

Buckingham Fields Scrutiny Task Group Draft Report, April 2008

**Full circle:
from Hampton Nurserylands District Park
to Hampton Common**

Fencing at Buckingham Fields



*Before I built a wall I'd ask to know
What I was walling in or walling out,
And to whom I was like to give offence.
Something there is that doesn't love a wall,
That wants it down.'*

(Robert Frost: Mending Walls)

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Ms Stephanie Heximer, Hampton Community College

Staff at Richmond Reference Library in locating archive documentation

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¹ Maps and aerial view, Appendix 1

² Papers relating to BFWP, Appendix 2

³ See images, Appendix 1

⁴ Regulatory Committee, Agenda Item 4 and papers, Nov 2006, Appendix 3

GLOSSARY OF TERMS AND ACRONYMS

BFWP	Buckingham Fields Working Party (est. June 2000)
CPO	Compulsory Purchase Order
CROW	Countryside and Rights of Way Act
DCSF	Department for Children, Schools and Families
DEFRA	Department for Environment, Food and Rural Affairs
FoI	Freedom of Information
GPDO	General Permitted Development Order (1995)
HCC	Hampton Community College
LBRuT	London Borough of Richmond upon Thames
LEA	Local Education Authority
LMS	Local Management of Schools
NOF	New Opportunities Fund (part of the National Lottery in 2002)
OSC	Overview and Scrutiny Committee
PE	Physical Education
UDP	Unitary Development Plan (the borough's planning blueprint)

1. INTRODUCTION

1.1 *Reasons for the investigation*

The Buckingham Fields Scrutiny Task Group was set up in December 2006 under the auspices of the Environment and Sustainability Overview and Scrutiny Committee following the decision to grant village green status to public land at Buckingham Fields, Hampton North, in the London Borough of Richmond upon Thames (LBRuT). The investigation was in response to local people who believe that there is a need for explanations about the decision to enclose public land within a 3.5m fence, and an opportunity for lessons to be learned about the decision-making process in order to improve it for the future.

1.2 *Membership*

Cllr Marc Cranfield-Adams, Cllr Anna Davies, Michael Gold (chair), Tony Goodall, Cllr Clare Head, Jill Sanders (clerk), Cllr James Mumford, Chair of Environment and Sustainability Overview and Scrutiny Committee (observing)

1.3 *Agreed terms of reference*

1. To establish why the fence was erected without public consultation
2. To establish why the fence was erected where it was
3. To explore the planning implications of the erection of the fence
4. To investigate the decision-making procedures adopted by the Council Departments involved and the channels of communication
5. To examine the responsibilities of the Council in relation to its management of the land
6. To determine whether any conflicts of interest arose
7. To ascertain the costs incurred and examine the sources of finance in the erection of the fence, and the aftermath
8. In the light of findings to make appropriate recommendations to avoid similar situations in the future.

1.4 *Working methods and interviews*

Two preparatory meetings to discuss terms of reference and future work schedule were held on 12 December 2006 and 18 January 2007.⁵

<u>Interviews</u>	<u>2007</u>
Phil Lomax, Assistant Director, Education, Arts and Leisure	30 January
Colin Sinclair, Head of Sport and Fitness; and NOF PE and Sport Portfolio Manager (from 2002)	13 February
David Barnes, Head of Development and Enforcement, and Kate Barnes, planning lawyer.	27 February
Eve Risbridger, Parks Manager	13 March
George Chesman, Assistant Head of Legal Services, and Iain McLean, Principal Solicitor Commercial and Property	27 March
Cllr. Jonathan Cardy, ward member for Hampton Nurserylands to 2002	4 April

⁵ Minutes, Appendix 4

Anji Phillips, Director of Education, Arts and Leisure	4 April
Cllr. Jerry Elloy, ward member for Fulwell and Hampton Hill, and former ward member for Hampton North, Max Hoskinson	16 April
Chris Firmin, Business Manager, Hampton Community College	17 April
Cllr. Geoffrey Samuel, ward member for Hampton North, and Mrs Rosemary Samuel, former HCC Chair of Governors	30 April
Paul Chadwick, Assistant Director, Environment, Property and Procurement	8 May
Residents John Frixou, Maria Frixou, Sydney Smith and Michelle Taylor, and Cllr Jerry Elloy	9 May
Cllr Stephen Knight, Cabinet Member and formerly chair of the Education Committee (until May 2002)	3 December
Gillian Norton, Chief Executive	3 December

Twenty-one people were interviewed and a contemporaneous shorthand note taken: ten Officers, four residents, four Councillors and one former Councillor, the Business Manager for HCC and the former Chair of Governors HCC. Titles of interviewees were, as far as we know, those at the time of the events reports, but may have since changed.

Task group members also met amongst themselves to discuss and draft the report: 15 May 2007, 10 October 2007, 4 January 2008, 7 January 2008, 14 January 2008 and 30 March 2008.

The investigation was undertaken by members of the Task Group, who also drafted and finalised the Report. They received no administrative or clerking support from the Council. For this reason, the style and presentation of this Report may vary from those that have had Officer support. Once the initial draft was completed, it was circulated to all interviewees for comments by 14 March 2008. All but two interviewees made comments either directly or in association with another. Issues of accuracy and balance were then integrated into the final draft, which was then agreed by all members of the Task Group to produce this final version.

2. SUMMARY

Proposals for significant changes to public parks and open spaces should draw on the learning experiences from Buckingham Fields (now Hampton Common). We make the recommendations contained at the end of this Report to avert something similar occurring in future by improving engagement between the Council as land owner and guardian of public parks and open spaces and local residents and users of public parks and open spaces. It is our belief that these recommendations, if implemented, will improve decision-making and go a long way to prevent conflict between the local authority and residents, and those who live, work and attend schools in the borough. We recognise that there is no easy answer with consultation and a Council can only do its best; but a Council must be seen to be doing its best.

2.1 Findings set against the terms of reference:

1. To establish why the fence was erected without public consultation:

There was no statutory necessity for public consultation on the fence itself because it was deemed permitted development. The Buckingham Fields Working Party (BFWP) was a missed opportunity for public consultation from early in 2000, and we can find no good reason why none was carried out. The

decision to erect the fence in preference to the school's own priorities⁶ was taken by senior Officers, after which there was no opportunity offered for consultation, not even through the planning system, by virtue of the General Permitted Development Order 1995 (GPDO), where limited consultation could have been possible.⁷ We can find there is no clear explanation of why the Council disregarded the school's own preferred projects, though we recognise that there were communication problems with the school at this time.

2. To establish why the fence was erected where it was:

The location was a choice made by senior Officers,⁸ for reasons of cost and expediency, but without reference to BFWP discussions, local opinion or priorities clearly stated by the school.

3. To explore the planning implications of the erection of the fence:

The GPDO did not match the fence that was erected,⁹ which differed materially from the drawings on the planning application. The GPDO removed the requirement for public notification and the statutory 21 day consultation period normally associated with a planning application. It is also noted that the fence as erected differed materially from the original drawings agreed by Council Officers.

4. To investigate the decision-making procedures adopted by the Council Departments involved, and the channels of communication:

We find that there were no clearly co-ordinated decision-making processes. Good decision-making requires clear accountability and the organisation to ensure that the people concerned are informed, consulted, understand the appropriate response channels, and are told the outcome with full explanation for its reasons. Little of this took place. The BFWP lacked leadership and accountability. In consequence, muddled messages were sent out resulting in poor communications and conflict. The upshot was that local people themselves took the lead from June 2005, with the objective of getting Buckingham Fields taken out of Council hands and put on the Commons Register.

We draw attention to the Council's own Constitution as a reference point:

13.02 Principles of decision making

All decisions of the Council will be made in accordance with the following principles:

(a) proportionality (i.e. the action must be proportionate to the desired outcome);

(a) due consultation and the taking of professional advice from Officers;

(b) due consideration to the interests of residents and other stakeholders;

(c) due process;

(e) in accordance with legislative requirements;

(f) respect for human rights;

(g) a presumption in favour of openness; and

⁶ Letter from Hampton Community College to the Education Department, Appendix 5

⁷ Permitted Development Order and Certificate of Lawful Use, Appendix 6

⁸ See quotes from interviews later in this report

⁹ See quotes from interview later in this report

(h) clarity of aims and desired outcomes.

A record of what options were considered and giving the reasons for the decision will be prepared (in accordance with the requirements of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000).

The relevant doc (Article 13 of the Constitution, Decision Making, is here: http://www.richmond.gov.uk/constitution_part_2_article_13-2.pdf)

5. To examine the responsibilities of the Council in relation to its management of the land:

The Council was not well informed about the views of the local users and residents and did not take sufficient care to share information with them. The failure to consult is admitted by Officers in their interviews – it had been expected that Hampton Community College (HCC) would take the lead in consultations, as schools involved in other Lottery funded projects had done. The Council failed to keep accurate records, and so was unable to confirm the status and designations of the land. It also failed to respond to the groundswell of local opinion.

6. To determine whether any conflicts of interest arose:

The Council operated without sufficient co-ordination across and between its Departments. Where potential conflicts of interest arose within a Department, systems were not in place to deal with them. The Village Green Application particularly illustrated issues of role conflict within the Council's legal Department that were not adequately explained.

7. To ascertain the costs incurred and examine the sources of finance in the erection of the fence, and the aftermath:

We have only the cost of the external legal advice (according to Mr Chesman, £9,000); other costs we are told cannot be quantified, but they amounted to many days of senior Officer time for investigations and production of reports. It is accepted by senior Officers that there are long term implications for the Council of having a borough-owned asset placed on the Commons Register

8. In the light of these findings, to make appropriate recommendations to avoid similar situations in the future (see Section 8).

3. HISTORY OF THE SITE

3.1 Boundaries

Hampton Nurserylands District Park was established following a public inquiry into major development of the area in 1977. The Inspector recommended that 15 acres of land should be assigned to dual use playing fields for Rectory School, now Hampton Community College (HCC), and the public; the remainder of the 60 acre area should be open space for public recreation and enjoyment, and the whole area was to separate Hampton from Hanworth with a piece of green belt land. The original report and recommendations in full are no longer obtainable. The legal Department of Richmond upon Thames Council has stated that it no longer retains the document, which has not been located elsewhere. The Department has added that, under normal retention policies, files from the Town Clerk's Department (which at the time included legal services) for this contested planning application and compulsory purchase order have long since been destroyed. Nevertheless, according to the Planning Inspectorate, and

successors to the Department of the Environment, it is the local planning authority which is the guardian of this essentially local planning document.

