



Wimbledon and Putney Commons Conservators

Annual Open Meeting 29 July 2020

Questions and Answers

Conservator, David Hince, moderated the Q&A session.

Firstly, thank you for your questions. We will be answering approximately 10 questions and where possible I have tried to combine some questions together where they touch on the same topics.

Q1. The first question from Joanne Glynn was regarding the management of the meadows on Putney Heath. She would like to see more areas left for wildlife especially insects, small mammals and birds. Would a system of rotation of tidying 50% and leaving 50% untouched work and secondly, given the success of Putney Lower Common in London in Bloom, would the Conservators consider planting more flower meadows.

A1 Dr Ros Taylor commented that WPCC would be in favor of improving the grassy areas or meadow areas in Putney Heath. Whether 50/50 rotations were the right way forward she was less sure and suggested leaving 5 or 10% of the area uncut and then having variable mowing regimes over different parts of the area. That way the range of different habitats would be maximised and would thereby help to promote diversity, or at least ensure lots of opportunities for different forms of wildlife. At Putney Lower Common, such areas could be encouraged by taking mowings and seeds from the area around the Oasis Academy to scatter and help promote growth in a sympathetic way rather than digging up an area and sowing new seed. A meadow should be based on native species perhaps enhanced the introduction of species, such as Yellow Rattle which helps to control the vigour of some grasses and thereby opens up the opportunity for other floral species to flourish and in turn promote a wider diversity of insects and other organisms. She would be in favour of trying new schemes as part of the meadow management in the Putney area.

Q2. The second question came from Ann Halpern who wanted to know if the Board would consider making it compulsory for runners and cyclists to wear masks

A2. The Chairman, Diane Neil Mills, responded that in the early days of lockdown, WPCC recognized the fears and concerns of other visitors about potential health risks of cyclists in particular given the number of cyclists had increased massively. In response therefore, WPCC had reinforced the safe-distancing message on social media, their website and on signage across the Commons, asking cyclists and runners to be more aware of other visitors.

It was now increasingly believed that the outdoor environment presented a much lower health risk than indoor environments but cyclists and runners are still asked to respect the fears and concerns of others, some of whom are fragile and susceptible, and to use common sense. However, the Board did not have the power to make it compulsory for users to wear face masks.

Q3. Tony Michael asked what were the tree planting plans for the Commons for the next 30 years.

A3. Stephen Bound, Chief Operations Manager, responded that tree planting was being encouraged globally as a means of combating climate change. However, the majority of the Commons were both a Site of Special Scientific Interest and a Special Area of Conservation and one of the main reasons for these designations was the heathland habitat and therefore, for much of the Commons, tree planting would not be appropriate as it would destroy these valuable habitats. Where tree planting was being considered was in areas of existing woodland where there was either a poor mix of species or the diversity of ages of the trees was poor and, in those areas, planting would be undertaken to resolve those issues.

Q4. James Bellringer wholeheartedly approved that children enjoy and use the Commons but he noted that the number of companies that are providing outdoor learning on the Commons seems to have increased recently. What steps are being taken to ensure that there are adequate levels of supervision for these groups and to stop them from closing off areas of the Commons or otherwise damaging them.

A4. Stephen Bound, Chief Operations Manager, responded that the number of outdoor learning groups had risen over the last few years and the point had now been reached where no further new groups were being permitted to use the site as there was a general feeling that this activity was at capacity. Some of the groups were now licensed and those licenses specified very clearly what the groups could or couldn't do while on the Commons and these licenses were being rolled out to all such groups using the Commons.

Q5. Theresa Mary Morton noted that since March the number of cyclists on the Common had increased dramatically. Very few paid heed to the regulations on cycling on the designated tracks and could be found in wooded areas and on non-cycling paths continuously. Signage was far from clear and there was far too little of it. Could we please see more signs and could we also see more of Rangers throughout the day enforcing the Byelaws?

A5. Stephen Bound, Chief Operations Manager, responded that signage was a tricky issue on the Commons. Most would agree that one of the great joys of the Common is that it is wild, a piece of countryside in London, and WPCC therefore tried to keep clutter, particularly from signage, to a minimum. That said, many cycling signs had been replaced over the last year and as cycling had increased since lockdown started, a number of additional temporary no-cycling signs had been installed. The Keepers had run a campaign, stationing themselves on the non-cycling routes and would talk to cyclists, explaining where they could and couldn't cycle. It was an issue staff had been working hard on but it was accepted it was not fully resolved.

