

Derby Road Traffic Management and the Pinch Point

John Mullaney

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ANALYSIS

Introduction

In October 2020 I was tasked by the DRF committee with looking into the Pinch Point (PP).

When I started, I thought it might be a simple matter of examining the PP's effectiveness. However, having contacted various bodies with statutory rights, such as the Emergency Services and Reading Borough Council (RBC), all kept referring to the prime requisite to obtain legal advice.

I noted that the previous committee had indeed done this. I was, however, concerned that the advice received appeared to state that locking the PP was unlawful. Considering the fact that, for many years, it has been the custom to close, and possibly lock, the Peppard Rd gates, let alone the question of the PP, I considered this an opportune time to examine the whole legal issue with regards road closures, the rights and duties of all who use the road and the maintenance of the road's status.

The following is a long document.

I make no excuses for its length or complexity. The Pinch Point, and the management of Derby Road, have proven to be complicated and divisive issues within our community. My aim here is to bring together the relevant documents which bear directly on the problem. In order to help readers navigate a way through them, I have put them into categories; such as those dealing with the legal aspect, or with Reading Borough Council (RBC) etc. Inevitably there will be some overlap.

It is essential to be patient and read them all to understand the principles upon which any decision regarding the future of the PP should be based, and the legal framework which must determine how the DRFA approaches the question of how traffic is to be managed. It must always be born in mind that the DRFA's use of its funds can only be as stipulated in Section 2 of the Constitution.

I include all the documents in the 'Appendix' (Ap).

The problem and a solution

- Before Covid-19 there was an argument that there was an increase in 'unauthorised' traffic using Derby Road, and that the solution should be the construction of a Pinch Point with a lockable barrier. It was further argued that frequent closures, possibly coinciding with those on Grosvenor Rd, would be the best way to reduce traffic.

The Pandemic

- From March 2020 and the first 'lockdown', there was a noticeable decline in traffic, and it was decided, by the committee, at that time, not to close the PP. This policy was continued by the subsequent committee in October 2020.
- With the election of a new committee in October 2020, it was agreed to examine the operation and legal status of the of the PP
- At the 2021 AGM of 26th June 2021, and the election of a new current committee, it was agreed that the legal aspects regarding the PP and control of vehicular use of Derby Road required further investigation.

BACKGROUND DOCUMENTS

The Appendix (Ap. page 6) gives the main items pertaining to controlling traffic and the Pinch Point. This consists of correspondence:

1. **regarding the LEGAL ASPECT** (Ap. pages 6-20) of the PP entered into before October 2020, and subsequent legal opinion by Judge Darbyshire and the barrister (and judge) Mark Loveday. Reference is also made to the comments in the 'Private Roads Services Ltd' handbook.
2. **regarding the responses of the EMERGENCY SERVICES** (Ap. pages 21-28) entered into prior to October 2020 and subsequent clarifications,
3. **regarding other DOCUMENTS** (Ap. pages 31-36) **relating to 'rights of way', specifically to Derby Road's relationship with Grosvenor Road. These include;**
 - A - general principles of private road rights of way
 - B - minutes of the DRF meeting 4 April 2018
 - C - precedent dispute between Mr John Evans of 33 Derby Rd and Grosvenor Rd committee in 2001.
4. **with READING BOROUGH COUNCIL** (Ap. pages 37-41) with regards the permission to erect the PP and their comments about its legality
5. **regarding INSURANCE COVER** (pages 42-45)

**CONSIDERATIONS RELATING TO THE ABOVE FIVE AREAS
based on the evidence in the documents in the Appendix**

1. regarding the LEGAL ASPECT

- It is possibly lawful to erect a Pinch Point and to close it, but unlawful to lock it, unless specific permission, or 'easement', is granted by each person with a 'right of way', and that said persons should have means of passing 'to and fro', at all times, along the whole length of the road, and through the exits at the Peppard and Henley Road ends. This 'right' extends to their visitors, delivery drivers and all with legitimate right of access.
- It is possibly not lawful to close the barrier, though unlocked, should this be judged to create a nuisance to those with right of way. This is not 'binding law'. (Case Law is quoted in the Appendix, Loveday pp 23 -24).
- Every household which has used the road for 20 years, or more, has a right of way, known as a 'prescriptive right', irrespective of any previous deeds or covenants. All legal opinion considered that any restrictions or obligations in ancient deeds and covenants, should such exist, are most likely to be unenforceable. For a deed or covenant to be enforceable both parties and/or their successors must have explicitly entered into such agreements without any break.
- If anyone locks the barrier without giving the 'holders of right of way' (along with legitimate 'visitors'), the means of passing 'to and fro', then the person or body responsible for locking the barrier, is potentially legally liable to 'actionable charges'; namely they can be sued by the 'holder of the right of way' *for breach of the right to pass and repass*.
- These rights of way exist regardless of whether contributions have been made to the Derby Road Fund, or not.

Several surveys were held asking if residents supported the PP. Although most of the responses returned were in favour of the PP, this majority, in all cases, was less than a third of the households of the DR community.

Such surveys, though useful as indicative of opinion, are completely irrelevant to the legal status of the PP and whether the DRFA, or any individual or body, has the authority to deny right of way and implement closure.

The decision as to whether the PP should be locked, or closed, is not subject to majority wish. It is an issue of individual legal rights.

It follows that every single person with a right, must give consent before the barriers may be locked. It is probably not sufficient to give a means of passing through, such as a key or combination number, unless the person with the right of way agrees to this. As case law shows this is still a 'nuisance' and thus unlawful (see Appendix, Further Legal advice p24ff). Closure creates the risk of 'actionable charges being brought, following *that someone could sue for breach of their right to pass and repass*'. (Judge Darbyshire).

Should serious damage to person or property, such as loss of life, long term illness or damage to property, result as a consequence of closing the barrier, this could become an aggravated 'charge', with considerable legal and financial consequences. It potentially converts a civil offence, of unlawful action, into a criminal offence.

2. regarding the responses of the EMERGENCY SERVICES.

The emergency services believe that, in normal circumstances, they can respond in a manner to fulfil their statutory requirements. They made recommendations regarding how the barrier should be locked, if it is locked. However, they cannot offer a guarantee that the response times would not be affected by a locked barrier, and they will take no legal liability should delay result. The following is an extract from their response (see Appendix page 26, **LETTER 4 Ambulance Service reply 4 March 2020**). Note the admission that a locked barrier would lead to a few minutes delay. This is important when considering the risk of 'actionable charges'.

Referring back to our original response when we asked if a combination lock could be placed on the barrier, I note that there is a requirement for 2 x padlocks which of course would also be time consuming to unlock and delay an ambulance by a few minutes. Could I please ask that if in the future combination locks are installed then the codes are sent to us so that they can be stored on our control system.

The letter says that DRFA should take its own legal advice.

3. regarding other documents: The DRF committee in place before October 2020, took legal advice, which cautioned against locking the PP. (Ap. P6-17). Some years previous, the correspondence between Mr. Evans, then of 33 Derby Rd, and Grosvenor Rd (GR) committee, resulted in GR abandoning locking their gates owing to its unlawful nature.

4. with READING BOROUGH COUNCIL in regards the permission to erect the PP, their response is that they cannot advise as to any 'legal matters' arising, they are not responsible for any legal aspect of the PP, and that the DRF should take legal advice. The certificate of lawfulness merely states that the PP does not infringe upon the lawful requirements in relationship to RBC. Certain conditions known as 'informatives' formed the basis for this certificate. Furthermore, the Certificate of Lawfulness only extends to the planters and three reflective markers and not to the operation of any barrier. This was confirmed in an email from RBC legal department in August 2021. This states that *'The Certificate of Lawfulness is only for the implementation of the Pinch Point by the siting of a wooden planter with three reflective markers'* (Ap. page 41. 6 Sept 2021).

5. regarding INSURANCE COVER. When asked if our insurance policies would cover us against 'actionable charges' being brought against the DRFA or any of its officials or anyone locking the gates, both companies (Ashburnham and Ansva) said that we would not be covered by our existing policies.

RBC, the Emergency Services and our insurers advise that legal advice ought to be taken.

Several pieces of legal advice have been sought by the existing and previous committee.

Not one says that the PP barrier may be locked, without taking certain precautions, namely:

1. all those with 'rights of way' give their consent,
2. no 'serious inconvenience' is caused by the PP, resulting in 'interference with a right of way', which would deny means of transit 'to and fro' the length of the road, including both entrances. Such an 'inconvenience' is legally known as a 'nuisance', and is a 'civil wrong' and so unlawful. Giving a key or combination number to any lock, may mitigate the 'nuisance', but this has to be with the agreement of the person with a right of way. There is case law which indicates that any barrier, be it locked with a means of access or even unlocked may be a 'nuisance'. In the case of the PP barrier, it is heavy and difficult to move, especially if one is frail or incapacitated. As such it would be an undoubted 'nuisance'.

All those consulted concur with this opinion. This included the solicitor who advised the previous committee, a senior lawyer and judge, the legal representation of Field View, the detailed investigation and conclusion by a law firm with respect to the legality of locking the Grosvenor Road gates, the opinion of a barrister specialising in this aspect of the law, and the 'Legal Framework' as in the *Private Roads Services Handbook*.

Amongst their comments is the warning that should these conditions not be met, the committee and/or members of DRFA are at risk of actionable charges.

It has been said that should one ask several lawyers for a point of view, one would receive several different responses. In this case all, without exception, proffer the same opinion.

Notes.