There has been prolonged confusion over boundaries from the Council and among the residents. For example, an area lying between the school pitches and the public open parkland has apparently been 'double funded', falling between the Council's parks Department and the school. There is also some highways land involved and a small local nature reserve. Boundaries are not apparent either on maps or on the ground and no pitches have been marked out for several years.

3.2 Legal status and designations

This has been uncertain and confused.¹⁰ Local people were however able to prove that the entire area has been used by the general public since its designation as park and dual use playing fields. At his interview, Mr Chesman said: *'The freehold is vested in the Council and there are no subsidiary interests. That is the legal status.'* - *'It was held by the Council and administered as a park....'*

3.3 Usage of the dual use playing fields

According to local people, the school has not used its five pitches (15 acres) for the best part of a decade. Hampton Community College has had management of this land, under Local Management of Schools (Education Reform Act 1988), for some years with funding set at between £30-50,000. Richmond upon Thames Council's legal Department states there is no record of the date for the start of this new funding arrangement, nor any associated documentation. Local people report that the playing fields were regularly used in the past by the school, and for school sports days, and also by local teams. However, over the past seven or eight years, the standard of care and maintenance of the pitches has been poor, a fact acknowledged by all parties. The pitches were not marked or managed as playing fields, and unsuitable for playing. Local users and residents have occasionally registered complaints about litter and vandalism. One of the problems local people reported was: to whom are those complaints directed for action – is the school or the Council responsible for any remediation work?

3.4 Management of the pitches and park

From the interviews with the residents, it is clear that in the past management of the entire area was more satisfactory, especially when there was a park keeper living in a property on site. At some stage following the introduction of Local Management of Schools (LMS) in 1988, with a budget to maintain them, the five dual use pitches became the responsibility of the school. However, under LMS, it is schools that have control of their budgets.

Gillian Norton: *'Schools have a lot of power and we (the Council) have overall responsibility without power.'* - *'We can't use the money to maintain the pitch; the school has the power. We are between a rock and a hard place.'*

Philip Lomax: *'Once you have devolved funding to schools you can't change the way that works. You can't revoke it after it has been devolved to schools.. The Council gets funded and it goes to the school.'*

Cllr Stephen Knight: *'There had been an ongoing problem with the school, which effectively owned a portion of the Buckingham Fields land. The boundaries between what the school owned and what Parks owned didn't go down the centre of the pitches so there was some dispute over who managed what. The school was not spending the budget it got for maintaining the sports pitch. Because of the different bodies of the*

¹⁰ See interviews later in this report

authority (counting the school) with responsibility for it, nobody was taking responsibility for ownership of the field and taking control of it.'

Cllr Jonathan Cardy, ward member in 2002: *'I soon discovered that one bit was managed by Parks and another belonged to the school. The bit that belonged to Parks, I was able to get things done relatively easily; the bit that belonged to the school I had more difficulty. So eventually someone came up with the idea to set up a working party to do something about Buckingham Fields.'*

Local residents and users of Buckingham Fields:

'There was a lovely pavilion built... Everything was going first class. They had a park keeper living in the bungalow. When he disappeared, was mainly when all this trouble began.'

'There was one park keeper for the park and looking after the playing fields and marking them out for the sports according to the season. Others helped him out. But these people were made redundant and the school was allocated to looking after its own pitches and I strongly believe this is when things started to change for the worst.'

'...the feeling you get from the people locally is that they have a vital interest in this place because they have seen it develop from the Nurserylands days and they understand that the park was constituted as it was and they know the background to dual use.'

'Unfortunately the playing fields weren't being looked after and they weren't being used and so it becomes a vicious circle.'

'The school never marked pitches. I had no issue with dog mess more than any other park, I didn't see broken bottles. As the years went on my children started to play football, there was a club for under 11s that played right by my house. In the early years, the pitches were marked out with football posts, and a running track in summer. It was there for a long time and suddenly it wasn't there - say in the last six years, probably.'

4. BACKGROUND AND SUPPORTING EVIDENCE¹¹

Our understanding of the background to this issue and state of the site is based on four sources: interviews with the principal parties concerned (including Councillors, Officers, school managers and members of the public); minutes and proceedings of relevant Council committees; the Buckingham Fields Working Party; and the governing body of Hampton Community College. Of these, the minutes and proceedings of the Buckingham Fields Working Party (BFWP) have been most significant. This is because they focused specifically on the issues surrounding Buckingham Fields immediately prior to the successful lottery bid, which funded the fencing, and reflect the Working Party's deliberations.

Council committees and the governing body of Hampton Community College (HCC), though they produced written documentation, had of course far wider remits to consider. Interviewees relied on their memories stretching back as far back as the time of the working nurserylands greenhouses, some of which still existed at the time of the Compulsory Purchase Order enquiry in 1976-7. There was also available some useful documentation from the Council secured under Freedom of Information. For these reasons, the chronology of events outlined below is based on the BFWP,

¹¹ Readers should note that the administration was under the control of the Liberal Democrats between 1983 and May 2002. The Conservatives took control in May 2002 until May 2006, when the Liberal Democrats took over again.

supplemented where appropriate from other sources. We believe that this method is likely to reflect as accurate an account of events as possible.

4.1 Buckingham Fields Working Party: formation and limitations¹²

On 29 June 2000, Agenda item 12 of the Education Committee contained a report from Anji Phillips, the Council's Director of Education, Arts and Leisure, to look at issues regarding Buckingham Fields. The recommendation was *'that the Committee constitute and nominate Members to serve on a working group, including local ward Councillors, to look at issues regarding Buckingham Fields, which need to be addressed to bring this issue to a resolution, and report back to the next meeting of the Education Committee.'*

4.1.1 **'Details'** in the Education Committee's report included the dumping of rubbish, unauthorised usage of pitches, dog fouling and litter, all of which appear to have worsened from the time of Local Management of Schools, when care and maintenance of the five dual use playing pitches (school and community) was given to the school, along with a significant budget. However, the report stated that this budget was 'not adequate to maintain the fields given the current level of access and resulting damage'. Interestingly, the report highlights issues relating to enclosure, fencing and rights of access that subsequently led to submission of a Village Green Application by residents and users in 2005. The contemporaneous view of the planners in June 2000 was that *'permission might perhaps be gained for fencing to be erected provided that the open character of the field was maintained'*. Also, *'some issues on any rights of access still need to be resolved by Estates and Valuation'*. If erected *'there could still be problems with damage to the fencing particularly since public access to the fields appears to have become established by usage'*. Problems were identified at this early stage and, with hindsight, the predictions highlighted in this report proved accurate¹³

4.1.2 Though the school was funded to maintain playing fields, the report stated that *'this funding is not adequate to maintain the fields given the current level of access and resulting damage.'* The report noted that: *'No money is available under the Authority's asset management plan.'*

4.1.3 From the outset, it was not clear who was on the Buckingham Fields Working Party (BFWP). There was a varied membership of Councillors, members of the governing body of the school and Council Officers. There was only one member of a local amenity group, the Hampton Society, and no other members of the public.

Cllr Jonathan Cardy: *'I first turned up thinking it would be an opportunity to get things done.... I quickly realised that other people had another agenda so we wound up without a focus. I think it was education-driven. I was pushing things as a ward Councillor.'*

According to the notes of meeting attendance, there was not much continuity in membership. Users of the field, such as local teams, 'uniformed' youth groups, or other organisations/local people with a direct interest in the state of the playing pitches, were not represented. There were no officials appointed for the Working Party: no one was designated as chair or secretary/clerk, for example. It seems, where notes from meetings are attributed, that they were written up by an Officer from Education or Parks Department.

¹² Papers for BFWP, Appendix 2

¹³ See photos in Appendix 1

- 4.1.4** There do not appear to be any terms of reference. Meetings were convened by the Officers.

Cllr Cardy: *'It was never chaired by Councillors.'*

In fact, after the second meeting, it can be seen that the meetings are wholly in Officers' hands. The minutes are brief, and do not attribute information, or record opinions. There do not appear to have been any issues on which a vote was taken nor was any action proposed. For example, neither the Council, nor the BFWP, considered sending out a questionnaire to local residents and users seeking their views. This failure stands in contrast to the consultation of public opinion that takes place over controlled parking zones, planning and licensing applications, and road safety proposals, for example.

- 4.1.5** Because of the damage done by vandals, and the destruction of the pavilion, it is surprising that no members of the police force were invited to join the BFWP. Even a random police presence to deter vandals never seems to have been suggested, though it is recognised that local policing was more limited before the introduction of the Safer Neighbourhood strategy.
- 4.1.6** There was no brief given to the BFWP to crystallise thinking of what they were being asked to achieve and more importantly for whom. They were given a short time limit to report back to the next Education Committee meeting. They were not asked to produce a report independent of the Council, or to submit it to local residents. According to the notes available, they interviewed no one to help accurately assess the situation.
- 4.1.7** Since June 2000, there has been major reorganisation of Council processes, leading to the Cabinet model and formation of Overview and Scrutiny Committees. However, the operation of working parties seems to have been left out of the Council's Constitution. Despite receiving the instruction from the Education Committee on 29 June 2000, the first meeting of the BFWP was not convened until 7 February 2001, some seven months later. The next Education Committee which, according to the recommendation, was when the Group should have reported back, took place in October 2000.
- 4.1.8** However, there was a meeting of HCC governors on 29 June 2000, which may help identify the school's opinion about maintenance of community-related facilities, with a reference to core business of the school being education for 11-16 year olds, rather than management of community assets.

4.2 Examination of Buckingham Fields Working Party activities

There are five meetings of the BFWP on record:

- Meeting 1: 7 February 2001
Meeting 2: 7 March 2001
Meeting 3: 2 April 2001
Meeting 4: 18 December 2001
Meeting 5: 11 March 2002

4.2.1 Meeting 1: 7 February 2001¹⁴

¹⁴ Those present were four Councillors, Alexander, Cardy, Samuel, Maureen Woodriff; Rosemary Samuel, the chair of HCC governors; four Council Officers, Jessica Saraga (Education), Philip West (Building and Development), Tom Brown (Operations Manager) and Stuart Taylor (Community Safety)

The first meeting focused on a report from Philip West covering the ownership, funding and maintenance of Buckingham Fields, together with a map showing ownership, which is not included with the copies of the minutes obtained.

