

1. London Borough of Enfield
2. G. Murdoch
3. First Statement
4. Dated this 13th day of January 2006

IN THE LANDS TRIBUNAL

CLAIM NO. LP/37/2004

BETWEEN:

THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF ENFIELD

Applicant

- and -

OBJECTORS TO MODIFICATION OF
BROOMFIELD PARK COVENANT

Respondent

WITNESS STATEMENT OF GRAHAM MURDOCH

I, Graham Murdoch BSc of Fibbens Fox Associates 31 The Broadway, Woodford Green, Essex IG8 0HQ believe that the facts of this Witness Statement are true and understand that it may be placed before the Lands Tribunal.

Insofar as the content of this Witness Statement is within my personal knowledge, it is true and insofar as it is not within my personal knowledge, it is true to the best of my knowledge.

I WILL SAY AS FOLLOWS:

1. QUALIFICATIONS AND EXPERIENCE

- 1.1 I am a Director of Fibbens Fox Associates and I am authorised to make this witness statement on the behalf of the London Borough of Enfield (“the Council”).
- 1.2 I am a Bachelor of Science (Honours) in Town and Country Planning from Heriot Watt University, a Member of the Royal Town Planning Institute and a Member of the Royal Institution of Chartered Surveyors (Planning and Development Division).

- 1.3 I have over 30 years of experience in Town Planning. I was employed in the local Government service for 13½ years between 1974 and 1988, working for a year with South Yorkshire County Council and 12½ years with Harlow District Council in Essex. During most of my time with Harlow I was the Planning Officer responsible for all the Council's Development Control functions.
- 1.4 I entered private practice with Fibbens Fox Associates in January 1988 and I have been a director of the company since its incorporation in 1991. Subsequent to the death of Eric Fibbens in December 1993, I have been the Director responsible for planning matters.
- 1.5 My company is particularly active in London and the South-East of England and regularly handles work in the London Borough of Enfield. I have previously represented the Council at Public Inquiries and I also regularly handle applications and appeals for private clients in Enfield.
- 1.6 I am instructed to give evidence on behalf of the Council on planning matters arising from their application to the Lands Tribunal for modification of a Restrictive Covenant, details of which are provided with the Council's Application to the Lands Tribunal dated 9th June 2004.
- 1.7 I have been provided with a copy of the Land Tribunal application papers and have therefore been able to fully study the grounds on which the application is made.
- 1.8 In offering comments on the planning position, I believe that it is essential to look at the policy framework within which planning decisions are made, particularly the London Borough of Enfield Unitary Development Plan and I propose to look at policies in that plan under a number of headings, namely Conservation, Amenity and Open Space. I think it is also helpful to briefly describe the site and the surrounding area and essential to look at the planning position in relation to the proposals and I do both of these in further sections of the proof. Finally I think it is useful to look at the planning history that has led to the current proposals, although it should be noted that evidence will be given by other witnesses in relation to the way in which the current proposals have evolved and the range of options that were considered before they were decided upon.
- 1.9 I make this witness statement from facts and matters within my knowledge which are true. Where any fact or matter is not within my knowledge it is true to the best of my knowledge and belief.

2. THE SITE AND THE SURROUNDING AREA

- 2.1 In looking at this matter I think it is important initially to consider the site and the surrounding area. Broomfield Park is situated within the London Borough of Enfield a short distance to the north of the North Circular Road. It is bounded by Aldermans Hill, Powys Lane, Broomfield Lane and Broomfield Avenue. These are all roads that have a strongly, if not exclusively, residential character.

- 2.2 Broomfield House is situated on the southern side of the park. There is a vehicular access to the house from Broomfield Lane. This leads through an archway in the wall surrounding this part of the park and only permits one-way traffic.
- 2.3 Broomfield House is situated to the right-hand side of the access road as one enters the park through the archway. On the opposite side of the access road is a park depot area with a former stable block and a terrace of 60's style housing which have in the past been used to accommodate Park Rangers. The yard is separated from Broomfield Lane by one of the original walls of Broomfield House and the area immediately inside the wall houses a series of lockup garages and then an informal car park area.
- 2.4 In the vicinity of the entrance, and therefore the house, the other side of Broomfield Lane contains two storey detached or semi-detached housing.

