

# Friends of Haven Green



*Keeping Haven Green at the Heart of Ealing*

Ministry of Housing and Local Government and Local Government  
Provisional Order Confirmation (Greater London Parks and Open  
Spaces) Act 1967.

**Hearing into the Application under Articles 12 and 17  
by the London Borough of Ealing's For Works On Haven Green W5  
COM505 AND COM569**

**25 September 2014**

**STATEMENT OF CASE OF  
The Friends of Haven Green (FoHG) and Will French**

# Friends of Haven Green



## *Keeping Haven Green at the Heart of Ealing*

### 1. Introduction: The Scope of our Statement

- 1.1. This Statement of Case set out the objections of Friends of Haven Green and Will French, both of whom are registered to appear at the Hearing to take place on 25 September. As a member of FoHG Will French's views are broadly the same as those of the FoHG as a whole and for the sake of simplicity we think one Statement is required to cover both objectors.
- 1.2. We have received the Council's Statement of Case and studied it carefully. We do not intend to use this statement to respond to theirs. There have already been many exchanges of this kind but as far as we can see they have not moved the discussion along. So we shall reserve our response to the Council's statement for the 25<sup>th</sup> September Hearing.
- 1.3. Instead, our Statement aims to set out the background to FoHG's concerns. These are rooted in a perception of the low priority accorded to Haven Green as an area of Common Land. As Common Land, Haven Green enjoys, or it should enjoy, protection under legislation that includes the 2006 Commons Act and the Ministry of Housing and Local Government and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967.
- 1.4. Over the past fifteen years, Ealing Broadway Station which fronts the Green, has generated a sharp rise in passengers. A series of studies over this period, including those undertaken by the Ealing Centre Partnership, Halcrow, Glenkerrin and SDG have considered options for coping with this growth by providing a transport hub around or even upon the Green, but nothing has materialised. Instead, Haven Green is being used with increasing intensity by buses (both official and unofficial), taxis, cycles and pedestrians, all of which are eroding the quality of the Green as a place of open space for people to enjoy. The needs of commuters – though very real - are taking precedence, and we think that if Commons legislation is to mean anything the balance needs to be addressed.
- 1.5. Generally, our August 2013 response to COM 505 (Appendix 1) sets out FoHG's concerns about LBE's proposals in sufficient detail to serve as the main basis for our Statement. It describes FoHG and its objectives, the background to the changes in Ealing that led the Council to develop its proposals, the Council's presentations of its plans, our concerns about the application process and the information provided and the other works the Council has done on the Green for which consent has not been obtained. There is little to be gained from repeating all that here.

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- 1.6. However, there are inconsistencies between the two applications that also need to be resolved. We describe these in the following two sections.
2. The COM 505 and COM 569 Applications.
  - 2.1. This Hearing involves two separate applications, but we are unclear how the two relate to one another. COM 505 applies for the work under Article 12 of the Greater London Parks and Open Spaces Order 1967 which is about using Common Land for the purposes of recreation. As the proposed exchange of land is for highway purposes our view is that Article 12 is completely inappropriate for the works proposed. We assume that this is why PINS advised LBE to put in its second application (COM 569) under Article 17.
  - 2.2. We have tried repeatedly to clarify whether COM 505 has been withdrawn, but had no response. We see little purpose in responding to the Council's case under Article 12 as we think it is completely unsustainable, but if we are mistaken we reserve our right to be able to extend our comments to explain why we think COM 505 cannot succeed under Article 12.
3. Clarification of the detail of the Council's Application
  - 3.1. As explained above, our case therefore concentrates on COM 569 – LBE's application under Article 17 of the Order. Nevertheless, inconsistencies with this application as well as COM 505 remain unresolved and we think addressing them is a necessary first step. It has been unclear from the outset what the Council considers the extent of the registered Common Land to be. While these applications put the extent of Haven Green at 1.792 hectares, its previous application to PINS (COM 43) puts it at 1.982 ha.
  - 3.2. We are also confused exactly what bits it is proposed are to be exchanged. As far as we can see the Council's position seems to have shifted somewhat between the two applications. If this is the case it is therefore necessary to establish what its position is now.
  - 3.3. Our view is that the boundary of the Common Land was established in 1968 on a plan accompanying the application for registration of Haven Green as Common Land under the 1965 Act. This plan has its problems as it is not of very large scale and the boundary was drawn in freehand with what appears to be a green marker pen. Problems seem to have been compounded by the methods used to scaling up the plans from this one. Nevertheless, except for an unexplained kink in the northeast corner of the Green, we think it ought to

