

BATH AND NORTH EAST SOMERSET

REGULATORY (ACCESS) COMMITTEE

Friday, 15th November, 2013

Present:–Councillors: Douglas Nicol (Chair), Jeremy Sparks, Peter Edwards, Mathew Blankley and Dave Laming

21 WELCOME AND INTRODUCTIONS

The Chairman welcomed everyone to the meeting.

The Chairman and the Committee introduced themselves.

The Chairman also introduced the officers in the following order: Graeme Stark (Senior Rights of Way Officer and Case Officer for the Bath Recreation Ground Town and Village Green Registration Application), Simon Elias (Senior Legal Adviser) and Jack Latkovic (Senior Democratic Services Officer and Committee Clerk).

22 EMERGENCY EVACUATION PROCEDURE

The Democratic Services Officer drew attention to the emergency evacuation procedure as set out on the Agenda.

23 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

Apology was received from Councillor Douglas Deacon. Councillor Dave Laming was substitute for Councillor Deacon.

24 DECLARATIONS OF INTEREST

There were none.

25 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

There was none.

26 ITEMS FROM THE PUBLIC - TO RECEIVE DEPUTATIONS, STATEMENTS, PETITIONS OR QUESTIONS

The Committee noted that there were five members of the public who wished to make statements on the agenda item 8 (Bath Recreation Ground Town and Village

Green Registration Application). The Democratic Services Officer informed the meeting that each speaker will have up to five minutes to read their statement. The Committee might ask factual questions to speakers.

27 ITEMS FROM COUNCILLORS AND CO-OPTED MEMBERS

The Committee noted that Councillor David Dixon will address the Committee under item 8 on the agenda (Bath Recreation Ground Town and Village Green Registration Application) as Chair of the Recreation Ground Trust and Local Resident.

28 MINUTES OF PREVIOUS MEETING

It was **RESOLVED** that the minutes of the meeting on Tuesday 18th December 2012 be confirmed as a correct record and signed by the Chair.

29 BATH RECREATION GROUND TOWN AND VILLAGE GREEN REGISTRATION APPLICATION

The Chairman informed the meeting that the Committee will hear from Graeme Stark first.

The Committee will also hear from speakers in the following order:

Councillor David Dixon
Mr Jack Sparrow (Applicant)
Mr Steve Osgood
Mrs June Scott
Mr David Greenwood
Mrs Susan Macdonald

The Committee will then debate the matter and make their decision.

The Chairman invited Graeme Stark to introduce the report.

Graeme Stark addressed the Committee with the following statement:

'The matter in front of the Committee today is to determine whether Bath Recreation Ground should be registered as a Town or Village Green pursuant to section 15 of the Commons Act 2006.

On 18 December 2012, Bath and North East Somerset Council, in its capacity as the Commons Registration Authority, received a duly made application from Mr Sparrow to register the land edged in red on the plan contained at Appendix 1 of my report as Town or Village Green.

The application was duly advertised and the Authority received seven objections and 18 emails and letters of support. The Registration Authority instructed an independent barrister – Mr Leslie Blohm QC - to advise on whether the Bath Recreation Ground should be registered.

The legal test which must be satisfied in order for land to be registered as town or village green is contained in section 15(2) of the Commons Act 2006 which states that land should be so registered if:

“a significant number of the inhabitants of any locality, or neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and they continue to do so at the time of the application.”

The Committee are only permitted to consider whether this legal test has been satisfied, which in relation to this particular application means whether it has been demonstrated that a significant number of the inhabitants of the city of Bath have indulged as of right in lawful sports and pastimes on the Bath Recreation Ground from 1992 to 2012. The Committee is not permitted to consider whether or not registration would be deemed desirable nor what affect registration might have upon the future use or development of the land; these matters are legally irrelevant to the matter in hand.

Paragraph 71 of the Inspector’s Initial Advice advises that;

“...the Registration Authority... should dismiss the Application for Registration of The Rec, Bath as a Town or Village Green pursuant to section 15 Commons Act 2006 on the following grounds:

- (1) That usage of The Rec for lawful sports and pastimes ‘as of right’ has not been by a significant number of the inhabitants of Bath;
- (2) That usage of the land demised to Bath Rugby plc, and of the Leisure Centre and the tennis and Croquet Courts has not been ‘as of right’.

