

QUEEN'S BENCH DIVISION

MASTER VICTORIA MCCLLOUD

BETWEEN

CHRISTOPHER CHARLES MCGILL

Claimant

AND

RAY TAISHO STEWART

EMMA SIMONE STEWART

Defendants

***Keywords – land – rights of way – neighbours – private motor vehicles – deeds – trespass – Alternative Dispute Resolution – Online Dispute Resolution – construction of grant***

**Mr Rupert Cohen, instructed by JB Leitch Limited for the Claimant.**

**Mr Timothy Hammond instructed by DWFM Beckman Solicitors for the Defendants.**

**Authorities referred to by the parties**

1. Al Sanea v Saad Investments Co Ltd [2012] EWCA Civ 313
2. Arnold v Britton and others [2015] A.C. 1619
3. Chartbrook Ltd v Persimmon Homes Ltd [2009] 1 AC 1101
4. Holding & Barnes Plc v Hill House Hammond [2002] 2 P&CR 11
5. Investors Compensation Scheme Ltd v West Bromwich Building Society [1998] 1 WLR 896
6. Jumbo King Limited v Faithful Properties Ltd [1999] 2HKCFAR 279
7. Lea v Ward [2017] EWHC 2231 (Ch)

8. Mills v Blackwell [1999] EWCA Civ 1852
9. Oliver v Symons [2012] EWCA Civ 267
10. Pennock v Hodgson [2010] EWCA
11. Rainy Sky v Kookmin Bank [2011] 1 WLR 2900
12. Todrick v Western National Omnibus Co [1934] Ch. 19
13. Waterman v (1) Boyle (2) Gwilt [2009] EWCA Civ 1155
14. White v Richards (1993) 68 P. & C.R. 105
15. Wood v Capita Insurance Services Ltd [2017] A.C. 1173
16. Wood v Waddington [2015] EWCA Civ 538

### **JUDGMENT**

1. Good fences may make good neighbours, as the saying goes, but idyllic names of houses do not in a similar way bring idyllic relationships. Mr McGill, Claimant, lives at a property called 'Juniper'. Mr and Mrs Stewart, Defendants, live nearby at 'Walnut Cottage'. It is a countryside setting with fields all around in Buckinghamshire and is served by a single access lane.

2. This is my judgment on the trial of the action brought by Mr McGill which I heard by way of phone hearing during the 2020 Covid-19 pandemic but with the great assistance of a full paper trial bundle delivered to my home before trial via counsel's chambers. Evidence was in writing and included a joint expert report which I had previously ordered by which a surveyor attended and took measurements of the relevant locations, produced photos and a description, which saved any need for a site visit. No live evidence or cross examination was necessary. Counsel represented the Claimant and Defendants respectively and are commended for assisting in making the hearing effective in unusual circumstances for a High Court trial and in a way which avoided unnecessary friction in a neighbour dispute.

3. Both properties are located off a fairly long, quite narrow private lane near Bledlow Ridge in Buckinghamshire. The lane is as far as I can discern the only conventional means of access to both properties. Perhaps in constructing our places of residence we should learn from beavers and always

build with more than one way in or out, because the single narrow lane and its use has become a source of dispute in this human context.

4. Mr McGill is freeholder of Juniper and has been since 2009 when he purchased it from the previous owner. He owns that property and its associated land, which includes land abutting the lane. The Stewarts are freeholders of Walnut Cottage and have been since 2014. Walnut Cottage used to be known as “Old Farm”.

5. Well before the Defendants owned Walnut Cottage, the whole site on which both properties and the lane are to be found (which today also includes another residential property not involved in this dispute, occupied by a third party) was owned in what amounted to three plots themselves originally carved out from one larger site by two brothers called Gordon and Peter Frith who lived in two separate properties namely Juniper (now the Claimant’s home) and ‘Keeper’s House’ which is the other property connected to the lane which Mr Gordon Frith still owned until recently.

