

**RE: AN APPLICATION TO REGISTER LAND ADJACENT TO
68, WEIR HALL AVENUE, LONDON N18 1EE,
AS A TOWN OR VILLAGE GREEN**

*Commons
Registration Authority* : *London Borough of Enfield*

Applicant : *Patricia Lillian Jobson*

Objector : *St. Pancras and Humanist
Housing Association*

R E P O R T

**on a non-statutory public inquiry held
19th and 23rd July 2010**

**Inspector: Anne Williams
Barrister at Law
6 Pump Court, Temple,
London EC4Y 7AR**

Application Ref: 002/2009
Date of Report:

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Case Details

- The application was made by Patricia Lilian Jobson and is dated 10th November 2009. (It was received by London Borough of Enfield on 18th November 2009.)
- It is made under the provisions of Section 15 of the Commons Act 2006.
- The application is for land known as land adjacent to 68, Weir Hall Avenue, London N18 1EE to be registered as a village green.

Recommendation: That the application to amend both the application and objection be permitted and the application to register the land as village green be dismissed.

Preliminary Matters

1. I have been appointed by The London Borough of Enfield, the commons registration authority (hereinafter referred to as the LBE or the registration authority), to hold a non-statutory public inquiry and to write a report in respect of an application to register land known as land adjacent to 68, Weir Hall Avenue, London N18 1EE a village green and to make a recommendation as to whether or not the application should be granted.
2. The main issue to be considered is whether the requirements of Section 15 of the Commons Act 2006 (the 2006 Act) have been met such that the application to register the land adjacent to 68, Weir Hall Avenue, London N18 1EE as a town village green (TVG) should be granted. In this case these requirements are set out in subsection 15(2) of that Act¹: that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and they continue to do so at the time of the application. If the evidence supports this, Section 24 (4) of the 2006 Act provides that the application shall be granted.
3. An application was submitted on 10 November 2009 by Mrs Patricia Lilian Jobson. The application (dated 10 November 2009) enclosing a statutory declaration (dated 10 November 2009) (there was no name on the statutory declaration but it was signed) and letters from Mr and Mrs B Jobson dated 21st September 2009, Mrs King dated 5 November, Mrs Julie Bean dated 4th November 2009, Mr and Mrs Frutuosa dated 6th November 2009 and an undated letter from Mr Bullen and a Response to Questions raised on the potential developments, a petition produced by the Weir Hall Avenue Action Group and map purporting to identify the locality or neighbourhood within the locality (although no boundary was delineated) and 9 undated photos of children playing on the green were submitted to LBE, received and stamped with a valid date of receipt of 18th November 2009.
4. One objection was received to the application from the landowner, St. Pancras and Humanist Housing Association. A draft amendment was produced the week before the inquiry which I recommend be allowed. Skeleton Arguments on behalf of the Applicant and the Objector were helpfully submitted prior to the Inquiry.
5. To examine the evidence relating to the application, I held a public inquiry in the offices of LBE on 19th July and 23rd July 2010.
6. At the inquiry Miss Celina Colquhoun presented the case in support of the application on behalf of Mrs Jobson, calling a number of witnesses including the applicant herself. The objector – St. Pancras and Humanist

¹ The relevant statutory provisions are set out more fully in paragraphs 8 to 16 below.

Housing Association - was represented by Mr Vivian Chapman QC of Counsel, instructed by Trowers & Hamlins. I would like to express my gratitude to both Counsel and to their respective Instructing Solicitors for the considerable assistance which they all gave me throughout the public inquiry. I should also like to thank Mr John Hood and Miss Elizabeth Paraskera who made all the practical arrangements for the public inquiry and gave me excellent administrative support throughout.

7. I visited the site and the surrounding area alone during the afternoon of 5th July 2010, and carried out a formal inspection of the application land on 23rd July 2010. I was accompanied by Mr and Mrs Bonfield, Karen Chamberlain, Mrs Frutuosa and Gillian Palmer (on behalf of the Objector). I also went into Mrs Frutuosa's house and viewed the field from there.

I requested that the Applicant clarify the extent of the neighbourhood and the locality. It is important that the appropriate area is claimed as rights attend upon registration. To do that, the Applicant applied to amend the application to make it clear that it related to the second limb of the section i.e. 'a neighbourhood within the locality' and produced 2 amended plans which showed the claimed neighbourhood to be (a) Weir Hall Avenue E of Weir Hall Road (b) both sides of Amersham Avenue E of Weir Hall Road (c) both sides of Barclay Road E of Weir Hall Road and (d) both sides of Weir Hall Road between Amersham Avenue and Barclay Road and the claimed locality of the local government ward of Upper Edmonton.

Statutory Provisions

8. Section 15(1) of the 2006 Act provides that any person may apply to the commons registration authority to register land as a town or village green if certain specified circumstances pertain.

The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007² ('the 2007 Regulations') brought these provisions into force on 6 April 2007 and set out the procedures to be followed.

9. The application was made in November 2009 and therefore falls to be determined in accordance with the provisions of the 2006 Act. The application form indicates that it has been made in accordance with the provisions of Section 15(2) of the 2006 Act which provides that an application can be made where:

(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; and

(b) they continue to do so at the time of the application.