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be easy enough to pick out what is intended as the extent of the Green on the ground. We have suggested several times working with the Council to agree this

- 3.4. Our confusion about what exactly it is that the Council proposes to do under the two applications has grown since April 2013. In the COM 505 application the Council says at Question 14 the works will consist of: *'widening of the footway on the SW side of the Haven Green 'diagonal', [temporary fencing and footway renewal and] changes to the boundary following the removal of bus hard standing area opposite 32 to 38 Haven Green which will increase the total Common area by 179 sqm.'* In question 8 of COM 569 the Council's introduces a new (but unspecified) element of *'taking up some land for path widening'*. What does this mean, and why is this land not identified?
- 3.5. Plans submitted with the two applications also suggest changes to the scope of the two proposals. The COM 569 plan shows slivers of land shaded in red or green that according to the key would either be added as Common Land or re-designated as public highway. COM 569's application offers no rationale for these, and no explanation how they would be defined on the ground. Many of these slivers of land look impossible to achieve without closing public footpaths adjoining the highway. Is this really what the Council proposes? We are not aware such a plan has been discussed publicly, for instance at Ward Forum meetings. Until these details are satisfactorily resolved it is impossible to verify the claim that the application would yield an additional 179m<sup>2</sup> as the Council envisages.
- 3.6. Further uncertainty relates to the current extent of the Green taking into account other incursions since 1967. For instance, it is quite clear that most of the 65 bus layby which the Council says would be added as Common Land already lies within the 1967 Common Land boundary. How, in that case, can it be given back to the Common? Other land that was within this boundary but has been encroached upon more recently includes the electricity substation, the cycle hub, racks for 110 bikes and CCTV poles, most of which are not listed on either of the two applications as existing buildings or constructions on the Common. The S38 of the 2006 Commons Act prohibits these works without the consent of the appropriate national authority.
- 3.7. The Council has given differing explanations about the status of these constructions and/or whether or not they are on Common Land. (Appendix 8). FoHG has questioned the Council about these and we have been advised legally that the Council's explanations do not absolve them from their duty to have obtained ministerial consent for them. The forthcoming Hearing is the

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right time to resolve this matter. The status of these installations must be clarified to enable a correct calculation of the area of land that needs exchanging.

#### 4. Supporting Documents

4.1. The Inspector has requested copies of documentary evidence we shall rely upon. **Appendix 1** attached is the starting point for the matters we think need to be addressed at this hearing.

4.2. **Appendix 2** attached, is a background to the Green, its history and current status.

4.3. Other supporting documents which we propose to refer to at the Hearing include:

**Appendix 3:** ‘Ealing Broadway Ealing Broadway Interchange’ - LBE consultation Boards. (Hard Copy)

**Appendix 4:** FoHG’s response to the above (Hard Copy)

**Appendix 5:** The Council’s Boroughwide cycling strategy.

**Appendix 6:** PINS Decision Letter on COM 43. (Hard Copy)

**Appendix 7:** Consultation on changes to bus stops on Haven Green (Hard Copy)

**Appendix 8:** Correspondence with LBE relating to the Status of Haven Green and Structures installed on it. (Hard Copy)

**Appendix 9:** The 2006 Commons Act

**Appendix 10:** Ministry of Housing and Local Government and Local Government Provisional Order Confirmation (Greater London Parks and Open Spaces) Act 1967. (Hard Copy)

4.4. Not included here because they are very large documents are the studies we refer to in Para 1.4 into interchange options. We want to produce these to show the pressures the Common land is subject to and the disregard given to the Green’s protected status.