There was clearly a lack of information about ownership, management and boundaries. The point is made that Hampton Community College (formerly Rectory School) is unique in having its playing field designated public open space. The notes indicate an ambivalent attitude on the part of the school, from needing complete control if it was to discharge its responsibility for the area, to the difficulty of justifying spending money on the field to parents, who might prefer it spent on the curriculum.

The group formulated eight questions that were to be taken to the HCC governing body for consideration, though the word 'fence' appeared nowhere in these minutes. It is worthwhile examining these questions in detail, as they are an indication that at this early stage the Council was thinking ahead to possible outcomes and pointing out problems (see 4.2.1b).

- 4.2.1a** The HCC Governors met a week or so later, on 15 February 2001. At the end of the meeting, under Any Other Business (point 10), we read that Governors had received the minutes of the meeting [of the BFWP] on 7 February (2001).

Rosemary Samuel, chair of the governors, reported on the BFWP meeting for HCC governors:

Borough's proposal to increase funding because it is the college playing field as well as a public open space

The areas 'A' and 'B' marked on the map¹⁵ would be brought up to standard before all was handed over to the college (replace existing fence/gates, prune trees and shrubs to hedgerow)

The future of the conservation area to be reviewed with the borough (neighbours to be consulted)

There may be a problem with glass from the redevelopment (of the former greenhouses).

General discussion followed at the Governors' meeting:

Most secure piece of land is marked 'B' on the map (plus extra piece)

This seems the best place for the football pitch

'Planning permission may be needed if steel storage unit to be available for storage of college equipment

John Gossage mentioned the possibility of raising the kerb to prevent cars being driven over it.

Gary Hide [was] concerned it may be a financial drain on the college and would prefer to see facts and figures. Clive Neathey [Dep.Head] explained that the community income at large was subsidising some aspects of the college's main budget. Clive Neathey (Dep.Head) agreed to liaise with Leisure Services to quantify the amount of additional funding that would be required to maintain the field at a standard comparable with the district park.

Currently, high level of illegal use, which would be regularised if the college took it over.

Officer). Apologies were received from Emma Wilson (Ecology Officer), Eve Risbridger (Parks) and Bill Weisblatt (Chair of Hampton Society)

¹⁵ No copy of this map showing areas A and B has been located

Funding may be available from the Playing Fields Association.

4.2.1b The HCC governors' answers to the eight questions raised by the BFWP are noted in *italics*.

Q1) Could governors talk to the college's neighbours on the field to arrive at a common understanding of the boundaries shown on the map? *John Gossage and Rosemary Samuel offered to do this. At the present moment, the college is maintaining the areas marked in red on the map. Since these do not belong to the borough/college, it would be possible to consult with the neighbours to point out that whereas at present we are actually caring for the areas that do not actually belong to the borough/college, nevertheless for a fee the college would be happy to continue to maintain these areas.*

Q2) Would the governors wish to regularise the position on Area B, which is owned by Leisure Services, but included as part of the college grounds for funding purposes? *Governors would wish to assume ownership of Area 'B'. This was agreed by a majority decision.*

Q3) Would the college wish to identify a part of the Field, say Area B plus a part of Area A, to use as a sports field and give up the rest? *No*

Q4) If so, would it be possible or desirable to enclose such an area? *The college would like to enclose it themselves for use as their best pitch.*

Q5) If the area used by the college remains open would the governors wish to see it treated on a different basis from other schools' sports fields as the only one, which is also a public open space? (This would be subject to consultation under the Fair Funding procedures.)

Yes. If college takes on the whole field the sign 'School Sports Fields' (or something similar) could be erected. John Gossage also suggested that kerbs be made higher or bollards put in place to prevent cars going on the field.

Q6) Alternatively, would the governors support consultation on treating separate playing fields for all schools, where this applies, under a split site agreement? *If appropriate.*

Q7) Would the college wish to relinquish the triangular areas, if this were possible? *Yes, or consult with neighbours et al, if possible to level grass and plant trees, rather than leaving as a conservation area. which is always difficult to 'manage' due to dumping of rubbish, etc.*

Q8) If any extra funding became available in the future through a change in the formula, would the governors wish to consider spending it on the maintenance of the field? *Governors would not commit future governors, but it would be in the college's interest to respect this. Governors would certainly want to improve the facilities for the public by providing 'dog loos'.*

The word 'fence' is not used in this discussion; only enclosure. Nothing further was noted about the situation in Buckingham Field at the next two Governors' meetings on 29 March 2001 and 24 May 2001. Buckingham Fields do not appear in the minutes of the full HCC Governing body again until 14 July 2005, nearly four and a half years later, when the fence was in place.

4.2.2 Meeting 2: 7 March 2001¹⁶

¹⁶ Those present were three Councillors, Alexander, Cardy and Samuel; Alessandra Wilson (Head Teacher of HCC, now deceased) and Clive Neathey (Deputy Head of HCC); Rosemary Samuel, chair of HCC governors; four Council Officers, Saraga, West, Brown and Peter Joyce (standing in for Eve

The Chair of HCC governors introduced an extract from the draft minutes of the HCC Governors' meeting of 15 February 2001, telling the working party that:

- a) areas A and B were in relatively good condition;
- b) chestnut paling needed to be removed;
- c) the hedgerow needed to be replenished and supporting fencing improved;
- d) the field needed spiking and harrowing. However, Tom Brown (in attendance) stated it could be only spiked to about one foot.

We can only assume that this is on grounds of health and safety, due to the demolition of the old glass greenhouses in 1977, which may have left glass pieces in the soil. This was an issue which at one stage caused some concern but on which there was clarification from interviewees.

Cllr Cardy: *'There was a huge area of greenhouses and at some time in the 1970s they were demolished.... That is why Nurserylands had a problem with broken glass. We didn't know enough about where the glass was. It's not broken glass, it's migrating glass. An intensively used pitch had to be sited somewhere where broken glass was not going to start emerging in a badly worn goal mouth.'*

Philip Lomax: *'Glass migration comes up frequently as a rationale for not using the pitch for sporting purposes. This was referred to as contamination through terra firma by the Parks Department who said that it was not [is not] a problem.'*

In point 3 of the subsequent discussion, there occurs the first use of the word 'fence', though it is not clear by whom:

'The need to consult locally on a proposal to fence off the field was discussed. Local users would need to be alerted. Planners have previously expressed a view that if the open character of the land were retained there was no obvious obstacle. Planners will be contacted again. (Action for this point was with Philip West.) The school will liaise with Leisure services. (Action for this point was Clive Neathey and Tom Brown.)'

Bill Weisblatt, chair at the time of the Hampton Society, pointed out that the hedge was a site of house sparrows, which were increasingly rare, and that a hedge supported by a fence was a desirable prospect. (Local people called the boundary hedge the 'sparrow hedge' because sparrows were observed using it.)

4.2.3 Meeting 3: 2 April 2001¹⁷

This merits less than a page of notes and many previous attendees were absent. At this point concern was expressed for wildlife.

It was agreed that *a report should be submitted to whatever the relevant body in the Council would be following reconstitution, outlining a proposal to fence off the whole area needed by the school in order to keep it dog-free, and requesting funding - to be actioned by Jessica Saraga of the Education Department.*

Risbridger); Bill Weissblatt (Chair of Hampton Society). Apologies were received from Stuart Taylor and Emma Wilson

¹⁷ Those present were two Councillors, Cardy and Samuel; Alessandra Wilson (head, HCC), Clive Neathey (Deputy Head, HCC) and Rosemary Samuel (Chair of HCC governors); two Officers, Jessica Saraga, chaired the meeting, and Tom Brown. Apologies were received from Officers (Joyce, West and Wilson) and Bill Weisblatt, (Chair, Hampton Society)

In under a month (7 March 2001 to 2 April 2001), the BFWP has moved from vague discussions to a proposal to 'fence off the whole area needed by the school'. The points discussed at the previous meetings and raised in the initial Education Committee agenda item of 28 June 2000 are inexplicably absent. It is as if those previous meetings, which detailed problems and options, had not taken place.

There were then no further meetings for eight months, until 18 December 2001.

4.2.4 Meeting 4: 18 December 2001¹⁸

Six people attended, but only two provided an element of continuity having attended earlier meetings. The notes of the meeting are recorded as a series of bullet points. It is not clear that this was the Report requested by the Education Committee in June 2000.

This first group of 18 points is simply headed Philip West, who one assumes to be the author.¹⁹ One can only speculate as to the importance of these points, including their relevance, influence and meaning etc., given that the document is so brief. There is no record of Working Party members' opinions and no record of any discussions. The report then makes six even briefer points, gathered up under the heading of 'Alternatives'.

Finally there is a group of ten bullet points headed 'Options'. It is worth listing them here in full:

- 1 *NOF [New Opportunities Funding] for sports may be available (£50K - £100K possibly)*
- 2 *£850K allocations – 100% funded*
- 3 *Bids have to be submitted for it*
- 4 *'Fresh start' – to invest now*
- 5 *Fence whole or part*
- 6 *Explore development along Tangley Road*
- 7 *SLA to School*
- 8 *Regular maintenance*
- 9 *Irregular top ups*
- 10 *Lettings – offset income*

School receives c £30K and spends c £6-

Might cost £10-£15K annually plus one-offs c £25K

Finally, under a heading 'Proposal', the group asked ER (Eve Risbridger) and Colin Sinclair (not present) to arrange to meet Ian Flintoff (Head of HCC) to discuss:

- *Options for maintenance*
- *Fencing*
- *NOF/Football Foundation*
- *Pavilion*

¹⁸ Those present were three Councillors, Alexander, Knight and Rae (these last two Councillors for the first time); Richard Gurd (unidentified); two Officers, Eve Risbridger and Philip West. Apologies were received from Jessica Saraga (there were no other apologies)

¹⁹ Philip West was a Council Officer who left in August 2002

- *PFI Mike Walsh*
- *Long term vision – 5 years +*
- *Need firm recommendations/options for fencing (H & S issues).*

4.2.5 Between the fourth and fifth BFWP working party meetings, the College and Community Subcommittee of the HCC Governing Body met on 29 January 2002.²⁰ This is recorded: *'Buckingham Field. National Grant for upgrading sports field. Could also include old gym and maybe changing rooms.'*

In the minutes of the HCC Governors' meeting of February 2002, point 9 of the Premises Project records: *'CF (Chris Firmin) Paper tabled - explained the bids that are being put in to:*

- a) Refurbish the old PE changing rooms.*
- b) Refurbish older parts of the college.'*

Just before this, point 7 records: *'Report from Director of Arts and Leisure, Part B*

NOF (New Opportunities Fund) £800,000 is available across authority. Bids going ahead.'

