

Appendix 3

Retrospective planning permission Tournerbury Woods – Planning application APP/21/01310

Appendix to HMPC Ltd letter 17th August 2022

Latest legal exchange regarding the Right of Way

Your Ref: RWJ/A4274-3
Our Ref: 17197/17197/A8099604-7/31797203-1

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15 August 2022

BY EMAIL ONLY: rjames@thrings.com

Dear Sirs

Mr Christopher and Mrs Alice Snell

We write further to our letter of 3 February 2022 (copy enclosed), noting that we have not had the courtesy of a substantive response.

In that letter, in particular at paras.5-9, we drew to your attention to the steps [REDACTED] had taken to impede and substantially interfere with the Right of Way (as defined in the letter) and/or rights of way acquired by prescription over the verges/passing places to the side of the track. In support, we also enclosed a schedule of photographs, showing Google Earth's satellite imagery for 1999, 2005, 2007, 2015 and 2019 together with a 1998 photograph from the National College of Aerial Photography.

We are instructed that [REDACTED] has taken additional steps which impede and substantially interfere with [REDACTED] exercise of the Right of Way and/or other rights acquired by prescription. Specifically, on or around 20 May 2022, [REDACTED] moved the long standing existing fence and paddock gate on the eastern side of the Right of Way (looking northwest along the Right of Way from the entrance to [REDACTED] woodland), so that the eastern verge was wholly inaccessible to passing traffic, as it has been used.

We enclose a PDF containing images taken by our client on 17 May 2022 (photos 1 and 2), on 21 May 2022 (photos 3 and 4) and on 24 May 2022 (photo 5) clearly showing that the fence and paddock gate have been moved right to the edge of the track.

We invite:

1. You to confirm that [REDACTED] was responsible for moving the fence and paddock gate: i.e., that it was done in [REDACTED] name and with its authority.

2. Assuming the confirmation at 1 above, you to explain (i) what [REDACTED] was seeking to achieve, and, if it was [REDACTED] position that it was entitled to do so, (ii) why it did so on or as recently as 20 May 2022, altering the position on the ground after many years.

3. Whether or not the confirmation at 1 above is forthcoming, [REDACTED] acting through its agents, to restore fence and gate to their location prior to the works on or around 20 May 2022.

We reserve [REDACTED] position, so far as taking further steps are concerned, [REDACTED]
[REDACTED]

Yours faithfully

IRWIN MITCHELL LLP

Sent electronically

Read and approved by James Pavey, Partner

But not signed

Your Ref: RWJ/A4274-3

Our Ref: 014073/01073/A8099604-7/19034206-1

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03 February 2022

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Dear Sirs

Mr Christopher & Mrs Alice Snell

A. Introduction

1. We write in substantive response to your letter of 18 November 2021. We adopt the abbreviations used in our letter of 19 October 2021

2. Our letter of 19 October 2021 raised new issues in relation to the Right of Way, to which your written response and [REDACTED] response on the ground have been unsatisfactory. We write again, as the start of [REDACTED] 2022 events season is now in sight.

3. We asked in our letter of 19 October 2021 for your confirmation that you act for [REDACTED]. We invite you to acknowledge receipt by return [REDACTED].

4. We have written separately in response to paragraph 9 of your letter of 18 November 2021.

B. Rights over Northern and Southern Parking Places

5. At paragraph 5 of your letter of 18 November 2021, you query why the width of the Right of Way was not raised in our letter of 9 August 2019 to you. The answer is simple: as above, [REDACTED] had not then taken the particular provocative steps to try to impede [REDACTED] exercise of the Right of Way or, alternatively, of rights acquired by prescription which he took on 7-9 October 2021. The effect of those steps was, in their immediate locality, to narrow the available width which was useable on the ground.

6. It is an insufficient and, indeed, incorrect answer to say, as you do at paragraph 8, that [REDACTED] "has simply reinstated the width of the right of way prior to [REDACTED]"

6.1 The works which [REDACTED] undertook in September 2021 were to cut back hedging and overgrowth where it had grown out over time, reducing the available width for use. [REDACTED] has done that on a number of occasions over the years, with minor trimming every year during the height of the growing season. Without such cutting back, the Right of Way would by now have become impassable or, at least, functionally incapable of use: this is not work that [REDACTED] have ever seen [REDACTED] undertake themselves. By contrast, [REDACTED] has erected a series of physical obstacles, on the ground, which preclude exercise of the full width of the Right of Way or of such other rights as have been acquired by prescription without the risk of significant damage to vehicles or people.

6.2 As we set out at section C below, [REDACTED] are entitled, on a proper analysis, to undertake works to make the Right of Way or such other rights as have been acquired by prescription useable across their entire width. Such works do not constitute a trespass.

7. We infer that paragraph 5 of your letter of 18 November 2021 is your response to paragraphs 6-9 of our letter of 19 October 2021, but with all the hallmarks of a letter written to a limited budget. It is not self-evident why, if "tracks" is the "operative term" the matter of the width of the right of way reserved by the 1987 Conveyance resolves in [REDACTED] favour. We, therefore, invite you to set out in detail why [REDACTED] contend that that is the case – and, indeed, to respond substantively, to the analysis set out in paragraph 7 to 9 of our letter of 19 October 2021 in particular.