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**COM505 AND COM569**

**25 September 2014**

**STATEMENT OF CASE OF  
The Friends of Haven Green (FoHG) and Will French**

**ADDENDUM**

**4th September 2014**

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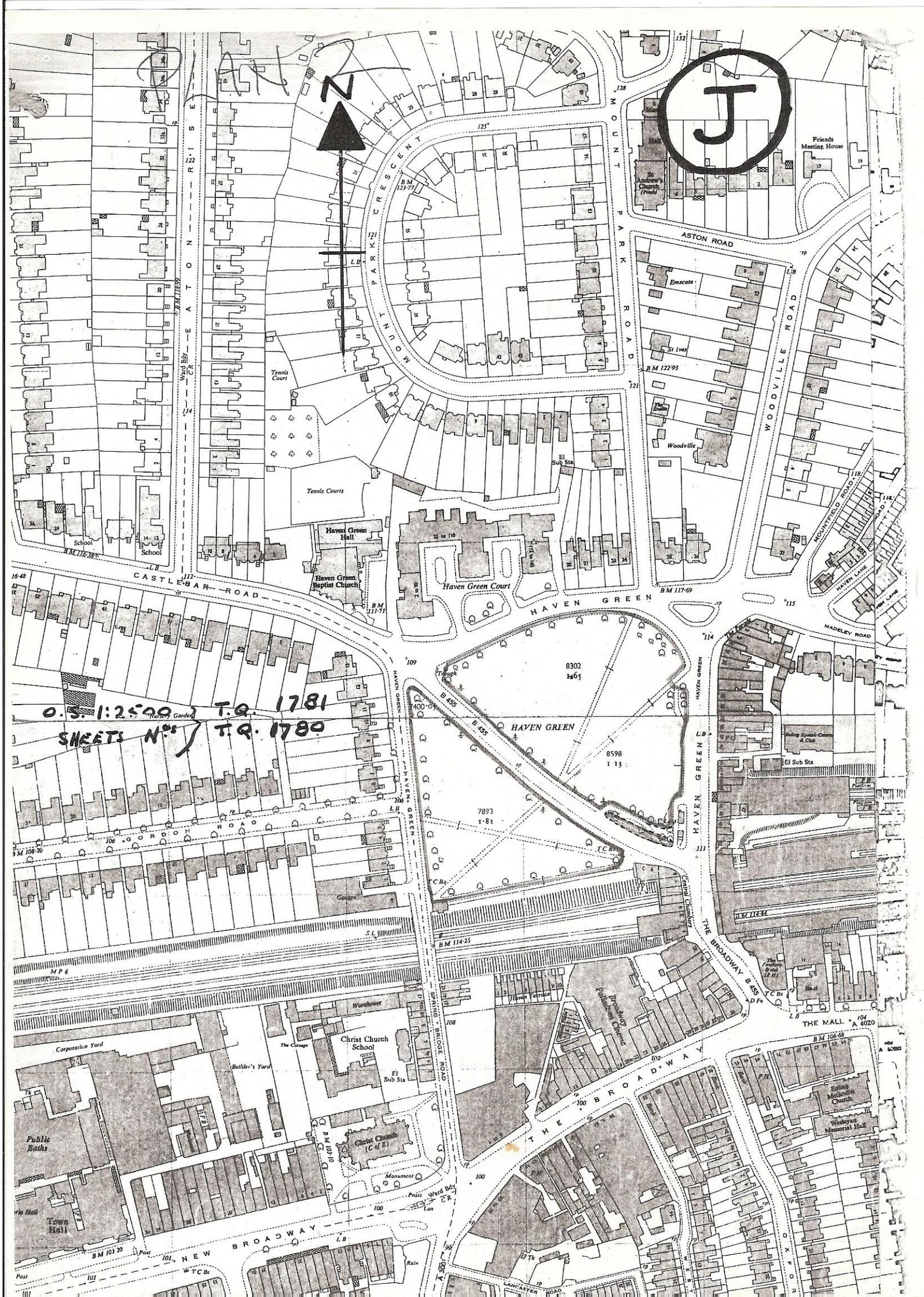
## *Keeping Haven Green at the Heart of Ealing*

### Explanation

1. This is an addendum to the Statement of Case relating to COM505 AND COM569 submitted to the Planning Inspectorate on 27<sup>th</sup> August by the Friends of Haven Green (FoHG) and Will French.

