



## **February 2018**

### **Questions raised by levy-payers and answers from WPCC**

#### **A. General Questions raised by a levy-payer and answers from WPCC.**

**Q1. I note that you have not responded to my direct request regarding statements made by Bates Wells and Braithwaite prior to them tendering their resignation as your advisors nor has any action been taken to prevent the erosion of the commons boundary along Southside Common despite this matter being brought to your attention in Oct 2017 some four (4) months ago.**

A1. Your question with respect to Bates Wells Braithwaite (BWB) and the Media Release of 18<sup>th</sup> June 2015. BWB ceased acting for the charity in September 2015; the Charity Commission issued a Formal Action Plan in late October 2015 and new lawyers were appointed to investigate the matter.

The Chief Operations Manager updated you on 14<sup>th</sup> February 2018 regarding your concern about erosion of the Commons boundary along Southside Common.

**Q2. The case of Housden verses the WPCC is a leading case on the legal interpretation of the 1871 Act and confirmed that the granting of an easement over the commons is not a disposal of the commons.**

**You maintain that the access way to the new development of lower Putney Commons was granted by way of an easement over Common Land and is therefore not a disposal.**

A2. The access way to the school and the residential flats belongs to, and is registered at the Land Registry to, Wimbledon and Putney Commons Conservators (WPCC). An easement was granted to the owners of the school and to the owners of the flats. This easement is merely a right to pass over the road, not to park on it.

**Q3. Given this statement could you explain the legal basis for allowing the access way to be fenced and gated and why given that it has been, this is not in fact a disposal of the commons.**

A3. The gate is to prevent unauthorised vehicles accessing the road; the bollards and mounds are for the protection of the Common from unauthorised camping and unauthorised vehicles, e.g. as frequently happened in the past with travellers. This was found to come squarely within the duty under section 34 to use all lawful means to protect the commons and preserve them as open spaces, in the Court of Appeal judgment in *R (Evans) v WPCC* of 9 July 2014 (see in particular, paragraph 26 of the judgment). The court did not find this a disposal of the Common.

Other roads on the Common, for example Inner Windmill Road and Sunset Road have gated access to prevent unauthorised vehicular access.

The range-style fencing at Putney Lower Common is temporary to protect the newly planted vegetation and will be removed when the vegetation has become established. The access way has not been fenced.

**Q4. Could you direct me to the provisions of the Act that permit parcels of the defined common land being permitted to be disposed of in consideration for other land.**

A4. There is nothing in the 1871 Act that permits parcels of defined common land to be disposed of in consideration for other land, nor have the Conservators ever done this.

**Q5. Would you state which part of the Information Commissioners Office (ICO) statement of 24 October 2017 regarding their dealings with WPCC you disagree with or consider not to be fact and why you failed to appeal the decision if you consider it ill founded in law.**

A5. Initially, the Interim Manager (IM) and the charity's lawyers advised that the instructions to Daniel Watney to provide a retrospective valuation report (RVR) and the RVR itself should not find their way into the public domain while they formed part of the IM's appointment. Once the IM had submitted his draft report to the Commission in early October, the IM had no objection to the instructions and RVR being released into the public domain. The Board having received the ICO's statement of 24<sup>th</sup> October 2017 complied with its requirements.

**Q6. Please state the market value that the WPCC ultimately confirmed to the ICO under the freedom of information Act and how this compares to the actual value received for that which you maintain was the granting of an easement and not a disposal of the commons**

A6. WPCC issued a media statement in November 2017 see attached link:

<https://www.wpcc.org.uk/downloads/publications/media-release-rvr-and-instructions-to-prepare-an-rvr.pdf>

Investigation of this matter is in the hands of the IM appointed by the Charity Commission under its Statutory Inquiry.

Also provided is a link to the latest Charity Commission statement of 22<sup>nd</sup> December:

<https://www.gov.uk/government/news/update-on-wimbledon-putney-commons-conservators-inquiry>

**Q7. In respect of the use of the commons as a private car park for the Wimbledon Golf club please state the provision of the 1871 Act which permit such a transaction.**

A7. The car park for the Royal Wimbledon Golf Club (RWGC) is a private arrangement set up many years ago whereby the land on which RWGC originally had a car park was leased to WPCC on which to build a Maintenance Centre in consideration for which the RWGC could use land adjacent the RWGC as their car park on annual licences. Thus WPCC could give the RWGC one year's notice of termination, but WPCC would have to dismantle the Maintenance Centre and move off the RWGC land. You will appreciate that the 1871 Act prevented WPCC from building a Maintenance Centre for their equipment on the Commons. In 2005 Leading Counsel settled a revised form of the Agreement and was of the opinion that no court would overturn an arrangement so favourable to WPCC. For the avoidance of doubt, the restrictions of use of this car park are limited to vehicular access only and that pedestrian access is not restricted.

