

**THE WIMBLEDON AND PUTNEY COMMONS CONSERVATORS (“WPCC” OR “THE
CONSERVATORS”)**

INSTRUCTIONS TO PREPARE RETROSPECTIVE VALUATION

We attach with these instructions copies of the following documents:

1. The Wimbledon and Putney Commons Act 1871 (“the 1871 Act”)
2. Relevant extracts of the Commissioners Clauses Act 1847
3. Official copies of the registers to the Conservators titles to the Wimbledon and Putney commons, title numbers TGL220263, TGL317693 and TGL197398.
4. Official copy of the register to the site known as Putney Hospital, Comondale, London SW15 1HW, title number TGL337634 (“the Hospital Site”).
5. Transfer dated 8 July 2010 between the Conservators and Wandsworth Primary Care Trust (“WPCT”) (“the 2010 Transfer”).
6. Section 106 agreement dated 8 July 2010 between the Mayor and Burgesses of the London Borough of Wandsworth (1) Wandsworth Primary Care Trust (2) and The Wimbledon and Putney Commons Conservators (3) (“the Section 106 Agreement”).
7. Agreement dated 14 February 2012 between the Conservators and the Wandsworth Borough Council (“WBC”) (“the 2012 Agreement”)
8. Deed of Easement dated 13 August 2014 between the Conservators and WBC (“the 2014 Easement”)
9. Agreement for Sale dated 14 February 2012 between the Conservators and WBC relating to the acquisition of land on the North East of Stag Lane (completed on 31 March 2015) (“the Stag Lane Agreement”)
10. The Court of Appeal decision in **Evans v Wimbledon and Putney Commons Conservators and the London Borough of Wandsworth [2014] EWCA Civ 940** dated 9 July 2014.
11. Letter dated 18 July 1911 from Percy H Clarke & Son re prospective changes to the access roads. (Referrred to in the Court of Appeal decision referred to at 10 above).
12. Licence for further right of way at Putney Hospital dated 23 February 1935 between the Conservators (1) and The Board of Management of Putney Hospital (2).
13. Licence to maintain a pathway bounding the Hospital Site dated 19 July 1947 between the Conservators (1) and The Board of Management of Putney Hospital (2).
14. Licence to make and use a car park on site between the Lower Richmond Road and the Hospital Site dated 17 October 1956 between the Conservators (1) and Battersea and Putney Group Hospital Management Committee (2).

15. Licence to extend and improve and use the roads leading to and from the car park to the Hospital Site dated 3 September 1957 between the Conservators (1) and Battersea and Putney Group Hospital Management Committee (2).
16. Copy counterpart licence to erect hoarding dated 19 December 2008 between the Conservators (1) and South West London Health Partnerships Limited (2).
17. Deed of grant of easement for electric lines at land at and adjoining the Former Putney Hospital, Lower Richard Road, London SW15 dated 31 March 2015 and made between the Conservators (1) The Mayor and Burgesses of the London Borough of Wandsworth (2) and London Power Networks pic (3).
18. Extracts from the files of Drivers Jonas Deloitte advisors to the Conservators on valuation issues prior to the 2010 Transfer and the 2012 Agreement.
19. Extracts from the files of Gregsons solicitors to the Conservators at the time of the 2010 Transfer, the 2012 Agreement and the 2014 Easement.
20. The report of Montagu Evans of 9 September 2015 with letter of 3 August 2015 setting out the basis of their instructions

Brief

The Conservators require a retrospective valuation report as at 14 February 2012 – the date of the 2012 Agreement - to establish whether the consideration received by the Conservators for the grant of the 2014 Easement represented best value for the Charity.

You have signed a Confidentiality Agreement and have already received copies of documents 1,2 and 5 – 9 above with the Briefing Note dated 28 September 2016. The contents of the Briefing Note are incorporated in these instructions.

The information contained in these instructions and the accompanying documents constitutes Confidential Information as defined in the Confidentiality Agreement.

