Haringey Council

Licensing Sub Committee A

TUESDAY, 10TH SEPTEMBER, 2013 at 19:00 HRS - CIVIC CENTRE, HIGH ROAD, WOOD GREEN, N22 8LE.

MEMBERS: Councillors Ejiofor, Mallett and Strang

AGENDA

1. APOLOGIES FOR ABSENCE

2. URGENT BUSINESS

The Chair will consider the admission of any late items of urgent business. (Late items will be considered under the agenda item where they appear. New items will be deal with at item 5 below).

3. DECLARATIONS OF INTEREST

A member with a disclosable pecuniary interest or a prejudicial interest in a matter who attends a meeting of the authority at which the matter is considered:

(i) must disclose the interest at the start of the meeting or when the interest becomes apparent, and
(ii) may not participate in any discussion or vote on the matter and must withdraw from the meeting room.

A member who discloses at a meeting a disclosable pecuniary interest which is not registered in the Register of Members' Interests or the subject of a pending notification must notify the Monitoring Officer of the interest within 28 days of the disclosure.

Disclosable pecuniary interests, personal interests and prejudicial interests are defined at Paragraphs 5-7 and Appendix A of the Members' Code of Conduct

4. APPLICATION TO REGISTER LAND BOUNDED BY ALEXANDRA ROAD N10, PINKHAM WAY (A406) N10, THE GREAT NORTH RAILWAY AND MUSWELL HILL GOLF COURSE AS A TOWN OR VILLAGE GREEN (PAGES 1 - 86)

To consider an application to register the area of land known as the former Friern Barnet sewage works as a town or village green.

5. ITEMS OF URGENT BUSINESS

To consider any new items of admitted under item 2 above.

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Tuesday, 03 September 2013

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Accessor's report: pages 5-46
Anex one: pages 47-84
Anex two: page 85

Agenda Item 4

Haringey Council

Report for:	Licensing Sub-committee - A 10 September 2013	Item Number:	

Title:	Application to register land bounded by Alexandra Road N10, Pinkham Way (A406) N10, the Great North Railway and Muswell Hill Golf Course as a town or village green

Report Authorised by:	Nick Walkley, Chief Executive

Lead Officer:	Antonios Michael, Acting Principal Lawyer

Ward(s) affected:	Report for Key/Non Key Decisions:
Alexander Bounds Green (adjoining) New Southgate (adjoining – LB of Enfield)	N/A

1. **Describe the issue under consideration**

a. The Council is the Commons Registration Authority for the purposes of registering and maintaining a register of Town and Village Greens in its area.

b. An application has been received under S.15(3) of the Commons Act 2006 for an area of land to be registered as a town or village green. The area of land is known as the former Friern Barnet sewage works and in the application is referred to as "the dump". It is bounded by Alexandra Road N10, Pinkham Way (A406) N10, the Great North Railway and Muswell Hill Golf Course, N10.

c. Although the determination of such an application rests with a licensing sub-committee, it is not uncommon for a Registration Authority to appoint an experienced independent assessor to hold a non-statutory inquiry and to produce a report containing recommendations as to whether or not the land subject to the application should be registered as a village green. This approach was considered appropriate and was taken in this application because the Council has an interest in the land by virtue of its membership to the North London Waste Authority which has plans to develop the site.

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d. A successful application under s.15(3) of the Commons Act 2006 would need to demonstrate that all the following criteria have been met i.e. that:

i) a significant number of inhabitants of any locality (or any neighbourhood within a locality);
ii) indulged in lawful sports or pastimes;
iii) as of right;
iv) for a continuing period of not less than 20 years, and
vi) the application was made within 2 years of such use having ceased.

The independent assessor's report is attached as **Appendix 1.** He has concluded that the first and last criteria are not met and therefore recommends that the application be rejected.

2. Cabinet Member introduction

N/A

3. Recommendations

To accept the recommendations of the independent assessor that the land should not be registered as a village green because the evidence does not meet the statutory test required for registration.

4. Alternative options considered

The sub-committee is not obliged to follow the recommendations in the report. However, if the sub-committee decided not to follow the recommendations, good reasons for doing so would be required.

5. Background information

a. The application was received on 13 October 2011 and validated on 24 February 2012 once the application form had been fully completed. Both before and during the inquiry, the Applicant took issue with the fact the application was not validated upon receipt. The Registration Authority remains of the view that the application was properly validated. The independent assessor states in his report that he cannot go behind this decision and that his recommendations, in any event, would be no different if the application was validated upon receipt (paragraph 27 of the assessor's report).

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b. In accordance with the regulations governing the procedure, the Registration Authority proceeded to give notice of the application to interested parties including those with a known legal interest in the land. The application was also publicised to a greater extent than is required by the regulations. In addition to being advertised in the Haringey Independent, Enfield Independent, Barnet Times, Haringey People magazine, and on a dedicated Council webpage, letters were also sent out to residents of Barnet, Enfield and Haringey living within 1km of the site. This included contact details of the Registration Authority where any queries could be responded to.

c. Responses to the publication were uploaded onto the Council's dedicated web page other than Barnet's/NLWA's submissions due to their size (but they were made available in a number of libraries). Details of the inquiry were advertised on the Council's website for two months before it took place.

d. In December 2012 the Registration Authority authorised the appointment of an independent assessor to hold an inquiry who then issued directions in preparation for the inquiry. Following an objection to this appointment, an alternative appointment was made in February 2013. This was Philip Petchey of Francis Taylor Buildings (an experienced barrister in village green law) who adopted the directions and proceeded to hold the inquiry.

e The inquiry took place between Monday 4th March 2013 and Friday 8th March 2013 at the Cypriot Centre, N22. The only Objectors that orally participated at the inquiry were the North London Waste Authority and Barnet Council which were jointly represented.

6. Comments of the Chief Finance Officer and financial implications

The cost of dealing with this application have been included within budget monitoring projections.

7. Head of Legal Services and legal implications

Schedule 1 Part B, Para 72 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 states that the registration of a town or village greens in not to be the function of an authority's executive. The Council's constitution reserves such functions in Part 3, Section C, Section 3, 4.1(2)(a) to the licensing sub-committees. The main legislation governing the registration of town or village greens in the Commons Act 2006 and the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 which are outlined in the body of this report. The holding of an inquiry that is not required by statute (a "non-statutory inquiry") was a sensible approach to take bearing in mind the Council's interest in the land. While the committee is not bound to follow the

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independent assessor's recommendations, the decision would be susceptible to judicial review if it did not do so without good reasons.

8. Equalities and Community Cohesion Comments

The rejection of the application would mean that the land would not enjoy protection that it would otherwise attract such as the prohibition of the placing of structures on the land. This is not, however, a factor for consideration under the statutory test.

9. Head of Procurement Comments

N/A

10. Policy Implication

The decision on registration is subject to a statutory test in the Commons Act 2006 and not subject to any Council policy.

11. Reasons for Decision

The reasons for the decision must be based on the statutory criteria.

12. Use of Appendices

Appendix 1 – Independent assessor's report dated 30th May 2013.

13. Local Government (Access to Information) Act 1985

The content of the independent assessor's report has been redacted to a very limited degree to remove full address details of the witnesses who gave oral evidence at the inquiry.

APPLICATION BY CHRISTOPHER FAULKNER TO REGISTER LAND KNOWN AS "THE DUMP" N10 AS A TOWN OR VILLAGE GREEN

INDEPENDENT ASESSOR'S REPORT

Introduction

1. This is my report to the London Borough of Haringey in respect of an application to register land known as "the Dump" N10 as a town or village green.

2. I am a barrister in independent practice, with experience and expertise in the law of town and village greens. I have frequently advised registration authorities and have often acted as an Inspector or Independent Assessor, holding a public inquiry before making a report and recommending the registration authority whether to register a particular piece of land as a town or village green. Also I have advised applicants seeking to register land as town or village green and landowners and others seeking to oppose such registrations. For both groups of person, I have appeared as an advocate at public inquiries and in challenges to registration brought in the Courts.

3. In the present case, on 4 February 2013 I was asked by the London Borough of Haringey to act as an Independent Assessor in place of Mr Alun Alesbury, another barrister in independent practice with expertise in the law of town and village greens. The London Borough of Haringey is the public authority which has the duty under the Commons Act 2006 of maintaining the register of town and village greens in Haringey, and the authority to which the application was made. At the time I was instructed the dates of the public inquiry had already been fixed, following consultation with the principal parties: 4 – 8 March 2013.

4. Under section 15 (2) of the Commons Act 2006, land is registrable as a town or village green if:

> *a significant number of the inhabitants of any locality, or of any 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.*

5. Accordingly there are five matters which an applicant has to show[1] if land is to be registered as a town or village green under this provision, namely use

- by a significant number
- of the inhabitants of a locality or neighbourhood within a locality;

[1] The burden of proof is on the applicant: see *R v Suffolk County Council, ex parte Steed* (1996) 75 P & CR (CA) per Pill LJ at p111. That the burden rests on the applicant is not a matter of dispute in the present case.

- as of right;
- for a period of at least 20 years; and
- that use continued until the date of the application.

6. *As of right* means that - in the time honoured Latin phrase - use must be *nec vi nec clam nec precario*. These words were translated by Lord Hoffmann in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council*[2] as *not by force, not by stealth, nor the licence of the owner*[3].

7. Under section 15 (3) of the Commons Act 2006, land may also registrable as a town or village green, despite the fact that qualifying use had ceased before the date of the application. Sub-section (3) provides that such land is registrable if the application be made within 2 years of the cessation of that use.

8. The present case is in respect an application made under section 15 (3). The application states that qualifying use ceased in July 2010.

9. The applicant in the present case is Mr Christopher Faulkner of 119b Sydney Road, Muswell Hill, London N10 2ND. He has been represented since an early stage in the proceedings by Mr Chris Maile of the Campaign for Planning Sanity.

10. The land which Mr Faulkner seeks to register as a town or village green was defined on a plan. It comprises the bulk of the site of the former Friern Barnet sewage works. This is land which - as the name that has been applied to it indicates - was subsequently used for tipping. I describe the site in more detail at paragraphs 48 - 50 below.

11. The locality or neighbourhood relied upon was indicated on a plan. It was not perhaps clear what the Applicant's position was about this aspect of the application from the application form.

12. The application was supported by 67 statements. These represented the completion by the people who made the statements of the following pre-printed form:

> *I (please print name in full) ..... of (address)..... have been a resident of the Freehold Community since ...*
>
> *I declare that I used The Dump on a regular basis between ..... and ..... for the following recreational pursuits (please list uses below):*
>
> .....

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2 [2000] 1 AC 335.

3 See p350H. By *licence* is meant *revocable licence*: see *R (Beresford) v Sunderland City Council* [2004] 1 AC 889.

I further declare that, at no time, during my recreational use of The Dump, was I given permission to do so nor was my access ever presented by any obstruction or barrier. I never saw any sign or notice advising that I could not access or use The Dump and at no time did anyone ask me to leave or advise me not [to] enter the site.

I believe that I have always used The Dump as of right.

I have provided this statement willingly, to the best of my memory and in full support of The Dump being registered as a Village Green so that it may continue to provide a much needed and valuable open recreational space for the Freehold Community.

Signed ..... *Date*.....

13. An application was received by the registration authority on 14 October 2011. It was not however validated under the regulations until 24 February 2012[4]. I was then publicised in accordance with the regulations (and, indeed more widely) and the following objections were received:

- received on 20 June 2012, by Ronald Boucher of Silvercliffe Gardens, New Barnet EN4 9QT
- dated 17 July 2012, by Transport for London
- dated 20 July 2012, by the London Borough of Barnet and the North London Waste Authority
- dated 20 July 2012, by the London Borough of Haringey in its capacity as local planning authority
- dated 23 July 2012, by Eversheds LLP on behalf of Network Rail Infrastructure Limited.

The registration authority also received several hundred e mails in support of the application.

14. The objections from Transport for London and Network Rail Infrastructure Limited related in each case to a parcel of land on the edge of the site owned by those bodies (a parcel on the west owned by Transport for London and a parcel on the east owned by Network Rail). Without objection, the Applicant has modified his application by deleting these two parcels of land and, in the light of these amendments, Transport for London and Network Rail Infrastructure Limited have withdrawn their objections.

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4 See regulation 4 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.

15. Before the inquiry began, I had to deal with a number of applications by Mr Maile on behalf of the applicant for rulings and I issued a number of directions in response to those applications. Copies of these directions are at **Annex 1** to this Report.

16. The applications related to three matters:

- an application for the postponement of the public inquiry because of Mr Faulkner's jury service
- an application to amend the neighbourhood relied upon
- an application to amend the date shown in the application form at which qualifying use ceased.

Application for postponement of the public inquiry because of Mr Faulkner's jury service

17. Although I accepted that Mr Faulkner's jury service may have made preparation for the inquiry more difficult than it otherwise would have been, he did have the assistance of Mr Maile. Accordingly, I rejected the first application for reasons more fully set out in the directions annexed to this Report. At the beginning of the public inquiry, Mr Maile did not renew his application that the beginning of the public inquiry should be adjourned. He did indicate that it might from time to time be necessary for him to seek short adjournments to take instructions from Mr Faulkner and, for my part, I indicated that I would not be unsympathetic to this should it prove necessary. In the event the inquiry ran smoothly and I think that Mr Maile would have had the opportunity to take the instructions that he needed during the ordinary adjournments that occurred in the course of the inquiry.

Application to amend the neighbourhood relied upon

18. As regards the neighbourhood and locality relied upon, as explained above, the application form defined the relevant locality or neighbourhood relied upon by reference to a map. In a letter dated 13 September 2012 to the Registration Authority, Mr Faulkner said:

> *It is clear from the comments of the various objectors that there is some confusion as to what I state is the locality neighbourhood. Indeed the wording of Part 6 of Form 44 could have been better formulated. Therefore for clarity I formally apply to amend Part 6 of Form 44 to reflect the following:*
>
> *The localities are the Coppetts Electoral Ward of the London Borough of Barnet and the Alexandra Electoral Ward of the London Borough of Haringey. The neighbourhood within those localities that I am relying upon is that of the Freehold which for the avoidance of doubt is bounded by the following roads: - A 406 (Pinkham Way), Colney Hatch Lane and Goodwins*

Vale together with the western and northern boundary of the Muswelll Hill Golf Course and the boundary of the section of Network Rail land between the golf course boundary and the A406.

19. There was no objection to this amendment, and I permitted it to be made. The neighbourhood thus defined was helpfully drawn on a large scale map and that map was available to the parties at the inquiry and to the witnesses.

20. I can here note that it was not contended that Mr Faulkner could not rely upon the localities which he had identified and I do not refer to this matter further[5].

Application to amend the application form by the substitution of 15 October 2009 for July 2010 in Part 4 of the application form

21. The third matter was more complicated. By my direction dated 23 February 2013, I had rejected Mr Maile's application to amend Part 4 of the application form as set out above before the beginning of the public inquiry. Mr Maile then renewed his application to amend the application form at the beginning of the public inquiry. I again rejected it for essentially the same reasons. I need in my Report to explain this decision, although my reasons will be apparent from my direction.

22. As explained above, the application is made under section 15 (3) of the Commons Act 2006. The date that Mr Faulkner entered in Part 4 of the Form as indicating the date on which he considered use as of right ended was July 2010.

23. In Part 7 of the Form, Mr Faulkner said

The land has been used by the inhabitants of the localities as described and set out in section 6 ... for a period of more than 20 years from 1988 to 1st July 2010 (and for many years prior to that period) ...

and

The Applicant and others will and do aver that they have used the land as a town or village green as of right without let or hindrance until July 2010 when a fence was erected which excluded public access to the land.

24. By a letter dated 13 September 2012, Mr Faulkner wrote to the Registration Authority as follows:

The Commons Act 2006 at section 15 allows for the back dating of an application for the registration of a town or village green by up to 2 years from the date of the submission of Form 44. I entered a date of July 2010 when the land first became a village green. This was clearly an error in

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5 It is possible to rely upon a neighbourhood (singular) in localities (plural): see *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674 per Lord Hoffmann at paragraph 27.

calculating the dates as I did not fully understand the concept of the provision set out in section 15 (3) of the 2006 Act. Therefore, for clarity, I formally request that Part 4 of Form 44 should be amended to that of the full two year's concession to the 15 October 2009 and that consequently that date should be entered into Part 4 of Form 44.

In making this application I submit that there is no prejudice to any of the objectors, indeed this is clear from the words of Lord Hoffmann at paragraph 61 and others on the panel of judges in the House of Lord's decision in the Trap Grounds case. Therefore in my submission there are no grounds in law for the Registration Authority not to grant this application to amend Part 4 of Form 44 ...

25. In order to understand the application for the amendment, it is necessary first to appreciate that it was made on the basis that the application for registration was effectively made on 15 October 2011. On the back of this, Mr Maile then argued that the effect of section 15 (3) was that Mr Faulkner was able to take advantage of a "concession" made by the sub-section that an applicant had only to show qualifying use down to two years before the application i.e. 15 October 2009.

26. The Objectors' position was that the application was made on 24 February 2012. If this be correct, the effect of Mr Maile's amendment would have been to make it impossible for Mr Faulkner's claim to succeed because, on the face of the application, qualifying use would have ceased more than two years before the date of the application.

27. It seems to me that I cannot go behind the date on which the application was validated: I have to accept this as a given. If Mr Maile wanted to pursue the point that the application was in effect made earlier he would need to pursue that as a separate matter. But it seems to me that the date on which the application was received is likely to be a side issue. This is because I consider that Mr Maile has fundamentally misunderstood section 15 (3). It does not entitle an applicant to measure qualifying use down to a date two years before the application; rather **if, as a matter of fact, qualifying use has ceased** it enables an application to be made for a period of up to two years after the cessation.

28. It seemed to me that, first and foremost, the inquiry was concerned with was what were the facts of the case. On the face of it, that use had ceased in July 2010. If the evidence showed it to have ceased at some other time, then that would be the occasion to consider the implications for the application – potentially giving the parties the opportunity to make further representations at that stage.

29. Accordingly I rejected the application to amend because it seemed to me that no proper basis for making it had been advanced at that stage.

30. In the event it will be seen from my report I have found that qualifying use ended in about June 2009: in short, that fencing was put up more than two years before the application. The effect of this is that the application must fail because the application post dates the cessation of qualifying use by more than two years. In the light of this,

it should be noted that if I had permitted Mr Maile's amendment (and if, also – in Mr Maile's favour - the date of the application were taken to be 15 October 2011), I would still have found that qualifying use had ceased more than two years before the date of the application.

Irrelevant matters

31. I should emphasise that I am not concerned with whether it would be a good idea that the application site be registered as a town or village green, so that it would be preserved for use by local people for informal recreational use; and not developed for any other purpose. I am aware that the North London Waste Authority do have proposals for a waste plant the site, and that those proposals are controversial. The merits of those proposals are irrelevant to the matters I have to decide; I am concerned solely to make an assessment of the historic use of the land in order to determine whether the requirements of section 15 have been met.

Procedure

32. I should also add that the decision as to whether the land should or should not be registered is not mine but remains that of the registration authority. I make a Report and recommendation to the registration authority; the registration authority could reject my recommendation if they had good reasons for doing so.

33. This is an appropriate place for me to set out the procedure which I suggest that the registration authority should adopt after receiving my Report. I consider that the Applicant and the Objectors ought to be given a reasonable period - say 21 days - to comment on my Report. If there is any matter of substance that arises, it will be appropriate for me to have the opportunity to comment on the comments by way of an Addendum Report. I would prepare this within 21 days of the expiry of the initial 21 day period. Thereafter the matter can be put before the appropriate committee, and a decision reached. The advantage of this procedure is that if there are legitimate concerns as to the correctness of any matter of substance in the Report, I will have the opportunity of considering them. This will, I hope, both ensure that the eventual decision is correct and also reduce the possibility of judicial review.

The inquiry

34. The inquiry was held on 4, 5, 6, 7 and 8 March 2013 at the Cypriot Community Centre, Earlham Grove, Wood Green, N22 5HJ. As I have indicated, the Applicant was represented by Mr Chris Maile. The London Borough of Barnet and the North London Waste Authority were represented by Miss Morag Ellis QC and Miss Clare Parry. The London Borough of Haringey as local planning authority did not appear.

35. The evidence was given on oath, in accordance with the directions for the inquiry given by Mr Alesbury[6].

36. I held an evening session of the public inquiry on 5 March.

37. I carried out a site inspection, accompanied by the representatives of the parties on 22 March 2013. I walked around the area, unaccompanied by the representatives of the parties, on 29 May 2013.

38. In addition to Mr Maile's application to amend the application form two other preliminary matters were raised, one by Mr Stephen Brice on behalf of the Pinkham Way Alliance.

Submission by Mr Stephen Brice on behalf of the Pinkham Way Alliance

39. Mr Stephen Brice is Chairman of the Pinkham Way Alliance, a company limited by guarantee. The Alliance was formed after the disclosure of the plans of NLWA for development of the site and has around 3,500 supporters. It represents residents, residents' associations and businesses in Haringey, Barnet and Enfield and several of its supporters live in the Freehold and Redbrick Estates.