1. Should a charge be brought against DRF, or its committee, or any individual locking the barrier, this would incur civil charges, and potentially criminal charges if it were to be judged that the closure resulted in loss of, or damage, to life or property.
2. The financial consequences of even contending a court case would involve large sums, should such actions be brought, let alone the final cost should DRFA be found guilty.

CONCLUSIONS

The above document and the following Appendix examine the legal and practical problems of managing traffic and related safety problems on Derby Road. If as a group, and this would be beyond the legal framework of the DRFA, the residents of DR and the surrounding area, wish to exercise some control of the road, this has to be within lawful and legal constraints. The DRFA cannot impose a solution which infringes the rights of individual residents.

To be clear, the DRFA does not control or run the road. It has no powers, legal or assigned, to change the status of the road or determine who uses it. This is determined by the law of the land. It is an unadopted road. It is a private road, but not in the sense of being a private gated enclave. It is private to the extent that it maintained privately as specified in Section 2 of the Constitution.

All householders have rights of way and access, either by title deed and covenant or by prescription.

As such, the road may not be lawfully closed without the specific permission of each and every person with a right of way. It is a private unadopted road in the sense that frontagers have a legal responsibility to maintain the road to halfway across its width. Which frontagers have this duty is specified in some, but not all, deeds. The frontager, with this duty, has no legal responsibility to pay the DRFA to look after the road, but rather annually agrees to make a voluntary payment so that DRFA can undertake the frontager's responsibility to maintain the road. As such, any claim resulting from a maintenance issue will be covered by DRFA's insurers.

However, it would appear that some residents would like to see some control of the road's use. The DRFA is in a position to help in this aim, though it cannot legally impose any solution. The responsibilities of the DRFA are clearly declared in Section 2 of the Constitution. These place a limit on its responsibilities and on what the Fund's resources may be spent.

Just how much traffic will use Derby Road following a return to pre-pandemic business is an unknown factor at present.

The DRFA committee accepts the legal advice received and in due course re-examines the issue of controlling the traffic that does use the road, be it by residents or non-residents. It is necessary to identify the main issues and come to a lawful and practical means of maintaining the road in a safe, sustainable and lawful way, in accordance with the DRFA Constitution.

Should any member of the community wish to challenge the evidence presented in this report, they should submit their findings to the DRFA committee by the next committee meeting, the date of which will be announced. Any evidence must be from a qualified legal source, along with the brief and correspondence given to any such person. As such, personal opinions, anecdotal evidence or selectively quoted material, taken out of context, or without independent confirmation that it is applicable to Derby Road would not qualify as 'evidence'.

Based on the above, the DRFA committee recommends that to avoid the 'risk' of actionable charges, the DRFA should:-

1. Follow the above recommendations of RBC, the Emergency Services and other legal comment, by ensuring that the legal rights of all residents vis-à-vis use of the road and access to their properties are respected and maintained.
2. Follow the legal advice received regarding the lawfulness, or otherwise, of locking the PP and/or Peppard Road end gates, and under what conditions.
3. Not to proceed with locking, or closing, the PP and/or Peppard Road end gates, unless, or until, clear contrary legal judgement is received.
4. Ensure that in the case of 'charges', the DRFA committee, association members and/or anyone acting on its behalf, are covered by our insurances. This must include all court fees, legal costs and any fines.
5. Undertake a comprehensive re-examination of the use of the road and of alternative ways to control its unauthorised usage in due course

ONGOING ISSUES

1. The Ambulance Service said they would contact us concerning their investigation into the incident where an ambulance was 'stuck' on the wrong side of the PP in March 2019.
2. Two suggestions have already been made. One is that we could look into converting DR into a Low Traffic zone, the other that chicanes would reduce speed, increase safety and deter 'unauthorised' traffic use. These and any other suggestions could be investigated as part of any future re-examination mentioned above.

The DRFA needs to examine all possible solutions which will achieve the aim of making Derby Road a safer place and reduce the traffic flow, especially that of so called 'unauthorised' motor vehicles. They also need to work along the whole road and at all times, not just at specific times, or on specific days. The solutions need to be indisputably lawful and not infringe the rights of, or cause disproportionate inconvenience to, DR community residents.

APPENDIX

Background documents and correspondence

CORRESPONDENCE

1 THE LEGAL ASPECT

DRFA is in receipt of several pieces of legal comment and recommendations.

They are summarised below.

A Correspondence with the solicitor Mr Thorowgood

The previous committee was in correspondence with Mr Thorowgood, solicitor of Clifton Ingram.

The first correspondence I have been able to find is dated 27th Jan 2020 with a reply.

The second, the 30th Jan 2020

The third, the 31st Jan 2020

The fourth, the 10TH and the 14th Feb 2020

The fifth, the 16th March 2020

The sixth 18th March 2020

CORRESPONDENCE 1

Your ref:
Our ref: NJT/DER8/1

27 January 2020

Mr Simon Scaddan & Mr David Moro,
(For Derby Road Fund Committee)
by email to

Gentlemen,

Derby Road Fund - Derby (and Grosvenor) Road, Caversham

I refer to our interesting meeting on Friday 24th. You asked me to summarise the (very provisional) advice I gave. It became apparent during the course of our meeting that the fund of which you are currently officers has a long history. The evidence I have so far seen is limited to a sight of a few Land Registry office copies and a copy of a deed in (I believe) the 1960's between the then Derby Road Caversham Association and a Housing Association whereby it, the Housing Association, undertook to make contributions to the then fund. "Your" fund is, or may be, the continuation of the original fund. It has certainly behaved for many years as if it were. My advice therefore was that a good deal of research into the long history of Derby (and Grosvenor) Road and its maintenance needs to be done before I, or anyone, could give any useful, definitive opinion – if then.

My advice however, so far as it goes, is this. Properties having Derby Road as their means of vehicular access all appear to have a common root of title in the Berkshire Estates Company Ltd which laid out the estate (and presumably constructed Derby Road) in the 1880's and sold off the various plots of land fronting it as building plots. Many, if not most, of those plots have subsequently been subdivided. The office copy entries (relating to such sub-plots) that I have been shown contain (some of them), in their charges registers, reference to such a conveyance as their root of title and to a covenant in it on the part of the original buyer to maintain the portion of Derby Road abutting his plot up to the centre line until such time as the road should become maintainable at the public expense (or words to similar effect, though they appear to differ from case to case). One of the sets of office copies, in its property register, contains reference to the conveyance in

It could deploy persuasive power by making it clear that, if the residents of Derby Road do not do so voluntarily, there will come a time when the Reading Corporation will force them to: by making it up to *its* satisfaction at *their* expense, which is likely to be a great deal more unpleasant than paying relatively small annual contributions to a sinking fund to maintain it in a style and way that suits *their* requirements.

Recommendations

1. I recommended that, before going into "battle" with any recalcitrant contributors, it would be wise to get copies of as many as possible of the "root" conveyances – and, in particular of the original plan of the estate (to identify the original plots).
2. I have bespoken from the Registry (but not yet received) a copy of the conveyance of 6 June 1890. It is clear that they differed in wording – though probably not in substance.
3. I would recommend, as well, researching the history of the Derby Road Caversham Association. It may well be that the former County Archive contains useful material. The Reading Borough Council will have a position and a search can be made against the roads to establish what (if anything) the Council holds on them.
4. I suspect that countless conveyancers have trodden this ground before me – and probably concluded that the answer was a lemon (i.e. that there is no-one in a position to deny a right of access; and no-one in a practical position to enforce the covenant to contribute.)
5. Having said that, there is a high degree of likelihood (and it is often the way) that huge labours in these directions will still reveal very little in the way of proof of anything very much.
6. I understand that a practice has been adopted for some time of closing a set of gates at the end of Derby Road; and (more recently, to try and prevent it from being used as a "rat-run") of blocking a "pinchpoint" for a period. Neither of these expedients would be lawful. If it is a highway, to obstruct it in that way is an offence; if it isn't, it would still be an obstruction of the private right of way granted by the original conveyances.

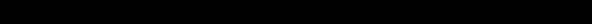
Conclusion

My instructions so far are limited to providing this initial advice – and do not extend to any of the suggested research. I shall be happy to act further, if so desired.

Yours sincerely,

N.J.C. Thorowgood

Solicitor, for and on behalf of Clifton Ingram LLP



To: Nick Thorowgood [REDACTED]
Subject: Derby Road Fund

Dear Nick

- (1) David and I are most grateful for the time you gave us last Friday and for your very helpful scanned letter. I should be very grateful if you could send David Moro a signed copy for our records. Can you please send it to The Derby Road Fund Association [REDACTED] marked for the attention of Mr Moro.
- (2) In relation to your letter. Am I right in assuming that irrespective of whether Derby Road is or is not a "highway" the fact that we have installed a pinchpoint which is closed from time to time every month and there are existing entrance gates which are closed annually means that we are acting illegally by doing so on the grounds mentioned in para 6 of your recommendations? I also assume that until we have done further research on the 18 July 1889 covenant (Ref BK111291 a copy of which I left with you) and the 6 June 1890 covenant and hopefully obtained a plan of the estate, your advice on the "highway" is only provisional.
- (3) As such I assume we cannot therefore refer to Derby Road as a "highway" although we can take action on the pinchpoint and entrance gates as previously mentioned?
- (4) You mentioned that a covenant which you looked at was not enforceable. I assume this means that all covenants on Derby Road which stem from the either the 1889 or 1890 covenants are not enforceable?
- (5) In my email to Sara Dixon of 2 January I sought advice about the legality of enforcing a late payment charge. I think we may have touched on this briefly at our meeting but I should be grateful for your advice on this point?
- (6) Similarly we spoke briefly about our Constitution and I should be grateful for your advice on this as well as requested in my email.
- (7) At the start of our meeting on Friday I handed you a piece of paper which included the question whether the Derby Road Fund Committee has a legal duty to forewarn estate agents, solicitors or potential purchasers of a property in Derby Road that there is an ongoing dispute between the Fund and the vendor about unpaid charges? Can the Committee legally ask the purchaser to pay the debt?
- (8) I look forward to receiving further advice from you.
- (9) In the interests of transparency if the Committee is asked to make public its legal advice are we obliged to do so? and would you have any objection?