Use must be ‘as of right’; however, the 1956 conveyance gives the citizens of Bath the right to use the land for *“games and sports of all kinds tournaments fetes shows exhibitions displays amusements entertainments or other activities of a like character”* use that is consistent with this description is therefore ‘by right’ and not the qualifying ‘as of right’ type of usage which is required to contribute towards registration as a TVG.

The Committee is recommended to refuse the application and not register Bath Recreation Ground as Town or Village Green.’

The Chairman asked Simon Elias to clarify the difference in definitions ‘as of right’ and ‘by right’.

Simon Elias quoted a comment from Leslie Blohm QC which was part of the Further Advice in regards of an application by Mr Jack Sparrow (application number TVG12/1), on page number 156 of the agenda:

'Mr. Sparrow has confused the terms 'by right' and 'as of right'. This is understandable as these are legal terms of art, and they do not bear the meaning that they might be thought to have if used in ordinary speech. 'As of right' refers to the quality that the use of the land must have in order for it to count towards the test for registration. It means 'as if of right', or to put it another way, in the same manner as a person would use the land if he was entitled to do so. It presupposes that the person doing the act does not have a right to do it at that time. 'By right' by contrast means 'by reason of a pre-existing right'. Therefore, if a person already has a right to use the land for recreation, then the law does not allow him to count his usage towards use 'as of right'. Mr. Sparrow suggests that citizens of Bath who are beneficiaries of the charitable trust have a right to carry out sports and games on the Rec, and that therefore their use should be considered to be 'as of right'. That is not correct. Their use of the Rec for such purposes would be 'by right' and not 'as of right'.'

The Chairman invited Councillor David Dixon to read out his statement.

Councillor David Dixon said that he was speaking on behalf of the Recreation Ground Trust Board which has 10 members. The Trust welcomed the recommendation from the Inspector, who gave quite clear advice. It still remains the view of the Trust that the uses put forward by the applicant were made 'by right' and not 'as of right'. The Trust also agreed with the Inspector that the applicant has failed to prove, and has no reasonable prospects of approving, qualifying use of the Rec by a significant number of the inhabitants of the City of Bath. The application to register the Rec as the Town and Village Green should be rejected.

The Chairman invited Mr Jack Sparrow to address the Committee. The Committee acknowledged that they received a statement from Mr Sparrow in advance of the meeting. Full statement from Mr Sparrow is attached as Appendix 1 to these minutes.

Mr Sparrow addressed the Committee as per his statement, by saying the following:

'I will assume that the committee members have read all the Town Green application papers, the objections, my response to the objections, support letters or emails, the two sets of advice from the Barrister, my additional information to the Barrister and my responses to his advice.

I will thus confine my contribution today to a series of questions, which I expect to be answered prior to the Committee making its decision.

There has obviously been some confusion on my part concerning 'As of right', 'By right' and 'As if of right' introduced by the Barrister. I preferred to use the normal English language meaning of the words not some arbitrary legalistic interpretation and chose 'The Right' finally as what Bath Citizens are entitled to.'

Mr Sparrow went through the questions, as included in the statement. The Chairman reminded Mr Sparrow that this part of the meeting, or the meeting, is not a question and answer session.

Mr Sparrow read out questions (until question 17) as printed in his statement.

Mr Sparrow finished his statement by saying that (quote) 'All the above questions and, more importantly, the original conveyance in 1956 indicate that the Recreation Ground is an ideal candidate to be a Town Green and I urge the Committee to recognise this and give it the appropriate status' and added that 'this meeting is an absolute farce and not worth counting'.

Councillor Laming asked Mr Sparrow about the comment on page 92, bullet point a), and asked how Mr Sparrow can be sure that the objector in would be aware that the Rugby Club's occupation of the Rec is illegal.

Mr Sparrow responded that everybody locally had agreed that the Rugby Club's occupation of the Rec is illegal. The Council, Trustees, the Charity Commission agreed that this is illegal.

