

**Members are reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting**

**BIRMINGHAM CITY COUNCIL**

**LICENSING AND PUBLIC PROTECTION COMMITTEE**

**WEDNESDAY, 18 JANUARY 2017 AT 10:00 HOURS**  
**IN COMMITTEE ROOMS 3 & 4, COUNCIL HOUSE, VICTORIA**  
**SQUARE, BIRMINGHAM, B1 1BB**

**A G E N D A**

**1 NOTICE OF RECORDING/WEBCAST**

The Chairman to advise the meeting to note that this meeting will be webcast for live and subsequent broadcast via the Council's Internet site ([www.birminghamnewsroom.com](http://www.birminghamnewsroom.com)) and that members of the press/public may record and take photographs. The whole of the meeting will be filmed except where there are confidential or exempt items.

**2 APOLOGIES**

To receive any apologies.

**5 - 10**

**3 MINUTES**

To note the public section of the Minutes of the last meeting held on 14 December 2016.

**11 - 22**

**4 LICENSING AND PUBLIC PROTECTION COMMITTEE BUDGET MONITORING 2016/17 (MONTH 08)**

Report of Acting Service Director Regulation and Enforcement and Strategic Director Finance and Legal

**23 - 34**

**5 "LOAN SHARKS" ILLEGAL MONEY LENDING PROJECT**

Report of the Acting Director of Regulation and Enforcement

**35 - 40**

**6 FIXED PENALTY NOTICES FOR THE UNAUTHORISED DEPOSIT OF WASTE (FIXED PENALTIES) REGULATIONS 2016**

Report of the Acting Director of Regulation and Enforcement

- 41 - 54**
- 7 **FIXED PENALTY NOTICES ISSUED NOVEMBER 2016**
- Report of the Acting Director of Regulation and Enforcement
- 55 - 120**
- 8 **TO NOTE THE DELETION OF THE REGISTRATION OF WESTHILL PLAYING FIELDS FROM THE REGISTER OF TOWN/VILALGE GREENS IN COMPLIANCE WITH AN ORDER OF THE HIGH COURT**
- Report of the Acting City Solicitor
- 121 - 144**
- 9 **INVESTORS IN PEOPLE**
- Report of the Acting Director of Regulation and Enforcement
- 145 - 148**
- 10 **COST RECOVERY AT COURT**
- Report of the Acting Director of Regulation and Enforcement
- 149 - 152**
- 11 **OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS DURING NOVEMBER 2016**
- Report of the Acting Director of Regulation and Enforcement
- 12 **PROSECUTIONS AND CAUTIONS DURING NOVEMBER 2016**
- Report of the Acting Director of Regulation and Enforcement
- 153 - 154**
- 13 **SCHEDULE OF OUTSTANDING MINUTES**
- 14 **OTHER URGENT BUSINESS**
- To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.
- 15 **AUTHORITY TO CHAIRMAN AND OFFICERS**
- Chairman to move:-
- 'In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee'.
- 16 **EXCLUSION OF THE PUBLIC**
- That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-
- Minutes - Exempt Paragraph 3

## **PRIVATE AGENDA**

17 **MINUTES**

Item Description

18 **OTHER URGENT BUSINESS (EXEMPT INFORMATION)**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.



# BIRMINGHAM CITY COUNCIL

<b>LICENSING AND PUBLIC PROTECTION COMMITTEE 14 DECEMBER 2016</b>
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**MINUTES OF A MEETING OF THE LICENSING  
AND PUBLIC PROTECTION COMMITTEE HELD  
ON WEDNESDAY 14 DECEMBER 2016 AT 1000  
HOURS IN COMMITTEE ROOMS 3 AND 4,  
COUNCIL HOUSE, BIRMINGHAM**

**PRESENT:** - Councillor Barbara Dring in the Chair;

Councillors Bob Beauchamp, Alex Buchanan, Neil Eustace,  
Des Flood, Jayne Francis, Mike Leddy and Gareth Moore.

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**NOTICE OF RECORDING**

768 The Chair advised that the meeting would be webcast for live and subsequent broadcast via the Council's internet site ([www.birminghamnewsroom.com](http://www.birminghamnewsroom.com)) and that members of the press/public may record and take photographs.

The whole of the meeting would be filmed except where there were confidential or exempt items.

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**APOLOGIES**

769 Apologies were received from Councillors Nawaz Ali, Lynda Clinton, Basharat Dad, Penny Holbrook, Nagina Kauser, Habib Rehman, and Rob Sealey for their inability to attend the meeting.

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**MINUTES**

770 The Minutes of the meeting held on 16 November 2016, having been previously circulated were confirmed as a correct record and signed by the Chairman.

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**PROSECUTIONS AND CAUTIONS DURING OCTOBER 2016**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 1)

The Acting Director of Regulation and Enforcement provided a comprehensive breakdown of the report and highlighted several notable cases.

771

**RESOLVED:-**

That the report be noted.

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**FIXED PENALTY NOTICES ISSUED OCTOBER 2016**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 2)

Mark Croxford, Head of Environmental Services, made introductory comments relating to the report.

772

**RESOLVED:-**

That the report be noted.

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**OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS TAKEN DURING OCTOBER 2016**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 3)

Chris Neville, Head of Licensing, introduced the report and highlighted the 2 cases that had progressed to the magistrates' court whereupon both had been dismissed by the court.

773

**RESOLVED:-**

That the report be noted.

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**TEST PURCHASE EXERCISE UNDER THE EQUALITIES ACT 2010**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 4)

Sarah Lavender, Licensing Officer, made introductory comments relating to the report.

In response to the Chair's enquiries with regard to appendix 1 of the report relating to the 2 drivers that had tried to charge extra for carrying a dog and not wearing their badges, Sarah Lavender confirmed that both were being investigated and would be taken to committee.

Following concern that the drivers should be made aware that they should not be charging extra for dogs, Chris Neville confirmed that it could be helpful if it was made known to the trade as widespread as possible, that this survey had been undertaken and as result of that reiterate to them what their obligations were.

774

**RESOLVED:-**

That the report be noted.

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**UPDATE REPORT ON UNAUTHORISED ENCAMPMENTS**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 5)

Mark Croxford, Head of Environmental Services, whilst making introductory comments relating to the report confirmed that he would circulate to members after the meeting a copy of the unauthorised encampment protocol.

In response to an enquiry relating to 7.1 and 7.2 of the report, Mark Croxford detailed how the family on Tameside Drive came to have residency rights following a court case, and as there were more pitches than what the existing family were paying for, colleagues in housing were looking into bringing back the additional sites at the location in order that they could be used for transit purposes.

Following a discussion relating to travellers and associated issues, Mark Croxford confirmed that due to the deregulation of travellers' sites there was now only the requirement to provide transit sites where there was a need. He highlighted the demand for these sites in the city and stated that they needed to be made fair for everybody in that travellers paid for the services when they occupied the sites and were able to undertake work lawfully, adding that the community open spaces which included parks and football pitches were not then affected when they moved on from the sites.

In response to a concern relating to Druids Heath and the need to take into account the whole of the open space in the area, Mark Croxford agreed to investigate the specifics and respond accordingly.

In response to Woodgate Valley Country Park being considered and the need to include generally the whole geographical area rather than just specifics, Mark Croxford agreed to speak off line as at present he did not have the appropriate evidence.

In response to a concern from the Chair regarding St Georges playing fields, Mark Croxford confirmed that they were included within the overall picture stating that all sites across the city that were owned by Birmingham City Council were receiving the same attention. He added that only the three sites within Selly Oak had been included in the trial for the injunction.

Mark Croxford referred to the areas of work that they were undertaking which was bringing the transit sites into use and the introduction of the seven day service, adding that colleagues in Housing were looking into the management of these sites.

Following an expression of appreciation that there had been improvements made to the service and that this would undoubtedly continue when the seven day service came into effect, Mark Croxford confirmed that officers were working extremely hard with evictions and agreed to pass on the vote of thanks. He added that he would circulate the message to the district leads with regard to ensuring the gates to parks and protected spaces were locked.

Mark Croxford confirmed that encampments were not illegal however the term 'unauthorised encampments' meant that people had not got the authority from the landowner to occupy them. In addressing this, the city used their powers in order to seek possession of the land and to move the encampments off the site. With regard to them moving a few yards further down the road, Mark Croxford agreed to look into the matter. He subsequently referred to the notices the police used regarding the three month protection order and confirmed that the city was looking to use similar powers in addressing this issue.

Following a comment regarding the introduction of new bylaws in helping to address the issue, Stuart Evans, Head of Economy (Legal) suggested that a briefing paper be brought to Licensing and Public Protection Committee setting out in more detail how the legal processes worked, and in the same situation, what could be done in dealing with the position of bylaws.

The Chair concluded by suggesting that the second recommendation of the report be amended with a further report being brought to Licensing and Public Protection Committee in February 2017.

The Committee was in agreement of the amendment.

Upon further consideration, it was:-

775

**RESOLVED:-**

That outstanding minute number 640(ii) be discharged and replaced.



That Committee agreed to the amendment that a further report be brought in February 2017 rather than in six months' time to update on the various work items contained within this report.

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**FRANKFURT CHRISTMAS MARKET AND CRAFT FAIR**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 6)

In response to a concern relating to increased noise levels at the Christmas Market, Mark Croxford confirmed that although he had not received any complaints, agreed to investigate in order to ensure that this was not repeated next year.

Chris Neville, Head of Licensing confirmed that there had been a complaint received regarding the high level of noise from the band situated outside the Council House which he confirmed had been addressed. He added that they he would look at the licensing agreement with regard to the 10 pm finish.

Concerns were raised by the Chair; regarding the increased number of drinking tables located outside the Council House, the access issue around the side of the Council House and the increased litter problems associated with the market

In response to the above, Chris Neville confirmed that the number of stands were reviewed thoroughly every year before the next market event was arranged and adjustments were made accordingly in order for improvements to be made. He further confirmed that he would take the comments back to the Safety Advisory Group (SAG).

Mark Croxford agreed to address the litter issue and Chris Neville agreed to investigate the issue regarding bomb alerts and evacuation plans for the Council House and the Christmas Market.

776

**RESOLVED:-**

That the report be noted.

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**SCHEDULE OF OUTSTANDING MINUTES**

The following schedule of Outstanding Minutes was submitted:-

(See Document No. 7)

Officers updated the dates for which reports would be forthcoming in relation to various Outstanding Minutes and it was: -

777

**RESOLVED:-**

That Outstanding Minute No. 640 (ii) be discharged and replaced with Minute No. 775 and all other Outstanding Minutes be noted.

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**DATE OF NEXT MEETING**

- 778 The date of next meeting was scheduled for Wednesday, 18 January 2017 at 1000 hours in Committee Rooms 3 & 4, Council House.
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**OTHER URGENT BUSINESS**

**A. E Cigarettes and Vaping**

- 779 Councillor Moore requested that an update be provided to the Committee relating to the above-mentioned items in light of the advice from Public Health England.
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780 **B. Bevington Road, Aston**

Chris Neville confirmed that a briefing note had been prepared for the above-mentioned item and would be circulated to members in due course.

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**AUTHORITY TO CHAIRMAN AND OFFICERS**

781 **RESOLVED:-**

In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee.

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**EXCLUSION OF THE PUBLIC**

782 **RESOLVED:-**

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Minutes - Exempt Paragraph 3

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The Committee adjourned at 1115 hours for a comfort break and reconvened at 1130 hours.

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<b>Report to:</b>	<b>LICENSING AND PUBLIC PROTECTION COMMITTEE</b>	
<b>Report of:</b>	<b>ACTING SERVICE DIRECTOR REGULATION AND ENFORCEMENT AND STRATEGIC DIRECTOR FINANCE AND LEGAL</b>	
<b>Date of Decision:</b>	<b>18 JANUARY 2017</b>	
<b>SUBJECT:</b>	<b>LICENSING AND PUBLIC PROTECTION – BUDGET MONITORING 2016/17 (MONTH 08)</b>	

<b>1. Purpose of Report:</b>
<p>1.1 This report sets out the position on the Licensing and Public Protection Committee's Revenue Budget at the end of November 2016 (Month 8) and the forecast position for the year end. It highlights any issues that have arisen and informs the Licensing and Public Protection Committee of any action being taken to contain spending within the approved cash limits.</p> <p>1.2 The report also details the latest performance within the Licensing and Public Protection Committee including progress against the approved Savings Programme for 2016/17.</p> <p>1.3 The report is in line with the current City Council established financial monitoring framework to ensure that expenditure is managed within cash limits.</p>

<b>2. Decision(s) Recommended:</b>
<p>The Licensing and Public Protection Committee is requested to :</p> <p>2.1 Note the latest Revenue budget position at the end of November 2016 (Month 8) and Forecast Outturn as detailed in Appendix 1.</p> <p>2.2 Note the position with regard to the Savings Programme for 2016/17 as detailed in Appendix 2.</p> <p>2.3 Note the expenditure on grant funded and Proceeds of Crime funded programmes in Appendix 3.</p> <p>2.4 Note the position on reserves and balances, as detailed in Appendix 4.</p>

<b>Lead Contact Officer(s):</b>	<b>Sukvinder Kalsi, Assistant Director of Finance</b>
<b>Telephone No:</b>	0121 303 3834
<b>E-mail address:</b>	sukvinder.kalsi@birmingham.gov.uk

<b>3.</b>	<b>Consultation</b>
3.1	<p><u>Internal</u></p> <p>The financial position on the revenue budget is reported on a monthly basis to the Management Team and the Acting Service Director of Regulation and Enforcement is briefed on the major financial issues, as required in line with the Council's framework.</p>
3.2	<p><u>External</u></p> <p>There are no additional issues beyond consultations carried out as part of the budget setting process for 2016/17.</p>

<b>4.</b>	<b>Compliance Issues:</b>
4.1	<p><u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></p> <p>The budget is integrated with the Council Business Plan, and resource allocation is directed towards policy priorities.</p>
4.2	<p><u>Financial Implications (Will decisions be carried out within existing finances and Resources?)</u></p> <p>The Licensing and Public Protection Revenue Budget Monitoring document attached gives details of monitoring of service delivery within available resources.</p>
4.3	<p><u>Legal Implications</u></p> <p>Section 151 of the 1972 Local Government Act requires the Strategic Director of Finance and Legal (as the responsible officer) to ensure proper administration of the City Council's financial affairs. Budgetary control, which includes the regular monitoring of and reporting on budgets, is an essential requirement placed on directorates and members of Corporate Management Team by the City Council in discharging the statutory responsibility. This report meets the City Council's requirements on budgetary control for the specified area of the City Council's Directorate activities.</p>
4.4	<p><u>Public Sector Equality Duty</u></p> <p>There are no additional specific Equality Duty or Equality Analysis issues beyond any already assessed and detailed in the budget setting process and monitoring issues that have arisen in the year to date. Any specific assessments will be made by the Directorates in the management of their services.</p>

## 5. Relevant Background/Chronology of Key Events:

### **Revenue Budget**

- 5.1 The City Council approved the overall budget on 1 March 2016. The Licensing and Public Protection Committee noted the original net revenue budget allocation of £5.951m (as detailed in Appendix 1).
- 5.2 As at Month 8, the budget has been reduced by a net £0.661m. The major changes are summarised in the table below.

	£'m
<b>Original Budget 2016/17 Reported to LPPC 16 March 2016</b>	<b>5.951</b>
Planned use of Reserves – Licensing Fees and Charges	(0.311)
Depreciation Adjustments	(0.199)
Cross Cutting Savings (Energy, Printing, etc.)	(0.010)
Additional resources for staff increments	0.124
<b>Net Revenue Budget 2016/17 – Month 2 (LPPC 13 July 2016)</b>	<b>5.555</b>
Cross Cutting Savings (Workforce)	(0.404)
Consolidation of Surveying Services (in Economy Directorate)	(0.062)
Additional Resources (3 posts) for Coroners Service (ongoing)	0.110
<b>Net Revenue Budget 2016/17 - Month 4 (LPPC 14 September 2016)</b>	<b>5.199</b>
No changes August-September	0.000
<b>Net Revenue Budget 2016/17 - Month 6 (LPPC 16 November 2016)</b>	<b>5.199</b>
Resources for Employee Pay Award	0.091
<b>Current Approved Net Revenue Budget for Month 8</b>	<b>5.290</b>

- 5.3 The City Council has well-established arrangements for monitoring spending against the cash limited budgets allocated to Directorates/Committees.
- 5.4 Reports are presented to Cabinet regularly on the overall city-wide financial position and the Licensing and Public Protection Committee receive periodic financial performance reports during the financial year.

### **Revenue – Financial Review and Year End Projections**

- 5.5 The total expenditure at Month 8 (end of November) is £2.380m, which represents 45% of the annual net budget.
- 5.6 A year end overspend of £0.700m is projected. This has been reduced by £0.100m from Month 6 due to the improved income performance in the Register Office.
- 5.7 The budgets continue to be managed rigorously and any changes will be reported in future reports.
- 5.8 The table below sets out a high level summary of the projected year end overspend by service (full details in Appendix 1) and how this is comprised of over the savings programme and base budget pressures.

Forecast Year End Variations – Month 8				
Budget Head	Savings Programme £'m	Base Budget (underspend) / Pressures £'m	Total (underspend) / Pressures Month 8 £'m	Total (underspend) / Pressures Month 6 £'m
Environmental Health	5	(560)	(555)	(555)
Pest Control	0	40	40	40
Register Office	0	0	0	100
Mortuary and Coroners	95	245	340	340
Trading Standards	5	5	10	10
Licensing	343	522	865	865
<b>TOTAL</b>	<b>448</b>	<b>252</b>	<b>700</b>	<b>800</b>

5.9 The key components of the projection include:

- **Environmental Health (£0.555m)** due to a number of staff vacancies, management of costs and increased fixed penalty notices income.
- **Pest Control +£0.040m** due to the service not being able to achieve its income target.
- **Registration Service (balanced)** improved income generation and recovery from the 2016/17 fee structure. Service previously forecast to overspend, now to break-even.
- **Mortuary & Coroners +£0.340m** – pressures from external costs for autopsies and laboratory fees.
- **Licensing +£0.865m** – historical structural financial pressures on savings applied to services that can only be operated on a cost recovery basis.

### **Savings Programme**

5.10 The Committee's Savings Programme total is £0.671m for 2016/17, as detailed in Appendix 2.

5.11 An assessment at Month 8 has concluded that £0.223m (33%) has been fully delivered and the remainder of £0.448m or 67% is not deliverable.

5.12 Following a petition to Full Council in April 2016, the savings target of £0.024m applied to the Animal Welfare (Dog Cruelty) will no longer be pursued. In 2016/17, this will be funded from within the Place Directorate budget and an alternative ongoing mitigation will be identified, with the detail set out in the budget report 2017/18.

5.13 The continued rigorous management action and financial control of officers is required to ensure that the programme will be achieved.

### **Mitigations and Management Actions 2016/17**

5.14 Managers within Regulatory Services are involved in a number of actions this financial year to mitigate budget pressures for current and future financial years.

#### 5.15 Registration Service

- A new fees structure for existing and new services was agreed by the LPPC committee on 17 February 2016.
- A streamlined financial administration process has now been implemented that allows more staff resources to be directed at front line services

#### 5.16 Pest Control

- Further contracts have been secured for Pest Control to clear waste land. This includes a significant contract for the City's Council Housing land.
- Additional contracts have been agreed to clear council owned sites after groups of Travellers have moved on.

#### 5.17 Licensing

- The increased demand from Private Hire applications – attributable to revisions to the Knowledge Test has increased the forecast shortfall from knowledge test fees.
- Officers within the Licensing Service have completed a base budget review and identified structural issues relating to prior year savings and income targets for the service. These will be rectified 2017/18 onwards, with the detail set out in the budget report 2017/18.

#### 5.18 Mortuary and Coroners

- The service continues to see pressure from Deprivation of Liberty Safeguards (DoLS) legislation, for which policy contingency has been made available for 2016/17.
- Pressures are becoming evident from the future inquest into the 1974 Pub Bombings and these are set to increase significantly. The funding is still to be identified, including requesting funding from the Government for this purpose.

#### **Capital**

5.19 The Capital programme (for Mortuary and Coroners) to undertake essential health and safety works in the mortuary was approved, funded through prudential borrowing of £0.024m per annum.

5.20 Although the site survey has now been completed, delays in completing this means that the scheme is now expected to commence in April 2017.

5.21 Arrangements are in place to transfer the capital budget into 2017/18.

<b>6. Grant Funded Programmes</b>
<p>6.1 Within Regulatory Services, there are two grant funded programmes: Illegal Money Lending and Scambusters.</p> <p>6.2 The expenditure and income for each programme is shown in Appendix 3.</p>
<p><b><u>Illegal Money Lending</u></b></p> <p>6.3 The Illegal Money Lending Team (IMLT) England investigates and takes action against Illegal Money Lending or “Loan Shark” perpetrators across the whole of England.</p> <p>6.4 The project is funded through specific grant from National Trading Standards Board (NTSB) (£3.098m) with additional funding from Financial Conduct Authority (£0.425m).</p> <p>6.5 The total funding for 2016/17 is £3.523m, a decrease of £0.082m from 2015/16.</p> <p>6.6 The expenditure at the end of November was £1.834m (52%). It is anticipated that the programme will spend fully to the grant allocated.</p> <p><b><u>Scambusters</u></b></p> <p>6.7 The Scambusters team investigates and takes action against fraudsters operating across council boundaries in the central region.</p> <p>6.8 Overall funding was originally agreed at £0.265m for 2016/17.</p> <p>6.9 The available funding has increased to £0.312m following an additional award of £0.047m from National Trading Standards Board (NTSB) to reflect the cost pressure of two significant court cases that the team is leading on.</p> <p>6.10 The expenditure at the end of November is £0.141m and is anticipated to spend fully to the grant allocated.</p>
<b>7. Proceeds of Crime Act</b>



7.1	Regulatory Services secures funding through the Proceeds of Crime Act 2002 in response to financial investigations undertaken post sentencing by the courts.
7.2	This money is strictly ring-fenced for community and crime prevention projects as follows:
7.3	Trading Standards and Illegal Money Lending have spent £0.160m (£0.103m and £0.057m respectively) on specific PoCA projects from April to November 2016.
7.4	Proceeds of Crime income (representing a proportion of money recovered through the legal system) received so far this financial year totals £0.198m (Trading Standards £0.134m, IMLT £0.064m). This has been transferred into the two reserve accounts and is reflected in Appendix 4.

<b>8.</b>	<b>Balances and Reserves:</b>
8.1	The balances and reserves at Month 8 are shown in Appendix 4.
8.2	The balances at the start of the year (1 April 2016) totalled £1.368m and these are all specific ring-fenced resources.
8.3	The planned use of reserves of £0.311m for the Licensing service is in relation to licence fees for 2016/17.
8.4	The resources of £0.198m received in relation to Proceeds of Crime have been paid into the appropriate reserve accounts.
8.5	The balances as at the end of November 2016 are £1.255m.

<b>9.</b>	<b>Evaluation of Alternative Option(s):</b>
9.1	During the year ahead the financial position will continue to be closely monitored and options identified to resolve budgetary pressures as necessary, and alternative savings proposals developed to meet new and emerging pressures

<b>10.</b>	<b>Reasons for Decision(s):</b>
10.1	The Report informs the Licensing and Public Protection Committee of the Revenue Budget for 2016/17 and the forecast outturn at the end of November 2016.
10.2	The latest position in respect of the Licensing and Public Protection Committee's year-end projections, use of reserves, Savings Programme and risks are also identified.

## Signatures

Alison Harwood  
Acting Service Director Regulation and Enforcement .....

Jon Warlow  
Strategic Director of Finance and Legal .....

Date .....

### List of Background Documents used to Compile this Report:

Licensing & Public Protection - Revenue and Capital Budget 2016/17 – 16 March 2016  
Licensing & Public Protection - Budget Monitoring 2016/17 (Month 02) – 13 July 2016  
Licensing & Public Protection - Budget Monitoring 2016/17 (Month 04) – 14 September 2016  
Licensing & Public Protection - Budget Monitoring 2016/17 (Month 06) – 16 November 2016

### List of Appendices accompanying this Report (if any):

1. Appendix 1 - Financial Performance Statement Month 8 and Provisional Outturn
2. Appendix 2 - Savings Programme Performance 2016/17 Month 8
3. Appendix 3 - Summary of IMLT, Scambusters and PoCA
4. Appendix 4 - Balances and Reserves at Month 8

<b>Report Version</b>	3.2	<b>Dated</b>	05 January 2017
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# Licensing and Public Protection Committee - 2016/17 Month 08 - Revenue Expenditure

## Subjective Headings

Budget 16Mar2016	Subjective Categories	Budget 16Nov2016	Movement (Oct-Nov)	Current Budget	Actuals	Forecast Year End	Savings Programme at Risk	Pressures
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
£'000		£'000	£'000	£'000	£'000	£'000	£'000	£'000
10,086	Employees	10,062	91	10,153	7,073	165	0	165
957	Premises	955	0	955	576	120	0	120
200	Transport and Moveable Plant	200	0	200	137	(80)	0	(80)
2,541	Supplies and Service	3,326	0	3,326	1,173	(640)	95	(735)
198	Capital Financing	208	0	208	139	0	0	0
3	Recharge Expenditure	3	0	3	80	0	0	0
13,985	Gross Expenditure	14,754	91	14,845	9,178	(435)	95	(530)
(4,023)	Fees & Charges / Reserves	(4,343)	201	(4,142)	(3,024)	510	0	510
(4)	Rents etc	(4)	0	(4)	(18)	0	0	0
(3,537)	Misc Income / Depreciation	(3,738)	(493)	(4,231)	(2,682)	625	353	272
(470)	Recharge Income and Interest	(1,470)	292	(1,178)	(1,074)	0	0	0
(8,034)	Income	(9,555)	0	(9,555)	(6,798)	1,135	353	782
5,951	Net Expenditure	5,199	91	5,290	2,380	700	448	252

## Service Areas

Budget 16Mar2016	Service Areas	Budget 16Nov2016	Movement (Oct-Nov)	Current Budget	Actuals	Forecast Year End	Savings Programme at Risk	Pressures
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
£'000		£'000	£'000	£'000	£'000	£'000	£'000	£'000
3,532	Environmental Health	2,846	37	2,883	1,202	(555)	5	(560)
(3)	Pest Control	177	7	184	334	40	0	40
450	Registrars	688	21	709	469	0	0	0
1,122	Mortuary and Coroners	1,135	11	1,146	750	340	95	245
1,566	Trading Standards	1,413	10	1,424	956	10	5	5
(764)	Licensing	(1,045)	5	(1,041)	(1,122)	865	343	522
5,903	Net Expenditure - Regulatory	5,214	91	5,304	2,589	700	448	252
74	Access and Development	74	0	74	52	0	0	0
(88)	Highways Regulatory	(88)	0	(88)	(261)	0	0	0
62	Surveying Services	0	0	0	0	0	0	0
48	Net Expenditure - Highways	(14)	0	(14)	(209)	0	0	0
5,951	LPPC - Net Expenditure	5,199	91	5,290	2,380	700	448	252

**Note: figures exclude: PoCA, IMLT and Scambusters (see Appendix 3)**

## Licensing and Public Protection Committee

### Savings Programme and Tracker at Month 08 (end November) 2016/17

	Total Programme 2016/17	Progress against specific Savings with Actions Required					TOTAL
		Actions in place to fully achieve Savings (in line with Policy Decision)	Actions in place to fully achieve Savings (new Policy Decision required)	Actions in place to Achieve savings in year only	Actions in place but some risk to delivery	Savings not deliverable	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	£'000	£'000	£'000		£'000	£'000	£'000
Environmental Health	(34)	(5)	(24)	0	0	(5)	(34)
Licensing and Enforcement *	(532)	(189)	0	0	0	(343)	(532)
Mortuary and Coroners	(95)	0	0	0	0	(95)	(95)
Pest Control	0	0	0	0	0	0	0
Registrars	0	0	0	0	0	0	0
Trading Standards	(10)	(5)	0	0	0	(5)	(10)
Regulatory Services	(671)	(199)	(24)	0	0	(448)	(671)
Highways Services	0	0	0	0	0	0	0
<b>Total Savings Programme</b>	<b>(671)</b>	<b>(199)</b>	<b>(24)</b>	<b>0</b>	<b>0</b>	<b>(448)</b>	<b>(671)</b>

Savings 2016/17 = £0.332m, plus £0.339m (Licensing and Enforcement) savings from 2015/16 not achieved

## Licensing and Public Protection Committee

## Grant and PoCA Funded Programme at Month 08 (November) 2016/17

Service Areas	Grant Allocation 2016/17	Actuals Year to Date	Forecast Year End Variance
(1)	(2)	(3)	(4)
<b><u>Illegal Money Lending Team (IMLT) England</u></b>	<b>£'000</b>	<b>£'000</b>	<b>£'000</b>
Employees	2,543	1,593	0
Premises	62	5	0
Transport and moveab	241	75	0
Supplies and Service	535	139	0
Third Party Payments		13	0
Recharge Expenditure	142	9	0
Gross Expenditure	3,523	1,834	0
Grant Income (NTSB)	(3,098)	(1,627)	0
Fees & Charges (FCA)	(425)	(207)	0
Income	(3,523)	(1,834)	0
<b>Net Expenditure</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b><u>Scambusters</u></b>			
Employees	141	93	0
Premises	1	(0)	0
Transport and moveab	5	2	0
Supplies and Service	154	36	0
Recharge Expenditure	11	10	0
Gross Expenditure	312	141	0
Grant Income (NTSB)	(312)	(141)	0
Income	(312)	(141)	0
<b>Net Expenditure</b>	<b>0</b>	<b>0</b>	<b>0</b>

# Licensing and Public Protection Committee - 2016/17 Month 08 - Balances and Reserves

## Balances and Reserves at Month 8 (November) 2016/17

Reserves and Balances (1)	Licensing		Grants		PoCA		Total Ringfenced Reserves (8)	General Balances (9)	Total Reserves and Balances (10)
	Entertain - ment Licensing (2)	Hackney Carriage and Private Hire (3)	Illegal Money Lending Team (4)	Scam - busters Team (5)	PoCA Trading Standards (6)	PoCA Illegal Money Lending (7)			
	£'000	£'000	£'000	£'000	£'000	£'000		£'000	£'000
<b>Reserves and Balances 01 April 2016</b>	<b>215</b>	<b>(366)</b>	<b>(279)</b>	<b>(13)</b>	<b>(338)</b>	<b>(587)</b>	<b>(1,368)</b>	<b>0</b>	<b>(1,368)</b>
<b>Transactions (to)/from Balances in 2016/17</b>									
Planned Use of Reserves in 2016/17	0	311	0	0	0	0	311	0	311
Appropriations to Reserves in year	0	0	0	0	(134)	(64)	(198)	0	(198)
Appropriations from Reserves in year	0	0	0	0	0	0	0	0	0
<b>Net Movements 2016/17</b>	<b>215</b>	<b>(55)</b>	<b>(279)</b>	<b>(13)</b>	<b>(472)</b>	<b>(651)</b>	<b>(1,255)</b>	<b>0</b>	<b>(1,255)</b>
<b>Estimated Reserves 31 March 2017</b>	<b>215</b>	<b>(55)</b>	<b>(279)</b>	<b>(13)</b>	<b>(472)</b>	<b>(651)</b>	<b>(1,255)</b>	<b>0</b>	<b>(1,255)</b>

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**18 JANUARY 2017**  
**ALL WARDS**

**“LOAN SHARKS” - ILLEGAL MONEYLENDING PROJECT**

1. Summary

- 1.1 This report provides an update on the work of the England Illegal Money Lending Team (IMLT) hosted by Birmingham City Council's Regulation and Enforcement.
- 1.2 The grant funded project was initially piloted in 2004 with teams from Birmingham and Glasgow operating across a specific region. The purpose was to identify if illegal money lending was in operation and, if so, investigate and institute proceedings against those involved.
- 1.3 The project was commissioned for an initial period of two years. It was further extended year to year following a number of high profile successful investigations.
- 1.4 By 2007 this had proved so successful, that the project was extended to form regional teams across the country with the Birmingham hosted team expanding into five regions. On 1 April 2011, once again building on this success, the regional teams were decommissioned and one National Team was launched. This team, unique of its type across the country, continues to be hosted by Birmingham City Council's Regulation and Enforcement.
- 1.5 The IMLT operates across the country using legislative powers under the Consumer Rights Act 2015.
- 1.6 The brief of the IMLT, from its inception, has been to investigate and prosecute illegal money lenders and to provide financial inclusion support to victims and communities under the control of illegal money lenders.
- 1.7 From an initial team of seven officers, the team has grown in size and now employs 52 staff in a variety of roles, with a future structure of 60 staff when fully funded.
- 1.8 Initially officers gather and develop intelligence, then when information is corroborated, warrants are executed and, where appropriate, cases taken into the court process. Another branch of the team (LIAISE officers) support loan

shark victims throughout the process and raise awareness, with partners, of the work of the team, gathering intelligence.

