

EPPING FOREST LAND REGISTRATION WORKING PARTY

Monday, 12 May 2014

Minutes of the meeting of the EPPING FOREST LAND REGISTRATION WORKING PARTY held at the Guildhall EC2 at 9.30 am

Present

Members:

Verderer Peter Adams

Verderer Michael Chapman DL

Alderman Gordon Haines

Alderman Ian Luder

Deputy Catherine McGuinness

Verderer Dr. Joanna Thomas

Officers:

Natasha Dogra

Lucy Frazer

Sue Ireland

Sue Rigley

Paul Thomson

Town Clerk's Department

Town Clerk's Department

Director of Open Spaces

Open Spaces Department

Superintendent, Epping Forest

1. APOLOGIES

Apologies had been received from Deputy Ginsburg.

2. DECLARATIONS OF INTEREST UNDER THE CODE OF CONDUCT IN RESPECT OF ITEMS ON THE AGENDA.

There were no declarations.

3. PRESENTATION BY THE SUPERINTENDENT OF EPPING FOREST

The Committee considered the report of the Superintendent of Epping Forest and were informed that following the analysis of 1500 deed packets, there remain 31 outstanding issues that can be grouped into five categories:

1. Encroachments (14 issues)
2. Land in Local Highway Dedication Schemes (4 issues)
3. Land in Statutory Highway Dedication Schemes (2 issues)
4. Additional Registration Land (8 issues)
5. 'Shortfalls' of Unregistered Land (3 issues)

Under section 10 of the Epping Forest Act, an Arbitrator was appointed to adjudicate on ownership issues in relation to the extent of Forest Land. After over 300 hearings, a Final Award was made on 24th July 1882 which effectively settled the boundaries of the Forest. The Final Award enjoys the full statutory force of the 1878 and 1880 Acts.

1. Encroachments

There were 14 issues relating to various forms of encroachment on Forest Land. Over time encroachments would ordinarily build up rights of ownership

through a process known as Prescription. Recent opinions given to the Conservators of Wimbledon and Putney Commons indicate that there remains an unresolved issue as to whether land such as Epping Forest, which enjoys statutory protection, can actually yield prescription under the 1832 Prescription Act

Members noted that the City of London needed to determine how vigorously the organisation should pursue land that has potentially been 'lost' to encroachments. Should the City of London reach a situation where action clearly needs to be taken because evidence and facts allow then an application to the Land Registry to rectify the boundary as opposed to a Court trespass action might be the best route forward. An exposure to costs will be present either way. It is impossible at this juncture to comment on the extent of any cost exposure in the event of a loss at trial or land registry adjudication save to comment that a contested case resulting in a loss will be expensive, and could run to many thousands of pounds.

The Remembrancer advised that Queens Counsel's advice on this matter would have limited value. Case Law developed through action in the Courts would be the only effective method of establishing the principle in law that statutory designation is a protection against prescription.

Members were informed that the principle of Estoppel would also need to be considered in relation to long standing encroachments as the City of London as the landowner could be considered to have been dilatory in not addressing encroachments within a reasonable time period making the occupation and subsequent registration binding.

Resolved: That Members agreed:

- (a) Where Forest Land had been formally registered through the Land Registry to a third party or that the land had been occupied for a period in excess of 12 years the City of London abandons attempts to reassert its ownership.**
- (b) Where Forest land was yet to be formally registered with the Land Registry and appears to have been occupied for less than 20 years the City of London makes every attempt to reassert its ownership.**
- (c) That Officers should seek legal counsel and advice from the Charity Commission to provide clarity before the report was considered by the Epping Forest and Commons Committee to ensure**

2. Land in Local Highway Dedication Schemes

The Conservators had the power under section 33(iv) of the Epping Forest Act 1878 to dedicate land to Highway Schemes. The Law Highways refer to the immediate surface, normally defined as 'two spits (spades) deep'. The underlying land would remain in the ownership of the City of London as Forest Land.

Decisions on previous dedications had been taken on the merits of each application and the compensatory arrangements have varied on a case-by-case basis. It may be that the City of London was owed land by the relevant Highway Authorities. More recent dedications have an express clause returning the land to Forest use, should the need for Highway use be no longer required. A number of dedications for road widening have not been realised, and consideration should be given to persuading Highway Authorities to return 'redundant' schemes to Forest Land.

4 Highway Dedication issues had been highlighted as examples. These examples showed the inconsistency of the Land Registration process when dealing with highway schemes. The 4 examples show:

- i. A surfaced and adopted highway that had been registered as Forest that should not belong to us.
- ii. A surfaced and adopted highway, part of which should be registered as Forest which hasn't been, but also as in (1) above, part which has been registered to us and should not be.
- iii. Highway verge – not registered as Forest.
- iv. A surfaced and adopted highway – not registered as Forest but also there is no formal dedication agreement in place.

