



ENGLEFIELD GREEN COMMITTEE

21 FEBRUARY 2012

APPENDICES

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Runnymede Borough Council

ENGLEFIELD GREEN COMMITTEE

1 November 2011 at 7.00 pm

Members of the Committee Present: Councillors P Taylor (Chairman), P I Roberts, Miss M N Heath, and HWV Meares

Residents' Representatives: Mr A E Panter (Vice-Chairman), and Mr M Spear

Members of the Committee absent: Councillors N Prescott and M T Kusneraitis

333. MINUTES

The Minutes of the meeting of the Committee held on 21 June 2011 were confirmed and signed as a correct record.

334. APOLOGIES FOR ABSENCE

Apologies were received from Councillor Prescott

335. ENGLEFIELD GREEN - PLANNING MATTERS AROUND THE GREEN

The Council was currently processing a planning application for a major development on the former Brunel University Campus (reference RU 11/0207, 208 & 209). At the meeting on 21 June 2011 the Committee had considered the potential damage to the Green during the construction works and the views of the Committee and the request for an alternative access to be investigated were passed to the Council's Planning Division. Concerns had been expressed by Planning Officers over the practicalities of the alternative access suggested.

The planning application submitted, and since revised, included four items that affected the Green;

Safety Signs

It was proposed that two safety signs at the junction of Priest Hill and Coopers Hill Lane would be erected on the Green. Members were shown maps which indicated the proposed location of the signage. The Committee considered that the signs would be on highway land and therefore the Committee would not need to be asked for consent.

Bus Shelters

Members were advised that the upgrade of the two existing bus stops at St Jude's Road and Middle Hill (one north-bound and one south-bound) was proposed to make them DDA compliant. The Committee was advised that these works appeared to be on the Green and not on highway land and therefore the Committee's consent, ministerial consent under Section 38 and consent from the Crown would be required in due course for the work to be undertaken.

Kerb

The Coopers Hill Lane triangle had previously been raised as a potential accident risk by local residents. Of particular concern were larger vehicles (such as student buses) travelling from the eastern section of Coopers Hill Lane and then turning into the southbound carriageway to the St Judes Road junction (and vice-versa). The northern section of Coopers Hill Lane by the triangle was narrow at this location, and this, combined with the configuration of the current junction, created a

potential conflict between northbound and southbound vehicles. Given the concern raised by residents a kerb build out was proposed which would reduce vehicle speeds and improve forward visibility. The improvement was supported by the applicant and would be carried out by them prior to occupation.

The former highway would therefore become highway verge. There was no requirement for consent from the Crown, this Committee or from the Secretary of State for these works.

The Committee raised their concerns over the possible implications the development could have on the Green. Whilst the applicants had confirmed in writing that any damage caused to the Green would be repaired, Members felt that this was unacceptable. Under the conditions of the lease the Council as leaseholder had an obligation to protect the Green.

The application was due to be considered by the Planning Committee at either its 16 November or 7 December meeting. Therefore, concerns over how the Council was to meet its obligations needed to be raised with the developers and the outcome of their discussions relayed to the Chairman. Other comments made by the Committee e.g. routing of construction vehicles would be considered as part of the Planning process.

Members agreed that Legal Officers should meet with the developers to convey the Committee's concerns regarding possible damage to the Green during the construction works and discuss possible protection options.

Footpath

The position of the footpath to link the two entrances to the Brunel site had been revised in response to concerns over appearance and impact on Coopers Hill Lane and the Green and it was now proposed to link the new footpath directly to the footpath on the eastern side of the Coopers Hill Lane triangle and then run northwards into the Brunel Site. This would take less land and have a lesser visual impact but would require a new entrance to be provided in the existing boundary wall to the Brunel site. This footpath would link to the proposed network of paths.

The revised route of the footpath would involve works to the Green as the highway verge did not extend to the boundary with the Brunel site. Such works in due course would require ministerial consent under Section 38 Commons Act 2006, consent from the Crown and a grant of rights from the Crown and this Committee's consent.

RESOLVED that -

- i) legal Officers meet with the developers of the Brunel site to convey the Committee's concerns regarding possible damage to the Green during the construction works and discuss possible protection works; and**
- ii) the views of the Committee be passed to the Council's Planning Division for consideration as part of the planning application process.**

336. ENGLEFIELD GREEN - LEGAL STATUS

The Committee was updated on Officers' progress on research regarding the legal status of Englefield Green.

Further factual research needed to be conducted to confirm (a) the ministerial consents made for the works carried out to the Green (b) the consents received for works on the Green from the Crown Commissioners and (c) more evidence as to why the Green was registered as a town and village green.