- 1.9 Since its inception the team has secured more than 359 prosecutions for illegal money lending and related activity, leading to nearly 303 years' worth of custodial sentences. They have written off £71.75 million worth of illegal debt and helped over 26,000 people.

## 2. Recommendation

- 2.1 That the report be noted.

Contact Officer: Alison Harwood, Acting Director of Regulation and Enforcement  
Telephone: 0121-303 0201  
Email: [Alison.Harwood@birmingham.gov.uk](mailto:Alison.Harwood@birmingham.gov.uk)

Originating Officer: Tony Quigley, Head of Service

## 3. Background

- 3.1 The primary legislation governing the consumer credit industry is the Financial Services and Markets Act 2000, previously the Consumer Credit Act 1974. The Trading Standards Service has a statutory duty to enforce this legislation within its area. A fundamental requirement of the act is that all potential providers of credit must possess an appropriate licence issued by the Financial Conduct Authority. To operate a credit business without being licensed is a criminal offence which carries a maximum penalty of a £5,000 fine and/or up to two years in prison.
- 3.2 Unlicensed illegal money lenders, or "loan sharks" as they are more commonly known, have long been recognised as the most unacceptable part of the illegitimate consumer credit industry. Targeting vulnerable communities and individuals, charging exorbitant rates of interest and using fear and intimidation to recover monies 'owed' have long been recognised as the hallmarks of their operations.
- 3.3 When the team was initially set up in 2004 there was little knowledge about the scale of loan sharking, either in the number of individuals involved or the number of possible victims across the country. Loan sharks were rarely, if ever, prosecuted. Birmingham City Council has now prosecuted 359 individuals.
- 3.4 As well as the work of the team, the government commissioned Independent research by Bristol University (POLICIS) in 2010 which has shown that around 310,000 people across the UK were indebted to loan sharks.



### 3.5 Typically loan sharks:

- Start out being friendly - they are often heard of via friends. It is only when repayments are missed their behaviour changes.
- Offer little or no paperwork.
- Increase the debt or add additional amounts.
- Refuse to tell the borrower the interest rate, how much they still owe or how long they will be paying back. (We have seen APR as high as 4.5 million %).
- Take items as security - this may include passports, driving licences or even bank or post office cards with the PIN to withdraw directly from borrower's accounts.
- Resort to intimidation, threats or violence.

3.6 Throughout its life the project has been funded by central government. This funding was always on a yearly basis which meant the team's grant was never secure long term. However, earlier this year it was announced that a levy would be applied to businesses (as part of the licence fee they already pay to operate legitimately). This funding will commence on 1 April 2017 and will secure the team's long term future. If a legitimate lender loses a customer to a loan shark the business losses can be significant. On this basis the levy has both government and business support.

## 4. Operating the Illegal Money Lending Team

- 4.1 The success of the team can be attributed to a number of factors, however, in the main, the quality of the intelligence gathered and information obtained through the hotline and from partner agencies has been a primary reason for the successes achieved so far. These relationships are developed and grown by the Liaise Officers (Leads in Awareness, Intelligence, Support and Education).
- 4.2 The speed at which the team operates is also a contributing factor. Operations Managers within the team are authorised to charge at police stations. This authority speeds up the court process, allowing suspects to be arrested, interviewed and charged the same day. In some instances the defendant has been brought before the courts within 24 hours and remanded in custody, due to the nature of the offences. This has stopped them interfering with likely witnesses and allowed the investigation to continue unhindered.
- 4.3 A further factor is that the team have always operated a 24/7 dedicated hotline allowing callers to speak to an investigator at all times. It is important to recognise that the volume of calls is not substantial, due to the nature of the subject under investigation, but from the outset of the project it was considered essential that a person under the control of a loan shark would be able to speak directly to an officer involved in the investigation. This method sought to promote reassurance and allows for information to be fed directly to those officers actively involved with catching illegal money lenders.

- 4.4 The investigations by the team have resulted in a number of high profile court cases that have included serious criminal offences, investigated and prosecuted by Birmingham City Council. The strategy to prosecute for all matters has resulted in the prosecution of offences that may not normally be associated with a Trading Standards Service. The decisions to prosecute offences such as rape, blackmail, kidnapping wounding and assault were made after careful consideration and in consultation with Legal Services. It was recognised that these offences were directly linked with illegal money lending and occurred as a direct result of the involvement with this activity.
- 4.5 Raising awareness of the team with the public, but also with other interested parties has been critical for gathering the right intelligence. The involvement of the police and support furnished by them throughout the operations has been extremely beneficial, and the embedded Police Officers (first introduced by the Birmingham project) have given the team an added dimension to its investigatory powers.
- 4.6 To further support this initiative the Birmingham team now employs a National Communication and Press Officer to promote the work of the team. This post allows for a coordinated approach to the work of the project and delivers a consistent message regarding the activities of the teams against illegal lenders.
- 4.7 As explained earlier, the team has secured a large number of prosecutions over the years including numerous prison sentences. One of these includes an indefinite term of imprisonment where the loan shark had raped his victim. These sentences are often obtained because we prosecute for all criminality and take the matter away from what may be seen as a purely technical offence.
- 4.8 Some of our more recent cases include:

**Operation JODO** – Thomas Johnson from Stockport who charged his victims 4.5 million percent APR was sentenced to 33 months in prison on 28 July. He had received in excess of £200,000 from his illegal money lending business, charging double for every £1 he loaned out.

Johnston threatened to break a victims legs if they didn't pay, claiming that no-one got away without paying, boasting that he even tracked someone down in Spain to repay a debt. Other threats involved Johnson telling the victim that he would put them in a wheelchair, claiming he had a space to bury the body.

**Operation BONIFACE** – A Harrow doctor received a 10 month prison sentence, suspended for 2 years on 18 October for running a £1 million illegal money lending business over a period of approximately 5 years. Dr Arjan Damjibhai Savani had issued loans to hospital colleagues, in the region of £500 - £50,000. The loan shark would put pressure on victims by sending

them monthly texts with their outstanding balance. This was an intimidating tactic used by the loan shark, giving him full control over his victim's debts.

**Operation LEMBATA** – Kevin Colin White and Adrian James Dowse were sentenced to 2 years and 9 months each on 2 November for their illegal money lending business. The loan sharks from Portsmouth supplied victims with cash loans and motor vehicles on credit. The value of their loan book totaled over £700,000. When the sale of a motor vehicle was made, the loan sharks would retain the second set of keys which enabled them to continue an influence over their victims or in the event of default, enabled recovery of the vehicle.

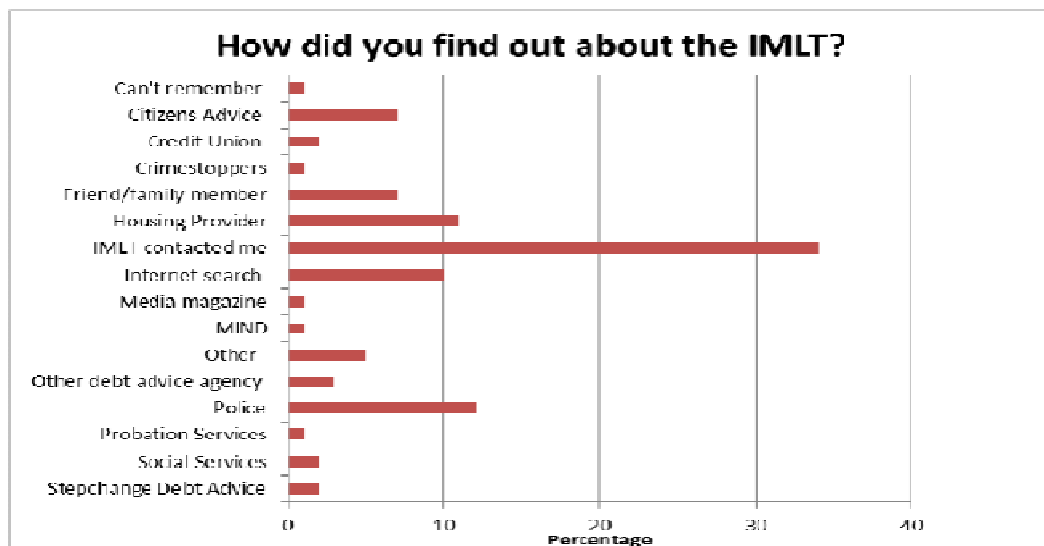
- 4.9 To date the team has assisted nearly 26,000 victims. The support by Liaise Officers provided to victims of loan sharks has had a real impact on improving quality of life for individuals and their families.
- 4.10 The following examples are from a number of people who have been through the process of giving evidence against illegal money lenders.
- a) Miss I has been through “building self esteem” training and training to “boost confidence”. Following this, Miss I has obtained an NVQ qualification in social care and is now working full time and off benefits for the first time in her life. She said that she is now living her life and not just existing and that's all down to IMLT. Miss I is also saving with the credit union.
  - b) Mrs O was re-housed and supported through the court case, now looking after her grandchildren while her daughter goes to college and has started tap dancing lessons to help build up her confidence. She has said that she would have killed herself without the support of the team.
  - c) Mr C was re-housed and supported. This included his children being relocated in respect of their education. Got a credit union loan to repair his car so he could continue working. He didn't know about them until he met us. He says that without IMLT he'd still be paying the loan shark and would be in a continual state of anxiety and stress.
  - d) Mr S and Miss G were supported to move. They are now working and have a credit union loan in order to finance work on their new house. Mr S is now working full time. They said, “We were having relationship difficulties because of the stress of the loan shark, but now we are back on track.”
  - e) Mrs M was supported to give a statement. She had a credit union loan to tide her over before her wages were paid in and she sees no need to use loan sharks in the future now she knows of the dangers and the alternatives available.

#### 4.11 Victim Research

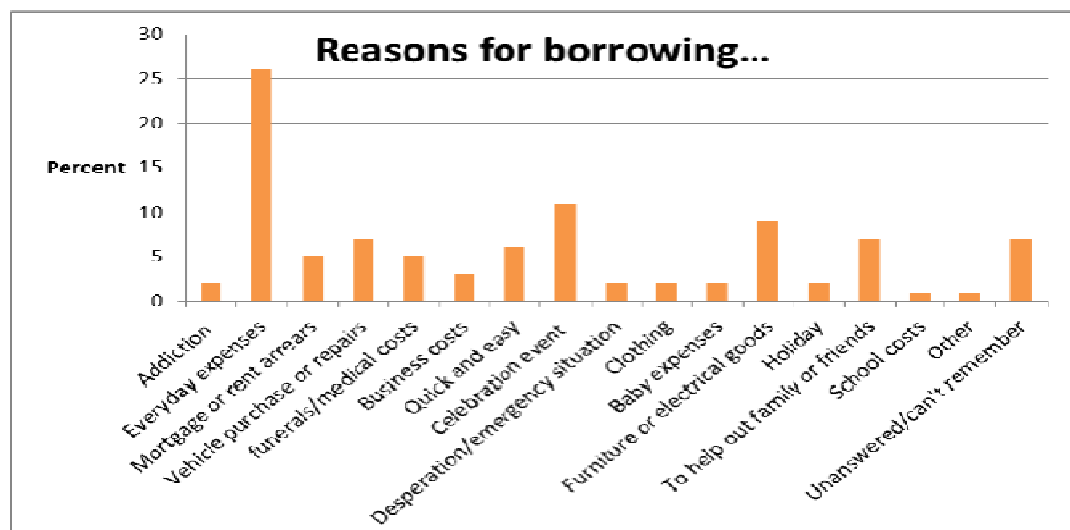
Analysis of questionnaires undertaken with those the team have supported has revealed:

- A 50/50 male/female split – this follows on from work the team did last year to increase the number of men reporting loan sharks.
- 43% of victims stated they had a disability – loan sharks are still targeting vulnerable people.
- 43% of victims were employed or self employed.
- Average amount of debt was over £5,500 per person.
- The median amount borrowed was £400.

Victims were asked how they found out about IMLT and answers reflected the range of partner agencies the team work with:



Reasons for borrowing:



- 4.12 As well as prosecuting the loan sharks, the team have four financial investigators whose jobs it is to recover their proceeds of crime (POCA). The money, once reclaimed, is put to good use throughout the community. When an initiative is instigated in a region each interested group places a bid for funds. Those bids are put to the community in a “Your Choice” event where the community votes for which group or groups should receive the money.
- 4.13 The funds must be used by local residents, charities, voluntary groups, schools or established agencies as long as they can show how their idea achieves one of the following:-

### Education Project

There are now over 4,850 schools delivering IMLT lesson plans. Work is now taking place to extend this project into the field of youth work – with funding sought for resources to be developed that can be delivered by youth workers in a non-educational setting. Furthermore, LIAISE have worked in conjunction with Experian in the development of a new workbook for their online learning resource “Values, Money & Me” which was launched in September. Schools in target areas of England have taken place in poster design competitions, with the winning poster being produced, or turned into a banner to display at the school.



### Awareness Raising Work – Partners

In 2015/2016 the team trained over 13,000 frontline staff and completed 90 weeks of action with partner agencies. These weeks of action have been targeted in areas where loan sharks have been known to operate and have been one of the main ways that intelligence has been generated.

### Stop Loan Sharks Champions

Bishop Auckland Theatre Hooligans (BATH) were crowned as Stop Loan Sharks Champions 2015 on 1 December at an event at Bishop Auckland

Town Hall. This group of young people put together 6 short plays about illegal money lenders that were showcased at Auckland Castle in July. They have performed the plays for their peers in school and the subject is now embedded in the curriculum. The group, who won in partnership with Durham Constabulary and King James I Academy, are spending their £1,000 winnings on developing a school bank to teach pupils more about money management and the value of savings.



### National Stop Loan Sharks Week

National Stop Loan Sharks week ran from 30 November to 6 December. The week was launched by a press campaign and saw events happening all over the country, in primary schools, community centres and on housing estates. Sid the Shark was photographed in many weird and wonderful places. The week also saw a tweetathon happen, with tweets about illegal lenders reaching 2.5 million people. The team tweeted facts about illegal lenders as the twelve days of Christmas and now have 2,000 followers.



As part of the week, the work of Bolton University students was showcased at Bolton library. Students had been asked to develop posters showing the dangers of illegal money lending that were aimed at a diverse audience, and that offered community reassurance after prosecutions had taken place. The winning posters will be produced and used by the team.

## National Partnerships

IMLT now have relationships with Public Health England and Anxiety UK. Public Health England are going to include information about loan sharks in their mental health masterclasses, and mutual training opportunities are being developed. Anxiety UK are working with the team to push the Stop Loan Sharks message to all the people they support.

LIAISE staff have been working to enhance their relationships with Police Forces, with Wiltshire, Norfolk and Dorset forces agreeing to assist in an intelligence trawl; West Mercia, Warwickshire and West Midlands forces agreeing that IMLT can train all their new recruits; and several forces booking training for 999 and 101 call handlers.

A partnership has been developed with the BCCA (British Cash Chequer's Association). Training has been offered to members, and will be piloted in April with Monkeydosh. A member of IMLT spoke at their conference, and several short term credit providers have asked for information for their websites as a result. The team are also meeting Dollar UK, and speaking at the CFA conference in Quarter 1 of 2016/2017.

The team have continued to work with the CAB nationally, looking at the information they hold on loan sharks, and speaking at their conferences to encourage reporting by debt advisers.

## Projects Targeting Different Communities

Throughout 2015/2016 the LIAISE team have been working to target specific communities. These have been selected due to their having protected characteristics under Equalities legislation, or due to evidence suggesting they are vulnerable to illegal lending, or may have specific barrier to reporting. Examples include:

- Work to target the Stop Loan Sharks messages to the armed forces. Information is now available in all family hubs on bases across the UK, and even on serving naval ships at sea. Army staff have received training from the team, and staff have attended health and wellbeing fairs to talk to recruits.
- Work in hospitals to get a preventative message to staff following a number of cases where nurses have been targeted. This work has involved promoting the team in individual hospitals (eg: Stoke), working with NHS protect to get the message to security staff (eg: Norfolk), and working to try and introduce debt and credit services to hospital staff as a preventative method (eg: Hertfordshire and Luton).
- A new video has been produced for the Deaf Community in sign language.

- Pilot projects were run targeting rural areas, the travelling community, migrant workers and sex workers. Reports have been produced and best practice rolled out.

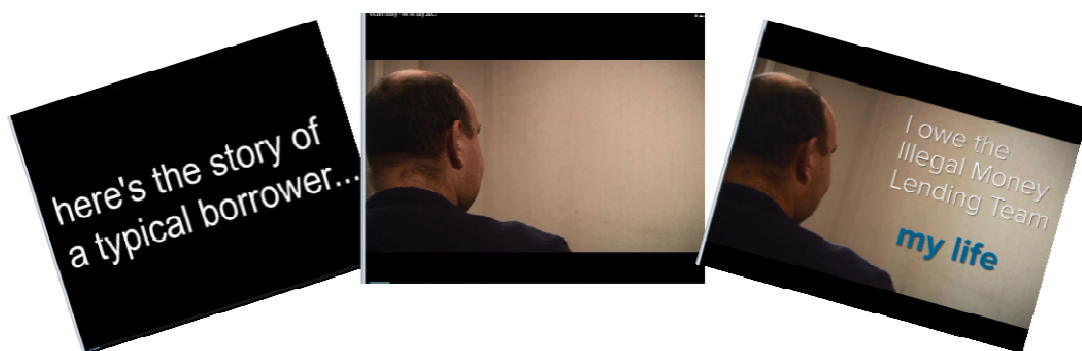
### New Resources

Partner agencies have developed two new videos to promote the work of IMLT. Circle Housing has produced a simple video which they are making available to all their tenants. The video has warning messages and contact details for IMLT for anyone who is the victim of a loan shark.

Sefton Council have developed a video for migrant communities. They found that the phrase “loan shark” did not translate so instead have used “loan leech”. The video is being produced in Latvian, Russian, Polish and Hungarian.

In 2016 IMLT will be developing a stand-alone website for the first time.

A video has been made of a victim from Yorkshire telling his story. The man is ex-services so it is particularly being used to get the message to the armed forces.



## 5. Funding

- 5.1 The IMLT project is currently funded by the Department for Business, Energy Industry Strategy (BEIS) through the National Trading Standards Board (NTSB).
- 5.2 The governance of the project consists of representatives from the Financial Conduct Authority (FCA), NTSB and the hosting authorities involved.
- 5.3 In 2015 the NTSB announced that they intended to reduce the funding amount currently provided for the illegal money lending teams. As a result, the FCA and Treasury intervened and announced that an industry levy would be introduced to fund the illegal money lending teams within England, Northern Ireland, Scotland and Wales.



- 5.4 The industry levy will be introduced from April 2017 and the governance of the teams will move to the Treasury and the FCA in April 2018. The funding amount for the England team will return to previous levels (£3.6 million's) to allow current resource to return to full capacity.

6. Implications for Resources

- 6.1 The Illegal Money lending team is grant funded and therefore all costs for the service are recovered through this provision. Any income and proceeds of crime monies are ring fenced to the team and utilised for the ongoing work.

7. Implications for Policy Priorities

- 7.1 Enforcement action taken against illegal money lenders protects legitimate traders from unfair trading practices and improves the quality of life for those individuals caught within the grips of a loan shark and, as a result, within the poverty trap.
- 7.2 Loan Sharks prey on the most vulnerable groups and enforcement action to remove them from communities and encourage more sustainable credit sources such as credit unions is important.
- 7.3 Prosecution and removal of loan sharks from communities will reduce the fear of intimidation and violence.

8. Public Sector Equality Duty

- 8.1 Illegal Money lenders prey on the most vulnerable members of society. They target people who may be financially excluded and, in many instances, people over whom they can exert power and control. Removing an illegal lender and introducing alternatives helps those individuals that have been trapped by the illegal lender into paying high interest or being forced into carrying out activities, under normal circumstances, they would not commit.

## **ACTING DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: Files held by the IMLT



**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**18 JANUARY 2017**  
**ALL WARDS**

**FIXED PENALTY NOTICES FOR THE UNAUTHORISED DEPOSIT OF WASTE  
(FIXED PENALTIES) REGULATIONS 2016**

1. Summary
  - 1.1 The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 came into force on the 9<sup>th</sup> May 2016.
  - 1.2 These Regulations introduced a new fixed penalty notice for small scale fly-tipping offences under Section 33 of the Environmental Protection Act 1990.
  - 1.3 This report seeks to inform and update the committee of the current process.
2. Recommendation
  - 2.1 That the report be noted.

Contact officer: Tony Quigley, Head of the Waste Enforcement Unit  
Telephone: 0121 303 9158  
Email: [Tony\\_quigley@birmingham.gov.uk](mailto:Tony_quigley@birmingham.gov.uk)

### 3. Background

- 3.1 Section 33 of the Environmental Protection Act 1990 [the Act] deals with the offence of “fly-tipping” which is the illegal deposit of controlled waste. On conviction the maximum penalty for this criminal offence is unlimited fines and/or five years imprisonment. Government has extended the non-court sanctions available to local authorities through the introduction of fixed penalty notices for this offence.
- 3.2 The fixed penalty notice provisions are made under the Unauthorised Deposit of Waste (Fixed Penalties) Regulation 2016 and came into force on the 9<sup>th</sup> May 2016. The new Regulations mirror similar provisions available to Scottish local authorities since 2004. As with Scotland, the provisions are intended to be considered as a potential alternative to prosecution in cases involving small scale ‘fly-tipping’.
- 3.3 For individual ‘fly-tipping’ offences the duty to consider whether issuing a fixed penalty notice or another disposal option is the most appropriate course of action will continue to be determined on a case by case basis taking in to account all of the circumstances including the amount, type, and deposit of the controlled waste as well as any relevant information available at the time regarding the offender and the offending.
- 3.4 The Licensing and Public Protection Committee set the fixed penalty notice at its maximum allowable tariff of £400.

### 4. Environmental Protection Act 1990, Section 33 - Fixed Penalty Notices

- 4.1 The introduction of the new fixed penalty for “Flytipping” was as ‘an alternative to prosecution of offenders through the courts’ and was aimed at small scale dumping of controlled waste where the liability of the offending could be discharged through payment of the fixed penalty amount.
- 4.2 This means that these fixed penalties, however, can only be used if there is evidence that a named individual (a person) or legal business entity has committed a criminal offence of unauthorised deposit of controlled waste.
- 4.3 This means you cannot issue this type of fixed penalty or take action against “households”, “businesses” without means of identifying a person who is responsible for depositing the waste. Merely finding documents in waste is not sufficient evidence to identify who deposited the waste and would not meet the required standard of proof.
- 4.4 The Standard of Proof remains as ‘beyond a reasonable doubt’ and the burden of proof remains with the prosecutor, exactly the same as that which is required to secure a conviction at court.

- 4.5 This means that these fixed penalties can only be used if there is real evidence that a named individual (a person) has committed a criminal offence of depositing the un- authorised waste.
- 4.6 The fixed penalties are a way of reducing magistrates' court service workload reducing the need for prosecution for smaller scale offences, but they cannot be used if there is insufficient evidence. Without court proceedings local authorities have no ability to recover investigatory or legal costs and the regulator carries the full financial burden.
- 4.7 The same amount of investigative input is required whether a fixed penalty notice is being issued or a full prosecution is being pursued.
- 4.8 Fixed penalties are not intended as a cost recovery tool, however the investigation of small scale fly-tipping requires full evidence to be gathered to enable potential court proceedings to be mounted in the event that a fixed penalty was not paid.
- 4.9 Fly-tipping investigations, irrespective of size, invariably require Officers to conduct interviews under caution with suspects and may require witness statements to be gathered or enquiries with other enforcement agencies, such as the police.
- 4.10 It remains that offenders need to be caught in the act and eye witness account or admissions of guilt are essential. Suspicion or having only circumstantial evidence of an offence does not meet the required standard of proof for issuing fixed penalty notices or instituting criminal proceedings through the courts.
- 4.11 As with other types of fixed penalty notices related to the Act, failure to pay the fixed penalty amount renders a person liable to prosecution for the original offence for which the fixed penalty notice was issued.
- 4.12 It is often the absence of an eye witness or an eye witness not wishing to give a statement or attend court which prevents action being taken.
- 4.13 The unit has served 11 Section 33 Fixed Penalty Notices so far.

4.14 Some examples of flytipping that would not be deemed appropriate as small scale offending are below:



Examples where fixed penalty notices may be deemed appropriate (small scale)



Enforcement figures to April to November 2016:

<b>Waste Investigation Outcomes:</b>	
Investigations into commercial waste disposal suspected offences and offences	460
Section 34 Environmental Protection Act: demand notices issued (trade waste statutory information demands)	396
Section 34 Environmental Protection Act: Fixed Penalty Notices issued to businesses (£300)	131
Section 87 Environmental Protection Act: Fixed Penalty Notices issued for commercial and residential litter offences (£80)	69
<b>Prosecutions:</b>	
Number of prosecution files submitted to Legal Services (number produced quarterly)	28

7. Implications for Resources

- 7.1 Fixed penalty notices issued appropriately will not reduce implications for resources due to the level of investigation required prior to service of any potential fixed penalty notice, however, it may reduce time in court or the necessity of court proceedings.

8. Implications for Policy Priorities

- 8.1 The issuing of fixed penalty notices is another application Regulation and Enforcement officers, in particular, the Waste Enforcement Unit can utilise tackling waste offences and improving the cleanliness of the city.

9. Public Sector Equality Duty

- 9.1 There are no specific implications identified.

**ACTING DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: Birmingham City Council – Corporate Charging Policy





**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**18 JANUARY 2017**  
**ALL WARDS**

**FIXED PENALTY NOTICES ISSUED NOVEMBER 2016**

1. Summary
  - 1.1 The report sets out a breakdown, on a Constituency/Ward basis, of fixed penalty notices issued in the City during the period November 2016.
2. Recommendation
  - 2.1 That the report be noted.

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### 3. Background

- 3.1 The issuing of fixed penalty notices [FPN] by officers from Regulation and Enforcement is one of the means by which the problems of environmental degradation such as littering and dog fouling are being tackled within the City.
- 3.2 The yearly total numbers of fixed penalty notices issued are indicated below.

