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By email to helen.berry@enfield.gov.uk

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Dear Ms Berry,

Further to previous correspondence, we write regarding the proposed disposal of a portion of Whitewebbs Park to Tottenham Hotspurs Football Club (“THFC”) (key decision 5177, Leasing of Whitewebbs Park Golf Course).

We write to set out our understanding of the council’s legal obligations over the land, our interest in the land as members of the public, and our aim and intention to preserve the land as public open space.

1. The legal status of the land

The land known as Whitewebbs Park, of which the planned area for disposal is part, is public trust land. It was acquired by Middlesex County Council under s169 of the Public Health Act 1875. The freehold of the land has been transferred to Enfield Borough Council but is still held under s164 PHA 1875. The land is subject to a public trust. The council is in the role of trustee or custodian of the land, as opposed to beneficial owner, and must approach decisions regarding its use accordingly (*Muir v Wandsworth* [2017] EWHC 1947 (Admin)).

We consider that the proposed restrictions on public use and access inherent in THFC’s proposals to convert the land to a private training academy are contrary to the statutory trust arising under s164 PHA 1875.

2. The council’s powers over the land

The land is “open space” as defined in Article 6 of the Greater London Parks and Open Spaces Order 1967: “...any public park, heath, common, recreation ground, pleasure ground, garden, walk, ornamental enclosure or disused burial ground under the control and

management of a local authority". The local authority's powers to enclose, grant rights over and exclude the public from the land are set out within the 1967 Order.

Article 7 of the 1967 Order empowers local authorities to provide facilities for **public recreation** in any open space. This includes indoor and outdoor facilities for "any form of recreation whatsoever". Article 7 specifically includes the power to provide a golf course. It also provides the power to set apart or enclose part of an open space in connection with providing any of the facilities under the Article.

Article 8 provides the local authority with the power to grant to any person the right of exercising the power under Article 7 of the local authority and to let premises to such a person for this purpose.

Article 9 empowers the local authority to restrict access or enclose parts of the open space in the interests of public safety or for the purposes of preservation of vegetation in the interests of public amenity.

Article 10 empowers the local authority, and any person exercising its authority under Article 8, to make reasonable charges as they think fit for the enjoyment and use of the facilities provided under article 7.

THFC's proposals

THFC's proposals do not constitute public recreational use. While some recreational facilities are planned, the main purpose of the land will be as a Training Academy. This is not a **recreational** use of the land. Its main purpose is to train young football players with the aim of supplying players to the first team. This is clear from the website of the Men's Academy, on which model the Women's Academy will be based, and which provides its mission as follows: *"To create an elite environment that attracts, retains and develops top quality players providing an ongoing supply of academy graduates to the First Team squad."*

The intensity and nature of the training that will take place at the Academy will not be "recreational". It may be that there is some recreational use of the pitches planned. But their main purpose, indeed the main purpose of the Academy, is to train elite players within a highly specialised and focused training regime.

Additionally, it is not a **public** use of the land. The proposed restrictions on public access are outside of the specific restrictions on access provided for in the 1967 Order. Trainees will be screened and selected according to a rigorous process. As stated on THFC Men's Academy website: *"The Academy employs a large team of staff to identify, recruit, coach, develop and support approximately 205 talented young players."*

In *Muir*, the Court said: “...the operators would not have the power to exclude or restrict access by members of the public, for example, by means of a membership scheme with high annual fees and a long waiting list, or by screening prospective members for suitability.”

Although the proposals create some areas of public access – although it is unclear what legal status would be afforded to such access – and some recreational facilities, they clearly remove part of the park from public recreational use. It will be operated by THFC, a for-profit commercial organisation, with the aim of training elite professional football players. Neither the main use of the land nor the level or type of public access restrictions inherent in that use are lawful under the 1967 Order. We consider the proposals to be unlawful on this basis.

3. The bidding process

The council’s bid criteria included enhancing or maintaining public access. The Council is claiming the former use of part of the land planned for disposal (as a golf course), was exclusive and not “public”, and that by re-dedicating some of the golf course to parkland, the proposals increase public access. However, as set out above, a golf course is specifically provided as an example of a public recreational facility within the 1967 Order. Whilst there is clearly some degree of restriction necessary to providing any facility with limited capacity such as a golf course, the restrictions did not go above the powers of restriction provided for in the Order, in this case public safety and the charging of “reasonable” fees. As an example, local members of the public could play golf in the evening for £9 on the course. There were no membership fees or membership criteria; it was a “pay and play arrangement”. This was a public recreational facility of the type the Council is empowered to provide under the 1967 Order. As set out above, the THFC proposal unlawfully restricts public access to parts of the Park. We consider it was irrational for the Council to conclude that the bid met its criteria to “maintain or enhance public access”.

4. Unlawful use of profits

As public trust land, any rent generated by the leasing of any part of Whitewebbs Park cannot be used for the Council’s general purposes but only for the purpose of improving or maintaining the Park itself (*The Churchwardens and Overseers of Lambeth Parish v London County Council* [1897] AC 625; *Mayor of Liverpool v Assessment Committee of West Derby Union* [1908] 2 KB 647). The Council has made statements such as the following on its website: “Using the rental income received, Enfield Council will reinvest an additional £100k a year into grassroots sport for young people across the borough”. This statement suggests revenue generated from the Park will be used outside of the Park. This would be an unlawful use of profits from public trust land.

5. Inconsistency with the public trust: freehold reversion

If the Council proceeds with a disposal under s123 Local Government Act 1972 – which, for the reasons set out above, we do not accept would be lawful – it would need to appropriate the freehold reversion of the land under s122 LGA 1972. This is because the court has been

clear about the need for land owned under s164 PHA 1875 to be managed in accordance with its statutory purpose. In particular, any access restrictions over the land can only be imposed in the recreational interest. In *Western Power Distribution Investments Ltd v Cardiff County Council* [2011] EWHC 300 (Admin), the Court said: “It is clear from the authorities that there should be **no restrictions on public access to the grounds or parts of them**, save where the restrictions, physical or legal, are imposed in the interests of the public enjoyment of the walks and pleasure grounds. Restrictions and prohibitions may be permitted but only in the recreational interest...” (emphasis added).

The Council would therefore need to comply with the s122 LGA 1972 requirement to show that the land is no longer required for its current purpose of public recreation.

Enfield RoadWatch, Friends of Whitewebbs Park and CPRE London want to see the entirety of Whitewebbs Park maintained for public recreational use. We do not consider THFC’s proposals deliver this. Please ensure we are kept informed of all developments relating to the planned disposal to THFC so that we may seek legal advice at each stage and take the necessary steps including legal action if necessary to enforce the rights of the public. Please also confirm the current position with respect to the Council’s negotiations with THFC and particularly if any agreement for lease or other document has been signed by the two parties to date.

Yours faithfully,

Alice Roberts, CPRE London
Sean Wilkinson, Friends of Whitewebbs Park
Carol Fisk, Enfield RoadWatch