

Carl Stott

From: Simon Stanion <Simon.Stanion@shma.co.uk>
Sent: 22 February 2022 15:30
To: Mark Pickrell; Carl Stott
Subject: RE: Invalid planning application P/20/2199/2
Attachments: Ltr to CBC (Leconfiield) 220222.pdf

Dear Mr Pickrell

I am instructed by Carl Stott on behalf of the applicant to add to the chain of correspondence below. Please see letter attached.

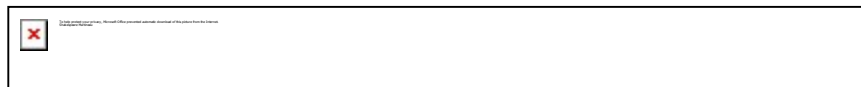
I would request that my letter be brought to the attention of Members prior to Thursday's Committee. I am sure that you would agree that it would be unfortunate, to say the least, if the application did not proceed to determination through a misunderstanding of the correct factual and legal position as to the Certificate of Ownership.

Regards

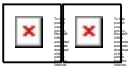
Simon Stanion
Partner


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From: Mark Pickrell <Mark.Pickrell@charnwood.gov.uk>

Sent: 21 February 2022 17:26

To: Carl Stott <carl.stott@nineteen47.co.uk>

Subject: RE: Invalid planning application P/20/2199/2

Carl,

Kate has advised and, in summary, confirms that the responsibility lies on you as agent to provide appropriate notification.

If the council are in doubt as to whether correct notification has been served then we would need to confirm.

At present we have the copy of the email from NWRG which includes a copy of an email from LCC which refers to William Davis owning part of the site.

The information provided by you so far does not provide sufficient comfort to dispute the reference to the potential for another owner of part of the site.

It is recommended that the clearest and potentially quickest way to confirm ownership (and not just responsibility) would be a copy of a land registry search showing any land parcels and related ownerships.

I look forward to hearing from you.

Kind regards,

Mark

Mark Pickrell
Principal Planning Officer – Strategic Development
Mobile: 07852720913
Email: mark.pickrell@charnwood.gov.uk

From: Carl Stott <carl.stott@nineteen47.co.uk>

Sent: 21 February 2022 16:01

To: Mark Pickrell <Mark.Pickrell@charnwood.gov.uk>

Subject: RE: Invalid planning application P/20/2199/2

Mark

Thank you for your email. Can you confirm whether your legal colleague, Kate Harrison, has specifically requested this information and/or considers it necessary to provide any information further to my earlier emails below in this respect?

Kind Regards

Carl Stott

Director

nineteen47
CHARTERED TOWN PLANNERS
& URBAN DESIGNERS

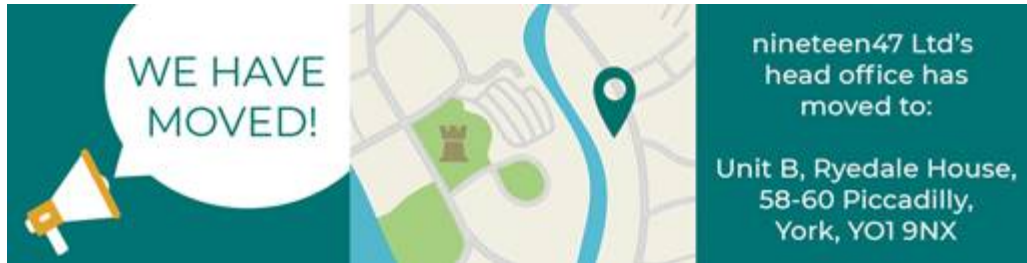
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From: Mark Pickrell <Mark.Pickrell@charnwood.gov.uk>
Sent: 21 February 2022 15:07
To: Carl Stott <carl.stott@nineteen47.co.uk>
Subject: RE: Invalid planning application P/20/2199/2

Carl,

Thanks for this.

Noting the Highway Record Enquiry plan shows adoption and therefore maintenance responsibility and you state that there are no intervening owners, please could you confirm through a land registry search of the highway land that there are no other land parcels within the red line?

At present, for the area to the immediate east of the gate, you are relying on the Highway Record Enquiry which shows responsibility but doesn't necessarily confirm ownership and it is this which is being disputed by NWRG.