### Legal Clarifications

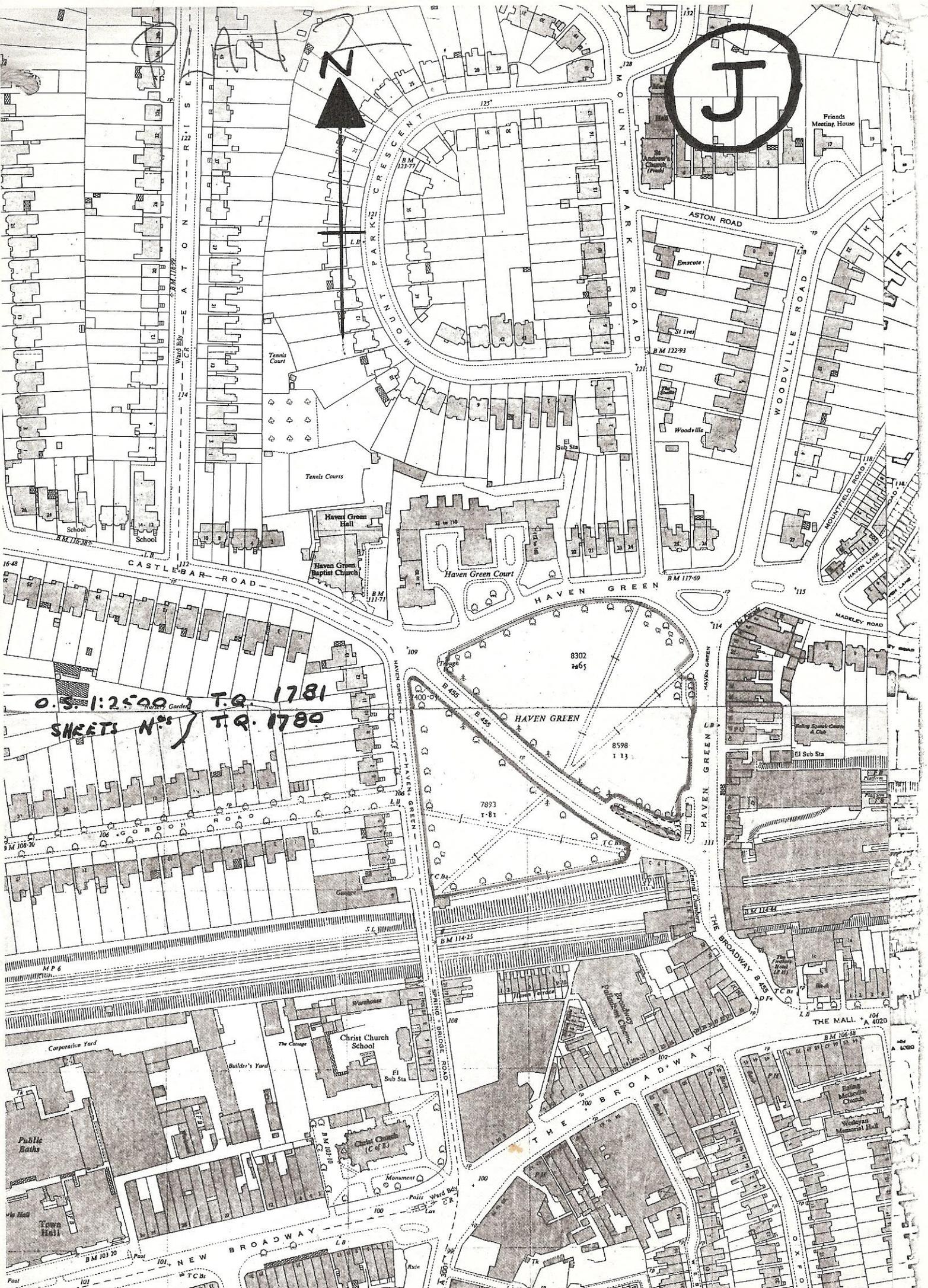
2. Our main submission remarked on the confusion surrounding the extent of the designated common land. Much of this arises from incremental encroachments since the Green was designated Common Land in 1968.
3. It will therefore be helpful to all parties to establish that the Common Land was legally established in 1968 by the plan accompanying the application for registration under the Commons Registration Act 1965 ('the 1965 Act'). A copy of this plan is attached for ease of reference.
4. Section 10 of the 1965 Act provides that '***The registration under this Act of any land as common land or as a town or village green, or of any rights of common over any such land, shall be conclusive evidence of the matters registered, as at the date of registration ...***' (our emphasis). The Council appears unclear about this point as shown in some of its correspondence with us - see Appendix 8 of our main evidence.
5. It seems that the Council imagines common land status can be removed if the land ceases to have recreational value. This is not so. Section 193 of the Law of Property Act 1925 provides, inter alia: '*Members of the public shall, subject as hereinafter provided, have rights of access for air and exercise to any land which is a metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1898 ...*'.