6. By a Deed of Transfer dated 30 November 1993 the brothers Frith granted to Mr Hoath (the then purchaser of Walnut Cottage) the following access rights and this case turns on the meaning of what the right of way along the lane allows or forbids (the ‘roadway’ referred to is what I am in this judgment going to call the ‘lane’ which seems to me a more apt term for it):

*“The right on foot and with or without private motor vehicles over and along the roadway running between the points marked A and B on the annexed plan subject to the Transferee contributing one third of the cost of maintaining such roadway.”*

The Deed also contained covenants by Mr Hoath:

*“Not to carry on or permit any trade business or profession on the property hereby transferred nor to do or permit anything thereon which may be or grow to be a nuisance or annoyance to the Transferors or the owners or occupiers of the adjoining lands.”*

*“To contribute one third of the cost of maintaining repairing and renewing the roadway running between the points marked A and B on the annexed plan.”*

7. It is not disputed that the rights and obligations set out above bind (and benefit) the Defendants. What is in dispute is what the right of way permits. There is also a collateral dispute as to whether the ‘one third’ cost has been paid or is due, and if not paid what if any effect that has. The trial of this case focussed on the rights in relation to the lane and in this judgment I shall not decide any issue as to the meaning and effect of the payment provisions, which will be a matter for further

evidence and argument if not agreed. The history is detailed, I understand on both sides, and it would not be fair to determine that aspect without further opportunity to make submissions.

8. It is alleged that the Defendants have failed to observe the restriction in the above Deed in relation to the user of the lane, which is inter alia limited to 'private motor vehicles'.

9. The particulars plead that there has been 'longstanding misuse' of the lane by agents of the Defendants in the form of heavy plant and machinery and HGV lorries, including for deliveries of materials and removal of materials from Walnut Cottage and its surrounding land.

10. It is also alleged that the Defendants, in breach, have caused disturbance of the enjoyment of the Claimant's land and that of the other neighbour by blocking the lane, causing congestion and by their agents driving at excessive speed.

11. It is further said that the Defendants have allowed use of the lane other than by 'private motor vehicles'.

12. It is said that the surface of the lane has been damaged, along with trees and verges. Damages are claimed as well as a final injunction and declaratory relief. In particular the declaratory relief sought in the Particulars of Claim is that the Deed has been breached and that its true meaning is that the user is restricted to access by private motor vehicles "*being those wholly owned by the Defendants on a private basis*". The injunctive relief sought restricts vehicular access other than by way of private motor vehicles "*namely those within the private ownership of the Defendants and capable of use for domestic means only*".

13. The Defence pleads as far as relevant to the issues for consideration that 'longstanding misuse' is denied, as is any 'consistent unlawful use' (it does not plead the terms 'longstanding or any misuse', or 'consistent or any unlawful use', but this was not a point argued over). Allowing agents to cause disturbance to enjoyment of neighbouring land is denied, as is blocking the lane, as is excessive speed whether by the Defendants or their agents. The allegation of regularly allowing the lane to be used by vehicles other than those allowed by the right of way is denied.

14. The meaning of the right of way contended for in the Defence is wider than that contended for by the claim. Reliance is placed on the facts that:

- (a) the Deed sets out that Walnut Cottage is to be used as a private dwelling house,
- (b) that it is not to be used for any trade, business or profession,
- (c) that the property is not to be used for keeping pigs or poultry.

15. In the light of the above context within the Deed the Defendants plead that the right of way properly construed means that the property is to be used as a private dwelling and that only vehicles 'which are being used in connection with a non-domestic use' of Walnut Cottage may not travel along the lane. The primary meaning of 'private' motor vehicles relied on by the Claimant – namely only vehicles owned by the Defendants privately and capable of use for domestic means only – is denied.

16. The Reply essentially joins issue subject to some pleading as to want of particularity, etc.

### **The Evidence**

17. The joint expert report of Mr Mark McGarragh, BSc MRICS was of assistance in ensuring that the court and parties had a common point of reference when looking at the setting on the ground. His report was produced on 20 May 2020 after a visit to the site by him on 11 May 2020 pursuant to my own pre-trial directions.