**Q8. Next in relation the rejection of the claim that the charity has "lost " 6 million pounds would you please state why the conservators granted the tenant of Mill house a lease that facilitated his purchase of the freehold under the law . Would you also please state why at completion of the sale the property was flipped to a BVI company for more than double the price it had just been sold for by the conservators.**

A8. In March 1934, WPCC agreed that the then tenant of “The Mill House” was entitled to extend his lease in March 1939 to March 1960. In 1936, the tenant spent considerable sums on rebuilding the house and persuaded WPCC to extend the lease for a further 11 years; a 34-year lease was granted in 1937, until 1971. Under the Leasehold Reform Act 1967, since the Mill House lease was over 21 years (a “long’ lease) the lessee was entitled to a 50-year extension of the lease, or to acquire the freehold. A 50-year extension of the lease was granted. Once the lease had been extended, the 1967 Act provided that it was no longer possible to acquire the freehold. Under the Commonhold and Leasehold Reform Act 2002, Section 16 of the 1967 Act was repealed, whereby the tenant was entitled to purchase the freehold. WPCC challenged this at Kingston County Court, but the Court held it was bound by the House of Lords decision in *ex part O’Byrne* of 14 November 2002 and the tenant was entitled to enfranchisement. The tenant gave the prescribed notice on 14 December 2003 that he wished to acquire the freehold of Mill House and this became the valuation date for enfranchisement. The tenant was entitled to deduct a £1M for improvements/extensions carried out at his expense (less 25% for potential for improvements under *Fattal*) and possibly a further 25% under the Landlord and Tenant Act 1954 - “holding over”. After a Land Valuation Tribunal hearing and a subsequent opinion by Jeremy Brock QC, WPCC finally agreed an enfranchisement valuation (as of 14 December 2003) of £2.5M and completion was arranged for 1 August 2006. The purchaser then put Mill House on the market.

**B. Question raised by a levy-payer in connection with WPCC Media Statement 14<sup>th</sup> February 2018 and answer from WPCC.**

*Q1. MEETING WITH CHARITY COMMISSION: On behalf of the Board, the Chairman met with officers of the Charity Commission in December 2017. The Interim Manager is undertaking further valuation investigation. The aim of the Commission is for the charity to be able to operate effectively without the distraction of an ongoing dispute over the valuation. The Commission confirmed that the scope of the Statutory Inquiry is not wider than the valuation matter. (WPCC Media Statement 14<sup>th</sup> February 2018)*

**I thought it was worthwhile checking with the Charity Commission your statement that the “The Commission confirmed that the scope of the Statutory Inquiry is not wider than the valuation matter.”**

**I have received the following reply from [REDACTED] today:**

Dear [REDACTED]

Thank you for your email.

**I have attached links to the two public statements that the Commission has put out concerning the Inquiry which refer to its scope.**

<https://www.gov.uk/government/news/new-charity-investigation-wimbledon-and-putney-commons-conservators>

<https://www.gov.uk/government/news/update-on-wimbledon-putney-commons-conservators-inquiry>

Yours sincerely

[REDACTED]  
**Investigations Monitoring & Enforcement**

**Even a cursory study of these two statements make clear that your February update is incorrect and misleading. Please ensure that it is corrected without delay, and confirm that you have done so.”**

A9. The entry under 'Charity Commission' was a report of the meeting held on 18<sup>th</sup> December 2017 that, as Chairman, Ms Whyte held on behalf of the Board with Ms Helen Stephenson, Chief Executive Officer, Mr Harvey Grenville, Head of Investigations and Enforcement and Mrs Alison Burmiston, Investigations Monitoring & Enforcement. She was accompanied by Mrs Francesca Quint, Barrister.

The draft report of the meeting with the Commission's officers was sent to them for comment. The draft report included the following:

*'The Statutory (SI) is solely around [the IM and valuation] issue. No other questions are being investigated. Once this is dealt with the SI will be closed'* and, later in the draft report,

*'The CC confirmed that the IM is solely looking at the valuation issue; the scope of the SI is not wider.'*

The Commission suggested one clarification to the draft report: this clarification did not include any reference to the two quoted passages above.

The scope of the Statutory Inquiry is clearly set out in the public statement by the Commission of 16th September 2016: *'The inquiry will examine the administration, governance and management of the charity by the trustees with specific regard to the issues arising from the granting of the easement in August 2014 for access rights over Putney Lower Common.'*

The Commission's update statement of 22<sup>nd</sup> December 2017 describes the ongoing work of the IM and referred to 'an ongoing dispute within the trustee body relating to the easement'.

The shorthand 'valuation matter' referred to in the final sentence of the 'February 2018 Board Update' needs to be viewed in this wider context as specified in the Commission's two statements including matters related to the valuation, such as trustee decision making and the trustee dispute in relation to the valuation.