4.2.6 At his interview with the Scrutiny Task Group on 17 April 2007, Chris Firmin confirmed this preference for refurbishments on the school site and made no secret of his dislike of the project to fence Buckingham Fields with funding from the New Opportunities Fund (NOF) of the National Lottery. He had outlined the school's preferred projects clearly in a letter to Phil Lomax early in February 2002,²¹ as required by the NOF which requested these projects should be school-led with the objective of improving sporting opportunities for both schools and communities. This letter, however, had no influence on the Council's decision on NOF funding for HCC. Colin Sinclair's explanation, in a written response, was that he understood that the Buckingham Field proposal had been submitted for consideration for inclusion in the NOF portfolio by the Chair of HCC governors. There is, however, no evidence of such a submission.

4.2.7 Meeting 5: 11 March 2002²²

The final meeting of the BFWP was held on Monday 11 March 2002. Once again, it is not clear who was chairing or recording the meeting, but Anji Phillips presented many of the facts and the resulting conclusions. As can be seen from the Minutes in the Appendix, the whole tenor of the group meeting had moved from consultation to announcement. There is no record of discussion of the alternative projects advanced by HCC for refurbishment of sports facilities on the school site. It is not clear at any stage who called, drove or conducted any of these meetings.

It is clear that the purpose of this BFWP meeting was to announce: *'The proposal to be included in the NOF bid was outlined: an estimated cost of £50K for fencing a pitch area and some renovation works to the pitch. The WP felt that this did offer a way forward'.*

²⁰ Chris Firmin (HCC Business Manager) joined the school on 28 January 2002 (the appointment was announced at the Governors' meeting of 12 February 2002

²¹ Appendix 5

²² Those present were Councillors, Alexander, Cardy, Samuel and Woodriff; Rosemary Samuel (Chair of HCC Governors), Ian Flintoff (HCC Principal), Chris Firmin (Business Manager); Bill Weisblatt, Chair, Hampton Society, and four Officers, Eve Risbridger (Parks), Tom Brown (Environment), Anji Phillips (Director of Education) and Philip West (Buildings/Development)

The last sentence embodies an independent thought and decision making process, which the Working Party had not hitherto shown. This Working Party would have been the ideal forum to discuss the school's preferred NOF bids. However, the proposal for fencing was subsequently ratified 'on the nod' by the Cabinet at its meeting later in March 2002, even though the recommendation to Cabinet was to 'consider applications received under this scheme'. Yet it should also be noted that the Education Overview and Scrutiny Committee that met shortly after the Cabinet did not raise any objections to the Cabinet's decision either. All schools had been invited to submit applications - which HCC had done in the timeframe in its letter to Mr Lomax. HCC had not applied for funding for fencing; the fencing project approved by the Council did not resolve the concerns identified by the BFWP, and expressed by the school, nor take any account of preferences expressed by the school.

It was noted that the HCC governors needed to approve the NOF proposal before submission in April.

This was the last Working Party meeting and the question to answer is: why did the working party achieve nothing, even though it could and should have done so?

5. THE LOTTERY BID (New Opportunities Fund, NOF)

In November 2001, the New Opportunities Fund (NOF) dispatched a programme to all Local Education Authorities (LEAs) in England inviting bids for improving schools' sports facilities with a related aim of creating community benefit. Richmond upon Thames was allocated £849,000. A senior management team was subsequently formed, including representatives from the LEA and Colin Sinclair, Head of Sport and Fitness, to decide on who would take lead roles in the programme. Colin Sinclair was appointed NOF PE and Sport Portfolio Manager in January 2002. The NOF Portfolio included 12 separate applications benefiting over 20 schools in the Borough. It was made clear to individual schools that their responsibilities covered a range of issues, including assistance with scheme design, consultation with neighbours and other stakeholders, and attendance at client/contractor meetings. In all cases – except Hampton Community College (HCC) – schools willingly accepted these roles.

Accordingly, in February 2002, all schools in the Borough were invited to submit bids including, of course, HCC.

5.1 HCC submitted its proposals in the letter from the business manager, Chris Firmin, which were on the table for the then Liberal Democrat Cabinet (25 March 2002)²³ and the Education and Culture Overview and Scrutiny Committee (27 March 2002). Four proposals for HCC were listed as Appendix A under item 16 of the Cabinet agenda:

Project	Estimated cost	Comments	Yes/No
i. Renovation of changing rooms	£48,000		No
ii. Installation of gym lighting and ventilation system	£12,000		No

²³ Cabinet and Education Overview and Scrutiny, March 2002, Appendix 7

iii. Storage	£15,000		No
iv Fencing football pitch at Buckingham Field to prevent public access.	£50,000	Poor outdoor provision	Yes

Projects i, ii & iii were proposals submitted by the school; iv was not.

At that Cabinet meeting, the fencing scheme was adopted in line with the recommendation and it was subsequently taken forward as part of the LEA's NOF bid (which included 17 primary schemes, five secondary schemes, four other and one adventure play). The Education and Culture Overview and Scrutiny Committee endorsed the recommendations two days later.

The school's proposals, for renovations and storage facilities, were dropped.

5.2 Questions to answer include:

1. What was the school's interest and involvement in each proposal?
2. How was the fencing proposal drawn up, and by whom?
3. What was HCC's response to the successful fencing proposal and omission of its own proposals?
4. Why did the Cabinet choose the fencing proposal, and reject the other three?
5. How was the exact location of the fence chosen?
6. How did the fence actually affect the pitch usage?

Q1. What was the school's interest and involvement in each proposal?

HCC's preferred project was to refurbish the changing rooms and the old gym. A new sports building had been completed in 1998/9, but the old changing rooms and toilets remained dilapidated and vandalised. As a result, the older sports building, which included a gym with a sprung floor, was not available to the public, which is why HCC prioritised the refurbishment. However, according to Max Hoskinson, who was elected as Councillor in May 2002 and later joined the governing body of the school as a member of the premises committee, there was no communication: *'We didn't know about the letter from Chris Firmin saying what the school would like from the New Opportunities Fund.'*

According to Colin Sinclair: *'There were difficulties within the school at the time. We left them the blank application forms because they had a big input into that. From thereon there were difficulties in engagement with the school, and you will see that from correspondence. We had to press the school to engage in terms of drafting the application form because we had to get them in by March 2004. We had to put pressure on the school to complete the process.'*

Cllr Geoffrey Samuel: *'I don't know who took the decision. The Working Party - I feel that borough interests may have been an influence.'*

Q2. How was the fencing proposal drawn up, and by whom?

The fencing proposal was drawn up by Colin Sinclair with consultants. The objective was to improve the chosen area, since it was believed that less was needed to raise it to a good standard than other grass areas. The school still had access to the original five grass pitches (15 acres), assigned by the planning inspector in 1977. It is widely accepted that these pitches were poorly maintained by the school under LMS and little used. It was apparently as a result of the deteriorating condition of these pitches that

the fenced pitch scheme was considered so important. The issue of consultation was not addressed at this or any subsequent stage. The appearance of the fence in June 2005 came, as one resident stated, "out of the blue".

Philip Lomax: *'The conclusion Officers came to was that there was not a duty to consult. They had sufficient authority to go ahead and erect the fence.'*

David Barnes, when commenting on whether local people should be consulted by way of the planning control process over proposals that do not require planning permission, said: *'It is not in the public interest to consult people and mislead them into thinking that their response would have some impact on the decision to be made by the planning authority. I am strongly of the view that should not be done.'*

Anji Phillips: *'There is a danger, if you enter into an in-depth consultation and there is no formal planning, you will get people objecting when we have to do it.'*

Q3. What was HCC's response to the successful fencing proposal and omission of its own proposals?

The NOF system involves a two-stage process – a tight timetable for NOF to approve the entire portfolio of proposals, and then a separate application for each proposal – and HCC was meant to be involved at all points. However, the Council team encountered a reluctance from the school when trying to liaise and take the project forward.

Colin Sinclair: *'I didn't encounter any enthusiasm. ... The school business manager made it clear in the correspondence, where he wasn't engaged or particularly supportive of the project.'*

Anji Phillips: *'The project was difficult to manage and we pushed and pushed and the person who was leading from the college didn't want the field, didn't want the project, that wasn't the voice of the governing body or the ward Councillors.'*

Chris Firmin: *'It wasn't our choice and really from my point of view anything to do with consultation would be by the people who were running the project. We weren't running the project, we weren't doing specs...'*

'We wanted to refurbish the old gym - a very good dance floor there...'

Although meetings with the (then) head teacher and the school's business manager, Chris Firmin, took place, the Council had to exert pressure on the school to get the necessary forms completed by the March 2004 deadline. There was clearly an ambivalent attitude to the proposal for the fenced pitch. It was not favoured by the business manager or, according to him, by the sports Department staff, who considered the area too distant and difficult to access as it was off-site, some 25 minutes' walk there and back on public footways.

Phil Lomax: *'It was evident at that early stage, there was a gap in terms of the ownership and commitment for the initiative within the leading Officer at the school. We were getting a range of different messages about what the school was looking for and how the project was being taken forward.'*

Chris Firmin: *'The whole area was very unpopular with the PE Department. They didn't want to know really.'*

'They never used the facilities on the old school fields, they were never let out.'

Mr Sinclair acknowledged the school was persistently unenthusiastic about the project and he suggested perhaps dropping it for something else (though in his written reply, he pointed out that the school's contribution to stage two of the NOF bid had demonstrated **some** commitment). Nevertheless, because it would have no changing or other facilities, the school business manager was always convinced that the facility was

'doomed to failure'. Enclosing the pitches had been flagged up by the BFWP as a deterrent to dog mess, anti-social behaviour and 'illegal use'. Chris Firmin, HCC business manager, described the fence scheme as 'a bit of a done deal', adding that the LEA had decided that the School was getting a sports field and that 'it didn't seem to be our decision particularly'.