A question was raised as to the appropriate definition of temporary in relation to the rope barrier protecting the cricket square. It was explained that this matter could be more sensibly addressed following the conclusion of the present research being conducted into the legal status of The Green.

Once the factual research was concluded the legal status of the Green could be examined. The research to date indicated that up to registration of the Green as a town and village green, the Green had been managed and treated as common land. The Green was referred to in documentation as common land and not as a town and village green. The regimes for managing common land and town and village greens were different. Officers would report further at the next meeting.

337. ENGLEFIELD GREEN -STREET LIGHTING REPLACEMENT

The Committee was advised of Surrey County Council's proposals for the replacement of the street lights around the Englefield Green conservation area.

Surrey County Council had signed a contract to replace all of the County's street lighting with new energy saving lights. The Contract was with private sector consortium Skanska Laing and the new white lights would replace the current inefficient orange glow street lamps.

In the first five years of the contract all of the county's 89,000 lights will be upgraded – 70,000 being replaced and 19,000 refurbished. Individual lighting columns would be remotely controlled from a new control centre near Guildford. The amount of power used on the network would be monitored and operators would be able to vary the lighting as required, saving energy and money.

Existing columns would be replaced on a 'like for like' basis so the new lamps would be a combination of heritage columns and some swan neck tops.

Members were advised that the possibility of refurbishing the old cast iron columns within the Englefield Green area was not a practical option. The Committee, however, were concerned with the combination of lamp posts and felt that this was an opportunity to provide some consistency. The Committee requested that Officers seek Surrey County Council's view on the replacement of all lights as heritage columns, with exception of three columns around the mini roundabout at St Judes Road junction.

RESOLVED that -

Officers liaise with Surrey County Council on the possibility of heritage lamps being installed consistently around the Green and conservation area.

338. ENGLEFIELD GREEN CRICKET CLUB - LEASE AND LICENCE

A meeting had been held with the Chairman and legal representative of the Englefield Green Cricket Club, who indicated that they did not wish to have a licence arrangement for the cricket pitch as they had concerns about severing the pavilion from the cricket pitch. They requested that a right to use the cricket pitch was incorporated in the lease and that such right be subject to any rights of common under the various Commons Acts. The right would be restricted to sixty matches a year and be on the same cricket pitch conditions as previously agreed. If this right was found to breach any provision of such Commons Acts the Council could serve written notice and the right would cease and determine.

The draft lease incorporating these provisions had been submitted and a meeting was due to be scheduled with the Cricket Club and their legal representative.

339. ENGLEFIELD GREEN – BARBEQUES

At its last meeting, the Committee requested that the problem of barbeques on the Green be monitored over the summer months and reported to this meeting. The Committee had also resolved that the wording, publicity and location of the byelaws which, amongst other things, prohibited barbeques be reviewed at this meeting.

Honorary Wardens reported that they had dealt with fewer barbecues on the Green this year; about eight as opposed to twelve or thirteen in previous years. It was hoped that by improving the byelaw signs this number could be further reduced.

Members were shown a sample layout of the new byelaw sign. The Committee agreed to the new clearer signage and requested that the two existing signs be replaced.

340. ENGLEFIELD GREEN – EVENTS

The Englefield Green Village Residents Association's Village Fair took place on the Green on 18 June. There was no damage to the Green and no other issues to report.

Carters Steam Fair arrived on 27 September and was operational over the 1 and 2 October. Some concerns were raised about the amount of promotional signage they had erected and Carters responded to a request from Officers by removing much of it. There appeared to be very little damage to the Green but the ground deposit paid by Carters was being held by the Council until Officers were satisfied that the area had fully recovered.