40. Mr Brice pointed out that in its capacity as registration authority, Haringey LBC had received a large number of representations by way of support by e mail. He considered that, following receipt of these representations, a data base of consultees should have been set up so that, in due course, these consultees would have received notification of the public inquiry.

41. Mr Brice wanted his objection "placed on the record"; he did not ask me take or recommend any action in the light of his concern. It may nonetheless perhaps be helpful for the registration authority if I do make some observations upon Mr Brice's comments.

42. There was extensive initial consultation, beyond what is required by the regulations and subsequently a web site was established on which the date of the public inquiry was posted. The Applicant and the Objectors with an interest in the site were fully involved in the process whereby directions were given for the inquiry. I would expect the village green inquiry to have been quite "high profile" in the area. As I have indicated, the North London Waste Authority has controversial proposals for development of the application site and the effect of registration of the land would be to frustrate those proposals. Moreover, the neighbourhood relied upon is quite a small one and I would expect the occurrence of the public inquiry to have been well known. In the circumstances, it does not seem to me likely that the failure of the registration authority to establish the data base suggested would have led to anyone (or at least,

[6] I do not think that it is clear whether there is power to administer oaths in the context of a non-statutory public inquiry. Certainly there is no specific power to do so.

not any large number of people) who might have had relevant evidence and who wished to give that evidence not coming forward. I do accept that Dr Natelson was not aware of the inquiry until a very late stage, but he does not live in the neighbourhood. However, ultimately, the way the system works is for an applicant to take upon himself of obtaining sufficient evidence to support his application and there is no requirement for the public to receive notification of any public inquiry.

Submission by Mr Geoffrey Lever on behalf of Mr Stephen Brice (in a private capacity)

43. For the purposes of this submission I need to record that Mr Brice lives at [redacted] Churston Gardens N 11 2NJ.

44. Mr Lever submits that the London Borough of Haringey has no power to object in its capacity as planning authority because it lacks any sufficient interest to do so. In this regard he draws a contrast between the position of a local authority which he accepts might properly object if it were a landowner – and of course he did not object to the standing of the London Borough of Barnet in the present case. If he were wrong about this, he further submitted that in this particular case, the London Borough of Haringey had no power to object because the officer making the representations had no delegated power to do so.

45. On the first question, Miss Ellis referred me to Gadsden on *Commons and Greens* (2nd edition: 2012), pointing out that the learned author's view is that where under the regulations "pilot" registration authorities have a duty to refer applications in which they have an interest to the Planning Inspectorate, an example of such an interest might be where the registration authority (as planning authority) *has adopted a clear policy position about the development of the land, for example by allocating the land for development in a unitary development plan.* This suggests, she submitted, that a local planning authority do have standing to object to an application to register a town or village green.

46. If I postulate a local authority which both owns a site which is the subject of an application to register a town or village green and is also local planning authority in respect of that site, it seems to me that that authority may be just as opposed to registration wearing its planning authority "hat" as wearing its landowner "hat". Of course, the fact that registration would have an adverse effect on planning policies which it seeks to promote will be irrelevant to the issue of whether land should be registered as a town or village green; but that does not prevent the local planning authority presenting factual material which bears upon the use of the land. It seems to me that this is essentially what the London Borough of Haringey in its capacity as planning authority have sought to do in the present case and the factual material which they wished to present is before me. I should emphasise however that it derives no special status by virtue of being presented by the local planning authority. I note that the London Borough of Haringey as local planning authority did not seek to participate at the public inquiry.

47. In the light of the observation made at the conclusion of paragraph 46 above, I do not think that I am concerned with Mr Lever's more particular challenge. It seems to me that "the genie is out of the bottle", so speak; and the factual material is before me. I cannot pretend that it does not exist and I cannot think that be any rule of public policy which would require me not to look at the material if (as to which I express no view), the officer had no power to make those representations on behalf of the planning authority. If Mr Brice wishes to pursue the matter further, he should do via representations to the London of Haringey as local planning authority.[7]

The application site

48. The application site is about 17 acres in size. It comprises the site of the former Friern Barnet Sewage Works, land which was subsequently used as a tip. It is bounded to the south by the course of the Muswell Hill Golf Course, to the east by the mainline railway from King's Cross to the North, to the north by the North Circular Road, and to the west by a group of five blocks of flats fronting on to Alexandra Road and by the Freehold Community Centre. There is a short section of the western part of the site that fronts directly on to the pavement of the northern end of Alexandra Road.

49. The site is extensively overgrown with trees and shrubs although there are paths through and some open areas. There are the remains of various concrete tanks and similar structures surviving from the former sewage works still visible. Of the tip, most notably were visible dumped concrete lamp standards. There were also visible the remains of a number of burned out cars. I saw the site in February after there had been chemical treatment in respect of Hogweed growth.

50. The London Borough of Barnet helpfully produced a plan which showed the site and the various different sections of fencing (with dates) with which it has been surrounded. It is **Annex 2** to this Report. Different letters of the alphabet identify various points on the perimeter of the site, and the witnesses referred to this plan in giving evidence. This plan was not a controversial document, although the extent of the fencing that was in place at any one time was controversial. There are two gates in the section O and N, and a gated vehicular access on the roundabout between B and C. At the time of my visit the site was fenced and the gates all padlocked. There were signs of former gaps in the fence to the golf course which had been repaired; and of gap between point J and K, which had been repaired. There was not a gate between point J and K.

[7] In the event, the factual material provided background information, which does not require separate notice in this Report. The arguments presented were similar to those of the London Borough of Barnet and the North London Waste Authority and are not separately addressed.

Documentary evidence

51. There was a wealth of documentary evidence which was placed before the public inquiry. To some of it, witnesses spoke and it will accordingly be noticed in my record of the oral evidence. However much of the material speaks for itself and is not intrinsically controversial, although some of the conclusions to be drawn from it may be. I set out relevant matters from this material in this section of my Report.

52. There is an aerial photograph which dates from 1962. This shows the sewage works when they were still in operation or, at any rate, at a time when its infrastructure was still intact. Behind the Alexandra Road flats and in the south-east corner of what is now Hollickwood Park there is a rectangular open area. This corresponds to an area identified for allotments on various historic plans that were before the inquiry but does not appear to be being used as allotments. Perhaps this was former allotment land at this time[8].

53. There is an aerial photograph which dates from 1971. This shows the situation after the sewage works had closed and the infrastructure largely removed. Behind the Alexandra Road flats and in the south-east corner of what is now Hollickwood Park is now seen an open area which is square shaped.

54. It seems clear what this area was.

55. In 1964 Friern Barnet UDC granted itself planning permission for housing development on the site of a former recreation ground in Cromwell Road. (Cromwell Road is in the northern part of the neighbourhood, to the east side of Colney Hatch Lane). This proceeded on the basis that in its place the Friern South Playing Field should be provided. I do not know where the Friern South Playing Field was but it evidently was not on the east side of Colney Hatch Lane. This is because local people objected to the development on the basis that there should be provision on east side of Colney Hatch Lane, and the Barnet LBC agreed that there should be such provision. Accordingly they agreed to the development of half an acre of the former sewage works site ("to the rear of housing site No 4 in Alexandra Road") as a play space at an estimated cost of £550. In my papers I do not have a complete "paper trail" of all the relevant documentation, and the last minute that I have (of the Parks Committee dated 13 October 1964) the Parks Committee appears to be putting the proposal "on hold". This led the Controller of Legal Services of Barnet LBC to say in a report dated 6 May 1998 that he could not substantiate the claim by local residents made in 1998 that this area of land had been laid out. It seems to me that the aerial photograph shows that it was, a matter which was corroborated by the oral evidence before me of Lee Dray and Linda Dray.

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8 Mrs Hopkins's Statement suggests this: see paragraph 154 below.

56. There is an aerial photograph which dates from 1981. This seems to show this open area considerably extended, both northwards and eastwards. Nothing in the oral evidence before me referred to this, and there is nothing in the documents that refers to it either, save that the minute of 13 October 1964 referred to the possibility of increasing the half acre area "at some time in the future". It may be that this is what happened.

57. In 1998 the London Borough of Barnet applied to the London Borough of Haringey for planning permission for housing development on part of the site. There were a number of objections by local residents and, in particular, by a body called the Freehold and Hollickwood Residents'Campaign; latterly the Freehold and Hollickwood Residents' Protection Committee. It sounds to me like an ad hoc group which had come into existence to oppose the development[9]. They took the point that the development would involve the loss of part of the park in circumstances where according to them Barnet LBC were under an unfulfilled obligation to provide open space. Their account was as follows. Open space had indeed been provided in accordance with what was envisaged in 1964. However Hollickwood Park had been created by the Department of Transport in compensation for land taken for road widening and improvement schemes elsewhere in the Borough. That Park had incorporated the pre-existing open space provided in 1964. Accordingly after the development of Hollickwood Park, the local community were "owed" the land which had been incorporated into the Park.

58. I am not called upon to express any view as to the merits of this argument. It is relevant however to understand that this what local residents were saying in 1998 because it gives the context for a number of other comments which they made in 1998, which are relevant to the factual position obtaining at that time.

59. In a letter dated 12 November 1998, the Freehold and Hollickwood Residents' Protection Committee said this:

60. Rights of public access to remainder of site

> *One must also question whether the manner in which this was all dealt with by the UDC allows the community to claim greater rights of access in terms either of public footpaths or, indeed, the law relating to common land. As the fencing surrounding the earlier play area during the mid-sixties was allowed to deteriorate, the whole of the area became available to and was used by local residents. It is also noted that in the map attached to this letter, a greater area than one half acre was formerly taken up with allotments.*

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9 The Committee in August 1998 included K Arden, M Bartlett, V Cunin-Tischler, L Dray, J Duval, J Hardy, J Harries, L Leahy and H Siverns.

At the very least the park should provide gates for access onto the well established pathways that cross the remainder of the site. Even the one gate that does exist, on the northern margin of the park near the entrance has become blocked with landfill from the roundabout. This matter should be remedied as a matter of course.

61. There thus appears to be evidence that one of the gates between O and N provided access to the application site, albeit it was obstructed at this time.

62. There are aerial photographs dating from 1991, 2003, 2006, 2008 and 2010 which show circular tracks on the application site. They all also show a site with extensive areas of trees, shrubs and vegetation.

63. I shall refer to documentary evidence about the area known as the Freehold that was before the public inquiry when I come to discuss the arguments about the existence or otherwise of an appropriate neighbourhood.

Evidence on behalf of the Applicant

Oral evidence

64. **Lee DRAY** lives at [redacted] Alexandra Road N10. Before he lived there he lived at [redacted] Alexandra Road. He was born in 1986 so is now aged 27. He attended Hollickwood School between 1990 and 1997.

65. He knew from his family talking about it that he lived in the Freehold.

66. When he was younger he went on several day trips organised by the Freehold Community Asssociation, of which Mr Faulkner is a member. They went to Chessington, for example. There was a youth club run in the Community Centre which Mr Dray used to attend. Events were held in the Centre for the local area.

67. Mr Dray remembered a number of small businesses that used to be within the area but have now left. He instanced the laundrette on the corner of Pembroke Road, the shoe factory that was turned into flats, the premises of a coach operator (Andrew West?) who used to run their holidays. There was another pub, the Royal Oak, which has been turned into flats and there was a bus garage which has closed.

68. Mr Dray began by saying that he had lived on Alexandra Road all his life and that if you lived in Alexandra Road or in the Freehold then you knew about the land - "the Dump" - because that was where everyone would go to play and to hang around - family and friends. Friends from Hollickwood School and friends who were not from the Freehold would use it: *we used to all meet up over there.*

69. Mr Dray said that he began using the dump when he was about 3 years old with his Dad, who used to take him over there to ride his motor bike. This was in the flat land immediately behind the Alexandra Road flats. (One can see this land in one of the

photographs produced by the Applicant, although the boy on the motorbike is not Mr Dray). When family would come round, they would play run outs. (By "run out" Mr Dray meant a game of tag between two teams). He played on it with his school friends: Sarah, Claire, Joseph, Craig and Dean. They all lived in the Freehold.

70. He had had a dog throughout his life. The longest he had not had a dog was about a year. In the spring of 2009 he would be taking his dog on to the site at the weekends. Point O was overgrown by that time and he would access the site via the gate in the fence between O and N or by a hole in the park fence. When he walked the dog, he based his walk upon the paths. He did not use the paths all the time. If his dogs ran across the field, he would leave the path to retrieve them. His walk would be based on the path.

71. There was a tent on one occasion between E and F - about half way along. Mr Dray would have been aged about 11. He didn't know who it was - it was a homeless person, and wasn't pleasant at all.

72. Before the park was built there was a concrete slatted fence running to the back of the flats on Alexandra Road

73. In many places the fence was broken; one could walk from the estate on to the land.

74. Also there was an alleyway to the south of the flats. This now runs into the Park but which before the Park was laid out provided free access into land. After the Park was laid out, this access via the alleyway was blocked off, but it was then possible to go down the alleyway on to the golf course through a gap in the fence and get on to the golf course between holes in the golf course fence between I and F.

75. Also the golf course fence had holes in it.

76. The Park was laid out in 1994. A fence was built around the park. In Mr Dray's view, the purpose of this fence was to keep people in the Park not to keep them out of the land.

77. Over the years holes were made in the Park fence which allowed access.

78. There was one access hole next to the pond. One the aerial photograph Mr Dray thought that he could see a desire line going to the hole. There was a clear path to it through the bushes. It was a hole in the fence which someone had made. There were two struts missing. Mr Dray couldn't help with the date at which they went missing.

79. There were two holes at the return and where the Park fence joined the golf course fence there was a gap there.

80. There were two gates at the entranceway to the Park alongside the Freehold Community Centre - between O and N. These were unlocked for long periods of time. Mr Dray was not sure when these gates were locked.

81. The Retail Park to the North of the North Circular Road was built in about 1998. The accesses that Mr Dray described as being there from the Park remained. There was no fence around the roundabout until 2000. This allowed access straight on to the land.

82. A to O shows the original iron fence to the sewage works.

83. After the retail park was constructed there was a large gap at O.

84. The green palisade fencing has now filled this gap.

85. The last time Mr Dray was able to get on to the land was in June or July 2010. It was in the summer holidays. He remembered going on to the land with his younger brother. It was in 2010 to the best of his knowledge. He had accessed the site via the first gate as you enter the park between O and N. As far as he was aware that gate was open. There was a padlock on it, but it was never locked properly.

86. Between D and E there was a fence on the North Circular Road which was old and broken down in many places.

87. There were a number of holes in the fence to the land. This was always the position until the green palisade fence was put up.

88. There are several abandoned cars near the roundabout. There are several abandoned cars between the golf course and the park and also where the old sewage pits are. These would have accessed the site from the roundabout. These cars only came on to the land after 1998 when the retail park was built. People set fire to the cars.

89. Mr Dray said that he had used all the site. He had used the top part of the site near the golf course for run outs. (By "run out" Mr Dray meant a game of tag between two teams). If he was going to play hide and seek he would go to the back of the dump, where there were more trees. He played hide and seek from the age of six to about 14 - he had grown out of it by the time he was 14.

90. There was a "scary" area near the sewage works and near the railway land and the North Circular Road. He didn't go there when he was young. He would only venture up to the North Circular Road if there were a group of them because it was scary to them.

91. They took bottles from the site, near H. Other people dug them up, and they took them. He had a box of bottles from the site at home.

92. There were newts alongside the North Circular Road between D and E. His mother had gone over there in the 1970s and he had gone over there with his mother when he was still at Hollickwood School, sometime in the 1990s. He had since gone down there loads of times with other people, although he wouldn't go unless there were about 10 of them.

93. He used the site between the ages of 11 to 16.

94. Other people would play games on the land. There would be two teams - one from Mr Dray's area and one from the Redbrick Estate (an area to the north of the North Circular Road). Sometimes there would be 20 or 30 people and sometimes 10. The numbers would be higher in the summer. The majority of people - 60% or 70% - would have been from his area. Mr Dray's cousins from Barnet came down and played with them.

95. There would be adults there walking their dogs. There was someone who collected golf balls from the golf course. There were people collecting flowers. There were people watching their children play. There were people riding the motor bikes round the tracks on the site from the roundabout.

96. They were never approached and told that they could not use the land or asked to leave, although police officers did check that the bikes were not stolen. They never saw a Council official (except perhaps for the men in white coats).

97. People also rode pushbikes - 3 or 4 people or 5 or 6 sometimes. They used the area near the golf course - where there are some humps and bumps.

98. There was fly tipping around the roundabout. This was where there was the easiest access.

99. Chris Faulkner is a member of the Community Association. Mr Dray went on several day trips organised by them. There was a youth club run in the Community Centre which Mr Dray used to attend. Events were held in the Centre for the local area.

100. Mr Dray never used the land for train spotting and he cannot say for certain that he saw people train spotting.

101. There was a fence erected around the sewage pits.

102. The vegetation a few years ago was not as big as it is now. Since then the tees have grown and the vegetation has taken off. There are bluebells scattered across the land.

103. Mr Dray agreed that the details of the fencing shown on **Annex 2** were accurate both as to where the fencing was and as to when it was erected.

104. Mr Dray regarded the Freehold as being the area from Pembroke Road and running along Colney Hatch Lane; he said that he was not too familiar with what happened to its boundary after that. He derived what he regarded as the Freehold from local knowledge. He knew that he lived within the Freehold but he was not sure where he would put the boundaries.

105. In answer to my questions, Mr Dray said that he didn't recall the fencing being erected in 2009 - at that time he wasn't using the site so often. He did however

remember the occasion in 2010 when he accessed the site via the gate. On this occasion the padlock was just hanging on the gate with the claw open. The gate had been open when he approached it. He had expected the gate to be open because it had always been open. He had accessed the site several times through the gate with the claw like this. He agreed that with the padlock like this anyone could at any time have removed the padlock. They had not however done so.

106. **Kim MASON** has lived at [redacted] Pembroke Road since February 1988. She moved there from Alexandra Park Road where she had lived since 1982.

107. She remembered going to a summer fayre at the Freehold Community Centre in 1991 with her youngest daughter (then a baby) and her mother (who was staying to help with the baby). She was intrigued by the name and, having always been interested in local history she went to the library and found detailed information about the history of the area. This included an explanation of the name "Freehold". There had been events at the Centre since 1991 such as jumble sales and quiz nights; and the kids used to go to clubs there, such as ballet.

108. She identified the boundaries of the Freehold Area as being Colney Hatch Lane, Alexandra Park Road, the railway line and the North Circular. She would include people living in the estate at the bottom of Colney Hatch Lane in George Crescent.

109. Mrs Mason said that the area had changed a lot in the years that she had been there. However she said that it still retained a very strong sense of community and that people banded together to protect the few resources which they still had. She was involved in campaigns to prevent development on what is known locally as Skate Attack field in the 1990s and 2000s and the successful campaign in 2007 to save Hollickwood School from being closed and the land sold off. However the area has lost many local businesses and landmarks. The shoe factory in Sydney Road has closed as has the betting shop and Royal Oak pub just a few doors up. When Grosvenor Road was gated it was effectively closed off, and all the local businesses there eventually shut down, as there was no passing trade. She remembered using the launderette on the corner of Cromwell Road in the 1990s, but now all but one of the shops in Cromwell Road have closed. There used to be a corner shop on the corner of Pembroke Road and Hampden Road which was thriving when she first moved to the area but when Tesco opened business dropped off and the shop was converted into a private house in the early 2000s. The bus garage on Hampden Road closed down, again to be developed for housing.

110. She could not remember the Park opening and could not say that she remembered the time before the Park opened.

111. Mrs Mason started using the Dump in around 1993. It was a good place to walk her dog as he had a tendency to fight. He was nervy and sensitive to loud noises - she remembered that once when her husband had been walking him in the Park he was

startled by the noise of a motorbike on the Dump and made his own way home. There were few other people over there at the times that she went on to the site - she chose times when there weren't other people about - but she did know that other people used the site. She didn't keep her dog on a lead. There were clear paths through and Mrs Mason agreed that, because the paths were worn it was possible to surmise that most people walked on the paths. She used the site regularly to walk the dog - at least once a week and also to look at the birds and plants there. She remembered the apple trees in blossom in the spring and the abundance of wild flowers, including wild roses in the trees. These were along the paths but also in the large open area near the golf course. She said that people used to pick apples from the trees but she never did because she knew the land had been a sewage works previously.

112. Mrs Mason also used the site as a place for quiet reflection. She vividly remembered going over there on the weekend after her husband had died suddenly from a heart attack. The date was 7 April 2002 because he had died on Easter Sunday, the week before. She went over to site on that day at the same time that he had died because she wanted to be alone and reflective. She sat at the far side near the railway line - there was a large block of concrete in a clearing where she sat. In that year she went on to the site very often for the solitude, and she would leave a stone on the concrete block to show that she had been there. After her husband died she would go over to the site 2 or 3 times a week for 2 or 3 months; then weekly. She didn't see other people because she tucked herself away, wanting to be quiet and reflective.

