

BRISTOL CITY COUNCIL

**MINUTES OF THE ANNUAL MEETING OF THE
PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE
HELD ON 3RD AUGUST 2009 AT 2.00 P.M.**

P Councillor Cole
P Councillor Crew
P Councillor Harrison
P Councillor Havvock
P Councillor Jackson
P Councillor Jethwa
P Councillor Kent
P Councillor Main
P Councillor Quartley

**PROWG
1.8/09**

ELECTION OF CHAIR - MUNICIPAL YEAR 2009/10

**RESOLVED - that Councillor Kent be elected
Chair of the Public Rights of Way
and Greens Committee for the
2009/10 municipal year.**

**PROWG
2.8/09**

ELECTION OF VICE-CHAIR - MUNICIPAL YEAR 2009/10

**RESOLVED - that Councillor Quartley be elected
Vice-Chair of the Public Rights of
Way and Greens Committee for the
2009/10 municipal year.**

**PROWG
3.8/09**

MEMBERSHIP OF THE COMMITTEE

**RESOLVED - that membership of the Public
Rights of Way and Greens
Committee for the 2009/10
municipal year be as follows:-**

Councillor Cole

**Councillor Crew
Councillor Harrison
Councillor Havvock
Councillor Jackson
Councillor Jethwa
Councillor Kent
Councillor Main
Councillor Quartley**

**PROWG
4.8/09**

APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

No apologies for absence were received.

**PROWG
5.8/09**

DECLARATIONS OF INTEREST

There were no declarations of interest.

**PROWG
6.8/09**

TERMS OF REFERENCE

RESOLVED - that the terms of reference of the Public Rights of Way and Greens Committee for the 2009/10 municipal year, as agreed by the Full Council on 16th June 2009, be noted.

**PROWG
7.8/09**

DATES AND TIMES OF MEETINGS 2009/10

RESOLVED - that the Public Rights of Way and Greens Committee meet on the following dates and times for the remainder of the 2009/10 municipal year:-

2.00pm - Monday 26th October 2009

2.00pm - Monday 25th January 2010

2.00pm on Monday 26th April 2010

PROWG

8.8/09 MINUTES - PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE - 27TH APRIL 2009

RESOLVED - that the minutes of the meeting of the Public Rights of Way and Greens Committee held on 27th April 2009 be confirmed as a correct record and signed by the Chair.

PROWG

9.8/09 PUBLIC PARTICIPATION - QUESTIONS, STATEMENTS AND PETITIONS

QUESTIONS

NO.	SUBJECT	NAME	AGENDA ITEM NO.
1.	Application for Registration of Land Known as Castle Park as a Town or Village Green	Fraser Bridgeford	10.
2.	"	Keith Darkin	10.
3.	"	Mary Bannerman	10.
4.	"	Helen White	10.
5.	"	Harvey Tadman	10.
6.	"	Nancy Carlton	10.

A copy of the questions and answers could be found in the minute book and on the City Council's website at the following link;

<http://www.bristol.gov.uk/ccm/content/Council-Democracy/Elected-Representatives/committee-meeting-finder.en>

STATEMENTS

NO.	SUBJECT	NAME	AGENDA ITEM NO.
1.	Application for Registration of Land Known as Castle Park as a Town or Village Green	Clifford Beak	10.

2.	"	John Hirst, Destination Bristol	10.
3.	"	Fraser Bridgeford, Bristol Parks Forum	10.
4.	"	Keith Darkin	10.
5.	"	Helen White	10.
6.	"	Mary Bannerman	10.
7.	"	Daniel Bennett – <i>to be presented by Fraser Bridgeford</i>	10.
8.	"	Dennis Brown	10.
9.	"	Andrew Hartles	10.
10.	"	John Button	10.

The Chairman also permitted Harvey Tadman to address the Committee.

A copy of the statements could be found in the minute book and on the City Council's website at the following link;

<http://www.bristol.gov.uk/ccm/content/Council-Democracy/Elected-Representatives/committee-meeting-finder.en>

PROWG

10.8/09 CASTLE PARK TOWN GREEN APPLICATION

The Committee considered a report of the Service Director, Legal Services (agenda item no. 10) advising rejection of the application to register land known as Castle Park as a Town or Village Green under the Commons Act 2006, Section 15.