10. In determining the 20 year period of use, Section 15(6) states that any period during which access to the land was prohibited to members of the public by reason of any enactment is to be disregarded and treated as though use was continuing. This is intended to allow for situations such as that experienced during outbreaks of Foot and Mouth Disease, where

² Statutory Instrument 2007 No. 457

access to land is temporarily prevented. No such circumstances have been raised as an issue in this case.

11. Where subsection 2(a) is satisfied, Section 7 provides that for the purposes of subsection 2(b):
 - (a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in subsection (6) those persons are to be regarded as continuing so to indulge; and*
 - (b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land "as of right".*
12. An application must be made in accordance with the 2007 Regulations. These are set out at paragraph (3) and state that an application must:
 - (a) be made in Form 44;*
 - (b) be signed by every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or unincorporated;*
 - (c) be accompanied by, or by a copy or sufficient abstract of, every document relating to the matter which the applicant has in his possession or under his control, or to which he has a right to production;*
 - (d) be supported:*
 - (i) by a statutory declaration as set out in Form 44, with such adaptations as the case may require; and*
 - (ii) by such further evidence as, at any time before finally disposing of the application, the registration authority may reasonably require.*
13. The statutory declaration made in support of the application must be made by either:
 - (a) the applicant, or one of the applicants if there is more than one;*
 - (b) the person who signed the application on behalf of an applicant which is a body corporate or unincorporated; or*
 - (c) a solicitor acting on behalf of the applicant.*
14. Paragraph 5(4) of the 2007 Regulations states that:

Where an application appears to the registration authority after preliminary consideration not to be duly made, the authority may reject it ... but where it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action.
15. The task of proving the case in support of registration of the land as a village green rests with the person making the application, and the burden

of proof is the civil standard: the balance of probabilities. Each element of the qualifying criteria must be satisfied.

16. However, Section 24(4) provides that an application made for the purposes of Section 15 (and others) shall, subject to any relevant provision of the 2006 Act, be granted. Therefore if the evidence is found to satisfy the statutory tests such that a village green can be shown to exist, the application must be granted and the village green registered.

The application

17. The application was made in accordance with the 2007 Regulations on Form 44 and the attached statutory declaration was signed before a solicitor and Commissioner for Oaths. A number of supporting documents were submitted; five letters from users to support registration; a response to questions raised on the potential developments, a petition produced by the Weir Hall Avenue Action Group, a map purporting to identify the neighbourhood or locality and 9 undated photos of children playing on the green.

The application date

18. The application date is important insofar as subsection 15(2)(b) requires that use of the claimed green must be continuing "at the time of the application". In effect it sets a marker before which the required minimum of 20 years use must have been completed. However there is no clear guidance as to how this term is to be interpreted.
19. Regulation 4³ requires that, on receiving an application, a registration authority must allot a number to it and stamp the application form indicating the date it was received. This application was numbered 002/2009 and date-stamped 18th November 2009.
20. I have taken the relevant period as 18th November 1989 to 18th November 2009. This period is agreed to be the relevant period between the parties.

Identification of the locality or neighbourhood with the locality on the form

21. On the application form question 6 states "*Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked.*" The attached note advises: "*It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.*" A box is provided which is to be ticked if a map is attached.

³ Of the 2007 Regulations

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22. The Applicant responded to this question by stating "Weirhall Avenue, Upper Edmonton" and attaching a map of a wider area with the title "planning issue".
 23. At the inquiry, Miss Colquhoun applied to amend the application and submitted 2 amended plans showing the amended claimed neighbourhood to be Weir Hall East situated within the locality of Upper Edmonton.

The application land

Description of the site

24. The application form identifies the land in question as 'Playing field land situated between nos 68 & 69 Weirhall Avenue' and describes its location as land between nos 68 & 69 Weirhall Avenue, London N18 1EE.
25. Weir Hall Avenue consists of two cul-de-sacs in the centre of a housing estate built on land acquired by Tottenham UDC in 1933. The eastern part of Weir Hall Avenue contains about 30 houses arranged around an oval central area. At the south-west corner of the road around the oval, there is an area of open land fenced on 3 sides (the application land hereinafter referred to as "AL "). It is approximately 0.12 Ha. It is a grassed area surrounded by residential properties.

History of the application land

26. In 2008 the application land was sold and transferred by the London Borough of Haringey to the objector, St. Pancras and Humanist Housing Association, which wishes to develop the land for social housing.

Future proposals

27. On 22nd October 2009 LBE granted planning permission for the "redevelopment to provide a 2 storey block of 4x 3 bed terraced dwelling houses" on the application site. Mrs Jobson together with other residents objected to this development. This issue is not relevant to the determination of this application although it appears from the Applicant's case that it prompted the VG application.

The evidence

Documents submitted in support of the application

28. With her application submitted in November 2009, Mrs Jobson included a statutory declaration from herself, five letters from users of the claimed village green in support of registration and nine undated photographs of residents gathered on the application land, a petition produced by the Weir Hall Action Group, a Response to questions raised on the potential developments and a map purporting to show the neighbourhood/locality.