3. **PLANNING HISTORY**

- 3.1 Although the planning history relating to this site is detailed in the committee reports which are core documents that I refer to later, I think it would be helpful to briefly set out the relevant planning history.
- 3.2 This planning history arises from the original fire which occurred to the house in 1984.
- 3.3 The planning history is as follows:-

LBE/88/0001 an application proposing repair and restoration of the fire damaged listed building for continued use as a museum. No decision was made on the application as it was withdrawn in 1988.

LBC/96/0024 and TP/96/0769 were applications for Listed Building consent and planning permission respectively for partial demolition, repair, adaption and restoration of fire damaged Listed Building for use as pub/restaurant with ancilliary residential accommodation and meeting rooms together with construction of single storey extensions for use for food preparation and beer storage and laying out of a terrace to the eastern side of the building; provision of car parking on part of existing driveway and yard areas together with associated works including formation of new and improved vehicular access through listed walls involving partial demolition. Both were approved in August 1997 and I understand that this approval was following the completion of an agreement under Section 106 of the Town and Country Planning Act 1990.

LBC/98/0032 – an application for Listed Building consent for demolition of Broomfield House was refused at the same time as an outline application (reference TP/98/1654) proposing the erection of a single storey building for use as a museum, exhibition space and serving of refreshments, including the formation of a terrace, pergola and associated works was refused in April 1999.

- 3.4 These decisions are important in the sense that they provide a context to the evolution of proposals and the scheme which is the subject of the current planning permission and Listed Building consent.

- 3.5 In particular it is important to note that an attempt was made to demolish the building and that was refused. This clearly identifies a commitment to seeing the building retained and if it is to be retained clearly it needs to be fully restored and to have a viable economic use to secure its future. The August 1997 approvals clearly demonstrate the type of use which has in the past been considered acceptable and which arguably would have resulted in more activity than is the case with the current scheme.
- 3.6 Copies of these decisions are provided as core documents CD/PLA/O.

4. THE CURRENT PROPOSALS – PLANNING POSITION

- 4.1 Both planning permission and Listed Building Consent have been granted for the proposals which will result in restoration, re-use and extension of the house and which require modification of the covenant.
- 4.2 Planning permission was granted by the Council under reference LBE/03/0013 on 21st October 2003. Core documents CD/PLA/3 and 4 are a copy of the committee report and the decision notice relating to this application. The former is important because it shows the matters that were considered by the Council in reaching this decision, including the relevant UDP policies whilst the latter sets out in full the various conditions imposed by the Council in the event that the development proceeds.
- 4.3 A similar exercise was undertaken in respect of the Listed Building application. This was considered by the Council under reference LBC/03/025 and Listed Building Consent was granted on 17th May 2005. Core documents CD/PLA/5 and 6 are a copy of the committee report and the decision notice granting Listed Building Consent. The report again sets out the UDP policies that were taken into account in reaching the decision. This decision was issued in this instance by the Government Office for London rather than the Council. That explains the difference in timescales between it being approved and the planning permission being granted.
- 4.4 Both the planning permission and the Listed Building consent are subject to conditions requiring development to commence within 5 years of the date of the relevant permission or consent. They both remain extant and can be implemented.
- 4.5 Both documents have a number of what are called conditions precedent. This means that there are conditions that need to be satisfied with the Council before development commences. An example of this is the first condition on the Listed Building consent which requires a scheme to investigate and record both the subterranean archaeology in the environment of the house including the stable yard and that of the standing building to be submitted by the applicant and approved by the Local Planning Authority before development commences. These are important conditions and for commencement to be lawful must all have been dealt with before it occurs. I am satisfied that the conditions attached both to the planning permission and the Listed Building consent are capable for being discharged in order to enable the permitted scheme for Broomfield House to be implemented.