113. Mrs Mason's daughter was friends with Sarah Faulkner of Crown Road and Claire Creed of Sydney Road and they used to go regularly to play with friends on the land. Her daughter tells her that she went on to the land between 1997 - 2000 with her friends from primary school (these being the years she was at primary school). Her daughter recalls finding a marble over there when she was at primary school, which she described as a treasure.

114. Her children were born in 1987 and 1991 and went on to the site unaccompanied by their mother. She would not have been pleased to know that they were going over there on their own, and would have preferred it if they had asked her first, because they were vulnerable.

115. Mrs Mason is a keen photographer and took a series of photos in March 2011, which she called "Urban Wasteland". These focused on rusting cars and the beauty of the plants and trees around them. She had got in through a hole in the fence near K, where the metal palisades had been removed. She had taken another series of photographs before December 2005. At that time there were at least 13 abandoned and rusting cars over there. They were all over the site but especially in the wooded area towards the railway line and on the side near the golf course between H and I. As regards the position as regards K, Mrs Mason told the inquiry that the Council had mended the

fence last Friday morning and on Sunday there had been a hole in it. She agreed that "there had been a bit of a campaign going on".

116. Mrs Mason went on to the land through the park. There may have been a rudimentary fence there, but she said that everyone knew how to get on to the land. She at also accessed the land through the side gate near N. It was also easy to access the land from the Orion Road side since there wasn't a fence there; and then when one was erected there were many broken sections which were easy to get through. Mrs Mason remembers walking over there with the dog and coming out by the Orion Road roundabout. There wasn't a fence there at the time. She slipped down the slope and badly twisted her ankle, so that that she had to hobble home. She dated this as between 2003 and 2004 - it would have been before December 2005 when that dog died. On this occasion she had got on to the site at B - i.e. she left the site at the same point at which she entered it. She had probably accessed the site at this point at that time because it was the easiest way to get in, and Mrs Mason accepted that this indicated that the park fence did not at that time have a hole in it. The gate between O and N may have been overgrown and thus it may not have been possible to get on to the site at that point. She remembered that at O there was originally black fencing; she did not remember a time when it wasn't fenced at all. As regards O, this was very overgrown and she did not think that there was a gap there in 2003 - 2004. By the roundabout at B, it wasn't overgrown; the slope was about half as high as the witness table. After 2005 there would have been gaps in the park fence. Mrs Mason didn't think that she used the gate between O and N after 2005. This was because the dog that had to be separate from other dogs died in 2005 and she had less reason to go on to the site; she could walk her dog in the Park. However there were occasions - say, every couple of months - when she did go on to the site, which she did through a hole or holes in the fence. Mrs Mason agreed that since 2009 she had only gone on to the land through a hole in the fence at K. She had not gone through the gates between O and N after May 2009. She said that she hadn't been on to the site at all since 2011 i.e. when the "Private" signs went up.

117. **Linda DRAY** lives at [redacted] Alexandra Road, N10 2EY which is one of the flats between Alexandra Road and Hollickwood Park.

118. Mrs Dray was born in 1969 and lived at [redacted] Alexandra Road with her parents and brothers and sisters. She moved to [redacted] Alexandra Road in 1987 and to her present address in 1994.

119. Her parents were on the Committee of the Freehold and they used to go on summer coach trips to the seaside. This was before there was a community centre. She didn't know how the coach trips were organised - latterly they had been organised from the Community Centre. There used to be a youth club and they had football tournaments which raised money for day trips. It was mainly Freehold people who went on the coach trips but they did have families from outside.

120. She went to Hollickwood School from 1972 to 1979, and her brothers and sisters went there also.

121. She said that lots had changed in the Freehold during her time living there. There was no open space really now - the Field on Cromwell Road that used to have play equipment for children has gone. The Hampden road corner shop has gone. The ice cream shop has gone. The bus garage has gone.

122. She said that she and her family used to go over to a field on the Dump where the Park is now, accessing it through the garages at the back of the flats. There was originally a fence round it but over time it gradually disintegrated or fell down. They used the lorries coming up and down and they would make camps and hide.

123. In 1989, Mrs Dray was 30 years old [thus in the text]. Lee and Adam were born by then and their father used to take them over to the site on their motorbikes. They got taught how to ride a motor bike over there. Mrs Dray did also. They would go over to the site looking for wild animals, in particular foxes. A lot of children would go over there and hide or play run outs - Sarah, Claire, Adam, Lee, Joe, Ryan and Stephen and Darren Roche, and Shane Roche too when he got older.

124. On her son Adam's birthday one year, they all went over there. Mrs Dray remembered that, just before the Park was built, she was able to stand in the garden and call and her children would hear - beyond where the park is now, there was a mound and they would play on their BMXs over there.

125. When there was an eclipse of the moon they went over there with the telescope to get away from the houses. (When about ten years ago there was an eclipse of the sun lots of people watched it, but this was more up towards the Dump, in the Park. Sarah was there because Patsy came to get her. They were then at school aged about 14 or 15).

126. They started going over there because there wasn't anything else to do. She said that it was a little treasure hunt for them over there, using all the rubbish to build their camps.

127. They would access the site by the garages at the back of the flats. This was open and it was possible to walk straight on to site. Alternatively they got on to the land through the broken down fences; or down the bottom by the Community Centre. When Orion Road was built, there was no fence, you just walked over the humps on to the site. There was a wooden fence there but it kept getting knocked down and dump rubbish there. It was made of plywood or something, but there was still a gap. The gypsies got over there for a while. Mrs Dray thought that this happened when Lee and Adam were still at school. It used to be possible to enter the site through the gate between O and N. Right next to O there was no fence but a mound of mud which got overgrown.

128. There were newt ponds down the bottom - that's where they used to drive the sewage vans vans via the dirt road. There used to be frogs and newts where the sludge beds were. Mrs Dray went over there when she was a child and had taken the children over there a couple of times. The top bit of the site was where the Barnet vans would dump the rubbish and the tractor would push it all up in a big pile. Mrs Dray remembered a big hollow tree at the back by the railway lines.

129. She had gone over to the land last summer (2012) with Paris and Bobby and the dogs through a hole in the fence at K. The dogs had a good run around and the children looked if they could see foxes or anything but they only went in a little way. Mrs Dray considered that it never used to be as wild as it is now and that there used to be more pathways.

130. **Laurence HARDY** operates the tattoo studio at [redacted], Sydney Road N10 2NL. He has done this for over 30 years. He used to live over the business but 5 years ago he moved to Colney Hatch Lane – to a house north of the North Circular Road. He was born in 1958 and has lived in the area ever since.

131. He had seen many changes in the Freehold neighbourhood over the years. In Sydney Road they had lost the Burnham's Ice cream Factory and Shop (a famous local enterprise), a handbag and shoe factory in Roman Road, the bookmakers, the bus garage and the Royal Oak pub, for so long a hub for the local community, the Alexandra Arms pub and the laundrette in Cromwell Road. The vibrant and diverse parade of shops in Weatherill Road closed when road closures were implemented. Britain's first film studios were in Pembroke Road and they used a pub in Alexandra Road in a short film. That pub suffered a direct hit in the Second World War. Mr Hardy derived these facts from his late neighbour, Mr Fred Hetherington, a mine of information and "of a long standing Freehold family". Mr Hardy did not think the properties fronting on to the west side of Colney Hatch Lane were part of the Freehold, nor the roads off the west side of Colney Hatch Lane such as George Crescent, Albion Avenue or Halliwick Road.

132. Mr Hardy had used the land known as the Dump since 1979. He used to walk his dogs over there. His daughter had attended Hollickwood School from 1993 and they would walk their dogs on the land. Mr Hardy's daughter was born in 1989 and she lived with Mr Hardy until she was 15. However Mr Hardy continued walking his dogs on the land thereafter on a daily basis. The application site had always been popular with dog walkers. His next door neighbours Mr James and Mrs May Walker used to walk their dogs over there each day. Mr Hardy sent many an evening fox watching on the site and said that it was also an ideal place to watch birds, including green and spotted woodpeckers. Along the boundary with the golf course there is part of an old dump where it is possible to dig for old bottles. He still has a collection of these. Many people used the land for blackberry picking. People used the land for mountain biking and for trials biking. Many local people used the land for ornithology, dog walking

and walking in general. Many local children used it – it was a great play area. It was possible to access the land via the accessway which now provides access to the southern part of Hollickwood Park. Even after Hollickwood Park was laid out in 1994, access could still be gained by two separate gates from the Park, and these were not padlocked until recently. He had stopped using the site when a padlock was put on the gate and signs were put up. Mr Hardy believed this to have been in 2010.

133. Before Hollickwood Park was laid out there was no restriction to access on to the site – access was by an alleyway from Alexandra Road. After the Park was built there was a gate at J or K in the park fence through which it was possible to walk. This wasn't locked. When it was put to Mr Hardy that there had never been a gate in this section of fence, he accepted that he might have become confused. He thought that access at the gates between O and N had stopped at the time that signs had gone up. He had used a gate between O and N. He couldn't remember precisely when the green palisade fencing had been erected or when the gates between O and N had been padlocked. He thought that it was more or less at the same time as notices were put up.

134. **Christopher DORE** lives at [redacted] Sydney Road, N10 2RN and has done so since May 1976.

135. Mr Dore stated that in the late 1970s or early 1980s he became a member of the Freehold Residents' Association. In conjunction with the London Borough of Barnet, this body sought to improve the area and the lives of the people living within it. Two local councillors were also involved, namely Cllr Phil Williams and Cllr Mike Harris. During Mr Dore's time with the FRA, a plan emerged from the London Borough of Barnet to build up to four community centres within the Borough. These were to be offered to communities which put up a strong case to the proposing committee. Mr Dore was able to secure funding for a centre on the edge of the old sewage works. The activities of FRA extended to the west side of Colney Hatch Lane and he believed that there were one or two members of the Committee who lived on the west side of Colney Hatch Lane. Mr Dore did not know what the conditions of membership for the FRA were; he thought that it no longer existed. He considered that the neighbourhood as defined by Mr Faulkner was correct although he was unsure about the area west of Colney Hatch Lane and about George Crescent. He did not think that the church of St Peter le Poer was part of the Freehold.

136. When Mr Dore moved to Sydney Road he did not immediately use the application site, which he was aware of as a disused area. He had two sons, one born in 1981 and one in 1983. From about 1986, when his elder son was 5, he did use the area which became a place of recreation for him and his two boys. They would explore and enjoy the quiet of the area, Mr Dore encouraging his sons to appreciate the wildlife, particularly the birds and the butterflies. They also found the burned out cars interesting.

137. At one time, Mr Dore's elder son became obsessed with locomotives and *an often and familiar cry was heard "Dad, can we go and look at the trains"*. Mr Dore recalls that it was poignant because his family often used the line that ran on the eastern part of the site, on their way to see grandparents in Edinburgh. Mr Dore recalled that in the late 1980s a boy was killed having trespassed on to the railway lines from the sewage works site.

138. The family also acquired a dog at this time and many hours were spent walking the dog on the site, particularly in the spring and summer when the ornithological activity was at its height. Mr Dore remembered that his friend Edward, who lived in Pembroke Road, would spend a lot of time observing the various species. At this point Mr Dore would be using the site frequently – perhaps fortnightly, typically on a Sunday afternoon. After Hollickwood Park was laid out they used the application site less frequently because there were a mix of recreational facilities in the Park: the focus of the boys' recreational activity was on the Park. He considered that they stopped using the application site in the late 1990s, although there carried on walking the dog there until 2001, when he started to "lose his legs".

139. They were able to access the land from several points. Old railings were easily by-passed because of their age and condition; there was easy access from the pavement alongside the North Circular Road; and when the Park was established and a fence put around it, there was a gate added so that anyone could gain access to the area. In 1986 there was access between points J and I and there was no fence between D and E, so that there was easy access from the North Circular Road. There was also access from Alexandra Road near Point O. After 1994 when Hollickwood Park was laid out, it was possible to access the site by the gate between O and N. Mr Dore could only recall one gate in that section of fence. Asked about what happened after the 2009 round of fencing, Mr Dore said that access was very limited from that point on. At this point he was not frequenting the application site very much. He remembered walking along the North Circular and seeing it fenced but at that point he was not needing access at all.

140. Only occasionally or sporadically would Mr Dore see other people on the site.

141. On a sunny autumn afternoon – 24 October 2012 – Mr Dore decided to re-visit the site, as he hadn't been there for some time. He entered through a gap in the park fence at about K. Some palings were swinging on one bolt. There was no-one there except him. There had been a great deal of growth. The trees looked very beautiful.

142. **Rose BOYCE** has lived at [redacted], Sydney Road N10 2LR since October 1984. Her husband's family had lived there since 1957, moving to [redacted], Alexandra Road when he husband, Fred Boyce, was aged 9. The family moved to [redacted], Sydney Road when the new houses were built in the 1970s. Her mother-in-law still lives there. Fred Boyce attended Hollickwood School between 1957 and 1959; his brother Steven, who was five years younger, also did so. Mrs Boyce's own children went to the school: Katy

between 1984 and 1991; and William and Edward between 1992 and 2001.Mrs Boyce taught at the school between 1988 and 2001.

143. Mrs Boyce remembers that when she moved with her family to Sydney Road, Katy played in a small makeshift playground set up by local residents down by the boundary with the North Circular Road. They used to pick blackberries there. This disappeared when the Orion Road slipway was built as an exit from the newly built retail park. She remembered that she was working at Hollickwood School at the time that the Freehold community were trying to get their own community centre built – she said that it was an exciting time for the School and local residents when it was successful. The loss of the bus garage next to school to housing in about 1990 or 1991 was a sad loss. The loss of small businesses in the area has had a steady impact over the years. In the 1950s Mrs Boyce's mother-in-law remembers that there were shpos along the Cromwell Road leading down to the Alexandra Pub – a baker, a butcher, a greengrocer, a tobacconist/sweet shop and a shoe repairers. Mrs Boyce Snr also remembers a small hall where they would play bingo and a park or playground on the other side of the road where children would play. All these shops disappeared when the area was redeveloped in the 1970s – her present house was built on the park. Mrs Boyce remembers that the shoe factory on Roman Road was closed in mid 1990s. The Royal Oak pub, the Post Office next to it (which later became a betting shop) were all converted to houses some years later. Hollickwood Park opened in 1994.

144. Mr Boyce played on the Dump as a child. Mrs Boyce started using it in 1985. Katy and her friends would play on the grass area. She said that they would play hide and seek together. It was generally a popular place for children to play, particularly for those who lived in the flats on Alexandra Road. In about 1987 Mrs Boyce would accompany Katy and other members of the Woodcraft Folk who used to meet there for some of their activities. Their leader, Kate Norton and her children Tommy and Jessica were close friends. Mrs Boyce also used to go to the Dump when she worked at Hollickwood School. She would take the nursery class over to play on the grass, have picnics and go on nature walks over the rest of the site. This was mainly in the summer months but she does also remember collecting autumn leaves with the children. This would have been between 1988 and 1993 or 1994. She remembers during that time the whole school doing a project on the Dump, with every class being involved in some way – from map drawing to collecting and recording wild flowers. This concluded in an exhibition to which local people were invited. Edward Bunting of Pembroke Road, whose children also attended the School was involved in this and he helped to organise a special walk on the Dump with a local naturalist, who talked about some of the wildlife and rare wildflowers growing there. The School did not obtain consent for any of these activities. Mrs Boyce had completed the pre-printed form as to her use[10] stating that her regular use of the site ceased in 2001; she

10 See paragraph 12 above.

accepted that her personal use was associated with her work at the school and ceased when she stopped working there.

145. Mrs Boyce said that there were occasionally events on the Dump organised by local residents, and she remembered once that there was a bonfire night celebration. This was in the early 1990s or earlier – before the Community Centre and Hollicwood Park were built. William and Edward played in Hollickwood Park a lot and would also go up behind the Park on to the Dump to watch the older boys on their scramble bikes. There was a track laid out there which was very popular with the older boys and which was developed over the years by different groups.

146. The Dump was accessible by the path which runs between the Golf Course and the flats in Alexandra Road and Mrs Boyce further observed that there have always been other ways of getting on to the Dump. Her husband and his friends would access the land directly from the Alexandra Road flats but it was always possible to get in from "up the top", meaning the pathway. After the sewage works closed there were many ways through and the holes in the fence were never repaired or blocked.

147. Mrs Boyce's family have all grown up and moved on; she and her husband have recently retired. They have not been on the Dump for a few years.

Written evidence

148. **Josh DRAY** has lived at [redacted] Alexandra Road N10 2EY and has done so since 1995. He attended Hollickwood School.

149. Mr Dray remembers going over to the Dump all the time from a young age. His first memory is of being taken as a young child of 6 to the Dump by his father on the front of his motorbike. He played on the Dump throughout his childhood with his two brothers Lee and Adam, his cousin Reese, his friend Shane and Shane's two older brothers. He was aged about ten when he first went over to the Dump on his own. He and his friends would take their bikes over there using the gate in the Park. They used to ride all over the place on their BMX bikes. They used to take binoculars to watch the wildlife and his grandmother, Gill Hopkins, used to take him and his cousin Reese to the land to watch the wildlife. The children used to dig for bottles and also collected golf balls that had come over from the golf club. His mother had told him about the ponds where she used to play and collect newts when she was a child, and he would also go down there: down by the North Circular Road near the tunnel.

150. There were always plenty of places to get on to the dump. There were two holes in the park fence as well as the gate; and when the gate became too overgrown to use, he used to take his bike on to the site via the Orion Road roundabout – the wooden fence ended only a bit down the site and it was easy to get on. There was a fence along the North Circular but it had big gaps in it and it was easy to get on to the Dump from there.

151. **Gill HOPKINS** lives at [redacted] Alexandra Road and has done so since November 1967. She had six children, who all went to Hollickwood School. When she moved in Gary had started school.

152. She knew the area as the Freehold. There have been changes in the area. The old houses have been knocked down and there is a new estate in Cromwell Road. The bus garage next to the School has gone. There are only two shops left whereas there used to be a butchers, a greengrocers, a sweetshop, a DIY shop and a hairdressers. She remembers the Park being laid out. She said that *The children aren't as free as they were because they used to have the Dump to play in and they would be over there playing and climbing trees.*

153. She looked over the Dump from her flat. She can remember them dumping rubbish there. The kids would go over to see what they had tipped to see if there was anything worth having. She said that Gary would have been about ten when he started going over there so this would have been from about 1977 onwards. She recalled that once there was an accident on the North Circular involving a lorry carrying tomato sauce and they dumped cartons and cartons over it over there. So Ms Hopkins had cartons of tomato sauce brought home by her kids.

154. She would go over to the Dump to see that the children were alright; or if they were doing something at school which involved collecting plants, leaves or seeds. They would go over there quite late to see the foxes. Larry Ganes used to take his dogs over there. There would be lots of children over there playing. The allotments had only just gone when Ms Hopkins moved in and flowers grew over there – children brought back lupins. In the 1980s she recalled an underground fire on the site and telling her son not to go over to the site because his boots melted – but he still did! She recalled a Scout hut being on the land.

155. Latterly before the land was fenced off, she would go over to the application site with her grandchildren – Bobby, Harris, Lee, Adam and Josh.

156. Access was round by the garages, by the old entrance to the sewage farm, by the alley at the top of the Alexandra Road flats or straight off the North Circular.

Evidence on behalf of the Objectors

Oral evidence

157. **George Robert CHURCH** is a Principal Valuer in the Property Services team of the Commercial Directorate of the London Borough of Barnet. He has been employed by the Borough since 1995, he did not have any direct involvement with the site before April 2009 when he was concerned with the fencing of the site. It was to this and what happened subsequently that his evidence principally spoke. However he did also helpfully produce some relevant documentation; and was able to report an interesting

conversation he had with the Borough's former Chief Valuer, Mr David Stephens and to provide some background to it.

158. Dealing with the latter matter first, the conversation took place on 28 January 2013. Mr Stephens pointed out that that when a planning application for housing was made in respect of the application site, one of the objections made by local people was that the site was contaminated. Mr Church produced a copy of the local newspaper *The Independent* produced at that time which bore the headline DEADLY POISON THREAT.

159. Mr Church's comment was that he thought it unlikely that local people would have wanted to use the site for informal recreation if they had thought that it was contaminated.

160. Turning to the question of fencing, Mr Church explained that in the spring of 2009, when negotiations were proceeding for the sale of part of the application site to the North London Waste Authority, he undertook a review of the management of the site. This included a risk assessment concerning the Waste Authority's use of the part of the site to be sold; and the London Borough of Barnet's use of the land it proposed to retain. Risks considered were occupation by a third party (particularly by travellers) potentially leading to a claim based on adverse possession; occupier's liability; and the risk of a village green application being made.

161. As part of this risk assessment, Mr Church noted that although the fencing of the site to the golf course and Hollickwood Park was generally in good order, the old iron fencing to Orion Road was not in good order, although some of it was left to mark a boundary. This was also the case concerning some lengths of fencing at the eastern and western ends of the advertising hoardings fronting the North Circular Road, although there was a sound post and rail fence [further to the west] along the North Circular Road.