In terms of the visibility of the Keepers, at the start of lockdown the horses on which they normally patrol the Commons had been put out to grass and patrols had been either on foot or in the buggies. Although this reduced their visibility they had been out there and doing their job. Two horses had now returned and were gradually being reintroduced to their work routine and the other two horses would hopefully be back in the next few weeks.

Q6. Cathy Williams, Carol Andrews and Neville Shepherd asked a series of related questions, mainly regarding Rushmere, particularly the partying, events and the rubbish around there. Firstly, Cathy observed that the drunken partying behavior was essentially breaking a wide

range of WPCC bylaws and she believed that WPCC had the powers under the Wimbledon and Putney Commons Act to deal with the matter and did not think that this was something that should be delegated to the police.

Secondly, she asked if there is any consideration being given to introducing new byelaws to ban alcohol consumption on the Commons.

A6. The Chairman, Diane Neil Mills, responded that she certainly understood the context for the question and would pass the Byelaw enforcement matter to the Chief Operations Manager. However, following the events on Rushmere on one particular evening in June, a meeting had been convened with Chief Inspector Bob Whitehead and Stephen Hammond MP to discuss how the police and Conservators could work over these issues as there was a shared responsibility. That particular evening the police were already on site, having notified the staff earlier in the day that they would be carrying out patrols. When possible, the police have supported staff and additionally, in June 2013, Merton Council introduced a Controlled Drinking Zone across the entire borough, which provided the police with the power to confiscate alcohol from people who were acting in a disorderly manner.

Stephen Bound, Chief Operations Manager, commented that in terms of enforcement, Rushmere was an area that Keepers focused on as it had always been a busy area on summer evenings. This year it had been increasingly busy and Keepers had been on site monitoring for problems and speaking to people as and when necessary. Part of the issue was that many of the disturbances take place late at night, around midnight/1pm after Keepers have signed off. After the incident on 26 June, it became apparent that groups of teenagers were gathering in other areas deeper into the Common so as to be out of sight. This resulted in a greater incidence of fires and rubbish in areas not normally used.

The police were willing to help where they could but acknowledge very openly that their resources are incredibly limited. It's an issue that is not yet resolved but work is ongoing.

Q7. Could notices be placed at the entrances of Rushmere summarizing the main byelaws and making clear the penalties for non-compliance

A7. Stephen Bound responded that there were noticeboards at Rushmere and these were currently used to highlight particular byelaw issues such as BBQs or fires and this could certainly be expanded to cover the other main byelaws as well.

Q8. What arrangements are being made for a more extensive Keeper presence on the ground, especially in the evenings as Rushmere is turning into "party central"

A8. Stephen Bound responded by stating that Rushmere was a key area for the Keepers to patrol and they are out until dusk. They do talk to any groups they see breaching the byelaws but the Keepers do not have any greater powers than any other member of the public and, ultimately, if those people refused to cooperate there was not a huge amount that they could do other than liaising with the police where the behaviour was illegal. As mentioned previously, a lot of the problems happen later at night when the Late Keeper has finished but Duty Officers are contactable 24 hours a day so if people are aware of a particular serious issue happening late at night they just need to contact us to call the police on their behalf.

Q9. What action is planned for improved oversight of event management so that we're not left with very ugly footprints after something like the Bookfest

A9. It was unfortunate that after several years of operating very successfully and without any problems on the Common, there were issues after last year's Bookfest event. There was an incredibly wet period just before the event and when the site setup started the ground was heavily waterlogged and vehicle movements did cause some damage. Having learnt from that, we are now looking very seriously at this as part of event planning process. Earlier in the year, the Rugby 7s for example had been cancelled, partially due the pitches being waterlogged but also because of the damage that the event setup would cause. There is a much smaller Bookfest event being held this year and WPCC are already talking to the organisers and their marquee suppliers about how they can bring most of their equipment on site by either carrying or trolleying it in from the roads to minimise vehicle movements on the Common itself. Where vehicle movements are essential then vehicles will need to have appropriate tires and/or protective matting laid before the vehicles come onsite.

Q10. A question from David Hogan on whether car parking charges in the Windmill car park would become compulsory and permanent to produce more income.

A10. Mr Hince, Conservator, responded that in short, no. The Wimbledon and Putney Commons Act 1871 was unsurprisingly silent on car parking and so it was questionable whether WPCC had the powers to make a mandatory charge for car parking. The voluntary car parking donation scheme, which had so far raised just over £7,000, would continue and he thanked everyone who had donated so far.