18. The lane exits the main road by way of a wide entrance, presumably to ensure visibility when joining and leaving the main road so as to enter the lane. The narrowest point of the lane measured by the surveyor is 2.6m. It varies along its length, up to about 3m, save that where there are turnings off, leading to Juniper (the first property as one heads from the main road), the road widens significantly for the Y shaped junction. Likewise further along where the lane again branches at a Y-shaped junction, it again widens – as wide as 5m – where the right fork goes to Keeper's House and the left fork goes almost immediately to Walnut Cottage's (the Defendants') access track.

19. Although case law to which I was later taken does provide some support that a court can hold that a right of way permits vehicles to overhang land not within the right of way (if only slightly) in view of the undisputed right, in principle, of the Claimant to build right up to the edge of the lane it seems to me that the maximum width of any vehicle travelling up the lane must, if the vehicle is not to trespass outside the confines of the lane, be less than or equal to 2.6m. Whilst no geometry was done for me as to maximum vehicle length, if one assumes no overhang of the edges of the lane at turnings, visual consideration of the nature of the final Y-junction shows that it is a relatively straight route especially in terms of the route to the Defendants' property, and the lane widens somewhat at the turning points, and it does not appear likely that any meaningful physical upper length of vehicle can be derived from the plan; thus, it appears to me that even unusually long, but narrow, vehicles could in theory navigate it. Width is the main geometric restriction.

20. The surface of the lane is variable. It has evidently had tarmac and still does, but not evenly. In places it is closer to a gravel surface and in places it appears to have worn through, and is cracked and shows general wear and tear, or perhaps disrepair (I need not decide that here) but in some

stretches it is a more consistent surface. It appears that the surface, as one gets closer to the main road, is rather better than at the turnings off to the houses.

21. The edges of the lane are not consistently marked – there are some poles, some ropes and so forth but not in all locations, and the edge was taken, I think reasonably by the surveyor (and as jointly instructed) to be the point where the surface gives way to vegetation on the verges.

22. In terms of other evidence I have statements from the Claimant, the First Defendant, Peter Hoath (original transferee of Walnut Cottage) and Mr Gullett (a neighbour living about 200 yards from the start of the lane on the main road). The bundle also included disclosure documents to which I was referred. I have read and considered all of the material in the course of producing this judgment. The purpose of a judgment is to provide the reasons for a decision and not exhaustively to summarise all the material and hence I shall refer to material which has assisted me or not assisted me, focussing on the most relevant only. In general, however, much of the evidence relates to alleged breaches, and alleged forms of use by the other dwellings in the past, and to the dispute between the neighbours in a general sense.

23. It may well be that usage which falls outside the scope of the right of way has taken place from time to time by others, with or without permission (for example there is a reference to one dwelling holding a bird shoot which was at the time it seems asserted to have been a breach) but that does not in my judgment assist in construing the Deed. Nor does the fact that at the date of the Deed in the early 1990s internet supermarket deliveries etc were not in contemplation; however, at that point in history the notion of deliveries by van, whether of shopping or other things were not at all novel. Thus whether the right of way allows or does not allow such things as household deliveries is a matter of construction and would not have been alien to those entering into the Deed.

24. The claimant submits that, as is common ground, user of a right of way which goes beyond the scope of the right is a trespass. The extent of the right depends on construing the grant in a case such as this where the grant is an express one. My task is to ‘ascertain the objective meaning’ of the language of the grant, performing a process which considers the purpose of the contract as a whole, and depending on the nature, formality and quality of the drafting giving more, or less, weight to elements of wider context. Here we have a professionally drafted grant of a right of way which is part of a transaction which expressly provided that the property to which the lane leads is to be used only as a private dwelling and not for any business, trade, etc (or for keeping pigs or poultry). The lane is the means of access to the dwelling and the express provisions as to the user of the land granted provides me with a very clear indication of the purpose of the contractual relationship.

