IN PARLIAMENT
HOUSE OF LORDS
SESSION 2010–11

Legislative Reform (Epping Forest) Order 2011

Representations to
the Hybrid Instruments Committee
by the Residents (Lee and 35 others)

0.1. Your petitioners are Susan Lee, Lois Williams, Mary Swainson, Sharon Coles, Thula Coles, Kizzie Coles, Zandile Coles, Robert Gibbons Sandra Gibbons, Sue Linge, Alf Egan, Ophelia Francis, Vicky Haslam, Maggie Haslam, Carol Waters, Reg Waters, Gloria Johnson, Paul Marron, Liz Czarnecka, Sophie Walter, Apura B Walter, Sonia Zac-Williams, Arnold Zac-Williams, Shareef Haque, Chas Branson, Kath Lee, Paul Taylor, Frances Pett, Eileen Galer, Gerald Galer, Nigel Tromans, Angela Tromans, Raj Rammohun, Raj Reni Rammohun, Paul Bishop and Nadine Profitt, hereinafter called "the Residents".

0.2. We note that the Secretary of State acknowledges our *locus standi* [HOR:4].

0.3. This is our reply to the Representations ("HOR") made on 18 April 2011 to the Hybrid Instruments Committee ("HIC") on behalf of the Secretary of State in response to our petition ("RP") of 4 April against the said Order ("LRO") that was laid under the Legislative and Regulatory Reform Act 2006 ("LRRA") to amend the Epping Forest Act 1878 ("the 1878 Act") in order to allow the Metropolitan Police Authority ("MPA") to erect a Muster, Briefing and Deployment Centre ("MBDC") on Wanstead Flats during the Olympic Games 2012. We also refer to the Consultation Document ("HOCD") and to the Explanatory Document for the LRO ("HOED") that were published by the Secretary of State on 16 September 2010 and 21 March 2011. We abbreviate the planning process and the procedures of the Regulatory Committee of the London Borough of Redbridge as "Redbridge".

0.4. Dates refer to the period from June 2010 to May 2011 unless otherwise stated.

1 Procedural issues

1.1. The Secretary of State alleges [HOR:41-42] that the Residents failed to avail themselves of the opportunity to make representations at earlier stages. In fact, a score of local people lodged objections to the HOCD. More than eighty did so to Redbridge, including 19 of the 36 Residents.

1.2. Whilst these objections had many authors, they should be taken together as the work of the community, just as the Secretary of State expects the various reports on transport, habitat, site selection and so on that were written by many different people to be taken together to form her case.

1.3. In [HOR:7-8] the Secretary of State claims that we "had an opportunity to trigger inquiry into many of the matters of which [we] complain" and that these matters "were considered by [Redbridge] when it granted planning permission". We claim in §3 below that, as a matter of observed fact, our objections did not trigger any proper inquiry and Redbridge did not give them the consideration that they merited.

1.4. The Secretary of State's case therefore amounts to saying that, since she and Redbridge have already disregarded our complaints, the HIC should follow suit.

1.5. To suggest that your Lordships should not be able to consider the representations of petitioners because Redbridge has (allegedly) already done so is an attempt to make Parliament subordinate to a local authority. Consideration of the LRO and planning application have been back-to-front. It is for Parliament to make legislation and only it can set aside the 1878 Act. For Parliament to execute its democratic and legislative functions properly, and to be seen to do so, all of these matters need to be examined in depth by a Select Committee.

1.6. The Secretary of State wishes to make further representations regarding our petitions [HOR:46] but we ask that the same standards be applied to her as she seeks to impose on us. She has had several opportunities to respond to the matters that we have raised (at a public meeting and after our objections to HOCD, Redbridge and the HIC) but has failed to do so. There is no justification for her having not responded to our concerns as part of those processes. She should not be afforded a belated opportunity to do this.

1.7. We respond to the substantive issues in HOR as follows:

- §2 answers [HOR:18] about the scale of opposition and [HOR:23] on the purported MPA consultation;
- §3 answers the claim in [HOR:34] that Redbridge gave proper consideration to our objections;
- §4 answers [HOR:12, 22, 25] about security;
- §5 answers [HOR:20, 34] regarding traffic;
- §6 answers [HOR:14-17] about precedent; and
- §7 answers [HOR:30] about the Home Office Consultation Document.
- We understand that the appendix to the Campaign response will answer [HOR:27] about site selection.
- Although we do not accept the claim in [HOR:26, 28, 35-38] that Redbridge adequately considered our complaints about the effect of the site on the immediate neighbourhood, we do not wish to add anything to our [RP:23-29].

