

The Secretary of State for Children Schools and Families
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FAO Andrea Smith

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Our Ref: JZMM/MTH/SS2615-29

15 January 2009

Dear Sirs,

The Metropolitan Borough of Stockport (Harcourt Street, North Reddish) (Primary School and Children's Centre Development Scheme) Compulsory Purchase Order 2008

We have been instructed by the Metropolitan Borough Council of Stockport to reply to your e-mail of 16 September 2008. We mentioned that this reply would follow in our letter of 21 October 2008.

Our clients have taken Advice from Mr Martin Carter of Counsel in relation to the TVG application. Counsel has prepared a written advice on whether a TVG application is an impediment to the implementation of the scheme underlying the CPO. I attach a copy of the Advice. You will see that he has reached the view that it is not an impediment for the reasons addressed in the Advice.

We set out the response to each point raised by the Department's lawyers:

1. **Qn: When is work due to begin on the development? How soon does the Authority require the land?**

Ans: 16 March 2009

2. **Qn: What is the extent of parcel 2? The map provided to the SOS appears to indicate to that a part of Parcel 2 falls within the recreational land which the Authority already owns – if this is the case then this part should not be included in the CPO.**

Ans: No part of Plot 2 included within the CPO forms part of the recreational land. As a result the issue does not arise.

3. **Qn: Is parcel 3 and part or all of parcel 2 considered public recreational ground and defined as open space? If land which is open space is confirmed as part of the Order then parts of the Form 1 will have to be changed.**

Ans: Stockport do not believe that Plot 3 and part or all of Plot 2 (and indeed for that matter all of Plot 1) would be considered or zoned public open space for planning purposes at the present time. There is an outstanding application to register land to the east of the proposed school access as a town or village green. I have mentioned below that the size of Plot 3 needs to be reduced because part of Plot 3 has been found to be within the adopted highway. The TVG application includes part of Plot 3. If that

application (which has only been validated by the Council in its separate capacity as Registration Authority for town and village greens on 5 January 2009) is determined favourably in due course, then the question of whether Plot 3 constitutes open space will need to be looked at. For the reasons set out in Counsel's Advice the Council does not believe that the existence of an undetermined TVG application forms an impediment to confirmation of the CPO.

4. **Qn: What is the exact size (in square yards) of any open space to be covered by the CPO?**

Ans: Again as stated in 3 above, the Council does not consider that any of the CPO land is open space within the meaning of or for the purposes of Section 19 of the Acquisition of Land Act 1981. The area of the land within Plot 3 that appears to be included in the TVG application is 8.7 square metres (10.5 square yards). Should Plot 3 be confirmed in the CPO, the area will therefore be less than 250 square yards which would mean that the land will not be subject to special parliamentary procedures.

5. **Qn: Has the Authority carried out a land registry search of the Order land?**

Ans: Yes, revealing none of the Plots are registered land.

Notification: A fresh General Certificate complying with Appendix T of ODPM Circular 06/2004 is enclosed having regard to the comments set out in paragraph 3 below.

Documents submitted for CPO confirmation

The comments provided below are on the basis that the Council does not believe that it, or any local authority which is not the confirming authority, has the power to amend and substitute a CPO that has already been made, executed and submitted to the SOS for confirmation. It is our contention that once the CPO has been submitted for confirmation, it is the responsibility of the SOS to make any necessary modifications in compliance with Section 13 of the Acquisition of Land Act 1981.