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SHEETS N°s T.R. 1780



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## Other Encroachments

6. Para 3.6 of our main submission lists previous incursions on the Common. Missing from that list, but very relevant to the present application, is the loss resulting from the previous widening of the footpath on the southwest side of the diagonal road across the Green done around 10 years ago. This ate into the grassed area of the Common Land perhaps by 1.5 metres (we do not know the exact dimensions) all the way along the diagonal road.
7. Furthermore, the bus shelters now installed along this diagonal footpath - see the photograph below - all lie within the 1968 Common Land boundary.



8. To our knowledge, no Ministerial consent for this work was obtained as Article 17 of the 1968 Order requires that it should have been.
9. Though not part of the widened footpath, the bare matting behind the bus shelter was installed at the time the footpath was widened to try to help the grass recover. As the photograph clearly shows, it failed to solve this problem. Other possible solutions – eg the installation of a rail - have never been properly investigated, although a temporary experiment would be easy to do.



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Dear Sir/Madam

### **Application by London Borough of Ealing to do restricted works on Haven Green Under Article 12 of the Greater London Parks and Open Spaces Order 1967.**

The Friends of Haven Green (FoHG) is an independent community group that speaks up for Haven Green to protect it for the perpetual enjoyment of Ealing residents and visitors alike. FoHG has a number of concerns about the above application and its relation to other developments (some already implemented and others proposed) on Haven Green Common Land.

These developments are a direct consequence of intensifying demands that are being made of this important areas of green space that lies at the heart of Ealing town centre. Two documents the Council has published recently help illustrate the scale and nature of these demands.

- In 2012 the Council consulted on some initial proposals for Haven Green in a document a little confusingly entitled 'Ealing Broadway Forecourt designs'. The consultation said that changes are required on Haven Green to accommodate the redevelopment of Ealing Broadway Station as part of Crossrail and the increase in passengers it would bring. It then listed a number of ideas including those in this application. The consultation did not refer to the fact Haven Green is common land but FoHG flagged it in its response. The Council has not yet said how it proposed to respond to the issues it described in its consultation and the comments it received, but this application should make mention of them.
- A new [boroughwide cycling strategy](#) that will affect Haven Green generally and the bus layby area which is now proposed to be returned as common land in particular

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(see page 19) has also been published. These proposals are not mentioned in the current application.

These documents demonstrate very clearly that the proposals in the present application form part of some bigger ideas for Haven Green as a whole. In line with its mission to protect the Common Land for future generations, FoHG thinks an overall plan is now needed for the whole Green rather than the present approach of piecemeal encroachment. In the absence of such a plan, we are therefore objecting to the way the present proposals ignore these bigger questions.