2 Opposition and Consultation

2.1. The officers of the Corporation hinted to us privately that they would stop these proposals if there is significant local opposition to them. Whilst they never made it clear what they expected of us, the Secretary of State has now done so. She expects no fewer than 58,565 petitions to Your Lordships' Committee [HOR:18], each of which must, individually [HOR:41–42], set out in detail every one of the grounds for objection.

2.2. We do not understand where this figure comes from. Two local authorities, representing half a million people, have lodged objections to Redbridge and petitions to the HIC. The lives of maybe 10,000 people will be disrupted by the MBDC.

2.3. The signatories of the Residents' petition were drawn from a much smaller population than this. All but one of their addresses appear on the list at the end of the Redbridge minutes. Proximity was an issue because of the uncertainty in the advice that we had been given regarding who would be eligible to submit petitions to the HIC.

2.4. We could easily have collected more than 36 signatures on this petition had more than one weekend been available in which to do so. Everyone who was approached agreed to sign it, with just one exception.

2.5. The Secretary of State claims in [HOR:23] that the MPA consulted widely about these proposals. In our dictionary, "consultation" means asking for advice *and being prepared for unexpected and possibly unwelcome responses.* For example, the MPA could have "consulted" the people of east London by stating their needs for the Olympics and seeking suggestions and tenders for possible sites.

2.6. In fact, the MPA was preparing its plans in secret for about a year before they were leaked to the *London Evening Standard* on 15 June. The location of the South East MBDC (on Black Heath, near Greenwich) seems to have remained unknown until its planning application was made in February.

2.7. Only (some time) after the first public meeting on 14 July did the MPA and Corporation circulate a leaflet. However, this was only distributed to the roads that face on to the Flats, not those behind.

2.8. As late as February, we found while distributing our own leaflets that a large proportion of people, especially those living behind the main roads, had not heard anything at all about the proposal. Even the local GP, who might be expected to be well informed about affairs around him, knew nothing about it.

2.9. The MPA planning document about *Community Involvement* makes a lot of very little concrete activity. It repeatedly lists the names of *employees* of Redbridge Council and other authorities as if this amounted to engagement with the public.

2.10. It refers to the public meeting on 6 October as if this had been a planned part of their consultation exercise, when in fact it had been organised by the Save Wanstead Flats Campaign. The MPA representatives only turned up to it because the Convener of the Campaign threatened in his blog to put cardboard policemen in their place at the meeting.

2.11. Redbridge classified four of the representations about the planning application as being "in support", but only only one of these is unambiguously in favour. The others acquiesce to the proposals *on condition* that the site be restored to its original condition, strictly at the end of the period. Moreover, these contributions are comparable in length to the numerous single paragraph objections that were made. None of them considers the issues in anything like the depth that the major opponents did.

2.12. The *Community Involvement* document includes a supporting letter from Flash Bristow, who styles herself Chair of the Ferndale Residents Association. On the other hand, three residents of Ferndale Road lodged *objections* with Redbridge. Examining the letter, one sees that it seeks to appropriate the £170,000 for the benefit of the part of the park that is nearest to her house. Mrs Bristow later responded to HOCD *opposing* the LRO.

2.13. The Aldersbrook area, on the other hand, will be directly affected by the MBDC traffic. Shannell Johnson objected to Redbridge on behalf of its residents' association.

2.14. Gill James of the Redbridge London Cycling Campaign also supported the proposals, although she does not mention the four accidents near the site in which cyclists were injured (appendix to the *Transport Assessment*).

2.15. The MPA set up a free (0800) phone line, to which all of five calls were made. Six emails were sent to the enquiry address.

2.16. There were also five exhibitions, which were visited by 257 people over several days. This is about the same number who attended the first public meeting.

2.17. Altogether, we would guess from canvassing that about 5% of local people say that they are in favour of MBDC, but none of them has formulated arguments of comparable depth to those of its opponents.

3 Unfair Planning Process

3.1. The Secretary of State's case in HOR rests entirely on the claim that we had opportunity to trigger enquiry into our complaints through the Redbridge planning process. We do not understand what else she might mean in [HOR:24] by "the separate consultation on the planning application undertaken by Redbridge as local planning authority".

3.2. We are not experts in planning law and are therefore in no position to cite technical breach of it. However, we do assert, as a matter of observed fact, that Redbridge considered only the issues that were brought to their attention by the various committees (including Newham and Waltham Forest). The objections that ordinary people made did not "trigger" any enquiry but were ignored.

