

MEETING**PLANNING AND ENVIRONMENT COMMITTEE****DATE AND TIME****THURSDAY 13TH FEBRUARY, 2014****AT 7.00 PM****VENUE****HENDON TOWN HALL, THE BURROUGHS, NW4 4BG**

Dear Councillors,

Please find enclosed additional papers relating to the following items for the above mentioned meeting which were not available at the time of collation of the agenda.

Item No	Title of Report	Pages
6.	Addendum to the report of the Assistant Director for Planning and Development Management	1 - 6

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PLANNING & ENVIRONMENT COMMITTEE MEETING

Thursday 13 February 2014, 7.00PM

AGENDA ITEM 6

**ADDENDUM TO REPORT OF THE ASSISTANT DIRECTOR OF PLANNING AND
DEVELOPMENT MANAGEMENT**

Page 1-48

Reference: F/01319/12

Address: Chandos Lawn Tennis Club

The deadline for completion in recommendation III should be extended to 31 March 2014.

The following conditions should be added:

Notwithstanding details shown on drawings listed in condition 1 and before the development hereby permitted is occupied, details of measures to prevent vehicular access to the access road leading to London Underground shall be submitted to and approved in writing by the Local Planning Authority. The details shall be implemented as agreed in full before first occupation and retained as such thereafter.

Reason:

To ensure that safe access is provided to London Underground tracks.

All new trees and landscaping along the boundary of the site with properties on Reynolds Close and Waterloo Court shall be planted at least 3 months before first occupation of any of the flats.

Reason:

To ensure a satisfactory appearance to the development in accordance with policies DM01 of the Adopted Barnet Development Management Policies DPD (2012) and 7.21 of the London Plan 2011 and CS5 and CS7 of the Adopted Barnet Core Strategy DPD (2012).

Prior to the occupation of the development, a Maintenance Agreement for the operation of the car lifts must be submitted to and approval by the Local Planning Authority.

Reason: In the interests of highway safety in accordance with London Borough of Barnet's Local Plan Policy CS9 of Core Strategy (Adopted) September 2012 and Policy DM17 of Development Management Policies (Adopted) September 2012.

On page 37 of the report it should state that there is 1 cycle lift being provided and not 2.

Page 49-76

Reference: F/01320/12

Address: Finchley Manor Garden Centre

Condition 22 should be removed because potential noise issues arising from the development have been addressed by condition 17.

Condition 23 should be amended as follows: "The use hereby permitted shall not be open before 7am or after 11pm".

Condition 25 should be amended as follows: "The floodlights hereby permitted shall not be operated before 7am or after 9.30pm".

Condition 26 should be amended as follows: "The club house facilities hereby approved shall be ancillary to the use of the premises as a tennis club and shall not be let or hired for functions for more than 100 persons for non-tennis related activities or be made available to non-club members".

Page 203-210

Application to register land known as The Reddings Green between Reddings Close and Lawrence Street, Mill Hill, NW7 as a Town or Village Green

Following the publication of the Committee Report, the following comments have been received from the applicant:

1. We have no quarrel with Poonam Rajput's statement, in the letter referred to above, that it is a legal requirement to establish that use has been 'as of right' and that essentially the application must show that use of the land has been without force, without secrecy and without permission.

2. The distinction between 'as of right' and 'of right' is understood and accepted. Thus inhabitants who already have a right to use land for lawful sports and pastimes are not in a position to acquire rights by prescription. Consequently it is accepted that many open spaces that are used by the public for lawful sports and pastimes are incapable of being registered as greens, because the public already enjoys rights to carry out such activities on the land e.g. parks, certain recreation grounds which are open to all – and so forth. However, if there is any doubt as to whether or not that public right does exist and where its existence (as is alleged here) has not been made clear to local inhabitants by the erection of signposts/notices on the site, then the situation is far from clear.

3. The letter of 23rd January refers to Minister's approvals for land to be appropriated for open space purposes, but we cannot see that MHPS has been supplied with unambiguous evidence that such an appropriation took place. The letter suggests by implication that with the adoption of byelaws in 1978 the land became subject to the byelaws and from that point appropriated for open space purposes. But none of this was brought to the attention of the local inhabitants. We argue that to defeat the application for the Reddings Green to be registered as a village green Barnet must show unambiguously:

a) that the land was so appropriated and designated in the Council's local plan

b) that this was clearly brought to the attention of local inhabitants by written notice and/or advertising

The case of Beresford is not clear authority for any other proposition.

