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Our ref ERK/WAL/3190-1

Your ref IGT/HGG/App1871

18 August 2016

By email to helen.gilbert@surreycc.gov.uk

Dear Sirs

Our Client: Walton on Thames Charity

Re: Town & Villiage Green application on Land at Severn Drive and Rydens Road (the "Site"), Walton on Thames (the "Application")

We refer to the above matter and more particularly to the advice given by Mr Webster to the Registration Authority dated 22 June 2016 and the subsequent response from Mr Flannigan dated 1 August 2016.

We kindly ask that this letter be put for the attention of the members ahead of the Planning and Regulatory Committee meeting (understood to be taking place on either 28 September or 12 October).

In his aforementioned response Mr Flannigan is missing the point. What Mr Webster is saying is that;

- Elmbridge Borough Council had powers under both the Public Health Act 1875 and the Open Spaces Act 1906 to take a lease of land so that it could make that land available for use by the public as public open space;
- the use of land made so available is use *by right* and not *as of right*;
- for the whole of the qualifying period (less one day) the land was leased by the Charity to Elmbridge Borough Council as public open space.

Thus (contrary to what Mr Flannigan contends), *Barkas* is not distinguishable from the present case because in the present case the land **was** throughout the relevant period owned by a local authority: it is just that their ownership by way of a lease and not a freehold. There **was** a statutory permission given by Elmbridge Borough Council.

Mr Flannigan says that the use of the land was at the instigation/insistence of the Charity and that (in these circumstances) it was the Charity that made the land available to the public. Whether it was the Charity which instigated the arrangement (and its subsequent continuation) or Elmbridge Borough Council is not a matter which is before the registration authority, nor is it material.

Mr Flannigan ought to be able to understand that there is a very clear distinction between the Charity directly making the land available to the public, which did **not** happen here, and the Charity leasing the land to Borough Council so that, in accordance with the terms of the lease, it was made available for use by the public by the Borough Council (which is what **did** happen here).

The Charity is far from saying that if the land **had** been made available for use by local people without Elmbridge Borough Council being involved, that use would have been *as of right*. However the facts are that Elmbridge Borough Council **was** involved and it is not necessary to speculate about what would have been the position had the facts been other than they were. This being so, the correct analysis is that made by Mr Webster.

We understand that Mr Flannigan is allowed to make final submissions ahead of the preparation of the Registration Authority's report and we await a copy of these submissions (if indeed made).

We await confirmation of the agreed date for the Planning and Regulatory Committee meeting and look forward to hearing from you in this respect shortly.

Yours faithfully



Walker Morris LLP

cc Mick Flannigan - flan53@btinternet.com