We have not yet settled your invoice pending further clarification from you on the points raised in this email.

Regards

Simon

APPENDIX
Highways Act 1980
137 Penalty for wilful obstruction.

Nick Thorowgood

From: Nick Thorowgood
Sent: 30 January 2020 16:40
To: 'simon scaddan'; David Moro
Subject: RE: Derby Road Fund

Follow Up Flag: Follow up
Flag Status: Completed

Dear Mr Scaddan,

I have numbered the paragraphs of your message (below) and comment as follows:

- (1) In the post, addressed as requested, though it has missed tonight's post.
- (2) Wilfully obstructing a highway is a criminal offence (under section 137 of the Highways Act 1980)(see APPENDIX below). Obstructing a private right of way is not an offence, but is unlawful, in the sense that (in theory) an action lies against you at the suit of a person so obstructed. The existence of a gate (which a user of the highway can open) is not necessarily an "obstruction" for this purpose (or necessarily inconsistent with the road being a highway) in the sense that, although undoubtedly an inconvenience, it does not prevent the exercise of the right of passage to and fro. However, you must remember that the land over which a highway runs is still land that belongs to someone. The fact that it is a highway simply means that the owner of it must submit to the public exercising their right to pass. It is possible to trespass on a highway – if one enters it otherwise in the exercise of the right to pass (e.g. officiously to erect a gate or obstruction; to dig a hole for drains etc. – unless in exercise of a lawful power). You must remember that although the Association consists of members who may – or may not – own bits of the road, that does not give it the right to enter other bits of it for a purpose other than exercising the right of passage.

My advice that it is probably a highway is provisional in the sense that it is possible (though I think unlikely) that an exhaustive study of the history of Derby Road since its creation may show that there never was an intention to dedicate it, or a period of use of it by the public to give rise to presumed dedication. If at any point it was dedicated – or can be presumed to have been dedicated – then it has ever since been a highway – and, consequently, any obstruction of it has been an offence.

- (3) If you were to be prosecuted under section 137 for erecting an obstruction, it would be a defence to prove (if you could !) that it was not a highway (see (2) above) and the burden would lie on the prosecutor to prove that it was. I would sooner be him than you ! If you were sued for damages for obstructing a private right of way, you would be unlikely to have a defence. If you wish to refer to Derby Road as a highway, there is no-one to stop you. It will not make it a highway (if it isn't) though it might make it difficult for you to contend in future that it wasn't.
- (4) The covenants are not enforceable, by the Association, against anybody. The significance of them is that they strongly suggest an intention to dedicate as highway. (They do not, *per se*, prove it, or create a liability enforceable by anyone other than the original covenantee, Berkshire Estates Company.)
- (5) Since the "charge" is unenforceable, any penalty for late payment is likewise unenforceable.
- (6) The proposed draft constitution – indeed the whole status and standing of the Association, and its way forward - requires, if I may say so, a complete "re-think", *ab initio*, which goes some way

beyond my present brief ! (see 8 below). The whole premise of the draft you showed me is based on a misconception.

- (7) It can ask, of course. It cannot demand. It should (though only as a matter of courtesy) tell agents and prospective buyers. They may wish to volunteer payment.
- (8) I would be very happy to sit down with the Committee and discuss and devise a way forward, and advise on the most appropriate stance to adopt, though it would involve agreeing on what further further expense you are prepared to incur.
- (9) The Committee is not obliged to share the advice it has received with anyone (yet). The advice given so far is, in a sense, only preparatory to that comprehensive advice (if you wish it) as to "what to do now" (see 8 above). I would not be entitled to have any objection to your sharing my advice, if you wish – though I would advise against it until a definitive decision has been made as to the way forward – and stance to adopt as above. You will have paid for it and it is now yours.

Yours sincerely,

N.J.C. Thorowgood
Solicitor,
for and on behalf of Clifton Ingram LLP





5

simon scaddan <[REDACTED]>

Derby Road Fund

Nick Thorowgood <[REDACTED]>

31 January 2020 at 11:33

To: simon scaddan <[REDACTED]>

Dear Mr Scaddan,

I fear this is getting impossibly hypothetical. There is no law against entering into a contract to surface a road – but on what footing? “Their frontage” – how measured? What of the person who has paid some contributions but not this year’s?

I really do not think that is the way to go. Certainly a legal document establishing the legal relationship of the frontager and the Fund is highly desirable, but the precise terms and basis of it need very careful thought. I am afraid there isn't any “quick fix”.

I can think of various possible routes that could be taken but they all need to be carefully thought through and adapted to the particular circumstances of this particular case – and the individual cases of the individual frontagers – and their potential objections, and then adopted by a general meeting of all concerned.

[Quoted text hidden]

[Quoted text hidden]

CORRESPONDENCE 4

20/01/2021

Gmail - Derby Road Fund



simon scaddan <[REDACTED]>

Derby Road Fund

4 messages

simon scaddan <[REDACTED]>
To: Nick Thorowgood <[REDACTED]>

10 February 2020 at 07:31

Dear Mr Thorowgood

I promised to contact you after the Derby Road Fund Association Committee meeting which we held on 5 February.

Firstly may I thank you for the time and effort you have given to us. We are most grateful.

The Committee has now seen all the advice you have provided which enabled us to have an informed discussion.

We agreed the following action. We are going to follow the advice you have provided on covenants and late payment charges which is clear and unambiguous and we will no longer endeavour to enforce them. We have also taken on board other advice you have provided in your emails of 27, 30 and 31 January. We are currently considering how best to present the change in policy to our residents following our acceptance of your advice.

In relation to the status of Derby Road you have suggested several routes which we could explore when researching the history of the road and the existence or otherwise of covenants, maps and/or diagrams dating back to the late 1880s which might help to establish if Derby Road is a highway. We may need to return to you for advice depending on our research.

We also noted your comments on our Constitution. We have decided to re-examine it so that it both reflects the changes necessary in view of your advice on covenants and late payment charges but also we need to look at it overall to ensure it is good for purpose in 2020. This will take time and again we may need to approach you for advice and a further meeting. There will be costs which we will need to consider and we may need the agreement of members of the Association to meet them.

At this stage the Committee has decided not to take up your offer to address them until it has first carried out the work described in this email.

I am sorry for the delay in settlement of your invoice. Your office should receive our cheque shortly.

Regards

Simon Scaddan

Nick Thorowgood <[REDACTED]>
To: simon scaddan <[REDACTED]>

14 February 2020 at 10:44

Dear Mr Scaddan,

Thank you very much for your cheque in settlement of our invoice. I shall be glad to help in future if need be.

If I may make a suggestion with reference to your researches, and your constitution, you would be wise, so far as it may be practicable, to be in a position to represent yourselves as the continuation of (or if not that, then the successors to) the original Derby Road Caversham Association.

I do not know how you keep your accounts but I imagine them as a series of individual accounts one for each dwelling in the road – such that (for example) Mr and Mrs A of No 21 have a credit balance of £x (whereas for example, Mr and Mrs B of no 28 do not make any contributions at all, and Mr and Mrs C of No 23 used to make contributions and have a balance of £y but have stopped doing so) – or something like that.

CORRESPONDENCE 5

----- Forwarded message -----

From: **Nick Throwgood** <[REDACTED]>
Date: Mon, 16 Mar 2020 at [REDACTED]
Subject: RE: Derby Road Fund
To: simon scaddan <[REDACTED]>

Dear Mr Scaddan,

I don't think the enclosure was the one you meant to send of the Queensway Housing Association agreement. However, I do not think any positive agreements to maintain the road are likely to be enforceable.

In any case, neither the original Derby Road Caversham Association nor the Derby Road Fund can be said to be "liable" for anything – except perhaps the return to its contributors of their unexpended contributions.

It is important to realise that the Derby Road Fund and/or its predecessor, Derby Road Caversham Association, have no legal standing in the matter of liability to repair the road at all. They are charitable organisations formed for the purpose of collecting voluntary contributions from those who have, or might have, a legal liability to repair the road – with a view to organising the repair in an orderly way. They do/did not own any part of the road and have no right whatever to obstruct it by shutting gates or whatever.

It is a highly debateable point who legally owns the sub-soil of Derby Road. It looks very much as if it was the intention of the original developer to transfer a portion of the road up to the mid-point to each plot that fronted it. Without a copy of at least one of the original

conveyances, it is difficult to say. It is possible that gates were originally incorporated into the original design – though whether with the intention to close the road off from the public, one cannot say.

It is perfectly true that, if the owner of a road periodically obstructs it, one can infer from that that he did not intend to dedicate it as a highway. But if a stranger (i.e. not being the owner; e.g. Derby Road Fund) chooses to obstruct the road, that is simply an obstruction. If the road was originally dedicated as highway, then it is a criminal offence; if it was not highway, then it is merely actionable in damages.