162. In the light of this a decision was made to re-fence the boundaries where the fencing was defective and Mr Church drew up a plan showing where the additional fencing was required and it appears that two quotations were obtained for work which was described as:

> *Clear old timber and metal railings*
>
> *Supply and fix 2.1m high steel palisade fencing with triple pointed tops and green finish*
>
> *159m North Circular Road elevation*
>
> *112m Orion Road.*

163. On 27 April 2009, Mr Church sent an e mail to a Mr Dennis Tyler, who was to be responsible for placing the order:

I am instructed to ask you to proceed with the above fencing project using DF Long as the main contractor, subject to:

The timber hoarding around the roundabout of the exit road from the retail park to the North Circular should be checked over and repaired where necessary to provide a reasonably positive barrier

You have told me that in using the normal school type palisades which have a tricot spike at their tops the palisade has to be 2m tall or higher to comply with Health and Safety requirements

A risk concerning the height of the fencing in proximity to the highway is to be run by the client

We will meet the contractor on site to agree the final fencing line

The contractor will "mend" the golf course's fencing by erecting fencing on LBB land opposite the two gaps and securing it on to the course's fencing. I will write to the golf course to this effect

For your information, the 2 gates giving access to the western end of the land near Alexandra Road have been secured with padlocks by Property service's staff

You have told me that it may take 3 weeks for the contractor to receive the fencing from the supplier. I have said that every reasonable effort must be made to minimise this lead in time (emphasis supplied).

164. Mr Church recalled the two padlocks on the gates – one was yellow coloured and the other had a bronze finish. He surmised that he had grabbed what was available from Prperty Services at the time.

165. An e mail which Mr Church sent on 6 May 2009 to another officer in the Borough shows that the contractors had started work by this date. On 14 May 20009 Mr Church sent a further e mail as follows:

I met the contractors on site yesterday. They have cleared for the route [sic] of the fencing where necessary. They start fencing on Monday and the job should be completed in 2 - 3 weeks, allow 3 weeks.

166. An invoice for the work was received on 23 June 2009 and the contractor was paid on 1 August 2009.[11]

167. In November 2009, a section of the wooden hoarding around the Orion Road roundabout was taken down by the Council's fencing contractor and replaced by a

[11] The cost was £23, 848.

pair of wide steel vehicular gates. This was to give access to the site for survey purposes to Arup. From the completion of their installation, the gates have been kept locked shut with the keys being kept by the Property Services Team of the Council. One set of keys was lent to Arup for the duration of their survey.

168. On 13 November 2009, Mr Church told the Council's fencing contractor about a missing paling fronting the slip road down to the North Circular had been cut open. He remembers that this was repaired and this is congruent with the e mail record.

169. On 21 January 2010, Mr Church gave an instruction for a small gap in the fence to Hollickwood Park to be repaired – two uprights had been removed. There is a picture of this in the inquiry papers. Two further sections were identified on 26 January 2012. It appears from the e mail record that these gaps – and perhaps others which had been opened up by then - would have been repaired on or just after 29 March 2010.

170. In February 2010, in the light of damage to the wooden hoarding around the Orion Road roundabout, instructions were given for it to be taken down and replaced with palisade fencing. This was completed in May 2010.

171. From the end of March 2011 until December 2011, the London Borough of Barnet instructed Mr Jo Fiore to walk the site, reporting

172. On 11 May 2011, Mr Fiore inspected the site and reported no incursions through the fencing and *no foot trails through the verdant ground cover on the site.*

173. There are records of minor fencing repairs dating from 29 June 2010, 24 August 2010, 30 August 2010, 2 September 2010 and 12 May 2011.

174. In cross examination, Mr Church confirmed the position as regards ownership of the site. A sale and purchase agreement had been entered into with the North London Waste Authority on 17 December 2009. There were a large number of conditions relating to remediation works on the site, and completion did not take place until 11 February 2011. Thereafter the position was that 9 acres of the site had been sold to the Waste Authority, the London Borough of Barnet remaining owner of the remainder.

175. Mr Church thought that signs were posted around the site in July 2011 as indicated by an e mail dated 1 July 2011 from Mr Fiore to him. He didn't think that signs went up at the same time as the fencing in 2010: he had thought that signs were a sufficient statement to the public.

Written evidence

176. **Joseph FIORE** lives at [redacted] Gallants Farm Road, East Barnet EN4 8ET. From 1 April 2010 to 27 December 2011 he was employed as a caretaker in the Property Services Team of the Commercial Directorate of the London Borough of Barnet.

177. From April 2010 to February 2011 Mr Fiore visited the site two times per week and from February 2011 once per week. Each time he visited he would spend about an hour an a half on and around the site. At each visit he walked the perimeter of the entire site from the outside to check for any damaged fencing or signs of people getting on to the site. He also viewed the site from the outside from an embankment on the section of the site adjacent to the Golf Course. He could only view the section of site by the railway line from Pinkham Way. He gained access to the site, which was secured, by the vehicular access gate on the roundabout on Orion Way, which was kept locked. When on the site, he walked along the paths around the edge of the fence where it was reasonably accessible. Because a lot of the site was impenetrable, he had to walk through some of the undergrowth to connect the paths on the site.

178. After Mr Fiore's visits to the site, if he had observed that somebody had attempted to force access on to the site, he reported this to Mr Church. During his visits he observed that people had attempted to force access in a number of ways, including digging holes beneath the fencing pales; damaging the fencing adjacent to the side of the bridge; destruction and removal of the fence palings; and removal of bolts at the bottom of fencing pales in order to make them swing like a gate. Once he had realised that this was happening, he regularly also checked the bolts to that they were all in place. The fencing break ins and incursions were most common in the area adjacent to the children's play area and the playing fields. Mr Fiore reported the following matters by e mail:

- 13 July 2010: that somebody was getting over the wall at the end of the green fence on the side of the bridge
- 27 July 2010: that part of the wooden fencing had been removed
- 19 July 2010: that somebody was still getting over the wall at the end of the green fence on the side of the bridge
- 19 August 2010: that a balustrade had been broken on the football field side in the park
- 4 January 2011: that somebody had been over the fence by the bridge again
- 11 January 2011: that somebody had been over the fence by the bridge again
- 2 March 2011: that the fence by the bridge had been forced back again and that the bars that held the panel up were bent and likely to break soon
- 7 March 2011: that the fence had been bent back again and that one of the balustrades had been broken in the park
- 15 March 2011: that the fence by the bridge had been forced back again

- 6 April 2011: that there was a hole under the fence and that the fence on the roundabout had been smashed in
- 1 June 2011: that an upright in a fence panel had come off
- 21 November 2011: that there was damage to the fence by the bridge.

179. Mr Fiore says that his reports led to the necessary repairs to secure the site. He sent reminders when necessary.

180. When doing his rounds there were two occasions when he saw somebody whose presence was unauthorised. On one occasion he saw a dog walker on a path at the top end of the site nearer to the Golf Course. On another occasion he saw a boy who ran out of the site as soon as he saw him. On neither occasion was there the opportunity to speak with them or to ask them to leave the site.

181. Mr Fiore stated that at the beginning of his employment, there was a well trodden footpath outside the site at the top end, between the park and running parallel to the golf course. With regular repairs to the fence, this path gradually became overgrown and this appeared to prevent access to the site to a large extent.

182. On one occasion Mr Fiore found a tent on the application site, which he removed. He states that there was no evidence that it was being used by someone who was sleeping rough.

183. **Jonathan Michael CLARK** had an Honours Degree in Industrial Biology, a Masters Degree in Environmental Pollution Science and was a member of Chartered Institute of Waste Management. Since 2004 he has been employed by the North London Waste Authority as Principal Policy and Projects Officer.

184. On 7 February 2013 Mr Clark had visited the area. He explained that

185. *The purpose of my visit was to investigate the claim that this area is a "neighbourhood" known as the "the Freehold" by identifying local facilities that might be considered to contribute to the character of the area and define it with a separate and distinct identity; and to identify any uses of the word "Freehold" in place names or other uses in the area.*

186. The only reference to Freehold which he was able to find was in the name of the Freehold Community Centre.

187. There was one school – Hollickwood School on Sydney Road.

188. The parish church for the Community Centre and the application site is St Andrew's on Alexandra Park Road. The parish church of St Peter le Poer on the western side of Colney Hatch Lane is outside the claimed neighbourhood. There is an evangelical church in Pembroke Road.

189. Mr Clark walked along Cromwell Road, Strode Close, Pert Close, Alexandra Road, Sydney Road, Audley Close, Oak Avenue, Alma Road, Newton Avenue, Wetherill Road, Colney Hatch Lane, Goodwyn's Vale, Haldane Close, Pembroke Road, Roman Road, Crown Road and Hampden Road. He found that the area was mostly residential properties with a great varieties of styles, ages and sizes of houses and flats. He noted several auto repair workshops and a few other commercial and light industrial uses. These businesses were spread around the area adjacent to the housing and not in a defined commercial or industrial area. The only shops in the area were the Garip Supermarket on Cromwell Road, Mick's newsagent and the New Wave Tattoo Studio on Sydney Road. The only pub was *The Ministrel Boy*. The former Alexandra Arms on Cromwell Road has been converted into residential properties. The shopping centre for the area is Colney Hatch Lane – there are a few shops and restaurants on both sides of the road – some within the claimed neighbourhood and some outside.

190. Mr Clark suggested that a feature of an old OS map contained in the papers before me and showing the former sewage works showed settlement tanks – otherwise this might have been an outstanding puzzle from the inquiry. I can add by way of postscript that I subsequently did find a map in the papers bearing this notation, so Mr Clark was proved correct. It is not however necessary to refer further to the settlement tanks. Paragraph 190 accordingly appears in this Report as a matter of record.

191. **Milan DEDIC** is a Director of Concept Engineering Consultants Limited, a company employed by the North London Waste Authority in January 2010 to undertake ground investigations on the application site. Mr Dedic was project manager. The work took place between 15 March 2010 and 20 April 2010.

192. Mr Dedic states that in order to gain vehicular access to the site, a large soil embankment was removed from behind the existing site access gates off the Orion Road roundabout. There was no other vehicular access to the site and it was evident that there was no other formal access into the site other than via locked gates at various locations. The site perimeter was secured along all boundaries by timber hoardings, palisade fence or wrought iron fencing (along the golf course boundary).

193. Mr Dedic states that the site was heavily overgrown with many areas inaccessible due to the density of tress, brambles, ground cover and invasive species, including Japanese Knotweed and Giant Hogweed. He observed that the site topography was extremely variable, with high embankments and hollows meaning that great care was required when moving around the site.

194. Very shortly after setting up their plant and equipment on the site, the project experienced theft of plant following damage to the perimeter hoarding. After provision of a 24 hour security guard to the sit the thefts stopped.

195. Mr Dedic's team did witness unauthorized people on the site. Mr Dedic recalls that the same dog walker was seen on at least two occasions and on each occasion asked to

leave. The tent of someone who appeared to be sleeping rough was seen at the beginning of the project but disappeared shortly thereafter.

196. **Steven BLACKBURN** lives at [redacted] Thurlestone Gardens, Reading. He was employed in 2009 and 2010 as an Associate Director in the waste management team of Amec Environment and Infrastructure Limited who were instructed to provide baseline site information to the North London Waste Authority. He has retrieved from AMEC's computer various photographs that colleagues of his took of the site on 20 September 2009. They are not in dispute.

Evidence of witness called by neither the Applicant or the Objectors

197. **Dr Oliver NATELSON** lived at [redacted] Hollickwood Avenue N12 0LS. Dr Natelson was a pharmacist whose doctorate was in Pharmacy. He had an interest in botany and was a specialist in plant medicine. He had lectured in physics and chemistry for over 20 years at Westminster College.

198. He told me that a sister site to Friern Barnet Sewage Works site was the former Finchley Sewage Works site to the NW of the application site. It was closed in about 1963 and used thereafter as a landfill site before being capped with clay. Dr Natelson thereafter became alarmed about development proposals for the site and founded the Coppett's Wood Conservationists who campaigned for the site to become a nature reserve. In 1985 they were successful, and the London Borough of Barnet approved of that site and an adjacent site becoming two separate nature reserves. In 1999 they were recognised by Natural England and both given the designation of local nature reserves. A colleague of Dr Natelson's – David Bevan, who had been Environmental Officer for the London Borough of Haringey – told him about the former Friern Barnet Sewage Works site. Dr Natelson found it rather similar to the Coppett's Wood site but at an earlier stage of succession, which was possibly due to its continued disturbance by dumping. They recorded on the site a number of unusual and rare plants. Dr Natelson then became interested in the site and its history and the surrounding area. He visited the site: once every year, once every three years, three or four times a year – it varied. Sometimes he gave a guided tour. He had only found out about the public inquiry on that afternoon[12]. He had attended the E of Falloden Way Public Inquiry in the late 1980s – an inquiry concerned with improvements to the North Circular Road. When land is taken for road improvements, one thing that may be done is to provide replacement land not less in value. In this case the land to be given back was divided between two sites – one at Coppett's Wood and one at the Friern Barnet Sewage Works site. Local activists asked Dr Natelson what it should be called. He suggested *Hollickwood* – Hollick Wood had been in the vicinity until it was felled to make way for the asylum in 1849. So this iswhat it was called. Hollickwood was a corruption of Holliwick, which was a long-standing name in the

[12] Ie on the afternoon of Thursday, 7 March.

area. Two pieces of recreation land have disappeared – the second was Cromwell Road Recreation Ground. This was an area for boys to kick a ball around on in the 1930s. Dr Natelson believed that blocks of flats were built on it in the 1940s or 1950s. When he arrived on the scene in the late 1980s, he noted a rough area of ground behind one of the blocks of flats in Alexandra Road. However he didn't know whether this was land given in exchange for the Cromwell Road Recreation Ground. This rough area of ground was subsequently incorporated in Hollickwood Park, which therefore consists of this land and exchange land in respect of improvements to the North Circular. He didn't know whether the London Borough of Barnet still "owed" the public some land.

199. Dr Natelson had visited the land in question. One day there was suddenly a fence – on one day there hadn't been a fence and then, suddenly, there was. He thought that this must have been related to a concern about safety. He went on to the site. It had changed considerably. The dumped lamp-posts were still there, the burned out cars were still there and the circular tanks were still there in the northern part, holding water. David Bevan pointed to some golden dock, a very rare plant. Some of the rare plants were shaded out by the trees. There was a great pile of rubbish blocking access from the main gate. The site had been colonised by a huge variety of vegetation – it had changed becoming more overgrown. Although the concrete tank was damaged it still retained water. I was told that newts had bred there. This was Dr Natelson's last visit in 2011. In summer 2011 he had led a party looking for bats. In April 2011 he had gone there with bird experts.

200. In the past, he had attended a meeting in respect of a proposal for housing development of the site. He had opposed development on the grounds of contamination, an objection which he understood the London Borough of Haringey had accepted.

201. **Frances Elizabeth HEIGHAM** lives at [redacted] Sydney Road, N10 2ND.

202. Ms Heigham moved to her house in 1973. She investigated the history of the area. She discovered that the area was known as te Freehold and had been known as the Freehold since the buiding of it had started, which she understood was in the mid-nineteenth century. Her house was built in the 1890s. It was a terraced house. In the area was a bus depot just to the north of Hollickwood School. There were 3 pubs, only one which remains. There were quite a number of light industrial sites generally dotted in behind the houses. These sites have mostly since 1977 been filled in by houses. Also there was a parade of shops in Weatherill Road, which disappeared 15 years ago when Grosvenor Road was stopped up with the effect that business was taken away. Ms Heigham said that moved to the area this was a community with facilities, albeit the parish church was on the other side of Colney Hatch Lane. She said that it had always appeared to her to be an island, surrounded by other areas – Haringey and Enfield, an impenetrable golf course, and a mental hospital on the other

side of the North Circular. Colney Hatch Lane was to her mind, and everyone she spoke to, part of the Freehold. A great many of the inhabitants have lived there for generations, although over the last 15 – 20 years the industrial sites have gone and there has been dense infilling. The incomers have been a different sort of person and the area is thus not so cohesive. The incomers may not know the history. They worked outside the area. If Mr Clark had asked people where they lived, most would have said *the Freehold.* We feel cut off from most of Barnet by the fact that we lived south of the North Circular Road. The *Independent* newspaper, which Mr Church had referred to in his evidence did not circulate in the area.

203. In cross-examination, Ms Heigham accepted that there were no signs referring to "the Freehold" apart from the Community Centre. She said that there were still some shops and that it still felt like a neighbourhood to her. There had been an erosion of facilities only over the last 10 -15 years. She accepted that the Parish Church was in another area. She did her food shopping in Muswell Hill, to the south of the area. She didn't belong to a community association.

The issues

204. First and foremost, the objectors argued that the land was effectively fenced off by June 2009. If this was correct the majority of what use that there was by local people would have come to an end and any residual use would have been contentious (*vi*). In these circumstances, qualifying use will have ceased more than two years before the date of the application. However they also argued that there was insufficient use to justify registration. This was an argument relating to the amount of use but it was linked to an argument about neighbourhood. Qualifying use has to be by a significant number of the inhabitants of a neighbourhood within a locality. The objectors here argued that the neighbourhood for which the Applicant contended did not exist. If correct it would mean that however much use there was of the land, it could not qualify for registration as a town or village green..

205. Although I have identified the issues in this order, it will be seen that logically they need to be addressed in reverse order, and this is what I shall do.

Consideration of the issues

Neighbourhood

206. There are a considerable number of references to the Freehold in the *Victoria County History of Middlesex*[13] where it deals with the Manor of Friern Barnet; and also in an account of the history of Alexandra Park and South Friern, which is printed on a reprint of the relevant large scale OS Map of 1894 (1:4340 reduced from 1:2500). It seems that the name derives from the original developer, the Westminster Freehold

[13] This is available on line as *British History Online.*

Land Society. It started out as a working class area to the north of and a little removed from the northward extension of large detached villas from Muswell Hill. The original inhabitants were involved in the construction of Alexandra Palace. As witnesses have explained the area was developed with a mix of housing and industry with an admixture of public houses and shops. The school shown on the 1894 OS (St Peter's) was bombed in the Second World War and not rebuilt; what is now Hollickwood School was first established in 1906. St Peter's School was opposite St Peter's Mission Church; this was relocated before the First World War to a site on the west side of Colney Hatch Lane, utilising the fittings and endowments of a demolished City Church, St Peter le Poer – which name the new church bears. The new church, as Mr Clark points out, is outside the neighbourhood identified by the applicant.

207. It seems to me that quite a lot that gave the area what must have been quite a distinctive character – houses built for the working class and small areas of industry interspersed with pubs and shops – has been lost. It is however noticeable that there are still quite a number of industrial uses, chiefly if not exclusively car repair workshops. I should also add that, broadly speaking, the housing to the south of the identified area is more homogenous – good quality late nineteenth century terraced housing.

208. As well as the loss of facilities, I need to remind myself of the provision in the 1990s of Hollickwood Park and the Freehold Community Centre – the later named of course long before anyone dreamed that there might be arguments about whether a neighbourhood called the Freehold existed.

209. In *R (Cheltenham Builders Limited) v South Gloucestershire Council*[14], Sullivan J (as he then was) said that a neighbourhood could not just be a line drawn on a map – a neighbourhood has to have a *sufficient degree of cohesiveness.*[15] It seems to me that the history of the Freehold – much of it observable on the ground to the informed eye - and the appreciation of it by at least some of the people who live there does provide that degree of cohesiveness: it manifests itself in an appreciation by local people of belonging to one area or community rather than to another. It seems to me that it would be absurd if this sort of cohesiveness could not count whereas (for example) the cohesiveness arising from living in an area of homogenous housing would. (If the latter would not count, one can see that it might be difficult to prove the existence of a neighbourhood anywhere in an urban area).

210. This is not quite the end of the matter. It does seem to me that it is difficult to define with precision what is the area encompassed by the denomination *the Freehold*, and of course the views of the Applicant's witnesses did not entirely agree about that. It does seems to me that the area put forward by the Applicant is a sufficiently good

14 [2004] JPL 975.

15 See paragraph 85.

delineation of the neighbourhood for the purpose of registration. In *Oxfordshire County Council v Oxford City Council and Robinson*, Lord Hoffmann said:

"Any neighbourhood within a locality" is obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries.[16]

211. In *Leeds Group plc v Leeds City Council*[17], Miss Ellis QC for the registration authority[18] argued as follows:

> *Given the clear Parliamentary intention in 2000 to free applications for TVG registration from legalistic "loopholes", 'neighbourhood' should be interpreted to mean the area or areas in which the recreational users reside – the neighbourhood or vicinity of the Application Land for the purposes of recreational use of that land ("the recreational community"). There is no statutory requirement for it to have a name or not to have two or more names or sub-areas, "rationally defensible boundaries" or any particular facilities or characteristics or any particular degree of 'cohesiveness'; given the Parliamentary intention, there is no warrant for implying such restrictions. The concept is partly geographical, partly functional and partly one of community identity; such considerations are not always susceptible to logic and the Court should be slow to cut down the statutory term by imposing such requirements. Whether the statutory requirement is met in any case is a question of fact and degree for the decision maker.*[19]

212. HH Judge Behrens QC essentially accepted these submissions: as long as the neighbourhood identified was rationally defensible, it was not an objection that one or two roads at the edges might have been in or out.