The Council does not feel that the observations raised by the Department with regard to the format of the CPO are major issues but can be dealt with by modification of the CPO should the SOS consider this to be necessary. Without prejudice to its view that it is for the SOS to make any necessary modifications, the following comments are made in response to the numbered paragraphs referred to in your e-mail of 16 September 2008:

- 1 With regard to 2(i) - the proposed amendments are agreed. With regard to 2(ii) - agreed. With regard to 2(iv) (this should refer to paragraph 3) - the answer is No. With regard to 2(v) - agreed.
- 2 With regard to 3(i) - agreed. With regard to 3(ii) - Plot 2 comprises one parcel of land and is not part of the Council's adjoining recreational land. As indicated already, Plot 3 needs to be reduced in size as part of Plot 3 is within the adopted highway forming part of Mill Lane. We enclose a plan which shows the reduced Plot 3 comprising an area of approximately 8.7 square metres (10.5 square yards). With regard to 3(iii) - the CPO map already does this.
- 3 With regard to 4 (i) and (ii), the Council has complied fully with the procedural requirements relating to the publication of notices of the making and submission of the CPO and has confirmed in the General Certificate that the Council published notice of the intention to submit the CPO for confirmation on two consecutive weeks in the local press and because there was nobody known to the Council who had an interest in the CPO land (which is still the position), certified that the same notice was displayed on or near to the CPO land. There was no need for the Council to complete paragraph 2 of the General Certificate, as the Council was and is still unable to certify that it was necessary to serve notice on the class of persons referred to in paragraph 2. It was for this reason that the paragraphs 1 and 3 were compressed, as is usual in these circumstances where paragraph 2 does not apply.

We have some difficulty in trying to reconcile the way in which you require the General Certificate to be amended. In the letter of 1 July 2008, the Council explained that the notice of the making and submission of the CPO had been placed in the local press on two further

occasions owing to the notice not appearing as planned on 11 June after the initial publication on 4 June 2008. The notice subsequently appeared on 18 and 25 June 2008. In your e-mail of 16 September 2008, it seems that you want the Council to produce a General Certificate that (a) only refers to the notices appearing in the press of 18 and 25 June and (b) that includes the statement in paragraph 2 of Appendix T of ODPM Circular 06/2004 despite the fact that the Council did not serve any notices on the class of persons referred to in that paragraph as the Council was and is still unable to identify anybody with an interest in the CPO land. We have therefore enclosed for your consideration a revised General Certificate that contains all the publication dates including 4 June 2008 as otherwise the Council is unable to certify that the notice was displayed on or about the CPO land for not less than 21 days from the date of the original publication of the notice, being 4 June 2008.

With regard to 5 (Statement of Reasons), the following supplemental information with respect to the intended treatment of the CPO Plots is offered and where this is referred to in the Statement of Reasons, the amended passages have for convenience been reproduced in their entirety below:

Map Ref. 1 – refers to all that land comprising in the whole some 260 square metres, being land situate off Harcourt Street, North Reddish, and forming an access route between No 148 Harcourt Street and No 150 Harcourt Street to a playing field off Harcourt Street. The Council's Unitary Development Plan classifies the land as falling within a predominantly residential area. This parcel of land is required to locate the main service connections to serve the new primary school. This route is necessary as the only suitable main services are located in Harcourt Street.

The land comprises a level surfaced access road connecting the Council's land with Harcourt Street, which is an adopted highway. The land has a tarmac surface along its length from the adopted highway to the boundary of the Council's land. Access to the Council's land is secured by two metal pedestrian gates which are not locked and a wider metal gate sufficient to allow access by a vehicle or tractor mower. The Council has exclusive control of the gates.

It is intended to improve this area of land to form a gated, hard paved area improving pedestrian access to the residual open land as an alternative means of access to the new primary school. The route will have a refurbished tarmac access road and the existing gated access will continue to be maintained to allow safe pedestrian access to the new school and residual open land. In addition a highway standard curb and tarmac footpath will be provided along the northern boundary of this plot adjacent to the side of No 150 Harcourt Street.

Map Ref. 2 – refers to all that land comprising in the whole some 7.5 square metres being land situate off Mill Lane, North Reddish, and adjoining No 103 Mill Lane, North Reddish.

This rectangular parcel of land is required to facilitate the construction of the main access to the new school. The land is located adjacent to the boundary of No 103 Mill Lane which is a private dwellinghouse. The boundary to this property is marked by a low brick wall. This plot of land is a bare plot of land which is unkempt and serves no useful purpose and is not part of the adopted highway.

