

APPENDIX 1

LPC/03/1718 MINUTES



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Our Ref: SAB/LK/LUD2/3

Dear Sirs

Re: Easement over village green, Pennwood House, Ludgershall

We have been asked to advise on the Council's ability to grant a new easement over part of the village green at High Street, Ludgershall.

Planning permission has been granted to Mr and Mrs Lawson for the construction of a house in the grounds of their property known as Pennwood House, High Street, Ludgershall. On or about 5th April 1983 the Council granted a right of way to Percy John Wallington, the then owner of St George's Farm, Ludgershall for access to and from St George's Farm and for access to and from two additional dwellinghouses should the same be built upon Mr Wallington's land. The right of way granted to Mr Wallington was with or without vehicles and animals.

Since that date two other properties have been built on the land belonging to Mr Wallington, namely Laburnum Lodge and Pennwood House. There is therefore no permission for any further rights of way over the existing right of way that was granted in 1983.

I am informed that Mr and Mrs Lawson have applied for a new right of way for the fourth property for which planning permission has been granted. The Council has requested legal advice as to whether it has authority to grant such a right of way.

I have considered the email from Pamela Lawson to Tom Chettle dated 2nd June 2017, the advice of Barry Denyer-Green of counsel dated 2nd July 1998, the first page of the title to Laburnum Lodge, which contains a summary of the Deed of Grant dated 5th April 1983 referred to above and the comments of Mr and Mrs Pridgeon in their email to the Council dated 27th May 2017.



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A right of way is a form of easement. A legal right to drive over a town or village green (TVG) can be acquired either by prescription or by an easement.

To acquire by prescription, the right must be exercised for a period of over 20 years without challenge or consent of the landowner.

As the easement has not been exercised by Mr and Mrs Lawson and/or their predecessors in title for over 20 years for the benefit of the plot of land in question, the easement cannot have been acquired by prescription. It can therefore be only granted by way of an easement.

Subject to exceptions, the landowner is entitled to grant a new easement over a TVG if new access is required for neighbouring land, e.g., if a new house is built; any existing vehicle access by easement or prescription does not apply to the new property.

However, if a vehicle access will interrupt recreation or cause damage to the TVG you cannot get an easement as driving across the land would be a criminal offence. It is section 12 of the Enclosure Act 1957 and section 29 of the Commons Act 1876 that make it an offence to damage or encroach upon a village green or to interrupt its use or enjoyment for recreation. No works which could damage the TVG or interrupt its use as a place of exercising enjoyment should be carried out. The construction of a new right of way may fall into this category. In those circumstances it can only be legalised by changing the status of the land so that it is no longer a TVG. To do this the landowner must apply to the Secretary of State under Section 16 of the Commons Registration Act 2006. If the TVG is owned by a local authority (as in this case) they can use section 299 of the Town and Country Planning Act 1990 to change the use of land to another purpose. To do this the local authority must get a certificate from the Secretary of State under section 19 of the Acquisition of Land Act 1981.

If the area of land included in the application for the easement is more than 250 square yards, other land must be given in exchange.

Where the grant of an easement relates to the construction of a new access way (or where it is proposed to improve an existing access way) any works which involve the resurfacing of land on registered common land will require the consent of the Secretary of State. Works involve the resurfacing of land if they consist of the laying of concrete, tarmacadam, coated roadstone or similar material on the land (but not if they consist only of repair of an existing surface of the land made of such material).

It is assumed that the Council own the TVG under the Open Spaces Act 1906. If this is not the case please let me know as this may affect the advice given. I am informed that Mr and Mrs Lawson intend to use the land forming part of the TVG in the existing easement for the new easement and that the surface of the land of the existing easement will remain the same. The grant of a new easement would not therefore interrupt recreation or cause damage to the TVG. Therefore the Council as landowner appears to be entitled to grant the easement to Mr and Mrs Lawson and will need to decide if they will have to pay any compensation in return for granting the easement and, if so, the amount of that compensation.

19 June 2017

As there will be no interruption to recreation or damage caused to the TVG, there will be no need to apply to the Secretary of State under section 19 of the Acquisition of Land Act 1981 by using section 299 of the Town and Country Planning act 1990.

With regard to Mr and Mrs Pridgeon's comments concerning counsel's advice dated 2nd July 1998, in 1983 the Council granted the easement to Mr Wallington. It is not taking steps to prevent Mr Wallington enjoying the exercise of the benefits granted. It is doing exactly the opposite, namely granting an additional right to Mr Wallington's successors in title, Mr and Mrs Lawson.

If the Council decides to grant the new right of way it will need to comply with any advertising requirements.

I am not told how the Council acquired the village green but if it is held on trust or subject to certain covenants then the terms of the trust and/any covenants will need to be complied with.

Similarly, if there are any by-laws relating to the village green there will also need to be complied with.

I trust this is sufficient for your purposes but if you have any queries, please do not hesitate to contact me.

Yours sincerely

A black rectangular redaction mark covering the signature of Sinclair Burton.

*Signature
redacted*

Sinclair Burton
for and on behalf of PARROTT & COALES LLP