The local inhabitants had no knowledge as to the internal workings and paperwork at the Council and they were not informed either directly by advertising, or any Council designation of this land as open space. They made use of the Reddings Green 'as of right' in consequence and to the world it would seem clear that Barnet have acquiesced in this.

4. Consequently we do challenge the Council's proposed recommendation to the Planning and Environment Committee. The application was made for registration of Reddings Green as a village green in February 2012. There have been previous successful applications made in similar circumstances in the Borough – not least Simmonds Mead granted in 2007. It is considered that Barnet would be acting inconsistently if it were to turn down this application.

The Mill Hill Preservation Society believes the case for registration is sound.

The following comments are made by Officers in response:

1. Whether the fact that the users were aware of the right to use the land.

Where the land has been appropriated for a statutory purpose that in itself establishes how the land is to be used.

I note that in paragraph numbered 3 in your letter that you cannot see the evidence that the Minister's approval was provided for the land to be used for open spaces purposes.

In my letter to the MHPS dated 23 January 2014, I provided 3 documents in addition to the bye-laws relating to Barnet, these being:

a) Conveyance dated 9 October 1953 confirming 16.66 acres was sold to A W Curton, leaving 3.04 acres in the Council's possession.

b) Approval by the Minister of Housing and Local Government dated 15th April 1954 for the appropriation of 3.04 acres for open space purposes and

c) Approval by the Minister of Housing and Local Government dated 27th August 1954 for the appropriation of 3.19 acres for street improvement.

The Approval by the Minister of Housing and Local Government dated 15th April 1954, confirms that the Minister approves those areas marked green on the plan attached are approved under the purposes of s.164 of the Public Health Act 1875. The attached plan shows the application land in question

shaded green and the key on the plan confirmed that the land is allocated for open spaces.

The land was the designated to be used for public recreational purposes as under the bye-laws dated 1978 as pleasure ground, which was confirmed 1 March 1979 by the Secretary of State. At the time when the bye-laws were made the Local Government Act 1972 was in force which would have required the intention to confirm the bye-law to be published in a local newspaper a month before the confirmation is made.

Further the review of the bye-laws was determined at the Council meeting dated 29 January 2008 and the agenda would have been published at least 5 days before the meeting took place. The meeting was open for members of the public to attend.

In any event the case of R v. (on the application of Beresford v Sunderland City Council (2004), confirmed by Lord Bingham at paragraph 9 confirmed that user as of right would also be inconsistent with user pursuant to a statutory duty to do so. The fact is that the local authority is a creature of statute and can only hold property or land pursuant to a statutory duty to do so. Therefore the need to have a notice on the land is not absolute.

The use is therefore permissive by statute.

The land currently has a sign which has the Barnet Council logo on it. The sign states "NO BALL GAMES". The sign indicates that the land is under the control of the Council and that although it restricts ball games, it does not prohibit the land to be used by members of the public.

2. The application determined in respect of the Simmonds Mead

The decision in respect of Simmonds Mead is now being reviewed by Barnet Council and whether an application should be made to de-register the land from the Village Green register. Following the Council's recent decision in respect of the Village Road, village green application supported by an independent Counsel's opinion, land which is subject to the bye-laws permitting public recreational activities cannot be registered as a village green as they do not meet the test of using the land without permission.

The following further comments have been received in response to the Officer comments set out above:

Having examined this with our Horary Solicitor there does not seem much we can do if you insist on taking this view of our long outstanding application. MHPS wish to stand by our original letter to you dated 10th February 2014. Of course it is up to the councillors whether they wish to disregard the following:-

- a) The evidence that we have supplied to them on this matter
- b) The fact that the alleged legal position was not advertised/notified after the byelaw decisions were made
- c) The wishes of the local residents

- d) The need to be consistent with decisions taken on previous applications
- e) We think the 'No Ball Games' sign is neither here, nor there really

I would like to add that we have the support of our MP, Matthew Offord, in this matter – and would add further that he was very instrumental in obtaining the Registration of Simmonds Mead. The Society is seriously concerned that The Council is considering de-registering this green from the Village Green Register. We would object to this in the strongest terms.

Officers have nothing further to add to the additional comments in respect of this application.

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