Chris Firmin: *'I was against it because there were no changing rooms, and I didn't see how you could have a public pitch without changing room and car parking area. The whole thing was doomed to failure. That is my opinion.'*

However, the then Vice Principal of the school eventually submitted the signed project on behalf of the school governors as its NOF bid. But Chris Firmin commented: *'First was the selection process and that seemed to be more or less decided, and we didn't seem to have a lot to say. And then we put together a full bid application that went on for about 88 pages. We did help with it and make it sound it was a fantastic scheme to benefit a huge proportion of the population, and tick all the boxes.'*

Q4. Why did the Cabinet choose the fencing proposal, and reject the other three?

Philip West (building development Officer), Anji Phillips (Director of Education, Arts and leisure) and Colin Sinclair assessed all competing schemes for priority. Chris Firmin had advocated refurbishing the gym and upgrading the changing rooms, but the Council management team – with the eventual input of the school – prioritised the fence, in line with criteria for bids which focused on maximising use and raising standards in PE. In the Council's view, the Buckingham Field project would bring part of the school's playing field back into use - though, in fact, the fenced area was not erected on the pitches allocated to the school for dual use sports activities but on an area of the public park.

Cllr Stephen Knight: *'There was some frustration with the school about not maintaining the pitches. Also the local public was concerned about the state of Buckingham Fields. The school didn't want to be short of the money that came with it.'*

In her interview, Richmond's Chief Executive, Gillian Norton, referred to a meeting of senior management in her office in March 2002 (her first recollection of the project): *'It [BFWP] went round and round, and ended up with the meeting in my office, and how are we going to crack this. Perhaps I should have said then we are not going to crack it, we are going to leave it, but we didn't. It would have been a hard decision to take, but this might have been a more rational decision'*

.'It was intractable; we didn't know how to move it on.'

'The heart of the matter is back at the beginning and the discussion there, and balancing local and wider interests.'

'The LEA was trying to do the right thing.'

The choice of the fence was endorsed that same month (March 2002) by Cabinet and Overview and Scrutiny without debate. It appears the school lost interest as a result of that decision.

Chris Firmin, HCC Business Manager: *'LEA Officers running the project had decided we were getting a sports field, and it didn't seem to be our decision particularly.'*

By September 2003, the deadline was getting tighter, but Colin Sinclair managed to engage Beverley Bell (deputy head), and the bid was submitted just in time in March 2004.

Q5. How was the exact location of the fence chosen?

The school still had the five pitches (15 acres) on Buckingham Fields (or as originally named Hampton Nurserylands District Park), set at the end of the park closest to the

school. Nevertheless, the decision was taken to fence a separate sixth pitch on an area that had been unmarked and used as open park land. One reason given for this was the limited finance available, set at £50,000, which was just enough to enclose this particular area. Another reason was that the area chosen had some kind of tree cover, and to erect fencing at the five existing pitches would have involved visual intrusion and greater disturbance in an area closer to housing. The third point in favour of fencing this area was that the ground was considered in reasonable condition for playing sport. These points emerged from the interviews with Councillors, Officers and those associated with the school.

Q6. How did the fence actually affect the pitch usage?

Usage of the fenced pitch did not match the case made to the NOF with the bid, which was that it would be used intensively. A curriculum was supplied with the bid, showing how the new pitch would be used daily by all years and classes, plus evenings and weekends, for different sports. Among the reasons later given to residents for greatly reduced use of the pitch was the need to preserve the surface from overuse.

Philip Lomax: *'Seven hours a week would be up to its limit'* (a limit in line with guidelines issued by the Department of Children, schools and families on the provision and maintenance of school playing fields and grass pitches).

Cllr Elloy: *'The NOF application seems to be a work of fiction. It does not reflect the needs of the school, as made manifest later on. The school wanted a pitch to use for matches but the NOF application is for intensive use, almost on a period by period basis.'*

In the event, the fenced field was rarely used by the school, or by local teams, and neighbouring residents also record that it was entered by young people to play football and other informal games. They gained entry either by scaling the 3.5m fencing, by breaking the padlocks, or cutting the mesh fencing. The fence attracted new elements of anti-social behaviour; for example, residents experienced repeated incidents of graffiti on the metal storage container inside the fence.

6. DESIGN AND POSITION OF THE FENCING

6.1 Design²⁴

According to Colin Sinclair, the design of the fence was based on safety factors, hence the 3.5m height. However, when the fence appeared on site in early June 2005, it also had a cranked top. This came as a surprise to everyone, according to the interviews, and it was not shown on the drawings in the planning application. Its origins were something of a mystery, possibly a decision taken by the contractors - a conclusion borne out by the late production of a revised specification²⁵ that did not seem to have been picked up at the critical time. The 3.5m mesh fencing was also shown as being green, when in fact it was galvanised silver. There is no explanation for the change in colour, other than cost for the green coating. The consequence of these changes was that the fence shown on the application and found to be permitted development under the GPDO was materially different from the one erected, albeit that this too would, according to planning Officers, have been deemed permitted development and exempt from a formal permission. The automatic planning permission, granted by the GPDO for certain types of development, came as a surprise to some Officers outside the planning service.

²⁴ See images, Appendix 1

²⁵ See the revised specification, Appendix 8

Colin Sinclair: *'I was initially told by planners, because when you are a Council Officer you do seek advice from planners, that you would require planning permission and that is why we asked the consultant to prepare the application and we submitted it, and then three weeks later I was pleasantly surprised, in terms of progress of the project, that it wasn't going to require planning. It was given a permitted development. From what I understand that's common practice for certain projects on Council sites or parks sites.'*

David Barnes: *'What was actually proposed in that application was not what was actually constructed. There was not a cranked top. Alarm bells may have been alerted if we had seen that top. (With reference to planning application drawing) This looks fairly innocuous without knowing about the local situation of accessibility of the land, which wasn't being talked about.'*

Subsequently, the safety argument relating to the height of the fence was compromised when relatively low green palisade fencing was permitted along Buckingham Road in response to the residents' dismay. Attempts have also been made to reinstate the damaged hawthorn hedge after residents made the case that it was not only ecologically important, but also the most effective barrier to help prevent escape of balls on to Buckingham Road. Thus, the high fencing with the cranked top was limited to the three sides enclosing the area in the centre of the field, where risks to health and safety were lower. Residents found this illogical.

Colin Sinclair: *'To me, my brief was to make a fence that was a barrier. That was the whole idea. The spec was to make it impenetrable. The green palisade fencing - that was agreed with the residents. Residents were unhappy with the welded mesh along Buckingham Road.'*

Phil Lomax: *'The fence met the normal sports standard for ball retention and was of a similar construction to others in the area. The cranked return was put on the top. This is different to other sports fences...I quite understand how the residents must have felt in June when they saw the fence go up, and they had no correspondence or information or formal consultation through the planning processes, which someone would expect to take place with this scale of development.'*

George Chesman, in a written response to questions about the use of a General Permitted Development Order and whether the fence was lawful, stated: *'The fence was erected by the Council on land it owns and maintains and its objective was to promote the land's usability for sport. It was therefore permitted development for planning purposes as it was under four metres in height. The erection of a structure of this type in a public park of this size is also within the statutory powers of management of open spaces given to local authorities.'*

George Chesman, in response to questions about the use of a GPDO and whether the fence was lawful: *'The decision maker, who put up the fence, that is their responsibility.'*

6.2 Location of the fence

There is no public record for the choice of location, which was a distance from the dual-use pitches traditionally used by the school, and on land used as a public park. The choice of the area seems to have been a decision taken by Officers as a matter of expediency and cost, bearing in mind the £50,000 available from the Lottery.

Philip Lomax: *'I can't find any record of how that decision [the location of the fence] was made. But that is where the Working Group concluded to put the fence or the enclosed area.'*

Colin Sinclair: *'This area is a far better area for sport and needed less to get it up to a good standard.'*

Phillip Lomax: *'The conclusion was reached that this was the best location for a number of reasons. The playing surface of that area had not degraded as much as other areas of the playing fields so it was more cost-effective within the tender and the pricing.'*

Eve Risbridger: *'I think what has probably happened in this case is one Department has been project managing, and I think it would be fair to say the Officer was stretched by other things in his workload and delegated this to a professional project manager. I think where things might have gone really awry is when the project manager didn't see it as part of his brief to carry out any consultation nor even communications with the parks team until there was one meeting briefly with two of my colleagues to see how the fence would go in relation to the trees around this block of land. So the question of why this piece of land has been chosen was really just that it seemed a sensible place to put it.'*

'People didn't know which belongs to whom and where responsibilities started and finished.'

Councillor Cardy: *'Hiding a fence behind the hedge would be less obtrusive and I suggested the eventual location. It was suggested then we would block up the gaps in the hedge. Then an Officer said we would be better to put a fence behind the hedge. But there is a fundamental difference between hiding a fence behind a hedge, and replacing a hedge with a fence. The purpose of the fence was never fully discussed, but if you are going to have a heavily used football pitch up against a road then it makes sense to have a fence that will catch most of the footballs.'*

The Council decision to locate the school's enclosed pitch on an area of public park, outside the school's five allocated pitches, proved divisive and gave rise to conflict in the local community.

Phil Lomax: *'Clearly from that early stage (June 2005) there was unrest within the community....'*

John Frixou: *'My main concern is the relationship between the Council and the community. When you raise serious issues with the Council, why do they turn against the community? I think that is a very serious issue.'*

Maria Frixou: *'How disappointed I am, when we had a community that didn't have any problems before, and people have tried through misinformation to drive a wedge between our community.'*

Michelle Taylor: *'HCC in the newsletter talks about "losing our sports pitch on Buckingham Fields" which makes us feel extremely upset. It is not lost! It is there! I have had comments blaming me for ripping out the fence and saying their children can no longer play in the park.'*

Cllr Elloy: *[HCC's head teacher] wasn't happy about the school being involved at that stage and thought the whole business was counterproductive and giving the school a bad name locally, because there was a sense the school was responsible for enclosing this area of land. They didn't feel they were responsible, and they didn't seem to particularly want it anyhow.'*

Max Hoskinson: *'There was a substantial amount of suspicion from all directions.'*

Cllr Samuel: *'The whole motivation for many people was to provide a proper pitch for children in a socially deprived area. There are disadvantages between the articulate and non-articulate. They are out-gunned.'*

Gillian Norton: *'It is the tyranny of the minority, people who are convinced their view is right. Sometimes it will be about a small group of people wanting their way. The Council is acting on behalf of people squeezed out by articulate groups.'*

6.3 Removal of the hedge

The project contractors for the fencing were Blakedown, and a project manager was appointed by the Council, as its own Officers had too much work with so many Lottery projects. Blakedown have a proven track record with the Council.

