



Bristol Parks Forum

representing resident led
park groups and citywide organisations
involved in protecting and improving
Bristol's green spaces

Town and village green application process

PROPOSED OUTLINE PROCEDURE

BPF Response to Consultation

Bristol Parks Forum Committee objects to the proposed procedure as set-out in the consultation. While we accept that it is reasonable to consider reducing the time taken and cost arising from applications, we believe that this proposal will mean that the rules of natural justice will not be met in making these decisions.

In Bristol, many Town Green applications relate to Bristol City Council owned land, others relate to land where the Council supports proposed development. In these cases there will often be a conflict of interest between the wishes of the Council (or particular Councillors or officers) and the registering of the site. Where this is the case it is even more important that the council can demonstrate that it has considered the matter objectively and given due weight to the evidence and the arguments. We believe that this requires input into the process from an independent person.

This change is being justified on cost grounds. However, some of our members have expressed the view that it has come about because independent inspectors have not supported the Council's view in recent cases. There is an appearance that the Council is changing the procedure because it is starting to lose cases and is trying to avoid losing further cases in the future. The process needs to be fair and to be seen to be fair to all parties. The proposed procedure makes it more likely that decisions will be subject to legal challenge and will therefore actually increase the cost to the Council of dealing with these cases.

The following points relate to specific clauses in the procedure:

1. If anyone enquires about how to make an application to register a TVG they are sent a letter referring them to DEFRA, and to the Open Spaces Society as all the information they need is available on these websites.

No comment

2. Receipt of application:

On receipt of application Form 44, the Commons Registration Authority (CRA) allocates an application number, stamps the application using the CRA stamp and sends a letter acknowledging receipt together with the notice giving the reference number.

No comment

3. The CRA checks the application documents:

Ensures the form complies with the Regulations and is procedurally correct, relevant sections are completed, all supporting documents referred to are present, and that the plan complies with Regulation 10. It then gives preliminary consideration (Regulation 5(4)) to the application and to the evidence and reaches a decision as to whether to:

- (a) reject the application at this stage eg. if the forms are incomplete or it is clear that the land is obviously not registrable;
- (b) call for additional information;
- (c) proceed with the application.

We object to the inclusion of cases where 'the land is obviously not registrable' in this part of the procedure. This initial phase should be purely administrative and should not involve any judgement of the case. The procedure should make it clear what happens if the application is rejected. If the rejection is due to incomplete forms or more information being required the applicant should be given the opportunity to send completed information within an agreed timescale without it being considered as a new application.

Having considered the completeness of the application, there should then be a separate part of the procedure where issues such as whether 'the land is obviously not registrable' are considered by the CRA. At this stage the CRA will be making a judgement on the application. If the CRA concludes that the application should be rejected at this stage then the reasons, together with copies of the evidence on which the conclusion is based, should be sent to the applicant for further comment. The CRA should not reject the application until any further comments or evidence from the applicant has been considered. All decisions should be confirmed by the PROWG committee and applicants should have a further right of appeal to the committee if they do not accept the CRA decision. The PROWG should be able to instruct that the application is considered through the full procedure if they do not agree with the CRA.

4. Publicity:

- (a) any known owner, potential objector or other interested party to be served with notice;
- (b) notice posted at site, if owner agrees;
- (c) notice published in newspaper;
- (d) relevant ward Councillors notified;
- (e) copy of application papers on deposit at the Council House.

Publicity should include a notice being placed on the Council's website and the application site being shown on the Council's online mapping system. The BPF and the Open Spaces Society should be notified as 'interested parties' for any applications.

5. Any objections are referred to the applicant (Regulation 6(3)) for comment. If necessary, the CRA will ask for any further information or documents to enable the application to be determined.

No comment

6. All applications will be determined in accordance with the legal test set out in the Commons Act 2006.

- a) Straight-forward cases where there is no significant conflict of evidence, or significant objection will be dealt with on the paperwork. The decision will be taken by the delegated officer (strategic director of corporate services) or PROWG as appropriate.

All decisions (however straight-forward) should be taken by the PROWG committee meeting in public. Any objection by the landowner should be considered as a significant objection in this context.

b) In other cases there will be a public inquiry, ie. a hearing, open to the public, where both sides are able to present their evidence and make representations. Depending on the circumstances and the nature of the case, the inquiry will be heard by either a council legal officer, PROWG (or a sub-committee of PROWG) with advice from a council legal officer, or a legally-qualified inspector.

To ensure that justice is seen to be done and to avoid possible conflict of interest, a legally qualified and independent inspector should be used in all cases where land is owned by Bristol City Council or where the Council has an interest in any development proposals for the land. We question whether members of the PROWG would be able to set aside sufficient time to sit through a public inquiry. Inquiries in the past have run for a number of days and the length of time required is unpredictable. There would be difficulties if, for example, a hearing before the PROWG had to be adjourned and then could not be rescheduled before an election took place.

c) Whoever is holding the inquiry may carry out a site visit during the inquiry process. The parties are normally invited to attend the site visit but are not permitted to make any further representations.

No comment.

d) Following an inquiry hearing, there will be a report to PROWG summarising the evidence and facts with a recommendation as to whether or not the application should be accepted. This report will be prepared as follows:

- o Where the inquiry is held by a council legal officer, by that officer;
- o Where the inquiry is held by a committee (either PROWG or its sub-committee), by the council legal officer who advised the committee;
- o Where the inquiry is held by an inspector, by that inspector.

No further comment.

e) Following an inquiry, the application will be determined by PROWG on the basis of the report prepared at stage 4 above.

No comment.

The CRA will ensure that the rules of natural justice are met and considerations such as speed of decision making and cost of processing the application will be taken into account when deciding how to deal with an application.

The CRA's decision making process needs to be transparent and open to scrutiny. All decisions on how to deal with an application should be reported to the PROWG committee. Considerations of natural justice should over-ride cost and time considerations.

8. Applicants and objectors are informed of the decision.

No comment.

9. Application papers are returned to unsuccessful applicants, or land is registered in the case of successful applications.

No comment.

We are pleased that the PROWG committee supported our call in April for a consultation on this issue. We believe that the changes we propose above would result in a process that would be fair and be seen to be fair without putting a burden on the public purse. The BPF committee would welcome the opportunity to be involved in further discussions on this procedure once the consultation is completed.

Bristol Parks Forum Committee
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Bristol Parks Forum

Bristol Parks Forum was established by Bristol Parks as an umbrella organisation for community park groups and organisations in the city with an interest in their local parks and green spaces.

The forum is supported by Bristol City Council but acts independently and is the only 'community voice' that is dedicated to all of Bristol's green spaces. The forum's three main roles are to:

- offer an opportunity to share ideas and experience
- act as a consultation body for the Bristol Parks service and other agencies
- influence decision-making, including the allocation of resources

Bristol Parks Forum www.bristolparksforum.org.uk