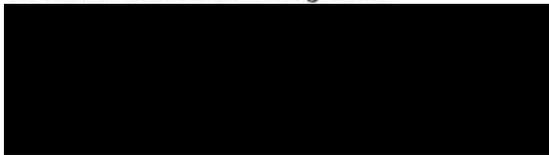
I think therefore that Reading Borough Council's view is much too simplistic. The fact that somebody periodically obstructs the road by shutting gates is meaningless in this context. It would only be a legally significant consideration if that somebody was the owner (which is plainly not the case). By "private road" they presumably mean: a privately owned road over which the public at large has no right of way (i.e. not a highway maintainable by the owner – as distinct from a highway maintainable at the public expense).

The fact that the road was built with gates (if that was indeed the case) may suggest that it was not the intention of the original developer to dedicate (contrary to all the other indications that suggest it was) but the ownership of the road (if indeed it was retained by the developer and not transferred in slices to frontagers) reverted to the Crown on the Developer's liquidation (unless, of course the liquidator transferred it to someone else (?))

Only the most rigorous and extensive research is ever going to establish the truth of the matter, even then. As you know, my personal belief is that Derby Road is now a highway: either because it is possible to infer that the original developer intended to dedicate it; or because the public have used it for a sufficient period to have acquired a public right of way by prescription. Obstructions of that right by Derby Road Fund, or its predecessor are irrelevant (because they were not the owners).

Yours sincerely,

N.J.C. Thorowgood
Solicitor,
for and on behalf of Clifton Ingram LLP



CORRESPONDENCE 6

I don't have sight of the email to which the following responded, but Mr Thorowgood's reply makes its content clear.

29/04/2020

Gmail - Derby Road Fund



simon scaddan <[redacted]>

Derby Road Fund

Nick Thorowgood <[redacted]>

18 March 2020 at 11:04

To: simon scaddan <[redacted]>

Dear Mr Scaddan,

You are quite right. I did not read down far enough. (Mea culpa)

Short of writing an enormous treatise on the enforceability of covenants (for which there would not be time!) there is no definitive answer to your question. In a nutshell, however, the covenant to pay in that document would only be enforceable by Derby Road Caversham Association (the original covenantee) against Queensway Housing Association (the original covenantor), unless it could be shown that the present owner of land bought from Queensway had indeed entered into a direct fresh covenant to the like effect with Derby Road Caversham and that Derby Road Caversham had assigned the benefit of the covenant to Derby Road Fund.

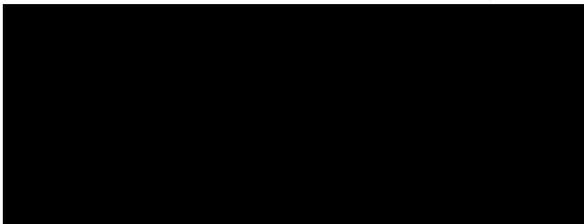
Theoretically possible, I suppose, but a tall order! I would only add that this document expressly contemplates (by the reference to Reading Borough taking over maintenance) that Derby Road is a highway!

Yours sincerely,

N.J.C. Thorowgood

Solicitor,

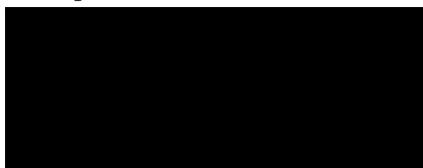
for and on behalf of Clifton Ingram LLP



**CLIFTON
INGRAM
SOLICITORS**

Wokingham Office:

Reading Office:



A. COMMENTS

The legal advice sought by the then committee was with regards the question as to whether it was lawful to close and lock the PP.

Mr Thorowgood gave unequivocal opinion throughout his correspondence and which he summarised at the conclusion of his letter of the 27th January, in numbers 4 and 6 of his recommendations

4. I suspect that countless conveyancers have trodden this ground before me – and probably concluded that the answer was a lemon (i.e. that there is no-one in a position to deny a right of access; and no-one in a practical position to enforce the covenant to contribute.)

6. I understand that a practice has been adopted for some time of closing a set of gates at the end of Derby Road; and (more recently, to try and prevent it from being used as a “rat-run”) of blocking a “pinchpoint” for a period. Neither of these expedients would be lawful. If it is a highway, to obstruct it in that way is an offence; if it isn’t, it would still be an obstruction of the private right of way granted by the original conveyances.

On the 16th March 2020, Mr Thorowgood gave legal advice concerning DRF that

They do/did not own any part of the road
and have no right whatever to obstruct it by shutting gates or whatever.

Further to this Mr Thorowgood gives advice in his letter of 18th March 2020 that any connection between subsequent fund, whatever their names, and the original Derby Road Caversham Association (DRCA) and Queensway are enforceable only if it could be shown they had entered into a *direct fresh covenant* (note the word ‘fresh’) and also that the DRCA had assigned the benefit to the Derby Road Fund. The relevance of this to the Pinch Point concerns responsibility and requirement for payment.

C. DEEDS FOR SOME PROPERTIES SHOW A RIGHT OF WAY.

The Property register for 58 Grosvenor Rd and passed on to nos 29, 31, 33 Derby Rd.

Land Registry

Title Number : BK111291
Edition Date : 23 February 2007

A: Property Register

This register describes the land and estate comprised in the title.

READING

1 (10.04.1972) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 58 Grosvenor Road, Caversham, Reading (RG4 5EN).

2 The land has the benefit of the following rights granted by the Conveyance dated 18 July 1889 referred to in the Charges Register:-

Together also with full right and liberty of way for the said Spencer Slingsby Stallwood his heirs and assigns in common with all other persons who had or might thereafter have the like right with or without horses cattle carts and carriages over and along the said road abutting upon the said piece of land and leading into the high Road from Reading to Henley and also over and along the two roads leading from the said road abutting upon the said piece of land into the high Road from Reading to Peppers which said roads were shown in part on the said plan and thereon coloured brown.

NOTE: The roads referred to are Grosvenor Road, and Derby Road.

A similar record is in the deeds of 1 Derby Rd

D PRESCRIPTIVE RIGHTS OF WAY

In response to query on prescriptive rights of way for Field View Chaneys gave the following response

Prescriptive Rights of Way. *Where there is no express grant of a right of way, i.e. no Deed creating it, and a property owner has exercised a right over he neighbour's (the "Association" the Crown??) land for at least 20 years, a legitimate right of way exists, whether the neighbour agrees to it or not.*

The conditions necessary to establish a prescriptive right of way are:

- 1. The right must have been exercised by the property owner for at least 20 years without interruption. The right of way must have been used regularly and there must not be any long gaps of non-use.*
- 2. The right must have been used in the same way for the whole of that period, i.e. a right of way on foot or by car should have been exercised on foot or by car.*
- 3. There must have been no force or secrecy either by the property owner (the "Association" the Crown??) claiming the right, or by his servants or agents. Further, the neighbour must not have given him a licence so to do, i.e. his permission.*
- 4. The right of way must be such that it could have been created lawfully, e.g. a right of way for the purpose of dumping rubbish would be unlawful.*

Over 40 years use the right of way is assumed absolute in any case.

Implied grant (easements of necessity) – *This typically occurs when part of a property is sold. However, rather than being written into the deeds to the property, its existence is implied by law. For instance, if the land that has been sold is the only means of accessing the land that has been retained, an easement of necessity exists.*

Comments on prescriptive right of way.

Irrespective of any pre-existing deeds or covenants a prescriptive right is granted as outlined above in Chaney's report. As Mr Thorowgood pointed out to the previous committee in item 4 of his letter of the 30th January 2020.

(4) The covenants are not enforceable, by the Association, against anybody. The significance of them is that they strongly suggest an intention to dedicate as highway. (They do not, *per se*, prove it, or create a liability enforceable by anyone other than the original covenantee, Berkshire Estates Company.)

E. JUDGE CHRISTOPHER DARBYSHIRE

To confirm the above, I approached a senior lawyer, the District and Circuit Judge, the Honourable Christopher Darbyshire.

I asked him to comment on the overall situation and on Mr Thorowgood's recommendations.

It should be noted that these are only general comments, not formal advice, by Judge Darbyshire.

He wrote,

The distinction between unlawful and illegal is simple (to a lawyer)! Something illegal can be the subject of criminal charges, and the police might take an interest. If something is unlawful, it means that it should not be done, and that someone can sue whoever does it. An unlawful act could lead to a civil action by someone affected. In this case that presumably means you.

Normally with private roads, there is a right of way to all those whose properties abut the road. That would apply at all times day and night. This is obviously a generalisation, because I have not seen the deeds. I would have expected the right of way to apply for the whole length of the road, so that you could enter from either end. On a practical basis, I assume that you can always reach your house from one end or the other. If the Committee want a central barrier, I would have expected them to have provided a key to each house.

I agree with the solicitor that the barrier could give rise to "actionable charges" which means that someone could sue for breach of their right to pass and repass.

F PRIVATE ROADS: The Legal Framework (sixth edition 2021) Andrew Barsby

Interfering with a right of way is a civil wrong ... namely a nuisance. A person whose land has the benefit of a right of way may take action against any person interfering with the right, whether the person is the owner of the road, or a person who also enjoys a right of way, or someone entirely unconnected with the road. (p58, 5-45)

Compensation can be obtained, to compensate for interference with a right of way, and the court can if necessary, grant an injunction in order to restrain further interference. Traffic-calming measures, such as road humps, and electronically-controlled gates and other barriers, will not necessarily amount to a nuisance provided they do not interfere substantially with rights of way. In one case, however, a series of four gates was held to be an unlawful interference with a right of way (p58, 5-46)

G MARK LOVEDAY Tue, 1 Jun 2021 Barrister and judge specialising in private road law.