25. Where rival meanings are contended for in relation to a grant of a right of way I can give weight to what the parties' rival constructions would mean for basic business common sense and efficacy, and in my judgment that is a task which primarily will have at its core any indications, such as the above, as to the purpose of the grant and the transaction of which it forms part ("What would a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean" (Chartbrook Ltd v Persimmon Homes Ltd [2009] AC 1101 para 4 per Lord Hoffman). I was referred to Arnold v Britton and Others [2015] AC 1619 at 15 which reconfirms the basic points that I focus on the meaning in its documentary, factual and commercial context, in the light of the natural and ordinary meaning of the clause, any other relevant provisions (such as that cited above as to the use of the demised land) and the overall purpose of the clause and lease, as well as the facts and circumstances known to the parties or assumed by them, but excluding subjective intentions of the parties. Per Mummery LJ in Pennock v Hodgson [2010] EWCA Civ 873, the physical features of the land (which I have summarised from the evidence above in relation to the lane) are also a guide to the construction and that in a sense is no more than performing the exercise already set out: the circumstances known to the parties include the nature of the lane itself and a construction which was practically impossible given the facts on the ground would obviously be contraindicated.

26. Albeit it is something of a makeweight, I was not told that there is evidence that the owners of the other dwellings are barred from (for example) postal deliveries, supermarket deliveries, doctor's and tradespeople's visits, and visits by car from family and friends, and I think I would certainly have been informed if that subsequent user was indeed so markedly restricted as a matter of daily practice 'on the ground'. Indeed the Defendants (as mentioned later) contended that the lane had been used from time to time for (eg) construction lorries: (but I note that even if correct that does not necessarily mean that such use was within the scope of the right of way at the time by whoever used them). However, the main factors are that in my judgment (a) the purpose of the grant is clear on the face of the grant, and (b) the physical nature and extent of the lane is clear and there is no reason to suppose that the lane is materially different now than it was at the time of the grant. As noted, it is a fairly narrow (single lane, 2.6m minimum width) somewhat roughly covered country lane leading to dwellings which are subject to covenants requiring them to be used only as private dwellings. The Claimant's skeleton correctly (relying on Gale on Easements 20<sup>th</sup> ed at 9-35) indicates that the two key limitations on user of a right of way are (i) the words in the grant and (ii) the nature of the land itself (its physical capacity, in this case that of the lane).

**"Private motor vehicles" in this grant**

27. I was referred to evidence about how this expression is commonly used in applications for planning permission and indeed the local authority in the area of the property construes the expression for planning purposes as meaning vehicles owned by the property owner (such as when permission is granted to construct parking areas outside dwellings, presumably so they do not become general car parks). I was informed the DVLA use the expression to mean ‘vehicles not more than 3,500 kg revenue weight used for ‘private’ (non-trade or business) purposes, including 3 wheeled vehicles over 450kg unladen”. I was referred to Waterman v Boyle and another [2009] EWCA Civ 1155 at 26, and 33 where ‘private motor vehicles’ did not include commercial visitors such as plumbers: but the case, with due respect to Claimant’s counsel, related to whether an express right to park in a particular location could be construed to include such commercial or visitor vehicles where there was access for and space for parking elsewhere (para 33: *“the right to park conferred by cl 5 is expressly limited to private vehicles, and there is an entrance to 2, Hog Lane Farm from the rear with provision for parking. In those circumstances, it is impossible to imply a right to park commercial vehicles on the green land at the front of the house in any event”* per Arden LJ). It was not a case where one was considering the sole access way to a dwelling and as I have said, it related to parking rights. I was informed also that s.48 of the Regulation of Investigatory Powers Act 2000 treats private motor vehicle as one used primarily for private purposes of the person owning it or having the right to use it, but that Act of course relates to very different subject matter.

28. The land on which Walnut Cottage stands was a mink farm, and as part of the planning application to build Keeper’s House there was a planning application to create a garage. The garage was granted with a condition that it was used only for ‘parking private motor vehicles’. It was in due course constructed. Later, Walnut Cottage was itself the subject of planning permission for the purpose of building a two storey extension, and planning permission included a condition that the garages should be used for housing only non-commercial vehicles and thereafter retained for that purpose. A licence, according to the Claimant, was obtained as part of the works so as to use the lane for the expected building works (specifically tipping and land filling). On any basis it seems to have been at least sought and I do not have to decide whether or not it was ever obtained, which is not agreed between the parties.

