrutiny and oversight are vital in ensuring accountability and transparency in the management of public funds.

Thank you for your attention to this matter.

Yours sincerely,

Ian Hughes

here's my statement and questions for Monday.

My statement is based on published accounts , FOI emails and Companies House website, so I do not expect any censorship

regards

Mike Oldreive

Statement for Audit Committee

Follow up on procurement issues re Stepping UP programme raised at last meeting

It is now clear that the Stepping Up Programme has been given financial support in excess of £1m from Bristol City Council, WECA and Bristol Waste.

Accounts have recently been published for Stepping Up Leadership CIC. This is a company co-founded by Bristol City Council Deputy Mayor Asher Craig (also using the name Jennifer May Craig when registering company directorships on Companies House) and Christine Bamford.

These accounts for year ended 31 March 2023 show:

- WECA has provided grants totalling £94k in 2022-23. (FOI requests suggest that WECA funding may also have been provided in previous years, including £150k from LEP reserves).
- a key item of expenditure is "Staff consultant" costs (£133k) for which no further details are given.
- a "Balance Sheet" that doesn't balance and is incomplete.
- that Bristol Waste withdrew " back office, accommodation and cash flow transitional support" which had been authorised by Bristol City Council.
- a loan of £54,000 from Bristol Waste is also noted. (There is no disclosure of this loan in Bristol Waste accounts).

As members of the Audit Committee, charged with governance I would ask you to consider:
 Why is Bristol City Council using its own company to provide these services and financial support to a private company? (A company of which the Deputy Mayor is a director)?
 Who authorised Bristol Waste to provide these services and loans?
 (I note that Bristol Waste now requires £4m financial support from the City Council (Council tax payers).)

FOI emails show concerns from Councillor Asher Craig regarding the procurement process and officers attempting to find "work arounds" and offers of BCC staff help to the Councillor's company- a situation that I highlighted in my previous statement to Audit Committee. The Director of Finance voices concerns, but Bristol Waste ends up providing services and a loan

email Cllr Asher Craig to Director of Finance 14.04.20:

I acknowledge that there is a need to ensure good governance in respect of the procurement requirement for provision of the programme director and you will be aware also that the tender process is in train. You will have been appraised that Tim Borrett met with the Stepping Up Stakeholder Governance Board indicating the need for procurement requirements but that the tender process could be stopped at any time if a suitable home for Stepping Up could be found. Bristol Waste offered to host which we understand was not appropriate but we did not receive a response from [REDACTED] as to whether Bristol Waste's separate commercial fundraising company was an acceptable solution.

email from DOF 30.04.20

This appears to have become unnecessarily complicated.

Assuming the Stepping Up intellectual property is owned by the Council I would consider the options are as follows:

- *Deliver the project using in-house services: - does the Council does have the necessary capacity to deliver the project itself..*
- *Pursue a EU compliant open market tender: provides a long term delivery option however the outcome is unknown and may undermine the Council's working relationship with project director some stakeholders*
- *CIC is established, IP sold and training only is commissioned by BCC either via 3 quotes of which the CIC could bid (potential for conflict of interest re IP sale / transfer legal would need to advise on this)*

Statement to members of the Audit Committee, 4 March 2024

Dear Audit Committee members

It was disclosed on 22 February in response to an FOI request that the Commons Registration Authority spent £60,750 (£50,625 plus VAT) for external legal advice in relation to the Stoke Lodge TVG between September 2018 and 31 January 2024.

No breakdown of this amount was provided, but in the period shown it covers both:

- payments to the Inspector appointed to consider the applications (up to the end of May 2023); and
- payments to the senior barrister (KC) who attended the PROWG meeting on 28 June 2023 to advise on process, and who has advised the CRA on the litigation since that time.

The figure does not include the amount spent by BCC as landowner on external legal advice in the same periods. It does not include internal officer time.

It came as a shock to many Bristol residents that the Council intended to participate in two capacities, with two sets of lawyers making different arguments, in the litigation brought by Cotham School to attempt to remove the TVG registration of Stoke Lodge.

It came as more of a shock that officers had decided that in neither of those capacities would they be defending the decision taken by the PROWG Committee to register the land. In fact, one officer proposed that BCC 'as landowner' should switch sides and take over the litigation if Cotham dropped out - and another officer, acting for the CRA, agreed to that proposal!