<u>Month</u>	<u>Fixed Penalty Notices Issued</u>
April 2004 – Mar 2005	382
April 2005 – Mar 2006	209
April 2006 – Mar 2007	650
April 2007 – Mar 2008	682
April 2008 – Mar 2009	1,147
April 2009 – Mar 2010	1,043
April 2010 – Mar 2011	827
April 2011 – Mar 2012	2,053
April 2012 – Mar 2013	1,763
April 2013 – Mar 2014	1,984
April 2014 – Mar 2015	4,985
April 2015 – Mar 2016	5,855

### 4. Enforcement Considerations and Rationale

- 4.1 The attached appendix shows the wards where FPNs were issued during the month of November 2016.
- 4.2 By identifying both the area where the FPN is issued and the ward/area that the litterer lives this demonstrates that the anti-litter message is being spread right across the city. By and large litter patrols are targeted to the primary and secondary retail areas of the city because there is a high level of footfall and they engage with a full cross section of the population. Targeted areas include locations where there are excessive levels of littering, smoking areas with high levels of cigarette waste that cause blight in the city and areas where there are known problems associated with groups gathering to eat outdoors.
- 4.3 The number of incidences of Fixed Penalty Notices being issued reflects the fact that there is still a problem with littering on our streets. Since the Health Act came into force there has been a decline in street cleanliness associated with cigarette waste. This is reflected not only in these statistics but also in the environmental quality surveys undertaken by Fleet and Waste Management that record cigarette waste being the most prevalent waste upon our streets and identify it in 98% of all samples of street cleanliness.

4.4 One of the difficulties in resolving the problem of cigarette waste being deposited on the street is that the perception of many smokers is that cigarette waste is not litter. A change in the culture and perceptions of these smokers is critical to resolving this problem.

4.5 Anyone who receives a FPN is encouraged to talk to their co-workers, friends and families to promote the anti-litter message.

## 5. Consultation

5.1 The Enforcement Policy that underpins the work identified in this report is approved by your Committee. The policy reflects the views of the public and the business community in terms of the regulatory duties of the Council. Any enforcement action[s] taken as a result of the contents of this report are subject to that Enforcement Policy.

## 6. Implications for Resources

6.1 The work identified in this report was undertaken within the resources available to your Committee.

## 7. Implications for Policy Priorities

7.1 The issue of fixed penalty notices has a direct impact on environmental degradation within the City and the Council's strategic outcome of staying safe in a clean, green city.

## 8. Public Sector Equality Duty

8.1 The actions identified in this report were taken in accordance with approved enforcement policies which ensure that equalities issues have been addressed.

# **ACTING DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: FPN records



**APPENDIX 1**  
**WARDS WHERE FPN'S ARE ISSUED**

Constituency	Ward	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Edgbaston	Bartley Green	0	0	0	0	0	0	0	0	0	0	0	0	0
	Edgbaston	0	0	1	0	0	0	0	0	0	0	0	0	1
	Harborne	0	0	0	0	0	0	0	0	0	0	0	0	0
	Quinton	1	0	0	0	0	0	1	0	0	0	0	0	2
Erdington	Erdington	0	1	2	2	0	0	0	0	0	0	0	0	5
	Kingstanding	0	1	0	0	1	1	0	0	0	0	0	0	3
	Stockland Green	0	1	0	2	0	0	0	0	0	0	0	0	3
	Tyburn	0	1	0	1	0	0	0	0	0	0	0	0	2
Hall Green	Hall Green	0	0	0	2	2	0	0	0	0	0	0	0	4
	Moseley And Kings Heath	4	0	0	0	1	1	0	0	0	0	0	0	6
	Sparkbrook	0	0	5	0	0	1	0	1	0	0	0	0	7
	Springfield	0	1	1	1	13	0	0	0	0	0	0	0	16
Hodge Hill	Bordesley Green	0	1	2	0	1	0	0	0	0	0	0	0	4
	Hodge Hill	0	1	0	3	0	1	2	1	0	0	0	0	8
	Shard End	2	0	2	1	1	1	0	0	0	0	0	0	7
	Washwood Heath	0	1	0	9	1	4	1	2	0	0	0	0	18
Ladywood	Aston	0	2	1	3	0	0	0	1	0	0	0	0	7
	Ladywood	480	438	527	454	427	577	538	547	0	0	0	0	3,988
	Nechells	10	16	16	21	8	2	0	1	0	0	0	0	74
	Soho	1	7	1	1	2	2	0	2	0	0	0	0	16
Northfield	Kings Norton	0	0	0	0	1	0	0	0	0	0	0	0	1
	Longbridge	0	0	0	0	0	0	0	0	0	0	0	0	0
	Northfield	1	1	0	0	0	0	1	0	0	0	0	0	3
	Weoley	0	0	0	0	0	0	0	0	0	0	0	0	0
Perry Barr	Handsworth Wood	0	2	1	0	0	0	0	1	0	0	0	0	4
	Lozells And East Handsworth	0	0	0	5	4	4	0	3	0	0	0	0	16
	Oscott	0	0	0	0	0	0	1	0	0	0	0	0	1
	Perry Barr	1	0	0	0	0	0	0	0	0	0	0	0	1
Selly Oak	Billesley	2	0	1	0	0	0	0	0	0	0	0	0	3
	Bournville	2	0	1	0	0	1	0	0	0	0	0	0	4
	Brandwood	2	1	0	0	0	0	0	0	0	0	0	0	3
	Selly Oak	0	0	0	0	1	0	0	0	0	0	0	0	1
Sutton Coldfield	Sutton Four Oaks	0	0	0	1	0	0	0	0	0	0	0	0	1
	Sutton New Hall	0	0	0	1	1	0	0	0	0	0	0	0	2
	Sutton Trinity	0	2	0	0	0	0	0	0	0	0	0	0	2
	Sutton Vesey	0	0	0	0	0	0	0	9	0	0	0	0	9
Yardley	Acocks Green	1	0	0	0	1	0	0	0	0	0	0	0	2
	Sheldon	0	0	3	0	1	0	2	0	0	0	0	0	6
	South Yardley	0	0	1	1	1	1	0	0	0	0	0	0	4
	Stechford And Yardley North	2	1	1	0	2	0	0	0	0	0	0	0	6
<b>Total</b>		<b>509</b>	<b>478</b>	<b>566</b>	<b>508</b>	<b>469</b>	<b>598</b>	<b>544</b>	<b>568</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4,240</b>

## APPENDIX 2

## WARD OF PERSON RECEIVING FIXED PENALTY NOTICES BY CONSTITUENCY/WARD

It is not possible to provide this information currently and will be provided in the coming weeks

Constituency	Ward	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Edgbaston	BARTLEY GREEN	3	1	0	3	3	0	0	0	0	0	0	0	10
	EDGBASTON	7	3	2	2	10	0	0	0	0	0	0	0	24
	HARBORNE	3	8	6	5	5	0	0	0	0	0	0	0	27
	QUINTON	5	5	3	2	4	0	0	0	0	0	0	0	19
Erdington	ERDINGTON	2	5	4	4	2	0	0	0	0	0	0	0	17
	KINGSTANDING	5	4	5	2	1	0	0	0	0	0	0	0	17
	STOCKLAND GREEN	6	4	3	4	5	0	0	0	0	0	0	0	22
	TYBURN	4	2	6	2	5	0	0	0	0	0	0	0	19
Hall Green	HALL GREEN	0	2	5	4	8	0	0	0	0	0	0	0	19
	MOSELEY AND KINGS HEATH	6	5	3	6	6	0	0	0	0	0	0	0	26
	SPARKBROOK	4	3	6	11	8	0	0	0	0	0	0	0	32
	SPRINGFIELD	4	7	5	5	7	0	0	0	0	0	0	0	28
Hodge Hill	BORDESLEY GREEN	4	1	9	2	3	0	0	0	0	0	0	0	19
	HODGE HILL	4	5	2	9	4	0	0	0	0	0	0	0	24
	SHARD END	5	4	2	7	5	0	0	0	0	0	0	0	23
	WASHWOOD HEATH	4	3	3	12	7	0	0	0	0	0	0	0	29
Ladywood	ASTON	7	6	7	5	5	0	0	0	0	0	0	0	30
	LADYWOOD	18	28	33	21	17	0	0	0	0	0	0	0	117
	NECHELLS	7	7	16	12	15	0	0	0	0	0	0	0	57
	SOHO	7	5	4	5	6	0	0	0	0	0	0	0	27
Northfield	KINGS NORTON	2	6	7	6	2	0	0	0	0	0	0	0	23
	LONGBRIDGE	2	4	9	4	7	0	0	0	0	0	0	0	26
	NORTHFIELD	5	3	3	3	4	0	0	0	0	0	0	0	18
	WEOLEY	2	2	1	4	4	0	0	0	0	0	0	0	13
Perry Barr	HANDSWORTH WOOD	2	10	3	6	1	0	0	0	0	0	0	0	22
	LOZELLS AND EAST HANDSWORTH	4	6	6	8	6	0	0	0	0	0	0	0	30
	OSCOTT	2	2	5	3	1	0	0	0	0	0	0	0	13
	PERRY BARR	2	1	1	2	7	0	0	0	0	0	0	0	13
Selly Oak	BILLESLEY	7	2	2	1	5	0	0	0	0	0	0	0	17
	BOURNVILLE	5	8	5	6	7	0	0	0	0	0	0	0	31
	BRANDWOOD	7	8	6	2	2	0	0	0	0	0	0	0	25
	SELLY OAK	6	5	3	6	8	0	0	0	0	0	0	0	28
Sutton Coldfield	SUTTON FOUR OAKS	1	2	2	3	0	0	0	0	0	0	0	0	8
	SUTTON NEW HALL	0	3	4	1	1	0	0	0	0	0	0	0	9
	SUTTON TRINITY	1	5	4	1	5	0	0	0	0	0	0	0	16
	SUTTON VESEY	3	2	2	1	1	0	0	0	0	0	0	0	9
Yardley	ACOCKS GREEN	3	2	2	1	4	0	0	0	0	0	0	0	12
	SHELDON		3	5		4	0	0	0	0	0	0	0	12
	SOUTH YARDLEY	7	2	3	8	4	0	0	0	0	0	0	0	24
	STECHFORD AND YARDLEY NORTH	4	4	4	1	3	0	0	0	0	0	0	0	16
	Ward not recorded	0	1	1	2	0	0	0	0	0	0	0	0	4
OUTSIDE OF BIRMINGHAM	OUTSIDE BIRMINGHAM TOTAL	335	280	359	314	251	0	0	0	0	0	0	0	1,539
	Location not recorded	4	9	5	2	16	598	544	568	0	0	0	0	1,746
Grand Total		509	478	666	630	507	469	598	544	568	0	0	0	4,240

### APPENDIX 3

#### FIXED PENALTY NOTICES ISSUED TO PERSONS RESIDING OUTSIDE THE BIRMINGHAM AREA

It is not possible to provide this information currently and will be provided in the coming weeks

RESIDENCE OF FPN RECIPIENT	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Grand Total
Aberdeen (S)			1	1	1								3
Allerdale				1									1
Amber Valley			3										3
Argyll and Bute (S)	1												1
Arun			1	2									3
Ashford	1												1
Aylesbury Vale		2	1										3
Basildon				1									1
Basingstoke and Deane			1										1
Bassetlaw				1									1
Bath and North East Somerset	2		2										4
Bedford	2	2		2									6
Blaby	1		1										2
Blackpool		1											1
Bolton				1	1								2
Boston			1										1
Bracknell Forest		1											1
Braintree			1										1
Brentwood	1												1
Bridgend (W)	2			1									3
Brighton & Hove	1	1	1	2									5
Bristol	3	2		4	3								12
Bromsgrove	6	6	9	7	3								31
Broxtowe	1												1
Burnley	1												1
Bury	1			1									2
Caerphilly (W)			2										2
Cambridge	3	2	1	2	5								13
Cannock Chase	5	3	2	4	1								15
Cardiff (W)	1	1	2		2								6
Carmarthenshire (W)				1									1
Castle Point	2												2
Central Bedfordshire	1		3		2								6
Ceredigion (W)	1			1	1								3
Charnwood			2	2	2								6
Chelmsford				1									1
Cheltenham	3	1											4
Cherwell	2		2										4
Cheshire East	2	2	2	3	3								12
Cheshire West and Chester	4												4

Chiltern				1	1									2
Chorley			1											1
City of Bradford				1										1
City of York	3	3	1	1										8
Copeland	1													1
Corby		1		1										2
Cornwall					1									1
Cotswold				2										2
County Durham			1	1										2
Coventry	14	9	10	18	15									66
Crawley				1										1
Darlington		1												1
Dartford		1		1										2
Daventry		1	2											3
Denbighshire (W)	1													1
Derby	5	2	4	4	2									17
Derbyshire Dales		1	2											3
Dover		1	1											2
Dudley	16	19	10	7	16									68
Dundee (S)	1													1
East Devon		2		1	1									4
East Dunbartonshire (S)			1											1
East Hampshire	2	1												3
East Hertfordshire	2				1									3
East Lindsey				1										1
East Northamptonshire	1													1
East Riding of Yorkshire			1											1
East Staffordshire	3	4	2	1	2									12
Eastleigh	1		1											2
Eden				1										1
Edinburgh (S)	1	1	1											3
Elmbridge	1		1											2
Epsom and Ewell				1										1
Erewash				1										1
Exeter	1													1
Fife (S)			1	1	1									3
Forest Heath			1											1
Forest of Dean	1		1											2
Fylde					1									1
Gateshead					1									1
Glasgow (S)	1			2	2									5
Gloucester	2	4	4	6	1									17
Guildford		1			1									2
Gwynedd (W)	1	1												2
Halton				1										1



Harrogate			1	1									2
Hartlepool				1									1
Herefordshire		5	3	3	4								15
Highland (S)	1												1
Hinckley and Bosworth	1		1	4	3								9
Hyndburn	1												1
Ipswich			2		1								3
Isle of Wight				1									1
Kettering	1												1
Kirklees		1	3	3	1								8
Lancaster	2	1	2	1									6
LB of Barking and Dagenham		1			1								2
LB of Barnet	3	4	2										9
LB of Brent			2	3	3								8
LB of Bromley			1	2									3
LB of Camden	2		1		1								4
LB of Croydon	4	2	1	1									8
LB of Ealing	2				2								4
LB of Enfield	1	1		1									3
LB of Greenwich	1	1	5	3	2								12
LB of Hackney	1	1	2	1									5
LB of Hammersmith and Fulham	1				3								4
LB of Haringey		1	2										3
LB of Harrow	2												2
LB of Havering	1												1
LB of Hounslow			1										1
LB of Islington		2	1	1	2								6
LB of Lambeth			1	1	5								7
LB of Lewisham	1	2											3
LB of Merton	1	1	1										3
LB of Newham	1	1	1	1									4
LB of Redbridge	1												1
LB of Richmond Upon Thames				2									2
LB of Southwark	1		1	2	1								5
LB of Sutton		1											1
LB of Tower Hamlets	1	2		1									4
LB of Waltham Forest	1		1		3								5
LB of Wandsworth	2	2	2	1									7
Leeds	4		3	1	4								12
Leicester	8	8	6	7	11								40
Lewes				1									1
Lichfield	5	4	5	7	1								22
Lincoln	1	1	2	1									5
Liverpool	4	2	7	5	2								20
Luton			1										1

Malvern Hills	4		2	1									7
Manchester	2	1	2	4	4								13
Mansfield				2									2
Medway		1											1
Mendip				1									1
Mid Devon	1												1
Mid Suffolk		1											1
Mid Sussex			1	2	1								4
Middlesbrough	1	1		1									3
Milton Keynes	2	5		1	1								9
Mole Valley			2		1								3
New Forest		1											1
Newark and Sherwood	1			1									2
Newcastle-under-Lyme			1		1								2
Newcastle-upon-Tyne	5		1	1									7
Newport (W)					1								1
North Devon			1		1								2
North Hertfordshire			1										1
North Lanarkshire (S)			2										2
North Norfolk	1		2										3
North Somerset			1										1
North Tyneside			1										1
North Warwickshire		2	2	1	2								7
North West Leicestershire					1								1
Northampton	9	5	5	3	2								24
Northumberland	1												1
Nottingham	6	7	5	4	2								24
Nuneaton and Bedworth	5	2	2	1	3								13
Oldham	1	1	1	3	1								7
Outside of UK		1	3	4	1								9
Oxford	1	7	3	1									12
Perth and Kinross (S)		1	1										2
Peterborough	2	1	2										5
Plymouth	2		1		1								4
Powys (W)			2		1								3
Preston				1									1
RB of Kensington and Chelsea					1								1
RB of Windsor and Maidenhead			1		1								2
Reading	2	1	1	1									5
Redcar and Cleveland		1											1
Redditch	2	5	5	4	5								21
Reigate and Banstead			2	1	1								4
Renfrewshire (S)			1										1
Richmondshire			1										1
Rochdale	1	1			1								3

Rugby	2	3	10	4	1									20
Rutland	1													1
Salford			1											1
Sandwell	13	17	27	19	17									93
Scarborough				2	1									3
Sefton			1	2	1									4
Sevenoaks		1												1
Sheffield	1	1	1											3
Shropshire	10	8	5	3	3									29
Slough		2												2
Solihull	16	14	19	13	11									73
South Buckinghamshire					1									1
South Derbyshire	1													1
South Gloucestershire	1			1										2
South Lanarkshire (S)			2											2
South Somerset			2											2
South Staffordshire	2	4	2	4	3									15
South Tyneside			1											1
Southampton		1	1											2
St Albans			1											1
St Helens					2									2
Stafford	6	6	6	7	1									26
Staffordshire Moorlands				1										1
Stevenage			2											2
Stirling (S)				1										1
Stockport	1		1											2
Stockton-on-Tees	1		2		1									4
Stoke-on-Trent	3		2	2	1									8
Stratford-on-Avon	5	2	3	1		0	0	0	0	0	0	0	0	11
Suffolk Coastal	1													1
Surrey Heath					2									2
Swansea (W)			1											1
Swindon				1										1
Tameside			1	1										2
Tamworth	2			2										4
Taunton Deane	1	1												2
Teignbridge				1										1
Telford and Wrekin	4	6	4	13	4									31
Tendring				1										1
Test Valley			1	1	1									3
Tewkesbury			1											1
Thanet			1											1
Tonbridge and Malling	2													2
Torbay			1	1	1									3
Torridge	1													1

Trafford			1		2								3
Tunbridge Wells		1											1
Uttlesford		1		1									2
Vale of Glamorgan (W)	1	1											2
Walsall	14	10	20	17	12								73
Warrington		1	1		1								3
Warwick	4	5	8	2	3								22
Watford	1	1											2
Wealden	1												1
West Berkshire				2									2
West Lothian (S)					1								1
West Oxfordshire					1								1
Wigan	2				1								3
Wiltshire		1		1		0	0	0	0	0	0	0	2
Winchester				1									1
Wirral	3				2								5
Woking			1										1
Wolverhampton	12	9	15	10	14								60
Worcester	11	8	6	9	8								42
Wrexham (W)		2											2
Wycombe			1	1	1								3
Wyre		1		2									3
Wyre Forest	1		2	1									4
(blank)	2	7	5		1								15
Outside Birmingham	335	280	359	314	251	0	0	0	0	0	0	0	1539





## BIRMINGHAM CITY COUNCIL

### PUBLIC REPORT

<b>Report to:</b>	<b>LICENSING AND PUBLIC PROTECTION COMMITTEE</b>
<b>Report of:</b>	<b>ACTING CITY SOLICITOR</b>
<b>Date of Decision:</b>	<b>18 JANUARY 2017</b>
<b>SUBJECT:</b>	<b>TO NOTE THE DELETION OF THE REGISTRATION OF WESTHILL PLAYING FIELDS FROM THE REGISTER OF TOWN/VILLAGE GREENS IN COMPLIANCE WITH AN ORDER OF THE HIGH COURT</b>
<b>Wards affected:</b>	<b>SELLY OAK</b>

#### **1. Purpose of report:**

The Committee is asked to note the deletion of the Registration of Westhill Playing Fields from the Registry of Town/Village Greens following a successful application to the High Court by the Landowner to delete the Registration. A High Court Order for the deletion was made on the 31 October 2016 and required compliance by the 28<sup>th</sup> November 2016. The deletion was made on the 24<sup>th</sup> November.

#### **2. Decision(s) recommended:**

- 2.1 To note the deletion of the Registration of Westhill Playing Fields from the Register of Town/Village Greens in compliance with an Order of the High Court.

<b>Lead Contact Officer:</b>	Stuart J Evans, Solicitor, Head of Economy (Planning and Regeneration)
<b>Telephone No:</b>	0121 303 4868
<b>E-mail address:</b>	<a href="mailto:stuart_j_evans@birmingham.gov.uk">stuart_j_evans@birmingham.gov.uk</a>

### **3. Consultation**

Consultation should include those that have an interest in the decisions recommended.

#### **3.1 Internal**

The Chairman and Vice Chairman of Licensing and Public Protection Committee; Selly Oak Ward Members; Alison Harwood, Acting Service Director of Regulation and Enforcement and Chris Neville, Head of Licensing .

#### **3.2 External**

Given the nature of the decision recommended there is no obligation for external consultation.

### **4. Compliance Issues:**

#### **4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?**

The Deletion of the Registration is a legal requirement, and is necessary to comply with a Court Order. Compliance will ensure the Council continues to act in a lawful manner and which is consistent with the Council Business Plan and Budget.

#### **4.2 Financial Implications**

(Will decisions be carried out within existing finance and Resources?)

Annually a budget of £50,000.00 is provided from corporate resources to pay for the administration of Town and Village Green applications and to fund independent Inquiries. of Any unspent balances for the relevant financial year are carried over to the following financial year as approved by this Committee.

#### **4.3 Legal Implications**



Birmingham City Council is the registration authority (“the Registration Authority”) for the purposes of Commons Registration and maintains the Register of Town and Village Greens. Under the Constitution the Registration function is delegated to the Licensing and Public Protection Committee.

Failure of the Council to have complied with the High Court Order would have left the Council Open to proceedings for contempt of Court. The usual remedy for contempt is a fine, but the Court also has powers to make a further Order for compliance, or for imprisonment of a Council representative. The Council would also be liable to pay the costs of the contempt proceedings.

#### 4.4 Public Sector Equality Duty

As the deletion is to comply with a Court Order, it is not within the scope of the public sector equality duty in the Equalities Act 2010.

### **5. Relevant background/chronology of key events:**

5.1 In May 2008 an application (“the 2008 Application”) was received from Muriel Caddy, Ann Haigh, Joanne Ward, Kevin Bailey and Kathleen Thomas (“the Applicant”) on behalf of Friends of Westhill Playing Fields Selly Oak to register land at Westhill Playing Fields Selly Oak (“the Site”) as a Town/ Village Green.

5.2 The freehold title to the Site is owned by Westhill Endowment a charitable trust (“the Landowner”).) Objections were received from the Landowner, and by a local resident, who has since passed away.

5.3 The Statutory tests in s15 (1) and S15 (4) of the Commons Act 2006 (“the 2006 Act”) are whether at the time the Application was made the Site was land on which, for not less than 20 years, a significant number of the inhabitants of the locality, or of any neighbourhood within a locality, had indulged in lawful sports and pastimes as of right. The Courts have also held use “as of right should” have been without force, secrecy or permission.

- 5.4 Your Committee authorised the appointment of an independent Inspector to hold a non-statutory inquiry to hear evidence from the parties and assess the requisite facts, and to give the Registration Authority a recommendation as to the determination of the 2008 Application.
- 5.5 A public local inquiry was held on 5<sup>th</sup>, 6<sup>th</sup> and 7 May 2010, at which the independent Inspector heard the evidence in relation to the 2008 Application. The independent Inspector provided a report dated 4<sup>th</sup> July 2010 (“The Inspector’s Report”) to the Registration Authority which recommended that the Site (excluding an area including tennis courts and a car park) should be registered as a Town/Village green, as the statutory tests in the 2006 Act had been met. A plan showing the registered Site edged red and coloured green is annexed as Appendix 1.
- 5.6 On the 16<sup>th</sup> March 2011 your Committee considered The Inspector’s Report; there was no reason for your Committee to reject either the findings of the Inspector or her recommendation to register the land. Accordingly your Committee resolved that the Inspector’s Report be endorsed, and that the application for the registration of a Town/Village green at Westhill Playing Fields, Selly Oak be granted for the reasons set out in the Inspector’s Report. A copy of the Report to your Committee (with the Inspector’s Report annexed ) , and the minutes of the meeting are annexed as Appendix 2 and Appendix 3 respectively.
- 5.7 The Registration was completed in March 2011, the Landowner did not challenge the Registration.
- 5.8 On 24 February 2016 the Landowner applied to the High Court (“the “Court Application””) to cancel the Registration under S14(b) of the Commons Registration Act 1965 ( “ the 1965 Act”) on the grounds that the statutory tests had not been met in 2011, and it was just to rectify the Register. The Council as Registration Authority was named as the Respondent (the Defendant) to the Court Application.

- 5.9 : Under s14 (b) of the 1965 Act the High Court may order rectification of the Register if four criteria are satisfied, namely:-
- (i) the register must have been amended pursuant to section 13 of the 1965 Act;
  - (ii) the amendment (ie: the original registration of the land as a Town/ Village green ) ought not to have been made;
  - (iii) the error cannot be corrected pursuant to regulations made under the 1965 Act; and
  - (iv) it must be just to rectify the register.

There is no statutory time limit for an application for rectification to be lodged.

5.10 On the advice of Counsel the Council decided not to take an active part in the proceedings, but instead take a neutral stance.

5.11 The Landowner wrote to each of the five original Applicants for the 2008 Application giving details of the proposed claim, and asked if they would like to take part in the proceedings as Respondents. Four of the five declined, one did not respond.

5.12 The High Court hearing was on 31 October 2016, and was a full rehearing of the 2008 Application. The Court considered witness evidence from both the Applicant and for the Landowner (through witness statements prepared for the original 2010 Application.) No oral evidence was given. The Landowner (who was represented by a Q.C. and a Junior Counsel) challenged some of the findings of fact by the Inspector, invited the Court to make alternative findings; and argued that as a result the Site should not have been registered as the statutory tests had not been met.

5.13 In particular the Landowner argued two issues when considering whether the Playing Field had been used “as of right” i.e. the use must have been without force, secrecy or permission including :

5. 13 (1) the erection of signs around the Playing Field through the period; The Court found that the signs stated that the Playing Fields were the private grounds of Westhill and that any notice granting permission to dog walkers to use the Playing Fields precluded all other recreational activity i.e. permission was only granted to dog walkers.

This exclusion of other uses meant that the Landowner had not “acquiesced” in the claimed use, which could not therefor be “as of right”.

5. 13 (2) The Court also found that the temporary use of the site by a developer to facilitate the construction of a Crest Nicholson development nearby interrupted the qualifying period of 20 years use by inhabitants of the locality, and access to the Playing Fields was precluded from Weoley Park Road. Although there was still technically access through the adjoining church, there was no evidence of the public using such access. In particular, the Court concluded any use of the Playing Fields by the youth clubs during the Crest Nicholson development was done secretly.
- 6 As a result the Court concluded that the Playing Field was not used “as of right” and the Site should not be registered as a Town Village Green. The Court ordered that the Register be rectified pursuant to section 14(b) of the 1965 Act to remove the Site from the Register as a town or village green by 28 November 2016.
7. In a meeting of your Committee on the 16<sup>th</sup> November the Head of Licensing provided an update of the Court decision, which is recorded under minute number 765.
- 8 The Court Order was complied with on 24<sup>th</sup> November 2016 when in consultation with the Chairman the Registration of the Site was deleted. The Committee is requested to note the deletion of the Registration.

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<b>8 Reasons for Decision:</b>
8.1 To note the cancellation of the Registration in accordance with the Court Order.

<b>Signatures</b>	<b><u>Date</u></b>
Chief Officer .....	.....

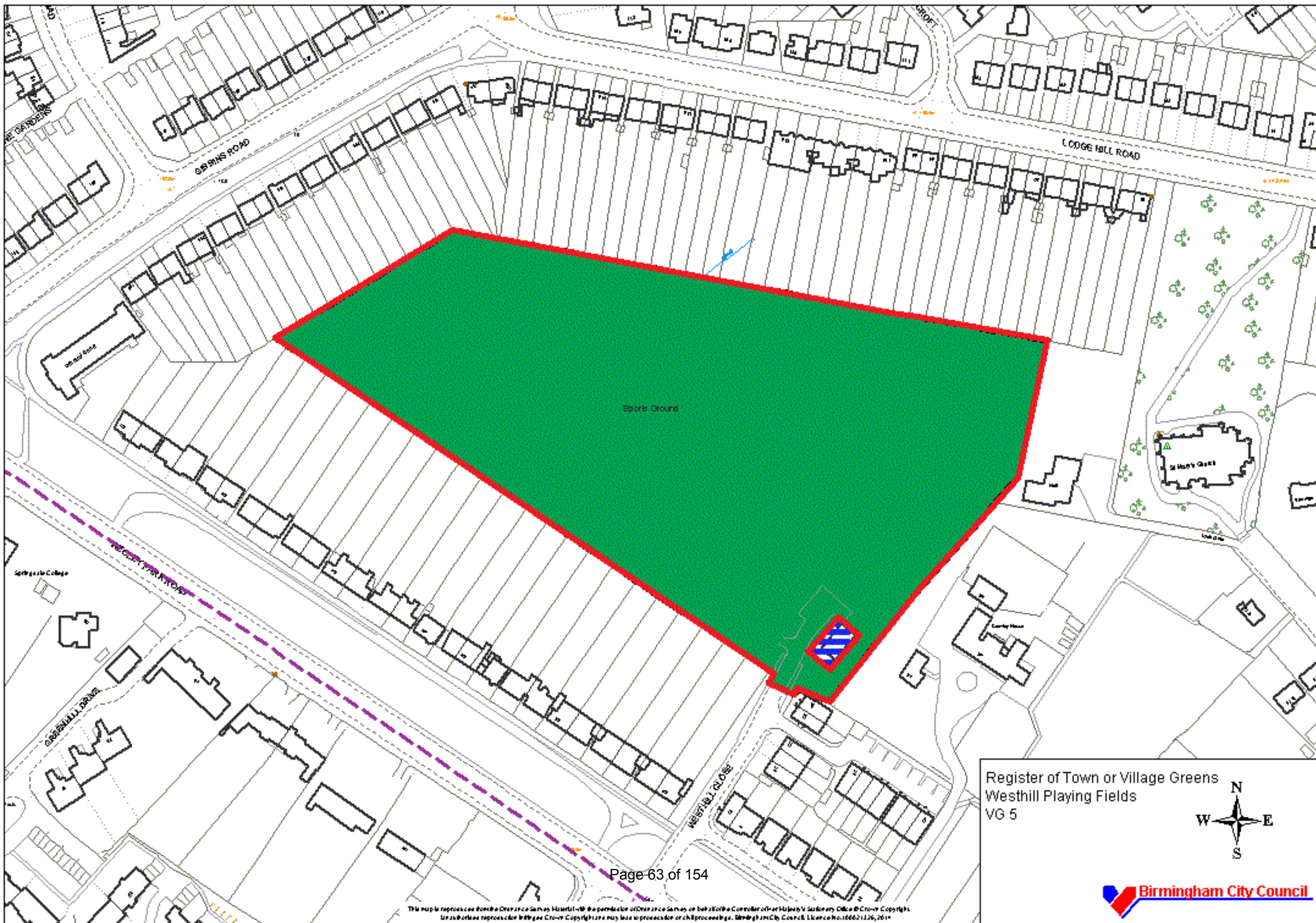
<b>List of Background Documents used to compile this Report:</b>
1. Court Order dated 31 October 2016 2. Register of Entry of Town and Village Green relating to the site

<b>List of Appendices accompanying this Report:</b>
1. Plan showing Site of Town and Village Green registered in March 2011. 2. 16th March 2011 Licensing Committee Report with attached Inspector's Report dated 4 <sup>th</sup> July 2010.

