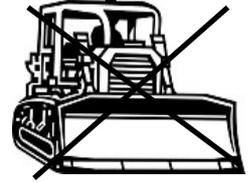




# KEEP OSTERLEY GREEN!

*For the protection of our green spaces & appropriate sustainable development*

**Newsletter No.9, 12<sup>th</sup> February 2016**



## Time for Justice – KOG applies for Judicial Review of Nishkam decision

First, apologies for our *Newsletter* silence. Our last issue was on 15<sup>th</sup> December, after the Planning Committee approved the application for a Nishkam School on the White Lodge site. In the meantime we have been very busy considering our options.

We were, and are, certain that the Planning Committee decision was deeply flawed. We fought the Nishkam application on purely planning and legal grounds only to find that the Planning Committee was improperly encouraged to approve it on non-planning grounds and with key information not provided, along with misleading and even false information.

In the weeks since the decision, we have consulted legal professionals. They have confirmed that we have a good case and that it is strong enough to have a good chance of a positive outcome at a Judicial Review. We believe that this is now our best option. To proceed we need your financial backing (see below).

### What is a Judicial Review (JR)?

A judicial review is the means by which the High Court considers the validity of the process by which a public body reaches a decision. (More on page 2)

We held a public meeting on 12<sup>th</sup> January at which there was overwhelming support for a JR in order to see that justice is done. It was important to test the strength of our case before proceeding. We held extensive talks with barristers and solicitors and have received the reassurance we needed from them.

### Paying for the Judicial Review

Our target to cover **Stage 1** and **Stage 2** of the JR is £40,000. This is serious money but we hope that you agree that it is possible. Since our 12<sup>th</sup> January meeting many residents have contacted us to offer money for the JR. Now we need contributions from everyone who supports our campaign.

More than 1200 residents signed our petition against the school. **How much do you need to contribute?**

- 40 residents x £1000 would reach the target
- or 125 residents x £320,
- or 250 residents x £160,
- or 500 residents x £80,
- or 1000 residents x £40.

If residents give money and either we exceed our target or if the process stops after Stage 1, then contributions of £100 or more which are surplus to requirement will be returned on a pro rata basis. If you need any further information about any of this, then please contact us.

### What if we do not go to Judicial Review?

As you think about the contribution that you feel you are able to make for a JR, please bear the following points in mind.

1. **The Nishkam School is only a start.** Another school for 1100 children is planned on the current Grasshoppers Rugby club site.
2. **Osterley Park will be under threat** as it is mostly privately owned Metropolitan Open Land (except for Osterley House and its immediate grounds) just like the White Lodge site.
3. **Nishkam have already announced their intention to add a nursery** to the White Lodge development adding further to traffic problems.
4. **A 14-storey block of flats is being proposed** on the corner diagonally opposite the old Gillette building.
5. **The Council has started consultations about development plans for the Great West Corridor** (The “Golden Mile”) which will bring an increase in very tall buildings in the area.
6. **Consultations have also started for developing the West of the borough** which have clearly announced the Council's intention to build on Green Belt land.
7. **The Council's practice of consultation is a farce.** A strong challenge is needed if residents views are to be taken seriously. We must oppose the Council's abuse of power or further inappropriate developments will destroy the character of the area.
8. **If we don't take legal action (JR), work on the White Lodge site could start on 10<sup>th</sup> March.** Now is the time to act and the legal avenue is the only way open to use.

# The Judicial Review Process Explained

In a JR case, the Court looks at the lawfulness of the decision-making process. If the Court finds that the decision was unlawful, it will be 'quashed'. The application process would have to be rerun from the start, this time legally.

There are a series of possible grounds on which a decision could be found to be unlawful. This includes (1) *Error of law*: failure to understand or correctly apply the law, (2) *Relevance*: irrelevant information allowed, relevant information ignored, (3) *Unreasonableness*: no reasonable decision-maker would have reached the same decision (4) *Bias*: the decision was not free of bias or the appearance of bias.

## A JR is normally a two-stage process

**STAGE 1.** The Claimants apply for 'permission' from the Court to proceed, and will only get through this stage if they can show that there is some merit to the case. The Claimants fill out an application form and set out their arguments in writing. The Defendant is then given an opportunity to respond in writing (within 14 days) before both sets of written arguments are considered by a High Court judge.

The judge will either:

- a) Grant permission - in which case, the case will be given a date for a full hearing in Court
- b) Refuse permission - If permission is refused, the Claimant must decide whether to give up entirely at this point, or to renew their application at an oral permission hearing. Again, the Judge can either refuse or grant permission

**STAGE 2.** If permission is granted, a full hearing will follow. At this hearing both sides present legal argument and the Judge will decide whether or not the decision under challenge was lawful.

**Costs involved.** We estimate the costs as follows:

**Stage 1** - £10-12,000 including VAT

**Stage 2** - £18-24,000 including VAT

Should we lose our challenge, we would also have to pay for the Defendant's legal costs, which we will be seeking to limit with a Protective Costs Order (PCO). That means we will only be liable for a fixed portion of the Defendant's costs in the range £5000 to £10,000.

These figures include all relevant solicitors, barristers and court fees as well as admin costs, like photocopying, filing Court papers, etc.

## Ways to contribute to our legal challenge to the Council

**(1) Pay directly into the KOG Bank account.  
The Co-operative Bank  
Account: Keep Osterley Green  
Sort code: 08-92-99  
Account: 65770728**

**OR**

**(2) Leave your contribution at the Osterley Bookshop in the form of cash or a cheque made out to Keep Osterley Green  
(Cheques could be posted to the Bookshop)  
168a Thornbury Road,  
Osterley TW7 4QE**

**OR**

**(3) Arrange for your contribution to be collected.  
Call us on 07562 385269,  
or email us:  
keeposterleygreen@gmail.com**

## Please contribute soon – we are starting the JR process

**Please note:** we appreciate the generosity already shown by residents. We are determined to make the best use of your money. If we withdraw our case, under advice, at **Stage 1** of the JR then we will refund surplus money on a pro rata basis for contributions of £100 or more. If you make a smaller contribution but want to be included in any refund please let us know. Any surplus money will be used for our campaign to keep Osterley green.