

# SAVE POLLOK PARK

c/o 56 Glenapp St  
Glasgow  
G41 2LG

0141 424 0447

9 September 2009

George Black  
Chief Executive  
Glasgow City Council  
City Chambers  
George Square  
Glasgow  
G2 1DU

By e-mail & letter

Dear Mr Black,

## **FORMAL COMPLAINT**

### **MALADMINISTRATION: PROPOSED LEASE/LICENCE AERIAL ACTIVITY FACILITY POLLOK COUNTRY PARK TO 'GO APE'**

We wish to lodge a complaint about the Council's handling of the above project. We write as residents of Glasgow and as representatives of the Save Pollok Park campaign.

#### **Background**

Following adoption of the Parks & Open Spaces Strategic Best Value Review and Implementation Plan in 2005, the Parks & Facilities Committee of 18 January 2006 approved the advertisement for and the appointment of an operator to design, install and operate an aerial assault course in a Glasgow City park. A further paper was presented to the Executive Committee on 1 September 2006, which recommended that the Executive approve negotiations with preferred supplier – Adventure Forest Ltd., trading as 'Go Ape' (AFL).

The report to the Executive Committee dated 16 February 2007 recommended '*approval in principle to grant a 21 year lease/licence of part of Pollok Country Park to Adventure Forest Limited t/a Go Ape... subject to legal clarification and consultation with appropriate parties*'.

As far back as 2004, discussions had taken place at national level on the subject of common good assets. In 2007 the Local Government and Transport Committee of the Scottish Parliament recognised that the presence of common good assets can be a source of civic pride that binds communities together and creates a link between generations. It also

recognised that local authorities are responsible for managing common good assets in the interests of the community. Following the May 2007 elections, this matter fell within the remit of the Local Government and Communities Committee who highlighted a wish to monitor the use of common good funds and assets as part of their work. In December 2007, LASAAC issued a guidance note for practitioners entitled “Accounting for the Common Good Fund”. This guidance note requires the introduction of an asset register for the common good by 31 March 2009.

Knowing these facts and, bearing in mind the provenance of the land in question, we believe the possibility of its common good status should have been actively considered before a recommendation to the Executive Committee since common good status would significantly restrict the Council’s ability to alienate the land.

### **National Trust for Scotland**

As conservators of the estate you should have formally consulted NTS at an early stage; you failed to do so. Had they been consulted, it is likely they would have objected – as they did subsequently - to certain aspects of the plan including the proposed erection of buildings close to the Burrell Museum.

Despite your failure to consult, NTS nevertheless made their objections clear prior to the approval of the planning consent in April 2008 and again in late 2008. Despite requests from Save Pollok Park throughout late-2008, you refused to reveal the status of these discussions. However from statements issued by NTS during the autumn of 2008, we understand NTS objections caused you to revise the approved plan to include the use of Knowehead Lodge. As this is also common good property it would have been likely the same restrictions would have prevented its alienation.

We believe the planning report failed to take proper account of the original common good issue surrounding the land and that DRS, in offering Knowehead Lodge as a possible solution, was ill advised for the same reasons.

### **Save Pollok Park intervention**

On 16 March 2009, Save Pollok Park wrote to the Asst Solicitor to the Council quoting his letter of 11 March that the Council would not conclude the consideration of Pollok Park’s common good status until *“the details of the proposed adventure playground are finalised.”* .

Save Pollok Park commented:

*You will be aware that the Council took a decision to dispose of part of the park in February 2007 and therefore it is unclear why, to conform with the above policy, a determination on Common Good by the Council should not have begun at that time – over two years ago.*

This correspondence followed a letter from SPP dated 6 March in which we quoted a legal opinion obtained by the campaign in February 2009 by a leading firm of solicitors. They stated:

*“A disposal means a sale or lease of land. Even a very short lease may be counted as a disposal if it deprives the public of the use of the land. In the case of Pollok Park, there would be a question of the Council’s legal authority to dispose of the park because the Park is still in use by the public for*

*recreational purposes. It would therefore be necessary for the Council to get the permission of the Court before a lease could be granted.*

*The test case which establishes this and is referred to by LASAAC is "Murray Versus the Magistrates of Forfar 1893". The Court of Sessions report for this case indicates that the land was proposed to be removed from common good use (that is used freely and unrestricted by members of the public) for commercial purposes with a lease granted for a period of 10 years. The Court upheld that such a lease was alienation and rejected the proposal by the Burgh of Forfar"*

Despite this detailed opinion, the Council continued to explore the alternatives to the planning consent involving Knowehead Lodge when it should have been obvious that its competence to grant any lease was questionable.

### **Conclusion**

We believe the way this project was handled by different Council service departments amounts to incompetence and therefore falls within the definition of maladministration.

We contend the Council failed to take full account of the legal issues surrounding common good status despite public discussion of the issues from 2004 onwards, a formal letter about accounting for common good assets to the Director of Finance in March 2007 from the Scottish Executive\* and subsequent warnings from concerned citizens.

We also understand the council's refusal to detail its list of common good assets is subject of an ongoing appeal to the Scottish Information Commissioner (ref 200900776).

The failure by you to properly consider all the relevant issues has resulted in unnecessary expenditure of taxpayers' funds as represented by staff time and out-of-pocket expenses.

Under the Freedom of Information Scotland Act we seek a full disclosure of correspondence and details of expenditure dedicated to this project detailed on a monthly basis from the date of the adoption of the Parks & Open Spaces Strategic Best Value Review and Implementation Plan in 2005 to the decision of Adventure Forest Ltd in July 2009 to abandon the project.

*\*Letter to all Directors of Finance dated 12 March 2007 from Finance and Central Services Department*

Yours sincerely



**Bill Fraser**

**In my personal capacity and on behalf of Save Pollok Park**

[www.savepollokpark.com](http://www.savepollokpark.com)