Map Ref. 3 – refers to all that land comprising in the whole some 23 square metres, being land forming a narrow triangular strip of land running to the rear of the kerb line of Mill Lane, North Reddish, in an easterly direction from No 103 Mill Lane, North Reddish.

Part of this land is a grass verge and is needed to ensure that the necessary visibility splay to the main school entrance is improved and maintained. The grass verge is currently maintained by the Council on a voluntary basis. To the rear of the grass verge is a row of mature trees.

The Council wishes to acquire this strip of land to ensure that it is able to provide and maintain the necessary visibility splay at the main entrance of the school, although no planning consent is required for this purpose as the Council intends to leave the grass verge in situ. Plot 3 will therefore remain as grass verge.

- 4 It is correct that Plot 2 is better described as rectangular. Again this will need to be altered.

- 5 Appropriate wording covering the Human Rights audit appears below for submission to the SOS.

Human Rights Considerations

- 5.1 Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way that is incompatible with the European Convention on Human Rights (the "**Convention**"). Various Convention rights may be affected by the process of making and considering the CPO, including those under Articles 6, 8 and 14 of the Convention and Article 1 of the First Protocol.
- 5.2 The European Court of Human Rights has recognised, in the context of Article 1 of the First Protocol (entitlement to the peaceful enjoyment of possession (including property)), that "regard must be had to the fair balance that has to be struck between the competing interests of the individual and the community as a whole". The Council recognises that powers of compulsory purchase must be exercised proportionately. Both public and private interests must be taken into account in the exercise of the Council's powers and duties as a local authority.
- 5.3 Similarly, any interference with Article 8 rights (the right to respect for private and family life and home) must be "necessary in a democratic society", and should also be exercised proportionately. In promoting the CPO, the Council has considered carefully the balance to be struck between individual rights and the wider public interest. Any interference with rights protected by the Convention is considered to be justifiable in order to secure the public benefits that the primary school scheme will bring to the community of North Reddish.
- 5.4 In coming to the conclusion that there is a compelling case in the public interest to make the CPO, the Council has had due regard to Article 1 of the First Protocol (the right to peaceful enjoyment of possessions (including property)), Article 8 (protection of private and family life), Article 6 (entitlement to a fair and public hearing), and Article 14 (the right to enjoy rights and freedoms free from discrimination).
- 5.5 Article 1 protects the right to peaceful enjoyment of possessions, including property. This protection does not diminish the right of the Council to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. The Council considers that in exercising its statutory powers and making the CPO, a fair balance will be struck between the public interest in the implementation of the scheme and those private rights that will be affected by the Order.
- 5.6 Article 6 protects a person's entitlement to a fair and public hearing in the determination of their civil and political rights. This includes property rights and may include opportunities to be heard in the consultation process connected with the planning application for the scheme to which the CPO relates. The Council is of the view that the statutory procedures relating to the making of the CPO, taken with the right to object to the CPO and the opportunity to seek judicial review of a confirmed CPO, satisfy the requirements of Article 6.
- 5.7 The right to respect for private and family life and home, protected by Article 8, may be restricted if the infringement is in accordance with the law, has a legitimate aim and is fair and proportionate in the public interest. The Council is satisfied that such interferences as may occur as a result of the CPO are in accordance with the law, pursue a legitimate aim and are proportionate, having regard to the public interest and to the public benefit which will be achieved by the implementation of the scheme.
- 5.8 Article 14 prohibits discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in relation to the enjoyment of all of the rights and freedoms protected by the Convention. In exercising its statutory powers in relation to the CPO, the Council has had due regard to Article 14.

- 5.9 Each of these rights are qualified rights and may be interfered with, provided such interference is prescribed by law, is pursuant to a legitimate aim, is necessary in a democratic society and is proportionate. The Council is conscious of the need to strike a balance between the rights of the individual and the interests of the public.
- 5.10 In the light of the significant public benefit for North Reddish and the Borough which would ensue from the implementation of the proposed development, it is considered that, in Human Rights terms, it is appropriate to make the CPO. In the circumstances, it is not considered that the CPO constitutes an unlawful interference with individual property rights. It is the Council's intention to follow the statutory procedures and to make compensation payments where appropriate.