4.6 Therefore subject to satisfaction of all of these conditions precedent and to development commencing within the 5 year period set by the conditions on the permission and consent, the restoration and reuse of Broomfield House could proceed from a planning point of view.

5. THE POLICY CONTEXT

5.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that where, in making any determination under the Planning Acts, regard is to be had to the development plan, the determination should be made in accordance with the plan unless material considerations indicate otherwise. Prior to the Planning and Compulsory Purchase Act 2004, this requirement was imposed by Section 54A of the Town and Country Planning Act 1990.

5.2 This means that when they make any decision as local planning authority on an application for planning permission or Listed Building consent the Council have to take account of policies in the Development Plan. It is also necessary to take account of National/Government Planning Policy and in relation to this scheme the committee reports identify National Planning Policy Statements and Guidance Notes which have been taken into account.

5.3 The statutory Development Plan in this case is the London Borough of Enfield Unitary Development Plan which was adopted in March 1994.

5.4 Although some interim amendments were published for public consultation in June 1997, these were never adopted. They dealt with the questions of affordable housing, open space and industrial land. Although there was an analysis of urban open spaces in the London Borough of Enfield in response to some criticisms of the Inspector who had considered objections to the UDP prior to its adoption I understand that the list does not include Broomfield Park since this had already been identified as Metropolitan Open Land.

5.5 There are a number of important strands of planning policy which will have been considered in making the decisions on the applications for planning permission and Listed Building Consent relating to Broomfield House. These are Conservation Policies dealing with Historic Buildings, policies which seek to protect the amenity of surrounding residents and policies relating to open space, which includes the designation of the Park and the House on the Proposals Map.

5.6 I propose to look at each of these sets of policies in turn, beginning with those in the Conservation Chapter and then dealing with those that deal with the amenity of adjoining residents and open space.

5.7 I have also taken into account the planning and design brief adopted by the Council, which forms supplementary guidance for prospective developers in relation to Broomfield House. It was the subject of consultation with interested groups. This document will have been one of the material considerations taken into account by the Council in reaching their decision and a copy is provided as Core Document CD/PLA/7A.

6. CONSERVATION POLICIES

- 6.1 The policies dealing with Conservation are set out in Chapter 7 of the adopted UDP entitled “Conservation and Townscape”, CD/PLA/7B.
- 6.2 As can be seen from the committee report (Core Document CD/PLA/5) the Council took a number of policies in this chapter into consideration in determining the Listed Building consent application.
- 6.3 They also took into account a number of national planning policies. Of particular importance is PPG15 which deals with Planning and the Historic Environment. This includes Section 3 which deals specifically with Listed Building control and identifies that generally the best way of securing the upkeep of historic buildings and areas is to keep them in active use. Paragraph 3.8 identifies that for the great majority this must mean economically viable uses if they are to survive and new and even continuing uses will often necessitate some degree of adaptation. The PPG was issued in September 1994, shortly after the UDP was adopted, and remains the Government’s current policy guidance. Moreover, the essential policy approach set out in PPG15 has applied for many years and is part of the context within which decisions on Listed Building consent applications must be made.
- 6.4 Broomfield House is Listed Grade II*. The guidance identifies that only 4% of buildings in England that are Listed achieve this grade. Only 2% achieve the higher Grade I Listing and the remaining 94% of Listed Buildings are Grade II. I believe that this clearly demonstrates the importance of this building.
- 6.5 Within the Conservation Chapter in the UDP there is a section which deals with “Protection and Maintenance of Listed Buildings”. This includes policies (II) C12, 13 and 14. These are key policies which seek to ensure that historic buildings are maintained satisfactorily, to maintain a register of buildings considered to be at risk and to protect buildings of architectural historic interest which have been identified as being at risk. The full text of these policies is provided in the extract from the UDP.
- 6.6 Policy (II) C14 sets out a number of ways in which the Council will attempt to protect buildings considered to be at risk and it can be seen that one of these involves encouraging owners to undertake restoration, repair and maintenance work. Clearly the approach that is being adopted in relation to Broomfield House will achieve the aim of that policy.
- 6.7 From this it can be seen that there is a very strong policy framework at both national and local level seeking to safeguard Listed Buildings and to make appropriate provision for their restoration, repair and beneficial use. Listed buildings need to be protected and which need to be restored if they fall into disrepair as is the case with Broomfield House. The framework recognises that in most cases this means that there must be an economically viable use for the building. I am satisfied that such a use or uses must be identified in the present case.
- 6.8 There are also a number of other policies in the Chapter of the Plan which deal with matters relating to this scheme.