29. I do not find the examples of usage of the expression ‘private motor vehicles’ in other very different contexts outside the context of this grant, of assistance. The history as to the planning restrictions on the use of garages does not assist me in interpreting the right of way: it relates, much as in *Waterman* (supra) to parking (and, moreover, parking in one specific building, the garage) and one cannot simply read across from it to the meaning of the right of way leading to the whole land on which the dwelling is situated. In my judgment the grant and the physical context are primary, as is



the self-evident purpose of the grant of the right of way and the right of use of the granted land as a dwelling, coupled of course with the basic principle which I reminded the parties of when I took the opportunity to encourage them to engage in mediation or other ADR, of non-derogation from grant (and its sibling, which seems to be simply that it is improbable that a right of way would be drafted in one part of a Deed which makes another part – use of a private Dwelling as such - practically not viable or at least restricted below what would be normal understanding of that term), which I feel must also inform the construction one places on a clause.

30. The Claimant contended primarily that the right of way is limited solely to vehicles in the ownership of the Defendants and used for domestic purposes only (a test based on ownership so that ‘private’ means ‘privately owned by the Defendants and used as such’). I reject that: it would be absurdly restrictive and would be inconsistent with the purpose of the grant, which is the use of the property as a domestic dwelling in its normal sense (rather than merely as a roof over one’s head). It would import notions of ‘private motor vehicle’ from planning law relating to parking permissions: if one cannot receive the post, the doctor, friends, family and the plumber at home, in a country location at the end of a long lane, then one, I think, is construing the right of way so as to derogate from what is commonly meant by the use of a property as a private dwelling and such an approach would mean that the right of way was substantially inconsistent with the use of the property in the normal sense of the term ‘private dwelling’.

31. It is correct that the grant restricts the ‘use’ of the property for any trade or profession but in my judgment that is to be understood in context, namely that the dwelling should not be used for that purpose. It does not mean that, say, a tradesperson coming to repair a sink cannot come to carry out the repairs to help the people residing at the dwelling: that is an operation performed on the land so as to keep the property in a state enabling it to be used as a dwelling, but it is not the ‘use’ of the house ‘for’ a commercial purpose if one adopts a conventional and common sense interpretation of that expression and nor is it ‘permitting’ anyone else to do so. Using the property for a commercial purpose (or permitting such) would for example include the owner trading from it, or allowing a third party business to trade from it as its business address. A visit from a plumber or an ambulance, for example, to provide services to the owner for the benefit of the owner/occupier and the dwelling is not in my judgment allowing a third party to use the property for a trade or business.

32. The Claimant as a second line of submission argued that the right of way should be construed by reference to the type of vehicle i.e. excluding ‘commercial’ vehicles. But this in my view would exclude essential things for everyday use of the dwelling such as postal deliveries by van or, possibly

more usual in 1993 than now, a milkman in a milk float. It again is contrary to the evident purpose of the grant of the land for use as a private dwelling, served by the lane.

33. The Claimant's third line of argument was more nuanced and it was that the right of way should be construed as limited to use of the dwelling as a private residence, i.e. for living there, and not for example for building works. This does echo the history of construction on the land, for example, of the two storey extension at Walnut Cottage where a temporary licence was either sought (but never concluded) or obtained for access for the building works.

34. The Claimant argues that this approach would not for example allow access for construction vehicles to convert (say) a stable into a library. I agree. It would in my view include access for maintenance and repair of the property necessary to keep it as a dwelling, access for post vehicles and so on, though I appreciate that there are inevitably cases where one would be at the boundaries of that construction if for example some repair also included some modification or betterment. In my judgment it would allow access for emptying of septic tanks for example, if such are lawfully on the land and provided the vehicle(s) used for it are ones for which the lane is suitable. There is a dispute over what the sewage provision used to be and now is, but in my judgment if the use is currently such that sewage is on a septic tank basis and if that is lawful then routine emptying (etc) as is common in country locations, is a normal form of access in respect of domestic dwellings as long as the septic tanks themselves are not unlawful and the vehicles can use the lane within the scope of its physical capacity. I come to that latter point – physical capacity for use - later.