The biggest shock of all should be that at no point did officers or members of the executive stop to consider whether the Council's constitution imposed any restrictions on their ability to attempt to undermine a decision taken by a regulatory committee. Had they done so, many thousands - even tens of thousands - of pounds could have been saved.

And what was the interest that BCC 'as landowner' was so concerned to fight legal battles over? It is the reversionary interest in land that will not fall back into the Council's control until the lease ends in 2136. In response to a previous question to this Committee in June 2020, it was confirmed to me that 'the Council's residual interest is not material' and that 'there is no value to the City for the term of the lease'.

So where was the value that motivated these efforts? There was value to Cotham School in having the Council fail to defend the decision of the PROWG Committee. There was value to Cotham School in the Council's suggestion that it would step into the school's shoes to continue the litigation if the school withdrew. But there was no value to the City in officers deciding to ignore the law and the constitution and attempting to undermine the PROWG Committee's decision, and it is a matter of concern that this might not be the only instance where this has happened.

Helen Powell

STOKE LODGE PLAYING FIELDS / VALUE FOR MONEY

On 28th June 2023, the Public Rights of Way and Greens (PROWG) Committee voted decisively to register Stoke Lodge Playing Fields (SLPF) as a Town and Village Green under the Commons Act 2006. The Commons Registration Authority, a department of Bristol City Council, has agreed to robustly defend this decision.

However, another department of Bristol City Council (the Property Team, Growth and Regeneration) has decided to join with Cotham School in challenging it.

SLPF is subject to a 125 year lease to Cotham School at nil rent. It is, in effect, a liability to the freeholder (Bristol City Council), who are obliged to maintain the boundaries, walls, hedges, trees and to insure the same. It is clear therefore that SLPF has little, if any, economic value to the freeholder.

Please therefore explain:

- a) The cost of the legal fees, both incurred and committed, arising from this challenge.
- b) Whether any cap has set on the potential cost of challenging this democratic decision.
- c) The justification for pursuing a course of action which appears to be economically irrational.
- d) How this action can possibly provide value for money for the taxpayer.

The decision of the PROWG Committee should bind the whole council. Can Bristol City Council give a commitment not to waste any more taxpayer's money on litigation/barristers and call a halt to the attempt to undermine this democratic decision?

Kind regards,

Jonathan Hucker
Bristol City Councillor
Stockwood Ward (Conservative)

Response.

The Applicant, Cotham school, joined both the CRA and BCC as landowner to the proceedings when they made the application under section 14 of the Commons Registration Act 1965 to have the register amended. There is also a judicial review of the June decision pending – this has been stayed for the time being.

There was a hearing to determine whether both could remain parties to the proceedings. The court held that BCC could only be joined once.

The cost of instructing Counsel for that application for the CRA was £2400 (written submissions only) and for the Landowner was £12,700 including all preparation up to and including the hearing.

Following the Judgment of the court, the Council as landowner agreed that it would take a neutral position in the application and therefore the only active defendant to the claim apart from Ms Welham, is the CRA.

Ms Welham applied for a costs order against both the school (£25 000) and the council (£5000) arising from that hearing. The Council defended that claim and were ordered to pay a reduced sum of £1500.

The cost of the applications is funded by the legal services budget, including the defence of the claim by the CRA.

This could be at least £100K for counsel fees for a fully contested hearing. If the Applicant is successful the Council is likely to be ordered to pay a proportion of their costs (which could be in the region of £300K unless the other parties are able to get this reduced as part of the costs budgeting process).

These estimates do not factor in the costs of inhouse legal services, nor do they factor in the costs of defending the JR should that proceed.

here's my statement and questions for Monday.

My statement is based on published accounts, FOI emails and Companies House website, so I do not expect any censorship

regards

Mike Oldreive

Audit Committee

QUESTIONS - Follow up on procurement issues re Stepping UP programme raised at last meeting

1. The City Council paid £57,500 to Bristol Waste in respect of Stepping UP (Procurement Request Form dated 06.07.22).

Why was this amount paid to Bristol Waste and not directly to Stepping Up, and how is this a bona fide accounting treatment if Stepping Up are providing a service to Bristol City Council?

(there are several Stepping Up companies of which Christine Bamford is director, but I'm assuming Stepping Up Leadership CIC).