Q11. A question from Fleur Anderson MP for Putney. Ms Anderson noted from previous years' accounts that £734,000 had been paid in legal and professional fees between 2012 and 2019, mainly for fighting questions by local residents over alleged mismanagement of property deals. Would there be any further action taken on this issue and do the Conservators anticipate that there will be further legal costs to be paid by the charity.

A11. Diane Neil Mills, Chairman, responded that in regard to the question about the legal fees dating between the period 2012 to 2019 she would need to investigate those and would be very happy to send a written response on the details of those fees. With regard to the anticipation of future costs, the Chairman reiterated the remarks made in her statement that with the closure and publication of the Statutory Inquiry, the Conservators did not anticipate there to be further activity in this area.

Additional response sent to Fleur Anderson MP following the meeting.

Questions answered after the meeting.

Question from Mr David Devons

Q. May I suggest that all signs on the Commons, whatever their size, carry "WPCC" and the 020 Ranger's Office telephone number, and the wording "Registered Charity No, etc"? This would increase security and help prevent some members of the public thinking the Commons belong to "The Council".

A. The Chairman responded.

I thank Mr Devons for his question. As an adjunct to the work carried out as part of the National Lottery Heritage Fund, we have over the past year carried out an assessment of WPCC's use of the crest as well as other symbols and words used in our communications, not only in signage but in electronic communications. The result of that initiative has been to agree the symbols and words associated with WPCC (ie, colour, form, font) to ensure consistency. As signage is renewed, replacement signage will reflect the agreed format including colours and language. Your suggestion is therefore quite timely as one of the objectives is to ensure that the crest and identity of WPCC are more widely promoted and better understood.

There is unfortunately a misunderstanding within the community as to the ownership of Wimbledon and Putney Commons, which is not surprising as most commons within London are under the ownership of local authorities. I have in fact recently written to the Cabinet Member at Merton Council on this specific matter, with a request to wherever possible, support our effort to broaden an understanding of WPCC. Our recent fundraising initiative highlighted the fact that WPCC is an independent charity and we need to take advantage of every opportunity to reinforce this message. Hopefully, further promotion of the crest and identity will help reinforce this message.

Question from Fleur Anderson, MP for Putney

Q. I have noted that there will be limited time for questions, so I am happy just to ask the second, but I would welcome a written answer to both of these that arise from receipt of the Charity Commissioners report on July 2nd. If these are already being asked by residents I am happy to leave it with them as well.

The Charity Commissioner's reported on July 2nd on the Putney Hospital land deal of 2014 when it was sold for a considerably lower amount than market rate - paying only £350,000 instead of a minimum of £1,187,500. Who was to blame for this, can any of this be recouped and can you assure levy payers that this will not happen again?

As another issue raised in the Charity Commissioners report I note from previous accounts that £734,310 has been paid in legal and professional fees between 2012 and 2019 which were mainly to fight questions by local residents over alleged mismanaged property deals. If further action is taken on this issue, do you anticipate that there will be further legal costs to be paid by the Charity?

Yours sincerely

Fleur Anderson
Member of Parliament for Putney"

A. Text of the response from the Chairman, Diane Neil Mills, to Fleur Anderson MP

Given the time constraints, I addressed only your second question at the AOM, as recorded in the notes of our meeting, which will be posted on the website alongside answers to questions not answered at the meeting and all of the reports delivered at the meeting. (The full minutes of the meeting will also be posted on the website once approved by the Conservators.)

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A11. Diane Neil Mills, Chairman, responded that in regard to the question about the legal fees dating between the period 2012 to 2019 she would need to investigate those and would be very happy to send a written response on the details of those fees. With regard to the anticipation of future costs, the Chairman reiterated the remarks made in her statement that with the closure and publication of the Statutory Inquiry, the Conservators did not anticipate there to be further activity in this area.”

Since receiving your question, I have investigated the details of the legal and professional fees for the period 2012 to 2019 on the basis of the information published in WPCC’s annual accounts and am able to confirm the following:

- The figure of £734,310 does not precisely accord with the actual figures disclosed in the audited accounts. The legal fees for the accounting years 2012 to 2019 inclusive were £585,007 and the professional fees were £114,186, giving a total of £699,193.
- Of the £585,007 in legal fees, over half were related to the Charity Commission’s action plan, statutory inquiry and appointment of the interim manager, all in relation to the easement at Putney Lower Common.
- Another 15 percent of the £585,007 in legal fees was in relation to the claim by a levy-payer for judicial review in 2013 (found in favour of the Conservators) and an appeal in 2014 (dismissed) in relation to the easement at Putney Lower Common.
- On this basis, over 70 percent of the legal fees incurred by WPCC between the period 2012 to 2019 were directly related to the easement at Putney Lower Common. In addition, certain elements of the remaining 30 percent of legal expenses were indirectly attributable to the easement.