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29. Witness Statements from J Bean, K Chamberlain, B King, Councillor Andreas Constantinides, Mr and Mrs Frutuosa, Ms Brewer, Mr Bonfield, Mrs Bonfield and 5 undated photos were submitted 3 weeks prior to the start of the inquiry. Early in July 3 further Witness Statements from Mrs P Jobson, dated 25th June 2010, Mr B Jobson, dated 29th June 2010, Mrs J Thoires dated 24th June 2010 and 4 undated photographs were submitted.
30. At the inquiry a revised map showing the "claimed neighbourhood", a map delineating the boundaries of the "claimed locality" of "Upper Edmonton" and the Design and Access Statement accompanying the application were submitted. All the documents submitted in support of the application are listed at the end of this report.

Documents submitted opposing the application

31. In response to the application, on 19th February 2010 the objector - St. Pancras and Humanist Housing Association submitted a detailed statement in its capacity as landowner objecting to the registration of the land adjacent to 68 Weir Hall Avenue as a village green. An application for a further amendment to the objection to add the "as of right" point and 2 Witness Statements from Gillian Palmer and Michael Donnellan dated respectively 9th and 12th July 2010 with exhibit folders respectively exhibiting 1) extracts from historical records of the Health and Housing Committee of Tottenham UDC dating between 1931 and 1940, and 2) copies from HM Land Registry showing titles to properties neighbouring the AL, a copy of the conveyance dated 21st August 1933 and copies of contemporary maps of the site were received the week before the commencement of the inquiry. I recommend that the Registration Authority allow this amendment.
32. In addition, a number of other documents were tendered at the inquiry and are included in the full list at the end of this Report. In brief these included:

A copy of the Land Registry title dated 22nd January 2009 to 68 Weir Hall Avenue;

A conveyance of 28 acres of land dated 21st August 1933 between David Howells and Tottenham UDC.

General approach to the evidence

33. I have taken all of the above documents into consideration in addition to the oral evidence given by all witnesses at the inquiry, apportioning weight as appropriate in reaching my conclusions.

Evidence of use from inquiry witnesses

What follows is not intended to be a verbatim transcript of all that was said, but a brief account of the main points addressed by each witness.

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34. I heard from 8 users of the green and Councillor Constantinides at the inquiry all of whom gave evidence on oath. The following is a brief note of the main points I have noted from the evidence of each witness.
35. **Mrs Jobson** – the Applicant - has lived at 67 Weir Hall Avenue for 41 years. She produced a witness statement dated 25th June 2010 and a letter dated 21st September 2009 and photographs probably taken last Summer with a view to making this application although she explained that she did not take them. They were taken by Karen Chamberlain. She told the inquiry that the local community was close-knit in the cul-de-sac. She gave examples of events which had taken place on the field last year – a party for Nanny Bullen, St George’s Day celebrations which started 2 years’ ago, BBQs and quite a few childrens’ birthdays. Her children had played on the field and her son had ridden his first bike on there although this was not during the relevant period. Now when her grandchildren come, they use the field. She explained other children had played there but was unable to provide names. She told the inquiry that the field was used on most days in the Summer. She described trampolines, swings, goal posts which had been on the field at one time or another. She said that whilst the Council had always maintained the field Karen Chamberlain would ‘finish it off’. She said her understanding was that the application land was created as part of the Council Estate for recreation. When asked by Mr Chapman to explain what holds the claimed neighbourhood together, she explained that there were two schools. She was not able to distinguish the claimed neighbourhood from the remainder of Weir Hall Estate. Mr Chapman put the Registered title of her property to her and asked her to confirm that it was a former council house bought under the Right to Buy scheme which she did.
36. **Mr Jobson** is married to the Applicant and also lives at 67 Weir Hall Avenue where he has lived for 41 years. He produced a letter dated 21st September 2009 and a Witness Statement dated 29th June 2010. He described events including parties and picnics but could not give precise details. He referred to St George’s Day celebrations which only happened recently. He confirmed that the Council maintains the application site by cutting the grass. He explained that he and his wife were not as involved in the field as they had been when their children were young and in the last few years they had got involved again. He mentioned dog walkers using the field and children but did not know their names. When asked by Mr Chapman to describe the cohesive quality of the claimed neighbourhood he referred to the Tenants Association which represented the whole of the Weir Hall estate and not specifically the claimed neighbourhood.
37. **Ms Chamberlain** has lived at 68 Weir Hall Avenue for 16 years. She produced a Witness Statement dated 24th June 2010. She has a stepdaughter in her 20’s and a grandson aged 5. She told the inquiry that she saw children on the field all the time but was unable to identify any specific children. She occasionally walked her dogs and ferrets on the field. She explained that Mrs Bullen walks her dogs on the field every day. She accepted that the Council has always mown the grass in the field but she has always tidied the edges. She confirmed what others had said that her street was a very close-knit community. She took the photographs
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submitted with the application in the Summer of 2009. She mentioned the two schools as the special feature of the claimed neighbourhood but accepted that they serve the whole of Weir Hall Estate.