341. ENGLEFIELD GREEN - UNAUTHORISED ACTIVITY

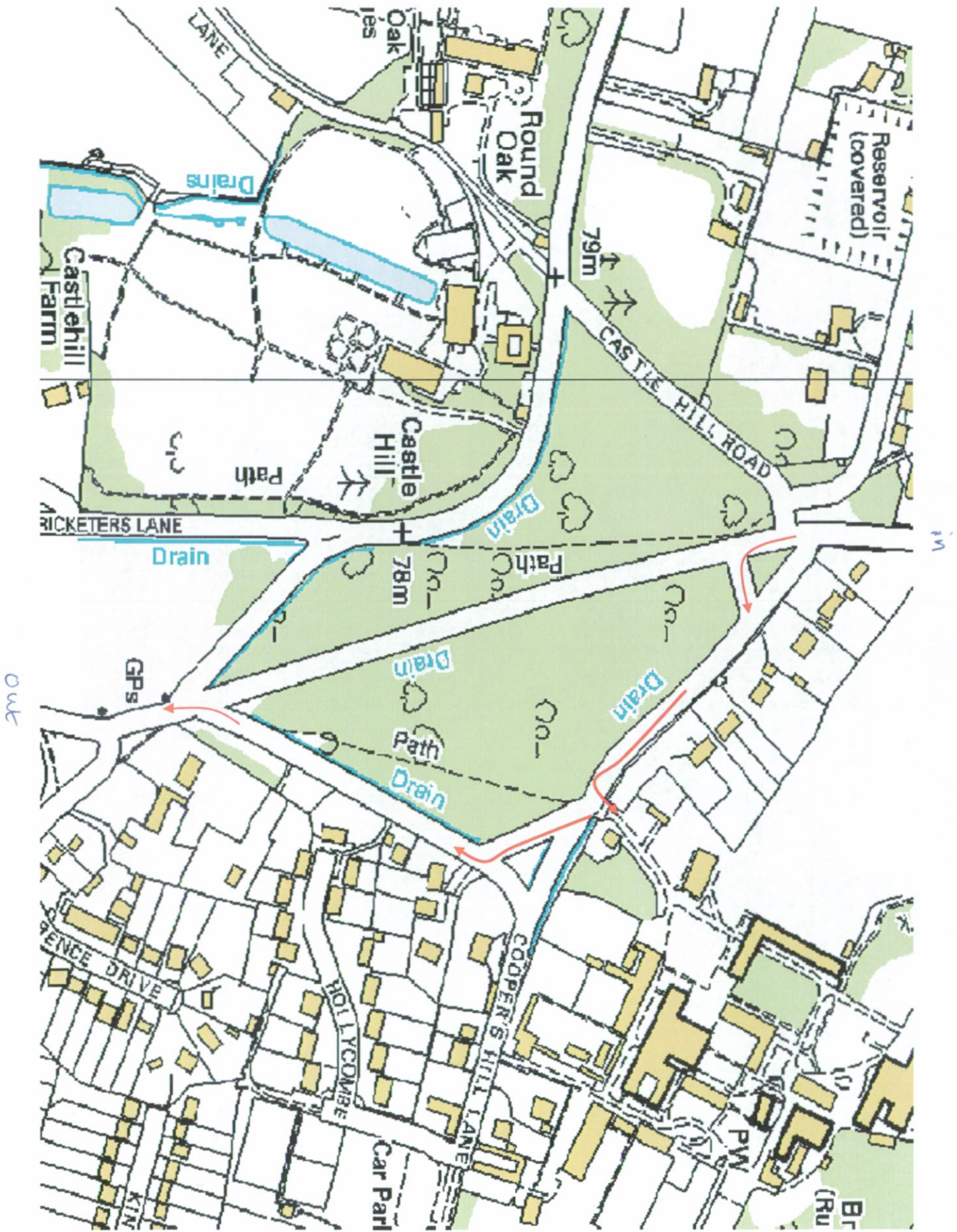
At its last meeting, the Committee was made aware of a commercial boot camp style fitness class that was taking place on the Green without the consent of the Council. Officers had made contact with the organiser and asked the organiser to stop using the Green. Subsequently, a second similar class had started up on the Green, organised by a different company. Both organisers had been asked by Leisure Officers to stop using the Green and offered help with finding other venues in the vicinity. Recent reports had indicated that the two classes had ceased.

However, the Vice-Chairman reported that another class was seen to be using the Green last Saturday. Officers would investigate and take action as necessary.

The Committee noted that any commercial company using the Green required the permission of the Council to use the Green and needed to prove they had the appropriate public liability insurance.

Chairman

(The meeting ended at 8.15pm)



Report on the Legal Status of Englefield Green ('The Green') and its Management.

1. Background

- 1.1 To prepare this report officers have researched the records held in the Council's files and archives and the Council Minute books held at the Surrey History Centre. Enquiries have been made of Surrey County Council, as the Commons Registration Authority, and the Crown Estate, as the freehold owner of The Green. The Common Land section of the Planning Inspectorate failed to respond to our enquiries
- 1.2 Counsel instructed by the Council on the Public Inquiry in 2010 prepared a useful summary of the statutory and legal context of The Green which is attached.
- 1.3 This Council and its predecessors in title have held a lease of The Green from the Crown since 16 July 1897 the date the first lease was granted to the Parish Council of Egham. The present lease is dated 20 April 1955 and is for a term of 99 years.