<b>Report Version</b>	<b><u>1</u></b>	<b>Dated</b>	
		<b>20 12 16</b>	











<b>Report to:</b>	<b>LICENSING COMMITTEE</b>
<b>Report of:</b>	<b>Director of Legal Services</b>
<b>Date of Decision:</b>	<b>16 March 2011</b>
<b>SUBJECT:</b>	<b>Application for the Registration of a Town/Village Green of Westhill Playing Fields, Selly Oak VG1/08 ("the Application")</b>
<b>Key Decision: No</b>	<b>Relevant Forward Plan Ref: N/A</b>
<b>Wards affected:</b>	<b>Selly Oak</b>

#### 1. Purpose of report:

- 1.1 This report seeks authority to endorse the Inspector's recommendations that the application be allowed and Westhill Playing Field (with slight modification) be registered as a Village Green.

#### 2. Decision(s) recommended:

- 2.1 To endorse the Inspector's report dated 4<sup>th</sup> July 2010 and to determine the Application in line with the Inspector's recommendations.
- 2.2 The Application for the registration of a town/village green in respect of land at Westhill Playing Field, Selly Oak, Birmingham (VG1/08) be granted (with modified plan) for the reasons set out in the Inspector's report.

<b>Lead Contact Officer(s):</b>	<b>Ben Burgerman, Solicitor, Legal Services</b>
<b>Telephone No:</b> <b>E-mail address:</b>	0121 303 8901 ben_burgerman@birmingham.gov.uk

### **3. Compliance Issues:**

3.1 Are decision(s) consistent with the Council's Policies, Plans and Strategies focused on "Global City with a Local Heart"?

Determination of the Application is a legal requirement and is consistent with "Global City with a Local Heart"

3.2 Have relevant Ward and other Members / Officers been properly and meaningfully consulted on this report?

Yes, as part of Licensing Committee deliberations.

3.3 Are there any relevant legal powers, personnel, equalities, regeneration and other relevant implications?

Birmingham City Council is the registration authority ("the Registration Authority") for the purposes of the Commons Act 2006, ("the Act") under which it is required to determine the Application. Under the Constitution, this function is delegated to the Licensing Committee.

In considering the Human Rights Act 1998 implications, the following convention rights and freedoms have been addressed in the preparation of this report;

Article 6 – Right to a fair trial – this was achieved by the appointment of an independent Inspector and the holding of a public inquiry;

Article 8 – Right to respect for private and family life – the determination of a village green application is proportionate because it is based on a statutory test; and

Article 1 of the First Protocol – Protection of property.

3.4 How will decision(s) be carried out within existing finances and resources?

In 2010/11 and ongoing, corporate resources have been identified to fund expenditure relating to village green applications of up to £50,000 per annum. The Resources for 2010/11 have been allocated to Licensing Committee and form part of the Original Budget 2010/11 as approved by this Committee on 17th March 2010. The cost of appointing an Inspector to hold a local public inquiry was in the region of £14000. There are sufficient funds in the 2010/11 budget to cover the costs incurred in the Application.

3.5 Have the main Risk Management and Equality Impact Assessment Issues been considered or concluded and, if yes, what are they and how will they be carried forward to deliver the Council's objectives?

There may be a further cost implication for the Council if the Council's final determination on the Application is judicially challenged. However, the risk of a successful challenge is low as an independent Inspector has made the recommendation that the application be allowed after hearing all of the evidence in a public local inquiry. There are no specific equality impact assessment issues that have been identified.

3.6 How will this report help to inform, further improve or otherwise, help to deliver the Council's BEST initiative?

**4. Relevant background/chronology of key events:**

- 4.1 The Application dated 14<sup>th</sup> April 2008 was received from Muriel Caddy, Ann Haigh, Joanne Ward, Kevin Bailey and Kathleen Thomas ("the Applicant") on behalf of Friends of Westhill Playing Fields Selly Oak on 13 May 2008. The Application is made under Section 15 (4) of the Act and in accordance with the Commons (Registration of Town or Village Greens) (interim arrangements) (England) Regulations 2007 ("the Regulations") to register the land at Westhill Playing Fields Selly Oak ("the Application Site") as a town/village green. The extent of Application Site (as originally submitted with the Application) is shown on the plan attached hereto as Appendix 1.
- 4.2 The freehold title to the Application Site is owned by Westhill Endowment Trust ("the Landowner"). Objections were received from the Landowner and Mr M. M. Webb, a local resident, who has since passed away.
- 4.3 Under the Act, the legal test which will need to be considered is whether at the time the Application was made, the Application Site was land on which, for not less than 20 years, a significant number of the inhabitants of the locality, or of any neighbourhood within a locality, has indulged in lawful sports and pastimes as of right, and they cease to do so before the commencement of Section 15, and the Application was made within the period of five years beginning with the cessation referred to above.
- 4.4 The Regulations do not prescribe the procedure for determining the Application. Your Committee authorised the commission of an independent Inspector to hold a non statutory inquiry to hear evidence from the parties and assess the requisite facts, and to give the Registration Authority recommendations as to the determination of the Application.
- 4.5 The Planning Inspectorate was requested by the Registration Authority to appoint an Inspector in order to hold an inquiry and provide a recommendation and as such a public local inquiry was held on 5, 6 and 7 May 2010 to hear all the evidence in the Application. The Inspector has since provided a report to the Registration Authority (Appendix 2).
- 4.6 Based upon the evidence presented at the Inquiry the Inspector has recommended that the application be allowed because the Applicant has met the tests set out in the Act. The Inspector concluded that a significant number of inhabitants of the neighbourhood lying within the localities of Selly Oak and Weoley wards, have indulged in lawful sports and pastimes on the Application Site (as modified on the amended plan – see Appendix 3) and the land has been used "as of right" for the whole of the 20 year period. Her reasoning for arriving at this conclusion is set out in detail in the report at Appendix 2.
- 4.7 The amended plan shows an 'Excluded Area' constituting buildings that the Inspector accepted could not physically have been used by the general public for lawful sports and pastimes. As such, the 'Excluded Area' has been removed from the Application Site, in accordance with the Inspector's findings. The Objector has disputed the extent of the 'Excluded Area' as outlined by the Inspector and requested the area should be larger, to include tennis courts and a car park. However, such an approach would not be consistent with the comments made on this point by the Inspector in her report. A surveyor has recorded the precise measurements of the 'Excluded Area', as delineated on Appendix 3.

**5. Evaluation of alternative option(s):**

5.1 The Registration Authority has a statutory duty to determine the Application and this lies with Licensing Committee. The only alternative option would be to go against the recommendation of the Inspector and dismiss the Application. This is not advisable as the Inspector is an independent adjudicator who heard evidence from all parties before making her recommendation.

**6. Reasons for Decision(s):**

6.1 To determine the Application in line with the recommendation provided in the Inspector's report is the proper course of action because having heard all of the relevant evidence, the Inspector concluded that the statutory test had been met.

6.2 To allow the Application for the registration of a town/village green in respect of land at Westhill Playing Fields, Selly Oak, Birmingham (VG1/08) for the reasons set out in the Inspector's Report.

**Signatures (or relevant Cabinet Member(s) approval to adopt the Decisions recommended):**

Director of Legal Services:

  
.....

Dated:

..... 7/03/11 .....

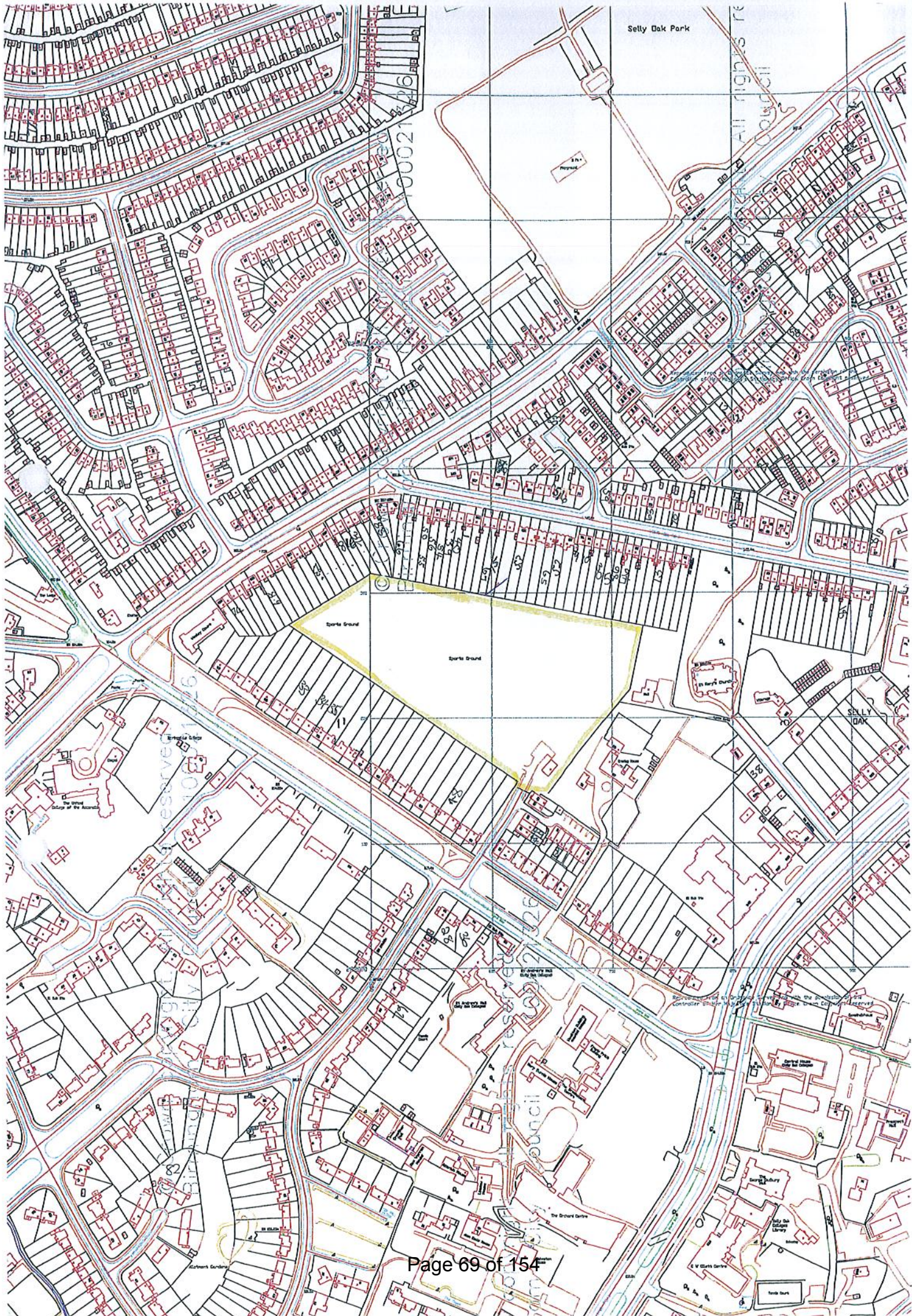
**List of Background Documents used to compile this Report:**

1. Application and supporting documents submitted by the Applicant.
2. Objections and supporting documents submitted on behalf of the Landowner.
3. The Applicant's response to point 2 above.
4. Inspector's report to the Registration Authority.

**List of Appendices accompanying this Report (if any):**

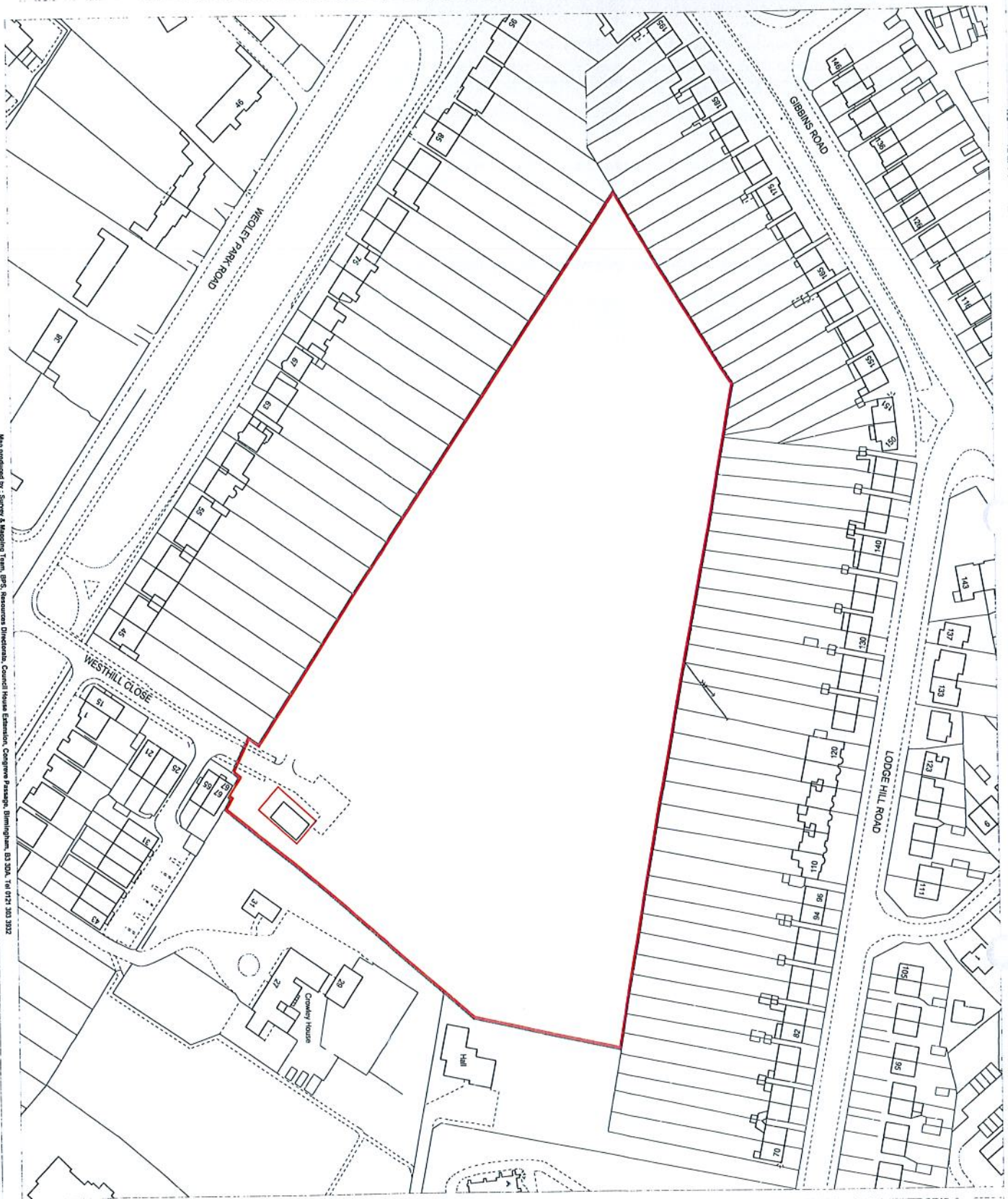
1. Plan of Application Site.
2. Inspector's report dated 4<sup>th</sup> July 2010.
3. Amended plan.











Map produced by : Survey & Mapping Team, GPS, Resources Directorate, Council House Extension, Congress Passway, Birmingham, B3 3DA, Tel 0121 353 3032

DRAWING NO. 9984



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NOTES

AREA EDGED RED

275 HECTARES APPROX.

679 ACRES APPROX.



Peter Jones, BSc, MRICS  
 Director of Property  
 Birmingham Property Services  
 1 Lancaster Circus  
 Birmingham, B1 1TR

TITLE

Westhill Playing Fields  
 Selly Oak

DATE 18/12/2011

SCALE 1:1250

DRAWN Jon Wilson

O.S. Sheet Ref. SP0382SW





**COMMONS ACT 2006**

**REPORT**

**IN RESPECT OF VILLAGE GREEN APPLICATION  
RELATING TO LAND AT WESTHILL PLAYING FIELD,  
SELLY OAK, BIRMINGHAM**

**HELEN SLADE MA. FIPROW**

**(An Inspector with the Planning Inspectorate)**

**Birmingham City Council Reference: VG1/08**

**Planning Inspectorate Reference: VG11**

**Date of Report: 4 July 2010**

## Case details

- The application was made by Miss Anne Haigh, Mrs Joanne Ward, Mrs Muriel Caddy, Mr Kevin Bailey, and Mrs Kathleen Thomas and is dated 14 April 2008.
- The application has been made under the provisions of Section 15 of the Commons Act 2006.
- The application is for land at Westhill Playing Field, off Weoley Park Road, Selly Oak, to be registered as a village green.

**Summary of Recommendation: I recommend that the application be allowed, and that the area of the Westhill Playing Field (with slight modification) be registered as a Village Green.**

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## BACKGROUND AND PROCEDURAL MATTERS

1. I have been appointed by Birmingham City Council, the Registration Authority (hereinafter referred to as the Registration Authority), to hold a non-statutory public inquiry and to write a report containing my recommendation in respect of an application to register land at Westhill Playing Field ('the application land') as a village green. I have been asked to recommend whether or not the application should be upheld, and thus whether or not the land should be so registered.
2. The application was made on 14 April 2008 by five local residents (Miss Anne Haigh, Mrs Joanne Ward, Mrs Muriel Caddy, Mr Kevin Bailey, and Mrs Kathleen Thomas) acting as members of an informally constituted group called the Friends of Westhill Playing Fields Selly Oak. Two objections were received to the application; one from the current landowner, Westhill Endowment Trust ('the principal objector'), and one from a local resident, Mr Michael Webb. Mr Webb has unfortunately passed away since making his objection, but I have taken his written comments into account as his objection remains extant.
3. It should be noted that I have not been supplied with the actual application, only a copy of it together with the applicants' inquiry bundle. I have not been given any reason to think that the copy is at variance in any way with the actual application, but I do not have the details of the valid day of receipt, nor the application number. I have deduced the application number from the correspondence submitted by the parties.
4. I held a public inquiry over three days at the Birmingham and Midland Institute, commencing on 5 May 2010. I visited the site and the surrounding area on my own during the afternoon of 4 May 2010, and made an accompanied site visit at the beginning of the second day of the inquiry (6 May 2010). On that occasion I was accompanied by Miss Haigh and Mrs Caddy, for the supporters, and by Mr Walmsley, Ms Smithen and Ms Murray on behalf of the objectors. Part of the site

visit included a drive around the estate situated between Lodge Hill Crematorium and Selly Oak Park. For that part of the visit the car was driven by Mr Walmsley (representing the principal objector) and I was also accompanied by Miss Haigh (for the applicants) and Ms Murray (for the objectors).

5. During the first day I was asked if I was intending to hold an evening session. I had not previously been requested to do so, and no-one had indicated to me that they wished to attend such a session. I therefore asked the applicants to furnish me with a list of people who wished to speak in the evening so that I could be sure that it was a worthwhile proposition. After some discussion, and the lack of any clear idea of who might wish to attend, I determined that I would not hold an evening session unless it became apparent that I needed to review the situation. No further requests were made, or any desire indicated, and so no evening session was held.

### **THE APPLICATION LAND**

6. The application refers to the application land as Westhill Playing Fields and describes its location as being 'land off Westhill Close'. Westhill Close is a cul-de-sac of houses built on the site of the former Westhill College<sup>1</sup> lying adjacent to Weoley Park Road. The application land forms a roughly triangular parcel of land, surrounded by the rear gardens of residential properties on two sides and on the third side by land belonging to St Mary's Church and to the Home Office. There is a metal gate giving restricted vehicular access to the site from Westhill Close, with a wooden pedestrian chicane to one side, and a small gap to the other. Various other access points to the land exist, or have been created, from the surrounding properties, including from the land belonging to St Mary's Church.
7. Westhill College ('the College') was founded in 1912 as a Sunday School Teacher Training Centre and evolved over the years to provide a wider range of teaching courses. In the late 1950s and early 1960s the college expanded to become a fully-fledged Teacher Training institution and in 1960 it acquired the premises formerly known as Middlemore Homes, a former orphanage, together with the seven acres of land now forming the application land. The premises were converted to form a teaching centre, and the land developed into playing fields to support the physical education curriculum of the college. The application land has therefore been part of the College (including, in recent years, its partner bodies) since 1960.

### **BOUNDARIES OF THE LAND REFERRED TO IN THE APPLICATION**

8. The boundaries of the application site, the localities and the neighbourhood identified by the applicants are shown on maps

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<sup>1</sup> I note that in the summary of the principal objector's case submitted by Counsel the former college and the land is sometimes referred to as 'Westfield' but I take this to be an error. Throughout the inquiry the college and the land was called Westhill and I can find no official reference to the college by any other name.

included in the inquiry bundle. 'Map A' is referred to on the evidence questionnaires as being 'the map showing the claimed land and the claimed locality which uses the land'. Each witness was asked to sign the reverse of Map A.

9. Two further plans identify the two localities into which the identified neighbourhood falls: Weoley ward and Selly Oak ward.
10. In his closing statement on behalf of the applicants, Mr Maire submitted a revised map showing an alternative, smaller neighbourhood than that originally identified. This is the map which is listed at the end of this report as Inquiry Document 7. I was also asked to consider the exclusion from registration of part of the application land, due to the presence of two buildings: a pavilion or changing rooms and a small storage building. I have addressed these issues at paragraph 168 in my Reasoning below.

### **SUMMARY OF THE CASE IN SUPPORT OF THE APPLICATION**

11. The applicants argue that during the 20 year period ending on 1 April 2006 a significant number of the local inhabitants of the neighbourhood identified as lying within the two wards of Selly Oak and Weoley have used the application land for a variety of lawful sports and pastimes. Individuals have used the land for a range of activities including (but not exclusively) dog-walking, children playing, blackberry picking and informal games of football and cricket. The land has also been used by a number of local clubs and organisations, many of whose members live within the identified neighbourhood.
12. The applicants claim that the identified use has been as of right, and that it has taken place side-by-side with use by the Westhill College. There has been no interference with the use of the land by the College, both uses co-existing as the land is capable of accommodating a number of activities at once.
13. The applicants state that two signs were erected in the summer of 2006 at points of entry onto the land. Although access continued to be enjoyed, the applicants consider that the signs were erected as a measure to restrict the liability of the landowner in case of injury. The signs forbade entry onto the land without permission, and granted permission to dog walkers on the understanding that the permission could be withdrawn at any time without notice.
14. In support of the application a total of 142 witness evidence forms were submitted, covering claimed use of the land by more than 150 people as some forms were signed by or on behalf of more than one person. These are contained within the inquiry bundle. A number of photographs and a copy of a video (on a computer disc) were also submitted with the inquiry bundle, together with some letters of support.
15. At the inquiry, eight people gave oral evidence in support of their witness evidence forms, including four of the applicants.

## **SUMMARY OF THE CASE OPPOSING THE APPLICATION**

16. The principal objector is the Westhill Endowment Trust ('the Charity'). In their original objection to the application<sup>2</sup> it was argued that the access claimed by the applicants had been exercised variously with general consent or with express permission.
17. It is also the Charity's view that the claimed use of the application land involved not a significant number of residents but rather a few individuals, whose use had been limited and who mainly visited the land when it was not in use by the landowner. The claimed use was too sporadic and trivial to give the impression that it was being exercised as of right, and always deferred to use by the College.
18. The field has been used by either the College or the University of Birmingham (of which the College latterly formed a part) continuously since its acquisition in the 1960s to 2003 (when it was no longer directly associated with the College) for the purposes for which it was bought. As a result of this significant use by the College the application land cannot also have been in continuous use by the local residents for the various alleged sports and pastimes.
19. The Charity also claims that when users were seen by staff or personnel from the College they were generally asked to leave. Furthermore there was signage present on the equipment shed at the playing field and also the old Teaching centre adjacent to the playing field which date back to the late 1980s and early 1990s which stated that the grounds were private and there was to be no trespassing.
20. The application land was securely fenced and the access to the site from Weoley Park Road was gated and locked. There was a secure fence around the playing field and the site was regularly patrolled by security personnel. Open attempts were therefore made to keep the application land secure and to restrict access.
21. The Charity's objection was supported by 25 witness statements, including one from the second objector, Mr Michael Webb. Subsequently, supplementary statements were submitted (as part of the inquiry bundle) from two of the witnesses.
22. Mr Webb's own objection referred to the fact that he had been given specific verbal permission to walk his dog on the site, and also gave details of various problems that had been associated with the site due to vandalism.
23. The principal objector called 10 witnesses to give oral evidence at the inquiry in support of their statements, including the present Company Secretary to the Trust, former members of teaching staff of the College and the University, security staff and groundsmen. A representative of the company who built the properties in Westhill Close also gave evidence.

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<sup>2</sup> Contained in inquiry document 9

## STATUTORY PROVISIONS

24. Section 15(1) of the Commons Act 2006 ('the 2006 Act') provides that any person may apply to the Registration Authority to register land as a town or village green if certain specified circumstances pertain. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007<sup>3</sup> ('the 2007 Regulations') brought these provisions into force on 6 April 2007 and set out the procedures to be followed.

25. The application was made on 14 April 2008 and therefore falls to be determined in accordance with the provisions of the 2006 Act. The application form indicates that it has been made in accordance with the provisions of Section 15(4) of the 2006 Act which provides that an application can be made where:

- (a) *a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
- (b) *they ceased to do so before the 6 April 2007 (the commencement of this section of the Act); and*
- (c) *the application is made within the period of five years beginning with the cessation of use referred to in paragraph (b).*

26. However, sub-section (4) does not apply<sup>4</sup> in relation to any land where:

- (a) *planning permission was granted before 23 June 2006 in respect of the land;*
- (b) *construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and*
- (c) *the land—*
  - (i) *has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or*
  - (ii) *will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.*

<sup>3</sup> Statutory Instrument 2007 No. 457

<sup>4</sup> See Section 15(5) of the 2006 Act

27. In determining the period of 20 years use, Section 15(6) states that any period during which access to the land was prohibited to members of the public by reason of any enactment is to be disregarded and treated as though use was continuing. This is intended to allow for situations such as that experienced during outbreaks of Foot and Mouth Disease, where access to land is temporarily prevented. However, no-one has suggested that this is an issue; it was not raised in the documentary evidence or at the inquiry and I have therefore not given it any further consideration.
28. An application must be made in accordance with the 2007 Regulations. These are set out at paragraph 3 and state that an application must:
- (a) *be made in Form 44;*
  - (b) *be signed by every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or unincorporated;*
  - (c) *be accompanied by, or by a copy or sufficient abstract of, every document relating to the matter which the applicant has in his possession or under his control, or to which he has a right to production;*
  - (d) *be supported:*
    - (i) *by a statutory declaration as set out in form 44, with such adaptations as the case may require; and*
    - (ii) *by such further evidence as, at any time before finally disposing of the application, the registration authority may reasonably require.*
29. The statutory declaration made in support of the application must be made by either:
- (a) *the applicant, or one of the applicants if there is more than one;*
  - (b) *the person who signed the application on behalf of an applicant which is a body corporate or unincorporated; or*
  - (c) *a solicitor acting on behalf of the applicant.*
30. The task of proving the case in support of registration of the land as village green rests with the person making the application, and the burden of proof is the normal, civil standard: the balance of probabilities.

## **REASONING**

### **THE VALIDITY OF THE APPLICATION**

31. The application has been made under Section 15(4) of the 2006 Act and the application form indicates that the claimed use as of right ceased on 1 April 2006, prior to the commencement of the relevant section of the 2006 Act in April 2007. The application was made on 14 April 2008, and was thus made within 5 years of the claimed use ceasing.
32. No planning permission has been granted in respect of the application land, although a pavilion was built on it in conjunction with the permission relating to the development of the Westhill Close site. Although I understand that planning permission for the site is being pursued, I was provided with no evidence to suggest that Section 15(5) of the 2006 Act is relevant to this application.
33. In their Summary of Case, the principal objector indicated that the validity of the application was not at issue, and this was confirmed at the inquiry.
34. I have been given no reason to think that the application is in anyway invalid and consider that the matter is thus capable of being determined by the Registration Authority.

