

Agenda Item 5.1

To: MARTIN EDWARDS
Cornerstone Barristers

From: SEAN MADDOX

15/08/23

Dear Sir,

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND TO THE REAR OF
CHERRYHOLT ROAD, STAMFORD, LINCOLNSHIRE PE9 2EP AS A VILLAGE GREEN
(MW/SK V6/1/2019)**

Some thoughts on Stamford Village Green Report Draft

Thank you for sending us your proposed draft of your report, it is a courtesy that is greatly appreciated. We appreciate the weighing up of matters, is not always easy and a lot of ground was covered, much of it contentious. However I feel that some of our arguments and evidence have not been giving sufficient weight, for example the status of Mr Gray, who merely held a grazing licence (therefore precluding almost all rights, he was not a tenant as they have a number of important rights, a very different matter), and was not even the license holder for most of the period he states. As Mr Anderson was the grazing licence holder, for part of the time, and rights were not transferable, as per the specific clause 18 in the contract. Mr Gray therefore himself was possible an unauthorised user, and his main concern was dogs being off the lead, which lead to some altercations, e.g. the testimony of Lesley Battley. Indeed it is likely Mr Gray was not even the licence holder when Mrs Battley feared for her dogs safety. It was not about being on the land or off the footpath. On no occasion according to our witnesses did he tell them to leave the land. The perspective footpath being on the land itself.

The landowner nor his agent made objections to people using the land, except for the letter to Mr Hall (Mr Turton, never seems to have received his), in January 2019, yet this is the period that the land owner claims he consented residents using the land use. This surely in direct contradiction to their claims and argument, which why Mr Lawrence left this matter aside and avoided the whole issue. It cannot be used as evidence of objection of use, whilst at the same time as claiming they gave permission for leisure use a grave inconsistencies of logic.

The argument of changing permissions over the period, is a creation of convenience, after all what changed? What evidence is there? Your own question Sir to Mr Lawrence the Objector during the inquiry to which he was unable to reply. Nothing. The residents had no permission to use the site for recreation and then suddenly, we do have permission to use the site at some mysterious date. The Allison homes lease does not support his change as outlined below. Secondly In Para 12 we are told for example the lack of evidence re those exercising footpath rights, vs the site more generally, when in fact there are no footpath rights (as it was not the lawful route and had been moved), so surely as a point of the Allison Homes lease is not material. It was about allowing footpath access, for the moved

path following the sale of land for the car park. The only direct evidence is the letters to Mr Hall and Turton, and they absolutely refute this position.

Also I am not aware of any resident correctly knowing at the time who the landowner was, the few that thought they did, thought it was Burghley (see witness forms). We of course now know it was Cecil Trust, and we were informed by Mr Dawson that Cecil and Burghley are completely different legal identities etc.

Witnesses used the paths off the Speculative route

All our witnesses stated clearly that they did not just stick to the speculative path, and all used the circular path on the site, which is outside of the path. The path of the speculative route was dryer and easier to use for many residents so more favoured than other routes. Para 5 is therefore a mystery. The satellite photo you mention not showing the circular-path clearly is merely because the grass had just been cut (obscuring the path and removing much of the contrast). Other Photos show the paths as do local maps, it's always been used. Even the speculative path is a use of the site, though in winter this leads to a winter bog, hence the more common use of the circular-path. Use of other routes would not invalidate the use of the site itself, as seems to be the implication.

Mr Gray was hardly ever there, and his focus was on dogs being kept on leads

Concerning Mr Gray, firstly he was a holder of a grazing licence for his animals, and that was his sole right in respect to the land. Secondly he was a holder of the grazing licence for only 4 years (though animals removed before termination), the other years being taken by Mr Anderson. The rights on the agreement are specifically non transferable, therefore Mr Gray himself could be said to be an unauthorized user of the site himself. The issue we raised about his animals and their poor state is relevant, it was never about the animals themselves and their health but to independently show that Mr Gray's account of how often he tended the animals and visited the site was a gross exaggeration and could not be relied on, in short he was not a reliable witness and yet he is the objectors only effective witness. The assessment of the BHS and RSPCA back this up, as I am sure the RSPCA and the BHS knew how to judge the situation with their experience and knowledge so Mr Gray's evidence on this should be taken with a pinch of salt. It is not in Human nature to voluntarily admit the effectively abandoned of animals, particularly in a public hearing. These charities would have taken their actions reluctantly and at some cost to themselves to remove the Animals in 2009. A prosecution by them would have further increased costs with little gain, and the monies saved by inaction would have better spent elsewhere. If Mr Gray tended to them as per his statement I am sure they would have been in much better health, and not starving or having major issues with the state of their hooves, teeth etc. This was a function of neglect over a long period of time. The written statements and multiple witnesses on the stand, all talked about how Mr Gray was rarely ever seen support this view. No doubt because he was busy running his building business. Whilst our witnesses made clear his main preoccupation and objections were to animals being off the lead, and not about keeping to path, or being on the land itself. Therefore the inspector is asked to make a choice and whose accounts to believe, the singular account of Mr Gray or the applicant's witnesses (the land agent was not there so cannot verify the accuracy or otherwise). In their accounts they state that Mr Gray's objections were not about land use, and where, but about dogs being off leads. Mr Gray's statement also states this, as does Mr Dawson's statement on the matter relating to Mr Gray, in Para 44 of his statement of speaking to Mr Gray regarding his confrontations with members of the public who let their dogs off their leads. It is a stretch therefore to say Mr

