

NORTH LONDON WASTE AUTHORITY

REPORT TITLE:

PINKHAM WAY TOWN OR VILLAGE GREEN APPLICATION

REPORT OF:

HEAD OF WASTE STRATEGY AND CONTRACTS

FOR SUBMISSION TO:

AUTHORITY MEETING

DATE:

16th APRIL 2013

SUMMARY OF REPORT:

This report updates Members on the application to register the Pinkham Way site as a 'Town or Village Green', made by residents of an area close to the site.

RECOMMENDATION

The Authority is recommended to note this report.

**Signed by: Head of Waste Strategy
and Contracts**

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Date.....8th April 2013.....

1.0 BACKGROUND

- 1.1 On 24 February 2012 a Mr C Faulkner submitted an application to the London Borough of Haringey in its capacity as the Commons Registration Authority to register as a 'Town or Village Green' the Pinkham Way site owned partly by the Authority and partly by the London Borough of Barnet.
- 1.2 Haringey considered the application to be properly made, and therefore commenced a consultation process with local residents and affected landowners. Haringey also considered that their indirect interest in the site through the Authority meant that it would be advisable to appoint an Independent Assessor to conduct a hearing into the views and evidence put forward by interested parties in order to ensure a fair and independent assessment of the facts of the application. The Authority objected jointly with LB Barnet.
- 1.3 The hearing was held during the week commencing 4/3/2013 at the Cypriot Community Centre, Wood Green. The Independent Assessor was Mr Philip Petchey of Counsel, a barrister experienced in this area of law. The Applicant, Mr Faulkner, was represented by Mr Maile of Planning Sanity. The Objectors, the Authority and LB Barnet, were represented by Morag Ellis QC of Cornerstone Barristers.
- 1.4 If the Independent Assessor finds in favour of the Applicant, he will recommend to the Commons Registration Authority that it registers the Pinkham Way site as a 'Town or Village Green'. It would then be impossible to develop the site for any use unless a suitable compensatory site could be provided.
- 1.5 At the time of preparation of this report, the Independent Assessor had still to make his formal site visit, but he did indicate at the end of the hearing that he would prepare his report no sooner than four weeks, and that the Commons Registration Authority will then provide the Applicant and Objectors twenty-one days during which to comment on any matters of fact or law before a report is prepared for LB Haringey's Licensing Sub-Committee that will act as the Commons Registration Authority and take the final decision.

2.0 THE 'TOWN OR VILLAGE GREEN' HEARING

- 2.1 The case centered on the extent and nature of use of the Pinkham Way site made by local people in the 20-year period between 1990 and 2010. Officers attended the hearing. Their assessment of the evidence submitted was as below.
- 2.2 The Objectors' perspective, (including officers' comments about the apparent strength of some of the issues) was as follows:
 - 2.2.1 Seventeen people who appear to live in the neighbourhood have made a clear claim that they have used the site.
 - 2.2.2 The forms that they have filled-in are suggestive of very limited or historic use.
 - 2.2.3 Many of the witnesses in giving evidence on their forms appeared to be directing their minds to the adjacent Hollickwood Park as opposed to the current site.

- 2.2.4 No map, either showing the neighbourhood or more particularly the site, was distributed by the Applicant with the questionnaire forms, resulting in uncertainty as to what area of land was meant in some cases.
- 2.2.5 Six of the Applicant's witness attended the hearing and had their evidence tested by cross examination.
- 2.2.6 From the evidence given by the witnesses at the hearing, it is clear that throughout the period the use of the site was reducing, and towards the end became sporadic.
- 2.2.7 The identification of a clear 'neighbourhood' is important in establishing that land is being used as a town or village green. No witness claimed to have been using the site as a member of the 'neighbourhood' regularly in the latter part of that period from 1990 to 2010.
- 2.2.8 The Applicant, Chris Faulkner withdrew from participating in the hearing from the third day to the end of the hearing i.e. he did not give evidence and was not cross-examined. Evidence that has not been tested through cross examination carries less weight.
- 2.2.9 A number of uses of the site identified in the application are believed to be inadmissible as evidence of use as a town or village green e.g. motor biking, bottle digging, secretive uses, use at night for solitude, use by unaccompanied children, use resulting from forceful entry (the site was re-fenced from June 2009), use by people outside the 'neighbourhood'.
- 2.2.10 There appears to be a lack of evidence that there is a common understanding of where the boundaries of the 'neighbourhood' might be and officers believe there is nothing which would give the visual impression of a cohesive area today. The Independent Assessor, however, will have made his own assessment of this on the basis of his own unaccompanied observations of the area after the hearing.

