



CITY OF
Lincoln
COUNCIL

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31st October, 2011

Ms. D. Barnes,
Assistant Director of Children's Services,
Lincolnshire County Council,
County Offices,
Newland,
Lincoln.
LN1 1YQ

Dear Ms. Barnes,

Re: Queens Park Special School

I write further to your letter dated 4th October, 2011.

The area of land you refer to as being land that the LCC may wish to purchase, is an area of land forming part of the South Common and subsequently afforded protection under the Lincoln City Council Act 1985. Under the Act, the Council has a duty to maintain and to preserve the aspect of the Commons as an open space, free from all encroachments and to which the inhabitants of the city shall have free access to and a right at all times of enjoying recreation upon. The Act does not allow for the disposal of any Common or part thereof save for a small number of exceptions that are defined within the Act. Your proposal to purchase that area of land forming part of the South Common, to the north east of the Queens Park Special School, is in direct conflict with the provisions of the Act and as such a decision taken in contravention of the Act would very likely lead to legal challenge.

Furthermore, aside of the statutory protection issue addressed above, as anticipated in your letter, your proposal to fence off the area and use as a school site would likely trigger an application for village green status. For an application to be successful I am reminded that the applicant would need to prove a significant number of residents of a neighbourhood have used the land for lawful sports and pastimes for at least twenty years as of right. Clearly, the first three criteria can be easily proved by an applicant. However, there is an argument in relation to the fourth criteria in that if land has been purchased as Public Open Space, or it is held for that purpose then the Council does not have the right or power to prevent the public from using the land, and as such the usage is 'by right' as opposed to what is required to be proven in village green cases; 'as of right'. In relying upon this argument to defeat a village green application, the Council would be reliant upon the wording and effect of the Lincoln City Council Act and hence to subsequently contravene the Act for reasons set out above would be entirely inappropriate.

With regards to your query for the Planners, the area you are concerned with is protected open space within Local Plan policies of critical natural asset and green wedge both applying. Given this position it is likely that support for such development would be unlikely, however, it is worth bearing in mind that planning is rarely this clear cut and it may be possible to change this position if a clear case could be made evidencing that the development is in the interests of the City's education needs, that this is the best available

site, a mitigation package could be provided to replace the play area/open space and address and adverse environmental impacts. However, this would still leave the issues of Common Land and village green, the first of which is insurmountable given the wording of the Act.

I hope the content above clarifies the position. I regret that I am unable to assist with your proposals for an enlargement of the current school site given the very strict nature of the Lincoln City Council Act 1985 which prohibits the sale of this land and enclosure of the land from the public.

Should you have any queries then please get in touch.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Taylor', written in a cursive style.

Andrew Taylor
Chief Executive & Town Clerk

ACT/KAF