Definitive Footpaths

Following submission of the CPO for confirmation, the Council has received a claim for 4 footpaths to be registered. We enclose 4 plans showing the claimed routes (marked Route A, B, C, and D). A portion of these routes: Route A between Points E & F; Route B between Points C,D & E; Route C between Points B, C & D, affect plots included in the CPO. The terminus point for the claimed footpaths with Mill Lane does not lie within either Plots 2 or 3 within the CPO, but on land which is already within the Council's ownership.

It is the Council's intention immediately to promote orders to divert the claimed routes for these footpaths along routes which will allow the primary school and the adjacent football pitch to be built in accordance with the planning permission already granted by SMBC for the project.

For clarity, the claimed footpath routes between 148 and 150 Harcourt Street do not prevent the underlying reason for the acquisition of Plot 1 (to enable the location of the main service connections to the primary school) and the claimed routes do not affect Plots 2 and 3.

I trust that this deals with all the outstanding points you have raised at this stage. Will you please confirm with the Department's lawyer that the CPO can proceed to confirmation without delay in the light of the information now provided.

Yours faithfully



Cobbetts LLP

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**THE METROPOLITAN BOROUGH OF STOCKPORT
(HARCOURT STREET, NORTH REDDISH)
(PRIMARY SCHOOL AND CHILDREN'S CENTRE DEVELOPMENT SCHEME)
COMPULSORY PURCHASE ORDER 2008**

I hereby certify that:

1. A notice in the Form numbered 7 in the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004 (SI 2004 No 2595) was published in three issues of the Stockport Express and Advertiser dated the 4th June 2008, the 18th June 2008 and the 25th June 2008. The time allowed for objections was not less than 21 days from the date of the first publication of the notice and the last date for them is the 4th July 2008.
 2. A notice in the same Form addressed to persons occupying or having an interest in the land was affixed to a conspicuous object or objects on or near the land comprised in the order on the 4th June 2008 and from that date remained in place for a period of at least 21 days which was the period allowed for objections, the last date being the 4th July 2008.
 3. A copy of the order and of the map were deposited at the offices of the Metropolitan Borough Council of Stockport, Town Hall, Stockport and will remain available for inspection until the 4th July 2008.
3. Two copies of the Statement of Reasons are herewith forwarded to the Secretary of State.

DATED this 4th June 2008



Barry Khan LLB (Hons)
Council Solicitor,
Stockport Legal Services
Business Services Directorate
The Metropolitan Borough Council of Stockport.
Town Hall, Stockport.
SK1 3XE.

RE: THE METROPOLITAN
BOROUGH OF STOCKPORT
(HARCOURT STREET, NORTH
REDDISH PRIMARY SCHOOL AND
CHILDREN'S DEVELOPMENT
SCHEME) COMPULSORY
PURCHASE ORDER 2008.

ADVICE

Cobbetts LLP
58 Mosley Street
Manchester
M2 3HZ

Your Ref: JZMM/PJLB/SS2615-29

Our Ref: MC/268119

RE: THE METROPOLITAN BOROUGH OF STOCKPORT (HARCOURT STREET,
NORTH REDDISH PRIMARY SCHOOL AND CHILDREN'S DEVELOPMENT
SCHEME) COMPULSORY PURCHASE ORDER 2008.