Sections 117-121 of the Charities Act 2011 (“the Charities Act provisions”)

The Conservators were created by the 1871 Act which provides – at Section 8 – power to take, hold and to dispose of land and other property by grant, demise or otherwise. The decision of the Court of Appeal in Evans v Wimbledon and Putney Commons Conservators and the London Borough of Wandsworth of 9 July 2014 – which relates to the 2012 Agreement established that the Conservators have power under the 1871 Act to create easements.

Leading Counsel’s advice has been obtained that Section 8 of the 1871 Act provides the Conservators with an exemption from the need to comply with the Charities Act provisions by virtue of Section 117(3)(a) of the Charities Act 2011. Consequently it was not necessary for the Conservators to obtain a qualified surveyors’ report prior to entering into the 2012 Agreement which commits them to granting the 2014 Easement when certain conditions are fulfilled. It was however, necessary for them to ensure that the transaction satisfied their

fiduciary obligations as trustees and represented the best value available for the charity at the relevant time.

Your retrospective valuation report should be provided on this basis.

Background to the 2010 Transfer

The Putney Hospital site ("the hospital site") is a freehold site owned by WBC which sits within a corner of Lower Common South which is part of Putney Common. The hospital site was originally occupied by two houses with pre-1871 rights of access. Until 14 February 2012 the site was owned by WPCT. On that date it was sold to WBC.

Until relatively recently the hospital site was occupied by Putney Hospital and at the northern end by housing for the nurses. The hospital site has never immediately joined either of the public highways known as Comondale or the Lower Richmond Road. Access to and car parking for the hospital and nurses home was under licence from the Conservators over its common land. Various access licences were granted between 1957 and 1999 when the hospital closed.

From 1957 until the closure of Putney Hospital in 1999 the hospital site had the benefit of the various licences granting access to and from the site for the purpose of the hospital and the nurses' home over the access roads. For completeness copies of these licences are included with these instructions.

Between 1999 and 2003 it seems that WPCT had no plans for the hospital site. In 2003 WPCT approached the Conservators to agree a right of way to the hospital site for the purpose of developing it into a primary care centre and private flats which were intended to be sold off to cover the costs of the re-development of the hospital site.

On 19 December 2008 the Conservators granted a licence to South West London Health Partnerships Limited to occupy part of the common surrounding the hospital site for the purposes of erecting a hoarding around the derelict buildings which were Putney Hospital and the nurses' homes. A copy of this is at divider 16.

The 2010 Transfer

For the purposes of enabling the redevelopment of the hospital site into a primary care centre and private flats, the Conservators entered into the 2010 Transfer. This provides for the following:

- the land edged red on the plan to the Transfer forming the northern end of the hospital site was transferred to the Conservators and became part of the freehold title to the commons;
- The land coloured yellow on the plan to the Transfer (being the access routes and car park formerly used under licence for the benefit of the Hospital Site) was deemed part of the freehold of the commons

- In return for the grant of the rights detailed below and within 56 days of commencement of the development of the hospital site, the WPCT were to pay to the Conservators £250,000.
- For the benefit of the part of the hospital site that was to be retained as a primary care centre, the right of way over the access roads provided that the right was to be limited to the use of that part of the site as a primary care centre substantially providing health services free at the point of delivery as part of the NHS.
- For the benefit of the part of the hospital site that was to be redeveloped as private flats, a right of way over the access roads was granted provided that the use of that part of the hospital site was for residential purposes only and no more than 24 flats were constructed.
- The primary care centre and the flats were not to exceed the dimensions specified in planning permission 2006/2866
- The £250,000 payment was to be apportioned £1 for the rights in respect of the primary care centre and £249,999 for the rights in respect of the flats.
- Further ancillary rights of access for the purpose of the redevelopment and for the laying and maintaining of service media cables etc. were granted.
- The WPCT also covenanted to keep the accessway properly maintained and in good and substantial repair and condition, as well as implementing and policing a parking policy over the accessway.

The land was transferred pursuant to the Transfer and registered at the Land Registry.