There is a significant risk of JR if it is shown that the incorrect notice has been served and there is a chance that any permission be quashed if it can be evidenced that there is an intervening parcel of land.

At risk of labouring the point, can you evidence whether a land registry search has been undertaken for the highway land to show ownership as well as responsibility?

Kind regards,

Mark

Mark Pickrell

Principal Planning Officer – Strategic Development
Mobile: 07852720913
Email: mark.pickrell@charnwood.gov.uk

From: Carl Stott <carl.stott@nineteen47.co.uk>
Sent: 21 February 2022 13:40
To: Mark Pickrell <Mark.Pickrell@charnwood.gov.uk>
Subject: RE: Invalid planning application P/20/2199/2

Mark

Thank you for your email.

We can confirm that our client's position with regards land ownership remains as most recently advised in our email of 10th February 2022, namely that the land in the sole ownership of the Helen Jean Cope Charity abuts publicly maintainable Highway land, with no intervening land within different ownership/controls, as demonstrated in the following documents, copies of which are re-attached:

- a) Land Registry Title Plan (LT375628) showing the extent of the Charity's land ownership at Leconfield Road;
- b) Highway Record Enquiry Plan (NDI/HRE/1905211/100/A).

Notice was served on the Charity on 23rd December 2020 and, for completeness, notice was also served on Leicestershire County Council as the Local Highway Authority on the same date, albeit with there being no legislative requirement to have served notice on this latter party.

The email trail forwarded to you by the NWRG includes an email dated 8th January 2021 from Hannah Watson of Leicestershire County Council, which confirms that the land in question (which, without the benefit of sight of the plan forwarded to her by NWRG, we assume comprises the extent of land within the red line application boundary of Site Location Plan n1249_001_A that falls outside the Charity's ownership) is regarded to be part of the publicly maintainable highway and the responsibility of Leicestershire County Council as the Highway authority.

There are therefore no parties with ownership interests within the red line of Site Location Plan n1249_001_A that have not been served the appropriate notice, with the application site as a whole comprising land within the ownership of the Charity and publicly maintainable Highway land. As such, there has been no prejudice to any party with an ownership in the application site - rather, we have exceeded our obligations in this respect by also serving notice on the Highway Authority to make it aware of the proposals at the point of submitting the application.

We do not consider that there are any reasons relating to land ownership, the serving of notices, or the completion of certificates that would mean the determination of the application should be deferred.

If you are able to confirm safe receipt of this email at an early convenience, it would be appreciated.

Kind Regards

Carl Stott

Director

nineteen47
CHARTERED TOWN PLANNERS
& URBAN DESIGNERS

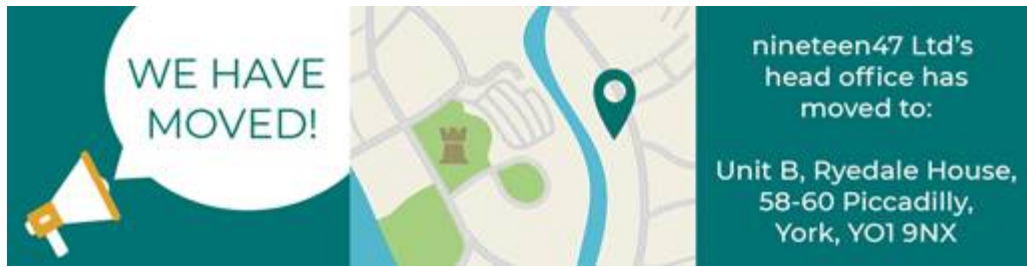
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From: Mark Pickrell <Mark.Pickrell@charnwood.gov.uk>

Sent: 21 February 2022 08:59

To: Carl Stott <carl.stott@nineteen47.co.uk>

Subject: FW: Invalid planning application P/20/2199/2

Good morning Carl,

Please find attached a copy of ownership information sourced by NWRG.

Please could you review and advise on the ownership issues raised asap.