3.3. Planning applications are judged by local authorities whose elected representatives reside within its boundaries. This ensures that the people who are making the decisions have a personal interest in them in the senses that

- planning affects their own local environment and
- their constituents can re-elect or remove them on the basis of their decisions.

We contend that the members of the Regulatory Committee of the London Borough of Redbridge had neither of these incentives to give fair consideration to our objections.

3.4. Key to this is the fact that the site lies within 100m of the point where the London Boroughs of Redbridge, Newham and Waltham Forest meet. Even though it is on the side of Wanstead Flats that is nearer to Newham and Waltham Forest and will disrupt the lives of thousands of residents of those boroughs, legally it falls within the boundary of Redbridge.

3.5. The nearest citizens in Redbridge are some distance away on the other side of the Flats. They belong to the Wanstead ward, but none of the councillors for this ward are members of the Regulatory Committee.

3.6. The members of the committee did not therefore have any electoral mandate or incentive to make this decision in the interests of the people who would be affected by it.

3.7. The home addresses of all of the members of the Regulatory Committee lie outside the A406 North Circular Road, in many cases far beyond it. This is with the exception of Cllr Paul Canal, but even he lives in the northern part of Wanstead.

3.8. Therefore the members of this committee are unlikely to choose Wanstead Flats for their own recreation and do not have the incentive to preserve it as their own local environment.

3.9. At first Redbridge refused to notify residents of the other boroughs by post. Anne Overbeke told a member of the Campaign in an email dated 7 December that

> contrary to my earlier advice to you, and given the vast number of households located within a radius of 800m of the application site, we will not be writing directly on this matter to households located outside of the London Borough of Redbridge boundaries.
>
> However, a significant number of Site Notices will be displayed around the site and a press notice placed which is considered to comply with the Regulations set out in Circular 15/92, Publicity for Planning Applications.

3.10. Following the intervention of the Mayor of Newham, they did send out notices by post, but these arrived on Christmas Eve, when people had other things to think about and after which they were likely to be discarding a lot of waste paper. There was nothing in the Public Notices section of the free *Waltham Forest News*. Street notices were put up – in the snow – dated 4 December and demanding responses within three weeks.

3.11. The Secretary of State refers in [HOR:11] and throughout HOR to links into the Redbridge website, but these do not work. This was acknowledged in an email to the petitioners at 7pm on 5 May by Alison Gorlov, a Partner of Winckworth Sherwood, the authors of HOR. In fact, it is possible to obtain documents from the website, but only by following a complicated procedure for each one. It uses a lot of programming where far more basic website technology would have been much easier to use.

3.12. If direct links like the ones in HOR had worked, we would have made use of them to present all of the documents in a more accessible form on our own website. We were unable to do this without re-publishing our own copies, which would have been a breach of copyright. Without the ability to reorganise the documents with meaningful headings, captions and our own notes, we were seriously disadvantaged in our scrutiny of them.

3.13. More and more documents were added in dribs and drabs over this three-month period, even though a number of people had already submitted their objections, so may not have subsequently become aware of the existence of the new documentation.

3.14. In the week of the meeting, the secretary of the Regulatory Committee put a document on its website that summed up the numerous planning documents in a clearly structured text. This document seems to be the same as pages 22-32 of the minutes that the Secretary of State has provided to the HIC.

3.15. It also mentioned the objections that had been made. However, the account of all of them is crammed together into a single unreadable paragraph that spans nearly two pages (27–29). The points in it are not accompanied by citations to the addresses of objectors to enable councillors to follow them through. It is not even organised into topics. A dozen or so of the objections were quite substantial pieces of work but, after these people had gone to some trouble to undertake research and present their findings as structured documents, their efforts were frustrated in the presentation of these documents to the committee by its secretary.

3.16. Having presented such a quantity of documentation, the MPA should have been subjected to detailed and professional cross-examination. However, at the meeting itself, the objectors were allowed a total of four minutes in which to speak.

3.17. Following the meeting, objectors were notified of the decision and the conditions that were imposed, as listed on pages 37–39 of the minutes. However, the first that we heard of the more detailed planning assessment on pages 32–37 was when the Secretary of State cited this document in HOR. The version of the minutes that is linked from the webpage about the meeting does not include this assessment.

3.18. This planning assessment begins with yet another reiteration of the MPA case, followed by a structured commentary on the various exchanges with committees. The response to objections by ordinary people is once again crammed into a single paragraph on page 37.

3.19. The conditions on pages 37–39 also all relate to matters that were raised by committees, not by ordinary people. They do not even take account of the front-line issues raised in the objections from residents of Sidney Road.