2.3 The Applicant's perspective was as follows:

- 2.3.1 The identity and cohesiveness of a 'neighbourhood' can come from not only defined physical boundaries, but also from the mental associations of those living within the stated 'neighbourhood'.
- 2.3.2 Further examination of how the term 'neighbourhood' was introduced would assist forming an understanding of its ability to be widely interpreted. No definition is given in statute of a 'neighbourhood'.
- 2.3.3 An area called the "Freehold" is shown on old maps of the area and fits all the criteria from the mental associations or 'state of mind' of the inhabitants to the physical make up of the 'neighbourhood'.
- 2.3.4 Identified case law suggests that it is for the Commons Registration Authority to decide what neighbourhood constitutes the relevant neighbourhood. It can if it so wishes substitute some other area as the neighbourhood if it is apparent that a better neighbourhood exists.
- 2.3.5 The land has been used for varied recreational uses. The degree of the usage cannot be described as spasmodic; and the requirement to demonstrate use by a significant number of people is relative to the size of the neighbourhood community, and that those giving evidence are only representative of the community as a whole.
- 2.3.6 The Objectors took no steps to notify the users of the application land that they were trespassing. There were no signs or other prohibitive measures other than the fencing. The first time a notice was put up was in July 2011, after the statutory 20-year period. Officers engaged in fence repairs and other site issues made no mention of use by the locality of village green use.

- 2.3.7 The actual purpose of the fence is questionable. All evidence points to the Council securing the land only for the purposes of preventing the dumping of commercial waste, rather than the fence preventing the public from accessing the land; two personnel gates served to allow access by pedestrians on to the application land. There was never any challenge to those using the site.
- 2.3.8 In relation to the Objectors' suggestion that the application was made to frustrate the NLWA/Barnet planning application, the Applicant submitted that the motive behind the application is irrelevant to the application, and simply not a matter that can be taken into account.
- 2.3.9 At the end of the hearing the Applicant concluded by saying that if the Independent Assessor were of the view that any given area of land was incapable of registration for any reason whatsoever then the Independent Assessor should go on to register the remaining area.

3.0 NEXT STEPS

- 3.1 At the end of the hearing the Independent Assessor stated that his report will not be ready before four weeks at the soonest, and this is also dependent on his workload and other competing matters. When his report is issued, there will be 21 days within which both parties can make any comments/representations on any significant aspect of the report that they are not content with. Thereafter, when the final report is released, it will be for LB Haringey, in its capacity as the Commons Registration Authority, to prepare a report of these findings for ratification by its Licensing Sub-Committee. He suggested that this process is likely to take about three months in total for the final result to be confirmed.

4.0 RECOMMENDATION

- 4.1 The Authority is recommended to note this report.

5.0 COMMENTS OF THE LEGAL ADVISER

- 5.1 Under section 15 of the Commons Act 2006, land can be registered as a green if it has been used by local people for recreation 'as of right' (*i.e.* without permission, force or secrecy) for at least 20 years. The consequence of registration is to protect the green against damage or interruption to the use as a place of exercise or recreation and against interference with occupation of the land for that purpose.

6.0 COMMENTS OF THE FINANCIAL ADVISER

- 6.1 The comments of the Financial Adviser have been incorporated into this report and he has no further comments to add.

Local Government Act 1972 – Access to information

Contact Officers: Andrew Lappage, Head of Waste Strategy & Contracts

North London Waste Authority
Lee Valley Technopark, Unit 169
Ashley Road, Tottenham
London, N17 9LN

Tel: 020 8489 5730

Fax: 020 8365 0254

E-mail: post@nlwa.gov.uk

Report Ends