- 6.9 Policy (II) C17 deals with built development in the historic curtilage of a Listed Building and restricts such development to that which is reasonably required in conjunction with a suitable use of the Listed Building. That policy was taken into account in looking at the proposed extension to Broomfield House. Equally the policy (II) C18 dealing with grounds around Listed Buildings and seeking to ensure that curtilage of buildings normally retain their historic form, character and use and that where built developments are permitted on land within such curtilage they are in character with the historic design and use of the curtilage and do not result in the curtilage becoming fragmented in terms of occupation and/or use was also taken into account.
- 6.10 Finally I think it is also important to look at the conditions imposed on the Listed Building consent. This consent deals solely with the physical alterations to the building and does not seek to make any judgement of its relationship with the surrounding houses, that matter having been fully considered in connection with the planning application.
- 6.11 There are a number of conditions imposed on the Listed Building consent and it is clear that many of these deal with requirements for further details to be submitted to the Council before consent can be implemented and work commenced. This demonstrates that a high degree of care is being taken over the way in which the restoration is undertaken in order to secure this important Listed Building.
- 6.12 I would therefore conclude that the principle of finding a new use for this Listed Building which will ensure its restoration and be economically viable is one which has a very firm basis in terms of both national and local planning policy. I believe that the Council have taken the relevant policy into consideration in reaching their decision on the Listed Building application and have imposed appropriate conditions governing the way the work is undertaken on that consent.

7. AMENITY POLICIES

- 7.1 Again as can be seen from the committee report on the previous application (Core Document CD/PLA/3) the UDP contains policies which require the impact of proposals for development upon the surrounding environment and residential amenity to be taken into account in considering applications for planning permission. Those policies were considered by the Council in reaching their decision to grant planning permission for the current proposals.
- 7.2 These are set out in the committee report and I note that policies (I) EN1, GD1 and GD2 which deal with environmental quality, regard to surroundings and integration into local community and quality of life and visual amenity are specifically referred to.
- 7.3 The report then goes on to analyse the development. The relationship with residential properties is dealt with under the heading “acceptability of uses”.
- 7.4 This identifies that the nearest residential properties situated on Broomfield Lane are some 90 metres away and analyses the impact on those properties in terms of noise and disturbance both from the use of the building and from the increase in traffic movements that will result from the change of use.

- 7.5 The committee report concludes that the internal use of the building is unlikely to give rise to conditions prejudicial to the amenity of those neighbouring residents subject to appropriate conditions regarding hours of operation and noise generation. Those conditions are imposed (see condition 21 regarding hours of operation and 18 regarding noise) on the decision notice, CD/PLA/4.
- 7.6 The committee report also recognises that the traffic generated by the scheme is a potential source of impact upon the amenity of local residents. While the report acknowledges that there will be an increase in traffic movements it concludes that Broomfield Lane already carries a reasonable volume of traffic and that taking account of the overall proposal and the desire to secure a viable economic future for the restored Broomfield House, the noise and disturbance would not be of a level so as to materially affect the amenities enjoyed by residents of Broomfield Lane.
- 7.7 In summary, the Council's decision to grant planning permission for the current proposals for Broomfield House was founded upon an assessment of the impact of those proposals upon the surrounding environment and residential amenity in accordance with the relevant policies of the development plan.
- 7.8 In that respect, the Council imposed a number of the conditions on the planning permission in order to secure appropriate control over impacts upon the surrounding environment and appropriate protection to residential amenity. Conditions 18 and 20 address those matters. There are also conditions which control and provide for loading and unloading and turning of vehicles clear of the highway (which will inevitably mean within the site rather than on Broomfield Lane where the houses are), a requirement that highway works identified in a Transport Impact Statement be carried out before the use commences (Conditions 4 and 5) details of fume extraction (Condition 13), lighting (Condition 14) and limitations on the number of people attending any function and restrictions upon the use of the community and educational rooms (Condition 19 and 20). There are also conditions requiring management plans covering various matters relating to opening times, the relationship of functions to major events in the park, control and allocation of on site car parking and onward review of the management plan together with a need to have the range of activities and hours of use permitted within the conservatory extension submitted to and approved by the Council.
- 7.9 I have mentioned the question of highway improvements. I am aware that the Council commissioned a report from JMP Consultants Limited in relation to improvements to the access into the site from Broomfield Lane. (Core Document CD/PLA/8) Proposals have been put forward which seek to provide the best possible means of access whilst retaining the historic archway in its current form.
- 7.10 The Council acknowledge that the permitted scheme will result in an increase in traffic in Broomfield Lane. Nevertheless, Broomfield Lane already carries traffic and the Council is satisfied that the impact of the increase in traffic in Broomfield Lane resulting from the refurbishment and restoration to beneficial use of Broomfield House is acceptable.