2. Common land or Town and Village Green

The Egham Inclosure Act 1814 refers to The Green as 'the common or waste lands called Englefield Green', situate within the said parish, and comprised within the following boundaries, (that is to say), the several dwelling houses, and the Pleasure and other Grounds thereto belonging on the North, East, South and part of the West sides thereof and the road leading towards Lion Green from Bishopsgate and the said green to Old Windsor on the other part of the West side thereof but the same shall remain open and unenclosed for the pleasure of the inhabitants, and ornament of their residencies on the said green in such manner as the said Commissioners shall think fit, and that the pastureage thereof shall be allotted and awarded to the several and respective owners and proprietors of estates which shall adjoin the said green so as to be reserved as aforesaid, under such restrictions, rules and regulations, as the said Commissioners shall in and by their Award, order and direct.'

By virtue of the Egham Inclosure Award 1817 the grazing rights were allotted to 18 persons.

The Egham Inclosure Act 1814 is a private Act and section 14 of the Commons Act 1899, under which the Scheme of Management is made, provides:

'A scheme under this part of this Act shall not apply to any common which....is the subject of any private or local and personal Act of Parliament having for its object the preservation of the common as an Open space...'

It appears that this matter was expressly raised and considered by the Ministry of Agriculture Farming and Fishery in 1954 before the Scheme was made, but the reason for it's view that the 1814 Act was not an Act outside the scope of section 14 was not set out. Counsel's opinion has been sought on this point and Counsel view is that the 1814 Act had as its objects (1) not inclosing Englefield Green and (2) regulating grazing rights over the Green. The Commissioners did not in fact regulate the use of the land for recreational use. Thus, it seems that if, following the inclosure award in 1817 the Crown had bought out the grazing rights and the recreational rights (if any) over the land, it could have developed The Green without infringing the 1814 Act. If this view is correct then the 1814 Act could be said to have as it's object the preservation of the common as an open space. It is arguable that there were not customary rights of use for lawful sports and pastimes over the land in 1814 and accordingly it could be The Green was not correctly registered as a town and village green following the enactment of the Commons Registration Act 1965.

At the meeting of the Englefield Green Committee on 27 June 1966 the clerk submitted a letter from Messrs Cluttons stating that the Crown Commissioners had decided to apply for The Green to be exempt from registration under the Commons Registration Act 1965. Cluttons had been informed that the Minister can exempt land where there is a Scheme of Regulation, the owner is known and the common rights are practically obsolete. The Crown Commissioners felt that The Green fell into this category. It was reported at the meeting on 3 January 1967 that the Minister of Land and Resources had refused the application made by the Crown Commissioners for an order exempting The Green from registration.

Copy documents obtained from the Crown Commissioners show that the application failed because of a claim of rights of common by a local farmer. There is also reference in the documentation to grazing rights being granted to a local farmer though there is a comment made by the Crown Commissioners agent that they doubted that this constitutes exercise of common rights. There is nothing in the documentation supplied by the

Crown Estate that explains why an application to register The Green as a town and village green was then made

The research to date indicates that up to registration of The Green as a town and village green, The Green had been managed and treated as common land. Prior to registration in 1967 The Green was referred to in documentation and correspondence as common land and not as a town and village green. There had been pasturage rights but these appear to have disappeared by the time the Crown Estate came to consider the registration of the Green under the Commons Registration Act 1965.

3. Scheme of Management

The draft scheme for the regulation of Englefield Green Common under the Commons Act 1899, which was based on the model issued by the Ministry of Agriculture and Fisheries was submitted to the Englefield Green Committee on 10 November 1954. The Scheme was agreed with the Crown and was approved by order of the Ministry of Agriculture and Fisheries on 28 June 1955 and reported to the Englefield Green Committee on 7 November 1955.

An amendment to the Scheme was required in order to amend the byelaws and a public notice of the amendment to the Scheme was given on 20 December 1984 and there is a note on the Crown Estate's files dated 28 December 1984 stating that 'we can see no objection to the proposals and recommend that consent is given' The Scheme was approved by Order of the Minister of Agriculture Fisheries and Food on 28 June 1985.

Since the Scheme of Management was approved the Council has managed and regulated the Green on the basis of and by reference to the Scheme of Management

4. Management

Headings have been used for ease of reference and to cover the main issues that have arisen concerning The Green and its management.

4.1. Car Park

Prior to the construction of the pavilion there was no formal car park on The Green.

At the meeting of the Englefield Green Committee on 4 February 1957 the clerk stated that as the Pavilion has been completed, a decision was necessary as to what area of the Green in the vicinity of the pavilion should

be set aside for the parking of cars and after discussion it was resolved that an area to accommodate about 30 cars at the southern end of the island site on which the pavilion stands is set apart for the parking of cars and the clerk be instructed to apply for consent of the Crown and the Ministry of Agriculture and Fisheries. The area set aside for parking of cars be temporarily surfaced with shingle and the remainder of the site be sown with grass.

