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.

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[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

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[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
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11 April 2013