On 8 July 2010 the Conservators were also a party to the Section 106 agreement relating to the redevelopment of the hospital site under which the WPCT agreed to carry out £215,000 worth of works to the common, details of which are listed at Schedule 4 which states *"in part consideration for the granting of the access easement, the agreed works are to be carried out."*

The 2012 Agreement

The development envisaged by the 2010 Transfer was never commenced and on 14 February 2012 WPCT sold the site to WBC for £4,400,000. The precise terms of sale are not known.

Also on 14 February 2012 the 2012 Agreement and the Stag Lane Agreement were also concluded. The Stag Lane Agreement involved the acquisition of land part of which was in compensation for additional land included in the 2012 Agreement - to provide the turning circle at the end of the accessway. The consideration for the purchase was £8,000.

The 2012 Agreement provides that following grant of a satisfactory planning permission for the development of the hospital site into a primary school and block of residential flats the parties will enter into a Deed of Easement in the form annexed to the 2012 Agreement. Consequently the trustees were bound to enter into the 2014 Easement as at 14 February 2012. The valuation date has been confirmed by Leading Counsel as 14 February 2012.

The Deed of Easement attached to the 2012 Agreement provided for payment to the Conservators of £350,000 in return for the grant of the following rights:

- For the benefit of the part of the hospital site that was to be retained as a school a right of way over the access roads coloured brown on the plan attached to the deed provided the use of that part of the hospital site is for a school providing education free at the point of delivery and with restrictions on the size of the school .
- For the benefit of the part of the hospital site that was to be redeveloped as private flats a right of way over the access roads coloured brown on the plan attached to the deed provided that use of that part of the hospital site is for residential purposes only and no more than 24 flats are constructed with materials and volume as specified.
- The £350,000 payment was to be apportioned £1 in respect of the rights for the school and £349,999 for the rights in respect of the flats.
- Further ancillary rights of access for the purpose of the redevelopment and for laying and maintaining service media cables etc. and an access barrier were also granted.
- WBC also covenanted to: keep the accessway properly maintained and in good and substantial repair and condition, as well as implementing and policing a parking policy over the accessway; and to procure, as part of the consideration for the rights of way for the school and flats, the Common Land Works – ie the same works as referred to in the Section 106 Agreement - were carried out at the cost of the Council's appointed developer for the development of the hospital site.

The easement was on similar terms to that referred to in the 2010 Agreement save that the rights of way extended over an additional turning circle at the end of the accessway.

On 13 August 2014 the Conservators granted the 2014 Easement which provided access to the hospital site to WBC in substantially the same form as attached to the 2012 Agreement.

Other agreements

On 31 March 2015 the Conservators completed the transfer of the land at Stag Lane and so now own land on both sides of an unregistered lane.

On 31 March 2015 the Conservators also entered into a deed of grant of an easement for electric lines on land at and adjoining the hospital site with the London Power Networks plc for the consideration of £1. The easement extended over both WBC and common land. London Power Networks plc is an electricity distribution network operator.

Dispute amongst the Conservators

The 1871 Act provides that there shall be 8 Conservators: 5 are elected from those who would be entitled to vote in a local government election and whose residence is within the ambit of Wimbledon Common or the old Parish of Putney and 3 are appointed by each of the Secretaries of State for the Home Office, Defence and the Environment. Conservators are either elected or appointed for a period of 3 years and are capable of re-election or re-appointment.

There has been a change of Conservators with only 2 of those who were in post at the time of the 2012 Agreement remaining in post. They were appointed in 2009. The other appointed Conservator currently in post was appointed in 2013. Five Conservators were elected in April 2015, none of whom had been elected before. One resigned in November 2015.

Some of those elected in April 2015 have sought to challenge whether or not the arrangements in relation to the Putney Hospital Easement have achieved best value for the charity. One of the issues between them is whether or not the hospital site has sufficient rights of access to enable the development to proceed and if not whether the terms of the 2012 Agreement represent best value for WPCC. The issue of access to the hospital site is addressed in paragraphs 1-5 of the Court of Appeal decision in Evans v Wimbledon and Putney Commons Conservators and the London Borough of Wandsworth of 9 July 2014.

