

SUBMISSION

in support of the complaint by the

WIMBLEDON PARK RESIDENTS ASSOCIATION

against the

LONDON BOROUGH OF MERTON

FEBRUARY 2010

DETAILED SUBMISSION IN SUPPORT OF THE COMPLAINT MADE BY THE WIMBLEDON PARK RESIDENTS ASSOCIATION AGAINST THE LONDON BOROUGH OF MERTON

The detailed information and statements contained within this Submission are to the best of Iain Simpson, Chairman of Wimbledon Park Residents Association, and David Watkins, its author, knowledge complete and accurate.

A copy of the key supporting documentation, which is cross referenced into the text, is provided within the appendix to the Submission. The other documents which are referred to, marked with an asterisk *, can be produced on request.

1.0 SUMMARY OF COMPLAINT

- 1.1 The Wimbledon Park Residents Association (WPRA) has used its best endeavors since 2003, negotiating direct with Cabinet Members and senior Officers of the London Borough of Merton (LBM/Council), to secure, without success, a mutually satisfactory outcome in the matter which is the basis of this complaint.
- 1.2 In the opinion of the WPRA the LBM has failed
 - 1.2.1 To progress with due care and diligence the sale of the previously existing Wimbledon Park Memorial Hall (the Hall) to an approved developer and grant the required detailed planning permission for a mixed development containing a new Community facility.
 - 1.2.2 Despite the undertakings given to 'ring-fence' and retain the proceeds from the sale of the Hall thereby ensuring funds were available for it to be replaced with a similar facility within a new development. The Council have refused to acknowledge any obligation to provide funding.
 - 1.2.3 To put in place planning and contractual safeguards which would have ensured the existing Hall remained available for use until a contract had been entered into by the developer for the construction of the new Community facility (forming part of the mixed development)>
 - 1.2.4 Consult to ensure proper provisions were made within the contract with the developer to protect the interests of the Wimbledon Park community.

2.0 HISTORIC BACKGROUND

- 2.1 The location and configuration of the site of the original Wimbledon Park Memorial Hall is shown on the extract from the Ordnance Survey Sheet (document A).
- 2.2 There has been some form of Residents Association in Wimbledon Park since 1906. The WPRA's Newsletter, published three times a year, is distributed to 2,300 households. The level of membership varies from time to time but is currently in the order of 1,000.
- 2.3 Wimbledon Park Memorial Hall was opened in 1926. It was built as a local War Memorial entirely from privately raised funds raised by way of a Pageant in 1925.

- 2.4 Sadly and for reasons which are unclear (presumably financial) the Hall was sold to the Borough of Wimbledon in 1949.
- 2.5 In reporting the acquisition and future use of the Hall to the General Purposes Committee it was resolved (document B)

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The Wimbledon Park Hall be reserved for public use for the residents of the Borough and especially for those residing in the Wimbledon Park area, and that a Sub-Committee, consisting ofbe appointed to consider and advise the Committee upon the future use of Wimbledon Park Hall and on all matters incidental to the control., management and letting thereof.....

- 2.6 From the time of its construction to when it was prematurely closed the Hall provided a community facility within Wimbledon Park with uses ranging from a 'British Restaurant' in WWII, as a base for promoting youth activities particularly the Scouts (from 1934) and lettings for a pre-school nursery and as a wedding and birthday reception venue.
- 2.7 LBM, without any prior consultation, decided to close the Hall (document C).
- 2.8 Having already suffered the loss of the local Library 3 years earlier and then the replacement Mobile Library service there was, predictably, considerable anger that yet another valuable community facility was to be lost (regardless of its state). The WPRA therefore challenged the then Leader of the Council, Andrew Judge, to enter into a dialogue about what should happen.