### **THE DATE ON WHICH THE CLAIMED USE AS OF RIGHT CAME TO AN END**

35. In order to examine the nature and extent of the claimed use it is necessary to identify the 20-year period over which that use took place. It has been clearly established by the courts that for use to be described as being 'as of right' it must be use without force, without secrecy and without permission.<sup>5</sup>
36. The applicants have identified the summer of 2006 as the time at which notices were erected on the site which appeared to alter the situation. They have relied on the date of 1 April 2006.
37. The objectors consider that the signs in question were probably erected in 2005, and that in fact there were always signs of some description on and immediately adjacent to the application land.
38. Nevertheless, there was agreement that the signs referred to by the applicants were erected at some point, and that the wording was not in dispute. The signs indicated that access to the application land was prohibited without permission, and that permission to walk dogs was granted but could be terminated without notice. There was no dispute between the parties that pedestrian access was facilitated by the provision of a stile or 'chicane' arrangement to the side of the locked gate, and a gap on the pavement to the other side of it.

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<sup>5</sup> R v Oxfordshire County Council ex parte Sunningwell Parish Council [1999] 3 W.L.R. 160 [2000] 1 A.C. 335 ('Sunningwell')



39. No clear argument against the date of 1 April 2006 was presented to me. Mr Walmsley, who gave a very full account of the history of the College and the site in his evidence, stated that the application land was handed over to a trading company, Hillwest Enterprises Ltd, in January 2006. The purpose of the company was to manage the hire and use of the sports pitches and possibly pursue other commercial development of the playing field. He stated that one of the first things that was done was that signs were erected on the site, and agreed that these were the signs referred to by the applicants. The present signs are replacements for the original signs, erected when the land was returned to the control of the Charity.
40. I therefore conclude that in the absence of any clear evidence or argument to the contrary, it is appropriate to take the date of 1 April 2006 as being the date on which the claimed use of the land as of right is deemed to have ceased.
41. This is not affected by the fact that use of the land continued because the use after that date is not relevant to the examination of the matter. The wording of the sign effectively meant that any future access to the site was either prohibited, or that it took place with permission. In other words it could not be described as use 'as of right'.

### **THE NATURE OF THE CLAIMED USE**

#### ***The witness evidence forms***

42. The applicants have availed themselves of the witness evidence forms designed and made available by the Open Spaces Society. The principal objector pointed out a number of difficulties with relying on these forms. Firstly there is no requirement to give the age of the witness. In this case there are a number of witnesses who are likely to be children. This does not negate their evidence but it does mean that certain aspects of it may need clarification. For example, if they were using the field because they were at Youth Club, they may not have been aware of any consents which may have been secured by the adult leaders of the club.
43. Secondly there is no requirement to indicate in any depth the frequency with which each of the claimed activities were indulged in. This shortcoming was evident when oral evidence was given at the inquiry because it became apparent that some of the claimed activity actually took place on only one or two occasions, or only for a week or two (for example the tennis mentioned by Mrs Caddy).
44. Thirdly, the form asks people to describe activities they have witnessed taking place on the land, but requires no details as to the frequency or the duration of those activities. Furthermore, there is no distinction between activities which may be undertaken by others with permission, and activities which it may be thought are being undertaken as of right. Mr Featherstonehaugh was particularly critical, stating that few of the witnesses indicate that the field was used by the College or for other official educational or club purposes.

He considered that one or two mention the use of the field by the Youth Club or the Kids Club, but no-one makes clear reference to its use for teaching purposes or use by College teams.

45. I have some sympathy with all these criticisms, and cannot emphasise enough the benefit of hearing oral evidence. Mr Maile indicated that they had restricted the number of user witnesses to avoid unnecessary repetition. I must disagree with that approach, because in cases such as this, where one is dealing with facts, repetition is not an issue. Each person's evidence is individual and unique. The more witnesses who are able to give their evidence, the more complete the picture that emerges.
46. Whilst I accept that an inquiry held during the day may be inconvenient or even impossible for some people to attend, I would have been prepared to hold an evening session had there been any indication that it would have enabled additional witnesses to attend. There was no evidence that any witnesses had requested to be heard during the evening, or that they would definitely attend. Nevertheless, additional evidence from those who claim to have used the application land would undoubtedly have provided a clearer impression of the situation and I must take into account the absence of those witnesses in forming a view on the value of the user evidence.
47. I must also take into account the fact that the information provided on the written evidence forms is sketchy, and in my view the forms themselves are of limited value. Some of the questions, particularly Question 23<sup>6</sup>, are leading questions and without the opportunity to examine the witnesses provide little valuable evidence at all. The evidence questionnaires are undoubtedly useful as a first step in information gathering, but without follow up their value is compromised.
48. However, I must disagree with Mr Featherstonehaugh's view that the user witnesses have not acknowledged the use of the application land by other organised bodies and more formal team matches. I have examined the user forms carefully and find that out of 142 forms that I have available to me, only 23 make no mention of the use of the land by organised or community groups. The ambiguity of some of the questions on the forms means that the information is included in differing sections of the form, and clearly some people did not understand the question in the first place. For example several witnesses refer to taking part in organised activities themselves (Brownies etc) and yet make no mention of use of the land by the community or organisations. The most frequent references to other activities are those referring to the Kids Club, the Youth Club, Boys Brigade and Brownies. However, there are numerous references to use of the field for cricket matches, football matches, and use by St Mary's School. Four witnesses actually refer to a degree of use by Westhill College for sports or matches. Conspicuously absent however

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<sup>6</sup> The question provides tick-boxes suggesting a number of different activities

is any reference to the use of the application land by the College for teaching purposes, most likely explained by the fact that it probably took place at times when the local inhabitants were not actually using the land, and was therefore not witnessed.

49. Overall therefore, although the witness forms have their limitations, careful examination of them does show a high degree of consistency of information. There is no evidence of collusion in the presentation of the evidence. I would have expected more uniform responses if that had been the case. The information is not presented identically by any means, and but the consistency gives the written evidence contained on the witness evidence forms more credence than it might otherwise have.

### ***Lawful sports and pastimes***

50. The question of what constitutes lawful sports and pastimes has been considered by the courts, and in particular in the *Sunningwell* case. Lord Hoffman expressed the view that the term 'sports and pastimes' was a composite phrase which covered any activity that could properly be described as a sport or a pastime. The term was relative; the definition of what is a sport or pastime alters through time such that modern informal pastimes such as dog walking and playing with children are just as applicable as more formal sports or pastimes such as cricket or maypole dancing may have been in the past.
51. Several activities have been identified in the user evidence provided by the applicant's witnesses, ranging from formal team games to children playing informally, and including dog walking, picnicking, blackberry picking and flying kites. All of these activities would seem to me to be capable of being legitimately described as 'sports or pastimes'.
52. It is not contested by the objectors that these activities took place to some degree. Rather, it is submitted on behalf of the principal objector that these activities did not take place to the degree or extent claimed by the applicants and that such activities as did take place, or were not exercised, as of right.
53. I am satisfied that the type of activities described would fit the description of lawful sports and pastimes. It is therefore necessary to examine the nature of the claimed in more detail to establish whether or not it is capable of fulfilling the remaining statutory requirements.

### ***Whether the use involved the whole area of the application land***

54. It was asserted on behalf of the principal objector that the nature of the application land and its use by the College (and other educational partners) means that the claimed activities could not and did not take place over the whole of the land. The site was marked out with two football or general sports pitches, plus a cricket crease (surfaced with artificial turf) and that the hard-surfaced tennis or netball courts were fenced and gated from the rest of the field. The activities on which the applicants principally relied must have and did take place around

the perimeter of the field only. The dog walkers avoided the pitches and walked around the edge of the field. Children playing hide and seek or other such games would primarily use the perimeter of the field, as would those indulging in blackberry or other fruit picking, because that was where the appropriate vegetation grew.

55. I do not think that it can be a requirement for each sport or pastime to involve use of the whole area of the application land. Assuming that none of the qualifying activity was unlawful in any way it is not necessarily disqualified from being a relevant activity for the purposes of registration of a village green merely because it may habitually have involved the use of only a small part of the application land.
56. However, there is a potential difficulty with the question of dog walking on the application land. At both my site visits it was possible to see a clear path trodden around the edge of the field which corresponds to the route taken by those people who gave evidence of walking their dogs. This particular activity seems to me to be more in the way of adhering to a linear route rather than using the whole area. However, I consider that it is the use of the application land as a whole over a period of time and in a variety of appropriate ways which is the qualifying factor, and not that each activity undertaken must occupy the whole of the land concerned.
57. Several witnesses gave details at the inquiry of other activities in which they had either been involved or which they had witnessed. Mrs Thomas gave evidence of use of the field by her sons in particular and submitted photographic evidence to support her statement. The photographs are not dated but at the inquiry she estimated that they were taken at various different times during 1991 and 1992. These activities (playing casual football and athletic pursuits) can be seen to be taking place on the application land in general and not merely in one area. The photographs also provide evidence of the land being used for formal football matches during the same period, although teams themselves are not identified.
58. Mrs Caddy described her use of the field over a period of time dating from 1980. Most of the use she described related to use of the field by or with her children (her children were born in 1975 and 1980) and latterly (since 2005) for walking her son's dog. Her children used the application land in conjunction with other friends who lived close by in Lodge Hill Road. She explained that the children had used the application land for a variety of children's pursuits: in addition to casual football and cricket they would play hide and seek, build dens and, at the appropriate time, pick blackberries. Mrs Caddy was the only witness at the inquiry to refer to using the tennis courts to play tennis. Her written statement implied that this was a regular activity, but on questioning at the inquiry it emerged that it was for a few weeks during one summer. In general, Mrs Caddy acknowledged that the use of the application land by children was more regular during summer and autumn, but less so in winter.

59. Mrs Ward stated that her daughter had used the netball post on the tennis court for practice, and also referred to the use of the adjacent slope for sledging. Her son had made use of the rugby posts for practise, when they were left in position.
60. Mrs Vaughan gave details of her family using the field regularly between 1988 and 2002 for walking, jogging and playing with the children. Other activities she described included sunbathing and having picnics, golf practice, and blackberry and conker collecting, and seeing other families pursuing similar activities.
61. Mrs Owen talked about playing rounders with family and friends and also organising mini-sports events for the children. She talked about snowball fights and building snowmen, and also made reference to the use of the land for practicing golf. Her own use of the field included walking, and in her written statement indicates that this also involved circuits of the field.
62. Many other witnesses refer to similar activities in their written evidence which is not inconsistent with the oral evidence I heard, although it has not been possible to examine that evidence in more detail.
63. It seems to me that the types of activity which it is claimed have taken place, and which are not disputed by the landowners as having taken place, are activities which by their nature make use of more extensive areas of the application land than merely a circuit around the edge of the field. Whilst there may be some argument about the intensity of such use, there is no doubt in my mind that the land has been used for a variety of purposes by children and adults, and that the use of the land has been in a general manner, and not restricted to certain parts of it. I also consider that the evidence is supportive in showing that much of the claimed use would be likely to have taken place during light evenings, at weekends, and at times of school holidays. This is because much of the activity described involved use by children, and it is at those times when children would be available.
64. I accept that, at times when more organised sports events or matches were being played, any use which may have been being exercised by the local inhabitants at the same time will of necessity have been restricted to the parts of the application land which did not form part of the relevant pitch. Nevertheless, leaving aside the arguments about the frequency with which such formal sports took place on the application land, it is common practice on established village greens for activities such as cricket matches to be played on a regular basis throughout the summer period. At such times it is clear that access to the whole area of a village green for other purposes would be unlikely to be possible or sensible; any other activity being confined to the perimeters of the green for the duration of matches.
65. I therefore cannot accept that the use of the application land for formal sports, whether as part of the college curriculum or whether undertaken by clubs or societies by arrangement, can, in principle, mean that the application land could not be registered as a village

green. Nor do I accept that formal use of parts of the application land has prevented the use of the whole area by the local inhabitants at other times. Indeed I am satisfied that it is more likely than not that at least some use of the whole of the application land has taken place to a greater or lesser degree for the activities and purposes described by the applicants and their witnesses. Whether that use has been continuous throughout the relevant period, and whether or not it has been use as of right are examined below.

***Whether the claimed use has been use as of right***

66. The judgement in *Sunningwell* set out clearly the definition of what is to be considered usage 'as of right': use must have been exercised without force, without secrecy and without permission. The question of use by permission was thoroughly explored in the *Beresford* judgement<sup>7</sup> which I consider to be very relevant to this particular case. I have already concluded that the claimed use, if it took place, qualified as lawful sports and pastimes, and I am satisfied that what use did take place involved the whole of the application land to some degree. I consider below the question of whether or not sufficient use of the land took place when considering whether the use was exercised by a significant number of the inhabitants of the locality (see paragraph 136 onwards).

*Without force*

67. Several witnesses for the Trust gave evidence of the extent and nature of the fencing which had been erected around the application land over the years. Physical evidence of various fencing is still visible on the site, but even Mr Walmsley, who provided the most evidence about the history of the site from the owners point of view, was not entirely sure of the history of the fencing. Nevertheless, I am satisfied that there has been some sort of boundary fencing and, in addition, some fencing appropriate to sports pitches for the containment of balls etc.
68. The boundary fencing which was originally present or erected in the 1960s when the land was purchased by the Trust is decrepit where it is still visible, but to all intents and purposes has disappeared. There is, in places, evidence of an intermediate boundary feature, but again it has largely disappeared. More evidence remains of the high sports-type fencing, including evidence of gates in it which were presumably provided to enable the retrieval of balls which had managed to evade it. However, this fence too is out of repair and ineffective in preventing access. There was no suggestion that it was ever a continuous feature, only being erected where there was a need to protect adjacent properties from potential damage. Any fencing which had previously existed around the former tennis/netball court is no longer present, but it was not disputed that such fencing had existed in the past, whilst the application land was in use by the college. It had also been fenced off whilst in use as a compound during the

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<sup>7</sup> R (Beresford) v City of Sunderland [2003] UKHL 60

construction work, between approximately March 2004 and September 2005.

69. The gardens which back onto the application land have a variety of boundaries of their own, in various states of repair and functionality, and some have no boundary at all. One or two households appear to have made gaps or gates in their boundaries specifically to provide access to the application land, as worn paths lead to and from them.
70. The boundary between the application land and the church land currently has what appears to be a well-established gap in it.
71. There is evidence that fences have been broken down at times, but although the Trust argued that the fences were repeatedly repaired, close examination of the statements of their witnesses and cross examination of their evidence showed that efforts to repair fencing and gates had petered out in the early 1980s, before the 20-year period I am considering. Repairs had been carried out with varying frequency and eventually the finances simply did not permit further repair work.
72. The judgement in *Sunningwell* suggests that, although initial use of an area might well constitute use by force or trespass, the question to be determined is whether or not the landowner took sufficient action to repel any such incursion such that the continuing access constituted use by force. The evidence of the Trust did not support the continued maintenance of the fencing into the relevant 20 year period with any degree of rigour. In fact, it seemed that the overriding principle was one of tolerance and good-neighbourliness, and an acceptance that people were using the land, especially for dog-walking. Mr Walmsley stated that the Trust (or the College) knew a lot about the neighbouring residents, and in particular about the regular dog-walkers.
73. Furthermore, there is evidence that access across the church yard was not only possible but was permitted by virtue of a sign erected under the auspices of Section 31(3) of the Highways Act 1980. The current churchwarden, Professor Knight, stated at the inquiry that the current signs or an earlier version in the same terms had been in place 'a long time' although he could not say how long. The signs say the following and are positioned at the vehicular entrance to the church and at the footpath entrance:

*'HIGHWAYS ACT 1980 SECTION 31(3)*

*Notice is hereby given that this is a private path intended to provide access to the church for parishioners and others on church business or given permission by the church. Members of the public are also permitted to pass through the churchyard on foot.*

*Notice is given pursuant (sic) to the above Act that the road and paths have not been dedicated to the public nor do the permitted uses referred to above constitute any intention to dedicate them.'*

74. Both these routes permit access to the application land through the gap in the hedge or fence-line between the church land and the playing field. At the site visit Mr Walmsley was able to point out that there had originally been a double gate through that same boundary although it has long since become overgrown.
75. Several of the user witnesses who spoke referred to the use of the access across the church yard. This is reflected in the written evidence, where a large number of the witnesses referred to the use of church land to access the application land. It was also acknowledged by the witnesses for the Trust that, even when the building work had been going on in 2003 on the adjoining housing development, access from the church land was not fenced off and there was actually a gate in the boundary which must have been available for use at one time, even if it is now inaccessible.
76. It is therefore clear that there has been longstanding access to the playing field through this particular access point, which was available for use without force. The access across the church land may have been by permission and thus not as of right, but Section 15 of the 2006 Act makes no reference to the necessity of being able to access the application land via public rights of way or any other type of route. The criteria which need to be satisfied relate only to the use of the application land and not to the method of accessing it.
77. Several witnesses who spoke (Mrs Owen, Mrs Caddy, Mrs Vaughan and Mrs Thomas) mentioned accessing the application land through the rear of gardens, either their own or that of neighbours. Although some of this involved climbing over a fence in some cases, in other cases either no barrier exists (i.e. Mrs Owen whose property has no rear fence) or gaps or gates have been created. No evidence was presented to me of any attempts made by the Trust during the relevant period to prevent such access and thus this access cannot be treated as access by force.
78. The ability or otherwise to enter the application land via the College access from Weoley Park Road (what is now effectively Westhill Close) was a major issue at the inquiry. I deal later with other aspects of alleged obstruction to this access, but for the purposes of user by force, there is no evidence of forcible entry by this means from user witnesses. The Trust argued that the gate was frequently locked but their own witnesses confirmed that it was not locked until late in the evening after the use of the college premises had ceased each day. Nevertheless, even when the gate was locked there were alternative means of access to the application land which were available without difficulty if required (i.e. through the church either via the vehicular access or via the pedestrian access).
79. Photographic evidence was presented to the Inquiry on behalf of the Trust to indicate that a sign had been present on the wall of the College which would have been visible to users of the entrance from Weoley Park Road. Unfortunately the photograph is not clear enough to identify the wording, but Mr Walmsley stated in his evidence that it



said "*Westhill College Private Grounds*". It might be argued that deliberate disregard for such a sign would constitute user by force, but this argument was not pursued by the objectors. Even if it had been, I would conclude that in the absence of any action to reinforce the intentions of the landowners, simply walking past such a sign would not constitute user by force. A similar argument applies to any notices which were allegedly affixed to the original pavilion or equipment store which were referred to by the objector and the wording of which was said to be similar. I return to this issue when looking at secrecy.

80. Witnesses on behalf of the principal objector stated that acts of vandalism had been perpetrated over the years and that damage had been caused to the pavilion or original equipment store. This was not contested by the applicants and whilst I accept that such behaviour took place, this does not demonstrate user by force by those indulging in lawful sports and pastimes.

*Without secrecy*

81. The application land is surrounded on all sides by other land or properties and thus hidden from the general public view. The trees also limit the views into the site from the surrounding properties, but nevertheless it was claimed that the playing field could be seen from certain vantage points within the College, when it was still in use.
82. The objectors claim that their witnesses never or hardly ever saw any activity of the type claimed, and that when people were seen they were either asked to leave or advised that they could continue if their behaviour was responsible (i.e. playing football sensibly or cleaning up after their dogs.)
83. Clearly much of the activity is likely to have taken place in the evenings, at weekends, and during school holidays, particularly those activities which involved children. Nevertheless, the objector does not deny that such use took place; just that it was not as common an occurrence as is being alleged or claimed by the applicants. Indeed the point was made that the evidence of the applicants and that of the objectors was so different that it was irreconcilable.
84. Furthermore, on behalf of the objector it was argued that the use of the application land by the local inhabitants was secretive, because they accessed the land surreptitiously (or in defiance of the notice referred to above in paragraph 79) and at times when it was not in use by the College, so that they were unlikely to be seen.
85. I accept that use of the land by local inhabitants may have taken place principally at times when the College was unlikely to be open or using the field itself, but that is not the same as saying that the use was secretive. Given that the College and a number of its employees were aware that the field was being used for purposes other than that connected to the college itself, I consider that it cannot be concluded that the use of the application land by local inhabitants was secretive.

*Without permission*

86. Certain activity on the playing field was clearly official and thus in effect by permission. Any activity which related to the educational purpose of the College, or later the University, is unlikely to be qualifying use of the application land in relation to a claim for village green status. It was clear to me that those witnesses who recalled having seen, heard or watched formal football matches, or the occasional cricket match, were probably referring to such activity. No evidence was provided by the objectors of a specific booking system, but Dr Benn said that inquiries were received and passed on to someone else, it not being her responsibility to deal with such matters. The activity itself was therefore not 'as of right' since it was presumably authorised in some official way. I agree with the objectors' view that spectators at such events, whether specifically invited or not, might be considered to be there by implied permission and thus not there 'as of right'. This applies to a number of activities referred to by the applicants' witnesses, and evidenced in photographs submitted by Mrs Thomas.
87. The adjacent church hall plays host to a number of youth activities, some of which make use of the playing field. Difficulties arose over the evidence of Mr Gerald Fage, who originally claimed that no permission had been sought for these activities, and who completed a witness evidence form on behalf of the applicants, but who later altered his view and completed two statements on behalf of the objectors.
88. Mrs Caddy was very gracious about what must have been a disappointing decision on Mr Fage's part, because his original evidence indicated that all use by the Youth Clubs or Kid's Clubs might have qualified as user as of right. Unfortunately Mr Fage was unable to give oral evidence and so his change of heart could not be clarified. Professor Knight endorsed Mr Fage's later claim to have received permission to use the field for Youth Club activities, saying that he had seen a letter and that the permission was long-standing. However, in the absence of any clear evidence of permissions granted in this respect, and in the light of his complete *volte face*, I must treat his evidence with a degree of caution. The applicants were denied any means of testing his evidence as he did not appear at the inquiry to support his revised statements.
89. In his first statement for the objectors, Mr Fage provided a list of the applicants' witnesses who were connected either with the Church activities: either the Youth Club, the Kids Club, the Boys Brigade, Brownies, Guides or Scouts. The applicants did not seek to dispute the connections of the individuals concerned. Indeed if a comparison is made between the list presented on behalf of Mr Fage, and the user evidence forms, there is an almost direct match: the users being quite open about their connections to the organised youth activities. However, the applicants claimed that not all of that claimed use was necessarily associated with the particular organisation. Other use that

the witnesses made of the application land might have been without any potential permission.

90. No evidence of any permission in writing was submitted by the objectors, and thus it is necessary to look at all the circumstances to determine whether it is reasonable to conclude that use was by either express or inferred permission.
91. Several user witnesses, and witnesses for the objector, make reference to having been given permission to use the field for certain purposes. For example, Mrs Carolyn Dyer received permission as a child in 1945 to play there from the previous owners, but her use relates only to the period up to 1952 and therefore has no relevance to this application.
92. Mr Gibson indicates in his user evidence that he was told 'it was fine' for him to be there playing football, and that the caretaker had given him permission to go onto the land. His use of the land extends throughout the relevant 20 year period.
93. Mr Passmore, who has also used the land throughout the relevant period, clearly acknowledged that he sought and obtained permission from the Head Gardener to walk his dog. His form indicates however that he also used the land for jogging and informal sport, suggesting that any permission he sought related only to dog-walking.
94. Mr Thomas of, 5 Widney Avenue, states that he had permission to train his football team (from St Mary's School); but he also used the land with his family at other times, for which he does not indicate that any specific permission was sought. However, in the absence of any chance to clarify the issue, it is reasonable to conclude that playing football with his own children was encompassed by the same permission.
95. For the objector, Mr Clifford confirmed speaking to a lady who acknowledged that she had received permission to walk her dog on the field, and Mr Davies, who was the Head Gardener for much of the relevant period, confirms that he was asked for permission to walk dogs by one or two people. He stated that he never took issue with the two or three regular dog-walkers provided that they cleaned up after their dogs.
96. I look to the judgement in *Beresford* for guidance on this matter, as relied on by both the applicants and the objectors. Since some of the facts in *Beresford* differ from the facts in relation to the application land I am considering, it would be helpful to identify those.
97. In the case I am considering, the land is not and never has been owned by the local authority. Neither has it ever been managed in such a way as to encourage the use by the public by the provision of any facilities. Use for formal sports appears to have been by arrangement, so that goal posts etc could be erected and removed as appropriate. It is true that the grass has been mown in the past, and pitches marked out, but I accept the arguments of the objectors that

this was clearly for its intended purpose as part of the college playing fields.

98. Nevertheless, it is also true that the College has taken a benevolent attitude towards the local community in not wishing to prevent all use; allowing some uses to continue on what it considered to be a low-level basis, provided they were conducted in a responsible manner.
99. Mr Featherstonehaugh drew my attention to the comments made by Lords Bingham, Rodger and Walker, which point to their view that it is possible to draw an inference of permission or licence from the circumstances, and that it is not always necessary for there to be any form of written statement to that effect. The conduct of the landowner may be sufficient from which to draw the inference. Lord Walker expresses the view that he would prefer to identify such actions as 'non-verbal consents', indicating that there was at least some gesture or overt act on the part of the landowner which imparted the knowledge of the permission to the user. Lord Walker refers to the nod or a wave, whilst Lord Bingham considers that the landowner needs to make clear his intentions by, for example, excluding the inhabitants when he so chooses, demonstrating that at other times the access is because he is permitting it.
100. Mr Maile highlights Lord Walker's view in the same judgement that the actions of the landowner must be overt and have an impact on the inhabitants, such that they are made aware of the precarious or revokable nature of their access. He particularly relies on the comments made by Lord Walker in paragraph 83 of the judgement:

*"In the Court of Appeal Dyson LJ considered that implied permission could defeat a claim to user as of right, as Smith J had held at first instance. I can agree with that as a general proposition, provided that the permission is implied by (or inferred from) overt conduct of the landowner, such as making a charge for admission, or asserting his title by the occasional closure of the land to all-comers. Such actions have an impact on members of the public and demonstrate that their access to the land, when they do have access, depends on the landowner's permission...."*

101. I therefore agree that what must be determined is whether or not the landowners 'suffered in silence' and thus tolerated or acquiesced to the use of the application land, or whether the landowners so conducted themselves as to make it clear to the inhabitants that their use of the land was pursuant to its permission.
102. On behalf of the Trust, reliance is placed on the existence of signs indicating that the grounds were private; the permissions alleged to have been given to the church activities; the permissions given (and acknowledged in some cases) to the few dog walkers they consider used the field; the actions of the security staff in allowing young boys and youths to continue to play football responsibly; the ejection of those behaving irresponsibly or incompatibly with the use of the field by the college; and the general understanding amongst the local inhabitants engendered by such behaviour that the use of the application land was by permission only.

103. There certainly appeared to be a general understanding on the part of the employees, whether teaching staff or grounds staff, that the use of the land by the inhabitants was by permission. This was reflected in the evidence of Tansin Benn, Tony Fogarty, Chris Clifford and Eddie Houston for the objectors, although none could say where exactly this impression emanated from.
104. However, none of the inhabitants who gave evidence of use at the inquiry acknowledged either that they had been given permission, or that the use was generally assumed to be permissive. Mrs Thomas acknowledged that she had asked her neighbours whether it was possible to use the field, and was reassured that it was.
105. Nevertheless, I agree with the objectors that there is a tranche of use for which evidence has been submitted but which I must consider disregarding on the basis that it was permissive. The organised use of the field by the various groups attached to the Church is a quite distinctive and discrete activity. Mr Fage's change of stance means that I must regard both his original statement (for the applicants) and his two subsequent statements (for the objectors) as being unreliable. It is most unfortunate that he did not attend the inquiry as his evidence would then have carried much more weight, one way or the other. None of the applicants are in a position to know whether or not Mr Fage or the Church in general did or did not have a permission to use the field, but Mrs Vaughan, who did give oral evidence, shed a little light on the attitude of the groups through her assistance with the Brownies. She stated that she helped out and just took it for granted that when she was asked by the Leader to take the girls out onto the field she just accepted that she could go. She never asked whether permission had been sought, and she did not determine what activities took place.
106. This suggests to me that if there was a permission of any sort, its existence was only known by a few people, and not generally disseminated to those who were using the land. It can hardly therefore be called an overt act, designed to bring to the notice of those using the land that the permission was revocable.
107. I acknowledge the argument put forward by Mr Featherstonehaugh: that if a permission exists, ignorance of it by some users does not make their use 'as of right'. However, I consider that this situation can only apply if there is a well-documented or clearly expressed permission, hard evidence of which can be produced. In this case, there is not. Despite the numerous claims that permission had been granted to the Church, and the fact that the Church groups or other organised youth groups were not necessarily all run by the same leaders, no evidence of any formal permission to any person could be produced.
108. Even if I were to conclude that the use of the field by the Church groups was by permission, I consider that there is evidence of use by some people not connected in any way with the Church and which was not exercised by virtue of any permission, express or implied. This

would include use by children for general playing of games of various types, both team games and recreational activities; dog-walking, hide and seek, picnics, kickabouts, and blackberry picking being the most commonly referred to by witnesses at the inquiry, and in the written evidence of those who do not appear to be connected with the Church activities.