ADVICE

1. I am asked to advise Stockport Metropolitan Borough Council ("the Council") as to an issue that has arisen in connection with the above Compulsory Purchase Order ("the CPO"). I am aware that this Advice may be disclosed to others.
2. The Council has made the CPO pursuant to section 530 Education Act 1996, in order to be able to provide a new school on land off Harcourt Street, North Reddish, Stockport. Objections have been made to the CPO, and it has been submitted to the Secretary of State for Children, Schools and Families for confirmation.
3. The vast majority of the land required to provide the school is already Council-owned, but three small plots of land are outside the Council's ownership and are required to provide either mains services or safe vehicular access to the proposed school and are an integral part of the scheme.
4. Plot 3 of the Order Lands is an elongated triangular piece of land with an area of some 23 square metres, which is required in order to provide a visibility splay for drivers of vehicles turning left into the school from Mill Lane and for drivers to have a safe view of conditions on Mill Lane as they leave the proposed school site, whichever direction they turn onto Mill Lane. No built development is to be

provided on plot 3 and no works are required on that plot. Ownership is required in order to give the Council power to ensure that the visibility splay is kept free from obstructions.

5. An application has been made to register land to the east of the proposed school site as a Town or Village Green (“TVG”), pursuant to section 15 of the Commons Act 2006. The applicant was told that the application was invalid when it was first made, because of the lack of a necessary plan, but that problem has since been attended to and the Council, as Commons Registration Authority, is progressing the application. It has not been determined.
6. Plot 3 of the CPO Order Lands is also within the area of the TVG application.
7. The Secretary of State, as confirming authority for the CPO, is obviously mindful of the Advice in paragraphs 22 and 23 of circular 06/2004 and has quite properly raised the issue of whether the TVG application amounts to an impediment to the implementation of the scheme underlying the CPO, which he is bound to consider when deciding whether to confirm the CPO. It is this matter which I am asked to address.
8. In my view, the TVG application is not an impediment to the implementation of the CPO for two separate, but complementary, reasons.
9. The first reason is that the TVG application is only an application and has not been determined. Land does not have the status of a TVG unless and until it is

entered onto the Commons Register. The authority for that proposition is the House of Lords' decision in the case of Oxfordshire County Council v Oxford City Council and Robinson [2006] 2 AC 674¹. That means that the land comprised in plot 3 does not have TVG status and may never have it. At worst, the application amounts to a potential impediment which may arise at some unspecified point in the future. It is not an impediment now and would not be unless and until the application succeeded.

10. The second reason is that even if the TVG application succeeds, it would not be an impediment to the implementation of this scheme, having regard to the particular facts of the case. As I have set out above, no built development or works are required on plot 3. Indeed, the purpose of acquisition is to keep the land free from obstruction. If plot 3 became part of a registered TVG, then that status would be perfectly compatible with the proposed school scheme. That is because, in general terms, no built development or other works can take place on a TVG unless they are to the advantage of the recreational use of the TVG: see section 29 of the Commons Act 1876. On the facts of this case, TVG status for plot 3 would, if anything, support the purpose of acquisition of the land, by reinforcing the inability to erect obstructions in the visibility splay.

11. It is therefore my view that, for those two complementary reasons, the TVG application is not an impediment to the implementation of the scheme underlying the CPO in this case.

¹ See, in particular, paragraph 43 (Lord Hoffmann), paragraph 110 (Lord Scott of Foscote), paragraph 116 (Lord Rodger of Earlsferry) and paragraph 124 (Lord Walker of Gestingthorpe).

12. I trust that I have dealt with the matters upon which my view was sought. If I can be of any further assistance, then my Instructing Solicitor should not hesitate to contact me in Chambers.

MARTIN CARTER
15th December 2008.

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NTS 21st Nov 2008



- Point
- Route
- Council Owned Land



STOCKPORT
METROPOLITAN BOROUGH COUNCIL

Corporate Director, Environment & Economy
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SCALE NTS		DATE 21st Nov 2008	
DRAWING NUMBER Task 2524			


JOB TITLE **Appendix 1. Harcourt Street Route A. Melanie Drive to Harcourt Street.**