Eve Risbridger: *'These contractors are expert, and we have used them before.'*

Work started on the installation of the fence in June 2005. The first step was removal of some old fencing, which had become inextricably entangled with the hedgerow over many years. According to Eve Risbridger, the contractors had been instructed to remove this fence with the minimum of damage to the hedge, though we have no record of or evidence for this instruction, and the entanglement of fence and hedge may have anyway made it an impossible ask. It was subsequently widely accepted by Officers and Councillors that 'cavalier contract management' caused extensive damage and an instant public outcry – all the more because it was during the nesting season.

Eve Risbridger: *'First thing we knew was a call to the ecology Officer after contractors were pulling the fence and hedge out to put a fence in, other than a quick discussion with my colleagues about where should we put the fence, if we are going to put the fence within this hedged-off bit, how close can we go to the trees, access gates, etc.?'*

'I think, if there had been closer liaison at that stage of things and in terms of detail, then Blakedown should have been clearly aware that you don't do this in the nesting season. They were trying to remove old concrete hedge posts; they did it in a very quick way by putting a chain around and ripped out the whole hedge. They know perfectly well, as Council contractors, it is not the way to do things. Their contract manager was apologetic.'

The question was why work of this nature had been scheduled in the heart of the nesting season. The Countryside and Rights of Way Act states that the nesting season runs from 1 April until mid-August, during which time only essential work should be carried out. Officers and Councillors have stated the timetable was to have the sports pitch ready for the start of the Autumn Term 2005.

Following the public outcry, a meeting was quickly convened on the street with Councillor Samuel, Parks Manager Eve Risbridger, a representative from the contractors and about 20 residents, where the contractors apologised for the damage to the hedge and promised to take steps to mitigate it once the planting season arrived. Subsequently some replanting took place with small whips, but these were later damaged by a grass-cutting strimmer. There was some further replanting with plastic protection. However, considerable public dismay persists at the long-term loss of mature hedges.

It is clear from the Officer interviews that there was no effective liaison between sports and education and the parks Departments, even though the sports project was on land maintained by parks.

Eve Risbridger: *'I came in when they were ripping the hedge out - my first personal role was crisis management. I was not involved in terms of this part of the project.'*

7. THE RESIDENTS' VILLAGE GREEN APPLICATION ²⁶

7.1 The application and evidence questionnaires

²⁶ Regulatory Committee, November 2006, Appendix 3

Residents applied for new village green status to LBRuT as the commons registration authority in November 2005 for the whole of Buckingham Fields. They did so because they perceived grave risks to the entire park based on the evidence of the fenced enclosure,²⁷ and further endorsed by a cabinet approval to sell off 430sq metres of public land to an individual for private garden.²⁸ Their 70 evidence questionnaires were not challenged by the Council, and included the following points in support of the application:

- the enclosure of the area of public open space excluded members of the public who had enjoyed free access to the land for more than 20 years (since the creation of Hampton Nurserylands District Park in 1977)
- descriptions of their use of Buckingham Fields for more than 20 years for many varied recreational and leisure purposes without impediment of any kind complied with rights of way/commons legislation
- the erection of an unsightly fence was contrary to green belt policies for the land under the Council's UDP
- despite strong public assurances to the contrary, made by a Cabinet member to the public question at full Council in July 2005, Cabinet recommended the sale of 430sq metres of public open space on Buckingham Fields for enclosure as a private garden; there were fears of cumulative impacts from the precedent set by this decision (though Iain Maclean, in a written response, states that any disposal would have been subject to separate public consultation under the relevant procedures)
- the school had no justifiable claim to a sixth pitch on public park land when it already had five pitches across 15 acres allocated for its use in 1977, with funding to manage the land devolved to it under LMS (no date obtainable) for the benefit of both the school and the community, to whom there was a duty of care as the pitches were dual use
- the fencing had been erected by the Council without consultation, notification or public processes associated with planning permission (under a Permitted Development Order)
- the community, if it intended to protect the entire open space from the various threats identified, had no alternative recourse other than to lodge a Village Green Application, following unsuccessful attempts to open up discussion with Officers, elected members of the administration and other interested parties.

These 70 evidence questionnaires were submitted to Mr George Chesman of the Borough's legal Department in November 2005, some five months after the erection of the fencing. Anxieties for the future of Buckingham Fields were articulated by residents and one of the local Councillors at their interviews.

Michelle Taylor: *'There is a huge space for the school, and they took a piece of the park and it doesn't bode well.'*

Cllr Elloy: *'This land was bought under CPOs specifically for use of the community as park and dual use, but they [the Officers] have interpreted that dual use as principally for the school to use. With the whole business about posting notices excluding the public from the land, if you like, and to have the land for the exclusive use of the school when the school had no intention of using it, the Council's policy would have been effectively to exclude everybody from the park! But how can the Council embark on a policy of excluding the public from its own land? It's not sensible.'*

²⁷ See images, Appendix 1

²⁸ Cabinet report June 2005, and public questions to Council July 2005, Appendix 9

John Frixou: *'Concerns are fears of development, and the land previously allocated to the school - should the school become independent - that land would belong to the school. And the school would have its playing area elsewhere in the park so the school will find itself owning surplus land.'*

Maria Frixou: *'Unfortunately the playing fields weren't being looked after and they weren't being used, and so it becomes a vicious circle.'*

7.2 How the Council responded

The Village Green Application by local people coincided with a legal review of an Appeal Court decision on related matters (Traps Ground, Oxford City Council). Letters of instruction from DEFRA²⁹ advised commons registration authorities to await the outcome of this review, expected in a House of Lords Judgment in spring 2006. Notwithstanding, the Council erected notices at Buckingham Fields in January 2006 stating: *'Private Property, access prohibited except with the express Consent of the London Borough of Richmond upon Thames, or Hampton Community College.'*

Other areas of the park had notices posted stating: *'Buckingham Park, the Council of the London Borough of Richmond upon Thames holds this land for the purposes of the enjoyment thereof by the public as an open space the use of this Park is subject to regulation by Bye-laws made on 10th December 1985 under the Open Spaces Act 1906.'* There was confusion about the two different and contradictory notices, which appeared to partition the park even though there were no clear or agreed lines of demarcation on the maps, or on the ground and, indeed, considerable confusion existed among senior Council Officers about the status of the land.

The Council's explanation is that it had been advised to make the status of its land clear by signs on site.

Iain McLean: *'That came from the understanding of the legal situation at that time, which was under appeal. The view was you have to make the situation plain, what the use of the land was and what the terms were to use it, and then on the state of the law at that time you would probably be able to fight off Village Green Application. As it turned out, the Traps Ground Case didn't support that view.'*

People calling the Council were to be told that *'they can still use the land as they always have done'*. The notices caused shock, huge concern and dismay in the community.

The Village Green Application was submitted to the Council, as the Registration Authority, on 17 November 2005. The letter issued by DEFRA dated 10 January 2006³⁰ was one of a number to be sent to all Commons registration authorities requesting them to await the judgment before determining any village green issues. Nevertheless, Mr Chesman proceeded to arrange for the Regulatory Committee to meet, hear and, on Officers' recommendation, reject the application on 15 March 2006³¹ without reference to the DEFRA advice; the applicants were alerted to it only by the Open Spaces Society. They then forwarded the DEFRA correspondence to Mr Chesman on 21 February 2006 to inquire whether the Council, acting as the commons registration authority, was in receipt of the DEFRA circular, and if so whether it should not have heeded it, and also brought this advice to the attention of the applicants. On 27 February 2006, Mr Chesman postponed the hearing date for the Village Green Application.

For the residents, this series of events clearly demonstrated the Council's position against the Village Green Application. The House of Lords hearing was scheduled for

²⁹ One of the letters from DEFRA to Commons Registration Authorities, January 2006, Appendix 10

³⁰ Appendix 10

³¹ See cancelled Regulatory Committee, Appendix 11

27 April 2006, only some 3-4 weeks after the date Mr Chesman had initially set for the Regulatory Committee hearing to determine the application.

George Chesman: *'DEFRA's advice to the local commons registration authorities was to postpone determination of applications until after the Traps Ground decision had been published.'* In a written response, Mr Chesman subsequently added: *'That was done but in the meantime it did not stop landowners, including local authorities, from taking action such as the erection of signs in an attempt to defeat applications following the decision in the Court of Appeal in the Traps Grounds case. I also point out that (1) the advice of DEFRA was contrary to regulations made under the Commons Act 1965 which required local authorities to determine applications "as soon as possible", and (2) the numerous points to be considered by the House of Lords in the Trap Grounds case did not include the principal ground under which I considered that the pending application should be rejected.'*

The cumulative effect of this series of events at Buckingham Fields hardened the residents in their resolve to protect the entire area from what they perceived to be real threats to its future as public open land under the Council's stewardship. As far as local people were aware, the whole park, since its creation in 1977 as Hampton Nurserylands District Park, was Council-owned public open space in the spirit of the planning inspector's original report and recommendations (no longer obtainable), with five pitches (15 acres) allocated for dual use by community and school.