Resolved: That Members agreed to:

- (a) Work with the Land Registry and Highway Authorities to find a consistent approach to registering Highway Dedications**
- (b) Work with Highway Authorities to return land from redundant dedication schemes to Forest Land**
- (c) Establish a register of Highway Schemes where the City of London is owed compensatory land in exchange for Highway dedication.**

3. Land in Statutory Highway Dedication Schemes

Forest Land had been lost to national highway schemes such as the M25 and A406 North Circular projects. Dedicated enabling legislation has used land swaps to release Forest Land for strategic Highway purposes while avoiding exposure to compulsory purchase schemes which might set an unwelcome precedent for the Epping Forest Acts. Two schemes at the Green Man roundabout at Leytonstone and the A406(T) North Circular Waterworks Corner roundabout at Woodford have both seen significant negotiation prior to construction of the schemes.

Unfortunately, in both cases the Highway Schemes had not been formally assigned to the Conservators on completion of the highway projects. Further detailed negotiation was needed with the Highways Agency, Local Highway Authority partners and adjoining landowners to determine the relative responsibilities for the management of these schemes, ensuring that the outcomes are then properly registered with the Land Registry.

Resolved: That Members agreed to:

- (a) Work with Highway Agency and Highway Authorities to formalise Highway Scheme and Forest Land boundaries and maintenance responsibilities.**
- (b) Register the resulting Forest Land boundaries with the Land Registry.**

4. Additional Registration Land

8 pieces of additional land that had been awarded by the Land Registry totalling in excess of 7.5 acres. This additional land is beyond the Arbitration Award boundary and the Land Registry has chosen natural property boundaries such as road or fence lines, rather than the Arbitration Award records.

Members noted that the City of London had previously denied responsibility for 'no man's land' beyond the Arbitration Award boundaries. At sites such as Forest Glade, there would be additional management responsibilities for the Conservators including hazardous tree management surveys; fly tipping; garden waste disposal issues and parking arrangements that would be contrary to the Epping Forest byelaws. The costs of annual tree survey would be no more than £150. The ongoing costs of tree works are difficult to estimate. The City of London undertakes work on between 300-400 hazardous trees at Epping Forest each year based on a survey area of 1,200 acres (500 acres). This would suggest that a further 7.5 acres could be absorbed within the maintenance scheme without too much additional expense.

Recent valuations of similar land suggest that the 7.5 acres would be equivalent to a purchase value of £112,500. The transfer would also allow the City to address the 'nuisance value' of various management issues which are reported to and investigated by the Conservators in any account. There are other examples throughout the Forest where extra land has been registered as Forest where historically the 'hedge (or bank) and ditch rule' would have applied.

Resolved: That Members agreed that:

- (a) The City of London accepts the registration of additional land beyond the Arbitration Award boundaries and forthwith manages the land as Forest Land.**

4. 'Shortfalls' to existing property 'boundaries' & unregistered 'Forest Land' in unconnected situations.

These 'shortfalls' related to boundaries that were set by the 1882 Arbitration Award that now fall short of subsequent boundary arrangements, leaving agglomerations of land that appear to be Forest Land, but which were outside the Conservator's control. This 'shortfall' land was often considered by users and Local Agencies as Forest Land but was not actively managed or protected as such by the Conservators. This left arrangements regarding hazardous tree management; the removal of fly tips; and the management of vehicle parking difficult to administer effectively.

The 4 metre strip of land adjacent to Broomhill Road, Woodford Green totalling 0.23 acres shows that the strip of land perceived to be Forest on the eastern edge of the Green, is unregistered and the City has no title evidence to claim it.

This land could not be registered with the Land Registry as the City of London has no proof of ownership. The acquisition of this land which could be broadly valued at £15,000/acre would marginally increase the Forest landholding, but would bring additional liabilities in the form of tree surveys; tree works; highway verge and hedge trimming.

Similarly, there were also potential parcels of unregistered land that were originally Royal Forest but have been overlooked by the Arbitration Award of 1882, i.e. Mott Street verge opposite Pepper Alley seen on the 8th March Committee Visit. Again, the City has no title evidence to claim the land, and there would be additional liabilities for the Conservators if the land was claimed in terms of hazardous tree assessment and verge maintenance. There could also be potential benefits in terms of *de facto* development control opportunities and Wayleave/ Easement income over future possible development.

Options to acquire ownership would be to:

- actively manage the land for 12 years before making a claim with the Land Registry, eventually acquiring the land by prescription at 20 years from first active management.
- researching the land ownership with a view to purchasing the land from the Crown Solicitor.
- declaring the land Forest Land under an amendment to the Epping Forest Act by a City of London (Various Powers) Act.

Resolved: That Members agreed that:

- a) The City of London accepts the management responsibility for 'shortfall' land beyond the Arbitration Award boundaries and forthwith manages the land as Forest Land with a view to subsequent acquisition through either through purchase, claim by prescription or Parliamentary action.**

Members thanked the Director, the Superintendent and their teams for their continued hard work and commended the well written and descriptive report.

4. QUESTIONS RELATING TO THE WORK OF THE COMMITTEE

There were no questions.

5. ANY OTHER ITEMS OF BUSINESS THAT THE CHAIRMAN CONSIDERS TO BE URGENT

There was no urgent business.

The meeting closed at 10.45 am
