
From: Nicola Garrington
Sent: 03 January 2013 17:22
To: Audrey Christie; Nicola Garrington
Subject: Further evidence Nicola Garrington
Attachments: [REDACTED]

Flaws in recommendation by Durham County Council

Earlier period 1972-1992

Outside of all "freehold plots" were grass verges and a private road to the public highway
All the grass verges in the earlier period including the roads belonged in fee simple to Lord Gorts Estate (The Vendor)
Lord Gorts Estate was the absolute owner of all of the "protected lands"
All of the protected lands had "restrictive covenants" upon them
These protected lands for the time being were **by way of lease** by the vendor (Lord Gorts Estate)

Therefore the purchasers (are an exclusive group of residents)
had:

freehold title inside their plots -

leashold title outside their plots - purchasers were tenants

SEE EVIDENCE RESTRICTIVE COVENANT

The exclusive groups of people the purchasers were restricted in their activities regarding the grass verges

"The purchasers would not use the grass verge in front of the site for any other purpose than as a grass verge and will not do or permit or suffer anything to be done to prevent or interfere with the maintenance as such by them"

SEE EVIDENCE LEASHOLD PRIVATE RIGHT OF WAY T

Exclusive groups of people the purchasers (The residents)
had a "right of way to the highway"

Item A PRIVATE ROAD

From 1949- 1987 there was only one main entrance to the Main Estate and the only
"Surfaced route" for pedestrian and vehicular access to the entrance of the Estate

This entrance had a notice which was on the left Hand Side was located on the entrance to High Hamsterley Road and it clearly stated PRIVATE ROAD

This notification was installed by Lord Gorts Estate Management and clearly demonstrated the following

“The landowner must not be able to demonstrate he had no intention to dedicate the way”

Miss Garrington has appointed a Barrister Christopher Vane of Trinity Chambers his opinion Notes the following ;

That it could be argued that such a notice should be read as applying to the route in question as well as the estate road .

The fact there was only one main private estate road and the route in question which was grassed Before 1990 led onto this gives significant weight to this argument

(An example would be that if you took a short cut through a parcel of land but left by the main entrance to get to the public highway you would know you had committed a trespass once you read the “ Private Road “sign)

Item B CUL -DE -SAC

The alleged route prior 1987 therefore did not run from public highway to public highway As long as the estate road remained Private it is argued that the alleged route was really a private cul- de -sac with no public rights of way over it

Item C Route not shown or included in conveyance

1987 Estate roads adopted

The route in question was not included in that conveyance however the official alternative route was

1988 HMRA AGM MEETING

A request to Derwentside Council by the residents Association for an all -weather path to be laid This was turned down by the local authority

(The existing highways have no historical records on file)

1994 HMRA AGM MEETING

A request to Derwenside Council by the residents Association for installation of handrails to be laid installed on the alleged route in question

This was turned down on the grounds it was not adopted by the county council

(The existing highways have no historical records on file)

Item D The public at large must have used the way

Use must be by the public at large, not just certain tenants or employees of an estate.

Miss Garrington has appointed a Barrister Christopher Vane of Trinity Chambers his opinion

The Residents Association and its members are of course are neither “the public” nor each of the residents on Hamsterley Mill Estate no more are local authorities “the public”

12 users recorded 1972-1992 are part of an exclusive group of people on the estate who do not represent the public at large

- Contemporary period 1992 -2012

It is stated that in the said draft report on item 6.1

“Although the owner asserts that the obstruction existed for 3-4 days it is surprising that having regard to the regularity of the usage put forward
no one has any recollection of the route being obstructed”

Evidence to the contrary

Statement 63 of long close road Hamsterley Mill

“I am aware **that others may remember an obstruction** for a short time around 1990 but I never saw anything”

Response; this indicated that others who ever they are did witness an obstruction

The statement is made by someone who

- a) Is reluctant to divulge the names of such individuals as the witnessing of an obstruction would not be beneficial to this individual who is complainant
- b) The fact is the statement is made by an individual who has been notified of an obstruction in the 1990s
- c) The term “others” is plural not singular indicating that more than one individual notified this individual of the obstruction

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Non complainants

The only statements have been taken from complainants only

Various non- complainants have witnessed the fence being moved but have not been approached by the rights of way team
or notified by public notice

The only contact has been via the HMRA which do not represent all the residents

Local authority record keeping

No records have been retained by the Council of

All Correspondence with HRMA at that time

Detailed Schedule of works for adoption of Roads and sewers

Removal of old signs and replacement of Estate and street signs

Notification of enforcement officer regarding the obstruction of the route

The fact that they are no records does not indicate an event did not occur

Substantial evidence

It is stated that in the said draft report on item 7.2

“Recommendations and reasons that contemporaneous written minutes of meetings should be given greater weight than the recollections of the owner”

Evidence to the contrary

The previous owner (1976-1992) has provided a written signed letter stating that during her ownership

*SEE EVIDENCE LETTER FROM PREVIOUS OWNER *(I have removed the address)

“There was no concrete path up to the set of steps”

The previous owner also states

“I remember this because a horse rider used to go up to the steps to the top road and in wet weather there were deep hooves in the grass from the horses hooves”

“The residents association were never involved”

Additional factors

The existing owner has never contacted the previous owner before therefore there is no reason for the previous owner to distort the facts

There is no benefit to the previous owner to this case

The HMRA actually complained to the council regards horses on the estate and steps were taken To prohibit their route through the estate

It is stated that in the said draft report on item 7.3

“There is no evidence of lack of intention to dedicate the part of the owner During either 20 year period”

This statement is incorrect

Earlier period 1972-1992

The landowner Lord Gorts Estate was in-fact the absolute owner at that time
Of the said grassed area.