38. **Mr Bonfield** lives at 68 Weir Hall Avenue and has done for 16 years. He produced a Witness Statement dated 24th June 2010. He has a daughter – Nicola Bonfield who is 25 and he told the inquiry she used to come every Saturday and played in the field but she stopped playing when she got a flat aged 18. He explained that he helped to monitor children playing in the field when he came home from work. He identified users as Miss Bean and Miss King. He also mentioned that Miss Bean walked her dog on the field. He said that BBQs and birthday parties took place on the field and everyone was invited. Over 16 years, there were approximately 5 parties a year. He could not identify any particular factor which was cohesive about the claimed neighbourhood.
39. **Miss Bean** has lived at 55 Weir Hall Road for 24 years. She produced a witness statement dated 22nd June 2010 and a letter dated 4th November 2009. She identified various children aged between 5 and 12 who lived in Weir Hall Road who use the field. She said she went to the field all the time with her daughter, Lisa, who is aged 9. She also told the inquiry that she had been to 15 or 16 parties on the field. She was unable to identify any cohesive factor in the claimed neighbourhood.
40. **Mr Frutuosa** who has lived at 74 Weir Hall Avenue for 24 years produced a Witness Statement dated 22nd June 2010 and letter dated 6th November 2009. He bought the house from former council tenants. He has four grandchildren (aged 12 – 18). In particular, his wife used to look after their grandson who used the field when he was young so that his parents could work. He saw children on the field over the years but did not know where they came from. As to parties on the field, he was invited but didn't go. He confirmed what others had said that the Council had always cut the grass until recently. He was asked by Mr Chapman whether there was any 'cohesive factor' in the claimed neighbourhood and he told the inquiry that the community is the cul-de-sac and not the other roads such as Weir Hall Road which is part of the rest of the Weir Hall Estate.
41. **Mrs Frutuosa** who has lived at 74 Weir Hall Avenue for 24 years. She produced a Witness Statement dated 22nd June 2010 and a letter dated 6th November 2009 and also lives at 74 Weir Hall Avenue with her husband. Her house is situated opposite the field and she can see the field from her window. She had seen children playing but did not know where they came from. She did not know the area outside the cul-de-sac. She did know Miss Bean. She said that she did go to parties on the field sometimes but usually they were in Portugal. I asked how long they spend there and she explained that over the last 10 years, she had spent about 4 months there mainly during the Summer.
42. **Councillor Constantinides** who has lived at 49 Rylston Road (some distance from the AL) since 1986 and is the ward councillor. He produced a Witness Statement dated 23rd June 2010. He represents the ward of Upper Edmonton which was formed about 12 years ago – before that there was no such ward but rather a smaller ward called Weir Hall ward. He had

been to a number of events on the field over the years – he specifically remembered two – a 50th wedding anniversary during which the couple were presented with a huge pumpkin and another occasion at which there was a bouncy castle and he had seen children playing there and a huge trampoline. When asked to describe any cohesive factor in the claimed neighbourhood, he said the cul-de-sac was the distinctive part which had a sense of community and also the local school but he accepted that children went to the school from the whole of the Weir Hall Estate.

43. **Mrs J Thoires** who is Mr and Mrs Jobson's daughter, produced a Witness Statement dated 24th June 2010. She now lives at 37 Hawkdene and is aged 44. She has two children who often go to her parents. She sees her parents every week. When she was a child (pre 1989 – the 'relevant period'), children came to play on the field from the surrounding roads. Now Karen's grandchildren next door to her parents and Joanne Brewer's children, play in the field. She did not indicate the level of frequency. She confirmed that the Council had always cut the grass. She explained that it was very rare to have such a good neighbourhood feeling and that everybody looks out for each other. She did use the 'other field' to the north of the cul-de-sac when she was a child but now it is fenced off. She had not been to any event on the field herself. She was unable to describe any cohesive factor in the claimed neighbourhood.

Evidence of use from other claimants

44. In addition to the 8 witnesses who gave evidence at the inquiry, there is **written evidence** in various forms from a further 4 people provided by the applicant to support the application.
45. This evidence, being untested through cross-examination, attracts less weight since the answers to some questions are missing and some essential details are unclear. However I find nothing in these letters, questionnaires and statements to conflict in any significant way with the evidence given by the applicant's witnesses at the inquiry.

The Petition

46. The Petition, submitted with the Application has 130 signatures from Weir Hall Avenue, Weir Hall Road, Amersham Avenue and Barclay Road. It is clear that the Petition was gathered in response to a planning application made in relation to the AL. The terms are as follows:

"It has come to our notice that Origin Group are to build four houses on the land our children play on.

Our children play safe in this area and are in sight of constant watch from all who live here. We have been given notice of these plans from the council or consultation meeting regarding any plans. The first we knew of these plans was the letter we received through our doors (copy attached). We have previously written to you opposing a Mosque on the children play area. There was a representative that

come around from the above company. She asked questions and said why can't the children play in their back gardens, but this area lets all children play safely in a friendly community, unless its raining you will always see children playing outside and not sitting in front of a television. As the media are always advertising that children need to play, exercise and interact with peers **THIS PLAY AREA MEETS ALL OF THIS**. We are a close knit community with people from all ethnic backgrounds and would like you to take the signed petition into consideration against these plans.

Photographs

47. 3 sets of undated photographs were produced showing children playing and play equipment.

The Objector's Evidence

48. The Objector produced 2 Witness Statements from a partner and a barrister from Trowers & Hamblins. Gillian Palmer's Witness Statement dated 9th July 2010 exhibited 21 extracts from the Minutes of the Health and Housing Committee of Tottenham UDC. Michael Donnellan's Witness Statement dated 12th July 2010 exhibited: copies from HM Land Registry showing titles to properties neighbouring the AL, a copy of the conveyance dated 21st August 1933 and copies of contemporary maps of the site.