109. Turning to dog walking in particular, although some dog-walkers might have received permission to walk their animals on the field, I do not consider that others who took to doing so could necessarily be assumed to have implied permission until perhaps the erection of the signs by Birmingham University in 1999. The existence of these signs was only brought to light rather late in the inquiry, and Mr Walmsley was recalled to deal with the matter. The signs were erected in accordance with a University-wide approach to the issue of dog-walking. Similar signs are still in evidence in several locations both nearby and on other University sites and say something along the lines of:

*"University of Birmingham permits dog walkers on its grounds but expects people to act in a reasonable way"*

110. Although the sign in relation to the Westhill College site appears to have been erected in the highway verge, rather than on the actual site, I consider that its meaning is clear. The fact that many people may not have actually passed it or seen it does not, under these circumstances, render it ineffective. Mr Maile sought to rely on the judgment in *R (Godmanchester and Drain) v SSEFRA and others* [2007] UKHL 28 (*'Godmanchester'*) to show that, by its positioning in particular, it could not be effective as it had not been brought home to the users of the land. I think his reliance on the case is misplaced. The judgement in question relates to the issue of what actions are sufficient to constitute a lack of intention to dedicate a public right of way. Although there are many similarities between the way in which a village green may come into being and the way in which a public right of way may be acquired, there are also significant differences. In this respect Lord Scott's comments in *Beresford* are particularly helpful. He makes the point that a public right of way comes into being through dedication: in other words the period of 20 years use is evidence that the path had been dedicated at some point in the past and that it has been accepted by the public. Village greens are not brought into being by dedication<sup>8</sup>. Thus the question of an owner showing a lack of intention to dedicate does not, therefore, arise.
111. With regard to dog-walking therefore, I accept that some people were given permission to walk their dogs, whether they sought that permission in the first place or whether they were simply given it by a member of the College or University staff at some point. Others, who may have seen these people exercising their pets on the application land and then assumed that it was acceptable for them to do likewise, cannot be deemed to have implied permission in the absence of any

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<sup>8</sup> Except now in certain circumstances under the 2006 Act, not applicable in this case

evidence that they were aware that such permissions existed. There is no evidence that they were. The tolerance of the College under these circumstances amounts to acquiescence, and thus guided by the judgement in *Beresford* I conclude that, until 1999 when the signs mentioned in paragraph 109 above were erected, some people who walked their dogs on the application land were doing so as of right. After that date, none of the dog-walking activity can be considered to have been as of right, since the sign gave permission to reasonably-behaved dog-walkers. The sign clearly implies that if the behaviour of the dog or the owner was unreasonable, permission could be withdrawn and was thus precarious.

112. This sign was replaced at some point, on the demise of the union with the University, but it had effectively interrupted the relevant period of 20-years' user 'as of right' as far as dog walking was concerned.
113. I do not consider that this sign gave any permission whatsoever in relation to other use made of the land by the local inhabitants, and so the application must rely on the continuing exercise of other types of activity to show that village green status has been statutorily acquired over a period expiring in 2006, or alternatively show that the 20 year period as a whole expired in 1999. No argument was put to me to consider the earlier period.
114. Neither do I consider that any signs indicating that the land, grounds or buildings were Private (see paragraph 79 above) indicated that permission of any sort was being granted. I have already concluded that the failure to take concerted action to assert the privacy so indicated did not result in user being by force. I do not find that the wording of such a notice in those terms is capable of implying permission for lawful sports and pastimes indulged in by the local inhabitants on the application land.

#### *Conclusion on use as of right*

115. Taking all these factors into consideration I conclude that there has been some use of the application land during the relevant period of 20 years (1986-2006) by a proportion of the witnesses which can be regarded as use 'as of right' for lawful sports and pastimes.
116. However during the relevant period of 20 years dog-walking has, for the last six or seven years, been by permission in respect of all such activity. Prior to 1999 some of it had been may have been indulged in by a number of people who had received no permission, express or implied, and thus be as of right up to that time.
117. The use of the land by groups associated with the Church or other organisations is more difficult to resolve. However, I am of the view that whatever 'understanding' may have existed, it was certainly unclear, even in the mind of Mr Fage, who did not initially acknowledge that it existed. The objectors have been unable to produce any written evidence whatsoever in connection with use by organised groups, despite Professor Knight's vague reference to

having seen such a letter. It seems to me that granting specific permission for such activities is a matter which would have been recorded, either in the documents owned by the College or the Charity, or in the documents relating to the groups themselves. In the absence of overt actions on the part of the landowner (or the Church) making it clear to all participants that their use of the application land was by permission, and the absence of any formal written evidence of such a permission, I conclude that such user was as of right.

***Whether the qualifying use has taken place for the relevant continuous period of 20 years***

118. With regard to dog-walking, any qualifying use during the relevant period of 20 years ceased in 1999 because of the permission implied by the signs erected by the University. If the application for village green status had relied solely upon the activity of dog walking I consider that the application would fail because it has not taken place as of right for the relevant requisite period. However, it is only one activity out of a range of lawful sports and pastimes which have been indulged in, and thus I consider it would be reasonable to take the use up to 1999 into account as qualifying use.
119. In relation to the other activities it is necessary to look carefully at the user evidence forms, because only two of the witnesses who gave evidence at the inquiry were able to provide evidence of use throughout the whole of the relevant 20-year period: Mrs Caddy (from 1980) and Mrs Thomas (from 1985). It is not a requirement that each individual needs to demonstrate 20 years use, but there must be evidence of continuous use by the local inhabitants throughout that period.
120. The applicants provided a summary of the numbers of people using the application land decade by decade, but I have had to study the forms myself to try to identify more clearly the actual numbers involved. Bearing in mind that the majority of users did not give evidence in person at the inquiry, and that I must therefore treat their evidence cautiously, my analysis indicates the following pattern of use:



YEAR	Number of claimed users (all types)
1986	61
1987	67
1988	72
1989	72
1990	76
1992	72
1994	72
1996	75
1998	76
2000	91
2002	99
2004	104
2006	106

121. These figures have to be qualified and tempered by the fact that it includes use by all people who claim to have used the land during that year or period. Adjustment must be made to account for dog walking after 1999; connection to the University<sup>9</sup>; those who were also spectators at organised matches; those who acknowledge that there have been gaps in their usage for a variety of reasons; and those whose use was only occasional or in fact relates to use by other members of their family (who have not submitted separate forms). Accurate adjustment is impossible, given the lack of clarification of the written evidence.

122. It is therefore necessary to take a conservative approach overall, and conclude that it is only possible to say that it is likely that there has been some qualifying use of the land throughout the 20 year period which could be classed as use as of right. In effect, this is accepted by the objectors, although they maintain that the use was not as of right. I have reached a different view on the quality of that use based on the evidence available.

123. I have dealt with the question of the alleged interruption to that period in paragraphs 157 to 167 below.

**WHETHER THE QUALIFYING USE HAS BEEN INDULGED IN BY A SIGNIFICANT NUMBER OF INHABITANTS OF THE LOCALITY OR A NEIGHBOURHOOD WITHIN A LOCALITY**

<sup>9</sup> E.g. Brenda Merchant whose husband was a lecturer at Westhill for 20 years

***The locality or neighbourhood within a locality***

124. It is necessary to determine whether or not a significant number of the inhabitants of a locality or a neighbourhood within a locality have indulged as of right in lawful sports and pastimes on the application land. I therefore look first at the question of the extent of the claimed locality or neighbourhood so that the relevant users may be identified.
125. There is no statutory definition contained within the 2006 Act of what is meant by a locality. The case law on the subject relates to the registration of village greens under the Commons Registration Act 1965 as amended by Section 98 of the Countryside and Rights of Way Act 2000. However, the definition of a village green in the 2006 Act is in substantially the same form as the wording contained in the 2000 Act. It has been determined that a locality must be a recognisable division of an area known to the law, such as a parish, borough or electoral ward.<sup>10</sup> It cannot be a line arbitrarily drawn on a map, but must be an administrative unit.<sup>11</sup> Some flexibility has been provided by the inclusion in the relevant criteria of the term 'a neighbourhood within a locality'.
126. The applicants have relied on identifying a neighbourhood as being the relevant area from which the inhabitants who have used the application land originate. This area is delineated on the Map A, included with the application, which the applicants estimate to consist of a total of about 2000 households. The principal objectors calculate that the number of dwelling houses is 1,841 and estimate the total population to therefore be about 4,500, using an average occupancy per dwelling of 2.3.<sup>12</sup>
127. On behalf of the applicants it was argued that the concept of neighbourhood is difficult to grasp and that it is a matter for the Registration Authority to determine, based upon the evidence. This view was based principally on the judgement in *Laing Homes* where Sullivan J agreed that the application form (in that case, Form 30) did not require an applicant to identify a locality. Mr Maile therefore argued that all the applicants were required to do was no more than to suggest what constitutes a locality or a neighbourhood. Ultimately it was for the Registration Authority to look beyond the suggestion to establish whether, for the purposes of the Act and Regulations that area, or some other area, is sufficient to establish whether, as a matter of law, a locality or neighbourhood exists that would support the application.
128. Whilst accepting that the authorities offer little guidance on the subject of localities and neighbourhoods, the objectors relied on the judgement in *Cheltenham Builders* to show that although a neighbourhood gave a large degree of flexibility to applicants, it still

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<sup>10</sup> R (Laing Homes Ltd) v Buckinghamshire County Council and SSEFRA [2003] EWHC 1578 (Admin) (*'Laing Homes'*)

<sup>11</sup> R (Cheltenham Builders) v South Gloucestershire District Council [2003] EWHC 2803 (Admin) (*'Cheltenham Builders'*)

<sup>12</sup> An average figure supported by the 2006 census

had to display a sufficient degree of cohesiveness. It could not simply be any area of land that an applicant for registration chooses to delineate on the plan. Nevertheless, Mr Featherstonehaugh conceded that the authorities show that it would be open to an inspector to entertain a revision to the area, even against the wishes of both the applicant and the objectors, but there must be some evidential basis for doing so.<sup>13</sup>

129. Ms Haigh and Mrs Caddy were the two people who had most to do with putting the application together. Both Ms Haigh and Mrs Caddy were questioned about the way in which they had approached the question of locality or neighbourhood, and both gave clear and honest answers. They had obviously given considerable thought to the matter, using as a starting point the area from within which the user witnesses were drawn. They then considered the question of what facilities were available to the residents and thus included land to the east of the Bristol Road, that being the location of the local bank, post office and other services. They had also considered which areas should be excluded and came to the view that the Bourneville area constituted a distinctive neighbourhood and stood apart from their own.
130. All of the witnesses who completed witness forms and who signed the map also thereby agreed that the area shown within the green line on that map formed the relevant neighbourhood.
131. Mr Maile put forward an alternative neighbourhood, should the Registration Authority come to the conclusion that the original designated area was not the appropriate one. Clearly, as Mr Featherstonehaugh commented, reducing the area covered by the neighbourhood would affect the question of whether or not a significant number of the inhabitants had used the application land, almost certainly by increasing the proportion of users in relation to inhabitants. Mr Featherstonehaugh argued that the applicants should not be afforded the opportunity to put forward a different case which none of their evidence supported.
132. I reject Mr Maile's argument that it is the Registration Authority's role to identify the relevant locality or neighbourhood. The case cited by him relates to an application made under the Commons Registration Act 1965, and to the relevant application form in use at the time (Form 30). Although I do not have available to me a copy of Form 30 it is clear from the comments of Sullivan J in the judgement that there was no provision on the form for the applicant to identify the locality. In that case, the Inspector had found that there was no requirement in the Form or Regulations for an applicant to commit himself to a legally correct definition of the locality and Sullivan J agreed with him. He commented at paragraph 137 of the judgement that:

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<sup>13</sup> R (Oxfordshire and Buckinghamshire Mental Health Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v Oxfordshire County Council [2010] EWHC 530 (*Oxfordshire Hospitals*)

*'Given the importance of the locality in the statutory scheme it might have been desirable to require an applicant to provide information about the locality served by the village green in the prescribed form, but Form 30 does not require the provision of such information'*

133. The application form applicable to the present legislation is Form 44, on which there is a clear question addressed to identifying the locality or the neighbourhood (Question 6). It requires the identification of the area either in writing (by administrative name or geographical area) or by attaching a map. This is the application form used by the applicants in this case, and to which was appended Map A, showing the application land and the neighbourhood.
134. In answer to a question from me, Mrs Caddy said, with commendable frankness and honesty, that she could not put her hand on her heart and justify choosing a smaller area than that which was shown on Map A. That was the neighbourhood as she saw it, and as the other applicants and witnesses understood it.
135. I accept that it is open to me to recommend, or for the Registration Authority to find, that a different area forms the relevant locality or neighbourhood, but agree that there must be evidence to support that. No cogent case was put to me to support a lesser area, and indeed the applicants did not press the case. I therefore conclude that the relevant neighbourhood in respect of this application is that as shown and set out on Map A, and not the reduced area postulated during the closing session of the inquiry and marked on Inquiry Document 7.

***Whether the qualifying use has been indulged in by a significant number of inhabitants of the locality***

136. A number of different activities are alleged by the applicants and their witnesses to have taken place on the land over the relevant period. It is not necessary for each activity to have been undertaken by a significant number of the inhabitants of the locality, but overall the use of the land for such activities as a whole must be capable of demonstrating that level of usage.
137. The question of what constitutes a 'significant' number of the inhabitants has been considered in the *McAlpine* judgement in the High Court.<sup>14</sup> Sullivan J accepted that the word ought to be given its normal meaning and that it did not mean 'substantial or 'considerable'. What was required was that sufficient people had used the area for informal recreation to indicate that it was in general use by the local community for such purposes, rather than occasional use by individuals as trespassers.
138. Of the 150 or so user witnesses, I heard oral evidence of use from only eight people. Mrs Graham had not known or used the application

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<sup>14</sup> R (Alfred McAlpine Homes Ltd) v Staffordshire County Council [2002] EWHC 76

land during the relevant 20-year period and so I have disregarded her evidence of use, although it does provide some evidence of reputation.

139. Written evidence forms that have not been supported by oral evidence must be treated with caution with respect to detail, but where they are consistent with the tested, oral evidence I can give them some weight, particularly in respect to the range of activities undertaken.
140. Having concluded that use by the various youth groups was capable of being considered to be use as of right, it demonstrates that significant use of the area was made, particularly during the summer months. The Kids Club is an after-school club and therefore takes place every week-day during term-time. The Boys Brigade, Scouts, Brownies etc are likely to have taken place regularly once a week, at least during term-time. Some of the participants may have come from outside the identified neighbourhood, but a significant number of forms were completed by witnesses who had some connection with these various groups. All the user evidence forms submitted are from people living within the identified neighbourhood.
141. The objectors consider that the users do not represent a significant number when taken in the context of the neighbourhood identified by the applicants. It is true that many, if not most, of the user witnesses live in the properties immediately surrounding the application land, and in particular along Lodge Hill Road and Gibbins Road. It is also true that there are large swathes of properties on Map A from which no users have been identified.
142. However, the test outlined by Sullivan J is not prescriptive. What needs to be demonstrated is that the use of the application land was sufficient to demonstrate use by more than a few occasional trespassers. Using that as a guide, it must be concluded that there was use by substantially more than a few trespassers. The figures I have identified in paragraph 120 above, even when tempered by the uncertainties I have identified, indicate that a significant number of people were likely to be using the application land in any one year. Taking a conservative view, even if only half of the number given for each year were using the land on more than an occasional basis, I consider that it would be sufficient for the landowner to have been aware of the fact. As part of the use was by groups, I consider that that this is even more likely.
143. The objector claims that only one or two people walking their dogs were making regular use of the area, and that they had been given permission. Others using the area were regularly chased away. However the evidence of the Trusts own witnesses does not bear that out.
144. Mr Walls stated that he used to see *'kids on the field playing football'*. He also stated that *'no-one actually gave permission. Jack Priestley<sup>15</sup> just said be a little sympathetic if you see them in*

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<sup>15</sup> A former Principal of the College

*recompense for the noise from students. There was never anything official.'* He said he saw children near the tennis courts and near the church among other places and he didn't get heavy handed with them. He just told them to stay away from the buildings.

145. Dr Benn said she was aware that dog walking was going on, but they were accepted as long as they did not go onto the pitches or areas used by her for her work with the students. Although she said that the number involved was '*miniscule*' she also acknowledged that she would not know if local residents used the site at weekends or in the evenings. She confirmed that it was not the culture of the establishment to have a formal policy with regard to use of the field.
146. Mr Clifford acknowledged that the application land tended to be used by teenagers during the 1980s. Not all of them were 'vandals' but some caused inadvertent damage (for example when practicing golf shots). He left the teaching centre in the early 1990s, so his evidence is useful in confirming use of the site during the earlier part of the relevant 20-year period, particularly as he said he spent very little time on the field. If even he knew of, and saw use of the land going on, it must have been sufficient to raise awareness.
147. Even Mr Houston, who was responsible for the security of the site, said that there were usually three types of scenarios:
- Live and let live
  - Tell kids to move
  - Call the police.

He acknowledged that the instructions he gave to his staff were to ask people to leave but not to put themselves at risk. However he acknowledged that this appeared to be in conflict with the views of the Principal (see paragraph 144 above) and that lots of children used the area in the north west corner. He had also seen 12/13 year olds playing near the church.

148. Mr Walmsley considered that the user witnesses gave the impression that the students of the college were 'invisible' because no-one mentioned the use of the application land for teaching purposes during the day. However, this is likely to be explained by the fact that the use by the local inhabitants, other than a few dog walkers, took place during the evenings and at weekends.
149. A similar statement could be made in reverse: that the use of the application land by the local inhabitants was 'invisible' to the College because it took place in the evenings and at weekends. However, a substantial part of that usage was by the youth groups to which the College claims to have given permission. If permission had been granted to Mr Fage and others to use the land it seems strange that none of the security staff knew about that permission or referred to that use in their evidence, even though some of them were responsible for locking the gate from Weoley Park Road in the evening, and allegedly patrolled the site out of normal working hours.

150. There is clear conflict of evidence between the amount of use claimed by the applicants and the amount of use acknowledged by the landowners. It is relatively easy to explain why the local inhabitants did not acknowledge the use by the students during the day: most of them were not at home or using the application land when the students would have been present for lectures.
151. It is less easy to reconcile why the College appears to have been unaware of the amount of use which was being made of the application land – some of which was allegedly authorised by specific permissions about which no-one seems to have been made aware.
152. Mr Featherstonehaugh considered that the use had to be sufficient to alert the landowner that a right to use the land was being asserted by the local inhabitants. I accept that premise, but if the landowner simply fails to acknowledge what may be staring him in the face, that would not be a reasonable argument to use to turn down an application. Mr Walmsley acknowledged that he had never taken any advice about how to prevent rights being acquired by people; either public rights of way or village green rights. He stated that his principle concern was the insurance liability.
153. The test must be objective: were the local inhabitants making sufficient use of the land to demonstrate to a reasonable landowner that they were acting as though they had the right to use it. If the use of the land by the various youth groups is taken into account as being use as of right, I consider that it is the inescapable conclusion that a significant number of the local inhabitants have indulged in sports and pastimes on the application land.
154. I acknowledge, however, that there may be an element of doubt in some people's minds about whether such organised use could possibly have been going on without some form of permission. If that use was discounted, the amount of qualifying use of the application land would be significantly lower, and my decision might be different. But based on the fact that the security personnel responsible for the site outside normal college working hours were seemingly unaware of any such permission, I must conclude that the youth group use constitutes qualifying use, and thus that use by a significant number of the local inhabitants of the neighbourhood has taken place.

#### **OTHER GENERAL MATTERS TAKEN INTO CONSIDERATION**

##### ***Whether permitted use by some parties negates qualifying use by others***

155. Mrs Thomas indicated that she had asked her neighbour whether it was acceptable for her family to use the application land, and was reassured on that account. However, she was quite adamant that she was not aware of any specific permissions which may have been given to other people. I consider her approach to have been sensible and reasonable, and one likely to have been adopted by other people.

156. The Trust claims that permission was granted to one or two dog walkers and this is supported by the evidence of Mr Webb, and one or two other user witnesses who refer to having received permission to continue using the land for this purpose. There is no evidence that those few people who had specific permission transmitted that knowledge to others in such a way as to imply that their own permission extended to others. There is a substantial majority of users to whom no permission was ever given, and their use of the application land cannot be deemed to be permissive by virtue of permission to one or two people, unknown to them.

***Interruption: The access points***

157. The Trust alleged that access alongside the former College building would have been impossible during construction works and that use of the application land was thus interrupted during the relevant 20-year period.
158. The route alongside College seems to have been gated and locked from late evening until early morning but it was not locked at other times, including weekends, because access would have been needed by either by the college or by visiting teams using the pitches. During building works, I think it likely that there were times when this access was unavailable. However, other access through church land or direct from back gardens was possible. Furthermore, the developers themselves would have needed access to the compound (on the former tennis courts) and the adjacent car park and thus access for others is also likely to have been possible by that means. It may also have been the case that the field continued to be used for matches etc at certain times, but it was not entirely clear to me whether that use had continued during the construction period or not.
159. Nevertheless, access to the application land through church property has been possible for many years, as demonstrated by existence of the signs negating public rights of way over the two routes concerned, and by the long-standing existence of youth groups, particularly Boys Brigade. Activity on the field by this group and others who used the Church Hall has been exercised for many years, whether or not the alleged permission was given. The existence of a gate, now obstructed, is clear evidence of a long-standing access point which has been superseded by the gap in the fence presently existing. The evidence of Mr Worley confirmed that access to the Hall had not been fenced during construction works. Therefore there has always been access from Lodge Hill Road and from Weoley Park Road via the church access. The evidence forms show that the majority of users accessed the application land, at least some of the time, by this method.
160. Late in the inquiry, the question was raised of access across the front of the College through a sunken garden, and this was clearly not a normal means of entry. Mrs Caddy also referred to access through the College buildings themselves in the past. However, these two routes appeared to have been used by one or two individuals on



relatively few or exceptional occasions, and I have discounted any serious use of these access points.

161. Nevertheless, I am satisfied that there was never a period during the relevant 20 years when there was no access point available onto the land.

***Interruption: Flooding of the application land***

162. The land has been subject to water-logging and drainage works have had limited efficacy. More recently, some severe flooding due to a blocked drain resulted in some houses having to be evacuated. The College claims that the land has been used regularly and frequently for their own purposes, and thus it cannot at the same time have been unavailable for the local inhabitants. Nevertheless, it was also acknowledged that many sports matches had to be played elsewhere because the ground could not support them. However, there is no evidence that access to the land itself has been prevented for any significant period of time, such that the use of it by local inhabitants can be said to have been interrupted.

***Interruption: deference***

163. Recent decisions on Village Green applications have been guided by the earlier judgement in *Lewis* in the Court of Appeal<sup>16</sup>, which considered the effect of the deference shown by one type of user to use by others. In particular, the deference shown by local inhabitants to the use of the land by the owner or tenant of the land (in that case who were playing golf on golf links). It had been held that such deference was contrary to the concept of use as of right, and thus in such circumstances an application for registration must fail.
164. This judgement has now been overturned in the Supreme Court<sup>17</sup>, which has confirmed that it is possible for land to support more than one type of use, with give and take on both sides. What is important for Village Green application purposes is whether the use by the local inhabitants has been exercised as of right, based on the tests established in *Sunningwell*. It is unnecessary to impose any further test.
165. The objectors sought to establish that the attitude of Miss Haigh and others, in avoiding using the pitch areas when they were being used for matches and other college purposes, amounted to a failure on their part to assert that they were using the application land as a Village Green as of right, and also that it interrupted the period of use.
166. I have already dealt with the issue of dual use in paragraph 65 above, but for the avoidance of any doubt, I also consider that it falls into the category of 'give and take'. The Supreme Court judgement in *Lewis* decision also establishes that registration of a Village Green

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<sup>16</sup> R (application of R Lewis) Redcar and Cleveland Borough Council and Persimmon Homes [2009] EWCA Civ 3

<sup>17</sup> R (on the application of Lewis) v Redcar and Cleveland Borough Council and another [2010] UKSC

neither enlarges the rights of the inhabitants, nor diminishes the rights of the landowner to continue to use the land as he did before.

167. I am therefore not persuaded that the consideration or courtesy shown by the local inhabitants to use of the pitches for matches at certain times demonstrates that their use of the land cannot be considered to be 'as of right', nor that it amounts to an interruption to that use. In any case, it often occurred simultaneously.

#### **MODIFICATION TO THE AREA OF THE APPLICATION LAND**

168. Mr Maile, on behalf of the applicants, requested that a modification be made to the area to be registered, if the application was successful, in acknowledgement of the fact that part of the land had been unavailable for use during the relevant period due to the presence of a storage building or pavilion. The location of this area is indicated on Inquiry Document 7 and is adjacent to the access from Westhill Close.

169. No evidence was presented to show that the local inhabitants had used the area of land on which the storage shed or pavilion sits for any of the lawful sports and pastimes claimed. Therefore it would be right to consider excluding that area from any area which is registered as a village green on the basis that it did not fulfil the criteria.

170. However, I am unable to give precise details of the extent of this exclusion, since no measurements were provided to me. This will need to be determined by measurements on site, should my recommendation be accepted and the application land be registered as a village green.

#### **CONCLUSION**

#### **SUMMARY**

171. The evidence as a whole sets out a picture of increasing use of the application land by local inhabitants over the years, including during the relevant 20 year period between 1986 and 2006, at a time when the College and its managing Trust were facing many challenges to their existence. The College took a benevolent view of the use made of the land by the local inhabitants so long as it did not interfere with its own use of the land, aware of the inconvenience that its existence sometimes caused to local residents and wishing to be a good neighbour. Activity which was antisocial was resisted, and some people were asked to leave as a result, but apart from a very few people whose individual use was acknowledged and sanctioned by college staff on occasions, most use of the land for lawful sports and pastimes was simply tolerated. Much of that use was exercised at times of the day or week when it presented no difficulty to the College, and the College was sufficiently unconcerned about it that no concerted attempts were made to regulate or control it during the relevant period. The application land was regularly used by local groups who used the adjoining Church Hall and for whom no formal permission appears to have been granted.

172. Some formal sports events, such as football matches and cricket matches, took place on some evenings and weekends and some local inhabitants would watch them. These activities, whilst not qualifying as use as of right, do not detract from the fact that at the same time there may have been other people using different areas of the site for other purposes, in much the same way as on many established Village Greens around the country. The two activities are not incompatible.
173. Although the numbers of local inhabitants using the site is not high in percentage terms, the volume of use suggests that it has been significant enough to alert a reasonable landowner to the fact that it was happening. Some staff were aware of it, but none of them seem to have been aware of the existence of any alleged permissions.
174. I conclude that a significant number of the inhabitants of the neighbourhood identified on Map A, lying within the localities of Selly Oak and Weoley, have indulged in lawful sports and pastimes on the application land as modified in paragraph 169 above and shown on the map at Inquiry Document 7.

### **RECOMMENDATION**

175. That the application be allowed, and that Westhill Playing Field be registered as a Village Green, with the exclusion of the small area near to Westhill Close occupied by the storage shed/pavilion.

*Helen Slade*

### **INSPECTOR**

Planning Inspectorate  
Commons and Village Greens  
Temple Quay House  
2 The Square  
BRISTOL  
BS1 6PN

4 July 2010

## **APPEARANCES**

### **For the Applicants:**

Mr Chris Maile	<i>Representative of the Campaign for Planning Sanity</i>
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#### **Who called:**

Ms Anne Haigh	<i>Applicant and local resident</i>
Mrs Kathy Thomas	<i>Applicant and local resident</i>
Mrs Philomena Vaughan	<i>Local resident</i>
Mrs Michelle Owen	<i>Local resident</i>
Mr Dave Walton	<i>Local resident</i>
Mrs Linda Graham	<i>Local resident</i>
Mrs Muriel Caddy	<i>Applicant and local resident</i>

### ***Others in support:***

Mrs Joanne Ward	<i>Applicant and local resident</i>
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### **For the Objectors:**

Mr Guy Featherstonehaugh QC	<i>Counsel, instructed by Cobbetts Solicitors</i>
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#### **Who called:**

Mr John Walmsley	<i>Company Secretary and Clerk to Westhill Endowment Trust</i>
Dr Tansin Benn	<i>Associate Professor (Birmingham University) and former lecturer at Westhill College</i>
Mr George Davis	<i>Former Head Gardener and Grounds Supervisor and local resident</i>
Mr Tony Fogarty	<i>Former Maintenance Operative</i>
Mr Chris Clifford	<i>Former member of IT staff, Westhill College</i>
Mr Alan Worley	<i>Senior Projects Manager with Crest Nicholson (Midlands) Ltd.</i>

Mr Eddie Houston	<i>Former Site Manager of Westhill College</i>
Mr Andrew Edgington	<i>Former Sports and Leisure Officer and Estates Manager for Westhill College</i>
Mr Dave O'Driscoll	<i>Former Head Groundsman, and Acting Head of Grounds and Gardens Section, Birmingham University</i>
Mr Terence Walls	<i>Porter (previously at Westhill College) Birmingham University</i>

### **Interested parties**

Professor Donald Knight	<i>Churchwarden, St Mary's Church</i>
Mrs Christine McCauley	<i>Local resident</i>

### **DOCUMENTS**

#### ***Submitted by Applicants***

1. Three red indexed lever-arch files (Volumes A, B and C) containing copies of the application, witness statements, other statements and letters of support, the witness questionnaires, and legal precedents
2. Response to the objectors initial statements, dated 2 June 2009
3. Revised outline legal statement dated 25 April 2010, and copy of further legal precedent
4. Document from Communities and Local Government web-site regarding neighbourhoods
5. Photographs of signs at St Mary's Church
6. Map and aerial photographs of Westhill College Teaching Centre
7. Map showing exclusions and potential alternative neighbourhood for modified registration request
8. Closing Statement

#### ***Submitted by the Objectors***

9. Original objection and supporting statements
10. Two black indexed lever-arch files (Bundles A and B) containing a summary of the first (or principal) objectors case with legal submissions, the original objection statement, witness statements and legal authorities.
11. Laminated copy of map of the application site
12. Closing Submissions on behalf of the principal objector
13. Letter of objection from Mr M M Webb (deceased) dated 16 April 2009



# BIRMINGHAM CITY COUNCIL

<b>LICENSING COMMITTEE WEDNESDAY, 16 MARCH 2011</b>
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**MINUTES OF A MEETING OF THE LICENSING  
COMMITTEE HELD ON WEDNESDAY,  
16 MARCH 2011 AT 1000 HOURS,  
IN COMMITTEE ROOMS 3 AND 4,  
COUNCIL HOUSE, BIRMINGHAM**

**PRESENT:** - Councillor Bruce Lines (Vice-Chairman) in the Chair;

Councillors Bob Beauchamp, Dennis Birbeck, Lynda Clinton, Barbara Dring, Penny Holbrook, Barbara Jackson, Penny Wagg and Mike Ward

\*\*\*\*\*

**APOLOGIES**

2048 Apologies for their inability to attend the meeting were submitted on behalf of Councillors Nigel Dawkins, Mohammed Ishtiaq, Peter Kane, David Osborne and Shokat Ali.