Sufficiency of use

213. The application site was a former tip. As Ms Hopkins vividly recalls, even when it was in use as a tip, it proved an attraction for local children - although I have some doubt whether the scavenging in which they engaged can appropriately be described as lawful sports and pastimes. However this may be, there would not have been any general use for lawful sports and pastimes at this period. Once the tipping ceased

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16 See paragraph 27.

17 [2010] EWHC 810 (Ch).

18 Since this Report is to be read by lay people, it is worth pointing out that a barrister is a "hired gun": instructed by his or her client to present the best available arguments on his or her behalf. His or her advocacy of any particular argument does not represent his or her personal endorsement of it.

19 See paragraph 100 of the judgment.

however it seems to me, at least to some extent, that the sort of activity that is described by Mr Faulkner's witnesses would indeed have been carried on the site.

214. I also bear in mind that the application site bears some at least some resemblance to the application site considered in *Oxfordshire County Council v Oxfordshire City Council and Robinson*. This was also a former rubbish tip. It was described by the Inspector as follows:

> *The Trap Grounds are nine acres of undeveloped land in North Oxford. They lie between the railway to the west and the Oxford Canal to the east. About one third... is permanently under water... This part... is usually called 'the reed beds'. [They] are inaccessible to ordinary walkers since access would require wading equipment. The other two thirds ['the scrubland']... are much drier and consist of some mature trees, numerous semi-mature trees and a great deal of high scrubby undergrowth, much of which is impenetrable by the hardiest walker... The scrubland is noticeably less overgrown at the southern end and there is a pond and wet areas in the central eastern part of the scrubland. Throughout the dry parts of the scrubland there are piles of builders' rubble, up to about a yard high, which are mostly covered in moss and undergrowth. The Trap Grounds are approached from the east by a bridge... over the canal. From the bridge a track, known as Frog Lane, leads along the northern edge of the reed beds and gives access to a circular path around the scrubland. Off this circular path there are numerous small paths through the undergrowth. Some peter out after a few yards. Some lead to small glades and clearings. I estimate that a total of about 25% of the surface area of the scrubland is reasonably accessible to the hardy walker.*[20]

215. This land was held to be capable of registration by the registration authority and in due course was registered by the registration authority.

216. It is also important to bear in mind that the relevant aerial photographs show tracks on the land. These seem to me likely to have been referable to the motor bike scrambling that took place on the site but it does also indicate the general accessibility of the site. Miss Ellis indeed accepts that before 1994 there would have been reasonably open access to the site.

217. Nonetheless I am not persuaded that there was use by a significant number of the inhabitants of the neighbourhood.

218. I begin with the motor bike scrambling, which as I have indicated was evidently significant in terms of the uses of the site, since it (or its effects) were visible from the air. Miss Ellis argued that this could not count because it was activity which was a

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[20] This description is set out in paragraph 1 of the speech of Lord Hoffmann.

criminal offence under section 34 of the Road Traffic Act 1984 and therefore could not be a lawful sport and pastime. I see the force of her reasoning that *Bakewell Management Limited v Brandwood* (where the Court held that an easement of way is capable of being created by activity which is prima facie unlawful) is distinguishable, although I am not convinced that a Court might not extend the reasoning in that case. However I am unpersuaded that motorbike scrambling can be within the category of lawful sport and pastime. I regret introducing what may seem to be yet another gloss on the words of the Commons Act 2006, but it seems to me that the phrase *lawful sports and pastimes* is not at large (so that, for example, it includes stamp collecting) but has relation to relevant sports and pastimes. Use of a village green by motor bikes seems to be to be inimical to use of it for the sorts of thing that clearly are included in the phrase – like cricket and football and children's games. It is not a question of "give and take"[21] but of the two things being fundamentally incompatible. I would put horse riding in the same category. Even were I wrong about that, it seems to me that the motor bike riders will have come from a much wider area than the neighbourhood. If there was any significant motorbike use by people living within the neighbourhood, I would have expected this fact to emerge in some way from the evidence – but it has not done so. Accordingly I consider that the motor bike use falls to be discounted.

219. I also think that it is instructive to consider the position which obtained before Hollickwood Park was laid out in 1994. I think that the grassed area behind the Alexandra Road flats would have functioned as a play area; and it evidently was not fenced off from what is now the application site. I think that children would have tended to play on this area, albeit more adventurous spirits might have strayed more widely. I think that this effect would have been more pronounced after Hollickwood Park was laid out in 1994. Obviously it would have been attractive as a well laid out park containing a children's playground, which would have been a positive reason to use the Park in preference to the Dump; and also its fence would have made it less easy to access the Dump. Mr Dore and his family certainly used the application site less after this time. I think that it is also material to bear in mind that some residents may have been concerned about their children playing on the Dump both because they may have had concerns about contamination and also because they would be generally worried about the safety of their children; but I do not think that it is possible to put much weight upon a matter which is ultimately speculative.

220. It is important to note from the aerial photographs that much of the site was overgrown and the evidence of use that they present was of circular paths. I do not think that the paths can plausibly be considered to be putative public footpaths, but even considering use of them for walking (both with and without dogs) as being use for lawful sports and pastimes, it is a big jump from saying that paths across a large

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21 Obviously two sports and pastimes cannot be carried on together and there has to be "give and take" by users: see *R (Lewis) v Redcar and Clevand BC* [2010] 2 AC 70 (SC).

site may have been used for lawful sports and pastimes to saying that the whole of the site could, on the back of that use, be registrable as a town or village green.

221. I heard oral evidence as to use from 6 people[22]. I appreciate that they were giving evidence of not only what they had done but of what others had done also. I note that I have before me about 70 witness statements and the several hundred e mails (of which however it appears that there are only 17 by inhabitants of the neighbourhood speaking of their use of the land) but I must be cautious in placing weight upon them because those making them were not available to be cross-examined.

222. I do not think that the oral evidence of personal use by 6 people and the people they have observed using the site is sufficient of itself to demonstrate use by a significant number of inhabitants of the neighbourhood of the whole of the site. In cases of this kind, it seems to me that a decision maker (and an Assessor advising a decision maker) has to apply a broad approach. It is likely that there will always be questions about the number of people who used a particular site, whether they have used the whole of the site and the length of time the used it for: but the detail loses importance in the light of the evidence of a sufficiently large number of people who speak as to their use of the land: the lacuna or doubt in respect of one person's evidence is covered by the evidence of another, so that a mosaic picture is established of the use of the land. In the present case, the absence of oral evidence of personal use by more people strongly suggests to me that although there may have been some such additional users, there were not so many as to amount to a significant number for the purposes of section 15. Having said this, I do not think that it is appropriate to view Mr Faulkner's case as positively losing weight because he did not call more witnesses. Rather the position is, more simply, that he failed to persuade me that there had been significant use by a significant number of the inhabitants of the neighbourhood claimed. It is possible, at least in theory, that there was such use by a significant number; it is just that Mr Faulkner has not demonstrated it[23].

Whether qualifying use ceased by June 2009 by the erection of a fence

223. I think that the position as regards this issue is clear.

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22 Dr Natelson gave evidence of use but did not live in the neighbourhood, so I have not counted him as an oral witness as to use.

23 At paragraph 2.14 of her closing submissions, Miss Ellis takes points which are good in themselves about the personal use of the oral witnesses either being focused on a period which ended before the fencing was erected and, in Mr Hardy's case, his latterly living outside the area. The problem with this is that the use to which these witnesses speak might be taken as being representative of others who used the site at other times and who did live in the neighbourhood. However one can accept that it may be true that they are, to a degree, representative without being satisfied that there has been sufficient general use apart from that to which these witnesses directly speak.

224. Mr Church told the inquiry about the erection of the fencing in May 2009. It is not possible to be sure as to the precise date that those fencing works were completed but it must have been by some time in June 2009. Subject to one matter which I shall go on to consider, at this point the site would have been rendered inaccessible and qualifying use – all use by local people - would have ceased.

225. The potential caveat is that the gates between O and N could have been left unlocked and access could have continued by use of them. It seems to me that the situation would require some special explanation if it were that the landowner had just spent more than £20,000 fencing a site and then leaving two gates in it open. Mr Church told the inquiry to the contrary that the gates had been padlocked. This fact receives independent confirmation from a contemporaneous e mail. The only evidence I have to contradict this account is that of Mr Lee Dray (see paragraphs 85 and 105 above). I do not consider his evidence to be credible on this point.

226. There is likely to have been some subsequent access through holes in fence, as the Applicant's witnesses indicated. Access by the he person who unlawfully made those holes in the first place would have been *vi.* So would access by anyone who not having made the hole himself, took advantage of it. And holes were subsequently repaired, as Mr Church told me and was confirmed by the written statement of Mr Fiore (itself confirmed by contemporaneous mails). Any use after the 2009 fencing was erected was plainly contentious.

Recommendation

227. I recommend that the application be rejected because:

i. Mr Faulkner has not shown that there was use by a significant number of the inhabitants of a neighbourhood within a locality; and

ii. Qualifying use ceased more than two years before the date of the application (i.e. use had ceased by June 2009 in circumstances where the application was made in February 2012).

228. For the avoidance of doubt, I should make it clear that my recommendation would be the same if it were considered that the application had been made in October 2011 (i.e. use would still have ceased more than two years before the date of application).

PHILIP PETCHEY
Independent Assessor

30 May 2013

RE: LAND OFF PINKHAM WAY, LONDON N10

NOTE

Introduction

I have been appointed Assessor in this matter in place of Mr Alun Alesbury.

By a letter dated 23 January 2013, Chris Maile of Campaign for Planning Sanity on behalf of Mr Faulkner the Applicant applied for an adjournment of the inquiry fixed for 4 March 2013 on the basis that Mr Faulkner has been summoned to jury service in the week beginning 11 February 2013. I evidently need to deal with this application as a matter of urgency.

I need to begin by setting out the facts as I understand them. If I have misunderstood anything, Mr Maile will have the opportunity to correct me.

The facts

On 4 January 2013, the inquiry was fixed to begin on 4 March 2011.

By an email dated 9 January 2013 (by the Applicant) followed up by a letter 11 January 2012 (presumed 11 January 2013), Mr Maile wrote to the Registration Authority as follows:

... the Applicant has been called for jury service starting on 11 February 2013 and ... he is not aware at present as to how long he will be required for jury service and further cannot give a date when he is likely to be available to attend the inquiry or to prepare documents or submissions for the inquiry. Therefore he requests that the date of the inquiry be adjourned sine die ...

The Registration Authority responded by an e mail dated 15 January 2013:

The Registration Authority is confident that the court service will be wiling to exercise flexibility in its requirement for jury service taking onto account the nature of the village green application. I am happy to provide a letter for the court service upon request. It is logistically very difficult to find a suitable date and venue for such an inquiry and each party's availability was requested and provided some time ago.

In the light of this, Mr Faulkner e mailed the jury summoning officer seeking a deferral of his jury service. The jury summoning officer (Olubunmi Omotosho) replied on 23 January 2013 as follows:

You are only entitled to one deferral by law and you have already been deferred so you cannot be excused. I am unable to excuse you from your jury service for the reasons given. You must attend on the date and at the time and place given in your summons. A letter of refusal would be sent to you regarding this and you have the right to appeal to the Head of Bureau.

The reference to the deferral that had already occurred related to an earlier jury summons which had been issued at the end of 2011 or the beginning of 2012; on which occasion Mr Faulkner's jury was deferred for a year.

On 23 January 2013, Mr Maile wrote to the registration authority as follows:

...The applicant informed you at a very early stage of the fact that he had been served with a copy of a jury summons [This I take to be the email dated 9 January 2013] ... I attach ... a notice dated 23 January 2013 informing the Applicant that he cannot be excused from the present jury service. Therefore the Applicant is of the view that your authority's refusal to adjourn the inquiry to a date after such time as the Applicant has completed jury service is unreasonable. Whilst we accept that the average time of service on a jury is two weeks, however, there is no guarantee as to how long he will be required to serve. But even in the event that he has finished before the start of the inquiry this would eat into the preparation time for the inquiry. Therefore in our submission it is unreasonable for the Registration Authority to continue with the present date for the opening of the inquiry and therefore the only option for your authority is to adjourn the inquiry sine die. However given that all other matters are resolved and with some flexibility such an adjournment hopefully should not be little ... more than a month.

The Registration Authority has responded to this request by an e mail dated 31 January 2013:

With regard to your request for deferment of the opening of the inquiry, I intend to refer this matter to Mr Petchey for his determination. At this stage, however, the Registration Authority maintains its position in relation to jury service. The chances of a juror being required beyond 10 working days is remote and in such a prospective eventuality, jury members are asked about any difficulties that would result from this on their first day. This would leave the Applicant a full week to prepare for the inquiry.

Consideration

Standing back, evidently the simplest way for this matter to be resolved would be for Mr Faulkner's jury service to be further deferred. In this connection I note

- that I have not seen a copy of Mr Faulkner's e mail to the jury summoning officer
- Mr Faulkner did not take up the Registration Authority's request to write a letter to the Court Service.

Although I can see that the Jury Summoning Officer (or Head of Bureau) might take the view that any inconvenience or difficulty that Mr Faulkner might suffer through his jury service not being deferred was not of sufficient weight to warrant a second deferral, I think that there is a reasonable prospect that a reasoned renewed application, supported by a letter from the Registration Authority (and I would imagine attaching this Note) might lead to a second deferral. It seems reasonable for the Registration Authority to ask Mr Faulkner to make such a renewed application as a matter of urgency.

If such a renewed application is unsuccessful or (for whatever reason, Mr Faulkner declines to renew his application), it will be necessary to consider further the application that the inquiry be deferred. As well as weighing the inconvenience and difficulty to Mr Faulkner, it will be necessary to weigh the inconvenience and difficulty caused to objectors; before making a decision, I would give them the opportunity to comment on Mr Maile's representations thus far and upon any further representations he might make.

As far as Mr Faulkner is concerned, what I would like to understand are the particular difficulties that he envisages that will arise if he has to do jury service in the time indicated. In this context it seems to me that it is relevant to note that

- he is represented by the Campaign for Planning Sanity in his preparations

- although in the two weeks following 11 February 2012 he will be unable to devote his attention to preparation for the case during the time that he is serving on a jury, even if this were not the case, it might be expected that his work might preclude him from preparation for the case during this time in any event. I appreciate that Mr Faulkner may not be in employment nor have other commitments which he would need to set aside during the time of jury service, but if that be the case, he may have more time generally to prepare the case (i.e. outside the time required for jury service).

It will be seen that what I am saying is that if it becomes necessary for me to consider the application for a deferral of the inquiry further, I will need to understand the particular reasons why it is requested by Mr Faulkner.

Finally, I note that if Mr Faulkner's jury service is not deferred and the Inquiry be not deferred either, there must be the possibility that Mr Faulkner's jury service will overrun into the week beginning 4 March 2013. Since on the material before me this does not seem very likely (because Mr Faulkner would indicate his particular difficulties at the start of his jury service, and the Court would I think strive to assist him), this does not seem to me to be good reason for deferring **at this stage** the start of the inquiry.

A copy of this Note should be circulated to all the parties. I would be grateful for a response from the Applicant or Mr. Maile by close of business on Thursday 7th February 2013.

PHILIP PETCHEY
Assessor
Francis Taylor Building
Temple EC4Y 7BY
5 February 2013

RE: LAND OFF PINKHAMS WAY, LONDON N10

NOTE (2)

AMENDMENT OF DATE AT PART 4 OF FORM 44

Introduction

The application is made under section 15 (3) of the Commons Act 2006 and the date that Mr Faulkner entered in Part 4 of the Form as indicating the date on which he considered use as of right ended was July 2010.

In Part 7 of the Form, Mr Faulkner said

The land has been used by the inhabitants of the localities as described and set out in section 6 ... for a period of more than 20 years from 1988 to 1st July 2010 (and for many years prior to that period) ...

and

The Applicant and others will and do aver that they have used the land as a town or village green as of right without let or hindrance until July 2010 when a fence was erected which excluded public access to the land.

By a letter dated 13 September 2012, Mr Faulkner wrote to the Registration Authority as follows:

The Commons Act 2006 at section 15 allows for the back dating of an application for the registration of a town or village green by up to 2 years from the date of the submission of Form 44. I entered a date of July 2010 when the land first became a village green. This was clearly an error in calculating the dates as I did not fully understand the concept of the provision set out in section 15 (3) of the 2006 Act. Therefore, for clarity, I formally request that Part 4 of Form 44 should be amended to that of the full two year's concession to the 15 October 2009 and that consequently that date should be entered into Part 4 of Form 44.

In making this application I submit that there is no prejudice to any of the objectors, indeed this is clear from the words of Lord Hoffmann at paragraph 61 and others on the panel of judges in the House of Lord's decision in the Trap Grounds case. Therefore in my submission there are no grounds in law for the Registration Authority not to grant this application to amend Part 4 of Form 44 ...

By a letter dated 19 October 2012, the Registration Authority responded:

Your request to amend paragraph 4 of the application causes some difficulty because it contradicts paragraph 7. The date of July 2010 appears to simply reflect when the fencing was erected and hence when the alleged right of use ended. This appears entirely logical. Your new interpretation of section 15 does not appear correct. However this will be put before the Independent Assessor for consideration.

By a letter dated 25 October 2012, Mr Faulkner replied:

There is no conflict as indicated in your letter. If the statement at paragraph 7 was read literally. Then, Yes, there may, at face value, be seen to be a slight conflict. However, in practice if the statement is read as it should be once the proposed amendment is taken into account, then there is no conflict. But if it eases the mind of the Registration Authority then it would be simple enough for me to supply an amended statement in place of the existing para 7; but in my view there is no need for such a trivial amendment, it only requires the relevant passage to be read with common sense. In any event there is or could be no prejudice to the objectors by the change of date or the amendment (or not) of para 7.

As for the interpretation of section 15 of the Act, this is a matter that can easily be cured within legal submissions as part of my closing submission. But in my view, and after seeking appropriate advice, I see no reinterpretation of section 15 that is not widely understood to be the case when referenced to precedents set by the courts.

By an e mail dated 15 November 2012, Jill Warren on behalf of Haringey LBC (as local planning authority) wrote to the Registration Authority as follows:

... the proposal to amend the date in the application from which it is claimed that the land first became a village green (i.e. July 2010) to 15th October 2009, is considered to be unacceptable.

The application is accompanied by a statutory declaration by the applicant that the contents of the application are true. It is considered that this cannot be the case if the date claimed is now to be some 9 months earlier than originally claimed.

In addition, the evidence submitted as part of the application relies upon the date claimed in the application. It is further supported by statutory declarations from a further 72 residents which also relate to the original date.

Finally the 15th October 2009 date is not the basis of the application which has been consulted upon, nor upon which objectors have based their responses to the application.

Accordingly, the application should not be altered by the Registration Authority at this stage, as to do so would cause substantial prejudice to all those who have been consulted on the July 2010 date.

We therefore raise a fundamental objection to the request by the application to amend the date from July 2010 to October 2009.

By a letter dated 12 December 2012, the Principal Lawyer for the Barnet LBC and the North London Waste Authority wrote:

I wish to place it on record that as objectors, both London Borough of Barnet and the North London Waste Authority have not been given an opportunity to formally make a full legal representations on [this proposed change][1]. This letter serves to request that as a matter of urgency, we are given the opportunity to formally make representations before anything is

[1] There was a separate issue as the definition of locality in the application, to which this letter also referred. I address this further below.

done or indeed a decision is made by the independent Assessor as to whether or not [this proposed amendment is] accepted.

In his directions, the question of permission to amend the application was not addressed by Mr Alesbury.

Evidently it is important that this question is addressed before the beginning of the inquiry.

Consideration

Part 4 of the application form contains this requirement:

If section 15 (3) or (4) applies please indicate the date on which you consider that use as of right.

An applicant is then required to sign a statutory declaration that *The facts set out in the application form are to the best of my knowledge and belief fully and truly stated ...*

The form was completed by Mr Faulkner as set out in the Introduction to this Note.

It is appears from reading the application form that Mr Faulkner believed that use of the land for lawful sports and pastimes continued until July 2010 when a fence was erected that stopped it. I accept of course that subsequent investigation or consideration might have led Mr Faulkner to believe that he got the date of the fencing wrong or that he had made some other mistake relevant to what he said in Part 4 or Part 7.

I do not find what Mr Faulkner says in his letters dated 13 September 2012 and 25 October 2012 clear. On the face of it, what he is seeking to do is to argue that he is entitled as a matter of law to rely on a two year grace period and that the relevant 20 year period is the 20 years down to two years before the application. This is a matter of **law**. However he also seems to contemplate that Part 7 of the Form might need amendment, which would seem to be a matter relating to the **facts** of the fence.