35. In my judgment the use of the expression 'private motor vehicles' in the right of way has to be construed to mean 'vehicles using the lane for the purposes of the use of the private dwelling on this land', because (a) the road is clearly suitable for the sorts of typical vehicles one encounters in everyday life at a dwelling such as postal deliveries, (b) the purpose of the grant of the land (served only by the lane) is for a private dwelling and it would be inconsistent with the grant and basic commercial efficacy if one could not have the usual and customary forms of access such as for repairs to ensure the property remains useable for the demised purpose and (c) the express restrictions on user for commercial purposes do not in my judgment bite on such things as visiting tradespeople since that is not meaningfully the use of the dwelling for commercial purposes.

36. This really brings one to the essential difference, however, between on one hand the Claimant's third contention, which is much more sensible and realistic than the other two put forward by the Claimant, and on the other hand the Defendants' also not unreasonable position that the right of way only restricts vehicles which are not being used 'in connection with' domestic use of the property, but which as I understand it is intended to mean a broader notion of 'connected with' so as

to include for example construction lorries, if even very substantial building or demolition works were to be done at the dwelling, whilst still using and intending the use to remain that of a 'private dwelling'.

37. I think in truth this is what lies at the centre of this dispute which appears to be triggered by the Defendants carrying out substantial construction works for which equally substantial vehicles may have used the lane. The First Defendant's statement also suggests that he needs access for tankers of 18 tonnes and 2.5m width for emptying of septic tanks, which gives an idea of the somewhat broader construction proposed by the Defendants. Those are large and heavy vehicles. The Defendants point for example to Mr Hoath's evidence that cars, vans, lorries and trucks used the lane from 1994 and that from 1997 there were also construction vehicles, postal vehicles, deliveries, friends' vehicles and so on using the lane. There are other points such as the apparent use of a bulldozer near Keeper's House, and a nearby resident, Mr Gullet, who says he has seen cars, vans, lorries and so on using it without objection. However such use to me simply means that the right of way may not have been enforced strictly before.

#### **Back to the grant**

38. In my judgment, as I have effectively said more than once in this judgment, the key document is the grant, read in its commercial and factual context. It is a grant of a right of way as the sole access for vehicles to land which must be used only as a private dwelling. There must be no derogation from the grant of the land for that use, and in my judgment a construction which would entail no access for (e.g.) vans, post deliveries, friends and relatives, doctors visiting lawfully for the purpose of serving the domestic use of the property as a dwelling would be a construction incompatible with the commercial purpose of the grant. Emptying a (lawful) septic tank would also fall within that, subject to the characteristics of the lane which in the end determine the outer limits of use.

39. But does the grant permit use of the lane by vehicles for absolutely any purpose as long as it is connected with the use of the land as a private dwelling? Does it (as of right, ie without agreeing with neighbours) allow demolition and significant construction works, and large works of improvement as long as connected to the dwelling and use of it as such?

40. In my judgment that broader interpretation goes too far. The grant of the right of way does not positively permit such very substantial use, and such use is not in my view necessary to imply to avoid derogation from the grant, or to avoid the right of way contradicting the purpose of the contract. Access for repairs, for deliveries, and for all the usual access one needs for maintenance and use of a property as a private dwelling are necessary and consistent with the grant and the wording of the

deed, but use for purposes which are not necessary for continued user of the dwelling as a dwelling (such as significant improvements and new construction) are not implicitly within it.