Gray challenged the use of the land by residents, and had rights to do so, as a point of law please see below.

Mr Gray was not a tenant, a point the objector has tried to confuse the inquiry with, and when pointed out to them Mr Dawson did accept there is a world of difference. In terms of Grazing rights, please see the summary below as to their rights or lack of them:

A copy and paste from Battens on the issue of Grazing Licences

*“A grazing licence allows a horse owner to graze horses for a short period of time. **It does not allow for any rights over the land** and the landowner remains in occupation and control of the land. Traditionally, grazing licences run from April to October although they can be renewed regularly so that the licence applies all year round”.*

Grazing of horses | Battens ([link](#))

Para 6, and objectors letters of January 2019 to Residents use

The reason Mr Lawrence did not bring up this letters of the land agent to Mr Hall and Mr Turton was that it undermines their argument that they gave permission to the residents to use the land. As you Sir observed there was no change in signage or anything else. The Allison homes agreement was renting the land whilst allowing access to what they thought was a public footpath, (which they almost certainly moved to facilitate a land sale to Cherryholt House for the creation of a car park) to go beyond that and say this was evidence of Cecil Trust giving permission to the public to use the land I think is too far. The agreement was also not public.

Para 8 Allison Homes Standard Lease terms

The restoration of the land after use by Allison Homes, is merely standard contract terms in matters like this, and had nothing to do with restoring the land for the use by residents, it was to restore so it can be used later for grazing and remove a potential liability/ future cost from the Cecil Trust. To make the leap that Para 8 does is extortionary, suggesting that this was about enabling land for the use by local residents is fatuitous, it was about protecting their own interest and very much a standard clause in this type of agreement. It was not an argument Mr Lawrence put forward at the time, so I am unsure of its origins. Residents did not challenge the land owners rights at he time, why would they, and the connection to our case I do not see, except for case make in stating that this land can be excluded from the granting of the village green area, as it was not used by the residents for 3 years.

Para 10 Walking Routes Vary, why would this be an issue?

Walking routes vary it is the nature of these things depending on weather, time and ability of the walker. So yes, our walkers used other routes at times, but they used our site frequently. I assume the critique is that we should have applied for the entire area, that may be so, it would have made matters simpler but we were trying to be reasonable and focus on the main area residents used throughout the year. Flooding and mud is an issue in the adjoining areas (see photos), hence it carried the most traffic. Our witness statements and testimony clearly state that they saw frequently other residents of the locality, using the site as well, and acknowledged that indeed some were outside the immediate locality (though a couple them by a matter of meters), so I am somewhat confused as to the intention of this paragraph.

Para 11 A Truism?

Is almost a truism, as population densities in England are rising everywhere, and there has been much building in the last 25 years in Stamford and else where. Many people who used the land in earlier periods, have moved, died, or become ill (e.g. Mary Kozich losing her memory resulted in her being unable to testify or give evidence, the Parents of Brad

Adams died, or people like Hilde Attenborough who moved away)). Others have an aversion to becoming involved. It must therefore always be easier to find people in these cases who have recently used the land, rather than users 20 years ago, which is always going to be more difficult, and those still here and willing to give evidence are a fraction of those who used the site. I noted that in past judgements, and as is in this case our witnesses have testified to the frequency of seeing others using the site throughout the period, and such testimony has been considered relevant and of importance. I did make it a point to ask each witness a few basic questions to establish this at the inquiry, along with the lack of sightings of Mr Gray.

Para 12 Alludes to the Use of Rights that did not exist

How can we exercise footpath rights when they did not exist? The real footpath route was elsewhere.

May I take this opportunity to thank you for your all your efforts and seeking to insure a fair and open hearing, and the help of LCC in arranging and supporting the inquiry is also greatly appreciated by all.

Yours sincerely,

Mr Sean Maddox
On Behalf of the Applicant