3.0 HISTORY OF EVENTS LEADING TO THIS COMPLAINT

- 3.1 The Hall was not properly maintained by the Council and became expensive to run. A 'Best Value' report on community facilities was commissioned by the Council but its content was not disclosed to WPRA. This apparently recommended the closure of the Hall. Community groups were written to advising of this decision and requiring their relocation. The Hall was closed
- 3.2 Prior to the Halls closure in April 2003 no consultation took place with the local residents or with the WPRA resulting in a furore within the WP Community. One months notice was given to users to find other venues for their activities. The Easter edition of the WPRA Newsletter (*) commented

It has been evident for some time that Wimbledon Park Hall was not being used very frequently and as a result was obviously not generating much income – hence it was an easy target for closure. However one has to ask how well this facility was being managed by the Council. The price per hour of £ 25.00 for use was very high and indicates one reason why it was not used very much. It is certainly the reason why this Association did not use the facility for meetings. The Scouts have been using the building since 1934 but at a special rate and closure will affect them badly. Generally the building, whilst not pretty, could look a lot better with some care. The Council has made no attempt to clean up the outside for some time. This is a building that with more proactive management could, in our view, make itself pay.

- 3.3 A public meeting took place on the 14 May 2003. There were follow up meetings at the Council. The then Leader of the Council, Andrew Judge, recognized the need for a community facility and for the Council to work more closely with local groups and residents in the future.
- 3.4 A meeting was therefore held on the 1 July 2003 (document C), arranged and chaired by Andrew Judge, and also attended by the Heads of Planning and Technical Services and two Ward Councillors, the minutes of which record

Summary

We should try to achieve a solution that made a positive contribution to the street scene, provided a new community facility that met local needs and made a contribution to the wider unmet need for community/public hall facilities in the area. Those present from Wimbledon Park should draw up a business plan, which would reflect the properly identified needs of the community and the most suitable type of facility that would meet those needs. The Council would then endeavour to incorporate this expression of community needs in the planning brief for the redevelopment of the site. It was further agreed that the Residents group would aim to have a business plan with the Council by the middle of September. Once the planning brief was ready a further meeting would be called to consider the proposals.

- 3.5 It will also be noted from the minutes

*The Hall had been under-utilised because of the lack of marketing, difficulty of bookings, hire costs and general neglect. **For years the Hall had been neglected by the Council** to the extent that it was considered unfit by Ofsted. The outside walls had been covered in graffiti for years with no attempt to clean it up. It was no surprise that it was under-utilised and therefore not generating income. It was generally felt that given proper management and marketing the Hall could easily pay its way as there was a rich variety of potential demand in the community from all types of activities and groups. (emphasis added)*

- 3.6 A local developer prepared proposals (*) for the redevelopment of the Hall to include a community facility which received the active support of the WPRA.
- 3.7 A significant investment in time involving extensive market research, including the distribution of a consultation leaflet to some 2,000 homes to establish the views of the residents and business community, was given to the preparation of a Business Plan by the WPRA. The Proposals/Business Plan (*) were submitted to the LBM at the end of October 2003. They proposed a dedicated, non-denominational, community facility at ground floor level with residential accommodation on the upper floors
- 3.8 In January 2004 the Proposals/Business Plan received a welcome from the Council but in order to achieve the necessary transparency it was decided that the redevelopment opportunity should be the subject of an open tender. A target was set for the completion of the Planning Brief by April 2004 to form the basis on which tenders would be invited.
- 3.9 Following a Freedom of Information request it was found that Quinton Scott had been commissioned by the LBM to professionally value the property (subject to the requirements of the Planning Brief). In their Report and Valuation, dated 4 April 2004 (*) their valuation is £ 625,000.

- 3.10 The minutes of the Borough Development Plan Overview and Scrutiny Panel meeting, held on the 6 July 2004 (document D), at which 15 Councilors were present, record

In consideration of the Public Meeting held in June the Panel agreed that the text of the resolution made at the meeting be included in these minutes as follows

*Calls upon Merton Council to ensure that the funds from the sale of the Wimbledon Park Hall be used solely for a community hall in Wimbledon Park, which provides comparable capacity and flexibility of usage. Moreover, any development should address the concerns of local residents relating to the scale and size of any buildings, as well as issues relating to visual intrusion and loss of privacy. To ensure fairness and transparency, the redevelopment proposals should be put out to tender to allow residents to evaluate all available options. **The Council should also reinstate the existing hall facility and provide appropriate funding until a final sale of the Wimbledon Park Hall is determined** (emphasis added).*

- 3.11 LBM's Cabinet considered at their meeting, held on the 19 July 2004, an Officers Report (document E) containing the following statement and recommendations

2.4Neither of these options was considered satisfactory by local residents so it is proposed to make use of the capital value of the site to provide new community facilities within a redevelopment scheme.....