Response.

The Procurement Request Form (PRF) in question was raised in error and then cancelled. No sums were paid to Bristol Waste pursuant to this PRF. A new PRF was raised for £57,500 pursuant to which payment was made directly from the council to Stepping Up Leadership CIC in respect of the council's participants on the Stepping Up programme for 2022/23.

2. Did the City Council authorise Bristol Waste to "support the transitional arrangements" for Stepping Up and what form did this authorisation take, and by whom? Specifically did BCC authorise or request any loan or cash flow support on behalf of Stepping UP?

Response.

The council was aware that Bristol Waste was providing Stepping Up with transitional support, however the details of the support provided was pursuant to an arrangement between Bristol Waste and Stepping Up. Bristol Waste is a separate legal entity and were not acting on the council's instruction or authorisation, and the council did not authorise or request any loan or cash flow support for Stepping Up from Bristol Waste.

END

BCC Audit Committee - Public Forum Statement

As a Bristol City Council taxpayer, I am alarmed and concerned at the amount of money spent by BCC in connection with the recent High Court Hearing (24 January 2024) before HHJ Paul Matthews. I was an observer at the all-day Hearing, and it was very clear to me, almost from the outset, that the Judge did not buy the arguments that the Council could act in two capacities or, in his witty words, “that Bristol City Council isn’t an amoeba that can split itself in two”.

With regard to the COSTS of BCC’s actions, it would appear that Counsel Paul Wilmshurst’s brief fee would be around £10-12K, and there were also written submissions from Douglas Edwards KC and his junior, Michael Feeney. A reasonable estimate is that Mr Edwards’ rates are around £700-£750/hour. Two employed solicitors were also present, and inevitably there would have been officers’ time involved prior to the Hearing. This is a LOT of taxpayers’ money, which was spent on something that ultimately failed.

Why did BCC attempt to litigate against itself in an attempt to reverse its own PROWG committee’s decision to award TVG status to Stoke Lodge? A perusal of BCC’s accounts reveals that Stoke Lodge is not even recognised as an educational asset because of the length of the lease (125 years) to Cotham School. What a shocking waste of Council resources.

Public Statement by David Mayer

For the Audit Committee

On Monday 4th March 2024

Agenda item 6 – Public Forum

In preparation for the Preliminary Hearing in the High Court Action brought by Cotham Academy against Bristol City Council (BCC) and Katharine Welham, held on Wed 24th January 2024, relating to the Town or Village Green Registration at Stoke Lodge in Stoke Bishop and concerning the attempt by Cotham to overturn the recommendation of the Public Rights of Way and Greens Committee (PRoW&GC); Unusually, Bristol City Council legal services have chosen to be listed as two separate and diametrically opposed defendants, represented by separate counsel.

In fact, BCC Legal services chose to present somewhat unequal arguments and submissions.

In their role as Commons Registration Authority (CRA) Legal services chose to submit a “neutral response” regarding their defence of the PRoW&GC (a duly authorised Regulatory Committee) and were apparently perfectly content not to be represented by counsel at the hearing. This was despite the fact that the PRoW&GC had prior to the hearing instructed the CRA that they wanted their decision to be actively and robustly defended.

Furthermore, and worse still, the CRA barrister. Acting (Supposedly?) on behalf of the PRoW&GC actually submitted written arguments arguing for the Council to be able to argue against the decision to register Stoke Lodge as a TVG, which wasn't neutral at all.

Additionally, and in stark contrast their CRA role BCC legal services separately fully engaged and promoted the argument that the recommendation of the Regulatory Committee should be overturned. This was undertaken by a second barrister acting on behalf of BCC as Landowner. This decision required expenditure of officer time and resources together with considerable external legal fees involved in preparation and attendance on the day.

In the event the judge has decreed that BCC cannot present opposing arguments because it is a single body (corporate entity).

Undaunted by this Judgement BCC Legal services has continued to take ever more expensive external legal advice to defy and challenge the findings in the Judgement. Predictably, the advice confirms that BCC must robustly support the recommendation of its own Quasi-Judicial Regulatory Committee and cannot promote contradictory arguments, as decreed in the BCC Constitution.

Based on the above events my question is how much did this undemocratic process cost the tax payers of Bristol and who authorised it? And what can we do about it??

David Mayer