**The physical extent of the lane and its capacity.**

41. The lane cannot sustain, without trespass, vehicles wider than 2.6m at any point. More than that would overhang other land. That is the limit to the width of any vehicle which can use the lane and defines in my judgment the limit of the grant in that respect. I do not refer to 'wheel base' since it would be open to the Claimant to erect walls or poles at 2.6m apart and a vehicle which is wider at any point than 2.6m would foul of those. To avoid future issues at least as to width, perhaps such measures would be sensible such as by putting in two key operated metal bollards at the start of the lane, which could be opened if it was agreed to allow a wider vehicle to have access on specific occasions. Such solutions are possible in ADR but I cannot impose them and it is a pity the parties have not reached a voluntary agreement. I have stated already that the lane does not appear geometrically to impose any sensible limit on the length of vehicle, and we do not have specific evidence of what might in theory be the maximum length given the quite shallow nature of the bends, however the general law beyond the grant I suspect limits vehicles on roads to a maximum length and this lane is served by a public road at its end. Clearly if a vehicle was so long that when turning off the lane it would overhang the edge of the lane, then that would be beyond the scope of the right of way.

42. I do not have evidence as to the physical capacity of the lane for the weight of vehicles but the parties pragmatically wanted from me a decision which is specific and can determine things practically and hopefully heal their relationship. I was taken, very helpfully, to White v Richards (1993) 68 P&CR 105 where the facts assist me. A right of way was reserved over a track which was 2.7m wide and from the stated facts appears similar to the lane in terms of its surface and construction. The Court of Appeal upheld the judge in deciding that the extent of use by vehicles was to be limited to a specific set of dimensions, and importantly here, to laden weight not exceeding 10 tons. I shall adopt the figure of 10 tons as being the best evidence I have on which to proceed in terms of the reasonable weight which the lane can sustain without damage, in circumstances where what is needed from the court is a practical solution.

43. My decision therefore is that the lane is limited physically to vehicles not exceeding 2.6m in maximum width, and 10 tons weight (converted to metric) given the apparent similarity between this case and the above on the facts.

44. The restrictions on the user of the lane by such vehicles are that the right of way permits any reasonable and otherwise lawful user by such vehicles (for access, not parking on the lane or obstructing it) which is for the purpose of use and maintenance of the dwelling as a private dwelling.

45. This would therefore include: normal frequency of emptying of septic tanks provided the weight and size of the lorry is within the limits, postal deliveries, supermarket food deliveries, visitors, tradespeople coming to carry out work to maintain the dwelling and its grounds in a state suitable for that purpose, emergency medical access, and all such similar forms of access.

46. The test is that the purpose of the use is either the use of the dwelling as a private dwelling as such (e.g. arriving home from work or to visit the Defendants at home socially) or for access necessary to ensure the dwelling and the land on which it is situated remains able to be used as demised, ie as a private dwelling.

47. Demolition and construction of annexes, libraries, swimming pools or any other works of substantial improvement are not necessary to the normal use of the property as a dwelling and one would expect the Defendants to seek permission for such use and in a neighbourly fashion pay for repairs if permitted extra access caused damage.

48. Bicycles? There was implicitly a dispute over whether vehicles such as bicycles (which are not motor vehicles) may be used on the lane. This is a side issue but logically arises such that the Defendants felt it necessary to state in their skeleton that they did intend to include such user. My view on that is that whilst bicycles clearly do not fall within 'motor vehicles' it is I think simply the case that the deed is silent on it because such was likely to have been so obviously intended not to be prevented that it went without saying once access on foot was allowed: one would exclude, e.g. wheelchairs by the same token if one construed this grant narrowly. The mischief the right of way was aimed at was excessive user of motor vehicles given that this was a project converting a formerly commercial mink farm site to dwellings.

49. One would expect a neighbour not unreasonably to withhold permission where occasional out-of-scope use may be needed if (say) planning permission is given for an extension to a kitchen. One would then expect terms to be agreed ad hoc. If the parties really cannot agree such matters then I suggest ADR should take place aimed at drafting a comprehensive agreement or deed to replace existing provisions and govern everything in detail including payments for user and that a clause is drafted to include determination by way of third party neutral determination in the event of a dispute.