What I want to know before the inquiry begins is when the land was fenced off so that use for lawful sports and pastimes ceased: was it July 2010 or some other date? If that date were not July 2010 I am not sure that strictly speaking the Form **needs** amendment – July 2010 was the date that the Applicant considered the use ended when he completed the Form; what may have happened since is that he has re-appraised the situation. My preliminary view is that, subsequent to the application, he is not disabled from arguing for a different date because of the way Part 4 has been filled in - as long he makes it clear what the changed date is.

Of course it is important that the objectors are not taken by surprise. If the date when the land was fenced off was not July 2010, they may want to take instructions as to that different date. It is even possible that they might wish the start of the inquiry to be deferred to enable them to make further inquiries.

As regards the points made in Ms Warren's e mail, it seems to me that she has not sought to disentangle the legal side of Mr Faulkner's application from the factual side. I can see as regards the factual side it can be said that getting the date that the fence went up wrong (if that is what has happened) may call for some explanation or lead to evidential issues in

respect of the evidence forms. However these matters do not seem to me to be in themselves a reason why – if Mr Faulkner has got the date wrong – he should not be allowed so to assert at the inquiry. As regards the consultation, it seems to me unlikely that there will be anybody who might have objected if the relevant date had been said to be October 2009 but who did not because the date was said to be July 2010. If I then consider prejudice to those who have objected by the amendment, I do not think that this has been clearly articulated. It will be seen however from my directions below that Haringey LBC (as local planning authority) will have opportunity to make further representations after Mr Faulkner has clarified what his position is about fencing.

As to the submission (if it be Mr Faulkner's position) that in law the relevant 20 year period in an application made under section 15 (3) is measured back two years from the date of the application, that is a matter all the parties will be able to make legal submissions about in due course.

Accordingly I would be grateful if by close of business on **Monday 11 February 2013**, Mr Faulkner can indicate to the registration authority when he says that the land was fenced off so that lawful sports and pastimes ceased. If that date is July 2010, I do not think that anything has changed as to the **facts** – I will receive **legal** submissions in due course. If that date is not July 2010, I would then be grateful if the objectors could indicate whether they are content to proceed on this basis, whether they want an adjournment or want me to make some other direction. They might wish to make submissions as to whether I am correct in my preliminary view that no formal amendment of the form is required. The objectors should get their further submissions to the Registration Authority by close of business on **Friday 15 February 2013.**

I should draw the following matter to the attention of the parties.

The application bears the stamp indicating the valid date of receipt to be 24 February 2012. Accordingly if the fence were erected on or before 23 February 2010 – in October 2009, for instance - the application would be outwith the two year grace period.

The form is actually dated 13 October 2012 and (to put the matter neutrally) I am aware that **an** application was received by the registration authority on 14 October 2012 (which it considered not to be valid). Accordingly I can see there might be arguments about when **the** application was received by the Registration Authority. (It is another matter whether I am empowered to determine them – a matter on which I might have to take instructions).

It may be that it makes no difference whether the application was received in October 2011 or February 2012. However it could do. If qualifying use ended in October 2009, the application would be out of time.

It would be potentially unfair to Mr Faulkner for arguments about amendment of the Form to proceed without him being aware of this aspect of the matter.

LOCALITY/NEIGHBOURHOOD

Part 6 of the Application defined the locality or neighbourhood relied upon by reference to a map.

In his letter dated 13 September 2012 to the Registration Authority referred to above, Mr Faulkner said:

It is clear from the comments of the various objectors that there is some confusion as to what I state is the locality neighbourhood. Indeed the wording of Part 6 of Form 44 could have been better formulated. Therefore for clarity I formally apply to amend Part 6 of Form 44 to reflect the following:

The localities are the Coppetts Electoral Ward of the London Borough of Barnet and the Alexandra Electoral Ward of the London Borough of Haringey. The neighbourhood within those localities that I am relying upon is that of the Freehold which for the avoidance of doubt is bounded by the following roads: - A 406 (Pinkham Way), Colney Hatch Lane and Goodwins Vale together with the western and northern boundary of the Muswelll Hill Golf Course and the boundary of the section of Network Rail land between the golf course boundary and the A406.

By an e mail dated 15 November 2012, Jill Warren on behalf of Haringey LBC (as local planning authority) wrote to the Registration Authority as follows:

The applicants proposed amendments to the geographical area (to exclude operational land of Transport for London & BR), is relatively minor and therefore considered unobjectionable in terms of the Town or Village Green application.

As has been seen, by a letter dated 12 December 2012, the Principal Lawyer for the Barnet LBC and the North London Waste Authority wrote asking that her clients be given an opportunity to comment before the Independent Assessor made a decision on allowing the amendment.

In his directions, the question of permission to amend the application was not addressed by Mr Alesbury.

Evidently it is important that this question is addressed before the beginning of the inquiry.

Consideration

Amendments by applicants to the identification of the relevant locality and/or neighbourhood within a locality or localities are commonplace. In *R (Laing Homes Limited) v Buckinghamshire County Council*[2] the amendment was not made until the first day of the inquiry; in *R (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council*[3] there was an amendment at the beginning of the inquiry but the Inspector decided that the relevant neighbourhood was not that which the applicant had identified but another area.

Obviously it is important that any amendment should not cause prejudice to objectors to registration.

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[2] [2004] 1 P & CR 36.
[3] [2010] 2 EGLR 171.

I do note that in the present case the request for an amendment was made more than 4 months ago.

If however it is thought that the amendment would cause an objector some difficulty I will obviously consider that concern before I make a decision on whether to permit the amendment.

Accordingly I would be grateful if by close of business on **Monday 11 February 2013** any objector who wishes to object to the amendment makes such a submission. If Mr Faulkner wishes to respond to any such objection, I would be grateful if they could do so by close of business on **Friday 15 February 2013**.

OTHER PROCEDURAL MATTERS

In his directions Mr Alesbury provided that the Applicant or Objector could apply to him to vary or supplement the directions that he had given. It will be helpful if the parties are aware, or become aware of any other procedural matter that requires to be addressed, that they raise it with me, via the Inquiry Officer, in advance of the beginning of the inquiry.

NOTE TO BE CIRCULATED

A copy of this Note should be circulated to all the parties.

PHILIP PETCHEY
Assessor
Francis Taylor Building
Temple EC4Y 7BY
6 February 2013

RE: LAND OFF PINKHAM WAY, LONDON N10

NOTE (3)

Introduction

I have been appointed Assessor in this matter in place of Mr Alun Alesbury.

By a letter dated 23 January 2013, Chris Maile of Campaign for Planning Sanity on behalf of Mr Faulkner the Applicant applied for an adjournment of the inquiry fixed for 4 March 2013 on the basis that Mr Faulkner has been summoned to jury service in the week beginning 11 February 2013. I requested further information about the application by a Note dated 5 February 2013.

I need to begin by setting out the facts as I understand them.

The facts

On 4 January 2013, the inquiry was fixed to begin on 4 March 2011.

By an email dated 9 January 2013 (by the Applicant) followed up by a letter 11 January 2012 (presumed 11 January 2013), Mr Maile wrote to the Registration Authority as follows:

... the Applicant has been called for jury service starting on 11 February 2013 and ... he is not aware at present as to how long he will be required for jury service and further cannot give a date when he is likely to be available to attend the inquiry or to prepare documents or submissions for the inquiry. Therefore he requests that the date of the inquiry be adjourned sine die ...

The Registration Authority responded by an e mail dated 15 January 2013:

The Registration Authority is confident that the court service will be wiling to exercise flexibility in its requirement for jury service taking onto account the nature of the village green application. I am happy to provide a letter for the court service upon request. It is logistically very difficult to find a suitable date and venue for such an inquiry and each party's availability was requested and provided some time ago.

In the light of this, on 23 January 2013, Mr Faulkner e mailed the jury summoning officer seeking a deferral of his jury service in the following terms:

Dear Sirs

I am an applicant in a village green registration. The Registration Authority are the LB Haringey. I was told by Haringey in December 2012 that the dates for preparation and the informal hearing for my application would be from 5 Februarry 2013 to 8 March. The informal inquiry taking place from 4th to 8th March 2013. I objected to the dates and informed them that I would be on jury service from 11 February 2013 and I could not guarantee that I would be available for the dates they wanted.

Haringey rejected my objection and claimed that I could get my jury service changed and they have asked me to contact yourselves.

I deferred my summons from 2012 as I am now the sole employee of my company but I have, over 2012, made fairly detailed arrangements to ensure that I am available for 11 February 2013. Should my service be deferred again I am unsure as to when the next date would be convenient as I have business commitments from the middle of March to the end of April as well as it being the end of the financial year.

Could you please provide advice as to deferring my service for a second time.

The jury summoning officer (Olubunmi Omotosho) replied on 23 January 2013 as follows:

You are only entitled to one deferral by law and you have already been deferred so you cannot be excused. I am unable to excuse you from your jury service for the reasons given. You must attend on the date and at the time and place given in your summons. A letter of refusal would be sent to you regarding this and you have the right to appeal to the Head of Bureau.

This was confirmed by a letter dated 25 January 2013 from HM Courts and Tribunals Service:

Your application to have your jury service deferred has beenrefused. Accordingly, you must attend Court on the date and the time given in your summons.

You are entitled to appeal against this decision. To do so, you should write to the "Head of the Jury Summons Bureau" at this office, setting out the reasons why you wish to have your service deferred.

A Judge of the Court may hear your appeal. If this happens, the appeal will be heard before you are due to attend for jury service. You will be notified in advance of the date, time and location of the hearing and you will be givenan opportunity to attend and make representations to the Judge. If you do not attend, the appeal will be decided on the basis of your written representations.

Unless you are subsequently notified that your jury service has been deferred, you must attend Court on the date shown on your summons.

On 23 January 2013, Mr Maile wrote to the registration authority as follows:

...The applicant informed you at a very early stage of the fact that he had been served with a copy of a jury summons [This I take to be the email dated 9 January 2013] ... I attach ... a notice dated 23 January 2013 informing the Applicant that he cannot be excused from the present jury service. Therefore the Applicant is of the view that your authority's refusal to adjourn the inquiry to a date after such time as the Applicant has completed jury service is unreasonable. Whilst we accept that the average time of service on a jury is two weeks, however, there is no guarantee as to how long he will be required to serve. But even in the event that he has finished before the start of the inquiry this would eat into the preparation time for the inquiry. Therefore in our submission it is unreasonable for the Registration

Authority to continue with the present date for the opening of the inquiry and therefore the only option for your authority is to adjourn the inquiry sine die. However given that all other matters are resolved and with some flexibility such an adjournment hopefully should not be little ... more than a month.

The Registration Authority has responded to this request by an e mail dated 31 January 2013:

With regard to your request for deferment of the opening of the inquiry, I intend to refer this matter to Mr Petchey for his determination. At this stage, however, the Registration Authority maintains its position in relation to jury service. The chances of a juror being required beyond 10 working days is remote and in such a prospective eventuality, jury members are asked about any difficulties that would result from this on their first day. This would leave the Applicant a full week to prepare for the inquiry.

In my Note dated 5 February 2013, I expressed the view that on the material before me that there seemed to me a reasonable prospect of obtaining a second deferral of jury service and asking for further information if a deferral was not asked for or obtained:

If such a renewed application is unsuccessful or (for whatever reason, Mr Faulkner declines to renew his application), it will be necessary to consider further the application that the inquiry be deferred. As well as weighing the inconvenience and difficulty to Mr Faulkner, it will be necessary to weigh the inconvenience and difficulty caused to objectors; before making a decision, I would give them the opportunity to comment on Mr Maile's representations thus far and upon any further representations he might make.

As far as Mr Faulkner is concerned, what I would like to understand are the particular difficulties that he envisages that will arise if he has to do jury service in the time indicated. In this context it seems to me that it is relevant to note that

- *he is represented by the Campaign for Planning Sanity in his preparations*
- *although in the two weeks following 11 February 2012 he will be unable to devote his attention to preparation for the case during the time that he is serving on a jury, even if this were not the case, it might be expected that his work might preclude him from preparation for the case during this time in any event. I appreciate that Mr Faulkner may not be in employment nor have other commitments which he would need to set aside during the time of jury service, but if that be the case, he may have more time generally to prepare the case (i.e. outside the time required for jury service).*

Mr Maile has replied by an e mail dated 7 February 2013:

It should first be made clear Mr Faulkner is as anxious as all the parties are that this inquiry is conducted as timely as possible. Secondly, he is appreciative of the fact that you, at least, have made enquiries to establish his commitments beyond his being the Applicant for the registration of a Village Green.

The issue of Jury Service is not of Mr Faulkner's making and he did, at the request of Mr Michael, contact the Jury Office, (copy attached) to request a second deferment. Copies of the relevant exchanges in regards to this were sent to the Mr Michael but for clarity I reattach them to this email.

With regard to Mr Faulkner's employment he has run his own business for more than 26 years with his area of trading falling in the construction industry. Along with many in this area he has seen a drastic reduction in his business to the extent that he has had to shed staff leaving him as the only working employee of his business and very much struggling to survive. His reason for deferring his Jury Service in 2011 was because he was not in a position to cover his absence from his commercial commitments at that time. Being aware of his requirement to carry out his Jury Service in 2013 Mr Faulkner has had to plan and make various arrangements with his suppliers, fabricators and clients as well as arranging cover for his office to ensure that his contractual commitments are as unaffected as possible by the Jury Service. As is obvious when Mr Faulkner returns each day from Jury Service his work day will begin. Also there will be a knock on effect that will affect his work load in at least the first week after completion of his Jury Service A second deferment would have a significant impact on these arrangements.

Mr Faulkner very much views the Registration Authority as the architects of the situation that has now been created. They advised Mr Faulkner in October (copy attached) that he could expect Instructions from the Independent Assessor in November 2012 and that the enquiry would be held early in the New Year. Based on this information, as vague as the enquiry date was, Mr Faulkner considered that the enquiry would be likely to take place in the 2nd or 3rd week of January 2013 a timing that was acceptable to his business and time commitments and would have had no effect on his Jury Service commitments. In reality, of course, the Registration Authority did not issue the Instructions in November. Instead Mr Faulkner received them on 6th January 2013.

With the appointment of Mr Alesbury in May 2012 his undoubted expertise in the administration of the Village Green process should have enabled, by simple consultation with Mr Faulkner, the creation of a provisional time table for the various stages of the VG process as well as the location for the Inquiry. With the completion of the Consultation period in August and with the objectors being identified, a more certain time table could have been created that was fair and achievable for all the parties then identified. Certainly Mr Faulkner is unable to see why a mutually agreed time table could not have been in place by the end of September 2012.

With regards to yet another request for the deferral of Mr Faulkner's Jury Service. You will note from the official refusal notice received from the Court (copy attached) that this will require Mr Faulkner to attend in person in front of a Judge.

Mr Faulkner is already under significant stress preparing his business for his absence on Monday as well as the anticipation of actually carrying out his Jury Service. Therefore as much as h wants this matter resolved he see no way forward and instructs me that in as far as a further deferment is concerned for the reasons set out above he now considers this matter closed.

I will though comment on the following:-

"As far as Mr Faulkner is concerned, what I would like to understand are the particular difficulties that he envisages that will arise if he has to do jury service in the time indicated. In this context it seems to me that it is relevant to note that he is represented by the Campaign for Planning Sanity in his preparations"

The Campaign for Planning Sanity (CfPS) is non funded NGO who only advise and assist on a voluntary basis and cannot guarantee what if any time can be allocated to the assistance of any one local community.

Therefore it would be wrong to assume that simply because help and assistance is being offered to Mr Faulkner by CfPS that it amounts to the same degree of assistance that might be expected of a commercial undertaking.

I hope the above clarifies the position of Mr Faulkner, and that a determination can be made in respect of the question of his jury service, by as I originally requested the inquiry is adjourned sine die.

Consideration

Before turning to the points raised by Mr Maile, I should say at the outset that I said in my Note dated 5 February 2013 that in considering the request for a deferral of the inquiry I would have to consider the inconvenience potentially caused to the objectors. I am still of this view. I will give them the opportunity to comment by close of business on Tuesday 12 February 2013. Mr Maile will have the same opportunity to add any further comments of his own, but it seems to me that at that point I will have to make a decision.

First of all, I accept Mr Maile's point that the situation that arises about jury service is not of Mr Faulkner's making.

Second, in his e mail dated 23 January 2013, Mr Faulkner refers to have made detailed arrangements in order to "cover" his period of jury service: which he was evidently prepared to put aside in the context of the deferral of his jury service. However if he is were to attend the village green inquiry on 4 March 2013, on the face of it similar arrangements would have had to have been made, and no problem is identified in the e mail dated 23 January 2013 or 7 February 2013 about this: obviously whenever the village inquiry takes place Mr Faulkner will have to put such arrangements in place.

However this may be, Mr Faulkner is now reluctant to put those detailed arrangements aside in respect of his period of jury service and pursue an application to defer his jury service. This evidently must be a matter of judgment for him but I am not sure how much weight I should put on the difficulties of deferring and re-arranging cover against the background that it was possible to do this as at 25 January 2013 in respect of jury service and will be necessary to do it for the period of the village green inquiry.

Evidently the email dated 23 January 2013 was not encouraging as to when Mr Faulkner would be available to do jury service again if it had been deferred. This then raises the question as to what is to happen if the inquiry is deferred. I note that Mr Faulkner's position is that he is *as anxious as all the parties are that this inquiry is conducted as timely as possible.* I think Mr Maile needs to tell me the first week that Mr Faulkner considers that he will be able to attend an inquiry if the inquiry is deferred from 4 March 2011; whether there are any weeks subsequent to that he will not be able to attend; whether there are any weeks that Mr Maile (or whoever will be attending the inquiry to represent Mr Faulkner) is not able to attend.

I can understand and accept that in the run up to a village green inquiry Mr Faulkner would prefer not to have the complication of running his business at the same time as doing jury service. In my Note dated 5 February 2013 I did ask however for details of the particular difficulty that would be caused him. Mr Maile in his e mail dated 7 February 2013 does not do so. Also in my Note dated 5 February 2013 I made the point that Mr Faulkner is represented. On this point, Mr Maile responds that the Campaign for Planning Sanity is a non funded voluntary organisation that cannot give the same assistance to Mr Faulkner as a commercial undertaking. I can understand this, but the Campaign is nonetheless representing Mr Faulkner at the inquiry and, on the face of it, burdens which he might otherwise have had to bear will not arise. Again, if the Campaign considers that it is going to face particular difficulties in preparing for an inquiry on 11 March 2013, I would like to hear about them.

I would expect (but I do not know) that the Objectors will object to the inquiry being deferred. However in their representations they should indicate their availability if the inquiry were to be deferred, addressing the same questions about availability that I have asked of Mr Maile.

I hope to make a decision on the application to adjourn the commencement of the inquiry on grounds of jury service by **Wednesday 13 February 2013**.

A copy of this Note should be sent to all the parties.

PHILIP PETCHEY
Assessor
Francis Taylor Building
Temple EC4Y 7BY
8 February 2013

RE: LAND OFF PINKHAM WAY, LONDON N10

NOTE (4)

Introduction

I have been appointed Assessor in this matter in place of Mr Alun Alesbury.

By a letter dated 23 January 2013, Chris Maile of Campaign for Planning Sanity on behalf of Mr Faulkner the Applicant applied for an adjournment of the inquiry fixed for 4 March 2013 on the basis that Mr Faulkner has been summoned to jury service in the week beginning 11 February 2013. I requested further information about the application by a Note dated 5 February 2013.

I need to begin by setting out the facts as I understand them.

The facts

On 13 January 2012 HM Courts and Tribunal Service deferred Mr Faulkner's jury service, requiring him to attend for jury service on 11 February 2013.

On 14 December 2012, the Commons Registration Authority e mailed Mr Faulkner as follows:

Further in this matter, we are writing to inform you that Alun Alesbury (an experienced independent self-employed barrister) of Cornerstone Barristers has been formally appointed as the independent assessor who will hold the public inquiry. Following the inquiry, Mr. Alesbury will make recommendations to the Commons Registration Authority as to the determination of the application. If any objection is made to this appointment, this should be done in writing and with an explanation of the grounds to be received by the Commons Registration Authority no later than 31 December 2012. In the absence of any sustained objections, Mr. Alesbury will be issuing directions in January 2013 in preparation for the inquiry.

A provisional date for the inquiry has been identified as 4th-8th March 2013 (inclusive). This will also be confirmed in January 2013. Should any significant issues be taken with this provisional date, these must also be received by the Commons Registration Authority no later than 31 December 2012.

By a letter dated 19 December 2012, HM Courts and Tribunal Service confirmed Mr Faulkner's jury service for 11 February 2012.

On 4 January 2013, the inquiry was fixed to begin on 4 March 2011.

By an email dated 9 January 2013 (by the Applicant) followed up by a letter 11 January 2012 (presumed 11 January 2013), Mr Maile wrote to the Registration Authority as follows:

... the Applicant has been called for jury service starting on 11 February 2013 and ... he is not aware at present as to how long he will be required for jury service and further cannot give a date when he is likely to be available to attend the inquiry or to prepare documents or

submissions for the inquiry. Therefore he requests that the date of the inquiry be adjourned sine die ...

