

Michael Smith  
Lawyer | Corporate Team | Legal Services  
On behalf of the Director of Law and Governance  
London Borough of Enfield  
Civic Centre, B-Block South, Silver Street, Enfield EN1 3XA  
Via email to [michael.smith@enfield.gov.uk](mailto:michael.smith@enfield.gov.uk)  
c.c. [Nikolina.Porcheva@enfield.gov.uk](mailto:Nikolina.Porcheva@enfield.gov.uk)

10 January 2023

Dear Mr Smith,

**Whitewebbs Park**

I refer to your email dated 22 December 2022 in response to my letters dated 3 November and 15 December 2022.

Regrettably your email has not answered our concerns about the lawfulness of the council's proposed lease of part of Whitewebbs Park to THFC.

The council relies heavily on s.123 of the Local Government Act 1972 (LGA) as authorising the council to grant the proposed lease to THFC subject only to the council undertaking the consultation process envisaged by s.123(2A). We consider that reliance to be misplaced, in particular in so far as the council contends that a disposal under s.123 would override the restrictions on the council's powers set out in the Ministry of Housing and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967 (GLPO) (see para 20 of your letter).

S.131 of the LGA provides:

- “(1) Nothing in the foregoing provisions of this Part of this Act...
- (a) ...
  - (b) Shall ... empower a local authority to act otherwise than in accordance with, any provision contained in ... any of the instruments specified in subsection (2) below and relating to any dealing in land by a local authority ...
- (2) The enactments referred to in subsection (1)(b) above are –
- ....
- (k) any local Act (including an Act confirming a provisional order); ...”

The “foregoing provisions of this part of this Act” include s.123. And the GLPO is a “local Act ... confirming a provisional order”.

We therefore consider that the effect of s.131 of the LGA is that the council has no power to grant THFC a lease where such a lease would not be authorised under Article 8 of the GLPO.

Moreover, we note that you have not challenged the contentions made in section 2 of our letter dated 3 November 2022 that THFC's proposals do not constitute public recreational use as required by Article 7 of the GLPO.

We take it therefore that this aspect is not in dispute but please inform us (with your detailed reasons) if the council does in fact contend that THFC's proposals would satisfy the GLPO. In particular, please provide a detailed statement of THFC's current proposals for using the land including the extent to which public access would be permitted or restricted.

In addition the council does not appear to have had proper (or any) regard to the status of Whitewebbs Park as public trust land before deciding to lease it (subject to conditions) to THFC. The council must take all relevant considerations into account before exercising its power of disposal under LGA s.123 and the public trust status of the land is one such consideration: *Blake (Valuation Officer) v. Hendon Corporation* [1962] 1 Q.B. 283. Your lengthy analysis at paras 2-19 of your email does not affect this.

Moreover, we do not agree with what you say at para 21. You have not addressed the problem that would result from the council's grant of a lease of the land under LGA s.123, that without an appropriation of the land to another permissible enactment, the council would hold the reversionary interest in the land under s.164 Public Health Act 1875. The proposed use of the land by THFC under the lease would be incompatible with its statutory object: *Western Power Distribution Investments Limited v Cardiff County Council* [2011] EWHC 300 (Admin). As you will be aware, an appropriation under s.122 LGA 1972 requires the council to demonstrate that the land is no longer required for the purpose for which it is held.

### Next steps

Depending on how matters now develop, the opponents of the council's proposals may well wish to commence proceedings to challenge the council's relevant decision in due course. It seems to us that the relevant decision for challenge will be the council's determination following the end of the current consultation process to enter into an agreement for lease with THFC. It would be premature to commence proceedings before the council has made that determination and potentially prejudicial to delay proceedings until after the agreement has been signed. We therefore ask the council to undertake to inform us of its decision to enter into such an agreement not less than 21 days before it actually executes it. That time period will enable the objectors to issue a formal letter before claim and, if necessary, to seek interim relief from the court.

May we please have your undertaking as requested above by return and a substantive response to the remainder of our letter within 14 days.

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