The clerk reported at the meeting on 27 February 1958 that the Ministry of Agriculture and Fisheries had intimated that the Council's request for consent had been granted and the formal consent would follow. The committee was also advised that the proposed car park would not stand up to frequent use by vehicles particularly in bad weather and the Engineer and Surveyor was instructed to surface it with surplus road materials as and when available.

In 1969 at a meeting on 6 January it was reported that the Committee opposed a metalled surface to the car park but a hoggin surface would be considered as part of the programme of works.

In 1985 there were proposals to install children's play equipment on the Green in the area where the car parking had been and linked to this were proposals to create a new car parking area. In a letter dated 4 February 1986 concerning the siting of the play area the Egham -by-Runnymede Historical Society described the car parking area as 'temporary car parking' which is similar to the term used in the Scheme of Management. They also made suggestions about the new car park

The Council contacted the Department of Agriculture Fisheries and Food concerning consent and were directed to the Department of the Environment who wrote in their letter of 23 April 1986 'Under the terms of Article 3 of the Scheme of Regulation your Council have the power to improve the Common as a place of exercise and recreation, but may not do anything that may otherwise vary or alter the natural features or aspects of the common or interfere with the free access to every part thereof and shall not erect upon the common any shelter pavilion drinking fountain convenience or other building ...without consent of the persons entitled to the soil of the common and the Minister of Agriculture, Fisheries and Food. It is for your Council to decide whether the erection of a climbing frame and slide could be considered to be an improvement to the common as a place of exercise and recreation, and therefore , whether your Council may legally execute these works under the Scheme of Management' An application form and notes on procedure were enclosed with the letter and are on file but not completed . In a letter to Cluttons dated 3 June 1986 the Council indicated that it would not seek consent. At this stage the letters only refer to the play equipment

There were complaints in 1986 about misuse of the Green by vehicles from coaches parking there overnight to youths driving fast cars and loitering in the car park area and making a noise. At the Englefield Green Committee dated 23 September 1986 this was reported and members were asked to give consideration to increasing the car parking provision.

Consideration was given to proposals to increase the level of parking provision on the Green at the Englefield Green Committee on 27 January 1987 and plans were considered and approved and were to be put to the Highways committee This was approved at the Highways Committee on 23 March 1987. The Englefield Green Committee reported at its meeting on 30 June 1987 that £5,000 had been allocated for the parking and verge treatments in the pavilion area and to the access from Bishopsgate Road.

At the same time there was development at the Castle Hill Estate a property that abuts the Green and highway works were required to the road at the back of the pavilion for which the developer was paying. The car parking had to be delayed until these were completed. There is no record that ministerial consent was sought or given for the works to road at the rear of the pavilion. The development at the Castle Hill Estate also led to the closing of the road at the rear of the pavilion and the formation of two cul de sacs

By a letter dated 13 May 1988 the Council sought consent from Cluttons acting on behalf of the Crown Commissioners for the parking scheme and the proposed access arrangements for Castle Hill Farm. There is no letter in response from Cluttons or the Crown Estate on the Council's file and none was located when inspecting the Crown Estate's file

At the Englefield Green Committee dated 28 June 1988 it was noted that the car parking and other improvements awaited the completion of the Castle Hill development.

The play area was completed in 1988 and the formation of the two cul de sac and the car park were completed in 1989.

4.2. Pavilion and public conveniences

The provision of a pavilion on the Green had been discussed by the General Purposes Committee in 1951 but abandoned due to limits on capital expenditure. In 1954 the cricket club and the football club put forward plans and agreed to bear the cost of building the pavilion and the siting of the pavilion was tentatively approved by the Crown Commissioners to go on a site north of the pond. At the General Purposes

Committee on 27 April 1954 it was resolved to proceed with the building of the pavilion and the public conveniences subject to Crown approval, the consent of the Ministry of Agriculture and Fisheries and Englefield Green Committee approval. At its meeting on 9 June 1954 the Englefield Green Committee approved the siting of the pavilion and the public conveniences on the north side of the pond and resolved that applications be made for the necessary consents from the Crown, the Ministry of Agriculture and Fisheries and the Ministry of Housing and Local Governance.

