



# WE ARE NOT DESPONDENT

**Wild swimming is a traditional way to freely spend time in nature, but London's 'wild' ponds are now threatened with enclosure. Swimmer GEOFF GOSS reports on the resistance.**



Of all the subterranean rivers flowing into the Thames, the River Fleet is London's largest. By the 18th century, due to pollution, it had become unsightly and unsafe, so in 1733 the City of London petitioned the House of Commons to cover it up. Around 1777, the Fleet's headwaters - two streams running down the hills of Hampstead Heath - were dammed into a series of reservoirs and ponds. Soon Londoners began using those ponds for public bathing. Constable painted the scene in 1821. By an Act of 1871, Hampstead Heath was set aside as land that its freeholders, at that time the Metropolitan Board of Works (MBW), should 'forever keep... open, unenclosed and unbuilt on'. The MBW officially opened the Highgate Men's Pond to the public in 1893. In 1926, the Kenwood Ladies Pond opened. Before the City took over the heath's management from the abolished GLC in 1989, the issue of paying had never arisen. Swimmers have been bathing there, for free, for nearly 200 years. That freedom is now in danger.

On March 12, the Hampstead Heath, Highgate Wood and Queen's Park Committee (HHHMWQPC), which is responsible for the overall management and decision-making for open spaces in North London, voted by 8-1 that visitors wanting access to the ponds will be obliged to pay a charge, to be enforced from May 2, 2020.

The single dissenting delegate, from the Hampstead Heath Society (HHS), had promoted a compromise option, whereby the rangers would request payment, not insist on it. That had the overwhelming support of many local organisations, including the Kenwood Ladies Pond Association (KLPA), the Mixed Pond Association (MPA), the Highgate Mens Pond Association (HMPA) and the United Swimmers Association (USA). Witnesses said the other delegates angrily rejected this option; "they've had it too easy too long", they snapped.

## Against The Tide

Outside the meeting, a group of swimmers gathered holding 'Ponds Not Profit' placards. The general feeling amongst the swimmers is that the City's consultation period, just a few weeks in winter when few people used the ponds, was an utter charade. Users of other sporting facilities on the heath — the Lido, a running track, tennis courts — faced with increased fees, had been grumbling about pond swimmers, for not sharing some of the costs. In January the HSS, which historically has battled to save the heath from development, passed a resolution that swimmers should pay, though they recommended a trial voluntary period. The tide of public opinion had been going against us for some months.

Karina Dostalova, chair of HHHMWQPC and the main driver of the compulsory scheme, set out the City's rationale: the costs to the City, the growing numbers of pond users, matters of health and safety and duty of care to its employees, some of whom had had to deal with disorderly situations. There were two safety issues: first, following a recent tragic drowning in the Men's Pond, the HSE enquiry had recommended having additional lifeguards on duty. Swimmers have offered to help raise funds towards this cost; we appreciate the existing lifeguards. (Normal regulations governing swimming pools do not apply to open surface waters such as ponds.) Secondly, problems of disorder: most of these occurred at the Lido where visitors pay; and which has a wall all around it. For the City, imposing their new system brings more problems and expenses: perimeter security, with turnstiles and cameras; hiring more rangers to enforce payment from uncooperative swimmers, providing lockers, possibly hot showers, and so on. (To put these expenses in perspective, the City is also planning some huge prestige projects in the Square Mile, including a £250 million concert hall for the Barbican). As the budget for the Heath has shrunk with inflation, the number of people using it has grown - not just for swimming. In future, will people also be charged to jog, walk their dog, go for a stroll?

## In At The Deep End

Since 2005 fees for swimming have been collected via 'honesty' machines at the entrances, after the City had unsuccessfully tried to impose charges and restrict access to the ponds. Protests from hundreds of angry swimmers followed.

## Who'll Take The Plunge?

Hampstead Heath contains the largest single area of common land in Greater London, with 144.93 hectares (358.1 acres) of protected commons. A map dated 1680 of the Manor of Hampstead shows the then boundaries of the common land, which covered today's East Heath, Sandy Heath and West Heath, (since enlarged, see map p XX). The fundamental purpose of the 1871 Hampstead Heath Act which confirmed the heath's status as common was to ensure that the Heath remains freely open and unenclosed by gates or charges.

Section 193 of the Law of Property Act 1925 gives all members of the public 'rights of access for air and exercise' to all urban and metropolitan commons - a right that can be exercised on foot or horseback, but which does not give a right to enter land with vehicles or to camp or light fires on the land (originally meant to deter Gypsies, but would now include barbeques). The common law doctrine of *nec vi, nec clam, nec precario* (which, as translated by Lord Hoffmann, means 'not by force, nor stealth, nor the licence of the owner') describes how one is entitled to freely enjoy his or her rights of access for "lawful sports and pastimes" on urban common land. Which is what Hampstead Heath is. So with or without a ticket, feel free to hop in and swim.

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So, although the City installed their machines, they never insisted on payment. A sort of status-quo prevailed: formally one should pay the £2 entrance fee, but no-one would be barred if they did not pay. That system still doesn't work; it falls between two stools, by neither insisting on payment, nor asking for voluntary donations. Many regular swimmers have said they will not pay: "I've been coming here for 40 years and I think it's appalling to charge people....I'm never, ever going to pay for something which, until now, was one of the few free things in life. I think it ruins the experience of coming here." Another said "It is a natural space, a completely unique experience and it feels wrong to pay". One of the 'honesty' machines, at the Men's Pond, was sabotaged with blackberries.