Applicant's Submissions

49. Miss Colquhoun on behalf of the Applicants produced a written closing statement which is attached to this Report. I briefly summarise the main points:
1. The minutes of Tottenham UDC produced by the objector do not refer to any specific power pursuant to which the UDC made an agreement to purchase the AL. This is a significant omission.
 2. The plans attached to Mr Donnellan's Witness Statement do not show how the development was formally laid out and whether the AL was specifically laid out as recreation or open land. The history is entirely speculative.
 3. The statutory test is met and the following propositions are put:
 - a) a locality need not have an administrative boundary (para 88 Behrens J in *Leeds*)⁴ and in any event the test does not require any precision
 - b) when deciding the issue of neighbourhood within a locality the principal quality it must have is one of cohesiveness.

⁴ *Leeds Group plc -v- Leeds City Council [2010] EWHC 810 (Ch)*

Housing estates in themselves can be such neighbourhoods (Sullivan J at para 85 in *Cheltenham Builders*)⁵. The evidence showed what made this neighbourhood special were:

- i) the way that the houses are laid out in the cul-de-sac but also that they backed onto the houses in the surrounding roads
- ii) there is nowhere else like the green which provides a safe overlooked environment
- iii) there is a distinct character to Weir Hall East compared with the 1930's houses on the west.

c) Significant number

It is clear from the petition that at least 130 people who live in the neighbourhood wish to see the AL protected. Evidence presented by residents have referred to children from around the neighbourhood who use the field although it was accepted that generally their names and addresses were not available but it is not always a question of names but of recognition. It is clear from the judgment of Sullivan J in (*McAlpine*)⁶ at para 77 that it is not a question of a considerable or substantial number but

"the number of people using the land in question has to be sufficient to indicate that their use of land signifies that it is in general use by the local community ..."

d) have indulged in lawful sports and pastimes on the land

The evidence presented shows that the application land has been used for such activities as dog walking, social activities, children playing and various events which amount to 'lawful sports and pastimes' (per Hoffman LJ in *Sunningwell*⁷).

e) as of right

user qualifies under s15 "as of right" if it has been "*nec vi, nec clam, et nec precario*" ("without force, without secrecy, and without permission"). L J Bingham makes clear at para 7 of his judgment in *Beresford*⁸ that mowing of the grass by the Council is not sufficient to imply a licence. If it could be shown that use was pursuant to a specific statutory right then the position may be different (para 52 Scott LJ).

The AL cannot have been used 'by right' as

⁵ *R(oao Cheltenham Builders Ltd) -v- South Gloucestershire DC [2003] EWHC 2803 (Admin)*

⁶ *R(McAlpine v Staffordshire CC [2002] EWHC 76*

⁷ *R v Oxfordshire County Council and others ex parte Sunningwell Parish Council [2000] 1 AC 335 (at 357 D) OB TAB 18*

⁸ *R(Beresford) v Sunderland City Council [2004] 1 AC 889*

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- i) the AL is not and cannot be treated as open space within the meaning of *the Open Spaces Act 1906*.
 - ii) there is no evidence as to the intentions of LB Haringey and Mrs Jobson's letter of 21st September 2009 erroneously quoted LB Haringey's 'answer' that the land had been laid out for "use for the people of the estate" when in fact that was the question asked of them.
- f) for a period of at least 20 years
There is clear evidence for the relevant period.
- g) They continue to do so at the time of the application.
The evidence demonstrates this.

The Objector's Submissions

50. Mr Chapman, on behalf of the Objector, submitted his Closing in writing and this is attached to this Report. I briefly summarise his submissions:

- (1) The effect of registration confers rights on local people⁹ and effectively sterilizes the land¹⁰. The onus of proof lies on the Applicant, and all elements must be "properly and strictly proved".¹¹
- (2) "Significant" does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community.¹²
- (3) There are 203 houses and it is reasonable to assume 3 inhabitants per house and therefore to calculate approximately 600 inhabitants within the claimed neighbourhood. The witnesses who gave oral evidence came from only 4 addresses within the neighbourhood and only 3 claimed 20 years' user. There were only 7 other witnesses who submitted written evidence which was vague and untested. The witnesses who gave oral evidence found great difficulty in identifying the names and addresses of other users of the AL. The evidence was contradictory as to whether the photographs were taken with a view to the TVG application. Councillor Constantinides was giving moral support to his constituents but had little personal knowledge of AL. Consequently the Applicant has failed to prove her case.

⁹ *R(Lewis) v Redcar & Cleveland Council [2010] 2WLR 653 (the Redcar case)* Lord Walker at paras 42-47, Lord Hope at para 72.