To **John Mullaney** [REDACTED]
John

As explained, any substantial interference with the exercise of a right of way would generally be an actionable nuisance. Generally speaking, the traditional view is that *any* kind of gate (even an unlocked one) is considered an actionable interference. The case of *Sisters of the Sacred Heart of Mary Ltd and others v Kingston BC* [2008] All ER (D) 209 (Mar) involved a school which successfully argued that a barrier with a keypad operated lock was a substantial interference with the use of a private road by parents etc. visiting a school.

But there is some evidence the courts may take a more liberal view on this today and find that domestic premises can be protected by gates with fobs or keys. I have successfully argued in the past that a gate is not an interference if the owner of the right of way was provided with a remotely operated fob. But that case was at first instance, and it is not binding law.

Mark
Mark Loveday
Tanfield Chambers

H LEGAL CONCLUSIONS

1. It is lawful to erect a Pinch Point and to close it, but not lock it, unless specific permission, or 'easement', is granted by each and every individual who has a right of way.
2. Every household who has used the road for 20 years or more has a right of way, known as a 'prescriptive right', irrespective of any previous deeds or covenants. These latter are, in any case, difficult, if not impossible, to enforce.
3. The right of way exists regardless of whether contributions have been made to the Fund, or not. It is the duty of certain 'frontagers' to maintain the road to half way across in front of their properties. There is no obligation to pay any body, such as the Derby Road Fund, to fulfil this liability. Therefore the contribution is voluntary.
4. The right of way is not subject to a popular vote of those with rights of way, unless each and every holder of a right of way agrees to it by a legal document known as an easement.

If anyone locks the barrier without giving the 'holder of right of way' the means of passing through, then the person or body responsible for locking the barrier, is legally liable to 'actionable charges', namely they can be sued by the 'holder of the right of way' *for breach of the right to pass and repass*. This right extends to legitimate visitors to the property of the holder of a right of way. Such would include delivery drivers. It is probably not sufficient to give a key of combination number as case law indicates. (The case of *Sisters of the Sacred Heart of Mary Ltd and others v Kingston BC* [2008] All ER (D) 209 (Mar) involved a school which successfully argued that a barrier with a keypad operated lock was a substantial interference with the use of a private road by parents etc. visiting a school.)

2 THE EMERGENCY SERVICES

As stated, the emergency services had been contacted by the previous committee. As part of the instructions by the committee in Oct 2020, it was necessary to ask for further clarification regarding the particulars of the how they viewed the PP, especially as they now had time to assess the situation and let them know that it would be open until further notice.

The working group was given two documents by the previous committee, one each from the Emergency Services.

A AMBULANCE SERVICE

LETTER 1 to Gill Vooght 19th Oct 2019



South Central Ambulance Service **NHS**
NHS Foundation Trust

Northern House
Talisman Business Park
7-8 Talisman Road
Bicester
OX26 6HR

Gillian Vooght
Derby Road Fund Committee

Tel: +44 (0) 1869 365000

17th October 2019

Dear Gill

We write to thank you and acknowledge receipt of your email dated 30th September. Please accept our apologies for the delay in replying.

We have now checked with our Emergency Control Centre and can confirm that a special feature is attached to this address to advise crews of appropriate access points to Derby Road. This information is relayed to any responding emergency resource.

We can also confirm that to date we have no recorded access problems with this closure.

We trust that this will reassure the residents

Yours sincerely

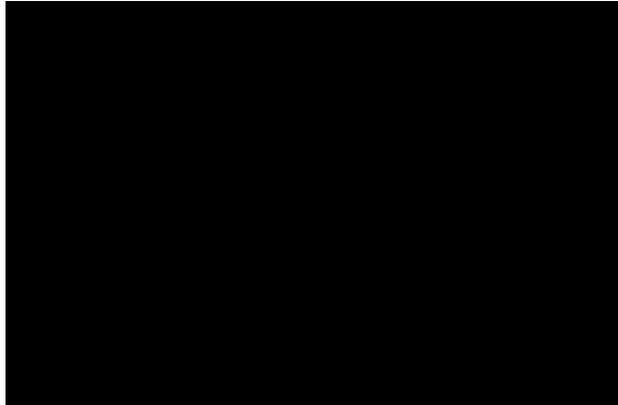
Kirsten Willis BEM
Head of Operations
Berkshire West

1

Registered Headquarters: 7 and 8 Talisman Business Centre, Talisman Road, Bicester OX26 6HR

NOTE. The claim that 'to date have no recorded access problem with this closure'. This is probably inaccurate and is under investigation by the Service as of April 2021

John Mullaney MA
Co-Chair Derby Road Fund Committee



9 Dec 2020

Dear Sirs,

I have recently been appointed co-Chair of the Derby Road Fund Committee (DRFC). To validate my credentials please visit the Derby Road Fund website <https://www.derbyroad.co.uk/committee.html>

This is essentially a new committee and as such we are establishing various policies. One of these is that of the temporary road closures, which the previous committee implemented via the means of a lockable road barrier placed approximately halfway down Derby Road.

The new committee has been passed a letter that was sent to Gill Vooght dated 17th October 2019 by the South Central Ambulance Service (SCAS), in which you reassure the DRFC that you have no concerns regarding emergency access to what appears to be a particular address.

As part of our policy review, we would appreciate assurances that this applies to all Derby Road residences and those on other roads leading off it such as Ellesmere Close, Moss Close, Field View, Mander Court, Fry Court, etc.

I am sure that you appreciate that, when the road is barred off by a locked barrier at the pinch point (PP), the DRFC wishes to ensure that there should be no danger whatsoever to a person, or persons, in need of medical attention resulting from the inability of an emergency vehicle not being able to attend a residence at its closest point.

You say that there are 'no recorded problems with this closure'. The DRFC is concerned that this is your response because we have a record of an ambulance travelling using sirens and flashing lights attempting to attend an incident at the entrance to Fry Court, off Derby Road, sometime around 18-27th March 2019. This is well before your letter to Gill Vooght. The ambulance in question had to stay on the one side of the PP, as it was locked, and attend to the incident on foot.

We would therefore appreciate a response to the following queries regarding the logistics of how an emergency vehicle would attend an address in the following scenarios:

1. What if an ambulance is dispatched when the PP is closed - how specifically do they know which address is on which side of the PP or have all 200+ addresses been tagged?
2. Do residents within these properties need to provide location information, i.e. which side of the PP the property lies when placing a 999 call?
3. If an ambulance is already on Peppard Road and receives an emergency call out to a property that cannot be accessed via the Peppard Road end of Derby Road, how will they attend the address? How will that affect the emergency respond time? The same applies if an ambulance is already on the

Henley Road and would normally access a property via Henley Road > Grosvenor Road > Derby Road, what is the provision for attending calls in this situation?

4. Can an ambulance open the PP by cutting the lock (as the fire brigade can) in case local traffic conditions result in gridlock on Peppard Road or Henley Road thus making it impractical to take a longer route?
5. It has been suggested by a former member of the DRFC that SCAS is permanently treating Derby Road essentially as two separate roads – from Peppard Road to the PP and from the PP to Grosvenor Road. Can you confirm if this is actually the case? Our understanding is that this will potentially affect the fastest route calculated by a planning system to any given address, even on days when the temporary barrier is not in place.
6. The DRFC would appreciate written (email if preferred), acceptance of liability by the South Central Ambulance Service that if a claim were to be raised as a result of the PP being locked, the responsibility would lie with the SCAS and not with the DRFC.

I assume that if you are sure of your ability to respond to an emergency without any impact on the emergency response time, as per your letter of the 17 Oct 2019, then you will have no objection to giving this reassurance.

Yours sincerely,

John Mullaney

This was followed up on the 13th January requesting a reply to which I received the following

From: PatientExperience

To: John Mullaney [REDACTED]

Date: Wed, 27 Jan 2021 13:48

Dear Mr Mullaney

I am writing further to your email to the Patient Experience Team on 13th January 2021, in which you raised a concern regarding the lockable road barrier placed approximately halfway down Derby Road, Caversham, Reading.

Firstly, I would like to apologise for the delay in responding to you, as you quite rightly state our service is under a great deal of pressure at the present time.

I have consulted with the Clinical Operations Manager, who covers this area and he has come back to me with the following information.

We understand that the locked barrier was installed a few years back to prevent the road from being a 'rat run' between Henley Road and Peppard Road. The road is shown as being gated on our system.

We appreciate that the residents are obviously concerned about the response times, if an ambulance ends up going in the 'wrong end', and at present if they did this it would probably involve a 2-3 minute delay, whilst the ambulance turns around and goes around the other way.

To prevent any such delay in attendance (EOC), It would help our colleagues in the Emergency Operations Centre (EOC), if residents could identify the entrance point to assist us, i.e. either via Peppard Road or via Henley Road/Grosvenor Road.

The other option that has been suggested is that the current padlock could be replaced with a strong heavy duty combination lock and the code is given to all the emergency services, so that it is available in the EOC if we are given the wrong end to approach.

We have interrogated our system relating to events in Derby Road for the past three months and have found no incidents where the gate has been mentioned. Further to this there are no events where the crew report a delay to scene due to the gate.

I trust this response reassures you, but please if for any reason this is not the case then please do not hesitate to contact the Patient Experience Team.

Yours sincerely

David Wilson
Senior Patient Experience Officer

LETTER 3 A reply was sent on 9th Feb

Dear David,

Thank you for getting back to me.