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**MINUTES**

**Minute No. 2038 - Review of Licence Fees: 2011 - 2012**

Councillor Dring referred to the preamble to the above resolution, in which it was suggested that funds from the hackney carriage and private hire ring fenced reserve were being used for deficit reduction purposes.

Annette Rowe, Finance Manager, Corporate Management, confirmed that this was the case. Jacqui Kennedy, Director of Regulatory Services suggested that the addition of the words "within the hackney carriage/private hire licensing function" after the word "deficit" in the third paragraph of the preamble would help to clarify the point.

2049 The Committee having agreed this appropriate amendment, the Minutes of the last meeting held on 16 February 2011, copies having been circulated, were confirmed and signed by the Chairman.

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**REVENUE BUDGET MONITORING - 2010 2011: MONTH 9 UP TO 31  
DECEMBER 2010**

The following joint report of the Director of Corporate Finance and the Director of Regulatory Services was submitted: -

(See document No 1)

The report was introduced by Annette Rowe, Finance Manager, Corporate Management

2050

**RESOLVED:-**

- (i) That the latest approved revenue budget for the Licensing Committee, as set out in the report now submitted, be received; and
  - (ii) that the current budgetary position and the projected revenue outturn for the 2010/2011 financial year as detailed therein be noted.
- 

**LICENSING COMMITTEE BUDGET 2011-2012**

The following joint report of the Director of Corporate Finance and the Director of Regulatory Services was submitted: -

(See document No. 2)

The report was introduced by Annette Rowe, Finance Manager, Corporate Management

2051

**RESOLVED:-**

That the budget approved by the City Council for the Licensing Committee as referred to in the report now submitted be noted and more particularly -

- (i) that approval be given to the detailed revenue budget allocation for 2011/12 as shown in Appendices A and B to the report;
  - (ii) that the additional funding to address budget pressures and to meet policy priorities as shown in Appendix C be noted;
  - (iii) that the details of the approved savings programme for 2011/12 as shown in Appendix D be agreed;
  - (iv) that the estimated employee numbers for 2011/12 as shown in Appendix E be noted.
-



**APPLICATION FOR THE REGISTRATION OF A TOWN/VILLAGE GREEN  
WESTHILL PLAYING FIELDS, SELLY OAK**

The following report of the Director of Regulatory Services was submitted:-

(See document No. 3)

The following additional documents were submitted: -

- A. Statement on behalf of the Applicants and the Friends of Westhill Playing Fields organisation.
- B. Letter to the Chairman of the Licensing Committee dated 14 March 2011 from the Westhill Endowment, objectors to the Application.

(See document No. 4)

Ann Haigh attended the meeting on behalf of the Friends of Westhill Playing Fields (the applicant).

The Chairman advised that the representative for the applicant present at the meeting would be offered the opportunity to speak after the legal officer had introduced the report. It was not however open to them or indeed members of the Committee to revisit the evidence already heard at the Inquiry and considered by the Inspector in her report. Any representation they wished to make should be limited to the reading of the statement they had prepared, copies of which had been placed in front of the Committee.

Ben Burgerman, Legal Services then introduced the report, following which Ann Haigh read out the statement tabled at the meeting on behalf of the Applicants and the Friends of Westhill Playing Fields organisation.

The recommendations in the report were then put to the Committee, following which it was

2052

**RESOLVED:** -

That the Inspector's report dated 4 July 2010, as attached to the report now submitted, be endorsed and that the application for the registration of a town/village green in respect of land at Westhill Playing Fields, Selly Oak, Birmingham (VG1/08) be granted (with modified plan) for the reasons set out in the Inspector's report.

---

**GRANTS TO THE POLICE AUTHORITY**

The following report of the Director of Regulatory Services was submitted:-

(See document No. 5)

PC John Slater, West Midlands Police attended the meeting and addressed the Committee on his work as Taxi Liaison Officer, as detailed in the report submitted to the Committee.

Councillor Beauchamp said that he was appreciative of the impressive figures detailed in the six-month work report of the taxi liaison officer, which included the very useful facility of access to DVLA records.

PC Slater in reply to a question from Councillor Clinton, advised that there was a close working relationship with neighbouring authorities. Those contacts allowed a two-way communication process permitting appropriate intelligence to be passed between the respective licensing sections.

The Chairman thanked PC Slater for his hard work in respect of this valuable activity.

2053

**RESOLVED:** -

That approval be given to the grant of £65,000 to West Midlands Police for the services of a dedicated uniformed Police Officer (Taxi Liaison Officer), the maintenance and use of a police motorcycle and additional police officers to provide additional support for enforcement exercises as detailed in the report now submitted, in accordance with the authority granted by Section 92 of the Police Act 1996.

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**FOREIGN NATIONALS - CRIMINAL RECORDS CHECKS AND CERTIFICATES OF GOOD CONDUCT**

The following report of the Director of Regulatory Services was submitted: -

(See document No. 6)

The report was introduced by Chris Arundel, Principal Licensing Officer.

Councillor Clinton commented that the Licensing Sub-Committees occasionally considered cases of existing licence holders who were out of the country for extended periods and wondered whether the proposed amendments would affect this category of driver. Mr Arundel replied that the current policy applied only to new applicants without a history of residence in this country. The matters detailed by Councillor Clinton could be taken into account by the respective Sub-Committees should an individual licence lapse under such circumstances.

Councillor Lal said that it was difficult for any member to know all the background to a specific foreign country, particularly in terms of its political stability or otherwise. Equally it was often impossible to determine whether applicants from such states were the victims, or indeed the perpetrators of crime. In his view the current system was far too lax and the Committee would be justified in requiring a set period of say five to 10 years' residence during which an applicant could prove their good citizenship in order that the public were not exposed to risk.

Councillor Holbrook however did not feel that it was appropriate for an applicant to be treated disadvantageously simply because they came from a non-EU country. She added that in order for a person to be granted asylum or refugee status in this country, they were likely to have been resident for a significant period of time with a traceable UK history, which would have been checked by the Home Office as part of the application process.

Councillor Dring noted that the proposals contained in sections 4.4 and 4.5 reinforced and strengthened the Committee's existing policies in this regard.

Councillor Jackson referred to the list of 'prominent regulated occupations' set out in the Appendix to the report. She was somewhat surprised that occupations such as osteopaths, optometrists and traffic wardens were included in the list and wondered to what extent such occupations could be expected to know the background of an applicant.

Jacqui Kennedy, Director of Regulatory Services, advised that such referees would be required to provide a verifiable character reference to assure the licensing authority of an applicant's background.

Councillor Beauchamp commented that it had been a cause of some unease that licences could be granted to people with a "blank" past, and he believed that the list of occupations were of sufficient standing to give some degree of comfort to the Committee in this regard. He wondered however what would be the process for an applicant to make a statutory declaration of their fitness of character, which was the second element included in the proposed revised procedure. Parminder Bhomra, Legal Services, advised that legislation set out a prescribed format in which such declarations were to be made and gave a list of legally qualified persons who could attest to same. She would be supplying appropriate details to colleagues in the Licensing Section.

2054

**RESOLVED:-**

- (i) That approval be given to the introduction of revised procedures, in line with the advice provided by St Phillips Chambers as set out in section 4 of the report now submitted, to deal with applicants for hackney carriage and private hire licences unable to comply with the requirement to produce a certificate of good conduct, or the equivalent of a Criminal Records Bureau check, from a country or countries where they had been resident as adults, due to having fled from an oppressive regime, or having come from a 'failed' state;
- (ii) that Outstanding Minute No. 1997 be discharged.

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**LICENSING THE FRONT SEAT OF HACKNEY CARRIAGE VEHICLES**

The following report of the Director of Regulatory Services was submitted: -

(See document No. 7)

The applicant, Mr Mohammed Rashid of the Birmingham and Solihull Taxi Alliance attended the meeting. He advised that following extensive consultation with trade representatives, the proposal to relax the restriction on the use of the front seat of Birmingham hackney carriages was being put before the Committee. It was not intended to be compulsory however and individual licence holders would have the option whether or not to amend their licence. He pointed out that currently Solihull licensed drivers were permitted to carry seven passengers, whereas Birmingham drivers could only carry six, which caused particular problems in respect of dual licensed vehicles and also led to loss of business to the private hire trade.

Mr S Sahota, a licensed hackney carriage driver said that he was sure that a small proportion of drivers would like to carry additional passengers, although he pointed out that the Committee's position in the past had been to separate driver and passengers for safety reasons. Any driver wishing to carry passengers in the front of the vehicle would have to accept the increased risk and also note the possible additional insurance costs. He also anticipated that there could be potential problems on the taxi ranks if individual cabs were licensed to carry different numbers of passengers.

Jacqui Kennedy, Director of Regulatory Services, advised that if the proposal was to be agreed, an individual taxi licensed to carry seven persons would be unable to refuse such a fare.

Councillor Dring commented that this was a major change to the existing licensing provisions and felt that it merited extensive consultation with of the trade, in order to determine whether or not there was significant demand for its introduction. Councillors Beauchamp and Holbrook agreed that there was a need for substantial further consultation.

Councillor Ward however believed that it was not appropriate for the Committee to arbitrate on such an application or to saddle itself with an expensive consultation exercise. Rather he believed that the matter should be referred back to be applicant in order for them to secure the full agreement of the trade.

The Chairman said that in his view sufficient evidence had not been presented to support the application and that a further report should be presented giving full details of the implications of the proposal for the Committee's policies and procedures. He favoured individual consultation with the whole trade and suggested that it might be appropriate to fix a response rate of perhaps 45% for the proposal to proceed.

2055

**RESOLVED:-**

That the request by Mr Mohammed Rashid of the Birmingham and Solihull Taxi Alliance to relax the restriction on the use of the front seat for the carriage of passengers in Birmingham licensed hackney carriage vehicles be deferred pending submission of a further report giving full details of the implications of the proposal for the Committee's policies and procedures and following wide-scale consultation with the trade.

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**REGULATORY SERVICES SERVICE PLAN 2011-2012**

The following report of the Director of Regulatory Services was submitted: -

(See document No. 8)

2056

**RESOLVED:-**

- (i) That the introduction to Regulatory Service Plans for 2011/12 as detailed in Appendix 1 to the report now submitted be noted;
- (ii) that approval be given to the Regulatory Service Plan in respect of Licensing Services for the period 1 April 2011 – 31 March 2012 as detailed in Appendix 2;
- (iii) that the Joint Service Delivery Plan across Regulatory Services as detailed in Appendix 3 be noted.

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**FLATPACK FESTIVAL: 23-27 MARCH 2011**

The following report of the Director of Regulatory Services was submitted: -

(See document No. 9)

Ian Francis of the Midlands Arts Centre attended the meeting and responded to questions from members of the Committee in respect of the films to be exhibited at the Flatpack Festival.

2057

**RESOLVED:-**

That approval be given to the exhibition of the following uncertificated films at the Electric Cinema, Station Street and the Mac, Cannon Hill Park from 23 – 27 March 2011 as part of the 'Flatpack Festival 2011' with the age restriction classifications shown below:

Best Worst Movie (15)  
Double Take (PG)  
Memory and Desire (12)  
The Living Room of the Nation (15)  
Beeswax (12)  
Petropolis (U)  
Down Terrace (18)  
Colour Box Shorts (U)  
No One knows about Persian Cats (PG)  
Puppet Shorts (15)  
Animated Shorts (15)  
Experimental Shorts (12)

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**APPROVAL OF UPDATED REGULATORY SERVICES ENFORCEMENT POLICY**

The following report of the Director of Regulatory Services was submitted: -

(See document No. 10)

2058

**RESOLVED:-**

That approval be given to the application of the updated Regulatory Services' Enforcement Policy 2011 as attached to the report now submitted for implementation with effect from 1st April 2011 to replace the previously approved (2010) Policy.

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**CUSTOMER SERVICE EXCELLENCE**

The following report of the Director of Regulatory Services was submitted: -

(See document No. 11)

2059

**RESOLVED:-**

- (i) That the report now submitted advising the Committee of the retention by Regulatory Services of the Customer Service Excellence Standard, the scope of which has now been extended to include the Registration Service, be noted;
  - (ii) that this Committee's congratulations be conveyed to the staff concerned on their commitment and dedication in once again securing retention of the Standard.
- 

**PROSECUTIONS AND CAUTIONS - JANUARY 2011**

The following report of the Director of Regulatory Services was submitted: -

(See document No. 12)

2060

**RESOLVED:-**

That the report now submitted summarising the outcome of legal proceedings during the month of January 2011 involving four cases, resulting in fines of £1,190, prosecution costs of £600 and 24 penalty points as listed in Appendix 1 and 21 simple cautions as listed in Appendix 2, be received and noted.

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**OUTCOME OF APPEALS AGAINST SUB-COMMITTEE DECISIONS  
JANUARY 2011**

The following report of the Director of Regulatory Services was submitted: -

(See document No. 13)

2061

**RESOLVED:-**

That the report now submitted advising of the outcomes of appeals made to the Magistrates' Court against Licensing Sub-Committee decisions and any subsequent appeals made to the Crown Court and finalised in January 2011 be received and noted.

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**REPORT BACK ON ACTION TAKEN IN CONSULTATION WITH  
THE CHAIRMAN**

The following report of the Director of Regulatory Services was submitted: -

(See document No. 14)

2062

**RESOLVED:-**

That the action of the Head of Licensing in consultation with the Chairman be noted in amending the decision of Licensing Sub-Committee A held on 15 November 2010 in respect of the Toby Jug, Newman Way, Rubery so as to remove the null and void condition 'E' relating to the opening hours of the premises.

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**SCHEDULE OF OUTSTANDING MINUTES**

The following schedule of Outstanding Minutes was submitted: -

(See document No. 15)

**Minute No 2032 (ii) - Working Party on Plying for Hire**

The Chairman proposed that in view of the cancellation of the April meeting of the Committee (see Other Urgent Business below), the Working Party on Plying for Hire established at the previous meeting be held in its place and that all members of the Committee be invited to attend.

2063

**RESOLVED:-**

- (i) That all Outstanding Minutes listed in the foregoing Schedule, not the subject of report to this meeting, be continued;
- (ii) that the inaugural meeting of the Working Party on Plying for Hire be held on Wednesday 20 April 2011 at 10:00 hours at the Council

House and that all members of the Committee be cordially invited to attend.

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**OTHER URGENT BUSINESS**

2064 **Cancellation of April meeting**

The Chairman advised that due to lack of business, it had been determined that the meeting of the Committee scheduled for 20 April 2011 would be cancelled.

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**AUTHORITY TO CHAIRMAN AND OFFICERS**

2065 **RESOLVED:-**

That the Chairman (or in his absence, the Vice-Chairman) is hereby authorised to act until the next meeting of the Committee except that, in respect of the exercise of the Council's non-Executive functions, the appropriate Chief Officers are hereby authorised to act in consultation with the Chairman and that the Corporate Director of Governance is authorised to affix the Corporate Seal to any document necessary to give effect to a decision of the said officers acting in pursuance of the power hereby delegated to them; further that a report of all action taken under this authority be submitted to the next meeting and that such report shall explain why this authority was used.

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The meeting ended at 1150 hours.

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CHAIRMAN



**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**18 JANUARY 2017**  
**ALL WARDS**

**INVESTORS IN PEOPLE**

1. Summary

- 1.1 A report to advise Committee of the success of Regulation and Enforcement in the recent assessment which resulted in the retention of the 'Investors in People' accreditation.

2. Recommendation

- 2.1 That the report be noted.

Contact Officer: Alison Harwood, Acting Director of Regulation and Enforcement  
Telephone: 303 0201  
E-mail: [Alison.harwood@birmingham.gov.uk](mailto:Alison.harwood@birmingham.gov.uk)

Originating Officer: Adrian Parkes, Operations Manager  
Telephone: 675 4116  
E-mail: [adrian.parkes@birmingham.gov.uk](mailto:adrian.parkes@birmingham.gov.uk)

### 3. Background

- 3.1 The services comprising Regulation and Enforcement have held the 'Investors in People' (IiP) standard accreditation since 1998. The last award was made in 2013 with re-assessment in December 2016.
- 3.2 The IiP standard reflects the business planning cycle of 'plan', 'do', 'review'. The 4 basic principles of the standard are:
- Commitment – an IiP is fully committed to developing its people in order to achieve its aims and objectives.
  - Planning – an IiP is clear about its aims and objectives and knows what its people need to do to achieve this.
  - Action – an IiP develops its people effectively in order to improve its performance.
  - Review – an IiP evaluates and understands the impact of its investment in people on its performance.
- 3.3 These principles are underpinned by the 10 indicators of good practice that are assessed during the visit:
- A strategy for improving the performance of the organisation is clearly defined and understood.
  - Learning and development is planned to achieve the organisation's objectives.
  - Strategies for managing people are designed to promote equality of opportunity in the development of the organisation's people.
  - The capabilities managers need to lead, manage and develop people effectively are clearly defined and understood.
  - Managers are effective in leading, managing and developing people.
  - Peoples' contribution to the organisation is recognised and valued.
  - People are encouraged to take ownership and responsibility by being involved in decision making.
  - People learn and develop effectively.
  - Investment in people improves the performance of the organisation.
  - Improvements are continually made to the way people are managed and developed.
- 3.4 These principles are exacting with 39 individual evidence requirements and require a structured approach to managing people through good leadership together with meaningful policies and strategies. Regulation and Enforcement achieves this through its business planning process with the primary tool being the 'My Appraisal' system. The 'My Appraisal' allows personal targets to be established, training requirements to be established and evaluated and clarity of role for individuals to be discussed. At an organisational level communication with and between staff is essential to achieve the standards required by IiP.

#### 4. The liP Assessment of Regulation and Enforcement

- 4.1 The 2016 assessment was undertaken across most of Regulation and Enforcement including Trading Standards, Licensing, Environmental Health, Coroners and Mortuary, Registration Service, Bereavement Services and IMLT.
- 4.2 During December 2016 the liP assessor interviewed his selection of 33 members of staff from all services and grades. Interviewees were selected at random in order to ensure a thorough evaluation of the application. The criteria used by the Assessor to select interviewees covered factors such as their length of service and work location. These interviews were supplemented by a review of the documentation provided by Regulation and Enforcement evidencing the systems in place that ensure the standard is met.
- 4.3 In December, the Acting Director of Regulation and Enforcement was formally advised that Regulation and Enforcement had been successful in achieving the required liP standard and can continue to use the liP emblem on its communications and publications.
- 4.4 The Assessor included in his report (attached appendix) many areas of strength and good practice that he identified with regard to Investors in People. These include:
- People feel committed to the organisation and a number of interviewees clearly take great pride in the services that they provide.
  - The organisation continues to maintain a strong focus upon learning / training / development activities that will directly support the operational objectives of the organisation.
  - People value the training and development that they receive, and feel that the Division remains committed to their development; the provision of a range of learning, training and development opportunities continues to be seen by employees as a real strength of the organisation.
  - There are a number of other positives, some specific issues noted during the interviews include:
    - The organisation is perceived as having an open and transparent leadership team.
    - Most senior managers are seen as visible throughout the organisation, and are regarded as approachable and accessible by all those interviewed.
    - Communication is perceived as relatively good by most employees.
    - Investment in learning, training and development for all employees has largely been maintained; the organisation ensures that people are able to acquire, maintain and develop the core skills and capabilities that are essential for working successfully in this sector.
    - The organisation uses a variety of methods to deliver learning, training and development in an effective manner.

- People feel that everyone is treated equally and fairly, with equality of opportunity being recognised by the workforce.

4.5 The Assessor did identify some areas where improvements can be made and presented these in the form of an Improvement Plan:

<b>Business Issue - What</b>	<b>Suggested Actions – How</b>	<b>Potential Benefit - Why</b>
The degree to which the formal Appraisal process currently contributes towards performance improvement across the organisation	Consider any alternative / complementary methods by which levels of performance can be identified and communicated, finding ways in which to manage underperformance and sickness more effectively whilst also recognising higher levels of performance	Addresses a building perception that there is no “downside” or consequences to underperforming, and that there is “no point” in striving for higher levels of performance if they are not likely to be recognised
The longer term development of the entire management population within the Division	Undertake the planned Succession Planning exercise to better identify and understand the size and nature of the challenge. Develop a strategy for the development of current and future managers to meet this challenge.	Avoids critical skills and experience shortages in the future Ensures a planned and co-ordinated approach to ensuring the continuity of skills and experience amongst the leadership and management population in coming years
Preparing for the transition to the new IIP Assessment framework and approach	Progress “self-diagnosis” activities to examine the new Generation VI IIP Assessment approach and establish how this might stretch the organisation further	Continues to develop people management activities, prepares the organisation for a new, more challenging approach to being assessed in 2019

4.6 The IIP standard is awarded for a period of three years after which the service will need to be re-assessed.

## 5. Implications for Resources

5.1 The focus provided through the Investors in People process and methodology is consistent with the aim of maximising the development and potential of a key resource within the City Council i.e. the workforce.

6. Implications for Policy Priorities

- 6.1 The liP standard contributes to the City's Strategic Outcome of Achieving Excellence. Employees are our greatest resource in delivering services, this award of liP demonstrates that this resource is being well managed and utilised.

7. Implications for Equality and Diversity

- 7.1 One of the indicators of good practice which is subject to assessment as part of liP is that strategies for managing people are designed to promote equality of opportunity in the development of the organisation's people.

**ACTING DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: liP assessment report



# **INVESTORS IN PEOPLE ASSESSMENT REPORT**

## **REGULATION AND ENFORCEMENT BIRMINGHAM CITY COUNCIL**

## Key Information

Assessment Type	Review
Investors in People Practitioner	Martin Smith
Visit Date	30 <sup>th</sup> November – 2 <sup>nd</sup> December 2016
Assessment Enquiry Number	ENQ-100826-V131G0

## Conclusion

The Regulation and Enforcement Division of Birmingham City Council has demonstrated that it satisfies the 39 mandatory evidence requirements of the Investors in People Standard and has therefore once again met the requirements for Investors in People Accreditation.

As part of the requirements of the Investors in People Standard, the organisation will need to undertake Review of Continuous Improvement activities with the Practitioner during the coming accreditation period, before coming forward for the next full review by 2<sup>nd</sup> December 2019.

The review in 2019 will be against the new Investors in People Framework that was introduced in September 2015.

The organisation has a number of strengths which are outlined in the following pages. There remains potential for some further improvement in a number of areas; some of these are described in the following narrative, and a suggested “Continuous Improvement Plan” is provided within Appendix 1. It is recommended that the organisation considers requesting assistance from EMB / the Investors in People Practitioner in taking forward some of the issues highlighted in this Continuous Improvement Plan.

## Milestone Dates

Review of Continuous Improvement	2 <sup>nd</sup> June 2018
Date of Next Full Assessment	26 <sup>th</sup> November 2019



### Martin Smith

Investors in People Practitioner  
5<sup>th</sup> December 2016



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## 1 Executive Summary

The Regulation and Enforcement Division of Birmingham City Council, like all Local Authorities, faces extremely strong financial challenges. The organisation has experienced very significant changes and severe budgetary constraints in recent years, and it will be continuing to identify opportunities for further ways in which to deliver increased efficiencies.

Given all of the uncertainties that the above brings for staff, the Division has successfully maintained reasonably good morale. Indeed, interviewees reported a sense that the organisation is quite open and transparent, is seeking to engage employees to a reasonable extent, and that the senior management team is striving to maintain high standards in the ways by which it leads, manages, develops and supports staff.

Interviewees made comments about how they believe that the senior team is committed to continuing to improve the ways that people are led, managed, developed and supported. People recognise that the leaders of the Division and also the wider management team have a strong desire to deliver the Council strategy and still try to maintain and improve the way that they manage and support staff across the organisation, despite the severe financial constraints.

Although the organisation continues to meet the Investors in People Standard, in some areas it still has potential for improvement. In addition, although there are issues where the organisation is maintaining approaches and methods that will help it to deliver services in the short term, there are other matters which may result in longer term challenges if not addressed. Whilst some of these matters have been highlighted in this report, these should not detract from the overall finding that the leaders and managers continue to manage people well considering the context of the financial constraints under which the Division operates. It is also worth noting that some of the issues that may cause longer term challenges relate to working practices and approaches that are determined centrally by the Council, and are not under the direct control of the leaders of this Division.

The organisation has a number of strengths, some of which are highlighted throughout this report. Those areas where there is considered potential for improvement are highlighted within the text of the report and specific issues are summarised within the Continuous Improvement Plan (Appendix 1).

All those interviewed spoke of a good level of trust in the leadership team of the Division. Whilst acknowledging the ever increasing levels of pressure to deliver, people still spoke of the organisation as a good place to work, where there is a transparent and open working environment, and where people display a significant pride in the services that they provide.

## 2 Strengths of the Organisation

The Regulation and Enforcement Division of Birmingham City Council has a number of key strengths.

People feel committed to the organisation and as highlighted earlier, a number of interviewees clearly take great pride in the services that they provide.

The organisation continues to maintain a strong focus upon learning / training / development activities that will directly support the operational objectives of the organisation.

People value the training and development that they receive, and feel that the Division remains committed to their development; the provision of a range of learning, training and development opportunities continues to be seen by employees as a real strength of the organisation.

There are a number of other positives, some specific issues noted during the interviews include:

- The organisation is perceived as having an open and transparent leadership team
- Most senior managers are seen as visible throughout the organisation, and are regarded as approachable and accessible by all those interviewed
- Communication is perceived as relatively good by most employees
- Investment in learning, training and development for all employees has largely been maintained; the organisation ensures that people are able to acquire, maintain and develop the core skills and capabilities that are essential for working successfully in this sector
- The organisation uses a variety of methods to deliver learning, training and development in an effective manner
- People feel that everyone is treated equally and fairly, with equality of opportunity being recognised by the workforce

Whilst some of the following narrative includes mention of areas where the Division may be able to *improve* the manner in which people are managed by the organisation; it should still be noted that there are clearly already a number of areas of strength, and the organisation should be proud of its performance during the period since the previous Investors in People Review.

### 3 Key Issues Identified

During the planning discussions that preceded the visit, no specific issues were identified for the Practitioner to focus upon. However, during the interviews, the following matters arose and might be considered to be worthy of further consideration:

- ***The degree to which the formal Appraisal process currently contributes towards performance improvement across the organisation***

Both managers and staff have welcomed the simplification of the formal Appraisal process in use by the organisation. All interviewees felt that the historic approach had been unwieldy, too time consuming, and required too much effort in requiring significant evidence gathering activities prior to any such conversations.

For the most part, interviewees are comfortable with the new “streamlined” process, feeling that it is easier and require much less time and effort. However, many identified significant shortcomings in the limited *outcomes* from the process.

At the end of the process, an appraisee is either deemed to be “achieving” or “failing”. Interviewees observed that there have been very few individuals who are placed into the latter category, despite a number of people expressing a view that there were clearly a number of colleagues who were not performing at satisfactory levels, and were in their views being “carried” by their stronger performing colleagues. Some could not understand why a number of “underperforming” colleagues were not being dealt with by managers.

Whilst *some* of the managers interviewed during the assessment stated that in their view, all of their staff were indeed performing at a satisfactory level, others confessed that although they could identify members of staff that were not performing at this level, these individuals would still be deemed to be “achieving”. When challenged as to why this was the case, managers stated that to follow the prescribed performance management process that would be required by “failing” an individual in a formal appraisal would involve a very significant amount of time and effort, with no guarantee of any positive outcome at the end of the process. Such managers asserted that they were under such personal pressure themselves that they could not afford to spend this amount of time trying to improve the performance of a poorly performing member of their team – and that by awarding an “achieving” Appraisal outcome; they could focus upon other more urgent issues instead.

In contrast, many interviewees could clearly see that no matter how hard an individual works, and no matter how much their performance is “over and above” what might be expected of them, they could not achieve anything more than an “achieving” outcome from the appraisal process. People also observed that there will no longer be any scope for the award of salary increments for high performers, and that there will now be a “freeze” on any monetary awards related to performance for the next three years. As a result, a large number of people now perceive that there is no incentive to strive for higher levels of performance.

The overall outcome from all of the above would appear to be that a significant population of people now perceive that there are no longer any real consequences for underperformance, and no longer any incentive for improving performance. It is appreciated that the organisation is under huge financial pressures, and that the Appraisal process that is used has been mandated across the whole of the Council, but the longer term consequences of the above need to be very carefully considered when set against a need to continuously deliver more results with fewer people.

- ***The longer term development of the entire management population within the Division***

The Council has clearly been losing large numbers of staff in recent years, as it strives to make cost savings and efficiency improvements in all areas. Many interviewees commented upon the extreme levels of pressure and stress that many people are now experiencing in trying to meet service delivery objectives.

A significant number of interviewees in many areas felt that a key feature of the reduction in staff numbers has been the “de-layering” of certain teams, with the loss of people in “team leader” roles being of particular note. (These were seen to be individuals who had been employed in relatively senior roles, but had not yet reached managerial positions.)

Many interviewees in officer positions now perceive that there is a much more significant “step up” required in order to be considered for any future managerial vacancies that arise. People also commented that they felt that they did not have the necessary skills and experience to make such a transition in one single step, and because of this, they did not feel that it was a realistic hope for them to be promoted to a managerial role. People also went on to comment that they did not feel that the organisation would be likely to invest in the required learning and development activities that would help them to develop the requisite skills and capabilities to be considered for such a “step up” in responsibilities. Many also observed the increasing pressures that are being experienced by those in managerial roles, and are consequently deciding that they would no longer even *wish* to become a manager.