¹⁰ *Oxfordshire County Council v Oxford City Council & Anor [2006] 2 AC 674 (the Trap Grounds case)* per Lord Hoffman at paras 3 - 16 & 37, 39. Lord Rodger at para 115 & Lord Walker at paras 124 - 128 (Lord Scott dissenting at paras 71 - 83)

¹¹ *R v Suffolk CC ex p Steed (1996) 75 P + CR 102 at p111 per Pill L*

¹² *R v (McAlpine) v Staffordshire CC [2002] EWHC 76 (Admin) (the McAlpine case)* at para 77

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- (4) A "neighbourhood" need not be a recognised administrative unit. A housing estate can be a neighbourhood. A neighbourhood must have ascertainable boundaries because only the inhabitants of the relevant neighbourhood have recreational rights over the land¹³. However a neighbourhood must have some degree of cohesiveness¹⁴. None of the witnesses could think of anything which gave the claimed neighbourhood the required cohesiveness and thus the application fails on the ground that the claimed neighbourhood is not a neighbourhood in law.
 - (5) It is submitted that a limb (ii) locality must be substantially the same throughout the relevant 20 year period. In the present case, Councillor Constantinides' evidence was that Upper Edmonton ward had existed only for the last 12 years. The application fails on this ground.
 - (6) Qualifying user must be "as of right" i.e. without force, secrecy or permission (*nec vi, nec clam, nec precario*). In the present case, there is no evidence that the use has been forcible or secret. There is no evidence of express permission.
 - (7) "Lawful sports and pastimes" (LSP) include informal recreation such as walking, with or without dogs, and childrens' play¹⁵. It is accepted that the types of activities described by the witnesses as having taken place on the AL are LSP.
 - (8) The evidence of user for at least twenty years is very weak.
 - (9) The "by right/as of right" point. Although the discussion was obiter, there is strong guidance from the House of Lords in *Beresford*¹⁶ that user which is under a legal right is not user "as of right". The registered title to the AL makes it clear that the title derives from a conveyance dated 21st August 1933 (TAB 2 Mr Donnellan's Witness Statement). The Conveyance Plan can be examined against subsequent OS maps and the Design and Access Statement (the maps are listed in the list of evidence at p 21). The registered titles are to houses in Weir Hall Avenue and other streets on the estate (listed at TAB 1 Mr Donnellan's Witness Statement) disclose that title derives from the 1933 Conveyance and that title is based on the right to buy under the Housing Acts.
 - (10) The researches of Gillian Palmer in the Tottenham UDC minutes show that the 1933 Conveyance was a purchase of land by Tottenham UDC under the Housing Acts for the purposes of building a council estate. Mr Chapman's written closing sets out the extracts from the Minutes in full. There is reference to the proposal to build a recreation ground before the War but it is possible that the plan changed after the War. It is not

¹³ *Trap Grounds* para 69(i)

¹⁴ *Cheltenham Builders*

¹⁵ *Sunningwell* at pp 356F - 357E

¹⁶ *Beresford* - Lord Bingham paras 3 & 9, Lord Hutton para 11, Lord Scott paras 29 - 30, Lord Rodger para 62

suggested that the AL was laid out as a recreation ground but rather as open space. All the witnesses were agreed that the AL had been set out and maintained by the Council as an open space as part of the Weir Hall Estate.

- (11) At the date of the 1933 Conveyance the relevant housing legislation was the *Housing Act 1925*. The power to acquire and develop land for housing purposes was in sections 57 & 58. Under s59(1)(b) the Council could lay out "open spaces" on land acquired for housing under s107(1) the Council might, with the consent of the Minister, provide "recreation grounds" in connection with housing provided under the housing legislation. No evidence of Ministerial consent has yet been found in relation to the AL. It is submitted that the legislation probably had in mind a distinction between formal recreation grounds and small open spaces. The draftsman no doubt considered the precedent of the *Open Spaces Act 1906* which envisaged open spaces as being held on trust for public enjoyment (s.10). The AL is therefore an "open space" laid out under the Housing Acts. Mr Chapman's second submission (in the alternative) was that the AL is to be regarded as a recreation ground.
- (12) It is well settled that where a statute empowers a local authority to acquire and lay out land for public recreation, the public have a legal right to use it. This point was explored in relation to *Public Health Act 1875 s 164*¹⁷. The same principle must apply to an open space (or recreation ground) laid out under statute as an area for recreation on a council estate.
- (13) The fact that non-council tenants are not barred from using the land does not involve an excessive exercise of statutory power¹⁸.
- (14) An alternative analysis is that although permission cannot be inferred from mere acts of toleration (*Beresford*) permission can be inferred where open space is laid out under statutory powers. The statutory power provides the element which was missing in *Beresford*. The right of local people to use the AL is revocable because the local authority can dispose of it under the *Local Government Act 1972 s 122*.
- (15) The provisions of the *Housing Act 1925* have been preserved substantially unchanged in subsequent consolidations of legislation.
- (16) Accordingly recreational use of the AL by local people has been "by right" and not "as of right" and the application fails on this ground also.

¹⁷ *A-G v Loughborough Local Board Hall v Beckenham Corporation Sheffield Corporation v Tranter Blake v Hendon Corporation The Times 31st May 1881*

¹⁸ *Green v Minister of Health [1948] 1 KB 34*

Conclusions

51. I set out my conclusions applying the facts to the law:

52. **The burden of proof**

There is general agreement between the parties that the onus of proof lies on the Applicant on the balance of probabilities.

53. **Significant number**

I turn to the elements of the definition. First "a significant number". Both Counsel referred me to the *McAlpine* case and set out the test as "*what matters is that the number of people using the land in question has to be sufficient to indicate that their use of land signifies that it is a general use by the local community for informal recreation, rather than occasional use by individuals as trespassers*" (per Sullivan J at para 77). I adopt this approach.