50. My decision, however, is necessarily limited to the construction of the right of way, and my decision is as above which is I think close to the Claimant's third construction though with the inclusion

of (e.g.) septic tank access subject to the capacity of the lane. There is of course nothing to stop the parties agreeing to use of overweight vehicles, even at risk of damage, on terms they may agree such as on very occasional and prearranged occasions. One must in addition to the right of way and the grant, bear in mind that it is forbidden also to *“do or permit anything [on the land] which may be or grow to be a nuisance or annoyance to the Transferors or the owners or occupiers of the adjoining lands”* and also general law in relation to reasonable user and nuisance etc, and one would expect that use of the right of way for purposes which create a nuisance on the demised land would probably also be beyond the scope of the right of way itself by implication even if strictly within scope otherwise, because it would become unreasonable.

51. I think it is unfortunate that the case has proceeded on the basis of arguments such as the two ‘stricter’ interpretations proposed by the Claimant, since in such circumstances, where on the prime submission of the Claimant these Defendants, if he succeeded on that, would have been rendered almost cut off from the outside world unless using their own personal vehicles (no post, no deliveries). There are of course always two sides to a dispute, but any defendant really cannot do much else but seek to establish his or her rights in court if the position is pressed in that way leaving the defendant in a ‘high stakes’ position if he loses. This dispute really boils down to what the upper limits on use of the lane are, at the outer margins, when it comes to larger vehicles such as for construction. Having said that, it is apparent from open correspondence that efforts were made towards mediation.

52. Before I retired to consider judgment I signalled to the parties that I hoped that before I produced it they would seek and find a solution to avoid one being imposed, and I took my time in producing it so as to allow plenty of opportunity but I have heard no good news and therefore issue this decision imposing an outcome.

53. This decision does not deal with issues of payment for user and repair etc under the provisions of the grant, which remain live. I observe finally that I have not needed to set out the history of how these initially friendly neighbours fell out but I hope they will mutually realise that quite a bit of the irritation caused arose, actually, from contractors possibly overstepping the mark and then ignoring the Defendants’ efforts to instruct them not to do so, and then a sense of grievance that it was not adequately resolved, and matters seem to have grown from such small seeds. Litigation inevitably makes that worse. I strongly recommend mediation or even a binding ADR process as to remaining issues. If it is desired to ensure future issues over breach do not arise the parties should think creatively about things such as: lockable bollards at the start of the lane to restrict width, a simple vehicle weight measuring strip or suchlike (or CCTV so that in the event of an allegation that an overweight vehicle

used the lane, the weight (at least unladen: I have approached weight here as based on laden weight since the lane has to bear that) can be looked up via the DVLA based on the registration plate). Speed concerns, if any, can be addressed e.g. by road bumps. Detail such as how to calculate costs of any maintenance in future, and an agreed process for seeking approval for unusual usage and making good, such as where permission is given for overweight vehicles, or for unusually frequent use which might otherwise fall foul of the nuisance provisions is not something I can impose. I also add that it would be wise to check the legal weight limit for the public highway adjoining the lane, since if that were to be less than 10 tons it would de facto impose a restriction on the lane for practical purposes of less than 10 tons at least in terms of access from the main road.

54. I will conclude this judgment by noting that disputes of this sort may well be suitable for lower cost forms of online resolution possibly out of court, either now or in the near future involving decisions and discussion, (probably in a case such as this assisted by lawyers in resolving the construction aspects), alongside software to assist issue-identification and pre-trial steps to enable parties to do as much as they can for themselves. If that were to become the trend it would reduce the high stakes caused by legal expenses and perhaps aid relationships among neighbours. In the modernising legal system one hopes that such fallings-out will be less painful when resolved away from formal court settings. The courts themselves have limited resources, and whilst I appreciate that neighbour disputes are significant to the parties, it must be borne in mind that such disputes compete for time with cases such as those one sees daily in this court concerning brain damage and other life changing injuries, death and the very gravest of historic child abuse. Alternative dispute resolution for residential disputes is therefore desirable in terms of wider court resources especially in the High Court but I suspect also generally.

MASTER MCCLLOUD

Handed down 8/12/20