3.20. Contrary to [HOR:44], some of the objections, including that from one of the Residents, did complain about the fairness of the planning process. However, many of the procedural issues arose in the final stages, but there is no third party right of appeal to local planning decisions after they have been made.

3.21. Undoubtedly there are plenty of complaints on which we could have sought Judicial Review. However, to do so would have incurred considerable legal cost to ourselves. We do not have the funds to undertake this.

4 Security

4.1. Of particular concern to us is that the MBDC is a terrorist target in itself [RP:12–13&32] and that this will exacerbate the poor relationship that already exists between the Metropolitan Police and some local people [RP:14-16].

4.2. Security is germane to several of the pre-conditions in LRRA s3(2) for an LRO, in particular,

(c) it does not strike a fair balance between the public interest and the interests of the local people to put such a security centre in a residential area; and

(e) it prevents people from exercising their right enshrined in the 1878 Act to use the Flats for recreation.

4.3. The Olympic Games have always been an arena for international politics, notably in Berlin in 1936 and in Munich in 1972. Everybody takes it as read that the 2012 London Games offer an enormous opportunity to terrorists. The MPA has stated that the 2012 London Olympic Games will be their biggest operation in peacetime.

4.4. The MBDC is a security site. One cannot dismiss the question of what would happen in a security situation. However, the planning application was based entirely on the assumption of normal policing. It contains no mention of contingency plans for a major incident, although it seems unlikely that the MPA has given no thought to this. The fact that they have not said anything about this in even the broadest terms adds to our fears that they will resort to coercion of local people.

4.5. The MPA has claimed that there is no room for the MBDC on the main Olympic site and indeed one of their selection criteria was that it should be at least 1km away. They have never given any proper explanation of the need for this, but we surmise that it is because the main site may need to be evacuated. The Wanstead Flats MBDC is to be the biggest of the three, so in such a situation it would be the centre of emergency activity.

4.6. The main Olympic site is surrounded by a 5m high fence and even construction staff are escorted by bus to their places of work. Those attending the Games can expect airport-style security. By contrast, the site on Wanstead Flats is accessible from all sides (apart from some trees to the north and southeast) and from five roads. The MBDC will be open to the sky and its internal plans have been published on the Redbridge website.

4.7. The claim in [HOR:22] statement that security was considered by Redbridge is untrue. One of the objectors spoke mostly about this subject. The Committee asked the MPA representative (Alaric Bonthron) what his view was and he replied who said there was no specific threat at present. There is *no* mention of this in the minutes.

4.8. The MPA claims that they have no indication of increased terrorist threats. However, the political situation in the part of the world from which it is assumed that terrorist threats may come looks completely different now from that a mere four months ago. Being fluid now, is could be unrecognisable next summer.

4.9. The security services failed to prevent or even foresee the attacks on the Tube on 7 July 2005. In §270 of her Coroner's Report, Lady Justice Haslett referred to the Olympic Games and said that she considered that London was completely inadequately prepared for the terrorist threat.

4.10. We therefore submit that the MPA is powerless to make any kind of assurance regarding terrorism, whatever the level of "consultation" or endorsement by committees.

4.11. The MBDC is therefore an easy target. It is also a legitimate one in the language of previous terrorist campaigns.

4.12. We submit that the vulnerability of the MBDC will be obvious to the police officers who are stationed there, and that they will take *ad hoc* measures to protect themselves. The Police are therefore likely to *occupy* some large but unspecified area beyond the MBDC. It is hard to believe that users of the diverted cycle and bridle path, especially those with cameras or binoculars for bird watching, will go unchallenged by the police.

4.13. In [HOR:13], the Secretary of State observes that the neighbourhood in the immediate vicinity of the proposed site is residential, but this contradicts the claims in the site selection that the site is "not close to residential areas". Hundreds of houses are within 200m of the MBDC site.

4.14. There is also a children's playground on the same side of Dames Road as the site. It is very heavily used by young children. However, §7.39 of the Planning Statement says that there are is no intention to close it.

4.15. Our fear of harassment from Police patrols is a subject that the MPA should have addressed and on which they could have given meaningful assurances. At the public meeting on 6 October, Det Chief Superintendent Alaric Bonthron was challenged on whether MBDC police would search local people. His first response was that people *would* be searched. He later evaded the question.

4.16. Security matters were raised in the planning objection by several people, including one of the Residents, as well as in our petition [RP:15]. The MPA has therefore had three opportunities to allay people's concerns, but they have not seen fit to do so.