Councillor Laming asked Mr Sparrow about the evidence for the comment made on page 94, bullet hh) (quote) 'The Council and the Trustees should be concerned because one of their main reasons for falling over backwards to keep Rugby at the Rec. is because it brings trade to the pubs and restaurants on match days. These pages show clear evidence that much of the trade goes directly to the Rugby Club and into its coffers'.

Mr Sparrow responded that half of the stands have beer provider facilities and on match days they, Rugby Club, import special caravans to sell pies and other refreshments. In Mr Sparrow's view the Club conducts illegal trade then and all of the money made at the match is not going to pubs and restaurants in Bath.

Councillor Laming asked Mr Sparrow about the evidence for the comment made on page 95, bullet ii) (quote) 'How much of the clubs profits go to the Trust for illegally permitting this commercial activity to take place on charitable land?'

Mr Sparrow responded that he cannot produce any figures because he never saw any figures on that.

Councillor Laming asked Mr Sparrow about the comment made on page 95, bullet mm) (quote) 'I assume are pictures of the seating for a charity concert allowable under the rules. I only hope that the profits made at the clubhouse were donated to the appropriate charity!'

Mr Sparrow responded that if you carry out the charity function then the significant amount of money should go to the charity. Mr Sparrow said that he never saw any evidence on that.

Councillor Edwards commented on the comment/question from Mr Sparrow about the appropriateness of non-Bath Councillors to take part in the process and stated that it is suitable or appropriate. All Councillors are duly elected and hardworking Councillors and capable of dealing with this matter.

Mr Sparrow commented that the conveyance was to the Mayor, Alderman and the citizens of Bath and not to the people outside of Bath.

The Chairman invited Mr Steve Osgood to address the Committee.

Mr Osgood (Bathwick Ward resident) read out the following statement to the Committee:

'I have questions relating to two aspects of this application:

First aspect:

The 1956 Conveyance limits the uses to which this property may be put. In 2002 the High Court order confirmed the Rec as a Charity, with B&NES as the corporate Trustee to safeguard these uses, in perpetuity. Does the Town & Village Green proposal fall within the use description? Is there a 'trigger event that would preclude its registration, under the Commons Act 2006?

Second aspect:

Owners of the subject property are Citizens of Bath – some 80,000 of them. How have these Owners responded to Notices of the Application? Have Landowner Statements been deposited that would preclude registration? (reference to Growth & Infrastructure Act 2013 amendments to Commons Act 2006).

I would like these questions answered before the meeting proceeds further.'

The Chairman reminded Mr Osgood that this is not a question and answer session.

The Chairman invited Mrs June Scott to address the Committee.

Mrs Scott read out the following statement to the Committee:

'I moved to Bath more than 45 years ago. All my children grew up here and my family regard Bath as our home town. I taught mathematics for 25 years and I feel that I served Bath well. Do I have the right to speak to you tonight? The Rec is second home to me. I played croquet there in Bath croquet club. Each day I look out of my window and I see many different activities on the Rec – joggers, dog walkers, kite flyers, kids playing football, tennis, croquet, cricket...all these people enjoying the Rec. I support the application to make the Rec Town & Village Green. Captain Forester intention was for people to use the Rec for activities above. The Rugby Club is not the only one to raise the money for Bath.'

The Chairman invited Mr David Greenwood to address the Panel.

Mr Greenwood said that several points were made today. One, that is extremely difficult, is the definition of 'by right' and 'as of right'. One thing that does affect the issue is that there is an existing right of way from Riverside through the Recreation Ground. This is 'as of right' and open to all without the need to request permission and applies for 365 days of the year. Mr Greenwood and his family have been residents of Bath for over 20 years. Friends and family were always able to access the Rec as of right. There has never been any restriction. There are many hundreds of people who use the Rec for football, cricket, and other leisure activities. Nobody ever recognised that permission would have to be sought. There is no requirement

to provide the evidence of how many people are using the Rec. In 2002 the High Court made B&NES an interested party. It is B&NES interest to reject this application. It is extremely difficult for residents and other people to distinguish that B&NES is the judge and jury for the Rec.

Councillor Laming asked that it should be noted that proposal before the Committee considers Bath as the locality.

Graeme Stark responded that Mr Sparrow application specifically said that the locality is the City of Bath. The locality has to be the area known to the law and specified elsewhere, such as electoral Ward with defined boundaries.