Stephen McNamara, Service Director - Legal Services, introduced the report, making the following comments;

- Following an application from Mary Bannerman to register Castle Park as a Town Green, the City Council appointed Mr Vivian Chapman as an independent inspector. Mr Chapman conducted

an impartial public inquiry and produced a report in which he advised the City Council to reject the application.

- The critical argument was whether the land at Castle Park had been used by members of the public 'by right' under a statutory trust, or 'as of right' within the meaning of the Commons Act 2006.
- As new evidence relating to the application was submitted on 15th June 2009, Mr Chapman had been asked to prepare a supplementary report, but his conclusion that the application be rejected was unchanged.

Peter Wilkinson, Parks Services Manager, provided the Committee with a presentation regarding the history of Castle Park, a copy of which could be found in the minute book.

Vivian Chapman introduced his report and Members asked a number of questions regarding his conclusions. The following is a summary of the main points;

- His recommendations were based on his consideration of whether the application could be granted within the terms of the law.
- He had taken the view that the appropriation argument (which was detailed from paragraph 172 of his report) was one of the the key considerations.
- Since Castle Park had been acquired following a Compulsory Purchase Order 'for the purposes of dealing with war damage', he had concluded that in 1978, when the resolution to use the land as a park was passed, it must have been implicit in that decision that the land was being appropriated to a new statutory purpose.
- When the additional evidence was submitted in June 2009, he had asked all relevant parties to make representations. Following careful consideration of the evidence, he hadn't altered his recommendation because he took the view that the Council couldn't change the intention of the 1978 resolution at a later date. He concluded that the relevant Council officer had not fully

- understood the legal nature of appropriation.
- He had referred to Mr Durie's letter within his supplementary report, but hadn't attached much weight to the document as it contained conflicting evidence.
 - The permission argument had been debated in the House of Lords, where it was concluded that the essence of permission was that it needed to involve a grant of access to the land which was either time limited or revocable.
 - When advising on matters relating to the law, individuals were duty bound to rely on the available case law. He did not agree with Mr Bennett's suggestion that his conclusions were based on 'loopholes'.
 - After 1978, there were two periods when the land at Castle Park was used for other purposes (as detailed in paragraphs 222/223 of his report).

Members thanked Mr Chapman for his contribution and debated the information provided. The following is a summary of the main points;

- Members supported the intention to protect the green space at Castle Park, but felt that granting the application would be contrary to the law, which could result in a costly legal challenge.
- Steps should be taken to ensure that the development around St Mary Le Port didn't encroach on the green space at Castle Park.
- Parts of the park failed the test regarding twenty years of continuous use, which was not fully explained within Mr Chapman's report.
- Mr Chapman's reliance on the appropriation argument had been undermined by the evidence that was submitted in June 2009, which suggested that the land had been transferred.
- The public enquiry had cost the City Council around £50,000 to £60,000.

Councillor Jethwa moved the recommendation within the report, and was seconded by Councillor Quartley.

Councillor Kent moved an amendment to the recommendation, which was that the following be added;

1. That the Committee requests the Council Executive to consider bringing forward proposals for Castle Park to be voluntarily made a Town Green as per the 2006 Act, as part of any future development proposals.
2. That any development proposal for the St Mary Le Port site aimed to reduce the footprint, so protecting open space in Castle Park
3. That the Council Executive bring forward plans to protect Bristol's valued parks and open spaces by including a programme of voluntary Town Green applications as part of its Parks and Green Spaces Strategy.

Councillor Kent's amendment was seconded by Councillor Main.

In view of Councillor Kent's amendment, Stephen McNamara informed Members that whilst making recommendations to the Executive was not within the remit of the Committee, to do so would not be unlawful. In response to a query from a Member of the Committee, he added that a voluntarily declared Town Green would have the same legal status as one resulting from a Town Green application.

There was concern that if the application was rejected by the Committee, it could make it difficult to declare the land a Town Green at a later date, but it was noted that a voluntary Town Green would not need to meet the same criteria.

Following the debate, Councillor Jethwa was invited to sum up.

The amendment moved by Councillor Kent was then put to the vote and carried, with 6 Members in favour and 3 against.