Local resident Sydney Smith said: *'I have lived here for 70 years.... I have never been challenged by any single person or body as to what I was doing on that ground.'*

George Chesman: *'...whether it was formally allocated to open space under the Act or some other Act of Parliament, I know not. There may well not have been. It was acquired by the Council and held and administered as a park and nobody thought twice about the background until this Village Green Application came up. I was involved with this in the 1970s so I know quite a lot about the original background because I dealt with it.'*

Iain McLean: *'...whether then it had been under the Public Open Spaces Act 1906, and the Council's record going back 20 years or further - the Council's records are not very good. We struggled to find records that were able to prove the case one way or another.'*

The status of the land was confused by the fact that the Borough does not appear to hold a current register of its public open spaces, or record of the renaming of the area, nor of when the school was given management of the pitches under Local Management of Schools. However, in a later written response George Chesman stated: *'On 25 January 1990 the Council's former Community Services Committee resolved that "the Head of Recreation and Amenities, in consultation with the Chairman and Ward Councillors, be authorised to agree names for the District Park, Five Acre Park and One Acre Open Space". Later, on 1 November 1990, the Leisure Services Committee approved the renaming of the Five Acre Site, the District Park and the open space off Oak Avenue as Nursery Green, Buckingham Park and Page's Green, respectively.'*

7.3 The Council's position

Paul Chadwick, in a written response, stated very clearly that the Council's starting point for applications for Village Green status across any Council land is that, as landowner, it should object as a matter of principle. He continued: *'The Council's overriding and paramount concern for sites across the Borough is to ensure that its abilities to use, improve, build upon and sell land, either directly or indirectly for service based purposes, should be as unfettered as possible. The Council has a need in perpetuity to deliver a wide range of services for people across the Borough in ways and to*

standards that are constantly changing. Even if it is sure, or reasonably sure, of what its needs are for the use of particular pieces of land right now and for the immediate future, it is simply not possible to predict what its service needs for any piece of land will be in ten, twenty, thirty or a hundred years' time. So anything that adds further process to known, or as yet unknown, proposals for change is resisted. The Council argues that Village Green status is likely to add additional and potentially debilitating process for relatively small changes to open space, such as the addition of parks-related pavilions, the laying of all-weather surfaces and the construction of play facilities. In other words, it adds process in a way that that might prevent straightforwardly leisure-related changes to the use of open land – it does not just fetter the ability to deliver radical or significant change to the use of land. The process is also frustratingly unclear given the ever changing case law on this particular legislation.¹

In terms of this specific site, the Council has maintained that there are no proposals for significant change in the use of the Hampton Common land, nor were there at the application point. The planning status of the whole of the land as Green Belt, and its divided ownership status as park/open space and educational land, would in the Council's view have already provided significant hurdles and hoops for any future Council proposals for change had they arisen along with significant protection to those who are concerned to leave the site in its current use.

Accordingly, Iain McLean and Phillip Lomax submitted formal objections to the Village Green Application on behalf of the then Corporate Property Department (representing the landowning interests of the local authority) to the legal Department, while Mr Chesman was advising the Regulatory Committee to reject the application.³²

The Council argued that village green status was superfluous in law because the land was public open space; no permission was needed as it was already accessible to the people as of right.³³ For the Regulatory Committee members, this came as a questionable defence under the circumstances, and there has been no formal judgment on the issue 'as (if) of right', though much learned argument.

Local people challenged the Council's position which they pointed up as inconsistent and illogical: on the one hand the Council attested there was no case for commons registration because the land was public open space and therefore accessible as of right; on the other hand the Council was telling local people that, by the erection of the notices and the enclosure created by the fencing, the land was private, access could be charged for, and there was no right of way without express permission and/or payment of a fee. There was also the issue of Buckingham Fields not being named on the register as public open space - something that did not give residents confidence in its status.

Senior Officers have since stated that the Council will always take all steps to keep its publicly-owned land 'unfettered', that is, with as few restrictions as possible to keep options open for future uses. Having land on the commons register makes future changes of use and/or development almost impossible.

7.4 The applicants' position

Throughout the run-up to the Regulatory Committee hearing to determine the Village Green Application, residents objected to difficulties in obtaining the information they felt they needed to present their case. Anyone submitting an information request was 'aggregated' and told that a Mr John Frixou heading a Buckingham Fields Group had reached his allocation of 18 hours of Officer time. From what residents can discover, this aggregation of everyone into one group under the sole name of Mr Frixou referred

³² Letters and emails, Appendix 12

³³ Comments on behalf of the Council as Landowner (Regulatory Committee, 9 November 2006, Appendix 3

to names that appeared in the 70 evidence questionnaires from Buckingham Fields users and a petition of 400+ local people presented to Richmond upon Thames Council. Local people regarded these as rights open to them as individuals. They have challenged the Council's decision to limit their access to information under the Freedom of Information (Fol) Act on the grounds that there was no formal group, no elected Officers nor a membership.

George Chesman: *'The position as under Fol - you can have up to a set number of hours and if it takes longer then it can be charged for. There's also a provision that if you get a number of people asking for information on the same topic you can group the thing together and treat it as one Fol request and you can charge.'*

Maria Frixou: *'It was the whole community to protect our park; everyone worked together. We leafleted people - 1,500. We had lots of people leafleting around, people talking to each other in the area and feed-back we were getting. People were worried about the field.'*

Among other things, the residents sought a conclusive opinion on the history, status and designation of the land. There were various and inconsistent opinions coming from the Council during this period which created considerable confusion:

- October 2005: Mr McLean, Principal Solicitor, states *'the public recreation area adjoining the field is shown as being both planning green belt and public open space. However, the playing field is neither.'*
- November 2005: Mr Lomax to Cllr Samuel the following advice is given *'Our Legal Service advise the whole of the area is covered by a planning green belt designation and that about half of the field is also covered by a planning public open space designation. The sports pitch area enclosed does come within the part covered by the planning green belt designation but not open space. Within this designation, the fencing enclosing the sports pitch is permissible, with the application made for planning purposes issued with a Certificate of Lawful development.'*
- February 2006: Mr Barnes, head of planning, in a letter dated 3 February, states *'The whole of Buckingham park is shown on the proposal map which forms part of the Council's Unitary Development Plan as Public Open space with the exception of the area adjacent to Buckingham Park, which was fenced off in 2005. The part not designated as public open space and has no designation other than as green belt.'*
- February 2006: Mr Chesman states *'As to the current position, the northern part of the land, the subject of the current application under the Commons Registration Act 1965, is held as a public park under the Open Spaces Act 1906. The remainder of the land was allocated by the Council for the use of Rectory School and not as a public park. This allocation remains current notwithstanding that the school cannot presently use it for curriculum activities by reason of its condition'*.

In his covering letter, and in Council reports of the period, the planning inspector in 1977 unequivocally refers to open space and playing fields for dual use³⁴, for the school and the community at large. The residents' case supported this usage with the 70 evidence questionnaires, which were not challenged by the legal Department.

At the Regulatory Committee in November 2006, the elected members agreed, against Officer advice and recommendation, on a majority vote, to grant the Village Green

³⁴ See the Regulatory Committee papers, November 2006, Appendix 3

Application. A write up and the community's submissions can be reviewed at <http://www.oncom.org.uk/journal/VGapprove.htm>

Access to background information from the Council, in support of their application to the Council for a new village green for Buckingham Fields, was not satisfactory or helpful for residents.

7.5 Commons Registration and Regulatory Committee Processes

Residents found a frustrating lack of transparency and even-handedness in the run-up to and at the hearing. Their experience was that the legal Department, acting as commons registration authority, guardian of information, administering and conducting the Regulatory Committee hearing, objector to the application and adviser to members, conferred many advantages on the Council, which was also the land owner. Moreover, a lack of separation of these roles raised serious issues relating to conflicts of interest. In a written response, Iain McLean explains that: 'Legal Services did in fact recognise very early on the conflict of interest issue (over the Village Green Application), and did take steps to deal with the matter by dividing the roles.' He adds: 'If the execution of that approach was perceived to be unsatisfactory, then that is another matter, but to give the impression that it was never even considered is, in my view, just plain wrong'.

That said, the approach was indeed perceived as unsatisfactory by residents for a number of reasons. For example, despite assurances to residents that they would be kept informed, the appointment of an external solicitor to present the Council's case (based on the opinion given by Mr Chesman in e-mails to the residents) was known only shortly before the hearing and new legal papers were presented to members on the night.

George Chesman: *'I gave them [the residents] two comprehensive emails which set out the basis of the objections with considerable detail. I explained why I felt I had to recommend to the Regulatory Committee not to allow the application to succeed. They may not have had the documents, which were technical objections.'*

The legal Department requested residents send all documentation via the Department, which the residents declined to do for fear of having their objections reduced to brief summaries within the Officer's report to committee, and because it would expose their arguments to the other side, as they clearly perceived the Council's legal Department to be. In the event, the residents presented submissions in person in full at the hearing.

In addition, the residents had no faith in any 'Chinese Walls', as there was no evidence that the Council operated this procedure or made any attempt to mitigate conflicts of interest to achieve a degree of impartiality or fairness.

George Chesman: *'We separated our roles and kept them apart but saying that we do work closely and the Chinese Wall wasn't sound.'*

Iain McLean: *'George Chesman was dealing with the application and myself dealing with the objections and making representations for the Council as landowner.'*

7.6 Elected members' observations

At the Regulatory Committee hearing in November 2006, the Councillors heard seven residents' submissions and the Council's presentation and advice, including that from the external solicitor. Subsequently they granted the Village Green Application, recorded in the contemporaneous report in the November 2006 archive of Hampton Online: <http://www.oncom.org.uk/journal/VGapprove.htm>

Notable were observations by Cllr Rodney Bennett, vice-chair of the Committee: that parliament had seen fit to leave these decisions to lay members and so common sense should prevail, and that the prospect of a judicial review (raised by Mr Chesman relating to the decision being legally unsound) would be more likely to come from

residents than any other interested party (i.e. the Council's education Department or an LEA school that had not participated at any stage of the argument); and by Cllr Bob King: that the Council's case rested on the people already having access to Buckingham Fields as of right when in fact, with the fence and the notices, they had found that they had no rights.

It was clear to residents from Officers' remarks following the successful application that the Council as a corporate body regarded the granting of village green status as a grave defeat, and fears were expressed that this could happen with other communities and other parks.

8. CONCLUDING COMMENTS

Throughout this saga, there was a mismatch of perceptions between Council Officers on the one side and local residents on the other. It is, of course, the responsibility of Council Officers to look after the interests of the Borough as a whole, and attempt to maintain a sensitive balance when these interests conflict with those of residents in a particular locality (a difficult and sometimes dispiriting task that the authors of this Report acknowledge). It is also Officers' responsibility to identify and represent the interests of those who might otherwise lack voice, such as students at HCC who Officers hoped would benefit from an enclosed pitch.