The Chairman invited Mrs Susan Macdonald to read out her statement to the Committee.

Mrs Macdonald read out the statement (attached as Appendix 2 to these minutes) and offered her full support to the application for the Bath Recreation ground to be granted as a Town and Village Green.

Mrs Macdonald highlighted in her statement that Captain Forester did not give away his own personal property in 1922 so that a commercial business would solely benefit from his generosity. Access to the Rec was intended to be free and open to all.

Mrs Macdonald finished her statement by saying that the Committee have a duty to respect the rules.

The Chairman thanked to all speakers who address the Committee.

The Chairman asked Graeme Stark if there are any issues to be clarified before the Committee debate the matter.

Graeme Stark responded that the Committee have to decide whether or not the land was used by significant number of inhabitants of the locality for 20 years. The on-going management of the site is not relevant for the consideration – the Committee is asked to look at the use of the land from 1992 until 2012.

The Chairman invited the Committee to debate the matter.

Councillor Laming said there are three main issues for Members of the Committee to take into account before making the decision. Those issues are; 'as of right', locality or neighbourhood and significant numbers. In terms of the locality – the Committee is asked to consider City of Bath as the locality. In terms of the significant numbers – Councillor Laming commented that he had not found a reasonable description of significant numbers. In terms of 'as of right' issue – Councillor Laming said that his understanding is that 'as of right' means that people have permission to go somewhere and there is nothing stopping you. Councillor Laming said that the applicant should have found out for himself what 'as of right' means before submitting this application.

Councillor Dave Laming moved a motion that the Regulatory Access Committee refuse the application and not to register Bath Recreation Ground as a Town or Village Green, as per officer's recommendation.

Councillor Peter Edwards seconded a motion by saying that he fully supports the reasons for the motion from Councillor Laming.

Councillor Mathew Blankley said that he will support the motion from Councillor Laming as there is no evidence that the land was used by substantial number of people for 20 years continuously.

Councillor Jeremy Sparks said that he is not a rugby supporter and that he is not representing a Bath Ward so his view is un-biased. Councillor Sparks said that in the view of legal reasons presented in the report and at the meeting he will support the motion from Councillor Laming.

The Chairman asked the Committee to vote by show of hands.

Voting: all in favour of the motion.

On a motion from Councillor Dave Laming, seconded by Councillor Peter Edwards, it was unanimously **RESOLVED** to **REFUSE** the application and not to register Bath Recreation Ground as a Town or Village Green.

Appendix 1

Appendix 2

The meeting ended at 6.25 pm

Chair(person)

Date Confirmed and Signed

Prepared by Democratic Services

B&NES Town Green Meeting 15th November 2013.

I will assume that the committee members have read all the Town Green application papers, the objections, my response to the objections, support letters or emails, the two sets of advice from the Barrister, my additional information to the Barrister and my responses to his advice.

I will thus confine my contribution today to a series of questions, which I expect to be answered prior to the Committee making its decision.

There has obviously been some confusion on my part concerning 'As of right', 'By right' and 'As if of right' introduced by the Barrister. I preferred to use the normal English language meaning of the words not some arbitrary legalistic interpretation and chose 'The Right' finally as what Bath Citizens are entitled to. (See second advice from Barrister and my response)

1. Do you understand that B&NES are not the owners of the Recreation Ground, they only hold it in Trust for the real beneficiaries the Bath Citizens.(See appendix 3)
2. Do you then think it appropriate that Councillors outside Bath should be the proper authority to rule on the Town Green Application, which relates only to a specific area in Bath?
3. Do you think it right that the Barrister appears to give more credence to those who are illegally using the Recreation Ground than those legally using it as specified in the 1956 conveyance and covenants?
4. Do you agree that 'The Right' of access to the Recreation Ground over the past 20 years has been prevented by the illegal operation of the Rugby Club, The Leisure Centre and the poor management of B&NES Council and the Trustees who should be preserving the full rights for the Bath Citizens? (see my response to Barrister's first advice) TG STATUS WOULD CORRECT THIS.
5. Do you recognise that the Barrister commented on the length of my application and responses but had little to say about the 855+ pages in the Rugby Club objection, most of which was irrelevant but clearly designed to intimidate? It clearly confirmed that professional rugby was a large commercial activity not permitted within the rules! (see second advice from Barrister section 6) TG STATUS WOULD CORRECT THIS.
6. Do you accept the Bath Citizens have 'THE RIGHT' to use the Recreation Ground for all manner of activities provided they abide by the covenant rules? (see first Advice from Barrister section 2)
7. Do you accept the narrow interpretation of the Barrister in suggesting only competitive sport is permitted? This is not what the conveyance and covenants say.(see Barrister's second advice and appendices 1, 2 and 3)