4.17. Besides the terrorist threat, our fears are also based on our experiences of being victims, witnesses and unwarranted suspects of crime. Very many of us have suffered muggings and break-ins, but have little expectation that the Police will do anything about them.

4.18. Relations with the local Muslim community in particular were very badly disrupted by a dramatic police raid in Forest Gate on 2 June 2006. Two men were arrested and one of them was shot in the leg. This was prompted by terrorist intelligence of a possible chemical bomb that turned out to be false and maybe malicious. The men were released without charge, the MPA was later forced to apologise and the whole operation wasted over £2m.

4.19. We are especially concerned about the Police response in a terrorist situation. On 22 July 2005, Jean-Charles de Menezes, a completely innocent young Brazilian man on his way to work, was shot dead at point-blank range. The MPA was found to have lied about many of the circumstances. It became clear at the inquest that the police officers who were responsible for this were simply incapable of conceiving any mundane explanation for the victim's behaviour: whatever he did had to be for terrorist reasons.

4.20. Many of those who have exercised their democratic right of peaceful demonstration have also witnessed gratuitous violence by individual officers when the Metropolitan Police assemble in force.

4.21. We note that the elected members of the Newham Strategic Development Committee rejected their chief officer's advice and acknowledged our concerns at its meeting on 23 February. Following this, they lodged a planning objection and then a petition to the HIC. The former said,

> The Council is very concerned that the centre is a potential terrorist target and poses a security risk for local residents. ...
>
> It has not been demonstrated to the Council or our residents how this security threat will be property managed by the [MPA] to address the very legitimate personal safety concerns of local residents. ...
>
> Safety and security is a material planning issue and the Council is not satisfied that this matter has been given due consideration in the planning application. The Council feels that alternative sites should be more fully explored.

5 Traffic congestion

5.1. We have also expressed concern [RP:17–22, HOR 20&34] about the disruption that the MBDC will cause to local traffic and that the Police will resolve this in their own favour by imposing draconian restrictions on local people. At least seven objectors raised this issue, including three of the Residents.

5.2. We refer to the Police Transport Assessment that formed part of the planning application for the MBDC ("TA"), the statutory response to this by Transport for London ("TFL"), the Transport Analysis that was part of the planning application for the Olympic Games as a whole ("OTA") and the minutes of the Regulatory Committee of the London Borough of Redbridge ("Redbridge").

5.3. This MBDC will be the principal Police operations during the Olympic Games and in particular in the event of an emergency at the main Olympic site. In their cursory dismissal of ordinary people's objections on page 37, Redbridge claims that traffic "assessments have

been based on a worse-case scenario". However, this is simply not the case: no attempt is made in TA to model the effect on traffic of any kind of emergency situation.

5.4. The traffic model in TA relies on an "Olympic Downturn Factor", for which it cites OTA (6.9.5-8, 6.11.1-2 and 6.13.6). However, the latter provides no citation or evidence. One of the Residents emailed the Olympic Delivery Authority to ask for the evidence and sent a reminder on 10 January that he copied to Peter Foley (Redbridge), Ian Dimbylow (WSP Group, the authors of TA) and Matthew Roe (CGMS, the MPA agents). However, he received no response. The Olympic Games will attract a very large number of visitors to London and the traffic will increase accordingly. We consider any attempt to model the effect of such an unusual situation on traffic to be highly implausible.

5.5. TFL notes that the site is more than 1.3km away from the nearest major roads (the M11 link road, A12 Eastern Avenue and A118 Romford Road). The MBDC traffic will therefore have to use residential roads for a significant part of its journey.

5.6. TFL also notes that there are currently only two bus routes within an acceptable walking distance, so its Public Transport Accessibility Level scores 2 on a scale 1-5 on which 5 is excellent. Many local people therefore rely on their cars. MBDC traffic will further add to substantially elevated traffic levels over a much wider area. Local bus routes that already suffer severe delays due to traffic congestion will become unusable.

5.7. TFL also notes that the four-way junction involving Blake Hall Road, Overton Drive and Bush Road is already operating near to capacity. In addition to this junction, the MBDC traffic will have to use two mini-roundabouts. In the experience of local people, these are usually congested. They also have the highest density of accidents [TA:2.3.3 & Appendix].

5.8. Centre Road is also vulnerable to disruptions elsewhere in the local network, when traffic often backs up the length of the road. Residents are concerned that they will be stuck in frequent traffic jams when they travel north to Wanstead and Woodford.

5.9. There is no provision for pedestrians to cross to the other side of the Flats at the entrance of the development and there is no pavement on the other side of the road. How are we to get past the entrance of the site?