I have now had a chance to speak with my colleagues on the Derby Road working group. Further to your email, we would like to make the following observations and raise a couple of points for clarification.

To begin with we all appreciate the strain you are under at the moment, but as the Pinch Point raises some legal issues, it is of importance to us all.

In your response that you passed on from the operations managers, you refer to the 'locked barrier' and 'the road being gated'.

Can I ask for greater clarification as to what this means please? Does it mean that you are effectively treating the barrier as in permanent operation?

In this scenario, Derby Road is essentially always treated as two separate roads with one part running from Peppard Road to the barrier and then the second part of the road runs from the barrier to the other end of Derby Road where it meets Grosvenor Road?

Whilst I appreciate the need to give accurate location information and guidance on which end to approach Derby Road, there are many potential situations where the person calling might not be able to provide this guidance, for example:

- 1 - someone on their own has suffered a heart attack or stroke
- 2 - a child is calling 999 to report an illness of someone in the house without adult guidance
- 3 - someone unfamiliar with the road such as a visitor is calling 999

The following are some questions that we believe need addressing, so that we can approach our insurers with specific information regarding our liability.

Another question touches upon the target response time for an emergency call out.

You mention that an ambulance having to double back as a result of being unable to pass the barrier, would involve 'a 2-3 minute delay'. However, where traffic is backed up on Henley Rd or Peppard Rd – a scenario that is familiar to many local residents - it will take more time even with flashing lights and sirens blaring, the delay to an ambulance could easily be much more than 2-3 minutes. The distance is more than one mile. We are concerned that this could have a potentially serious impact on the ability of SCAS to attend an emergency.

In my original letter I raised a concern about a reported incident between 18th to 27 March 2019. You say that there are no recorded incidents involving the Pinch Point impacting an emergency call, whereas we have a record of an ambulance, using sirens and flashing lights, attempting to attend an incident at the entrance to Fry Court, off Derby Road. The ambulance in question had to stay on the one side of the Pinch Point, as it was locked, and attend to the incident on foot.

I should be most grateful if you could confirm this event, and if it not logged, this must surely raise some concerns.

My final point returns to the question of liability and what your liability might be or whether you view this as solely that of the residents who lock the barrier. This will impact on the Derby Road community insurance policies.

Once again, my apologies for asking you to spend on this matter, but I hope you can appreciate the concerns we have.

Yours sincerely,

John Mullaney

LETTER 4 Ambulance Service reply 4 March 2020

-----Original Message-----

From: David Wilson

To: John Mullaney

Sent: Wed, 3 Mar 2021 11:09

Subject: RE: Automatic reply: Derby Rd RG4 5HE

Dear Mr Mullaney

The Head of Operations for your area asked for a Paramedic Team Leader to look into this matter for you and he visited the sight on Friday (26th February 2021) and took pictures for a better understanding of the situation, and also for our information. Attached are the photographs he took, and under 'Derby Road Photos 2', the overhead photographs which, in conjunction with our response, should explain what we are going to do.

1. "The locked barrier or road being gated that we referred to is actually the two raised wooden flower beds that are sited 10ft apart in the road just before the junction of Derby Road and Field View [please see photo's attached]. On my visit it was also noted that in each flower bed there is a white painted scaffold pole which is used to push out into the road and forms the barrier when this is closed. Further I noted that each pole has a padlock which prevents unauthorised users from opening it.

Obviously during the present Covid Pandemic, with less traffic around, you have kept this barrier open but we are still treating this as permanently closed and therefore deem it as two separate roads with access via either Peppard Road or Henley Road depending on where any incident occurs.

2. With regards to a caller giving accurate information and guidance into their property, you mention scenarios whereby a caller may not be able to give this information. To alleviate this problem we sent information and maps marking where the barrier is located to our experts that deal with mapping on our control systems, which means that when calls come into the control room the call taker will be alerted that Derby Road is split into two and will then take the necessary information from the caller as to which direction to approach from, and subsequently avoid ambulances entering Derby Road from the wrong direction.
3. You mentioned further about ambulances having to double back, if they were unable to pass through the barrier and then getting caught in heavy traffic and delaying the response times. Hopefully, with the above being instigated with our mapping this would not happen; but if it did unfortunately we have no control over the traffic and would expect our ambulances to progress through it using blue lights and sirens safely so that we achieve an adequate response time.

Referring back to our original response when we asked if a combination lock could be placed on the barrier, I note that there is a requirement for 2 x padlocks which of course would also be time consuming to unlock and delay an ambulance by a few minutes. Could I please ask that if in the future combination locks are installed then the codes are sent to us so that they can be stored on our control system.

4. Unfortunately the incident that you refer to between 18th & 27th March 2019 where you have recorded an ambulance attending Fry Court and getting caught the wrong side of the barrier is still being looked into so I cannot give you an update on this.

5. Regarding the issue of liability. Having taken advice on this subject, our view is that you need to seek your own legal advice before you speak with your Insurance Companies as we cannot advise either way.

I think the only other concern which I did note when driving along Derby Road is that whilst most houses are well signed with either the number, or the name, of the house at the end of the drive, I did note that there are still some houses that would be difficult to find in an emergency in the dark.

Hopefully all of your queries have now been answered but obviously if you have any other questions then please do not hesitate to get in touch again.

I trust that this response is comprehensive enough to satisfy the committee.

Kind regards

David Wilson
Senior Patient Experience Officer

THIS CONCLUDES THE CORRESPONDENCE WITH THE AMBULANCE SERVICE

B CORRESPONDENCE WITH THE FIRE SERVICE

LETTER 1 TO GILL VOOGHT 13 AUG 2019

Quarters, Newsham Court, Pincents Kiln, Calcot, Reading, RG31 7SD



Caversham Road Fire Station
Caversham Road
Reading
RG18AA

Your Ref: Derby Road restriction
Our Ref: Station Manager
Ask for: 13th August 2019
Date:

Derby Road Fund – Pinch point closures

Dear Gillian

Thank you for your letter dated 24th July 2019 regarding the Derby Road pinch point.

I can now confirm that our Thames Valley Fire Control Service (TVFCS) and local fire crews are aware of the pinch point width restriction on Derby Road (positioned by Field View and Fry Court). Crews have visited the address and looked at the restriction, this information has been populated on our mobile data terminals on each appliance so that attending appliances are aware.

Crews will endeavour to attend via the correct entrance, but to avoid any delay if the width restriction is in place, it is vital that the correct location of any incident is given to our control room. This will also avoid the lock being broken if access is needed in an emergency.

Please don't hesitate to contact me if you require additional information from Royal Berkshire Fire and Rescue Service in the future.

Kind regards

Station Manager
Station One and Two White Watch

NOTE. This letter is unsigned

The Fire Service were contacted on the 6th January 2020. The points raised in the letter of the 6th January are contained in the reply from the Fire Service and are italics. This followed a telephone conversation on the 15th December 2020 between John Mullaney and a representative of the Fire Service

Trevor Ferguson • Chief Fire Officer

Headquarters, Newsham Court, Pincents Kiln, Calcot, Reading, RG31 7SD

John Mullaney MA

Co-Chair Derby Road Fund Committee

Ref:

Date: 6th January 2020

Dear Mr Mullaney

Thank you for your enquiry regarding the barrier and access restrictions in Derby Road, Caversham, Reading. Please find responses to the questions you raised below.

1. What if an appliance is dispatched when the Pinchpoint is closed - how specifically do appliances know which address is on which side of the Pinchpoint or have all 200+ addresses been tagged?

All of our appliances are equipped with a Mobile Data Unit (MDT). This is an electronic device with a number of databases which has mapping down to street level. Each property is shown with its house number. The MDT also contains much more information including specific risks and the barrier on Derby Road is on the mapping. Callers to the 999 service will be asked for their address and the crew attending will use the MDT to identify the most effective access.

2. Do residents within these properties need to provide location information, i.e. which side of the Pinchpoint the property lies when placing a 999 call? What if this information isn't given in the understandable situation that a caller doesn't provide location info?

All calls to the 999 service are routinely asked to give their address / location as part of the call handling protocols. Calls placed to the Fire & Rescue Service via the 999 system from a domestic landline utilise a system called EISEC (Enhanced Information Service for Emergency Calls) which will also provide the 999 call handler with the address which the landline is registered to. The mobilising gazetteer used by the Thames Valley Fire Control Service (TVFCS), which handles 999 calls on behalf of the Royal Berkshire Fire & Rescue Service, is premises based, meaning that each individual property is plotted uniquely. For calls made using a mobile phone, TVFCS uses British Telecoms 'Advanced Mobile Location' technology, allowing the 999 call handler to plot the device's location to within 6 metres.

3. If an appliance is already on Peppard Road and receives an emergency call out to a property that cannot be accessed via the Peppard Road end of Derby Road, how will they attend the address? How will that affect the emergency response time? The same applies if an appliance is already on the Henley Road and would normally access a property via Henley Road > Grosvenor Road > Derby Road, what is the provision for attending calls in this situation?

The response standard for Royal Berkshire Fire and Rescue Service (RBFRS) is to ensure the first fire appliance arrives at an incident within 10 minutes on at least 75% of occasions. The attending crew will follow the same procedure as in the answer to question 1.

4. I understand that you have the facility to break the lock – will this add under or over a minute to the response time?

This is a difficult question to answer, the lock could change overtime and present differing issues. We can confirm cutting a padlock may cause a slight delay.

5. It has been suggested by a former member of the DRFC that the Fire Service is permanently treating Derby Road essentially as two separate roads – from Peppard Road to the Pinch point and from the Pinch point to Grosvenor Road. Can you confirm if this is actually the case?

