



BATH HERITAGE WATCHDOG

www.bathheritagewatchdog.org
contact@bathheritagewatchdog.org

Committee Member:

J F Warren
8 Junction Avenue
Oldfield Park
Bath BA2 3NJ

Reference: **300412/CSID27**

30 April 2012

Chris Banks - Programme Officer

CD6/E2.2 Policy B1 section 8 (b) – 3 variants (amends PC 19)

All three of the variants propose some form of development, and although not all of them specifically identify the Recreation Ground, the absence of any other suitable location and the references to legal constraints make it clear that the Recreation Ground is the location intended.

The NPPF identifies three dimensions to Sustainable Development, one of which is:

- **“an environmental role – contributing to protecting and enhancing our natural, built and historic environment ...”**

The Recreation Ground is within a Conservation Area within a World Heritage Site and is part of the historic environment, so the Core Strategy should aim to protect and enhance it; and the failure of all three variants to do so is explained below. Also, the NPPF states “Plans and decisions need to take local circumstances into account” and also that planning must “conserve heritage assets in a manner appropriate to their significance”. Those local circumstances have been ignored by B&NES in formulating the variants.

The status of the Recreation Ground has been established in the High Court in a judgement dated 31 July 2002, which ruled that the Recreation Ground was a charitable trust with the council as the sole trustee, and it has been since it was originally conveyed to the council on 1 February 1956. That conveyance included a condition, recognised by the court as binding which said:

“TO HOLD the same unto the Corporation in fee simple upon trust that the Corporation for ever hereafter shall manage let or allow the use with or without charge of the whole or any part or parts of the property hereby conveyed for the purpose of or in connection with games and sports of all kinds tournaments fetes shows exhibitions displays amusements entertainments or other activities of a like character and for no other purpose and shall maintain equip or lay out the same for or in connection with the purposes aforesaid as they shall think fit but so nevertheless that the Corporation shall not use the property hereby conveyed otherwise than as an open space and shall so manage let or allow the use of the property for the purposes aforesaid as shall secure its use principally for or in connection with the carrying on of games and sports of all kinds and shall not show any undue preference to or in favour of any particular game or sport or any particular person club body or organisation.”

Following the court judgement the trust was registered with the Charity Commission which recognised that the current position was problematical.

In an Order dated 20 July 2007, the Charity Commission noted “As a result of the court’s determination, the Club’s occupation of the Rec is inconsistent with the trusts of the Charity” and directed “It is the duty of BANES to seek to resolve the irregularities in relation to the occupation of the Rec and discharge its duties and responsibilities as trustee of the Charity.” In a specific Direction, “BANES [must] continue to resolve issues arising from the current and future uses of the Rec, to ensure that the Rec is managed properly as the property of the Charity for the benefit of the public now and in the future and satisfy the Commission that BANES has discharged its legal duties and responsibilities as trustee of the Charity.”

It is clear that B&NES as trustee has an eventual legal duty to return the Recreation Ground to an open space, but the current lease cannot simply be waived and the existing unlawful use can continue in the interim. Nevertheless, the existence of the current built structures cannot be used as a precedent for proposals to add new or replacement structures on the land.

Now consider the three alternatives proposed, all of which imply some development on land which B&NES has a legal duty to return to open space, and an obligation under the NPPF to take these local circumstances into account. Therefore none of the alternatives are acceptable. B&NES in law is a single entity and is not sub-divisible into a Local Planning Authority and Trustee of a charity. The Local Planning Authority cannot therefore put forward any element in the Core Strategy or any subsequent planning document which would place it outside its legal obligations as confirmed by the High Court. The only acceptable strategy for the Recreation Ground must be to ultimately achieve the requirements of the covenant the council agreed to in perpetuity when the land was conveyed, and that is to maintain it as an open space for games and sports with no undue preference.

The examination must ensure that B&NES, in formulating its Core Strategy, recognises the local circumstances, and does not include any unlawful activity. Therefore none of the variants are appropriate to the significance of the Recreation Ground; nor are they permissible.

Yours sincerely