- 7.11 I conclude that the planning permission includes appropriate conditions to control the impact of the current proposals, upon the surrounding environment and the amenity of local residents.
- 7.12 Finally it is important to bear in mind that restoring Broomfield House and finding a viable and economic use for it must represent an improvement to the surrounding environment and to the amenity of local residents by removing an eyesore and by restoring to active use a dilapidated building that has the potential, if not very strictly controlled, to become a magnet for vandalism and associated problems.

8. OPEN SPACE POLICIES

- 8.1 These policies are found in Chapter 6 of the UDP copies of which are provided within the Core Document CD/PLA/7C. These follow the thrust of Government advice in PPG17 “Sport and Recreation” published in 1991.
- 8.2 Also relevant is the designation on the proposals map of the UDP. Broomfield Park itself is identified as Metropolitan Open Land. A smaller area of the park, centred on Broomfield House is identified as site 6/AO i.e. an area of opportunity. In the schedule to the plan identifying site specific proposals this is identified as a site 0.16 hectares in size and defined as
- “Land owned by LBE, would be suitable for community use, or office use with a degree of public access”.
- 8.3 As can be seen from the committee report on the planning application (Core Document CD/PLA/3) policies (II)01 and 02 in the Open Space Chapter were taken into account in the determination of the planning application.
- 8.4 These relate to Metropolitan Open Land. Policy (II)02 identifies general uses which would normally be considered acceptable within Metropolitan Open Land (public and private open space and playing fields; agriculture, woodlands and orchards; canals, reservoirs and other areas of open water; golf courses; allotments and nursery gardens; cemeteries and associated crematoria; nature conservation; educational and institutional uses) whereas Policy (II)01 deals with the question of new buildings, extensions to existing buildings or the change of use of land and existing buildings for purposes not normally appropriate in Metropolitan Open Land. As some of the uses to which it is proposed to put the restored and extended Broomfield House are not those which can be found within the definition set out in (II) 02, it is therefore incumbent for there to be very special circumstances to justify the use and the extension to the building. (The educational and associated uses clearly fall within the terms of policy (II) 02).
- 8.5 This matter was considered in the committee report which refers to the derelict nature of Broomfield House and how it has detracted from the setting and appearance of Broomfield Park. I believe that this together with its importance as a Grade II* Listed Building together with the importance of finding a viable use for such a building represent the very special circumstances which clearly justified the grant of planning permission.