5.10. [TA:4.7.1] states that

> There are areas of Centre Road that currently do not have parking restrictions. It is not expected that parking in these areas will occur in a manner to affect the MBDC operation. If any parking problem does emerge, the Police will be able to apply temporary parking restrictions to ensure the traffic flow along Centre Road is not unduly affected.

In other words, the Police will restrict public parking whenever it suits them, thereby further restricting the public's use of the Flats.

5.11. We also learn from [TA:3.6.1] (and, surprisingly, from no other source) that the Corporation of London is planning to stage popular sporting events on Wanstead Flats during the Olympic Games. These will add further to the traffic and parking. For comparison, on most Saturday and Sunday mornings there are football matches on the Flats, as a result of which Harrow Road is already completely full of parked vehicles. If their participants don't use public transport now, it is unlikely that they will do so in 2012.

5.12. Whilst TA says that all MBDC traffic will take this circuitous northbound route to the main Olympic site, the request from Peter Foley of Redbridge [TA, page 31] apparently resulted in no formal assurance that they will not instead take the obvious direct route. The latter passes through heavily built-up and congested residential areas of Forest Gate and the Cann Hall ward.

5.13. We note that significant work has recently been completed along Cann Hall Road and Crownfield Road, which link Lake House Road and the Olympics site in pretty much a straight line. The pavement has been widened slightly and cars now park on it instead of alongside it, which leaves insufficient space for pedestrians to pass each other. The vehicle traffic, on the other hand, has a free run because chicanes and other traffic calming measures have been removed.

5.14. No mention is made of the horses in TA, but Redbridge (page 35) says that they will take the direct route. Since horses go much more slowly than cars and the cars will keep further away from them than they do each other, this will disrupt the traffic.

5.15. We fear that, in the face of these difficulties, the Police will resort to coercion. This is confirmed by TFL:

> For the nearby Green Man roundabout, measures will be implemented as part of TfL's strategy to manage traffic flows in the area during the Olympic Games. It should be noted that the Green Man Roundabout will induce delays in general traffic approaching it as TfL will actively manage demand onto it when the A12 corridor becomes saturated. ...
>
> During pre-application discussions, it was agreed that when Police vehicle flows are in excess of a certain threshold ... manned entry control onto the A12 eastbound on slip will need to be put in place, in order to allow access to Police vehicles only while preventing other road users from gaining access.

6 History and Precedent

6.1. The Secretary of State has very kindly laid out the history in [HOR:14-15] and thereby justified our fears that the present proposals will set another damaging precedent. These events show that building in Epping Forest has been done consistently to the detriment of the southern part of Epping Forest, at regular 22-year intervals:

1946 despite being bombed out of their homes, local people fought to protect Wanstead Flats from the proposals to build houses there, which were in the end overturned by a Public Enquiry;

1967 building an ugly road junction at Waterworks Corner to the east of Walthamstow (section 4 of the Epping Forest (Waterworks Corner) Act 1966);

1989 building the M11 link road through Wanstead, Leytonstone and Leyton on land that had previously been part of Epping Forest (Part 2 of the City of London (Various Powers) Act 1990); and

2011 the currently proposed MBDC on Wanstead Flats.

6.2. By contrast, there have only been three proposals affecting the northern part of the Forest:

1883 proposed extension of the railway from Chingford to High Beech;

1967 a field study centre at High Beech (section 27 of the City of London (Various Powers) Act 1967); and

1979 the M25, which was put in a tunnel under Bell Common, near the town of Epping (Part 2 of the City of London (Various Powers) Act 1979).

The second of these was clearly for the benefit of the Forest. The first was defeated in the Commons by James Bryce MP on 12 March 1883 and the third was dealt with very sensitively but at considerable expense.

6.3. The issue of precedent is a key one. If Parliament allows this LRO then similar requests are likely to follow whenever there is a major policing event in the future. The Olympic Games are not a national emergency like WWII that justifies setting aside the Rule of Law. Full Parliamentary process should be required to amend an Act of Parliament. Civil liberties such as the protection of public spaces are not trivial issues. They should be taken seriously by Parliament and not blithely dismissed by Secretary of State as delegable to a local authority planning committee.

6.4. The last LRO to be made reduced the seniority of the staff that are required to conduct a Civil Partnership ceremony in a British embassy. It attracted one, favourable, representation. The present proposal is in no way similar to this. It tears up an entire, much valued, Act of Parliament.