On this basis, I do not believe it is a fair description of the fees to state that they were incurred as a result of fighting questions by local residents. The fees were unfortunately incurred out of necessity in response to an unsuccessful legal action taken by a local resident against WPCC, followed by referral to the Charity Commission, which after four years of investigation resulted in no finding regarding the terms of the easement.

As I said to you during the meeting, we sincerely hope that the publication of the inquiry report will draw a line under the Putney Lower Common easement matter. However, if there is any further legal action against WPCC in respect of this matter, it will be necessary for the charity to defend itself and take whatever legal action is regarded as appropriate to protect the charity.

With regards to your first question relating to the terms of the easement, the Charity Commission’s report of 2 July 2020 (‘the Inquiry Report’) addresses the points that you have raised, as set out below.

1. Valuation of Easement

The Charity Commission's press release of 2 July 2020 stated, "The Commission did not make any findings about the decision to grant the easement or the terms of that grant."

I appreciate that given the statements in the Inquiry Report regarding various valuations, it may appear difficult to reconcile the conclusion of the Charity Commission regarding "no finding" with the valuations. Whilst there is no doubt that the Charity Commission did conclude that whilst there were (in its view) valid valuations for the easement of between £675,000 and £830,000 - £950,000, the Charity Commission also concluded that WPCC was also legally entitled to consider the overall impact of the proposal, as set out below.

"47. Given the concerns expressed by some subsequent trustees, the Interim Manager also asked the surveyor who had produced the 2015 report to revisit his previous valuation principally in light of information relating to the 2010 transfer which was not supplied with their original instructions.

That surveyor concluded in a further report ('the 2018 report') that the value of the easement was £830,000-£950,000. The range of valuations provided shows the difficulty in calculating the extent, if any, of the loss to the charity. The Commission accepts that valuation is not a precise science and it is possible for two professional valuers acting properly and in good faith to arrive at different valuations. Whilst the easement was granted for £350,000, the range of valuations now obtained indicated a value of between £675,000 and £830,000 - £950,000.

That said, the Commission also noted the determination of the Court of Appeal, dated 9 July 2014, that found the Conservators were entitled to take into account the overall impact of the proposal including the net effect on the Commons of the scheme as a whole.¹"

Importantly, the 2015 valuation that formed the basis of the levy-payer's notification to the Charity Commission of £1.9 million was deemed to be invalid as it was based on incomplete information. Similarly, the figure of £1,187,500 million, to which you refer, was part of this same report and not accepted by the Charity Commission in its view of relevant valuations.

The other elements of the proposal that constitute terms of the transaction were considered by the Conservators at the very outset of the process, commencing in 2002, when discussions regarding the redevelopment of the site first began. WPCC's principal concern throughout was in upholding its duty to protect Putney Lower Common and as such put in place various measures to achieve that objective. Whilst some of these elements were specifically valued, others were not though it was accepted that they made a positive contribution to the

¹ Refer to [2014] EWCA Civ 940: *Evans v Wimbledon and Putney Conservators* [2014] EWCA Civ 940. "Guy Fetherstonhaugh QC instructed by Gregsons solicitors appeared for the respondent in the Court of Appeal. The case involved a challenge by judicial review ([2013] EWHC 3411 Civ) by the Appellant to the Conservators' exercise of their power under the Wimbledon and Putney Commons Act 1871 to grant easements. The Appellant alleged that such grant was inconsistent with other obligations under the 1871 Act. The Court of Appeal rejected that argument and upheld the Conservators' decision to grant the easements, thereby unlocking a valuable development site. **The decision also gave detailed consideration to the question of what ancillary works were permissible to give effect to such a grant.**" [Source: <https://www.falcon-chambers.com/news/evans-v-wimbledon-putney-conservators-2014-ewca-civ-940>]

development and formed part of the consideration of the transaction as set out in the deed. These measures included:

- restrictive covenant regarding the massing of the development;
- restrictive covenant regarding commercial limitations on use of the site;
- registration to WPCC of tarmacked roads and other historic accesses and areas surrounding the site and return to natural open space of all such land;
- award of land at Stag Lane;
- restoration of WPCC lands surrounding the site (“the Section 106 works”), valued at £300,000.