The Registration Authority responded by an e mail dated 15 January 2013:

The Registration Authority is confident that the court service will be wiling to exercise flexibility in its requirement for jury service taking onto account the nature of the village green application. I am happy to provide a letter for the court service upon request. It is logistically very difficult to find a suitable date and venue for such an inquiry and each party's availability was requested and provided some time ago.

In the light of this, on 23 January 2013, Mr Faulkner e mailed the jury summoning officer seeking a deferral of his jury service in the following terms:

Dear Sirs

I am an applicant in a village green registration. The Registration Authority are the LB Haringey. I was told by Haringey in December 2012 that the dates for preparation and the informal hearing for my application would be from 5 February 2013 to 8 March.[1] *The informal inquiry taking place from 4th to 8th March 2013. I objected to the dates and informed them that I would be on jury service from 11 February 2013 and I could not guarantee that I would be available for the dates they wanted.*

Haringey rejected my objection and claimed that I could get my jury service changed and they have asked me to contact yourselves.

I deferred my summons from 2012 as I am now the sole employee of my company but I have, over 2012, made fairly detailed arrangements to ensure that I am available for 11 February 2013. Should my service be deferred again I am unsure as to when the next date would be convenient as I have business commitments from the middle of March to the end of April as well as it being the end of the financial year.

Could you please provide advice as to deferring my service for a second time.

The jury summoning officer (Olubunmi Omotosho) replied on 23 January 2013 as follows:

You are only entitled to one deferral by law and you have already been deferred so you cannot be excused. I am unable to excuse you from your jury service for the reasons given. You must attend on the date and at the time and place given in your summons. A letter of refusal would be sent to you regarding this and you have the right to appeal to the Head of Bureau.

This was confirmed by a letter dated 25 January 2013 from HM Courts and Tribunals Service:

Your application to have your jury service deferred has been refused. Accordingly, you must attend Court on the date and the time given in your summons.

---

[1] I imagine that Mr Faulkner may have received an intimation of this possible "window" for the inquiry before he was sent the e mail dated 14 December 2012. However, if this was so, the e mail dated 14 December 2012 moved the matter on.

You are entitled to appeal against this decision. To do so, you should write to the "Head of the Jury Summons Bureau" at this office, setting out the reasons why you wish to have your service deferred.

A Judge of the Court may hear your appeal. If this happens, the appeal will be heard before you are due to attend for jury service. You will be notified in advance of the date, time and location of the hearing and you will be givenan opportunity to attend and make representations to the Judge. If you do not attend, the appeal will be decided on the basis of your written representations.

Unless you are subsequently notified that your jury service has been deferred, you must attend Court on the date shown on your summons.

On 23 January 2013, Mr Maile wrote to the registration authority as follows:

...The applicant informed you at a very early stage of the fact that he had been served with a copy of a jury summons [This I take to be the email dated 9 January 2013] ... I attach ... a notice dated 23 January 2013 informing the Applicant that he cannot be excused from the present jury service. Therefore the Applicant is of the view that your authority's refusal to adjourn the inquiry to a date after such time as the Applicant has completed jury service is unreasonable. Whilst we accept that the average time of service on a jury is two weeks, however, there is no guarantee as to how long he will be required to serve. But even in the event that he has finished before the start of the inquiry this would eat into the preparation time for the inquiry. Therefore in our submission it is unreasonable for the Registration Authority to continue with the present date for the opening of the inquiry and therefore the only option for your authority is to adjourn the inquiry sine die. However given that all other matters are resolved and with some flexibility such an adjournment hopefully should not be little ... more than a month.

The Registration Authority has responded to this request by an e mail dated 31 January 2013:

With regard to your request for deferment of the opening of the inquiry, I intend to refer this matter to Mr Petchey for his determination. At this stage, however, the Registration Authority maintains its position in relation to jury service. The chances of a juror being required beyond 10 working days is remote and in such a prospective eventuality, jury members are asked about any difficulties that would result from this on their first day. This would leave the Applicant a full week to prepare for the inquiry.

In my Note dated 5 February 2013, I expressed the view that on the material before me that there seemed to me a reasonable prospect of obtaining a second deferral of jury service and asking for further information if a deferral was not asked for or obtained:

If such a renewed application is unsuccessful or (for whatever reason, Mr Faulkner declines to renew his application), it will be necessary to consider further the application that the inquiry be deferred. As well as weighing the inconvenience and difficulty to Mr Faulkner, it will be necessary to weigh the inconvenience and difficulty caused to objectors; before making a decision, I would give them the opportunity to comment on Mr Maile's representations thus far and upon any further representations he might make.

As far as Mr Faulkner is concerned, what I would like to understand are the particular difficulties that he envisages that will arise if he has to do jury service in the time indicated. In this context it seems to me that it is relevant to note that

- *he is represented by the Campaign for Planning Sanity in his preparations*
- *although in the two weeks following 11 February 2012 he will be unable to devote his attention to preparation for the case during the time that he is serving on a jury, even if this were not the case, it might be expected that his work might preclude him from preparation for the case during this time in any event. I appreciate that Mr Faulkner may not be in employment nor have other commitments which he would need to set aside during the time of jury service, but if that be the case, he may have more time generally to prepare the case (i.e. outside the time required for jury service).*

Mr Maile has replied by an e mail dated 7 February 2013:

It should first be made clear Mr Faulkner is as anxious as all the parties are that this inquiry is conducted as timely as possible. Secondly, he is appreciative of the fact that you, at least, have made enquiries to establish his commitments beyond his being the Applicant for the registration of a Village Green.

The issue of Jury Service is not of Mr Faulkner's making and he did, at the request of Mr Michael, contact the Jury Office, (copy attached) to request a second deferment. Copies of the relevant exchanges in regards to this were sent to the Mr Michael but for clarity I reattach them to this email.

With regard to Mr Faulkner's employment he has run his own business for more than 26 years with his area of trading falling in the construction industry. Along with many in this area he has seen a drastic reduction in his business to the extent that he has had to shed staff leaving him as the only working employee of his business and very much struggling to survive. His reason for deferring his Jury Service in 2011 was because he was not in a position to cover his absence from his commercial commitments at that time. Being aware of his requirement to carry out his Jury Service in 2013 Mr Faulkner has had to plan and make various arrangements with his suppliers, fabricators and clients as well as arranging cover for his office to ensure that his contractual commitments are as unaffected as possible by the Jury Service. As is obvious when Mr Faulkner returns each day from Jury Service his work day will begin. Also there will be a knock on effect that will affect his work load in at least the first week after completion of his Jury Service A second deferment would have a significant impact on these arrangements.

Mr Faulkner very much views the Registration Authority as the architects of the situation that has now been created. They advised Mr Faulkner in October (copy attached) that he could expect Instructions from the Independent Assessor in November 2012 and that the enquiry would be held early in the New Year. Based on this information, as vague as the enquiry date was, Mr Faulkner considered that the enquiry would be likely to take place in the 2nd or 3rd week of January 2013 a timing that was acceptable to his business and time commitments and would have had no effect on his Jury Service commitments. In reality, of course, the Registration Authority did not issue the Instructions in November. Instead Mr Faulkner received them on 6th January 2013.

With the appointment of Mr Alesbury in May 2012 his undoubted expertise in the administration of the Village Green process should have enabled, by simple consultation with Mr Faulkner, the creation of a provisional time table for the various stages of the VG process as well as the location for the Inquiry. With the completion of the Consultation period in August and with the objectors being identified, a more certain time table could have been created that was fair and achievable for all the parties then identified. Certainly Mr Faulkner is unable to see why a mutually agreed time table could not have been in place by the end of September 2012.

With regards to yet another request for the deferral of Mr Faulkner's Jury Service. You will note from the official refusal notice received from the Court (copy attached) that this will require Mr Faulkner to attend in person in front of a Judge.

Mr Faulkner is already under significant stress preparing his business for his absence on Monday as well as the anticipation of actually carrying out his Jury Service. Therefore as much as h wants this matter resolved he see no way forward and instructs me that in as far as a further deferment is concerned for the reasons set out above he now considers this matter closed.

I will though comment on the following:-

"As far as Mr Faulkner is concerned, what I would like to understand are the particular difficulties that he envisages that will arise if he has to do jury service in the time indicated. In this context it seems to me that it is relevant to note that he is represented by the Campaign for Planning Sanity in his preparations"

The Campaign for Planning Sanity (CfPS) is non funded NGO who only advise and assist on a voluntary basis and cannot guarantee what if any time can be allocated to the assistance of any one local community.

Therefore it would be wrong to assume that simply because help and assistance is being offered to Mr Faulkner by CfPS that it amounts to the same degree of assistance that might be expected of a commercial undertaking.

I hope the above clarifies the position of Mr Faulkner, and that a determination can be made in respect of the question of his jury service, by as I originally requested the inquiry is adjourned sine die.

Mr Faulkner did attend to carry out his jury service on 11 February 2013. I understand that he did make an application for that service to be further deferred but that the application was unsuccessful. On 12 February 2013, Mr Maile e mailed the registration authority as follows:

Further to our telephone call in regards to the Jury Service obligation of Mr Faulkner. I confirm that Mr Faulkner has been required to undertake that service, but that I have no information on the trial that he is involved in or the likely time frame that is to take.

Therefore I formally request on behalf of the Applicant that the proposed start of the inquiry be adjourned sine die pending the end of his jury service when a date should be fixed at the earliest opportunity for the opening of the inquiry.

The grounds for this application are to my mind quite clear and not unreasonable, that is Mr Faulkner cannot be expected to deal with any matters that might arise in between now and the existing date of the inquiry such as any response to matters raised by the Objectors in their bundles by way of rebuttal evidence. Nor in relationship to general preparation such as the organisation of witnesses etc.

In addition we have the problem of the uncertainty of the end date of the jury service, this makes it very difficult for all parties to prepare with certainty as to whether the inquiry will commence or not.

This is also potentially is likely to add significantly to the costs of all parties if at the last moment the inquiry was to be adjourned.

As for my own role and my ability to step in on some matters in preparation for the inquiry. I must make it clear that I can only undertake a certain degree of the preparation, what I cannot do is to step in and undertake that work that only the Applicant can do, and that in any event I cannot take any work or decision without express instructions from the Applicant in regards to any given aspect, which is of particular importance in regards to any rebuttal submissions.

Therefore in my submission in all the circumstances of the case the Registration Authority has no option but to adjourn to be fair not only to the Applicant but to all parties.

In this e mail, Mr Maile did not address the question of alternative dates. The Registration Authority asked him whether he could supply alternative dates. He responded:

Sorry but the simple answer is no. Whilst I could give my own availability I cannot give any clear indication of Mr Faulkners or his witnesses. I will endeavour to find out. However, when we discussed this some time ago I suggested some time in April that met with general approval, but I can give no firm commitment to that.

The Objectors have not made any representations on the matter of the proposed deferral of the inquiry.

Consideration

I accept Mr Maile's point that the situation that arises about jury service is not of Mr Faulkner's making.

Second it is significant that Mr Faulkner knew about his jury service before the inquiry was fixed for 4 March 2013. The time to have made representations if he wanted the date to be deferred to accommodate his jury service was before 31 December 2012.

Third, in his e mail dated 23 January 2013, Mr Faulkner refers to have made detailed arrangements in order to "cover" his period of jury service: which he was evidently prepared to put aside in the context of the deferral of his jury service. However if he is were to attend the village green inquiry on 4 March 2013, on the face of it similar arrangements would have

had to have been made, and no problem is identified in the e mail dated 23 January 2013 or 7 February 2013 about this: obviously whenever the village inquiry takes place Mr Faulkner will have to put such arrangements in place.

However this may be, Mr Faulkner was in the event apparently prepared to put those detailed arrangements aside in respect of his period of jury service and pursue an application to defer his jury service. I shall not put much weight upon the difficulties of deferring and re-arranging cover against the background that it would have possible to do this as at 11 February 2013 in respect of jury service and will be necessary to do it for the period of the village green inquiry and the fact that in e mail dated 12 February 2013 Mr Maile does not seek to rely on any such difficulties. I can well appreciate that as a generality arranging cover may make matters more complicated for Mr Faulkner but he will have to do this for the period of the TVG inquiry whenever it takes place.

I can understand and accept that in the run up to a village green inquiry Mr Faulkner would prefer not to have the complication of running his business at the same time as doing jury service. In my Note dated 5 February 2013 I did ask however for details of the particular difficulty that would be caused him. In his e mail dated 12 February 2012, Mr Maile identifies the possible need to consider rebuttal evidence in relation to any new material emerging from the exchange of evidence; and the organisation of witnesses. I have not yet had the opportunity to read the objectors' bundles but I would be surprised if there was much in them that asserted new facts or called for a detailed additional response; and it does seem to me that it is relevant that Mr Faulkner does have the assistance of Mr Maile, even if that assistance is limited in certain aspects. I recognise that the organisation of witnesses is something that Mr Faulkner and those who assist him will have to address but in my experience the practical difficulties arise at the time of the inquiry itself because no-one is quite sure until the inquiry begins how long each witness is likely to take. As is usual at such inquiries I will be as flexible as possible about the order in which witnesses are heard.

Finally, I have not been told by Mr Faulkner as to his availability if the inquiry were to be deferred. I do not consider this satisfactory. It is difficult to assess the inconvenience potentially caused to other parties by a deferral of the inquiry if it is not known what other dates are potentially in issue. As regards any particular inconvenience caused to the objectors by a deferral of the inquiry, I have had no representations. I shall approach the matter on the basis that

- there would be inconvenience
- there is no specific inconvenience to which I should have regard; but that
- potentially there could be particular difficulties with other dates.

In my judgment the case for an adjournment that has been made is insufficiently cogent to warrant the deferral of the inquiry.

It is possible that Mr Faulkner's jury service could exceed two weeks. If this happens and it becomes apparent that this is causing him particular difficulties, I would obviously consider a further application for a deferral but I would want to understand very clearly what those difficulties were. If Mr Faulkner's jury service continues into the week beginning 4 March 2012 I would expect to defer the start of the inquiry.

A copy of this Note should be sent to all the parties.

PHILIP PETCHEY
Assessor
Francis Taylor Building
Temple EC4Y 7BY
13 February 2013

RE: LAND OFF PINKHAMS WAY, LONDON N10

NOTE (5)

AMENDMENT OF DATE AT PART 4 OF FORM 44

Introduction

The application is made under section 15 (3) of the Commons Act 2006. The date that Mr Faulkner entered in Part 4 of the Form as indicating the date on which he considered use as of right ended was July 2010.

In Part 7 of the Form, Mr Faulkner said

The land has been used by the inhabitants of the localities as described and set out in section 6 ... for a period of more than 20 years from 1988 to 1st July 2010 (and for many years prior to that period) ...

and

The Applicant and others will and do aver that they have used the land as a town or village green as of right without let or hindrance until July 2010 when a fence was erected which excluded public access to the land.

By a letter dated 13 September 2012, Mr Faulkner wrote to the Registration Authority as follows:

The Commons Act 2006 at section 15 allows for the back dating of an application for the registration of a town or village green by up to 2 years from the date of the submission of Form 44. I entered a date of July 2010 when the land first became a village green. This was clearly an error in calculating the dates as I did not fully understand the concept of the provision set out in section 15 (3) of the 2006 Act. Therefore, for clarity, I formally request that Part 4 of Form 44 should be amended to that of the full two year's concession to the 15 October 2009 and that consequently that date should be entered into Part 4 of Form 44.

In making this application I submit that there is no prejudice to any of the objectors, indeed this is clear from the words of Lord Hoffmann at paragraph 61 and others on the panel of judges in the House of Lord's decision in the Trap Grounds case. Therefore in my submission there are no grounds in law for the Registration Authority not to grant this application to amend Part 4 of Form 44 ...

By a letter dated 19 October 2012, the Registration Authority responded:

Your request to amend paragraph 4 of the application causes some difficulty because it contradicts paragraph 7. The date of July 2010 appears to simply reflect when the fencing was erected and hence when the alleged right of use ended. This appears entirely logical. Your new interpretation of section 15 does not appear correct. However this will be put before the Independent Assessor for consideration.

By a letter dated 25 October 2012, Mr Faulkner replied:

There is no conflict as indicated in your letter. If the statement at paragraph 7 was read literally. Then, Yes, there may, at face value, be seen to be a slight conflict. However, in practice if the statement is read as it should be once the proposed amendment is taken into account, then there is no conflict. But if it eases the mind of the Registration Authority then it would be simple enough for me to supply an amended statement in place of the existing para 7; but in my view there is no need for such a trivial amendment, it only requires the relevant passage to be read with common sense. In any event there is or could be no prejudice to the objectors by the change of date or the amendment (or not) of para 7.

As for the interpretation of section 15 of the Act, this is a matter that can easily be cured within legal submissions as part of my closing submission. But in my view, and after seeking appropriate advice, I see no reinterpretation of section 15 that is not widely understood to be the case when referenced to precedents set by the courts.

By an e mail dated 15 November 2012, Jill Warren on behalf of Haringey LBC (as local planning authority) wrote to the Registration Authority as follows:

... the proposal to amend the date in the application from which it is claimed that the land first became a village green (i.e. July 2010) to 15th October 2009, is considered to be unacceptable.

The application is accompanied by a statutory declaration by the applicant that the contents of the application are true. It is considered that this cannot be the case if the date claimed is now to be some 9 months earlier than originally claimed.

In addition, the evidence submitted as part of the application relies upon the date claimed in the application. It is further supported by statutory declarations from a further 72 residents which also relate to the original date.

Finally the 15th October 2009 date is not the basis of the application which has been consulted upon, nor upon which objectors have based their responses to the application.

Accordingly, the application should not be altered by the Registration Authority at this stage, as to do so would cause substantial prejudice to all those who have been consulted on the July 2010 date.

We therefore raise a fundamental objection to the request by the application to amend the date from July 2010 to October 2009.

By a letter dated 12 December 2012, the Principal Lawyer for the Barnet LBC and the North London Waste Authority wrote:

I wish to place it on record that as objectors, both London Borough of Barnet and the North London Waste Authority have not been given an opportunity to formally make a full legal representations on [this proposed change][1]. This letter serves to request that as a matter of urgency, we are given the opportunity to formally make representations before anything is done or indeed a decision is made by the independent Assessor as to whether or not [this proposed amendment is] accepted.

By a Note dated 6 February 2013 I gave further directions. I shall not here set those out. What I particular wanted to understand was when the land was fenced off (if it remained Mr Faulkner's case that it was fenced off).

Mr Maile replied by an email dated 8 February 2013:

First of all let us clear up whether Part 7 of Form 44 should be amended, it was never the view of Mr Faulkner that Part 7 should be amended, the reference in the letter of the 25th October came about from the reply by the Registration Authority to the letter of the 13th October, where they suggest that the Objector stated that Part 7 should be amended. Whilst Mr Faulkner did not feel that Part 7 required amendment if it satisfied the Registration Authority he was prepared to do so.

It is our case that as a matter of law if an amendment gives no prejudice to the Objector then it should be allowed rather than put all the parties to the expense of a new application. Whilst I will deal with that in detail in legal arguments should it be necessary to do so with considerable confidence.

For clarity the case of the Applicant is that by mistake he put the date of March 2010 whereas he should clearly have put the earlier date of 15th October 2009. Whilst I do not want to rehearse the evidence that will be given to the inquiry it would appear at face value that the Objectors case is that fencing was complete in March 2010. [This may be a mistype for July 2010]. *Whereas the Applicants case is that at no time was an impenetrable compound completed and as such at all times the inhabitants could gain access to the land. Therefore with hind sight and having first receiving appropriate advice the application to amend was made in order to better clarify the case of the Applicant, and of course naturally resolving any difficulties that may arise for the Applicant by the evidence being put forward by the Objectors.*

Therefore as to the question of the amendment and the justification for that application. When the Campaign for Planning Sanity was first contacted and reviewed the application it became abundantly clear that there were a number of issues that required clarification and/or amendment in the application, and that as such it would be prudent to formally apply for a number of amendments, as well as giving clarity on the question of locality/neighbourhood.

In regards to Part 4 of Form 44 then Mr Faulkner gives justification within that letter for the amendment in the terms that he had put a date of the 15th October 2009. Even if there was no application to amend it is clear that given the importance to the parties of the start date of the

[1] There was a separate issue as the definition of locality in the application, to which this letter also referred. I address this further below.

fencing, (although it is the Applicants case that it is the end date of the enclosure that is important and not the start date - i.e. ability to gain access to the land).

That being so it is of considerable importance to the Applicant to clarify the date when he states is the applicable date, therefore in my submission it is expedient that the full extent of the ability to amend is in this case exercised in order to give clarity to a position which may be difficult to clarify given the vagueness of the official documents relating to the awarding of the fencing contract and the evidence of the residents about the date when the work actually occurred and the extent of that work.