4.3 Play area

At its meeting on 24 February 1987 the Englefield Green Committee approved the location of a play area to the south of the pavilion and this decision was notified to Cluttons by a letter dated 13 March 1987. From the Crown Estate's files it is clear that it received a number of complaints from local residents who asked them to withhold consent. The Crown Estate deliberated long and hard and considered the obligations under the Lease and finally gave consent to the Council by letter dated 27 May 1987. This letter specifically referred to the play area only. No consent was sought under section 194 Law of Property Act 1925 as the Department of Environment indicated that the Council could carry out the works under the Scheme of Management as they were for the protection and improvement of the common as a place of exercise and recreation. Counsel's opinion concurred with this on the basis that section 194 (4) Law of Property Act 1925 applied

In 1998 it was considered that the play area should be upgraded and enhanced and authority was given by the Englefield Green Committee at its meeting on 2 June 1998. No consent was sought either from the Crown Estate or under section 194 Law of property Act 1925 on the grounds that the play area was only being upgraded and enhanced and not enlarged.

In 2007 it was proposed that there be an extension to the play area for the use of over 5's children. Both consent from the Crown and the Secretary of State were required. The Crown Estate gave consent but at a public enquiry the inspector refused to grant consent for reasons given in her decision report. The Englefield Green Committee decided not to appeal the decision.

4.4 The Roping off of Cricket Square

A discussion over the lawfulness of roping off the Green has arisen in recent years and the Council has contended throughout that it is permitted under the Scheme of Management on the grounds that it is a temporary means by which an area is set aside for the playing of a sport and is in keeping with the character and use of the Green. Cricket has been played on The Green since 1894. There is no obligation to seek consent from the Crown nor for a section 38 Commons Act 2006 consent.

ENGLEFIELD GREEN STATUTORY & LEGAL CONTEXT

Egham Inclosure Act 1814

Made provision for inclosure of land within Egham with exceptions including

Section XXXI *Commissioners not to set out any Part of the Green called Englefield Green*

And be it further enacted, That, nothing in this Act or the said recited Act contained shall authorise or empower the said Commissioners to set out any part or parts of the common or waste lands called Englefield Green, situate within the said parish, and comprised within the following boundaries, (that is to say), the several dwelling houses, and the Pleasure and other Grounds thereto respectively belonging on the North, East, South and part of the West sides thereof and the road leading towards Lion Green from Bishopsgate and the said green to Old Windsor on the other part of the West side thereof but the same shall remain open and uninclosed for the pleasure of the inhabitants, and ornament of their residencies on the said green in such manner as the said Commissioners shall think fit, and that the pasturage thereof shall be allotted and awarded to the several and respective owners and proprietors of estates which shall adjoin the said green so to be reserved as aforesaid, under such restrictions, rules and regulations, as the said Commissioners shall in and by their Award, order and direct.

ie – green should be uninclosed [and *remain open for the pleasure of the inhabitants and ornament of their residences on the said green in such manner as the said Commissioners shall think fit*], but the pasturage should be allotted.

Egham Inclosure Award 1817 – allotment was carried out and grazing rights for numbers of sheep - varying between 50 and 220 – were allotted to 18 persons [or rather 18 holdings and 15 people]

Inclosure Act 1857 –

Section 12 seeks to protect town and village greens from what it describes as "nuisances" including "injury or damage" to greens and the use of greens for exercise and recreation from interruption of the enjoyment of that use. It makes such acts summary offences which may be prosecuted by the laying of an information by the churchwarden or overseer (i.e. the Parish Council) or owner of the soil and by virtue of section 29 of the Commons Act 1876, any inhabitant of the parish.

Commons Act 1876 –

Section 7 of the Act provides:

In any provisional order in relation to a common, the Inclosure Commissioners shall, in considering the expediency of the application, take into consideration the question whether such application will be for the benefit of the neighbourhood, and shall, with a view to such benefit, insert in any such order such of the following terms and conditions on this Act referred to as statutory provisions for the benefit of the neighbourhood) as are applicable to the case: that is to say,

- (1) That free access is to be secured to any particular points of view; and*
- (2) That particular trees or objects of historical interest are to be preserved; and*
- (3) That there is to be reserved, where a recreation ground is not set out, a privilege of playing games or of enjoying other species of recreation at such times and in such manner and on such parts of the common as may be thought suitable, care being taken to cause the least possible injury to the persons interested in the common; and*
- (4) That carriage road, bridle paths, and footpaths over such common are to be set out in such directions as may appear most commodious; and*

That any other specified thing is to be done which may be thought equitable and expedient, regard being had to the benefit of the neighbourhood

ie CA 1876 permitted the Inclosure Commissioners to make Schemes in respect of the management of commons in respect of access and enjoyment by local people.