Separating the current proposal from these questions is inappropriate and confusing. For instance, the consultation referred to above said that temporary cycle stands on the Green were to be removed and the Green reinstated, whereas these stands have now been made permanent. This is unfair to those like FoHG who seek to promote the integrity of the Green but do not have the same resources that the Council employs to pursue other objectives it feels more pressing.

One such objective led last year to the construction of a new cycle hub partly on the Common Land and this year to the permanent installation of the stands for 110 cycles. At first, Ealing Council argued that consent for these developments was not required because they fell outside the area of the Common Land, or because they were temporary, but it has now changed its stance to say that the shelters and ranks of cycle stands do not require consent because they are not buildings. We have obtained legal advice that the Council's new argument is also incorrect, but extracting it was time consuming and expensive. Anyway, the shift in the Council's legal arguments has not succeeded in addressing the problems the unauthorised incursions have created in terms of the loss of common land, and the increased visual clutter that impairs the amenity of the green. These and similar matters need to be examined as part of this present application.

FoHG has specific concerns about this application, over and above the necessity of considering the Green as a whole. They relate to three broad areas:

- I. Questions about the process the Council has followed in making the application.
- II. Concerns about the information provided in the application.
- III. Objections to what is proposed.

### **1. Questions about the process the Council has followed in making the application.**

- For the purposes of our response we assume the application comprises:
  - The Notice of Application
  - The application form
  - The management scheme

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- The Steer Davis Gleave memo dated 19.03.13
- Haven Green registration documents
- The application form states that before applying for consent there should be wide informal consultation in order to identify and overcome objections. This has not happened. Although, as described above, more general consultations affecting Haven Green have been undertaken, there have been no consultations that refer to issues about the Common Land.
- In light of the above, it may be seen that the documents supporting the current application are rather partial in the information they provide. The main justification for the changes are set out in the 19<sup>th</sup> March memo from Steer Davis Gleave (SDG). This lists a number of ‘existing issues’, most of which are accurate enough, but it does not list others that are even more relevant as they were set out in the 2012 consultation and FoHG’s response to it. While we support many of the measures indicated in the landscape improvements, most of them have nothing to do with the exchange of important areas of common land as the current application proposes.
- The Council does not explain why it has made its application under Article 12 of the Greater London Parks and Open Space Order. We read this order as relating to matters of recreation, but there seems to be no suggestion that this application has anything to do with recreation. PINS Guidance states that ‘Article 12 applications must always be in respect of facilities for public recreation’. We think the application ought to have been made under Article 17 which concerns the use of portions of open spaces for street improvements.

## **2. Concerns about the information provided in the application.**

- We have referred above to the fact that other changes to Haven Green are envisaged by the Council that are omitted from this application. Unless one is familiar with these bigger changes it is very hard to make sense of what is being proposed here.
- Section G of the application form asks for details of existing works on the land. The response to this question is incomplete. There is no reference to the existence of the cycle hub on the island site clearly shown on the application plans as forming part of the area of Common land, and no reference to the recently installed cycle stands for 110 bikes. Other works that the legislation suggests are restricted, or should have obtained authorisation, (such as the installation of poles for CCTV cameras) are also omitted. And while it is correctly noted there is an electricity substation on the common land, it should also be noted that this is a temporary installation on the

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Green. The substation enjoys a 5 year temporary consent that expires in 2014; a consent that was granted retrospectively only after complaints by the local community that it had been installed without authority. FoHG and others have been seeking to establish the date for its removal. PINs' current investigation is the most appropriate opportunity to consider the substation's future.