6.5. Your Lordships' Committee finds itself effectively the guardian, not only of the liberties enshrined in the 1878 Act but of any open space with legal protection. Any future request for similar uses of Epping Forest or other places will be much more difficult to resist in the face of this precedent if the LRO is passed.

6.6. We further contend that this LRO seeks to expand the applicability of the LRRA well beyond what was done by the Government that introduced it. This Act was only passed after Government assurances that LROs would only be used for relatively uncomplicated, uncontroversial regulatory reform. It was certainly not envisaged that it would be used to remove the protection of an entire historic Act of Parliament. Not just Epping Forest but any Act of Parliament is now potentially under threat, as was commented in the Press in 2006.

6.7. The HIC ought not to be persuaded that an LRO without the appointment of a Select Committee is a satisfactory procedure for amending an Act of Parliament.

7 Change in the basis of the LRO

7.1. The Secretary of State has thrown down the gauntlet to the Residents to seek Judicial Review of the LRO [HOR:49–50], but acknowledges that "it would also be open to Parliament to inquire into these issues". She goes on to opine that "consideration of vires by a Select Committee might be unlikely to add to the Houses understanding of the vires issue and in any case such duplication does not seem to be an efficient use of a Select Committee's time." We suggest, on the contrary, that it would be much more efficient for Parliament if the first of its committees were to dismiss it straight away and save the time of the others and the Court.

7.2. We have complained in [RP:30] that we are now being asked to respond to a substantially different case in the LRO and HOED from the one that was set out before. The HOCD

alleged that s34 of the 1878 Act imposed a burden of a criminal offence of enclosing land, whereas HOED says that this is s7.

7.3. Here we wish to explore the procedural issues that are raised by this change, especially given that it resulted from the fact that four people, including one of the Residents, lodged objections to the HOCD that s34 had actually expired in 1882.

7.4. LRRA s13(2) requires that,

> If, as a result of any consultation required by subsection (1), it appears to the Minister that it is appropriate to change the whole or any part of his proposals, he must undertake such further consultation with respect to the changes as he considers appropriate.

On this basis, Your Lordships should immediately send the LRO back for further consultation.

7.5. Section 34 read as follows, the words in italics being those that were quoted in HOCD:

> *If any person, except as authorised by this Act*, after the expiration of the present session of Parliament, and before the making of the final award of the arbitrator, *makes any new inclosure of land in Epping Forest*, or commits any waste, injury, or destruction of the herbage, trees, shrubs, or other growing things in or on any land in the Forest, not by or under this Act allowed to remain inclosed, he shall for every such offence be liable to a penalty not exceeding twenty pounds.

7.6. The function of the 1878 Act at the time was to enable a named Arbitrator to supervise the purchase by the Corporation of London of the land in Epping Forest that it did not already own. It was one episode in the period of *Inclosures* that was a significant part of English social and economic history in the 18th and 19th centuries.

7.7. The Secretary of State acknowledged this error in [HOED:3.2]:

> During the course of the consultation an issue emerged over the proposed use of the Legislative Reform Order temporarily to remove the "burden" of the criminal offence in section 34 of the Epping Forest Act. It became apparent that section 34 of the 1878 Act has lapsed and that the criminal offence relating to enclosure of land on Epping Forest ... arises under bye-laws made under section 36 of the Epping Forest Act 1878 rather than section 34 of the Act.

The Policing Minister (Nick Herbert) made similar comments in his statement to the House of Commons on 20 January. But in fact Paul Thomson, the Superintendent of Epping Forest, had already said this in a private letter to one of the Residents on 28 November, while the Home Office consultation was still running.

7.8. This was despite the fact that his colleagues in the Corporation had set out the *correct* legal situation six months before the publication of HOCD, in an internal report by the Remembrancer (Paul Double) and the Director of Open Spaces (Sue Ireland) that was presented to the Epping Forest and Commons Committee of the Corporation of London on 10 March 2010.

7.9. Concerning the error, HOED says

> 3.6 ... The Government's proposal for the use of the LRO remains the same: a temporary amendment to the 1878 Act to permit the MPS to proceed lawfully in building the deployment centre. The principles of how Epping Forest and Wanstead Flats should be protected in law remain the same, as do the practical issues and potential impacts for local people. ...
>
> 3.8. The consultation put forward a single, simple proposal rather than a series of options and the LRO will reflect this. The results of the consultation do not indicate that any changes to the substance of this proposal are needed. The Government does not therefore propose to consult on the draft LRO itself.