Section 29 deems an "encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof ...to be a public nuisance" unless it is "made otherwise than with a view to the better enjoyment of such town or village green or recreation ground".

Commons Act 1899 –

Section 1 provides as follows:

- (1) The council of an urban ... district may make a scheme for the regulation and management of any common within their district with a view to the expenditure of money on the drainage, levelling, and improvement of the common and to the making of byelaws and regulations for the prevention of nuisances and the preservation of order on the common.*

- (2) *The scheme may contain any of the statutory provisions for the benefit of the neighbourhood mentioned in section seven of the Commons Act 1976.*
- (3) *The scheme shall be in the prescribed form, and shall identify by reference to a plan the common to be thereby regulated, and for this purpose an ordnance survey map shall, if possible, be used.*

Section 14 provides:

A scheme under this part of this Act shall not apply to any common which ... is the subject of any private or local and personal Act of Parliament having for its object the preservation of the common as an open space ...

Law of Property Act 1925

Section 193 – Rights of the public over commons and waste lands

- (1) *Members of the public shall, subject as hereinafter provided, have rights of access for air and exercise to any land which is a metropolitan common within the meaning of the Metropolitan Common Acts, 1866 to 1898, or manorial waste, or a common, which is wholly or partly situated within [and area which immediately before 1st April 1974 was] as borough or urban district, and to any land which at the commencement of this Act is subject to rights of common and to which this section may from time to time be applied in manner hereinafter provided that-*
 - (a) *such rights of access shall be subject to any Act, scheme, or provisional order for the regulation of the land, and to any byelaw, regulation or order made thereunder or under any other statutory authority;*

NB – These rights of access which it confers are subject ie go under those conferred by the Scheme.

Section 194 (now repealed) provided as follows:-

- (1) *The erection of any building or fence, or the construction of any other work whereby access to land to which this section applies is prevented or impeded, shall not be lawful unless the consent of the Minister thereto is obtained, and in giving or withholding his consent the Minister shall have regard to the same considerations and shall, if necessary, hold the same inquiries as are directed by the Commons Act 1876 to be taken into consideration and held by the Minister before forming an opinion whether an application under the Inclosure Acts 1845 to 1882 shall be acceded to or not.*
- (2) ...

- (3) *This section applies to any land which at the commencement of this Act is subject to rights of common: Provided that this section shall cease to apply –*
- (a) *to any land over which the rights of common are extinguished under any statutory provision:*
 - (b) *to any land over which the rights of common are otherwise extinguished, if the council of the county, county borough or metropolitan district ... in which the land is situated by resolution assent to its exclusion from the operation of this section and the resolution is approved by the Minister.*
- (4) *This section does not apply to any building or fence erected or work constructed if specially authorised by Act of Parliament, or in pursuance of an Act of Parliament or Order having the force of an Act, or if lawfully erected or construction in connexion with the taking or working of minerals in or under any land to which the section is otherwise applicable, or to any electronic communications apparatus installed for the purposes of an electronic communications code network.*

Commons Registration Act 1965

Section 1(2) provides:

After the end of such period, not being less than three years from the commencement of this Act, as the Minister may order determine –

- (a) ...
- (b) *no rights of common shall be exercisable over any [common land or town or village green] unless they are registered ... under this Act ...*

However, **Section 21(1)** of the 1965 Act also provides:

Section 1(2) of this Act shall not affect the application to any land registered under this Act of section 193 or section 194 of the Law of Property Act 1925 (rights of access to, and restrictions on inclosure if, land over which rights of common are exercisable).

[On 5 June 1967, the Green was provisionally registered as a town or village green upon the application of the Crown Estate Commissioners. The registration, being undisputed, became final on 1 October 1970. No rights, including the pasturage rights, were registered over the Green.]

The Lease

On **20 April 1955** the UDC was granted a **99 year lease** of the Green by the Crown – the freeholder.

The Scheme of Management

Made by UDC of Egham and on **28 June 1985** Approved by Order of the Minister of Agriculture, Fisheries and Food of a scheme for the regulation of the green under the Commons Act 1899.