Our understanding is that this will potentially affect the fastest route calculated by a planning system to any given address, even on days when the temporary barrier is not in place.

As the barrier is not a permanent feature and is installed at random times (as discussed in our telephone conversation 15/12/20). The officer in charge of the attending appliance would make the decision on how to access the address of an incident based on local knowledge, information on the MDT and details given by the caller.

In respect of the last two paragraphs of your letter I am unable to give you the assurance sought by you from Royal Berkshire Fire and Rescue Service.

I have insufficient information on which to express a view as to whether the barrier/pinch point is lawful in terms of not being in contravention of planning legislation; nor not an unlawful obstruction of a vehicular public right of way – which may subsist notwithstanding that the street is maintained privately.

Even assuming the barrier is lawfully constructed it would not be possible to rule out, dependent on the circumstances of how, when, why, and by whom, the barrier came to be locked, potential offences under the Emergency Workers (Obstruction) Act 2006.

These are matters on which your committee would need to take its own legal advice.

Kind Regards

Paul Binyon Area Manager Response and Resilience Royal Berkshire Fire and Rescue Service

SUMMARY CONCLUSIONS EMERGENCY SERVICES

1. The Fire Service – noted that their appliances were equipped with electronic devices that could identify properties down to house number and that “the barrier on Derby Road is on the mapping. Callers to 999 will be asked for their address and the crew attending will ... identify the most effective access.”
2. They went on to say, “it would not be possible to rule out, dependent on the circumstances of how, when, why, and by whom, the barrier came to be locked, potential offences under the Emergency Workers (Obstruction) Act 2006. These are matters on which your committee would need to take its own legal advice.”
3. The Ambulance Service replied that if they were compelled to double back because of a locked barrier and as they “have no control over the traffic ...(they) ... would expect ... ambulances to progress ... using blue lights and sirens safely so that we achieve an adequate response time”. They could not guarantee this. To overcome this problem, they suggested the use of combination locks, and that they should be given the codes.

They concluded by saying “having taken advice on this subject, our view is that you need to seek your own legal advice before you speak with your Insurance Companies. The Ambulance Service will not accept legal responsibility, as this would rest with DRF.

4. The Ambulance Service is investigating the incident which appears to have taken place before their letter of the 17th October where they claimed that no incidents had been reported.

3 OTHER DOCUMENTS relating to a. ‘rights of way’, b. previous closure policy and c. Derby Road and Grosvenor Road (2001 precedent)

a 'RIGHTS OF WAY' general principle

<http://www.boundary-problems.co.uk/boundary-problems/priv-r-o-w.html#vehicular%20private%20right%20of%20way>

A vehicular right of way permits you to:

drive vehicles of up to a permitted width, height and weight along the carriageway between the public highway and the dominant tenement;

b PREVIOUS CLOSURE POLICY from the minutes of the DRF meeting 4 April 2018

The following is a quote from the committee meeting.

"Gate closure

After discussion, the meeting agreed in principle to shut the gates in order to preserve the resident's right to maintain the road as a private road without a public right of way. Legal advice was that this needed to be done at least once every 20 years, but it was thought more practical to do this once a year. The date suggested was August Bank Holiday or Good Friday to avoid congestion at the entrance of Derby Road on weekdays.

The feeling at the meeting was that this should be put to a vote. A majority vote in favour of the gate closure was returned.

The agreement was subject to the following points:

- B. Closure should not be on the same day as a Grosvenor Road closure
- C. The gate should be shut from dawn till dusk (6.00am till 8.00pm) and not manned for opening.
- D. A board could be placed at both the Grosvenor Road and Peppard Road end to warn drivers of the closure.
- E. Emergency services should be notified in advance of the closure.
- F. The closure should be publicised on the new website.
- G. Consultation with Grosvenor Road committee.

Note that at this point the DRF was maintaining a conciliatory stance consistent with over 40 years of practice and that, although it was decided to 'shut' the gates, there was no mention of locking them, which would be unlawful. Moreover, in compliance with all previous DRF decisions, it was stated the gates should not be closed at the same time as Grosvenor Rd."

c DERBY ROAD AND GROSVENOR ROAD (2001 PRECEDENT)

In the early 2000s Grosvenor Rd put a lockable barrier at the Henley Rd entrance. This was challenged by John Evans the owner of 33 Derby Rd.

His solicitor proved the unlawfulness of locking the barrier (the gates) and this had to be stopped.

It would appear, from the legal comments above by Mr Throrowgood (DRF's solicitor), by Judge Darbyshire, and by Mr Loveday, that the same legal principles apply to locking Derby Road, at any point.

The relevant letter from Mr Evans' solicitor is reproduced below

Mr R Neale
Chairman
Grosvenor Road Residents' Association

Our Ref GP/KTB/24149/1
Your Ref
Date 26 March 2001
Email

Dear Sir

GROSVENOR ROAD RESIDENTS ASSOCIATION

Thank you for your letter of 13 March. It is not clear whether your Association is now representing itself therefore we have copied this letter to Clarks.

Before dealing with the balance of your letter we must make the general point despite your letter being three pages or so in length it does not provide a substantive response to our letter of 16 February 2001 in which we asked you to inform us

"On what authority your Association relied on in causing the gates to be erected and what legal authority gave you the right to obstruct Grosvenor Road in this way?"

You have not provided any legal authority for the actions of the Association rather you have merely explained why and how the action was taken.

We insist upon you informing us of the legal authority for the Association's actions. You have had the benefit of lawyers advice for almost three weeks and therefore it is entirely reasonable to expect this explanation by return. In the absence of such an explanation being given we and our clients can only conclude that the only authority on which the Association automated the gates was on the majority decision of a number of residents who operate under the banner "Grosvenor Road Residents' Association" being an unincorporated entity without legal status.

In short therefore your case appears to be that a majority of residents of Grosvenor Road have unilaterally decided to interrupt the right of way over Grosvenor Road previously enjoyed by Grosvenor and Derby Road residents.

The request in your letter of 16 March (received yesterday 19 March) requesting a copy of our clients' deeds sits uncomfortably with your failure to provide a satisfactory explanation as to the basis on which the Association has interfered with our clients' right of way. You have provided no explanation, have avoided the subject and have provided no documentary evidence in support of the actions which the Association have taken.

Our clients, (who for the avoidance of doubt are Mr and Mrs Evans and [redacted] Chairman of Derby Road Residents Association) unlike the Association, are prepared to provide a full explanation as to their

position.

Our clients' position is motivated by concerns regarding the safety of installing an automated gate which will, despite what you say, delay emergency services and prevent access to any person who has a legitimate right to access to our clients' property including family, friends and tradesmen. However the motivation behind our clients' objection is not, unlike the Association' motivation, the basis of their claim.

There are a number of grounds upon which our clients rely in saying that they enjoy a right of way over Grosvenor Road which is obstructed by the automated gates.

The root of the title to Mr and Mrs Evans' property goes back to 1890.

Their title is subject to the covenants, exceptions and reservations, rights and other provisions contained in the Conveyance dated 29 April 1905 made between (1) Felix Brodribb Parfitt (2) Albert Cockburn Brewerton and (3) William Henry Holden. A copy of an extract of the Abstract of Title is enclosed.

Mr and Mrs Evans have the right to use at all times and for all purposes "as public or high roads" both Grosvenor and Derby Road.

Mr and Mrs Evans are the freehold owners of 33 Derby Road.

By the Conveyance of 29 April 1905 the plot of land which became 33 Derby Road was conveyed to William H Holden. Mr and Mrs Evans are the successors in title of 33 Derby Road.

At the time of the 29 April 1905 Conveyance and ever since the roads now called Grosvenor Road and Derby Road existed and at the time of the 29 April 1905 Conveyance they were coloured brown on the plan which you will see attached on the second page of the Abstract.

Derby Road and Grosvenor Road were enjoyed with and were associated with 33 Derby Road and the Conveyance of 29 April 1905 contained an implied grant of a right of way for all purposes over and along Derby Road and Grosvenor Road as a means of access to and from 33 Derby Road under the provisions of Section 62 of the Law of Property Act 1925.

Moreover Derby Road and Grosvenor Roads were a usual and apparent easement and our clients are entitled to an implied grant of a right of way by virtue of the rule in Wheeldon and Burrows.

In addition, Mr and Mrs Evans and [REDACTED] and their predecessors in title have for over 20 years and more used Grosvenor Road as a right and without interruption and at all times and for all purposes in connection with their occupation of 33 Derby Road and as such have a right of way under Section 2 of the Prescription Act 1832.

Alternatively the right of way is claimed by virtue of the doctrine of lost modern grant.

Also Grosvenor Road is the only access to Henley Road from 33 Derby Road and they are entitled to a right of way over Grosvenor Road by way of necessity.

The automation of the gates at the Henley Road end of Grosvenor Road and the requirement to unlock the gate by means of an electric key (a "zapper") at peak times of day (or even at any other time of day) interferes with our clients' and their visitors seeking to exercise the right of way.

We draw your attention to the established case law which holds that even in respect of a prescriptive right of way, locking a gate would be an obstruction even if a key was supplied. *Guests Estate -v- Millner* [1911] 28 TLR 59.

As to the balance of your letter it contains a number of inaccuracies which must be corrected which we do using the sub-headings and numbering of your letter.

History and Sequence of Events

A barrier or gates may have been in place since 1925 however only very occasionally were they shut and on no occasion were they locked therefore our clients and their predecessors have had free access to Henley Road at all times.