8. Do you accept that if the Barrister was correct then friendly games, all spectators of any games and all other activities allowed in the conveyance and covenants would not be permitted? [TG STATUS WOULD CORRECT THIS.](#)
9. Do you accept that professional sport, which is primarily a commercial undertaking, is not allowed by the rules? ([see appendices 1, 2 and 4](#)) [TG STATUS WOULD CORRECT THIS.](#)
10. Do you accept that the Recreation Ground should be maintained as an open space forever as the conveyance prescribes? ([see appendices 1, 2, 3 and 4](#)) [TG STATUS WOULD CORRECT THIS.](#)
11. Do you accept that the 1922 conveyance and covenants, the 1956 pre conveyance contract and the 1956 conveyance, which incorporates the 1922 covenants, are all valid? ([see appendices 1 and 2](#)) [TG STATUS WOULD ALLOW THIS.](#)
12. Do you accept the ruling of the High Court in 2002, which determined that the Recreation Ground should have been seen as a Charitable trust since its inception in 1956 but that it could be used by the general public? ([see appendix 3](#))
13. Do you agree that usage is not the same as ownership, which the High Court confirmed was still the Bath Citizens, as shown in the 1956 conveyance? [TG STATUS WOULD ALLOW THIS.](#)
14. Do you accept that the Charity Commission registered the Recreation Ground as a Charitable Trust in 2002 following the High Court ruling? ([see appendix 4](#)) [TG STATUS WOULD ALLOW THIS.](#)
15. Do you accept the objectives set by the Charity Commission? These clearly state that the sport should be AMATEUR. ([see appendix 4](#)) [TG STATUS WOULD CORRECT THIS.](#)
16. Do you agree that Registration of the Recreation Ground as a Town Green would not restrict any of the legal uses but exclude the illegal ones? [TG STATUS WOULD CORRECT THIS.](#)
17. Do you feel that the Barrister was incorrect in dismissing the proposed future proposals for the Recreation Ground, which the trustees claimed had already agreed Heads of Terms in December 2011? ([See Additional information and Second advice from Barrister](#))
18. Do you agree that the Barrister was wrong in assuming that the future proposals had been overtaken by the Charity Commission 'Scheme' when this is still subject to a First Tier Tribunal hearing in January 2014? ([see second advice from Barrister](#))
19. Do you agree that if the Heads of Terms for the Rugby Club were approved then more of the Recreation Ground would fall under the control of a company based in the Bahamas, which is clearly not allowed in the original conveyance of the land in 1956? ([see appendix 1, 2](#)) [TG STATUS WOULD CORRECT THIS.](#)
20. Do you agree that the Recreation Ground was conveyed in 1956 to the Citizens of Bath for their amateur sporting and other charitable events not for commercial exploitation? ([see appendices 1, 2 3 and 4](#))
21. Do you agree it is wrong for one organisation to dominate a significant part of the Recreation Ground virtually throughout the year for some 15 professional games, whilst denying the Bath Citizens their right to use the land conveyed to them? ([see appendices 1, 2 and 3](#)) [TG STATUS WOULD CORRECT THIS.](#)
22. Do you agree that the covenants applying to the Recreation Ground are valid as determined by the High Court in 2002? ([see appendix 3](#)) [TG STATUS WOULD ALLOW THIS.](#)
23. Do you agree that no mandate has been given by any organisation, least of all the Bath Citizens to sell, lease or exchange land of inferior quality since it must be retained as an open space in perpetuity? ([see appendices 1, 2 and 3](#)) [TG STATUS WOULD CORRECT THIS.](#)

24. Do you agree that the Town Green application is the only solution so far proposed, which satisfies all the rules applicable to the Bath Recreation Ground? (see appendices 1, 2 and 3)
25. Do you agree that the covenants, within the conveyance of 1956, make the Recreation Ground an ideal site for a Town Green?