Kind regards,

Mark

Mark Pickrell
Principal Planning Officer – Strategic Development
Mobile: 07852720913
Email: mark.pickrell@charnwood.gov.uk

From: David Mulvaney <david@mulvaney.co.uk>

Sent: 20 February 2022 20:00

To: Adrian Ward <adrian.ward@charnwood.gov.uk>

Cc: Richard Bennett <Richard.Bennett@charnwood.gov.uk>; Mark Pickrell <Mark.Pickrell@charnwood.gov.uk>;

Margaret Smidowicz <Cllr.Margaret.Smidowicz@charnwood.gov.uk>; Geoffrey Parsons <Cllr.Geoff.Parsons@charnwood.gov.uk>

Subject: Invalid planning application P/20/2199/2

Hello Adrian

Planning application P/20/2199/2 is invalid as it has been issued either with an ownership certificate containing incorrect information or with the wrong ownership certificate.

On 21/12/20, the Council's Validation Team requested the red line describing the extent of the site be extended to include access to the site. On 22/12/20 (one day later), the proposers extended the bounding red line to include additional land at the top of Leconfield Road beyond the boundary of the field and submitted a revised Certificate B that added only Leicestershire County Council as a 'known' owner.

Please see the attached communications between Nanpantan Ward Residents' Group and LCC that took place in December 2020 and January 2021. LCC states that it does not own the land in the extended boundary nor the highway itself. It follows that either the ownership of all the land within the bounding red line is not fully known to the proposers, or that known owners have not been included on the certificate.

It is clear that the proposers have issued either an ownership certificate completed incorrectly or the wrong ownership certificate. The planning application as it stands is invalid. Please confirm that you will now take the appropriate steps to ensure the proposers submit a valid planning application before it is considered.

Kind regards

David Mulvaney

Nanpantan Ward Residents' Group

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Mark Pickrell
Principal Planning Officer – Strategic
Development
Charnwood Borough Council

Our ref: 1366200.2.SS

22 February 2022

URGENT AND IMPORTANT

By Email only: Mark.Pickrell@charnwood.gov.uk

Dear Mr Pickrell

Application Reference Number P/20/2199/2
Applicant: Bowbridge Homes Nanpantan
Land off Leconfield Road, Nanpantan,

I am instructed by Carl Stott on behalf of the applicant in this case to respond to recent correspondence concerning land ownership issues relating to the above.

It is vitally important that the Council understands that there is absolutely no question whatsoever – either in fact or law - over whether the correct notification and certificate have respectively been provided in this case, and you must not, with respect, allow the Residents Group to lead the Council into believing otherwise.

The facts

The factual position is perfectly plain, and acknowledged as such by you, in your email to Mr Stott dated 10 February at 20:10 i.e. that the land registry plan demonstrates beyond any doubt that the Trust's land and Highway land are contiguous and that all land subject of the application is therefore either within the Trust's ownership or is Highway land.

The Law

The legal position is equally plain.

- Article 13(1) of the Development Management Procedure Order 2015 requires an applicant for planning permission to give requisite notice of the application to any person (other than the applicant) who on the prescribed date is an “owner of the land to which the application relates”. (my underlining)
- It has been held that a highway authority is the estate owner in respect of the fee simple of the surface of the land and so much of the land below the surface, or indeed above the surface, as may be necessary for it to carry out its duties in respect of

highways (see *Tithe Redemption Commissioners v Runcorn Urban DC* [1954] Ch. 383)

Discussion

1. “the land to which the application relates” comprises land wholly within the control of the applicant and/or highway land. It plainly does not include the subsoil beneath the highway land, as this is not required to enable the access to the development to be constructed.
2. Accordingly the correct owner in this case (the Highway Authority) has been notified and furthermore there is no additional requirement on the applicant to notify the owner of the subsoil of the application. Axiomatically, the correct Certificate has been provided in this case.
3. That is a complete answer to the claim of procedural impropriety by the Resident’s Group. It is perhaps worth adding, however, that even if the applicant had been under a legal obligation to notify the owner of the subsoil, a claimant would have to demonstrate that failure to do so caused them prejudice, and want of knowledge alone would not be sufficient in this regard (see *R. (on the application of McLaren) v Woking BC* [2021] EWHC 698 (Admin)).
4. Thus, not only would the Residents Group not have sufficient standing to bring such a claim, no prejudice could arise in this case as the owner of the subsoil would have no right to prevent the construction of the access on highway land in any event.

The claim that there has been a failure to comply with the notification and certification requirements in the DMPO is therefore entirely baseless, and I would respectfully caution the Council against letting it have any bearing on the determination of the application.

Yours sincerely

Shakespeare Martineau

Simon Stanion
Partner

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