In my view the Applicant has failed to show that a significant number of the local community has used the field. The witnesses who gave oral evidence came from only 4 addresses within the claimed neighbourhood and only 3 claimed 20 years' user. The written evidence was sometimes vague. The witnesses who gave oral evidence found considerable difficulty in identifying the names and addresses of other users of the AL. Furthermore I give limited weight to the petition which was clearly produced in relation to the planning application. I was provided with a number of photographs but they were undated and the evidence suggests that they may have been taken to support this application. Consequently I attach little weight to the petition and photographs. Overall the Applicant has failed to prove her case.

54. **"or of any neighbourhood within a locality"**

Both Counsel referred me to the *Leeds* case. In particular, they both referred me to the fact that Behrens J took into account the guidance of Lord Hoffman in the *Trap Grounds* case in which he pointed out the "*deliberate imprecision*" of the expression. However a neighbourhood cannot be any area drawn on a map. It is clear that it must have some/sufficient degree of cohesiveness¹⁹. I adopt this approach.

There was insufficient evidence available to identify the necessary cohesiveness within the claimed neighbourhood and in my view the application should fail on this ground.

55. **"The locality"**

¹⁹ R -v- (oao Cheltenham Builders Ltd. -v- South Gloucestershire DC [2003] EWHC 2803 (Admin))

Mr Chapman submits that a limb (ii) locality must be substantially the same throughout the relevant 20 year period. I adopt this approach as the correct one.

The claimed locality is the local government ward of Upper Edmonton and it is evident on the facts that this ward has only just existed for 12 as opposed to 20 years and again the application fails on this ground.

56. **"Lawful sports and pastimes"**

Both Counsel referred me to *Sunningwell*. It is clear that the expression includes informal recreation such as walking and children's play.

I accept that the evidence shows that the types of activities described by the witnesses as having taken place on the AL are LSP.

57. **"As of right"**

If the registration authority accept my conclusions on the main issue in this case i.e. whether the Applicant has met the test i.e. "a significant number of the inhabitants of the claimed neighbourhood within the locality" then the registration authority do not need to form a view on this submission. However, I comment on the 'as of right' submission as follows. I accept that there is guidance from the House of Lords in *Beresford* that the user which is under a legal right is not user "as a right" but that the matter has not yet been determined by the Courts. The 1933 conveyance at TAB 2 of Mr Donnellan's Witness Statement shows the land which became the Weir Hall Estate. The registered titles at TAB 1 disclose that title is derived from the 1933 conveyance and that title is based on the right to buy under *Housing Acts*. Both parties agree that the estate was laid out as a council estate. The witnesses agreed that the AL had been maintained by the Council. Whilst I accept that the historical evidence is not conclusive, in my view the Minutes attached to Gillian Palmer's Witness Statement indicate that it is likely the AL may have been laid out as "open space" but probably not a recreation ground and it is accepted by the Objector that no Ministerial consent has been found. The provisions of the *Housing Act 1925* have been preserved substantially unchanged. In these circumstances, in my view, it is likely that the AL was laid out as 'open space' and on the basis of the analogy of the provisions of the *Public Health Act 1875 s164* the same principle should apply to land laid out as a council estate. If not, Mr Chapman's alternative submission would apply.

Recommendation

58. I recommend that the amendments to both the application and the objection be permitted and the application to register the AL as a village green be dismissed.

ANNE WILLIAMS

INSPECTOR

**6 PUMP COURT,
TEMPLE,
LONDON EC4Y7AR**

APPEARANCES

For the Applicant:

Miss Celina Colquhoun of Counsel instructed by OJN Solicitors

Who called:

Mrs P Jobson
Mr B Jobson
Ms K Chamberlain
Mr Bonfield
Miss Bean
Mr Frutuosa
Mrs Frutuosa
Councillor Constantinides
Mrs Thoirs

For the Objectors:

Mr Vivian Chapman QC Of Counsel; instructed by Trowers and Hamlins

**DOCUMENTS SUBMITTED IN SUPPORT OF
APPLICATION**

Application dated 10th November 2009 (received 18th November 2009)

Accompanying the application:

Statutory Declaration of Mrs P Jobson dated 10th November 2009
Petition produced by the Weir Hall Action Group
Response to questions raised on the potential development
Letters from:

Mr and Mrs B Jobson dated 21st September 2009
Mrs King dated 5th November
Mrs Julie Bean dated 4th November 2009
Mr and Mrs Frutuosa dated 6th November 2009
Mr Bullon

A map identifying the locality
9 photos of children playing on the green.