Basis of valuation

The Conservators obtained valuation advice on the proposed terms for the 2010 Transfer in October 2008 and for the 2012 Agreement in December 2011. Details of the advice provided are included in the documents at dividers 18 and 19.

The valuation undertaken prior to WPCC entering into the 2010 Transfer and the 2012 Agreement was based on marriage value. However it has subsequently been suggested – as a consequence of the access issues - that the appropriate basis of valuation is the ransom value.

On 9 July 2015 [REDACTED] Chair of the Audit and Risk Committee instructed Montagu Evans to provide a retrospective valuation report. The report and letter of instruction are at divider 20 . The fact of the report and the valuation figure reached are in the public domain and therefore we consider it appropriate that full details are provided to you.

Charity Commission Inquiry

On 18 August 2016 the Charity Commission opened a statutory enquiry into the Wimbledon and Putney Commons Conservators. The enquiry will look at – inter alia – the administration, governance and management of the Charity by the trustees with specific regard to the granting of the easement in August 2014 and whether the easement was granted at a significant undervalue.

As you know the Charity Commission have directed that the trustees shall take the following action **by 5pm on 13 October 2016:**

1. Appoint a surveyor to carry out a retrospective valuation of the easement granted in August 2014 to the London Borough of Wandsworth for access rights over Putney Lower Common ("the Easement").
2. Issue instructions to the surveyor for the valuation of the Easement.
3. Agree a date with the surveyor by which the valuation of the easement will be undertaken by the surveyor and communicated to the Charities trustees.

These instructions to you constitute compliance with 1. and 2. above. You have agreed to provide your report by Friday 11 November 2016.

Matters to be considered in the decision to grant the 2014 Easement

The matters set out below are referred to in the correspondence at dividers 17 and 18. These may or may not have had a bearing on the financial consideration the Conservators were prepared to accept in return for the grant of the 2014 Easement. It is a matter for your expertise as to the extent to which – if at all – they have a bearing on your valuation along with any other matters you think should be taken into account.

- the value to WPCC of the works to the Common which WBC agreed to carry out firstly under the S106 Agreement dated 8 July 2010 and subsequently as part of the 2012 Agreement and the 2014 Easement;
- the value of the land transferred to the Conservators under the Stag Lane Agreement. The sum of £8,000 was paid for this land: it is not clear whether that sum represented the true value of the land or an undervalue;
- The extent to which matters taken into account in connection with the 2010 Agreement were still relevant and/or taken into account in entering into the 2012 Agreement. The land acquired under the 2010 Agreement could not be consideration for any subsequent agreement. The rights granted under the 2010 Transfer were to be provided by WBC under the Section 106 Agreement. Could those works constitute consideration under the 2012 Agreement?
- The possibility of the land becoming subject to a Compulsory Purchase Order by the local authority on less favourable terms for the Conservators if an agreement was not reached voluntarily.
- The Conservators principal objective was the preservation of the commons and so they had an interest in returning land to the common; limiting the size and scope of any development and ensuring that a development proceeded for the benefit of the common; ensuring parking issues were addressed and having regard to the political repercussions of any perception that the development had failed because of objections by the Conservators.

Instructions

We would be grateful if you would prepare a retrospective valuation of the grant of the 2014 Easement pursuant to the 2012 Agreement.

You have agreed to provide your report by Friday 11 November 2016 at a fixed fee of [REDACTED] plus VAT.

Your report – which should be addressed to the Conservators – should include details of your instructions, of the methodology you have employed and the matters you have taken into account in reaching your decision with details of the weight you have attributed to them.

Arrangements for a site visit can be made through Simon Lee, Chief Executive of the Conservators who can be contacted by email at simon.lee@wpcc.org.uk

If you require any further information in order to be able to prepare your report do not hesitate to contact either [REDACTED].

12 October 2016


Charles Russell Speechlys LLP