8. As to the observations [REDACTED] makes about the topography over time:

8.1 Southern Passing Place: we invite you to review again the aerial photographs enclosed with our letter of 19 October 2021 and the enclosed pdf showing Google Earth's satellite imagery for 1999, 2005, 2007, 2015 and 2019, together with a 1998 photograph from the National Collection of Aerial Photography. The area which [REDACTED] have used and which we have labelled as the "Southern Passing Place" is visible throughout the period which the photographs cover. There is an obviously visible open area in the photographs, with no hedge or fence line separating the Right of Way from that area. It is not disputed that it used to be the access to a field, but for much of the period, it has opened on to [REDACTED] unlicensed and unauthorised waste storage and disposal area. It is also acknowledged in para.7.4.10 of the "Transport Note" dated 11 June 2021 and prepared by Evoke Transport for [REDACTED]

8.2 Northern Passing Place: you assert that the Northern Passing Place was heavily vegetated until [REDACTED] cut the area back in September 2021, with the implication that it had never been used with continuity as a passing place. We repeat para.11 of our letter of 19 October 2021 and the first three sentences of para.6.1 above. Also, please see the enclosed aerial photographs: the Northern Passing Place is less pronounced, as narrower and less used (probably by [REDACTED] but nonetheless visible to the east of the metalled track to the extent that two cars can pass at that point.

9. Our clients' position remains that the steps taken by [REDACTED] to place the obstacles on the ground between 7 and 9 October 2021, as listed at paras.9.1 to 9.3 of our letter of 19 October 2021, remain a substantial interference with the Right of Way or, alternatively, with such other rights as have been acquired by prescription useable across their entire width. In light of the scant and unpersuasive response to our letter of 9 October 2021, we again invite [REDACTED] to remove them.

C. Ancillary rights of dominant tenement owners

10. Further to the analysis contained in paras.6-11 of our letter of 19 October 2021 and by way response to the second paragraph of para.8 of your letter of 18 November 2021, we refer you to *Gale on the Law of Easements* (21st edition) at paras.9-112 and 9-113:

"9-112 The dominant owner is entitled to enter the servient land to effect repairs or to alter the surface of the servient land to accommodate the right granted. So a dominant owner may

be entitled to enter the servient land to install lighting if that is reasonably necessary to enable the way to be used safely and conveniently.

9-113 The following summary of the law has been described as “settled for centuries” and uncontroversial. Subject to contrary agreement,

(1)the grantee may enter the grantor’s land for the purpose of making the grant of the right of way effective viz. to construct a way which is suitable for the right granted to him;

(2)once the way exists, the servient owner is under no obligation to maintain or repair it;

(3)similarly, the dominant owner has no obligation to maintain or repair the way;

(4)the servient owner (who owns the land over which the way passes) can maintain and repair the way, if he chooses;

(5)the dominant owner (in whose interest it is that the way be kept in good repair) is entitled to maintain and repair the way and, if he wants the way to be kept in repair, must himself bear the cost;

(6)he has a right to enter the servient owner’s land for the purpose but only to do necessary work in a reasonable manner.” (Our emphases)

11. Consistent with that summary of the law:

11.1 [REDACTED] have been entitled to undertake the surfacing works to the Right of Way, as they have done regularly (often annually) over the years. [REDACTED] have taken no steps, themselves or through you, to challenge the lawfulness of such works. For completeness, last year [REDACTED] (on whose behalf it was not clear) asked that [REDACTED] did not impose road planings on the Right of Way to fill potholes between the two ponds, on the basis that [REDACTED] had been told not to because of “environmental concerns”. [REDACTED] cooperated with that request and instead laid MOT Type 1 Limestone scalplings. (On checking with Natural England whether there were any such “environmental concerns” with road planings, [REDACTED] was told that there none.)

11.2 [REDACTED] will again undertake works this calendar year to fill potholes and otherwise to repair the surface of the Right of Way. This year works are required to mitigate the effects of water overtopping the Right of Way when it flows from the pond to the west of the Right of Way to the irrigation pond to the east of the Right of Way. The overtopping appears to be due to a broken pipe.

12. [REDACTED] also reserve their rights to clear foliage and vegetation where it is a substantial interference to their exercise of the Right of Way.

D. Next steps

13. We invite your substantive response within 14 days – and, though [REDACTED] expectations are managed, any proposals which [REDACTED] may wish to make in cooperating with [REDACTED]. In light or in the absence of such response, we will take [REDACTED] instructions as to next steps, in particular in relation to the nuisance.

13. When responding, please would you also explain whether [REDACTED] placed the obstacles on the ground between 7 and 9 October 2021 in his role as [REDACTED]
[REDACTED]

Yours faithfully

IRWIN MITCHELL LLP

Sent electronically

Read and approved by James Pavey but not signed



Fig 1: Photograph showing the north-south section of Tournerbury Right of Way, immediately after lawn mowing the eastern verge on 17/05/2022.



Fig 2: Close up photograph showing the north-south section of Tournerbury Right of Way, immediately after lawn mowing the eastern verge on 17/05/2022.



Fig 3: Photograph taken on 21/05/2022 showing the current location of the fence line and paddock gate on the eastern verge.



Fig 4: Photograph taken on 21/05/2022 showing the current location of the fence line and paddock gate on the eastern verge (left hand side of photograph) and the position of the concrete barriers restricting access to the Southern Passing Place added in October 2021 (right hand side of photograph).



Fig 5: Photograph taken on 24/05/2022 showing the current restrictions to the width of the Right of Way.