Submitted prior to the inquiry:

Witness Statements from:

Mr Jobson dated 29th June 2010
Mrs P Jobson dated 25th June 2010
Mrs J Thoires dated 24th June 2010
J Bean dated 22nd June 2010
K Chamberlain dated 24th June 2010
B King dated 23rd June 2010
Councillor Constantinides dated 23rd June 2010
Mr and Mrs Frutuosa dated 22nd June 2010
Mr Bonfield dated 24th June 2010
Undated letters from Ms Bonfield, Ms Brewer, Mr Bonfield, Ms Chamberlain

9 further undated photographs

Skeleton Argument on behalf of the Applicant

A revised map showing the claimed "neighbourhood"
A map delineating the boundaries of the claimed locality of "Upper Edmonton"
A Design and Access Statement accompanying the application

Closing submissions on behalf of the Applicant

DOCUMENTS SUBMITTED ON BEHALF OF OBJECTOR

1. Statement of Objection
2. Amendment to the Objection
3. Witness Statement with exhibits from Gillian Palmer dated 9th July 2010

List of exhibits to Gillian Palmer's Witness Statement

Div No.	Date	Description	Reference
1	5/6/31	East and West of Weir Hall Road Extension decided most suitable for council house. Engineer to acquire land either by negotiation or compulsorily	Vol 30 Page 194 Para 393
2	10/07/31	Land acquired compulsorily under s64, HA 1925	Vol 30 p.321 Para 635
3	4/09/31	Owner wants to negotiate for sale; council will consider the advantages of negotiation	Vol 30; p.450 Para 893
4	27/11/31	Report of public inquiry held on 25/11/31	Vol 30; p.763 Para. 1491
5	15/03/32	Tottenham UDC (Weir Hall) Housing Confirmation Order 1932, dated 6/4/32 will become operative on 11 June 1932	Vol 31; p.324 Para 638
6	7/06/32	Notices to treat are served	Vol 31; p429
7	10/3/33	Notices of Entry & Engineer instructed to draw up plans	Vol 31; p1043 Para. 2104
8	08/09/33	Amended lay-out plan. Refers to one large recreation ground instead of four open spaces. Names of streets.	Vol 32 p.458 Para 929
9	8/12/33	New layout plan of section 1; Names of streets	Vol 32; p.791-2 Para. 1651/2
10	9/02/34	Nomenclature of estate	Vol 32; p.997 para. 2081
11	1934	Reference to sum of £190 for general estate fencing and layout of open space	Vol 33. P64 Para 109
12	6/10/36	Reference to gardens in inspection of estate and general layout	Vol 2 p1479; Para
13	1/10/35	Contract for section 3 of estate	Vol 2 p.1261;

		begins early	Para 2452
14	1/02/38	First reference to recreation ground	Vol 4 P376; para 873
15	5/04/38	Reference to permanent recreation ground	Vol 4 p.779; para 1582
16	29/11/38	Deferral for three months to consider Edmonton's suggestion of retaining an option to purchase public open space at Weir Hall House Estate	Vol 5 p.40; para 99
17	10/01/39	Direction to Engineer to prepare joint report permanent recreation ground	Vol 5 P264; para 647
18	3/01/39	Council Resolution that Weir Hall Road not to be appropriated into permanent allotments	Vol 5 P371; para 852
19	7/02/39	Note that Engineer and Parks Superintendent submit a joint report on Rec. Ground.	Vol 5; P379; para 877
20	4/4/39	Approval of plan for Rec Ground	Vol 5 P884; para 1666
21	5/3/40	Proposed houses on site	Vol 6; P166; para 304

4. Witness Statement with exhibits from Michael Donnellan dated 12th July
Exhibits are:

Copies of office copies obtained from HM Land Registry, showing titles to properties neighbouring the land the subject of the application.
A copy of the Conveyance dated 21st August 1933 between David John Howells and the Urban District of Tottenham.
Copies of contemporaneous maps of the site. These are:

- Map 1 : a copy of an Ordnance Survey map dated 1935, described as Middlesex Sheet XII 3.
- Map 2 : a copy of an Ordnance Survey map dated 1838, described as Middlesex Sheet VII 5.
- Map 3 : a copy of an Ordnance Survey dated 1957.

5. Skeleton Argument on behalf of the Objector
6. A copy of the Land Registry title dated 22nd January 2009 to 68 Weir Hall Avenue.
7. A conveyance of 28 acres of land dated 21st August 1933 between David Howells and Tottenham UDC.
8. Written closing on behalf of the Objector.

Authorities referred to in this Report

Statutes

Section 15(1) of the Commons Act 2006
Section 15(2) of the Commons Act 2006
Public Health Act 1875
Housing Act 1925
Open Spaces Act 1906
Housing Act 1936 ss 57,59 & 107
Housing Act 1957 ss 91,93 & 107
Housing Act 1985 s9, 12 & 13
Local Government Act 1972 s122

Cases

Leeds Group plc -v- Leeds City Council [2010] EWHC 810 (Ch)
Oxfordshire County Council -v- Oxford City Council and another
2 AC 674 (The 'Trap Grounds' case)
R (oao Cheltenham Builders Ltd) -v- South Gloucestershire DC [2003]
EWHC 2803 (Admin)
R -v- Oxfordshire County Council and Others ex parte Sunningwell Parish
Council [2000] 1 AC 335;
Reg v. Suffolk Council Council ex parte Steed (1995) 70 P & C.R. 487
R(Lewis) -v- Redcar and Cleveland BC (No.2)[2010]2 WLR;
UKSC 11
R (McAlpine) v Staffordshire CC [2002] EWHC 76 (Admin)
A-G v Loughborough Local Board *The Times* 31st May 1881
Green v Minister of Health [1948] 1 KB 34
R(Beresford) v Sunderland City Council [2004] 1 AC 889