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 **STOCKPORT**
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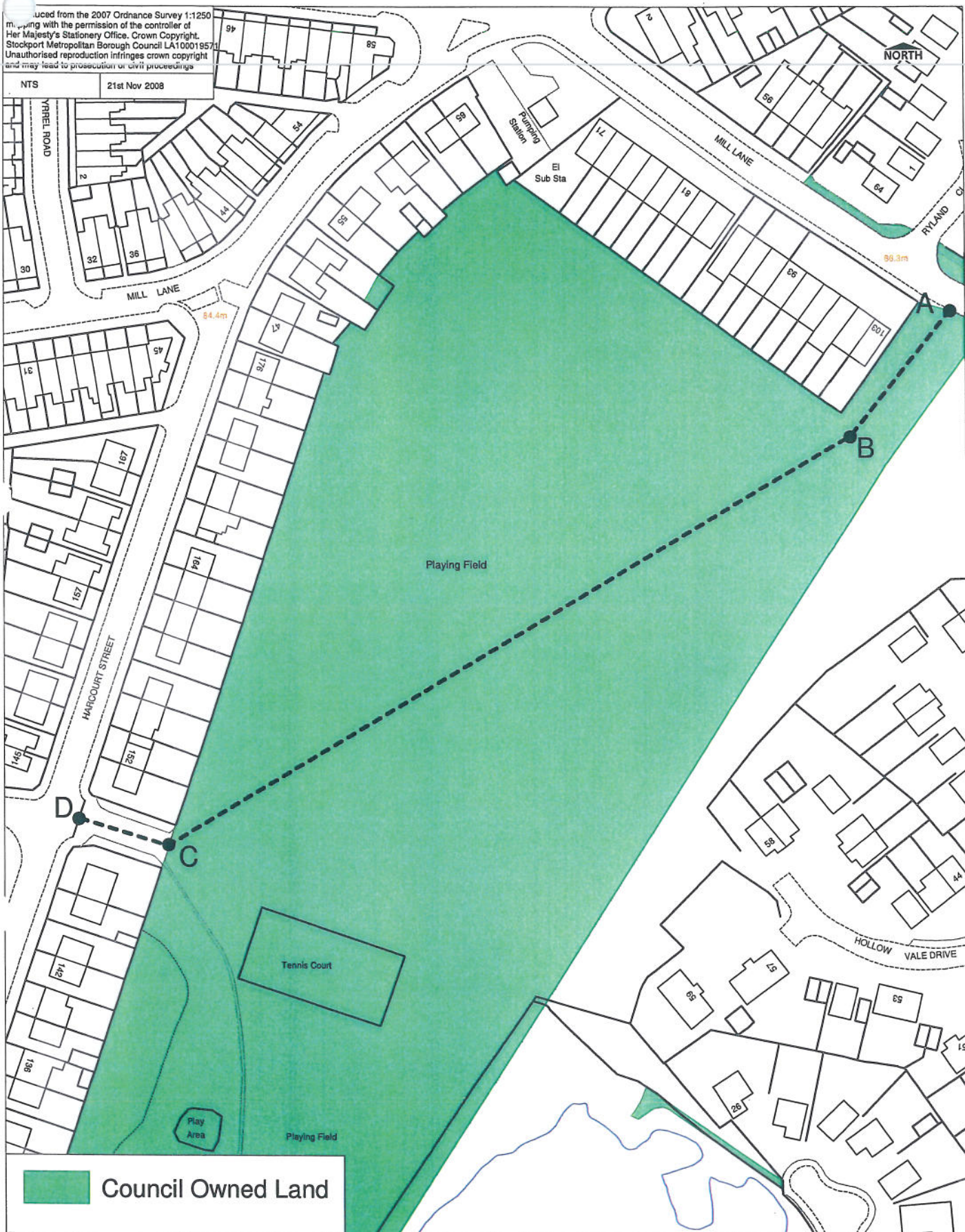
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DRAWING NUMBER Task 2524_2			

JOB TITLE **Appendix 1. Harcourt Street Route B. Hollow Vale Drive to Harcourt Street.**