All the above questions and, more importantly, the original conveyance in 1956 indicate that the Recreation Ground is an ideal candidate to be a Town Green and I urge the Committee to recognise this and give it the appropriate status.

Jack Sparrow 11th November 2013

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Mrs SUSAN MACDONALD

I fully support this application for the Bath Recreation ground to be granted as a Town Green for many reasons.

I have personally been aware of the continual campaign to attempt changing the covenants so that the Rec. can become a big business and commercial asset by the past and now present owners of the club for more than a decade. I even attended a meeting around 2002 that launched a design and plan for a three storey roman style amphitheatre at the rugby club suites. I never heard any more about this plan, and then was surprised when I received the recent invitation through my door with an offer to attend the 'first time' opportunity to consult with the public on plans for the Rec. by the rugby club- have they forgotten this last time? For me, as a real citizen of Bath, living in the city since 1997, the issue is a simple one. The legal opinion that has been presented here with a recommendation to reject this TV Green application is just that - a Barristers opinion and drafted by the Barrister based on a brief he has been given, it is not legal judgement, which only a judge can do. The only judgement made regarding the Rec, has been the High Court ruling, which would likely support this TVG application. I would urge that to take this forward it would be in all parties' interests to seek an independent review, with proper public consultation in a public enquiry, as this has never been done. Why?

When Captain Forester bequeathed the Rec. in 1922, he did not give away his own personal property, a valuable asset then, and considerably more valuable today, so that a commercial business would solely benefit from his generosity. What position do you think his descendants would be in today if they owned the Rec? His intentions were made very clear, and have been outlined in the documents supporting the application at length, as we have all read them.

We have talked today a lot about words and their meaning. Again my point is a simple one. This is also about the word 'trust'. He bequeathed his property into a trust - he trusted that his actions and intentions would be upheld by those trustees forever and they have been entrusted to ensure that his intentions are followed. This is why so far, despite considerable sums of money and full time legal staff employed to try to find a chink in the legal conditions and two very wealthy owners, it has not been so easy to get hold of the Rec. for exclusive use by Bath Rugby.

Access to the Rec. was intended to be free and open to all of us Bath Citizens- completely contrary to accessing the rugby on the Rec. where I would have to pay around £40 per person for 15 home games in a season- not very inclusive, is it?

I know too that women's rugby and the children's mini rugby are also not allowed to play on the hallowed Rec. pitch - only the male teams, primarily if not exclusively from anywhere but Bath - pretty exclusive of many citizens don't you think?

Today we can see a new mock up designs for the new rugby building, I think Prince Charles would refer to this as the 'Boil of Bath' - and in a World Heritage city. That aside, do you have any idea what 17000+ people looks like? How will the city centre cope with this volume of people, traffic, and rubbish in the centre? I laugh out loud when I hear that 'wives' will go shopping when their husbands are at the Rugby if it remains at the Rec. The idea that Bath Rugby fans would not travel to any other venue than the Rec. to see their team play is ridiculous, most of the current audience travel into the city already, and I am sure they would be just as happy to go to another venue, more in tune with facilities they claim they need. If you have visited purpose built out of town venues such as the O2 and Olympic village in London, you would see the plus side of these venues in an instant when compared to the inner city venues, and London is a far bigger place to accommodate large crowds. Why should those of us that use the Rec. be forced to tramp off to the muddy flood plain at Lambridge to wade around on a substitute and substandard Rec, already rejected by the rugby club, when we have a wonderful, sunny, flat land that is ours already by right, in the centre of our city?

Each day look out of my window and see so many different activities on the Rec.- joggers, dog walkers, kite flyers, kids playing footy, tennis in the summer, croquet, volleyball, lacrosse, jumble sales, cricket, the bath half marathon and even a triathlon used to be held here . Just as Captain Forester intended, when he put his property and his trust in you all sitting here today.

You have a duty to respect the rules.