If the date was left as an undetermined date in July 2010 then it will require substantial evidence on the part of the Objector to demonstrate that by a date in July 2010 fencing work had been completed to such an extent that from that date (or before) the public were totally excluded from the land. That clearly would not be the case if the application was granted to amend Part 4 to the 15th October 2009. Clarity would be given to the Applicants case thereby potentially curtailing a considerable degree of required evidence at the inquiry and thereby potentially shortening the inquiry time by at least 2 days.

However, for clarity the Applicant does not concede that a refusal to amend is such that the application would be placed in jeopardy from the fencing issue. The evidence that he calls will be clear and consistent that the enclosure of the land was not and still has not been finalised, and that neither the landowner or any of his employees or contractors took any steps to prevent any person gaining access to the land whilst the fencing work was being undertaken. And the Applicant whilst accepting that it is for him to prove his case puts the Objectors to strict proof that at any time during the statutory period or indeed prior to the submission of the application that the land was fully enclosed by fencing thereby preventing access to the land.

Therefore in my submission the Applicant was fully justified in making the application to amend Part 4 of Form 44, that there is no prejudice to the Objectors in so doing. They have had sufficient time to consider the merits of that application and whilst objecting to it, have not even at this late stage put forward those grounds of objection to the application to amend.

In their submissions for the inquiry which I received on x February 2013, counsel for Barnet LBC and the NLWA[2] make the following points:

The application for registration is made under section 15 (3) of the Commons Act 2006. Section 15 of the Act provides (as relevant):

> 15 Registration of greens
>
> (1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.
>
> .....
>
> (3) This subsection applies where–

[2] Clare Parry and Morag Ellis QC.

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
(b) they ceased to do so before the time of the application but after the commencement of this section; and
(c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).
....

In the original application form, the Applicant has stated that use 'as of right' ended in July 2010 (box 4) and more specifically in box 7 he has referred to the user ending on the 1st July 2010. In their objection LBB and NLWA accepted, based on an application date of 24th February 2012 and based on the Appellant's assertion of user ceasing in July 2010 the Application was made within time for the purposes of section 15(3)[3].

The Applicant chose not to respond to the objection on behalf of the LBB and the NLWA. However in response to objections on behalf of Haringey Planning Authority, Network Rail and Transport for London the Applicant wrote as follows on the 13th September 2012:

...I am of the view that a number of amendments should be made and I now formally request that the Registration Authority amend the application as set out below.
....
AMENDMENT OF DATE AT PART 4 OF FORM 44
The Commons Act 2006 at Section 15 allows for the backdating of an application for the registration of a town or village green by up to 2 years from the date of the submission of Form 44. I entered a date of July 2010 when the land first became a village green. This was clearly an error in calculating the dates as I did not fully understand the concept of the provision set out in Section 15 (3) of the 2006 Act. Therefore, for clarity, I formally request that Part 4 of Form 44 should be amended to that of the full two years concession to the 15th October

No ruling has yet been provided on whether this application should be allowed. This is most disappointing as the LBB and the NLWA have had to prepare for an inquiry with no idea as to whether there is an application as against them to vary the date. More importantly they have no idea what twenty year period they are preparing discuss. In the circumstances it is plain that it would cause very significant injustice to LBB and the NLWA if this amendment is allowed.

The very request for the amendment shows the weakness of the Applicant's case. In order to come within section 15 (3) there has to have been twenty years use followed by a cesser of activity. The Applicant initially claimed that relevant activity did not cease until June 2010, now the cut-off date is said to be October 2009. The point of section 15 (3) is not simply that the Applicant can backdate his application two years before the making of his application-it gives two years from the occurrence of something which has caused all activity at the site to cease. The Applicant's attempts to manipulate the date by which he claims activities at the site ceased demonstrates how misguided the application is.

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[3] See 3.4.1. of the Objection.

In any event the Applicant cannot rely on a date as far back as October 2009. As set out above, the section requires that in order to be in time 'the application is made within two years of the period beginning with the cessation'. NLWA and the LBB submit that for the purposes of section 15, an application is only made when it is made in accordance with the requirements of the Commons Registration (□England) □Regulations 2008/1961. This is clear from the legislative scheme. Section 15 of the CA 2006 requires the application to be made within two years. Section 24 provides for the making of regulations which may contain provisions 'as to the making.....of any application...'. It is clear that an application is not properly made for the purposes of section 15 unless it complies with regulations made under section 24. The Commons Registration (□England) □Regulations 2008/1961 were the regulations made under section 24. Unless and until an application complying with those regulations is made then no application is made for the purposes of section 15.

In this case it appears that the Commons Registration Authority ("CRA") were not satisfied until the 24th February 2012 that all of the requirements for a valid application had been met. Therefore it is submitted an application was not made for the purposes of section 15 until the 24th February 2012. If the Applicant is permitted to vary the date of cessor for the purposes of this application until October 2009 the application is out of time and should be forthwith dismissed.

Mr Maile responded to this in an e mail dated 15 February 2013:

First in regards to their para 6 in there statement. Clearly the Applicants application to amend should not be prejudiced merely by the fact that the Registration Authority have failed to determine the application to amend in a timely manner. Whilst due to Jury Service I am unable to take instructions as to what the view of Mr Faulkner will be but I would be very surprised if he did not to some degree echo the concerns of the Objectors that the failure of the Registration Authority to determine the application to amend has caused considerable additional work. But as that failure is NOT of the making of the Applicant then that cannot count as a justifiable ground not to amend which would be very prejudicial to the Applicant.

The point raised in para 7 is not accepted. It is clearly open to an applicant to amend a application after they have received objections and appropriate advice. Therefore whilst it is clearly open to an objector to put that argument forward, at the end of the day it is a matter of fact as to the merits of an application based on the evidence presented. Which is clear that even at today's date the application land has never been enclosed therefore irrespective of the application to amend the point raised in para 7 is not valid. It is clearly open to an applicant to apply to amend, and that unless there is clear and tangible grounds that to amend would prejudice the landowner or some other party with an interest in the matter then the application to amend should be granted. Nothing that is said by the Objector points to them suffering any prejudice.

The point raised in paras 8 and 9 are not made out. It is clear that the date of acceptance of an application is the date on which the authority first acknowledge the receipt of that application. This is a point that I do not believe has occupied the time of the court therefore if the Registration Authority were to accept what is said in those paras then whilst I have no

instructions as to what the position of Applicant will be nevertheless it will assuredly be an issue that may well be required to be determined by the courts.[4]

As will be apparent, in his directions, the question of permission to amend the application was not addressed by Mr Alesbury. Evidently it is important that this question is addressed by me before the beginning of the inquiry.

Consideration

Part 4 of the application form contains this requirement:

If section 15 (3) or (4) applies please indicate the date on which you consider that use as of right.

An applicant is then required to sign a statutory declaration that *The facts set out in the application form are to the best of my knowledge and belief fully and truly stated ...*

The form was completed by Mr Faulkner as set out in the Introduction to this Note.

It is appears from reading the application form that Mr Faulkner believed that use of the land for lawful sports and pastimes continued until July 2010 when a fence was erected that stopped it. I accept of course that subsequent investigation or consideration might have led Mr Faulkner to believe that he got the date of the fencing wrong or that he had made some other mistake relevant to what he said in Part 4 or Part 7.

I have carefully read what Mr Faulkner says in his letters dated 13 September 2012 and 25 October 2012 and subsequent e mails. I do not find what he is saying altogether clear.

It seems to me that I need to bear to bear in mind that Mr Faulkner is a lay person and that although he is assisted by Mr Maile and will be represented by him, Mr Maile is not acting as a solicitor. I think (although I could be wrong) that Mr Maile is not a lawyer.

On the other hand, it should be possible to tell me (and the objectors) whether it is Mr Faulkner's case that

- use of the application site ceased in July 2010 as the application form suggests
- at some other, and if so, what date
- has not ceased.

I consider that at the heart of the issue being discussed is the identification as a matter of fact of the date of the cessation of user, if it has ceased. It seems to me that if it is suggested that the date is other than July 2010, the form does in practical terms need to be amended - the objectors need to understand what Mr Faulkner's case is as to when fencing was erected.

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[4] There was a further short e mail on 15 February 2013 shortly elaborating this final point which I need not set out.

I would be assisted if Mr Maile could tell me before the inquiry begins what his case on this point is. It seems to me premature to consider amendment of the Form until it is clear what that case is.

This all said, for whatever reason, such clarification may or may not be forthcoming.

If, for whatever reason it is not forthcoming, we will arrive at the inquiry with the matter not clarified. If at the opening of the inquiry, Mr Maile is in difficulty telling me what the position is, we shall have to work on the basis of the form as it stands. This cannot cause the objectors any prejudice and, as I understand it, Mr Maile himself does not consider that the form needs to be amended.

If from the evidence, some other date emerges or it is suggested that the land was not fenced, then the matter then becomes one for the parties of legal submission and, for me, a matter of law which I must address in my Report.

If the objectors feel that they are prejudiced at any stage I can be confident that they will tell me and make what applications they consider appropriate.

Accordingly at this stage I consider that the appropriate direction for me to make is that the Form be not amended. However, if Mr Maile wishes to make any further application in this regard at the opening of the inquiry, he is at liberty to do so.

Locality

Mr Faulkner has also made an application to amend the identified locality. The amendment is does not appear to be controversial (although I note that the objectors have raised objections to registration based upon matters relating to locality and neighbourhood). Against this background, I propose to permit the amendment.

PHILIP PETCHEY

Assessor
Francis Taylor Building
Temple EC4Y 7BY

16 February 2013

RE: LAND OFF PINKHAMS WAY, LONDON N10

NOTE (6)

RENEWAL OF APPLICATION FOR AN ADJOURNMENT AND FURTHER CONSIDERATION OF APPLICATION TO AMEND THE APPLICATION FORM

Adjournment

Mr Maile has renewed his application to adjourn the inquiry. The position is that Mr Faulkner's jury service has extended into a third week. I have not been told whether it is thought that will be just one or two further days that are required; or whether indeed there is a risk that the jury service will extend into a fourth week.

I will consider any further representations about an adjournment that I receive by close of business on Monday and issue a decision on Tuesday.

I still wish to understand what particular difficulties are said to arise that call for an adjournment. I would imagine that both Mr Maile and Mr Faulkner will, by the end of this weekend, have had the opportunity to read the objectors' bundles. They should therefore be in a position in the course of Monday to tell me what it is that that they want to do in the course of the coming week that they consider that they will be unable to do.

Application to amend the application form

In the light of Mr Maile's e mail dated 22 February 2013, I think that I understand the Applicant's position, although no doubt Mr Maile will correct me if he thinks I am wrong. He says that the land *has never been fully enclosed* but that by virtue of section 15 (3) of the Commons Act 2006 the relevant 20 year period ended two years before the date of the application, which he puts at October 2011. On this basis the relevant date in Part 4 of the Form is, he says, 15 October 2009.

It seems to me that this is a submission of law and does not call for amendment of the form.

I do not think that the Objectors agree with Mr Maile's interpretation of the law: this is a matter on which I will hear legal submissions from them and Mr Maile in due course.

When Mr Maile says that the land has never been fully enclosed, that begs the question of when, as seems suggested, it was partly enclosed. No doubt I will hear evidence about this, and as to the extent to which the land has been partly enclosed (if I am right in thinking that this is what will be said).

At the conclusion of the inquiry, I will expect to hear submissions from the parties on both the facts (whether the land has been enclosed in whole or in part and, if so, when this happened) and as to the legal significance of these facts.

PHILIP PETCHEY

Assessor
Francis Taylor Building
Temple EC4Y 7BY

23 February 2013

RE: LAND OFF PINKHAMS WAY, LONDON N10

NOTE (7)

RENEWAL OF APPLICATION FOR AN ADJOURNMENT

Mr Maile has renewed his application to adjourn the inquiry. The position is that Mr Faulkner's jury service has extended into a third week. It seems that the position is that yesterday (Monday) the judge will have summed up in the case in which Mr Faulkner is serving; obviously we cannot know how long the jury's deliberations will continue. I would have thought that there must be a reasonable prospect that the trial will finish today or tomorrow.

Through Mr Maile, Mr Faulkner raises the possibility that he may be required to serve on the jury of a further trial. Although I would hope that this would not happen (and it seems to me that, in the circumstances, Mr Faulkner may reasonably make representations that it would be appropriate in the circumstances for him to be excused further service), I think that the time to consider this possibility is when (and if) it happens.

I have asked Mr Maile to explain the particular difficulty in which he says that Mr Faulkner is now placed. He tells me that although he (Mr Maile) has read the bundle, he has not had the opportunity to take instructions from Mr Faulkner who, in the intervals between his jury service, has had to devote himself to running his business (although I do understand he has had assistance in this regard).

I sympathise with Mr Faulkner. Nonetheless I do not accept that it would not have been possible for him to have discussed and considered with Mr Maile any issues arising from the Objectors' bundle; and will not be possible to do so further after the conclusion of Mr Faulkner's jury service and the beginning of the inquiry.

As always, there is a balance to be struck. The Objectors have written to the registration authority "spelling out" the inconvenience that they will experience if the inquiry be adjourned.

It seems to me that once I made the decision on 13 February 2013 not to adjourn the inquiry, the parties on both sides were duty bound to work towards a start date of 4 March 2013, and are still so bound. I am obviously reluctant to adjourn the inquiry at this late stage; and I am not persuaded that the difficulties that this will pose Mr Faulkner are insuperable.

Both sides have referred to potential difficulties with witnesses if the inquiry now be adjourned, and this is a fair point, although I think it is possible to overstate it. As regards Mr Faulkner, he is concerned that once his witnesses may be left in the position of having organised leave for next week, which will possibly be unnecessary if it **does** become necessary to adjourn the inquiry; and then it will be difficult to re-arrange fresh dates. It seems to me that, first and foremost, if Mr Faulkner's witnesses have arranged leave for next

week that is an argument for **not** adjourning the inquiry. But my experience is that it is difficult until an inquiry begins to programme witnesses, because it is not known how long each will take; and, further, to take account of the fact that, once basic facts have been established, inquiries tend to speed up. Thus even though Mr Faulkner's witnesses have organised leave, I am not sure how confident we can be at this stage as to the day on which they will give evidence. This is a common issue arising at inquiries of this kind. I can indicate that I will be flexible as to the order in which witnesses will be heard. For their part, I think that the parties have to work reasonably to ensure the attendance of witnesses, recognising that this may cause those witnesses inconvenience.

In the circumstances I do not think that it is appropriate that I should at this stage defer the beginning of the inquiry.

If it becomes apparent that Mr Faulkner's jury service is going to extend into a fourth week, I will consider the position further when that fact is known.

PHILIP PETCHEY

Assessor
Francis Taylor Building
Temple EC4Y 7BY

26 February 2013

RE: LAND OFF PINKHAMS WAY, LONDON N10

NOTE (8)

REQUEST TO MAKE FURTHER SUBMISSIONS

Mr Maile has e mailed the Registration Authority as follows:

Due to recent findings by the Court of Appeal in Newhaven Port and Properties Ltd, R (on the application of) v East Sussex County Council & Anor *[2013] EWCA Civ 276 (27 March 2013) in regards to the question of land ownership and the ability of a landowner to grant consent under a statutory provision on behalf of the applicants I apply to make further submissions specifically on the relevant points that are raised in that case. Whilst it is conceded that the direct points raised within the case are not fully inline with the circumstances of the dump, but there are in my submission very relevant points that come out of the case that do have a direct relevance, and that therefore it is right and proper that those arguments are advanced in order that the Registration Authority have all available arguments before them in their determination.*

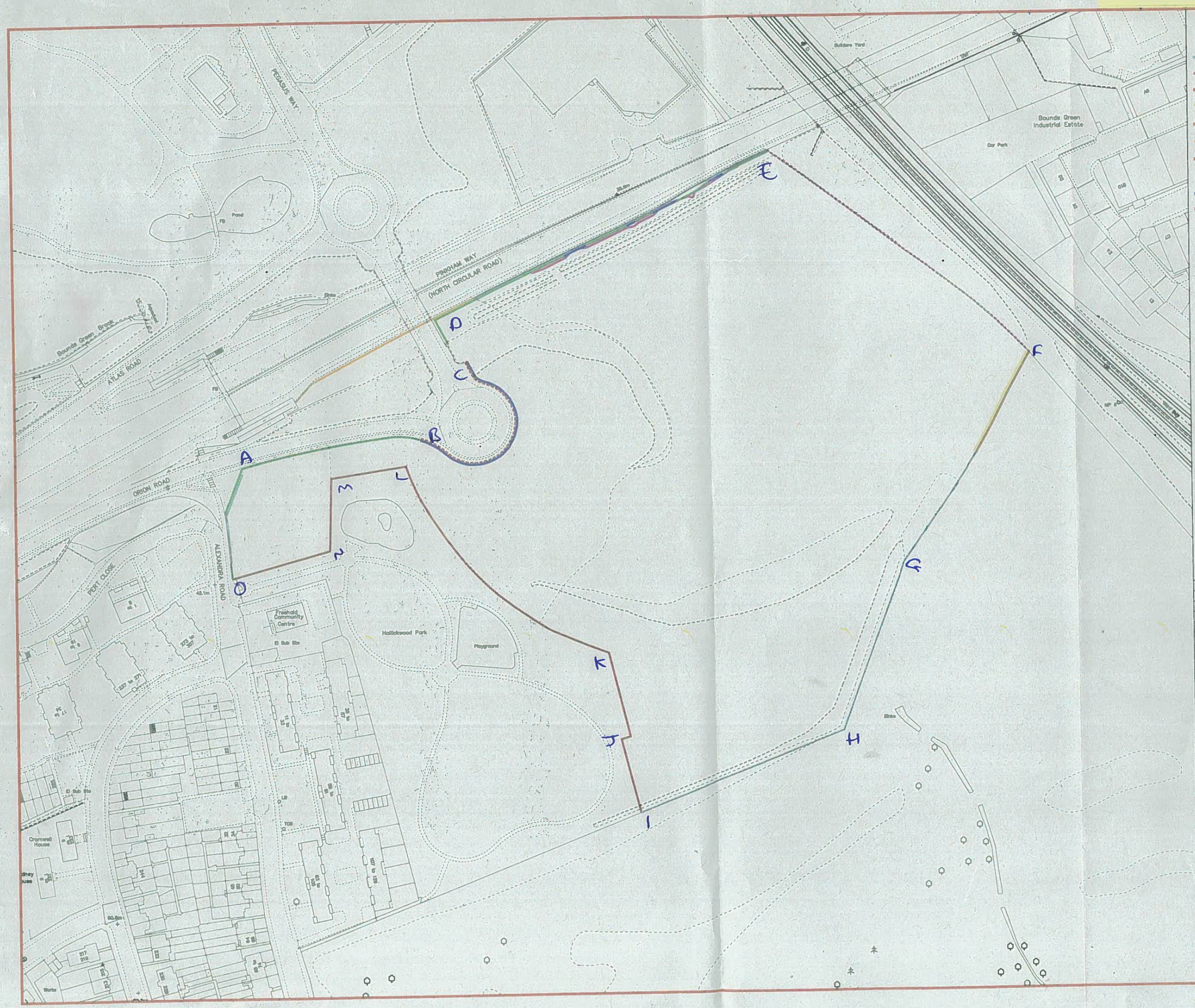
The position is that in their *Summary of Case* the Objectors placed reliance upon the judgment of Ouseley J in the Newhaven case (see paragraphs 61 - 66 at pp543 - 546 of the Objectors' bundle). It would appear that the effect of the Court of Appeal's decision is that that ground of objection falls away.

If Mr Maile wishes to make any further submissions on the Newhaven case, it seems to me appropriate that he should have the opportunity to do so. I would be grateful if he could do so as soon as possible and in any event within 14 days. The Objectors may have 14 days to respond. I hope to present my Report to the Registration Authority within the next six weeks, so it will be very helpful if the matter can be dealt with within the timescale that I have indicated.

PHILIP PETCHEY

Assessor
Francis Taylor Building
Temple EC4Y 7BY

11 April 2013



NOTES:

- Original Iron Rail Fence Pre 1963
- Advertisment Hoarding 2000 - 2009/10
- Pallisade Fence Around Hollickwood Park 1994
- Fence to Golf Course Circa 1983 - 2000
- Steel Pallisade Fence to Golf Course Circa 2000
- Post and Rail Fence to Pinkham Way Circa 1983
- Timber Board Fence to Roundabout Circa 1995
- Green Pallisade Fence June 2009
- Green Pallisade Fence March - May 2010
- Steel Pallisade Fence (Railtrack) Circa Pre 2007

Revision and Date	Description	Initial

Craig Cooper,
Commercial Director.

London Borough of Barnet,
North London Business Park,
Oakleigh Road South,
New Southgate,
London, N11 1NP
Tel. 020 8359 2000

BARNET
LONDON BOROUGH
VALUATION SECTION

SCHEME:
FORMER FRIERN BARNET SEWAGE WORKS, VILLAGE GREEN APPLICATION

TITLE:
CHRONOLOGY OF PERIMETER FENCE

Scales: 1:1250 (at A2 Size)		Date: 01/06/12
Initiated: G.C.	Drawn: K.E.B.	Checked G.C.

DRAWING NO:
24400/2

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