Commons Act 2006

Section 38 of the Commons Act 2006 provides as follows:

- (1) *A person may not, except with the consent of the appropriate national authority, carry out any restricted works on land to which this section applies.*
- (2) *In subsection (1) "the restricted works" are*
 - (a) *works which have the effect of preventing or impeding access to or over any land to which this section applies;*
 - (b) *works for the resurfacing of land.*
- (3) *The reference to works in subsection (2)(a) includes in particular*
 - (a) *the erection of fencing;*
 - (b) *the construction of buildings and other structures;*
 - (c) *the digging of ditches and trenches and the building of embankments.*
- (4) *For the purpose of subsection (2)(b) works are for the resurfacing of land if they consist of the laying of concrete, tarmacadam, coated roadstone or similar material on the land (but not if they consist only of the repair of an existing surface of the land made of such material).*
- (5) *This applies to*
 - (a) *any land registered as common land*
 - (b) *land not so registered which is*
 - (i) *regulated by an Act made under the Commons Act 1876 (c 56) confirming a provisional order of the Inclosure Commissioners; or*
 - (ii) *subject to a scheme under the Metropolitan Commons Act 1866 (c 122) or the Commons Act 1899 (c 30);*
 - (c) *land not falling within paragraph (a) or (b) which is in the New Forest and is subject to rights of common.*

- (6) *The prohibition in subsection (1) does not apply to*
- (a) *works on any land where those works, or works of a description which includes those works, are carried out under a power conferred in relation to that particular land by or under any enactment;*
 - (b) *works on any land where the works are carried out under a power conferred by or under any enactment apply to common land;*
 - (c) *works authorised under a scheme under the Metropolitan Common Act 1866 or the Commons Act 1899 without any requirement for any person to consent to the works;*
 - (d) *works for the installation of electronic communications apparatus for the purposes of an electronic communications code network.*
- (7) *In subsection (6)(a) the reference to an enactment does not include Part 2 of this Act.*
- (8) *For the purposes of subsection (6)(b), an enactment applies to common land if it is expressed to apply (generally) to*
- (a) *registered common land;*
 - (b) *common land; or*
 - (c) *any common or commons, commonable land, land subject to inclosure under any enactment or other land of a similar description.*
- (9) *Subject to the following provisions of this Part, consent given to works under subsection (1) of this section constitutes consent for the purpose of that subsection only.*

Section 39 Consent: general provides:

- (1) *In determining an application for consent under subsection (1) of section 38 in relation to works on land to which that section applies, the appropriate national authority shall have regard to –*
- (a) *the interests of persons having rights in relation to, or occupying, the land (and in particular persons exercising rights of common over it);*
 - (b) *the interests of the neighbourhood;*
 - (c) *the public interest;*
 - (d) *any other matter considered to be relevant.*
- (2) *The reference in subsection (1)(c) to the public interest includes the public interest in-*
- (a) *nature conservations;*

- (b) *the conservation of the landscape;*
 - (c) *the protection of public rights of access to any area of land; and*
 - (d) *the protection of archaeological remains and features of historic interest.*
- (3) *Consent may be given under section 38(1) –*
- (a) *in relation to all or part of the proposed works;*
 - (b) *subject to such modifications and conditions relating to the proposed works as the appropriate national authority thinks fit.*
- (4) *In considering the effect in relation to any land of proposed works under this section, the appropriate national authority may consider that effect in conjunction with the effect in relation to that land of any other works for which consent has previously been given under section 38(1) above or section 194 of the Law of Property Act 1925 (c 20).*
- (5) *Where the appropriate national authority imposes any modification or condition in relation to any consent given under section 38(1), it may on the application of any person carrying out or proposing to carry out works in accordance with the consent vary or revoke that modification or condition.*
- (6) *Regulations may specify a time limit for the making of applications under subsection (5).*
- (7) *Consent may be given under section 38(1) in relation to works which have been commenced or completed; and any consent so given has effect from the time of commencement of the works.*

Section 42 Schemes

- (1) *This section applies in relation to works on relevant land where, by virtue of section 38(1), the works may not be carried out without the consent of the appropriate national authority.*
- (2) *In subsection (1) "relevant land" means any land which is subject to –*
- (a) *...*
 - (b) *a scheme under the Commons Act 1899 (c 30) which is in force at the commencement of this section.*
- (3) *Where –*
- (a) *any provision of the scheme referred to in subsection (2) would also prohibit the carrying out of the works, and*
 - (b) *the scheme does not allow for any person to consent to the works to be carried out, the works do not contravene that provision if they are carried out with (and in accordance with the terms of) the consent of the*

appropriate national authority under section 38(1) and of any owner of the land (if not the person carrying out the works).

- (4) Regulations may make provision as to the procedure to be followed in obtaining the consent of an owner under subsection (3) (and may include provision for the consent of an owner to be regarded as having been given where he has not objected within a period of time specified in the regulations).*
- (5) Where any provision of the scheme referred to in subsection (2) would also prohibit the carrying out of works without the consent of the appropriate national authority –*

 - (a) consent given under section 38(1) is to be regarded as consent given under the scheme; and*
 - (b) consent may not be sought separately under the scheme.*