- Section K of the application form requires that maps submitted as part of an application show all existing works on the Common Land. The map we presume forms part of this application (SDG memo page 4) shows no such works – either those listed in Section G or those that are not.
- Neither the plans that depict the proposals nor the justification for them are sufficiently detailed to show what is intended. The maps submitted to describe the proposal do not even carry an accurate scale. The 1968 Common land map registration plan is obviously of insufficient scale to calculate the precise extent of the area of the Common Land, even though this could be ascertained easily enough using the line of the roads that bound the Green and existed at that time. It is therefore disappointing that the Council did not commence this present exercise by establishing the extent of this boundary more carefully.
- However, from what we are able to ascertain, we suspect SDG's plan may be inaccurate in showing the boundary in at least two areas:
  - It shows the eastern boundary of the Common land between the cab shelter and the 65 bus layby as running to the west of that shown on the 1968 map.
  - It suggests that the new area of the 'island site' on which much of the cycle hub now stands is larger than the original. This is especially surprising given that LBE told us for a long time that this island site lay outside the area of Common Land.
- The plan that appears in the SDG memo titled 'Ealing Broadway Interchange, Haven Green Boundary 1965<sup>1</sup> & 2013 versus Proposed Common Land Boundary' seems to have been used to calculate 'before and after' areas. Unfortunately, the figures showing the calculation of the area of land that would lie within in the common land boundary following implementation of the proposals is indecipherable.
- The calculations of the areas proposed to be exchanged are unavailable so we do not understand how SDG arrived at the view in the table on page 2 that the extent of the common land will be increased. We estimate the extent of common land will be reduced.

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<sup>1</sup> This ought to read 1968.

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- Three other changes seem to be intended that are not described in the notice.
  - SDG's plan seems to suggest widening the existing footpath along the southern edge of the Green. This would entail the loss of Common Land although this is not stated in the notice of Application.
  - A narrowing of the footpath along the north of the diagonal road is also suggested. If this were done it would have the effect of increasing the area of Common Land but there is no reference to this proposal in any of the application documents and no justification provided for it. In our view, the loss of this footpath would be an inconvenience for people who now use it.
  - There seems to be a similar narrowing of the footpath along the northern boundary of the Green. Again is likely to inconvenience pedestrians but it has not been advertised.
- We also query whether the land is indeed owned by the Council as the application claims. The Commons registration documents dated 1972 says the Council own the land, but the 1878 Management Scheme seems to say the Ecclesiastical Commissioner retain the title, having only transferred responsibilities for managing it to the Council's predecessor.

### **3. Objections to what is proposed.**

- Friends of Haven Green support many of the proposed landscape improvements, including the use of temporary fencing where it is needed to protect planting while it is recovering. We welcome these measures as being long overdue.
- We object to the Council's proposal to exchange the bus layby in the north east corner for the land taken from the Common to widen the pavement along the diagonal road across the Green. Most of the bus layby already lies within the area of Common land and it was extended and the hard surfacing surrounding it added without the Secretary of State's consent. It is not therefore available as an exchange for widening the footpath as proposed.
- To justify widening the footpath along the diagonal road across the Green, SDG explain that the grass has become degraded by excessive pedestrian use and people waiting at bus stops. They say, quite rightly, that 'grasscrete' installed to mitigate the problem has failed. SDG offer no evidence to show that they would solve the problem by widening the footpath, and why pedestrians and those waiting at bus stops would not just spread further onto the Green. FoHG thinks a better solution might be to discourage undue casual use of the grass areas through the installation of a simple waist high rail along the footpath edge, similar in design to that which already protects other parts of the Green. This would obviate the need to

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surrender this part of the Common Land and was a measure that we suggested in [our response to the Ealing Broadway Station Forecourt consultation](#). We have had no response from the Council to our suggestion and no consideration of it as an option in this application.

- In principle, we would support the proposed renewal of footways across the Green, many of which are in poor condition having been poorly installed less than 10 years ago. However, we would like more details about exactly what is proposed. We would like to know:
  - what materials will be used,
  - how the present problems of cracking and resulting patching can be avoided,
  - which paths it is envisaged may be used for cycling (currently only the path from Gordon Road to the Station is a designated shared cycle path),
  - what signs there will be,
  - whether any of the paths are to be widened and how this would be offset by appropriate land exchange.

Yours sincerely

Greg Phelan  
Chairman FoHG

31<sup>st</sup> August 2014



### *Keeping Haven Green at the Heart of Ealing*

## Haven Green Common Land An Historical Outline.

### Introduction

Haven Green lies at the heart of Ealing Town Centre. It is very ancient green space with many of the characteristics of a traditional Village Green but it is coming under increasing pressure to service the adjacent Ealing Broadway station which handles 27,000 passengers every weekday. A number expected to grow by 45% when Crossrail opens.