The Committee then voted on the substantive motion, with 6 Members in favour and 3 against. It was therefore resolved;

- RESOLVED -**
- i) that the application be rejected for the reasons set out in the Inspector's Report dated 30th March 2009; and**
 - ii) that the Committee requests that the Council Executive consider bringing forward proposals for Castle Park to be voluntarily made a Town Green, as per the 2006 Act, as part of any future development proposals.**
 - iii) that the City Council Executive be urged to ensure that any development schemes for the St Mary Le Port site aimed to reduce the footprint, so protecting open space in Castle Park.**
 - iv) that the City Council Executive be requested to bring forward plans to protect Bristol's valued parks and open spaces by including a programme of voluntary Town Green applications as part of its Parks and Green Spaces Strategy.**

There was a 10 minute comfort break.

PROWG

11.8/09 UPDATE REPORT - RIGHTS OF WAY

The Committee considered a report of the Director of City Development (agenda item no. 11) reporting for information on the present position with regard to Wildlife and Countryside Act applications; town or village green applications; public inquiries; and miscellaneous rights of way orders, agreements and legal proceedings.

Members were provided with background information relating to the pending applications for modifications to the Definitive Map and Statement. It was noted that whilst many of the outstanding applications were on Council owned

land, all of those routes were still open to the public, which removed some of the need for urgency. The Committee had a number of queries regarding the information provided, the following is a summary of the discussion;

- **Old Sneed Park** - the application, which had been outstanding since 1992, had been inherited from Avon County Council and had been difficult to progress due a number of long standing issues. However, the Deed of Dedication was soon to be completed and the route would be opened once concerns regarding the safety of the boundary wall had been addressed. It was hoped that the matter could be resolved prior to the Committee's meeting on 26th October 2009.
- **Claimed Footpath at Argyle Place** - once the developer had finished working on the area of new green space, the land would be adopted by the City Council. The route was expected to be dedicated before the Committee's meeting on 26th October 2009.
- **Claimed footpath at Barracks Lane/Kings Weston Avenue** - the City Council had resolved to dedicate the paths that were on City Council owned land, which was to the south of the area, and would do so once the land had been surveyed to ensure it was safe.
- **Claimed Bridleway, Dundridge Farm** - the application had been delayed because there was a view that the area should have a more ambitious investment plan, as part of the Parks and Green Spaces Strategy. However, it was hoped that the relevant routes would be dedicated within the next few months.
- **Claimed Footpath at Ridgehill** - Officers were waiting to be notified of the intention of the owners of the land regarding the claimed route. The claim was the next to be processed after the Purdown claims and it was hoped that it could be brought before the Committee in early 2010.
- **Claimed Footpath at South Hayes and Parkside Gardens** - the application had been prompted by the erection of gates as crossing an open field. It was agreed that the order of claims on the report would be amended, as the Ridgehill application was actually received after that for

South Hayes.

- **Claimed Footpath at the Rear of Shaldon Road and Morris Road** - this application had also been prompted by a route being obstructed by alley gates.
- **Grove Woods** - the claim had been arisen when the route had become obstructed by fallen trees, but the claimed route was parallel to an existing path, which was still open.

The Committee carefully considered the request from Councillor Hopkins and Councillor Rogers that the application be given priority above the others waiting to be progressed, but felt that it would not be right for Officers to depart from the Public Rights of Way Work Plan and Strategy, that had been adopted in 1998 (and revised in 1999), which stated that claims should be prioritised in chronological order.

Officers stated that the department had sufficient resources to progress approximately 2 applications each year, so Members commented that the Rights of Way service appeared to be under resourced, particularly when compared to the funds that had been spent on Town Green applications. It was felt that applications shouldn't take longer than 12 months to resolve.

The Committee decided that the Rights of Way Work Plan and Strategy needed to be reviewed and agreed to give the matter further consideration at the meeting on 25th January 2010.

- RESOLVED -**
- i) that the report be noted; and**
 - ii) that the Committee give consideration to the Public Rights of Way Work Plan and Strategy at the meeting on 25th January 2010.**

**PROWG
12.8/09**

DATE OF THE NEXT MEETING

RESOLVED - that the next meeting of the Public Rights of Way and Greens Committee be held on Monday 26th October 2009 at 2.00pm.

(The meeting ended at 4.50pm)

CHAIR