

RE: Village Green application number 1871.

Fortunately, the hoped-for advice from the OSS has reached me in good time. I am therefore able to make the following submission, which should enable you to compile your report to Committee. I have copied this email to Erin, who might or might not wish to respond. I confirm that I'm happy for the application to be decided *without* the need for oral representations from me or from Walton Charity.

MY SUBMISSION:-

In most respects, your Counsel's opinion comes down in my favour. The land is precisely the sort of location which would suit the designation of Village Green. Indeed, in practice it has served as a village green *de facto* for decades. There is a substantial and convincing body of evidence confirming its uses - and its importance to the community.

Where I believe Counsel has erred is in stating that the land was "made available by *Elmbridge B C*"; and that consequently, it was used by the public by virtue of a "statutory" power conferred by the council. In paragraph 8 of the Opinion, it is stated that licence was granted *by Walton Charity* to use the land as a *public* open space. The Charity is not a statutory authority and does not exercise statutory power. Paragraph 9 confirms that it was *the Charity* which stipulated in the lease that the land was for use *only* as a recreation ground. Thus, the consequent use of the land for that very purpose was at the instigation (and indeed, insistence) of the Charity - not the council.

The Barkas judgment can certainly be distinguished from the present case. In Barkas, the land was *owned* by the local authority. By contrast, the land at Severn Drive is in private ownership. Lord Neuberger specifically stated that "the position is **very different** from that of a private owner".

As explained by many of my witnesses, the public has not been using the land by virtue of any statutory "permission". It never entered anybody's head that permission was required. To my knowledge, nobody has ever sought or been given permission. By stipulating that its land was for use only as a recreation ground, it was the Charity (not the council) which made the land available to the public. The Charity is not a "statutory" body exercising "statutory" power

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