### Timeline of events: General

- Haven Green stands at an historic crossroad. An old route to Middlesex runs north through it from the Thames. After crossing the river at Brentford Julius Caesar may have passed by on his way to battle with the Catuvellauni. Running west to east is the old Oxford to London road. This was a drovers road along which sheep were driven to Smithfield. For many, Haven Green would have been a final resting place on that journey.
- The Green has been common land since medieval times. It was owned by the Bishops of London who were Lords of the Manor and then passed to the Church Commissioners.
- **1741** Rocques map depicts the Green as 'Ealing Green'.
- **1838**: The GWR was built across its southern half and Ealing Haven Station opened.
- **1877**: The Ecclesiastical Commissioners transferred management of the Green to Ealing Local Board (which has become the London Borough of Ealing).
- A 'Scheme with respect to Ealing Common' of 27 Jan 1876 explains *'the intent that the same may for ever hereafter be maintained by the said Local Board, their successors and assigns **as Recreation Ground** for the benefit of the Inhabitants of Ealing aforesaid'*
- **1968**: The GLC registered the Green as Common Land.
- **2011**: FoHG supporter Nick Woodward applied to Ealing Council to designate the Green a Village Green under Section 15 of the 2006 Commons Act.
  - 55 letters of support, two objections, both from senior LBE officers.
  - LBE's, Director of Regeneration said: *'It is important that any additional designation of Haven Green does not further prejudice the ability to provide an improved transport interchange at Ealing Broadway.'*
  - **2012**: Independent Inspector, Stephen Morgan QC found one of the Council's in-principle objections was *'determinative against the registration of the application land as a town or Village Green'*. On this advice the Council rejected the application.

### Timeline of Encroachments

- There have been encroachments on the Green since the start:
  - 1884 Vicar of Christ Church was prosecuted for opening a coffee stall on the Green.

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- 1880s A cab rank provided to capture trade from the station
- 1920s Road widening . Fred Perry's father wrote '*I regret that the Town Council have thought it desirable to destroy partially the beauties of Haven Green by removing the fine row of trees and have also encroached upon the Green in order to undertake the widening of the road...the regret at the action of the Town Council is shared by a number of residents of Ealing*'.
- **1960s** The creation of a car park south of the Green sliced off its southern edge.

### **Since Haven Green was registered as Common Land encroachments have continued.**

- **c 1980** Layby in the North east corner enlarged to create a bus waiting area.
- **2009** Electricity substation erected and, after objections from local people, granted a retrospective temporary 5 year consent. **In 2014** LBE applied to renew this consent for 25 years.
- **c 2000** Surfacing the 'island' in the SE corner for cycle stands prior to ...
- **2012** ... the erection and installation of a large and obtrusive cycle hub.
  - FoHG supporter Tony Miller complained to the Local Government Ombudsman that LBE had installed the cycle hub unlawfully by not obtaining Secretary of State consent. LBE said the site was outside the area of Common Land, (a fact their Chief Legal Officer later acknowledge as not being the case). However, the LGO declined to proceed, because he said the facts were in dispute.
- **2012:** Installation of stands for 110 cycles on a grass area. Initially LBE said these were temporary but now they are described as permanent.
- **2014** LBE application (COM 43) made to renew the electricity substation for 25 years. It is justified as being required for unspecified leisure, cultural, social or business events in the future.
- **2010(?)** onwards installation of cctv poles throughout the Green

### **The Future**

Crossrail looms large, with its forecast 45% increase in passengers using Ealing Broadway Station. Neither the Council, the transport operators nor adjacent landowners have shown any readiness to increase capacity around the station to deal with the increased passenger numbers. Instead, the assumption is that Haven Green will take the pressure. In 2012 the Council consulted on [proposals for Ealing Broadway Station Interchange](#) that would lead to further loss of the Common Land to footpath widening.