The above sentiments are troubling, especially when considering the context of an organisation with an ageing managerial population in many areas. In an area where managers require detailed technical and operational experience, one individual commented: “We can see that in the next couple of years, three key managers will be retiring – and we just can’t see where any replacements are going to come from”.

The need to make operational efficiency gains is clearly of very real, urgent and continuing importance to the organisation. However, in considering the longer term implications of the changes that have been made and continue to be implemented, it is recommended that in order to continue to provide effective service delivery in the future, maintaining and developing a skilled and experienced leadership and management population will be of key importance. Although it has been stated that the Division is already considering an exercise in succession planning, the importance of this exercise cannot be overstated, and this should form just the start of a process to develop a broader plan to develop skills and experience amongst officers, in order to provide individuals with the potential to become the managers and leaders of tomorrow.

- ***The degree to which internal communications are seen as effective by employees***

In many organisations, the issue of internal communication is often seen as a source of complaint amongst many employees. People often state the organisation is poor at ensuring that they have the information that is required for them to undertake their roles, and does not inform them of key changes and decisions in an appropriate manner.

When considering the nature and degree of change that has been experienced by employees within this Division, the feedback from interviewees was, to a large extent, relatively positive.

People were able to describe the range and nature of channels used by leaders and managers to keep everyone informed. Outline descriptions were provided of how staff would receive email communications from the Senior Management team of the Council, and how there was a clear “cascade” of information by means of team meetings and occasional senior management briefing

sessions in many areas. People also described how they would be updated at “away day” events, by their line manager in regular formal and informal one-to-one discussions, and that there was a significant amount of information available on the intranet and HR portal.

In general, people were reasonably positive about the amount of information that they received, and the timeliness of its delivery. Given the nature of the changes made in the organisation in recent years, this should be considered as quite an achievement.

With regards to the issue of internal communication, the only negative comments made by some individuals were:

- That there were far too many emails being sent out to an “all staff” list, where the nature and content of the messages were often not relevant to the majority of recipients and
- That some of the top leaders displayed little appreciation of the pressures that staff are under. A number commented that there had been a briefing at the local theatre, where all staff had been invited to “clear their diaries” so they could attend. Many interviewees felt that although there was a positive intent for leaders to be seen to be accessible and open in their communications, the way that the invite had been expressed demonstrated a lack of understanding that large numbers of employees could never just “clear their diaries” because of the huge volumes of work they were being expected to deliver.



## 4 Further feedback against the requirements of the Standard

### Key Issues:

- **Strategic / Business Planning**

The Council has developed and communicated a Vision ('A Future Council for the 21<sup>st</sup> Century') that outlines its broad future ambition and aspirations. This statement is underpinned by two overarching ambitions underpinned by four themes. Within this, the leader of the Council has set out a number of Strategic Priority areas.

The Division has taken the above contextual information and drawn up an overall business plan for its areas of responsibility, consisting of a number of Service Plans that can be seen to directly support the future achievement of the wider objectives. In so doing, the Division strives to ensure the existence of a "Golden Thread" that allows every individual to see where their own specific role contributes towards the overarching ambitions of the Division and the Council. It has also set out a number of Key Performance Indicators within these plans in order to help monitor progress. The service plans were developed and informed by discussions within departmental meetings that identified how management and staff felt that the Division could develop. The leaders also hold regular meetings with Unison representatives in order to maintain a consultative relationship.

Each individual within the organisation then has the ability to agree (with their manager) their own personal objectives in line with the overall plans for the organisation. The approach provides a clear "line of sight" that links each individual to the performance of the Council.

People generally feel that the communication of information from the top of the organisation has been maintained well in some difficult times for the Division. Progress and development is shared with all employees through a cascade of regular manager briefings and team meetings, providing staff with opportunities to raise issues and contribute suggestions.

The above is also complemented by 1-2-1 meetings with line managers, and frequent email communications from management. Information is also made available through the Council intranet.

- **Learning, training and development**

The organisation continues to invest significant resources in the development of its people. Interviewees believe that it remains committed to ensuring that the Division as a whole, as well as every individual within it, continues to have the skills and expertise to deliver the services that are demanded.

There is clear evidence of the planning of activities at both an individual level (e.g. through one to one discussions and appraisals with individual members of staff), and also at an organisation level through discussion amongst the senior leaders, followed by the planning of activities to ensure that the organisation meets any wider requirements for delivering its services.

The Service Plans of the various teams within the Division are used to inform analysis with regards to the needs for specific training and development activities, and this process helps to determine the priorities for the delivery of such activities.

A Training Management Group (TMG), consisting of a group of Senior Managers drawn from across the Division, meets regularly to plan the provision of learning, training and development and to review its effectiveness and impact on performance.

The organisation has developed a comprehensive on-line e-learning facility, and a wide variety of modules are made available for managers and employees to “self-select” if they feel that specific topics would be useful for their development.

Although some external course based learning does still takes place, the financial constraints experienced by the Division now limit the amount to which such solutions are used. As a result, it is clear that the organisation has increased the focus on other ways for people to learn and develop, including the use of internal colleagues to provide training, coaching, and mentoring. In addition, on-line resources, secondments, and “learning on the job” activities are widely used.

The Division continues to support Continuous Professional Development activities where these are necessary / appropriate for specific individuals, and also ensures that any training that is mandatory for specific roles continues to be provided.

Those individuals who have joined the organisation relatively recently (or have changed roles within the Council) confirmed that there was a structured process in place for induction into the organisation / a new position, and that this helped them to adjust and adapt to new responsibilities.

Interviewees were able to explain and give examples of how their training and development had provided them with the skills and knowledge to improve the delivery of services, and also reported that there is some reviewing of the results / benefits being achieved from investing in people’s learning, training and development. The reviewing of activities that have been undertaken has resulted in changes to the delivery of some activities in order to maximise the benefits that accrue from these activities.

Most participants at training / development events have broad objectives agreed with line management in advance (although there were some interviewees who reported that this was not always the case in their specific teams), and the majority also have subsequent conversations after the event regarding their experiences, but there may be potential to formalise this with a more structured approach to the matter so as to better establish any tangible benefits for the organisation that arise from such activities. Improved objective setting / post event reviewing has the potential to yield information that could be used by the TMG to better determine exactly how effective different training / development activities have been, and if there is any further scope for improving the delivery of similar activities in the future.

People were able to confirm many examples of how learning, training and development has helped them to work better and more effectively, and how this has helped the Council to continue to provide services despite now having a greatly reduced workforce. In general, it is clear that the organisation has an approach which now ensures that it is developing the expertise of employees in ways that will contribute towards its plans for the future.

#### • **Leadership & Management Development**

The organisation seeks to maintain an effective leadership and management cohort across the organisation, and some individuals have in recent years benefitted from attendance at specific training courses aimed at improving management effectiveness.

The organisation seeks to complement externally delivered leadership development activities through the provision of on-line learning modules that are available across the Council; these are seen as an



economic way to develop new skills / refresh existing capabilities for individuals throughout the organisation as and where these are seen to be needed and appropriate. Development is also supported through informal coaching of managers by their more senior colleagues.

The leaders of the Division have a clear understanding of the capabilities, knowledge and behaviours required of the managers within the Division, and were able to articulate these with specific reference to the expertise of each area and also to the wider Values of the Council (Putting Residents First, Acting Courageously, Acting true to our word and Achieving Excellence).

Managers are provided with feedback and guidance on their performance through regular one-to-one discussions with their immediate manager, and through a formal annual appraisal process. The appraisal form used by the organisation supports discussion in relation to the achievement of objectives and also provides reference to developing and role modelling against a defined framework of desirable competencies / behaviours that are expected of all employees; these discussions are then used to enable an overall outcome of either “achieving” or “failing” to be determined. Discussion during appraisal meetings is also used to help identify areas for development and any training or support that may be needed by managers to carry out their roles more effectively.

In *general*, people felt that the organisation strives to maintain and improve the leadership capabilities of individuals across the organisation in a reasonably effective manner. However, some interviewees still highlighted a view that staff could identify a relatively small number of specific individuals in leadership / management roles who were felt to be lacking in some key capabilities. People have a good understanding of the capabilities needed to be an effective manager, but some spoke of a small number of individuals who they had believe have scope to improve some of their “softer” people management skills (communicating, engaging, motivating, change management, working effectively with peers etc.)

In addition to any internal e-learning opportunities available to all managers employed by the Council, it may also be worth exploring other on-line learning and development opportunities that could support the wider development needs of leaders and managers within the Division. One such opportunity that could be considered is the programme of activity provided by The Open University and the Chartered Management Institute, which can be found at the following address:

<https://www.futurelearn.com/programs/management-leadership>

Although the approach taken by the Council currently enables leaders to maintain an effective management population in the shorter term, Section 3 of this report has already highlighted the challenges faced in the longer term with regards to maintaining a skilled and capable management cohort across the Division, and the difficulties faced in developing officers to enable people to be ready for promotion to managerial roles as and when future vacancies arise.

- **Performance Management**

Managers reported that they provide feedback and support to their people in regular “one to one” meetings, in informal day to day discussions, annual performance appraisals / reviews and also in regular team briefings.

People were able to confirm that annual structured performance appraisals are held with all individuals across the whole organisation. As mentioned earlier in this report, the appraisal process has been streamlined and is now much simpler and less time consuming than the previous approach, which had been unpopular with both managers and staff alike. The new approach takes up far less time, but although it is much simpler, managers were able to explain how the structure remains

capable of supporting a discussion that encompasses the achievement of objectives, the competencies and behaviours of the appraisee, and the identification of any learning and development needs of the individual concerned. In this respect the appraisal process is clearly still a key and effective means by which managers seek to provide staff with feedback on their performance and seek to help individuals develop. As mentioned earlier in this report (Section 3), the binary outcome (Achieving/Failing) may not be the most effective way to deal with underperformance or to motivate/incentivise improvements in performance, but this is something that could be examined further. Other key areas of focus might also be to investigate the comments from different managers that the amount of work involved in following the formal process for managing underperformance (and also the rules relating to the management of sickness and absence) does not encourage managers to make use of these procedures in view of the perceived time, effort and complexity involved.

The majority of interviewees felt that most managers were effective at leading them, developing their skills and capabilities, providing specific feedback on their performance and supporting them when they needed help and guidance through the use of all of the methods outlined above. Many spoke of individual managers taking a close interest in their performance on a daily basis whilst also helping them to meet their longer term career aspirations within the organisation. Specific examples were given by interviewees of how their managers had helped them to develop knowledge and skills required in their roles, and how this had helped them to provide a better service through becoming both more effective (meeting people's needs better) and more efficient (responding quicker).

- **People Management**

Interviewees felt that everyone is treated equally and fairly, and that the organisation has adopted policies and approaches that help to ensure that staff are all treated equitably and have appropriate and fair access to learning and development opportunities. People consistently reported that they felt that the Council is a meritocracy and that people progress, are provided with opportunities and are broadly rewarded according to their abilities and performance.

Some individuals reported examples of how management actively supported them through being sensitive to their personal needs and circumstances, and by being flexible in changing working arrangements in such a way as to ensure that they continue to be treated equally and fairly by the organisation. Examples included managers being flexible and accommodating changes in working patterns / shifts to help those with childcare commitments, and a strong approach to making reasonable adjustments for those with health related challenges.

People from all areas of the Division have access to an on-line "portal" which offers a wide variety of training modules that can be accessed at a time and location that suits the recipient, and this resource also provides wider information on learning and development to help individuals plan their future development. Individuals also confirmed that managers ensured that everyone also had equal access to the all activities aimed at delivering learning, training and development.

Although no issues / problems were reported with regards to the equal treatment of all employees, it might still be worth considering the provision of "refresher" training on Equality and Diversity issues, to ensure that such matters continue to be considered by all employees across the Division.

All employees are encouraged to contribute ideas and suggestions for how the organisation can improve performance; opportunities are provided in one to one discussions, team meetings, involvement in specific issues / projects, and the availability of a suggestion scheme.

- **Involvement and Engagement**

A reasonable degree of consultation and involvement was reported by interviewees as taking place through various channels, including:

- An open approach to the development of the Service plans in each area
- Union representatives having regular meetings with senior management
- Regular Team brief sessions and section meetings
- Appraisals and other informal 1-2-1 discussions
- Occasional exercises across the whole Council to consult on key issues (e.g. any potential changes to terms and conditions of employment)
- One off exercises to look at potential changes within individual teams (e.g. a working group being set up within Registrars to examine potential changes and improvements to the issue of Certificate production)
- Senior managers being visible and directly accessible to all staff, and being willing to listen and act upon the views of employees

At a team / day-to-day level, people felt that most of the management population encouraged involvement and debate prior to decisions being made; the majority of managers were perceived to be open to ideas and suggestions if employees chose to come forward with any such issues, and people believed that discussions with their line managers provided them with opportunities to discuss any ideas that they may have. However, some interviewees felt that the overall approach to this was still a little passive, suggesting that although most managers made it clear that they had an “open door” policy for listening to suggestions, some in management positions did not always demonstrate *pro-active* actions that might suggest that they really valued and were keen to hear any such suggestions. There was perhaps a perception by employees in some areas that their managers were far too busy keeping on top of day-to-day service delivery issues to have time to devote to exploring the merits of suggested changes to working practices.

A large majority of those interviewed felt that they were trusted by managers to take decisions that were appropriate for their roles and levels of responsibility, although a few noted that their decisions could often be overridden if a local Councillor put pressure on management to change priorities / deal with issues in a different way. Although this was considered frustrating, most interviewees were reasonably pragmatic about this; people feel this is an issue that can become very “political”, and is not one that could easily be challenged by the managers of this Division in isolation.

## • Reward and Recognition

In general, people feel that they are rewarded appropriately for their core roles and responsibilities with salaries that remain broadly commensurate with their positions, although a number of people interviewed expressed strong frustration that there is now a three year freeze on salary increments.

Interviewees were aware that the local government sector does not offer the highest salaries when compared to the private sector, but most also commented that this was compensated for by other factors.

A range of measures are in place that reward / recognise the contribution of staff across the organisation; in describing how they were made to feel valued for their contribution, people provided a range of examples, including:

- Managers explaining how regular performance appraisals are used to praise and thank people for their performance
- Occasional “token” celebrations to recognise significant milestones / successes (e.g. bringing cakes in to reward specific achievements)

- Senior managers thanking and praising specific actions / successes in briefings, team meetings or in person
- Recognition of achievements in the Chamberlain Awards, and with occasional buffets held by a member of the senior management
- Mentions of specific staff efforts in emails, senior management briefings, periodic newsletter (Registrars) etc.

Although all of the above were highlighted during interviews with managers and staff, the most frequently mentioned factor in making individuals feel valued and appreciated was when managers “noticed” when individuals worked especially hard / performed exceptionally well, and thanked people in person. Interviewees felt that most managers were good at doing this, and that this was a key factor in motivating people and maintaining morale, but it should be noted that some interviewees felt that there were still a small number of managers who could be better at displaying their appreciation of the efforts made by individuals in their team.

All of the above were all appreciated by interviewees, but another frequently mentioned and appreciated benefit of working for the organisation was seen as the on-going commitment of the Division to invest in the development of the skills, capabilities and expertise of each and every member of staff. People gave a strong impression that all employees really valued the sense that (despite the very significant financial pressures faced by the organisation) the Council was still prepared to “invest in me”, and help people to acquire, improve and retain skills and knowledge that would be useful to them not only in their current role, but in helping them to achieve longer term aspirations and ambitions in their careers and outside lives.

Most interviewees felt that the combination of all the above measures made for an organisation for whom they continue to enjoy working, and one in which they remain proud to serve. It would however, be a worthwhile exercise for the Division to revisit this topic; as challenges continue to mount for the Council, it would be worthwhile ensuring that *all* managers remain aware of the importance of ensuring that employees are made to feel appreciated for their efforts, and ensure that every effort is made to recognise the efforts of people across the organisation.

### • **Continuous Improvement in how people are managed**

Management has sought to establish the view of employees through means such as:

- Informal, day to day discussions with members of staff
- Establishing views during appraisals and regular one to one dialogues
- Listening to people’s opinions in meetings (team meetings, senior managers’ briefings etc.)
- Undertaking a periodic survey of all staff

The new approach to Investors in People Assessments is now incorporating the deployment of an On-Line Assessment questionnaire as part of the 3 Year Assessment process, and it may be that this same approach could be adopted by the organisation in between such Assessment activities, to “track” views on the same issues over time. The organisation might wish to consider the use of this On-Line Assessment to help it prepare for the next Investors in People Assessment in 2019, perhaps as an alternative / complementary exercise to the existing survey.

People were able to confirm many examples of how they believed the organisation had listened to their views and had been improving ways in which employees are led, managed and developed. Examples included:

- Streamlining the appraisal process to cut down on the time and effort required of both managers and staff in undertaking this annual review

- Some areas becoming more “open and transparent”. Some individuals with the Environmental Health team felt that their management briefings / meetings had become more inclusive and engaging than had been the case in the past
- A greater degree of consultation on some key issues
- Introduction and development of the e-learning facilities available to employees

When prompted for any suggestions for how the organisation could improve still further, interviewees struggled to come with any specific ideas. Some people were however very negative about what they perceived to be the very poor support for IT facilities, and many managers complained that they now spend a great deal of time undertaking work that was once the responsibility of central HR/Finance teams (and that this distracted them from managing their teams and the services they are providing),

The only other issue mentioned by a few individuals was the perception (as mentioned earlier in this report) that the leadership style of a small number of line managers could be improved, and that these individuals should be helped to develop stronger “soft” leadership skills in areas such as communication, motivation, engagement, change management and recognition of their staff.

Many of the interviews concluded with assertions from individuals that although they felt that the Division was having to implement very significant cost saving initiatives, they remained very proud of the services that are being provided by the organisation and are committed to their on-going provision.



## Appendix 1 – Continuous Improvement Plan

Business Issue - What	Suggested Actions – How	Potential Benefit - Why	Priority - When	Solutions/Support Available - Who
The degree to which the formal Appraisal process currently contributes towards performance improvement across the organisation	Consider any alternative / complementary methods by which levels of performance can be identified and communicated, finding ways in which to manage underperformance and sickness more effectively whilst also recognising higher levels of performance	Addresses a building perception that there is no “downside” or consequences to underperforming, and that there is “no point” in striving for higher levels of performance if they are not likely to be recognised	Medium – but within the next 6 months	Senior Management team
The longer term development of the entire management population within the Division	Undertake the planned Succession Planning exercise to better identify and understand the size and nature of the challenge. Develop a strategy for the development of current and future managers to meet this challenge.	Avoids critical skills and experience shortages in the future Ensures a planned and co-ordinated approach to ensuring the continuity of skills and experience amongst the leadership and management population in coming years	Low – but within the next 12 months	Senior Management team
Preparing for the transition to the new IIP Assessment framework and approach	Progress “self-diagnosis” activities to examine the new Generation VI IIP Assessment approach and establish how this might stretch the organisation further	Continues to develop people management activities, prepares the organisation for a new, more challenging approach to being assessed in 2019	Low – but activities should still commence at least 12 months before the 2019 Assessment becomes due	Leadership team / HR Manager with assistance from the IIP Practitioner if required. Consider attending EMB Workshops aimed at helping with the transition to the new approach

## Appendix 2 – Assessment results summary

### The Investors in People Framework

#### The Evidence Requirements

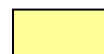
The Indicators	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29
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The number of evidence requirements met is **39**

Key:



The Core Investors in People Standard



Your Choice from the Investors in People Framework



Not part of the Investors in People Framework





**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**18 JANUARY 2017**  
**ALL WARDS**

**COST RECOVERY AT COURT**

1. **Summary**

- 1.1 Members of the Committee have asked officers to establish the amount of Court costs that are received by the Council as a percentage of the amount that are ordered to be paid by the Courts.
- 1.2 As a result of this question, officers have worked with HM Courts and Tribunal Service over recent months to improve the way in which payments are made to the Council by the Court. An improved system of BACS payments has been agreed that will be more accurate, however, due to the disparity between the time that a costs order is made and the receipt of the final sum it will not be possible to provide an accurate figure for costs received as a percentage of costs awarded. The amount of work required to produce such a figure would be disproportionate to the benefit.

2. **Recommendations**

- 2.1 That outstanding minute number 603 will be discharged.
- 2.2 That the report be noted.

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### 3. Background

- 3.1 At every meeting of the Licensing and Public Protection Committee, a report is presented which lists the results of prosecutions cases in the preceding month or months. The report includes information on the costs that have been awarded by the courts as a percentage of the amount claimed by the Council. Members of the Committee have asked officers to establish the amount of Court costs that are recovered from defendants as a percentage of the amount that the Courts have ordered.
- 3.2 Officers established that the Council's systems are such that it could not directly relate the income transactions from HM Courts and Tribunal Service to the costs of individual cases. Therefore, it has not been possible to say with any accuracy what percentage of costs awarded at Court are received by the Council.
- 3.3 In order to improve the system of payments, officers have engaged with officers from the Magistrates Court over recent months to examine how costs are dealt with. An improved system has been agreed with the Court which is explained below.

### 4. New System

- 4.1 With effect from 1 December 2016, Birmingham Magistrates Court has stopped making cheque payments to the City Council. This is part of a wider modernisation project for HM Courts and Tribunal Service. All payments are now made through the BACS system. Prior to this change, the Court was making some BACS payments and some cheque payments, which was potentially confusing and harder to manage.
- 4.2 The Courts computerised payment system classified Birmingham City Council as a 'Major Creditor'. This enabled the Courts to produce remittance reports showing amounts paid to the City Council overall but not to individual departments within the Council. Officers have agreed with the Court that individual departments within the Council will now be classified as 'Major Creditors' in their own right. This will allow monthly remittance reports to be produced by the Court to show payments that have been made to Trading Standards, Licensing and Environmental Health. Officers have used this opportunity to cleanse and update the Courts records for all of the Council's prosecuting departments. It has been possible to replace the Courts list of 26 Minor Creditors with 12 Major Creditors. The new system will provide us with greater confidence that Court costs are paid to the correct department.
- 4.3 Each summons that the Council issues will contain the name of the prosecuting department to enable the Court to know where to send costs by BACS. Monthly remittance reports will identify the name of each defendant and the date and amount paid.

4.4 Having made a costs order, the responsibility rests with the Court to recover the costs from the defendant which might be on an instalment basis dependent on their ability to pay. The Courts have various processes and procedures which they employ to recover costs from defendants such as:

- Collection Order Notices.
- Further Steps Notices.
- Attachment of Benefit Orders.
- Deducting payments straight from Attachment of Earnings Orders.
- Distress Warrants.
- Warrants of Arrest.
- Referring the matter back to Court for a committal warrant to be issued.

## 5. Calculation of Cost Recovery

5.1 Although the new system will provide more certainty that costs are paid to the correct prosecuting department, it will still not be possible to calculate with any degree of accuracy the amount of costs that are paid as a percentage of the amount awarded. This is because payments are not necessarily made in the same financial year as the year in which they are ordered and it is very common for defendants to pay costs in monthly instalments spread over a year or more. Sometimes it might be several months after a conviction before a defendant starts to pay their costs order.

5.2 The remittance reports that the Courts will send will itemise each payment by reference to the name of the defendant. From this it will be possible to calculate the amount that each defendant has paid although this would be a manual calculation although the Court has offered to provide reports on individual defendants upon request.

5.3 The time and cost involved in trying to match each defendants costs order to a monthly remittance report, spread over many months and even years in some cases, would be disproportionate compared to the benefits that such information would provide.

## 6. Implications for Resources

6.1 It is important that the highest possible level of cost recovery is achieved to reduce the burden of prosecution costs falling on the public purse.

## 7. Implications for Policy Priorities

7.1 The Councils Corporate Charging policy expects that officers will maximise income wherever possible.

8. Implications for Equality and Diversity

- 8.1 No specific implications have been identified. Costs are payable by all convicted defendants when ordered by the Court regardless of their protected characteristics.

**ACTING DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: nil

**BIRMINGHAM CITY COUNCIL**

**REPORT OF THE ACTING DIRECTOR OF REGULATION AND ENFORCEMENT  
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

**18 JANUARY 2017**  
**ALL WARDS**

**OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS DURING  
NOVEMBER 2016**

1. Summary

- 1.1 This report advises the Committee of the outcomes of appeals against the Sub Committee's decisions which are made to the Magistrates' Court, and any subsequent appeals made to the Crown Court, and finalised in the period mentioned above.

2. Recommendation

- 2.1 That the report be noted.

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3. Summary of Appeal Hearings for November 2016

	Magistrates'	Crown
Total	3	
Allowed		
Dismissed	3	
Appeal lodged at Crown		n/a
Upheld in part		
Withdrawn pre-Court		

4. Implications for Resources

- 4.1 The details of costs requested and ordered in each case are set out in the appendix below.
- 4.2 In November 2016 costs have been requested to the sum of £3,079.62 with reimbursement of £2,829.62 (91.8%) ordered by the Courts.
- 4.3 For the fiscal year thus far, April 2016 to November 2016, costs associated to appeal hearings have been requested to the sum of £16,464.57 with reimbursement of £14,685.57 (89.2%) ordered by the Courts.

5. Implications for Policy Priorities

- 5.1 The contents of this report contribute to the priority action of providing an efficient and effective Licensing Service to ensure the comfort and safety of those using licensed premises and vehicles.

6. Public Sector Equality Duty

- 6.1 The actions identified in this report were taken in accordance with the Enforcement Policy of the Regulation and Enforcement Division, which ensures that equality issues have been addressed.

7. Consultation

- 7.1 The Enforcement Policy that underpins the work identified in this report is approved by your Committee. The policy reflects the views of the public and the business community in terms of the regulatory duties of the Council. Any enforcement action taken as a result of the contents of this report is subject to that Enforcement Policy.

**ACTING DIRECTOR OF REGULATION AND ENFORCEMENT**

Background Papers: Prosecution files and computer records in Legal Proceedings team.

**APPENDIX****MAGISTRATES' COURT – PRIVATE HIRE DRIVER'S LICENCE**

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Mohammed Farooq	21.11.2016	Dismissed	£250	£0	On 20 September 2016, as the result of his licence having been endorsed with a total of eight points in a period of less than six weeks, none of which had been reported within seven days as required by his conditions of licence, Committee considered and resolved to suspend the licence for a period of two months. The Bench were satisfied that the decision of the Committee was correct on the basis of the information they had before them. However, in the circumstances given that the appellant had paid the issue fee and his solicitors costs were not minded to make any order as to costs, although indicated that it was proper for the City Council to have requested the £250 claimed.

**MAGISTRATES' COURT – HACKNEY CARRIAGE DRIVER'S LICENCE**

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Sawarn Singh	11.11.2016	Dismissed	£300	£300	On 5 September 2016, as the result of his licence having been endorsed with a total of fourteen points in a period of less than nine months, although he had not been disqualified from driving and none of which had been reported within seven days as required by the Byelaws, Committee considered and resolved to suspend the licence for a period of four months.

# **MAGISTRATES' COURT – LICENSING ACT 2003**

	Name	Date Case Heard	Result	Costs Requested	Costs Ordered	Comments
1	Shamas Mahmud (in respect of) Weoley Local, 159-161 Somerford Rd, Weoley Castle	28.11.2016	Dismissed	£2529.62	£2529.62	Committee considered and resolved to revoke the premises licence in order to promote the prevention of crime and disorder, public safety and the protection of children from harm objectives in the Act. On 29 June 2016, upon application by the Chief Officer of Weights and Measures for a review of the premises licence, following the seizure of significant amounts of illicit alcohol and counterfeit tobacco on 10 November 2015 and the seizure of further amounts of illicit alcohol on 3 February 2016, coupled with the breach of various conditions within the premises licence.



**BIRMINGHAM CITY COUNCIL**

**LICENSING AND PUBLIC PROTECTION COMMITTEE**

**18 JANUARY 2017**

**SCHEDULE OF OUTSTANDING MINUTES**

<b>MINUTE NO./DATE</b>	<b>SUBJECT MATTER</b>	<b>COMMENTS</b>
365(ii) 25/06/2014	<b><u>Committee Policy</u></b> – Service Director of Regulation and Enforcement to review the policy in respect of the engine size and age of private hire vehicles and report to Committee.	Date to be agreed
603 20/01/2016	<b><u>Cost awarded in Legal Proceedings</u></b> – Service Director of Regulation and Enforcement be requested to report on the percentage of the costs received against those awarded in legal proceedings	See agenda item 10
620 (iv) 17/02/2016	<b><u>Policy on Sexual Entertainment Venues</u></b> - That a Working Party be set up to look at the Council's Sexual Entertainment Venues (SEV) policy.	One further meeting to be undertaken
648 20/04/2016	<b><u>Conditions of Licence for Private Hire Operators, Drivers and Vehicles</u></b> – A comprehensive report on this to be submitted to Committee	Date to be agreed
651 (ii) 20/04/2016	<b><u>Proposals for Vehicle Emission Standards for Hackney Carriage and Private Hire Vehicles</u></b> – That officers be instructed to produce a draft policy for a future meeting based on the outcome of the Committee's deliberations.	Date to be agreed
651 (iii) 20/04/2016	<b><u>Proposals for Vehicle Emission Standards for Hackney Carriage and Private Hire Vehicles</u></b> – That officers engage with the neighbouring West Midlands Licensing Authorities to discuss proposals for a regional emissions standard for hackney carriages and private hire vehicles.	Date to be agreed
720 (iii) 14/09/2016	<b><u>Implications of the Casey Report for Licensing</u></b> – The Acting Service Director of Regulation and Enforcement be requested to report on the outstanding actions in respect of the Casey report.	Report for March 2017
775 14/12/2016	<b><u>Travellers</u></b> – The Acting Service Director of Regulation and Enforcement be requested to report further in February 2017 rather than in six months' time to update on the various work items contained within this report.	Report for February 2017