Although some of these elements were legally transacted in advance of the granting of the 2014 easement, the 2014 judgment recognised the value of these elements, concluding that the transaction had been carried out in two parts.²

Given these facts, the Charity Commission did not conclude that the easement had been “sold for a considerably lower amount than market rate”. Whilst the Inquiry Report does state that “retrospective valuations have indicated that the easement may have been transferred at an undervalue” the Charity Commission “did not make any findings about the decision to grant the easement or the terms of the grant”.³

In considering the overall impact of the transaction, the Conservators upheld their constitutional duty to protect Putney Lower Common, particularly during a time at which pressure from developers to increase massing and density in developments was intense. It is my personal view that one of the most valuable elements of the transaction achieved by the Conservators was the restrictive covenant on the massing of the development. There is no question that if the Conservators had accepted a larger development, the increased profitability of the development would have accrued to the Conservators through the terms of the easement, as the valuation methodology clearly demonstrates. In addition, there is no question that the £300,000 in improvements to Putney Lower Common, carried out by the developer, provided value to the Conservators.

² Refer to [2014] EWCA Civ 940: *Evans v Wimbledon and Putney Conservators* [2014] EWCA Civ 940:

Section 2 states, “As part of the consideration for the grant of these new rights of way, the Council has agreed (as part of the Agreed Works as defined in the Schedule to the deed) to remove areas of hardstanding around the perimeter of the Site so as to create new grassed areas in keeping with the Common and to transfer to the Conservators such of these areas as remain in its ownership. As I shall explain in a little more detail later in this judgment, some of the areas of hardstanding lay within the land owned by the PCT and were transferred to the Conservators prior to the sale of the Site to the Council.” Section 28 states, “It seems to me that in making a judgment as to what is proper, the Conservators are entitled to take into account (as they have done in this case) the overall impact of the proposal including the net effect on the Common of the scheme as a whole. “Section 29 states, “The ultimate effect of the current proposals will be to restore as open grassland significant areas such as the car park and the western access road. The fact that this has been a two-stage process involving transfers first by the PCT and now by the Council does not in my view prevent the Conservators from looking at the overall result which will be achieved. This represents a net gain in terms of the area of the Common which will be returned to grass and will preclude any reliance by the owners of the Site on the rights of way which the land enjoyed as of 1871.”

³ Refer to paragraph 56 of the Inquiry Report and to the Charity Commission’s Press Release, both of 2 July 2020.

2. Repeat Experience

There is no question that the entire matter of the easement has consumed enormous resources and marks a low point in WPCC's history. The Charity Commission's finding regarding the dispute is therefore important.

The basis of the dispute relates to WPCC's constitution and its interaction with the Charities Act 2011. The matter is complex and the understanding of both WPCC's constitution and its interaction with charity legislation continues to evolve over time through legal opinions and court judgments. Importantly, the Inquiry Report does not state that WPCC was required to obtain a formal surveyor's report though it does state that obtaining such a report does represent "best practice". It also states that had WPCC obtained a formal report (or agreed that it did not need to do so in advance with all Conservators), the dispute may have been avoided.⁴

As noted in both WPCC's press release relating to the Inquiry Report and WPCC's Annual Report (as presented at the AOM), Conservators recognise the need for clarity in this area and as such have published the Access Framework. As the Access Framework sets out, WPCC's duty is to "comply by analogy" with sections 117 to 120 of the Charities Act 2011 and as such, the Access Framework stipulates that 'best practice' is to obtain a qualified surveyor's report when entering into a lease, easement or wayleave agreement. In approving the Access Framework, Conservators have put in place a mechanism for minimising the risk of a re-occurrence of a dispute over the regulatory compliance requirements of such agreements. Through constitutional reform, Conservators also recognise the opportunity to further clarify the constitutional basis for such agreements.

⁴ Refer to paragraph 31 of the Inquiry Report of 2 July 2020, "The inquiry considers that the original trustees should have obtained a formal surveyor's report prior to facilitating the granting of the easement. The subsequent trustees did obtain retrospective legal advice that there was no need to comply with the provisions of the Charities Act 2011 relating to the disposal of land. However, this was not established at the time of the transaction and in the Commission's view, **it would have been best practice to have obtained a formal surveyor's report. Whilst the inquiry cannot conclude the failure to obtain a formal surveyor's report has resulted in financial loss to the charity it would, at the least, have reduced the scope for disagreement amongst the trustees.**"