9. RESIDENTIAL DEVELOPMENT

- 9.1 Although not part of the Broomfield House proposals which have been dealt with through the planning system to-date, I am aware that there are proposals to utilise the stable block and some residential buildings adjoining it in connection with the scheme. It is proposed to market these buildings for residential use and to use that finance to help fund the restoration of Broomfield House.
- 9.2 There are a number of points to bear in mind in relation to this.
- 9.3 Firstly these are buildings which have been used for residential purposes.
- 9.4 These houses are in my opinion extremely unsightly and although relatively well screened do to an extent detract from the appearance of the park.
- 9.5 The stable buildings themselves are I understand in a poor state of repair and in need of refurbishment.
- 9.6 As was the case with the works to the house the proposals would need to be considered against Policy (II)01 because the site is also within Metropolitan Open Land. I believe that there are sufficient very special circumstances to justify a residential scheme in this location, namely the need to bring the existing buildings back into full repair, the lack of any limitation on the use of the existing houses and their unsightly nature and the benefits that would result from their redevelopment into a more acceptable form. Finally there is the concept of “enabling development”. This is a well-established planning mechanism in relation to schemes for the restoration and use of Listed Buildings. What it basically involves is some other form of development, in itself not in accordance with planning policy, being permitted in conjunction with such a scheme in order to provide finance to enable works to a Listed Building to proceed.

10. PROVISIONS OF THE DEVELOPMENT PLAN IN RELATION TO THE APPLICATION

- 10.1 I am aware that reference is made in the application to the Lands Tribunal to various policies in the Development Plan which development of the site will need to comply with. These include policies that were taken into account by the Council in making their decisions on the planning and Listed Building applications relating to the site.
- 10.2 The policies deal with amenity, Conservation, open space, general design and traffic matters. Details of them are set out in the application.

11. CONCLUSIONS

- 11.1 Broomfield House is a Grade II* Listed Building which has suffered extensive fire damage. It is situated within Broomfield Park, an area of Metropolitan Open Land and a public open space.

- 11.2 The Development Plan covering the area is the London Borough of Enfield Unitary Development Plan adopted in 1994.
- 11.3 Development Plan policy relating to Listed Building reflects that of national guidance and places a very strong emphasis upon the protection, refurbishment and reuse of Listed Buildings. Grade II* buildings are one of only a very small proportion of Listed Buildings and are therefore of considerable importance. There is a very strong presumption against demolition of such buildings. Development Plan Policy also recognises that it is important to have an acceptable use for a refurbished Listed Building and the range of uses to which the building are being put is supported by policy.
- 11.4 The refurbishment and reuse of the Listed Building for these uses is supported by a brief prepared by the Council, subjected to consultation with interested groups and forming supplementary planning guidance.
- 11.5 The Unitary Development Plan contains a range of policies which seek to ensure that the amenity of neighbouring residents is safeguarded, seeks to protect the quality of the park (Metropolitan Open Land) for public use and seeks to ensure that the implications of traffic generation of a proposal are fully taken into account in assessing it.
- 11.6 Overall the effect of these planning controls, together with Listed Building controls, secures the safeguards to neighbouring amenity which the restriction in the covenant was originally designed to achieve at a time before the planning system existed.
- 11.7 The proposed scheme has been granted both planning permission and Listed Building consent.
- 11.8 Both the planning permission and the Listed Building consent remain alive. They are both subject to a number of conditions, some of which have to be satisfied before development commences. However subject to satisfaction of those conditions, development can commence within the life of the relevant permission or consent.
- 11.9 In accordance with the Royal Institution of Chartered Surveyors Practice Statement – “Surveyor’s Acting as Expert Witnesses”. I confirm that:-
- (i) I believe that the facts I have stated in this report are true and that the opinions I have expressed are correct.
 - (ii) The report includes all the facts which I regard as being relevant to the opinion which I have expressed and the Tribunal’s attention has been drawn to any matter which would affect the validity of my opinion.
 - (iii) The report complies with the requirements of the Royal Institution of Chartered Surveyors as set down in Surveyor’s Acting as Expert Witnesses: Practice Statement.
 - (iv) I understand my duty to the Tribunal and have complied with that duty.

Signed

GRAHAM A. MURDOCH

13th January 2006

1. Claimant: London Borough of Enfield
2. G. Murdoch
3. First Statement
4. Dated this 13th day of January 2006

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OBJECTORS TO MODIFICATION
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Defendant

**WITNESS STATEMENT OF
GRAHAM MURDOCH**

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