RECOMMENDATIONS

- 1 *That the comments of the Borough Development Plan Overview and Scrutiny Panel on the draft brief for the redevelopment of the Wimbledon Park Hall site be agreed and the brief be formally adopted as Supplementary Planning Guidance to the UDP.*
- 2 *That the site be disposed of by tender, subject to the requirements set out in the above brief.*
- 3 *That a Community Trust be established between the Council, the developer of the site and the Wimbledon Par Residents Association to manage and operate the community facility on the site.*
- 4 *That the process adopted for this site be a model for the redevelopment of other community facilities in the Borough, subject to a programme to be presented to a future meeting of Cabinet.*

- 3.12 It will be noted that Table 1, to the Officers Report (document E1), contains an Options Appraisal the conclusions section of which clearly defines the Council's intentions in regard to the funding of new Community facility. Option 3 was selected for implementing the scheme.

- 3.13 The minutes of the Cabinet meeting held on the 19 July 2004 (document F) record it being resolved that the Officers recommendations were accepted.

- 3.14 The public tendering process closed on the 29 October 2004. Mr S Hussein of Ibex Investments Limited (Ibex), whose proposals formed the basis of the Planning Brief, was not the successful tenderer.

- 3.15 The preferred tenderer entered into discussions with the Council which continued throughout 2005 but eventually negotiations broke down after 8 months.
- 3.16 In September 2005 Ibex increased their offer but the Council had already opened negotiations with another of the tenderers.
- 3.17 On the 29 November 2005 (*) WPRA wrote to the LBM pointing out that 21/2 years had now elapsed since the Hall was closed.
- 3.18 LBM finally decided to select and negotiate with Ibex to who they wrote on the 14 February 2006 (document G) stating
- I have received instructions to write to you and confirm that Merton Council intends to progress the above (Wimbledon Park Hall – Sale and Leaseback) with you.*
- 3.19 The issue of the above letter effectively marks the end of the protracted and inefficient tendering and selection process by LBM which commenced with the receipt of tender bids in October 2004 but which was not concluded until the issue of the above letter some 16 months later.
- 3.20 It was not until 2006 that the LBM issued to Ibex a draft contract. Because of the extensive revisions which were required to it Ibex's solicitors sent to LBM's legal department a suggested revised contract in July 2006. Numerous letters and emails (*) and telephone calls were then made by Ibex solicitors to the Council endeavoring to achieve an exchange of contracts subject to the grant of an acceptable planning permission without response.
- 3.21 In August 2006 a detailed planning application was submitted which at the Planning Applications Committee, held on the 19 April 2007, it was resolved to grant permission (*) subject to the completion of a Section 106 Agreement.
- 3.22 In April 2007 LBM wrote to Ibex (*), not their solicitors, notifying them that the required purchase price had increased. This was the first contact made by LBM with Ibex since the attempted exchange of contracts in August 2006.
- 3.23 There then followed several months of negotiation until the Contract between LBM and Ibex was signed on the 31 March 2008. A few months later the Hall was demolished and the site remains in that state a today.
- 3.24 Ibex wrote LBM on the 2 December 2008 (document H), prior to a meeting to be held on the 9 December 2008, summarizing the current position they were facing in trying to progress development.
- 3.25 On the 27 January 2009 (document I) that the Council eventually responded to the request made by Ibex at the meeting for financial assistance in funding the cost of constructing the community facility.
- 3.26 Ibex reply of the 12 February 2009 (document J) complaining of the excessive delay which LBM had caused to the project without which the development, including the new community facility, would have been completed. Ibex bankers had now withdrawn funding for the development because of the Recession. Ibex reminded the Council that the project was a partnership between the Council and themselves and as they had received nearly £ 1.1 million surely the Council had a responsibility to the local residents. Ibex requested an

increased contribution, from what was the ring fenced proceeds of the sale of the Hall, to bridge the increased cost of constructing the community element of the development.