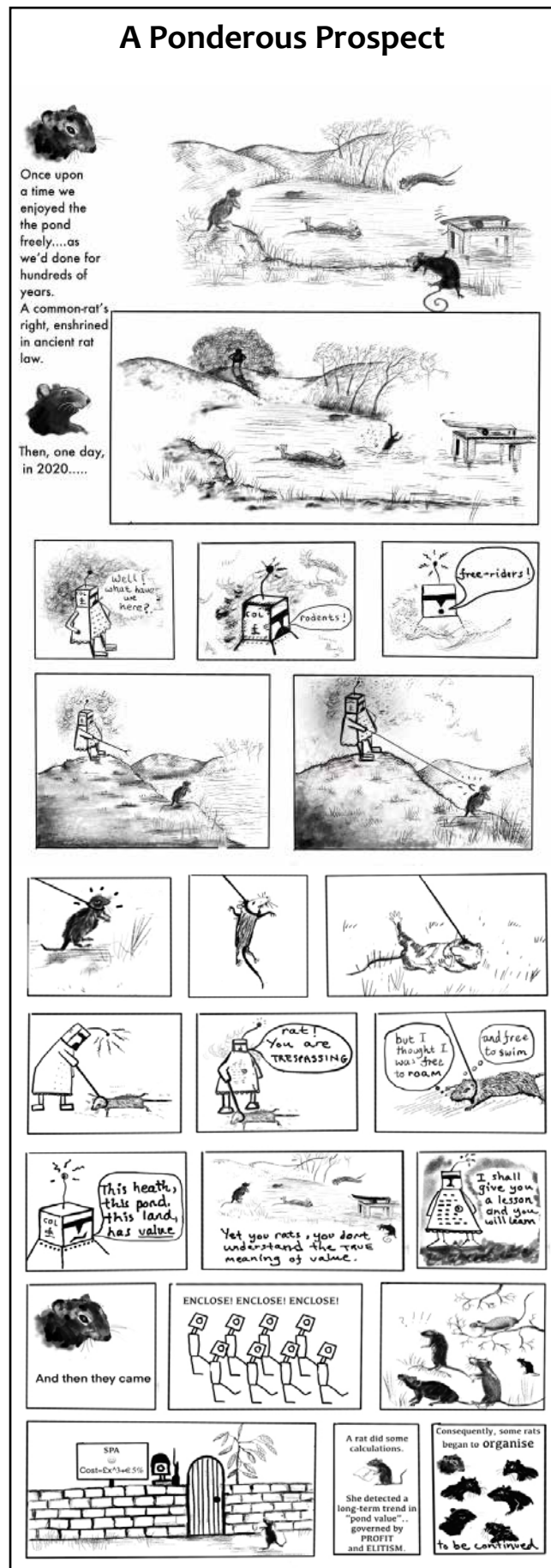
Time and time again, the swimmers have asked for a completely voluntary scheme; it works for museums, so why not here? Yes, we emphasise, we are willing to make voluntary donations to help subsidise the lifeguards. But no, we are not prepared to accept compulsory charges. Unfortunately, the City has never taken a voluntary scheme seriously; they do not accept the concept of free access to the ponds.

Does the City's insistence on payment contravene the right of access to common land? Other, mostly 20th century, local legislation appears to contradict the 1871 Act.<sup>1</sup> For instance, the Greater London Parks and Open Spaces Act, 1967, allows the owner/manager of open spaces in London, including the Heath, to enclose parts of that land, construct buildings and charge for entry. So whilst free access has been customary for well over a century, and there are similarities with a seaside (where one expects to find lifeguards but not to have to pay for them) our right of free access is not guaranteed. After all, the heath is not a wild place as such, it is managed by a fleet of gardeners, police and other staff. But it's clear that the City have been exploiting the 1967 Act and undermining the spirit of 1871.

### Not Going Under

Helen Lawrence, in her history of the Heath, argues that the 1871 Act came about through public pressure and campaigning, rather than philanthropy.<sup>2</sup> Now, as then, access to the ponds is not to be taken for granted, the struggle is ongoing. We have swiftly built a campaign that, though based on compromise rather than the principle of free access, unites everyone. Where do we go from here? Once charges are incurred, the ponds will be at the mercy of market forces; no longer a subsidised resource, but forever vulnerable to commercial pressure and out-sourcing. Charges will only go one way — upwards! There is a real danger that over time the ponds will degenerate into enclosed spas for the privileged: the wealthy ladies and gents of Hampstead and Highgate.

This dispute is not about money *per se*, it is about the difference between a free individual and a customer. And surely, there is a broader context: the City is setting a precedent to enclose, control, and charge for entry to wild waters anywhere in the country. In these times, when wild swimming as a way to spend time in nature is growing in popularity, and its health benefits are more widely recognised, the historic struggle for the right to freely access our commons of land and water is more crucial than ever.



#### References

1. Marc Hutchinson. The City of London open spaces bill. Hampstead Heath Society Newsletter, 47(2):18 – 25, 2016.
2. Helen Lawrence. How Hampstead Heath was Saved. Camden History Society, London, 2019.