The estate owner demonstrated he had **no intention to dedicate** the way by placing a Private sign at its entrance to High Hamsterley Road

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Use must be by the public at large, not just certain tenants or employees of an estate

The residents are not the public at large they were tenants outside of their freehold plots

All evidence of 12 users submitted pre 1992 were an "exclusive group purchasers called residents" of whom had restrictive covenants within their title deeds and a right of way to the highway"

The 12 users pre 1992 are not the public at large

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Contemporary period 1992-2012

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Purchase of freehold grassed verge 24.03.1992

Aim to fence off new boundary line – no concrete path present

Just grassed area

Between late Summer 1992-1993

Fence off boundary line by D Foggin Builders

Complaint by George Maughan

HRMA stating the route was on Lord Gorts Estate and was "the residents land "

Visit by Derwentside district council Enforcement officer

TOLD TO MOOVE THE FENCE AS IT WAS OBSTRUCTING A PUBLIC FOOTPATH

IT WAS STATED THAT OBSTRUCTING THE RIGHT OF WAY WAS AN OFFENCE

IT WAS STATED THAT THE CONSEQUENCES OF NOT MOOVING THE OBSTRUCTION WAS AN OFFENCE

I WAS INSTRUCTED BY THE OFFICER THAT THE WAY WAS A PUBLIC FOOTPATH AND I FOLLOWED THE INSTRUCTION TO TREAT IT AS SUCH

I HAD NO REASON NOT TO FOLLOW AN OFFICER OF THE COUNTY

1998

Installation of concrete path by HMRA

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Concrete path a HMRA installed on my land

Concrete path b HMRA installed on highway land on parklands side

Please note the path b on the highway is known to the local authority

A resident has broken a limb in 2012 on this path b and the highway in conjunction with Councillor Watts Stelling have acknowledged that the path is dangerous
Path B has still not been removed

MAY /JUNE 2011

*SEE EVIDENCE PARKLANDS *

EXCLUSIVE CONSULTATION WITH HIGHWAY TO PLACE A SIGNIFICANT PUBLIC PATH OPPOSITE MY PROPERTY

Its only route it to serve access over my private land

I WAS NOT CONSULTED UNTIL I FOUND OUT ON 6TH NOVEMBER 2012

The majority of residents have not been included the Council have only consulted with the residents association HMRA and a few individuals

The the route channels people for one purpose only to cross my land to the public highway

AUGUST/SEPTEMBER 2011

HRMA Visit

Asked who was responsible for the path as it was dangerous and residents were complaining about its dangerous state

when challenged denied any knowledge that the HMRA were responsible for the installation of the path and the negligence surrounding its maintenance

Visit by

I instructed to get the HMRA path removed

This was not instigated by

Item G 25th October 2011 Council

The path is not adopted or a registered public right of way

ITEM H- I- J- K

30TH November 2011 HRMA Letter and visit by

Confirming the path was dangerous and that it belonged to me and was my responsibility

Visit BY

when challenged acknowledge that the HMRA were responsible for the installation of the path

31TH January 2012 Abandonment of path by HMRA

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Closure of path before the 20 year period was up

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Summary of contemporary period 1992 -2012

There was no lack of intention to dedicate in the intervening contemporary years

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because

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I followed the instruction of the county council

Who advised THE ROUTE WAS A PUBLIC FOOTPATH

Who instructed TO REMOVE THE FENCE WHICH OBSTRUCTED A HIGHWAY

This advice was discovered in 2011 to be negligent

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Due to the negligent action of the county council in

tolerating / ignoring HMRA path b on highways land Installed by HMRA

This action gives credibility to the actions of the HMRA path a and path b

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Bias of local authority

The HMRA has a significant advantage with the Local Authority

The HMRA has been given the advantage of information in contrast to myself and other interested parties who have been excluded

I am the only individual in the example below where this outcome would have a adverse impact to my freehold property

EXCLUSIVE CONSULTATION AND SUBSEQUENT AGREEMENT WITH HIGHWAY TO PLACE A SIGNIFICANT PUBLIC PATH ON THE HIGHWAY ON PARKLANDS SIDE WHICH SEVES ONLY TO DIRECT TRAFFIC TO CROSS MY PRIVATE PROPERTY THIS EXCLUSIVE CONSULTATION STARTED IN APRIL 2011 MISS GARRINGTON WAS PROHIBITED FROM ANY INFORMATION UNTILL ADMITTED ON 26TH NOVEMBER 2012

It is stated that in the said draft report on item 7.4

"It is difficult at this stage to form a view on whether the path was in fact blocked by the owner in 1992/1993"

The original builder D. Foggin Builders has been contacted and he has verified the movement of the obstruction/fence to another location following the instructions of the local authority

***SEE EVIDENCE D FOGGIN ***

Hi Nicola

With ref to your inquirey regarding various buiding work carreid out my my company in 1992 /3 i can comferm that we erected the fence around the boundrey of you property instructed by yourselves and then we had to reposition the west side away from the path after your conserdation with the local authority who advised you it was an obstruction

REGARDS

Additional factors

The existing owner has never contacted the Builder since 1992
There is no benefit to the Builder to this case

Statement 63 of long close road Hamsterley Mill

"I am aware that others may remember an **obstruction** for a short time around 1990 but I never saw anything"

The complainant utilises the word **obstruction** which further supports the way had an obstacle in its path

Statements of non-complainants has not been instigated by the local authority

The local authority have only taken statements from complainants submitted by the HMRA.
The HMRA omitted to disclose to those individuals petitioned that they in-fact had instigated the event and committed a civil wrong