- 3.27 WPRA obtained a copy of the contract (*), between Ibex and the LBM, from which it is noted there are only statutory but no direct contractual provisions for enforcement of Ibex's obligations under it.
- 3.28 In an attempt to make progress a meeting took place at the Council's offices on the 28 September 2009 at which the representatives of WPRA reminded the Councillors and Officers there was an obligation on the Council to apply the capital receipts from the sale of the Hall towards the redevelopment of the site including a new community facility. The Council was urged to consider what assistance they could give to Ibex.
- 3.29 The Notes of the meeting, in particular, record (document K)

Cllr Ahmed indicated that the WPRA were focusing on the Overview and Scrutiny Committee minutes and subsequent Cabinet minutes of July 2004, which indicated that the capital receipt from the sale of the hall was only to be spent on a replacement community facility in Wimbledon Park. He indicated that the implications of this needed to be clarified by the Council.

ICS challenged why there was a need for clarification. It was clear to anyone who read them what was intended.

Cllr Diane Neil Mills suggested that, at the time, the Council's decision would have taken account of a reduced capital receipt arising from the sale of the hall including the condition that a replacement facility was to be provided. ICVS pointed out that according to his information the amount the Council received for the hall was actually well in excess of the valuation obtained by the Council at the time and also the developer. (this statement is correct see paragraph 3.9 of this Submission)

- 3.30 During 2009 numerous emails (*) passed between WPRA and the LBM reflecting WPRA's increasing frustration at the lack of action and support from the Council.

Examples are

- a) WPRA's letter to the Leader of the Council, Cllr David Williams, of the 26 March (document L).
- b) Cllr David Williams email to WPRA of the 12 May (document M1) and the response it brought forth from Tariq Ahmad, one of the Ward Cllrs, on the same day (document M2).
- c) WPRA's further letter to Cllr David Williams of the 25 May (document N).

- 3.31 Husband and Carpenter, Ibex's appointed Architect, wrote on the 8 October 2009 (O) updating the LBM on the current status of the project.
- 3.32 Following a further exchange of emails the Council admitted in their Progress Report (undated, but of or about the 15 October 2009) (document P) that the capital receipt from the sale had been used for the LBM's debt repayment programme.

- 3.33 In their letter to the LBM of the 20 October 2009 (document Q) WPRA restated their views in the matter and placed the Council on notice in regard to their intended course of action if a realistic approach was not agreed at the forthcoming meeting between the Council and Ibex.
- 3.34 In their letter to Ibex of the 4 December 2009 (*) the Council again declined their request for financial support.

4.0 COMPLAINT

- 4.1 The residents of Wimbledon Park are therefore left in the position where they have no community facility whatsoever and, subject to the outcome of this complaint, no possibility of one being available for the foreseeable future.
- 4.2 This situation could have been avoided had the LBM stood by their original undertaking to use the proceeds of the sale of the Hall to secure a replacement and to have efficiently and effectively handled the whole matter over the last 7 years, in particular
- a) Why residents were not properly consulted before the Hall was closed?
 - b) Why the Hall was not kept open (or funds made available for its maintenance) until a contract for a new community facility was in place?
 - c) Why did the tendering process take so long?
 - d) Why did the Council not exchange contracts with Ibex when they had the opportunity to do so?
 - e) Why did it take the Council over 2 years to produce the relatively straight forward Section 106 Agreement?
 - f) Why did the Council try and increase the purchase price after months of inactivity to a level over £ ½ million higher than the independent valuation they had obtained?
 - g) Why did the Council not include contractual provisions within the contract with Ibex for its enforcement? The Council will neither provide the carrot nor wield the stick to try and progress the project.
 - h) Why did the Council apply the capital receipt from the sale of the Hall towards their debt reduction when a clear undertaking had been given by Councillors that it should be ring fenced and used to provide a new community facility?

22 February 2010