However, it is equally the right of residents to be fully consulted over moves that might threaten the peaceful enjoyment of their area, not least because their views may well help to improve and refine Council policy. It is also their entitlement to protest if this right is infringed and receive consideration. Officers, whilst operating strictly (rather than correctly) within the law, were unfortunately often perceived by residents as non-responsive, and even opposing. Part of the problem was that they did not always explain to residents the parameters within which they were operating. For example, under Local Management of Schools, it was difficult for the LEA to compel HCC to maintain the pitch, even though it received a budget to do so. Similarly, the fence, whilst clearly an ill-advised monstrosity, was not deemed to be 'illegal', as it is lawful to enclose public space under certain circumstances; for example, to create a tennis court or bowling green or children's playground. In addition, the Council quite legitimately has different interests as landowner, Local Education Authority and planning authority, though failure to explain this clearly during the Village Green Application may have added to confusion over what were complex issues.

In addition to lack of factual explanation, another element of the problem was generally poor communications (for example, between HCC and the LEA), and a further element was poor liaison with contractors (as the appearance of the fence with an unexpected cranked top revealed, and the uprooting of the hedgerow in the nesting season). The failure of the Council to retain relevant records was a significant contributory factor to the difficulties in communicating and sharing basic information.

It should also be noted that HCC was itself undergoing an internal crisis of change, which meant that the LEA's assumption that the school would be consulting its neighbours over the NOF bid was misplaced. The LEA should, however, have recognised this and taken it into account. Perhaps the most striking feature of this episode was the apparent inability of the Council to intervene to improve a deteriorating situation. Pressures were clearly building up – evidence for which can be found in the discussions held by the Buckingham Fields Working Party and the residents' action in seeking village green status – but nothing was done. Lack of co-ordination between Council Departments would have been less of an issue if the will had been there to use the Working Party as a genuine wider forum to sort out problems at that earlier stage.

Overall, this Report concludes that the Buckingham Fields saga was the result of the interaction of a number of complex and interlocking circumstances which led to issues that were allowed to escalate unchecked instead of being resolved.

The Council is urged to implement these recommendations. If so, they should help to avoid worst case outcomes for the Council and improve its democratic processes. As a result of the mishandling of a public controversy, community relations and the reputation of the local authority were damaged, a great deal of Officer time was unnecessarily expended at significant cost to the Departments, and the Council lost control of the public park and open space. Moreover, as Mr Chesman succinctly put it: "It can set a precedent, which this may have done.'

Such an outcome, if the recommendations which follow are put into practice, is less likely in the future, but it will require a responsive change within the Council and its Departments. Officer opinion, however senior, is no substitute for thorough consultation, especially where public land is concerned and local people clearly have a passionate interest in its future.

9. RECOMMENDATIONS

9.1 WORKING PARTIES (TASK GROUPS, etc.)

Where working parties are set up to help with the early process of decision making, the Council must first establish:

- 1) clear terms of reference;
- 2) appropriate and representative membership;
- 3) clerical support and publicity;
- 4) a programme for fact-finding and engagement;
- 5) that business concludes with a report and recommendations in a reasonable timescale
- 6) continuity of membership as far as reasonable;
- 7) that when Officers attend working party meetings it should be in an advisory capacity
- 8) that working party reports will be put on the Council website in full
- 9) that a working party report should always be taken to the appropriate OSC at the earliest opportunity

9.2. INITIAL CONSULTATION TO IDENTIFY PREFERENCES

- 1) Where issues are identified consultation should take place to formulate detailed plans to address them before decisions are recommended;
- 2) consultation should involve all interested parties equally to ensure balanced decisions can be made based on full information.
- 3) Comments from interested parties should be considered in the report.

9.3 IMPLICATIONS OF FUNDING STREAMS

Where funding is involved, a timetable must be planned that will allow the opportunity to invite, assess and balance any competing interests in a way that will meet the funder's timetable and involve all interested parties equally.

9.4 CONSULTATION ON COUNCIL PROJECTS THAT AFFECT PUBLIC SPACES

- 1) A planning consultation does not replace an open Council-led consultation with local people; the Council should consult with or without the planning system, which is limited by legal constraints
- 2) Although they may not require specific grants of planning permission because they have permitted development rights under the GPDO, Council projects that propose significant changes to public parks and open spaces should be the subject of rigorous consultation.

- 3) the Council's Public Space Group composed of Officers should have an early input into the process.

9.5 CONTROVERSY AND CONFLICT

- 1) Where controversy arises, the Council must be alert to warning signs as a trigger for responsive action to avert a deteriorating situation;
- 2) Opportunities must be taken to engage with interested parties and to take opposing views into account honestly and transparently, giving them equal weight and fair consideration in a public-facing process.
- 3) The Council should always consult, even when a policy points to a certain outcome, to enable public input and influence wherever it can be accommodated.
- 4) The Council should examine the possibility of training for staff and members in the handling of conflicts.

9.6 CONTRACTORS' RESPONSIBILITIES

- 1) All contractors, project managers and the Council's own staff should be given robust instructions about the importance of the bird nesting season, and other environmental considerations, in line with Countryside and Rights of Way Act and DEFRA Guidelines.
- 2) This should be on the Council's website.
- 3) Unnecessary work that damages ecological interests should be scheduled outside the nesting season unless there is no alternative.

9.7 IMPARTIALITY

Where conflicts of interest arise within Council Departments, they must be kept separate if the Council hopes to be seen to be acting fairly and impartially.

The perception in relation to the Village Green Application was that the Council - and in particular the legal and education Departments - did not separate their functions as: land owner, planning applicant, application decision-maker, land manager, opponent of the Village Green Application, adviser to members, information gatekeeper and administrator of the Regulatory Committee process handling the Village Green Application.

This must improve and the Council is requested to address the absence of any 'Chinese Walls', to ensure transparent impartiality in its administration of public procedures.

9.8 RECORD KEEPING AND ARCHIVING

Record keeping must be of a much higher standard. The Council was unable to produce important documents on land use, dating only 30 years ago and highly

relevant today. Nor was the Council able to produce agreements for land management, or dates. The result was lack of any firm foundation for providing conclusive information for the public as well as conflicting advice from Officers. Good record keeping is crucial for the provision of clear information and essential if issues are to be tackled and resolved satisfactorily.

The Council is recommended to:

- 1) instigate an investigation into the archiving of records maintained for public custodial purposes; this must be retrospective as required by law
- 2) ensure each Department has a named Officer whose responsibilities include record keeping and archiving, separate from the legal Department and the Officer for FoI
- 3) conduct a risk assessment of the implications where there is a failure in this duty
- 4) have on its website a link for the public who wish to access certain documents, where they can be found, or with information on how they can be quickly obtained.

9.9 EXPLANATIONS FOR THE PUBLIC OF DIFFICULT CONCEPTS

.During the course of consultation, the Council should take potential areas of public misunderstanding and seek actively to explain them. For example, complex issues arose in this case concerning:

- LMS and devolved funding of schools;
- Consultation in relation to General Permitted Development Orders; and
- Authorisation for Councils in law to enclose (parts of) public open space.

Public misunderstanding of these areas of law and practice contributed to their confusion.

9.10 BALANCING DIFFERENT INTERESTS

The Council needs to explain how it balances conflicting interests where it has, as a body corporate, ambitions it believes will benefit the Borough as a whole, or a specific group, where this comes into conflict with local users' and residents' aspirations.

9.11 IMPLEMENTATION OF THESE RECOMMENDATIONS

The Council should draw up a timetable for implementation of these recommendations and issue regular progress reports to the Scrutiny Committee.

APPENDICES

Appendix 1

Google Earth satellite photo of Hampton North showing the sites of Hampton Community College and the sports pitches and park land at Buckingham Fields (artwork by Online Communities)

Appendix 1a with images of fencing and field, and notices erected on the fields

Appendix 2

Minutes and papers relating to Buckingham Fields Working Party (BFWP)

Appendix 3

Regulatory Committee, 9 November 2006, Agenda Item 15

http://www.richmond.gov.uk/home/calendar_of_meetings.htm?mgl=ieListDocuments.asp&CId=166&MId=1646&q=1

Appendix 4

Minutes of two early meetings of the Buckingham Fields Scrutiny Task Group preparatory meetings, 12 December 2006 and 18 January 2007

Appendix 5

Correspondence between HCC and Richmond Council

Appendix 6

Town and Country Planning Act General Permitted Development Order. Certificate of Lawful Use or Development, and correspondence between officers and elected member in relation to the granting of the certificate for the fence.

Appendix 7

Report to Cabinet, 25 March 2002, Agenda Item 375, New Opportunities Fund; and same report to Education Overview and Scrutiny Committee, 27 March 2002 with recommendations for the fencing at Buckingham Fields

[http://cabinet.richmond.gov.uk/Published/C00000163/M00000578/AI00002154/\\$CAB250302item16appxAB.doc.pdf](http://cabinet.richmond.gov.uk/Published/C00000163/M00000578/AI00002154/$CAB250302item16appxAB.doc.pdf)

Appendix 8

Original drawings of the fence with the planning application form; and revised specification for the fence (January 2005) with addition of cranked arms

Appendix 9

Cabinet, 6 June 2005, with recommendation to sell strips of land on Buckingham Fields to private ownership

[http://cabinet.richmond.gov.uk/Published/C00000163/M00001178/AI00008359/\\$Buckinghampublic.doc.pdf](http://cabinet.richmond.gov.uk/Published/C00000163/M00001178/AI00008359/$Buckinghampublic.doc.pdf)

and public questions by residents at Council, 12 July 2005

http://www.richmond.gov.uk/home/calendar_of_meetings.htm?mgl=ieListDocuments.asp&CId=173&MId=1344&q=1

Appendix 10

Instruction letter from the Department for the Environment and Rural Affairs and subsequent opinion from DEFRA relating to “as of right” use of a green

Appendix 11

Record of the Regulatory Committee, 15 March 2006, and correspondence from the Council’s Legal Department to residents on opposing the Village Green application.

Appendix 12

Comments on behalf of the Council as Landowner, presented by Sharpe Pritchard at the Regulatory Committee, 9 November 2006.