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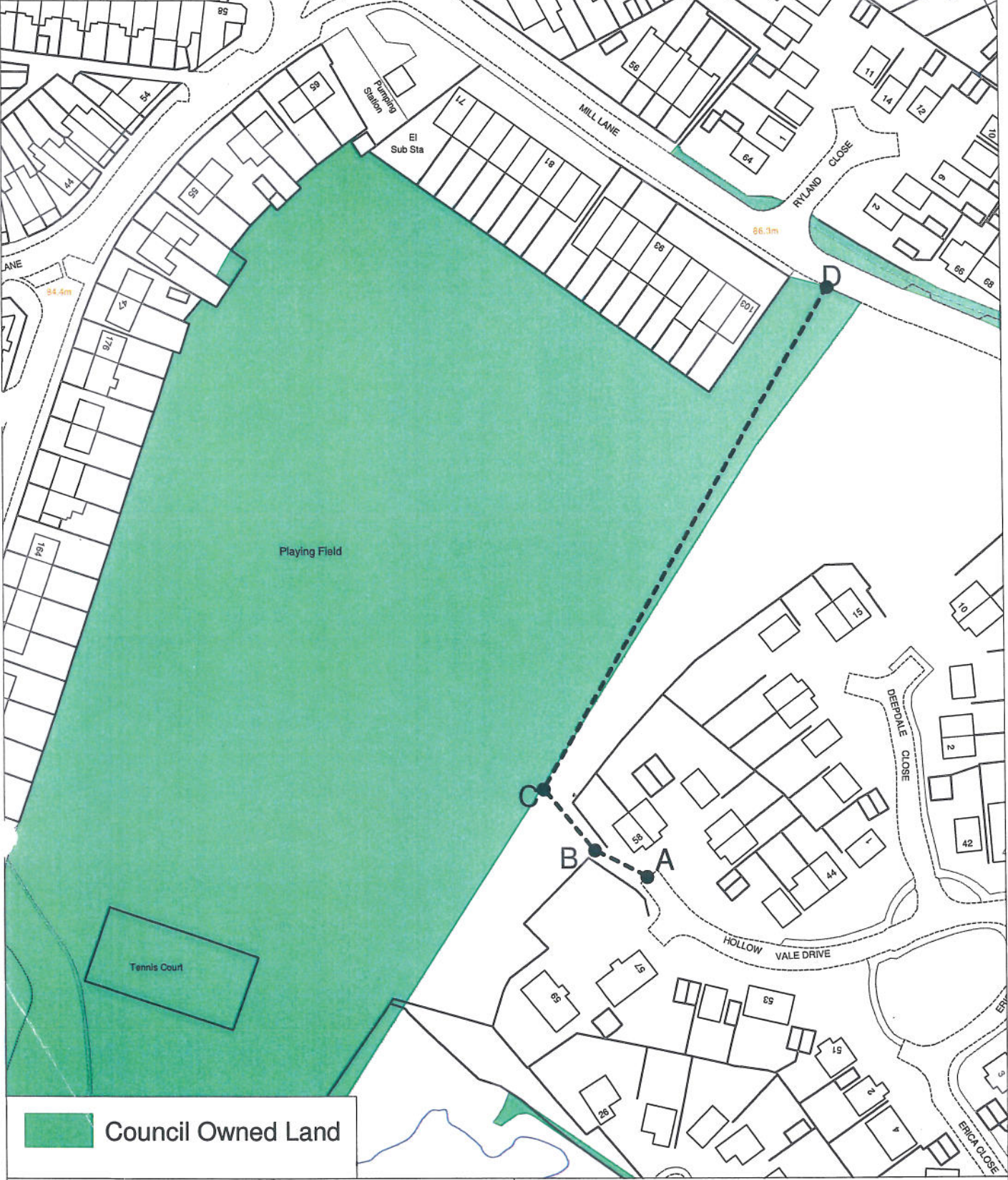
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SCALE NTS		DATE 21st Nov 2008	
DRAWING NUMBER Task 2524_3			

JOB TITLE

Appendix 1. Harcourt Street Route C. Mill Lane to Harcourt Street.

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DRAWING NUMBER Task 2524_4			

JOB TITLE

Appendix 1. Harcourt Street Route D. Hollow Vale Drive to Mill Lane.