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19 March 2012

Our Ref ASR/GEP/4664.322/AS
 Your Ref

Dear Sirs

Harrow School Playing Fields - Highways Act 1980
Application for Public Path Diversion Orders in respect of London Borough of Harrow Footpath Number 57 and London Borough of Harrow Footpath Number 58 and Public Path Creation Order

Applications under sections 26 and 119 Highways Act 1980

We refer to the meeting held at the School on 7 March 2012, when officers of the Mayor and Burgesses of the London Borough of Harrow ("the Council") and Graham Wright (Footpath Checker for the Ramblers in the London Borough of Harrow) were able to discuss the School's draft applications as provided in advance of the meeting.

The School indicated at the meeting that it was eager to submit the applications as soon as possible, but that it would consider any comments and suggestions as to the same.

It is now 12 days since the meeting. The School is pleased to note that since the meeting there have been no adverse comments from the Council or from the Ramblers in terms of its proposed applications.

In the circumstances, the School hereby formally submits:

- (a) An application for a public path creation order under section 26 of the Highways Act 1980; and
- (b) Two applications for public path diversion orders under section 119 of the Highways Act 1980 with respect to part of the current lines of the London Borough of Harrow Footpath Number 57 and the London Borough of Harrow Public Footpath Number 58, together with requisite extinguishment of part of the current line of those footpaths.

The detailed applications are enclosed herewith. They are supported by two plans (Harrow School Sports East: Proposed diversion of nos. 57 & 58 Public Footpaths and creation of new public footpath (29 February 2012) and the Width Plan). The applications are also supported by the enclosed Joint Opinion of John Steel QC and Stephen Whale, dated 19 March 2012.

Permissive Footpath Agreement ("PFA")

The School explained at the meeting on 7 March 2012 that in-depth discussions had taken place with the Council and the Ramblers Association before the tennis courts and the Astro turf pitches had been installed and that all parties had agreed at the time that the route of the permissive footpaths was the best option. Mr Wright indicated that he did not believe this was the case. Mr Wright's belief is misplaced, as the enclosed documentation makes clear.

We enclose herewith a letter from the Council to the School, dated 27 September 2000, copied to Bob Dunn of the Ramblers Association. The letter refers to Mr Dunn's suggestion of an alternative route around the grass sports pitches, and it encloses a copy of Mr Dunn's plan showing the proposed alternative route. The letter also invites the School's comments on whether it would be prepared to enter into a legal agreement creating a "permissive route" along the line suggested by Mr Dunn. It is clear from this letter that the proposal for an alternative route was originally a proposal of the Ramblers Association adopted by the Council.

The discussions which followed embraced more than Mr Dunn's original proposed alternative route. On 2 July 2002, Mr Dunn called the School regarding the School's proposal for an alternative, permissive, route in respect of the public footpath between Football Lane and the farm. Mr Dunn explained that he had discussed this proposal with other senior members of the Ramblers Association. He added that the route (i.e. London Borough of Harrow Footpath Number 57) is described as "undefined" [in the definitive statement] and that therefore the Ramblers Association had "no problem" with the School's suggested permissive route.

A File Note as to this conversation is enclosed.

It is therefore clear that there was indeed the in-depth discussion and agreement referred to at the meeting on 7 March 2012 prior to the execution of the PFA on 23 May 2003.

The plan attached to the PFA (Drawing Number 100-0211/101b) notes that the existing paths 1 and 2 (i.e. the London Borough of Harrow Footpath Number 57 and the London Borough of Harrow Public Footpath Number 58) are "undefined" between points A-C and A-B, respectively.

Pursuant to clause 1 of the PFA, the School granted the public permission to walk along the "permissive footpaths" (as defined in the PFA) until such time as it decided to close the said permissive footpaths to the public, which decision to be communicated to the Council by not less than 6 months notice in writing. The provisions as to alteration of the permissive footpaths do not in the present circumstances apply.

In accordance with clause 1 of the PFA, the School hereby gives the Council written notice of the closure of the permissive footpaths, as defined in the PFA, together with written notice of the termination of the PFA. This closure and termination will take simultaneous effect at 0001 hours on 24 September 2012. Please provide written acknowledgement of the same.

This closure and termination is part and parcel of the School's applications. We refer to the detail of the applications in this regard.

Astro turf gates

One of the issues discussed at the meeting on 7 March 2012 was the locking of the gates between the Astro turf pitches.

The gates between the Astro turf pitches were unlocked on 15 March 2012, albeit strictly without prejudice to the School's position that it does not need to do so and that it has not committed any offence under section 137 of the Highways Act 1980.

Nature conservation

The School's applications refer to, amongst other things, the fact that the proposed diverted London Borough of Harrow Public Footpath Number 58 will clearly be more enjoyable to the public than the existing route including in terms of cover, features and biodiversity interest. You will no doubt be pleased to learn that the School has already taken active steps to improve the environment of the stream alongside the proposed diverted route including from the perspective of nature conservation and biodiversity.

Charges

The School is aware that the Council has power to charge in respect of the making and confirmation of public path orders, including where the owner of land requests an authority to make a public path order under sections 26 and 119 of the Highways Act 1980 (Local Authorities (Recovery of Costs for Public Path Orders) Regulations 1993, as amended). The School undertakes to pay any charges properly payable in connection with its applications. We would be grateful if you would please provide us with a copy of the Council's published scale of charges, and inform us of the maximum charge for the applications, in accordance with paragraph 5.35 of DEFRA Circular 01/2009.

Conclusion

We look forward to receipt of the acknowledgement sought regarding the PFA, and to the making and confirmation of the orders sought in due course.

Yours faithfully

Pemberton Greenish LLP

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