7.10. The LRO most certainly does affect a different aspect of the law from what the HOCD had said, namely s7. It is *substantially* different because page 9 of HOCD had led its readers to believe that s7 would be left alone:

> This is in line with other provisions in the Act which include:
>
> - that the public has the right to use Epping Forest as an open space for recreation and enjoyment (subject to the Act): section 9;
> - an obligation on the Corporation to keep Epping Forest un-enclosed and unbuilt on (subject to the provisions of the Act): section 7.

7.11. Section 7 of the 1878 Act is quoted elsewhere in the documentation of this issue, but we feel that it well deserves repetition. It says,

> (1) Subject to the provisions of this Act, the Conservators shall at all times keep Epping Forest uninclosed and unbuilt on, as and open space for the recreation and enjoyment of the public; and they shall by all lawful means prevent, resist, and abate all future inclosures, encroachments, and buildings, and all attempts to inclose, encroach, or build on any part thereof, or to appropriate or use the same, or the soil, timber, or road thereof, or any part thereof, for any purpose inconsistent with the objects of this Act.
>
> (2) Subject to the provisions of this Act, the Conservators shall not sell, demise, or otherwise alienate any part of the Forest, or concur in any sale, demise or other alienation therefor, or of any part thereof.

7.12. Once the initial function of the 1878 Act had been completed, s7 became essentially the only part that matters. It *is* the Epping Forest Act. *These are the words* that protect the Forest from being turned into further urban sprawl. Whether the MBDC is temporary or permanent is irrelevant because the Act makes no distinction between temporary or permanent encroachments.

7.13. LRRA s3(2)(d) requires that "the provision does not remove any necessary protection". The Secretary of State wishes to use the *Habitat Report* to satisfy this, but this is inappropriate for two reasons:

- Such a report would have been germane to this pre-condition had the LRO sought to change something like the prohibition of winter grazing that was added to the Epping Forest Acts by s4 of the City of London (Various Powers) Act 1977.
- This report is invalid because it was made in November, whereas the Games will be held in August, and because it failed to consider Skylarks (Wren Conservation Group petition) or the Plantation (objection to Redbridge by the residents of Sidney Road).

7.14. LRRA is about legislation and not the environment. Its wording should therefore be construed in relation to the *legal* wording and history (§§6.1ff) of the Act that is being amended. The effect is on the key s7, which was a "necessary protection" against inclosures and building in Epping Forest and remains so to this day.

7.15. [HOED:3.6] also says that

> The Government does not believe that consultees in general were disadvantaged by the point at issue, or that consultees would have responded differently or raised substantially different objections had the consultation focussed around, for example, section 36 rather than section 34 of the 1878 Act.

However, the Secretary of State has only to look at the objections that *were actually lodged* to the HOCD to see how consultees would have responded had the document been correct. We would have referred to s7, not s36. We did refer to s7, not s36.

7.16. The discussion of s36 is yet another red herring that distracts attention away from the all-important s7. We suspect that this and the original error were driven by the search for some "burden" to allow this proposal to be shoe-horned into s1(3)(a) of the LRRA. Besides, if one of the bye-laws is a burden then the Corporation of London has the power, under s36, to change it.

7.17. Following a Freedom of Information request, we obtained the report mentioned in §7.8 and the minutes of the meeting at which it was presented. Item 22 records that

> a Member stated that any attempt to tinker with the 1878 Epping Forest Act would generate local hostility.

7.18. Whilst all modern and some old legislation is available online, this is not the case for either the 1878 Act or the several Corporation of London Acts that have amended it. We only obtained copies of these in November, after the Home Office consultation had begun and after the public meeting had taken place.

7.19. If the error was not accidental then its motive was to evade local hostility by relying on people's lack of knowledge of the protection that the 1878 Act affords. Contrary to [HOED:3.6], respondents to the HOCD were disadvantaged because this did indeed damage the effectiveness of the campaign.

7.20. Had the HOCD been up-front that it proposed to remove the protection of s7, indeed had we known at that time what s7 says, we would have made prominent use of it. When they appeared at the public meeting on 6 October, we would have put Sue Ireland and Paul Thomson on the spot about their blatant disregard of their statutory duties. Using s7 as a rallying cry, the campaign would have been much stronger and, with more people working on it, would have been able to achieve a lot more, in particular to give the planning documents much closer scrutiny.

7.21. Had the HOCD been up-front that it proposed to remove the protection of s7, indeed had they known at that time what s7 says, other respondents to the HOCD would have done so differently. For example, the Friends of Epping Forest (whose 19 committee members all live around the northern parts of the Forest) may have appreciated the fundamental threat to their Forest and objected to the HOCD, instead of supporting it.