The gates were automated on 18 January 2001 however it was not until 5 February 2001 that they were rendered operable only by use of an electronic key during peak times.

Your statement that an electronic key would be provided to Mr and Mrs Evans if they paid their share of the road fund highlights the unlawful nature of the Association's actions. You cannot obstruct the right of way merely because Mr and Mrs Evans have not contributed to a road fund which has no legal status and which in reality is merely an arrangement between residents to maintain the fabric of Grosvenor Road.

Aside from the fact that deeds alone would not conclusively determine the existence of a right of way, Mr and Mrs Evans have not been asked to provide copies of their deeds although they did write to you over a year ago on 18 January 2000 informing you of the right of way set out in their deeds (paragraph C ii). However, it is significant that on the one hand you say your letter is based on information given to you by the Association, members of previous Committees and past Chairman, yet you ignore that the Association has previously acknowledged the existence of the right of way of members of Derby Road Residents Association.

In Mr Staleys' letter to the Association dated 18 December 1997 (copy enclosed for ease of reference) he says:-

"The original deeds of property in both roads included a clause stating that all other owners of property on the Caversham Park Estate were permitted access to any roads on the estate. Thus Derby Road residents have a right to use Grosvenor Road and vice versa".

- 1 It is not accepted that the decision reached was the "most democratic possible". There were various major flaws in the voting process which we do not intend rehearsing here because even if the decision had been reached democratically it does not alter the fact that the majority of the residents of Grosvenor Road cannot lawfully interfere with even a single residents rights. Mr and Mrs Evans and the residents of Derby Road have a right of way over Grosvenor Road which is not capable of being interfered with merely by a majority decision.
- 2 We note you accept delay will be caused to the emergency services. "Minimal delay" as you put it in your letter is not acceptable to our clients.
- 3 We are surprised that you still maintain the emergency services may use Peppard Road on the approach to Derby Road and Grosvenor Road when this has already been discounted by the ambulance service in their letter to you of 10 March 2000 when they said, amongst other things:

"You state that our ambulances exit the Reading ambulance station via Caversham Road. This is incorrect because we now have a pro-active standby and our emergency vehicles are stationed at strategic points across Berkshire and are not kept on stations waiting for calls. This means that our vehicles could in fact approach Grosvenor Road from any direction whilst responding on an emergency".

We are further instructed that the ambulance service had written to you on three occasions informing you that Royal Berkshire Ambulance NHS Trust could not agree to any obstruction that may cause any delay to their paramedic ambulances responding to an emergency to Grosvenor Road.

4 & 5 Whether you have offered Derby Road residents an opportunity to buy a electronic key or not is irrelevant; they have a right of way over Grosvenor Road (as previously acknowledged by your Association in the letter of 18 December 1997 previously mentioned) and your Association is not entitled to interfere with it.

6 & 7 The Association's belief that there is no risk appears to have been reached despite concerns raised by the emergency services and Reading Borough Council's Planning and Highway Departments. The motivation behind locking the gates to reduce traffic etc may well be laudable however it does not give the Association the right to infringe other's rights in attempting to achieve that goal. The Association may perceive that you have gone through an adequate consultation period however equally the Association has abundantly aware for sometime of the views of Mr and Mrs Evans and the Residents of Derby Road and these were made known to the Association before the Association decided to automate and subsequently lock the gates at peak times.

We have provided you with a full explanation of Mr and Mrs Evans and [REDACTED] rights and therefore must insist that the gates should not be locked at any time. If the Association genuinely wishes to avoid our clients seeking injunctive relief then we must receive immediately an undertaking that the gates will not be locked at any time.

If the undertaking is not received by Friday 30 March 2001 then an injunction will be sought and given that you have been provided with a full explanation of the basis of our clients' claim and have also been given the opportunity to avoid Court proceedings you may rest assured that our clients will apply for the cost of the injunction to be paid by your Association. On this subject, as the Association has no legal status please provide us with the names and addresses of all those individuals on whose behalf you are acting and who are responsible for the locking of the gates.

Right of Way

Your suggestion that the gates have not interfered with the right of way is clearly incorrect. Your lawyers have no doubt advised you otherwise. Locking the gates at anytime even if a key is provided is an interference with the right of way. A right of way is a right of free passage. Locking the gates is an obstruction to that free passage.

You may quibble with our use of the word "locked" however the gates at peak times will not open without the use of an electronic key. We would be interested to hear your explanation as to why you do not regard this as "locked".

You say that a number of people have expressed delight with the new gates and that our clients must share

their delight. Equally a number of residents have expressed dissatisfaction with the gates and as you know of [redacted] clients clearly do not share other residents' delight with the gates.

Conclusion

The GRRRA may have sought to challenge the existence of any prescriptive rights over the years by closing the gates at regular intervals however the fact remains that GRRRA have never challenged Mr and Mrs Evans, [redacted] or other residents of Derby Roads use of Grosvenor Road as an access to Henley Road. At the very least therefore Mr and Mrs Evans, [redacted] and the residents of Derby Road have a prescriptive right of way along Grosvenor Road onto Henley Road.

In the case of Mr and Mrs Evans we have already rehearsed at length the additional grounds on which they enjoy the right of way.

It is irrelevant whether the purchasers of the properties have been made aware of the private status of Grosvenor Road. The private status of Grosvenor Road does not preclude the existence of a right of way.

Recommendation

You suggest a meeting with our clients.

Our clients do not rule out a meeting in principle however there are two preconditions to such a meeting taking place. Firstly, you must answer the simple question raised in our very first letter of 16 February 2001 namely on what authority does the Association rely in locking the gates requiring the use of a key. Secondly, our clients require a written undertaking that the gates will immediately be unlocked pending the outcome of such a meeting.

Yours faithfully

Boyes Turner

Enclosure

4 READING BOROUGH COUNCIL

- a. Public right of way
- b. Condition of lawfulness for the Pinch Point
- c. RBC legal dept re legal advice and the Certificate of Lawfulness

a PUBLIC RIGHT OF WAY

19 MARCH 1997 LETTER

Chief Executive: Di Bligh



Civic Centre, Reading RG1 7TD
Switchboard ☎ 0118 939 0900
Document Exchange DX 40124 Reading
(Castle Street)
Fax 0118 958 9770
Minicom ☎ 0118 939 0700
e/s/llad:rrbyr2
Our reference: TSR.IF.STRAUS
Your reference:
Direct ☎ (0118) 9390671

19 March 1997

ROBINSON ROBERTS - Solicitors,
20a Peach Street,
Wokingham,
Berkshire,
RG40 1XG.

Your contact is: **SARA BURROWS, Technical Services.**

Dear Sir / Madam,

Re: 11a, Derby Road, Caversham, Reading.

Further to your letter dated 10 March 1997, concerning the above property which we have received today from Berkshire County Council. Please note the following to the queries raised.

- 1) As noted this road is identified as prospectively maintainable, at present there are no plans to adopt this road.
- 2) As part of being identified as prospectively maintainable, this road has public rights of way to cross and re-cross by foot, motor and horse-drawn carriages.
- 3) This council holds no records on the ownership of this land. This can be gained from the local land registry office at:

Gloucester District Land Registry,
Bruton Way,
Gloucester,
Gloucestershire,
GL1 1DQ

I hope this information clarifies the situation for both you and your client.

Yours faithfully,

A handwritten signature in black ink, appearing to read "SARA BURROWS", written over a horizontal line.

SARA BURROWS
Highways Officer,

On Feb 17 2020 RBC conformed that Derby Road is a private road and not maintainable by RBC



FAO - Gill Vooght
Derby Road Fund Association



Jacqueline Yates
Executive Director of Resources

Civic Offices, Bridge Street
Reading, RG1 2LU

☎ 0118 937 3787
DX 40124 Reading (Castle Street)

Our Ref: CMS/001108
Your Ref:

Direct: - ☎ 0118 93 72356
e mail: claire.sturgeon@reading.gov.uk

17 February, 2020

Your contact is: Claire Sturgeon, Legal Services

Dear Gill Vooght

RE: HIGHWAY STATUS OF DERBY ROAD

I write further to our e-mail correspondence last week. I can confirm that the length of Derby Road is not held on the Council's Highways' Register as highway maintainable at the public expense. I can confirm that Derby Road is a private road and not a public highway. This status is due to the road being gated once a year, to prevent highway rights from being acquired.

A private road is maintainable by the landowner rather the Highway Authority.

I understand that enquiries of the Gloucester Land Registry will be made by the Derby Road Fund Association in relation to the landownership.

I trust this letter is satisfactory,

Yours sincerely

This confirms two points made earlier namely that DR is a 'private road' and that its maintenance is not the responsibility of RBC.

b. Condition of lawfulness of the Pinch Point

LETTER APPLICATION NUMBER 182061 20TH March 2019

3. Register of title of the covenant ownership on behalf of the Derby Road Fund.



TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN & COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

CERTIFICATE OF LAWFULNESS FOR A PROPOSED USE OR DEVELOPMENT

To: Derby Road Fund
3a Derby Road,
Caversham
Reading
RG4 5HE

Application No: 182061
Application type: Certificate of Lawfulness -
Proposed Use or Development

Applicant: Derby Road Fund

The Reading Borough Council **HEREBY CERTIFY** that on 16/01/2019 the operations/matters described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged black on the attached plan would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason(s) set out below:

First Schedule: Application for a Lawful Development Certificate for implementation of a pinch point on a private road by the siting of a wooden planter with three reflective markers at the end

Second Schedule: Derby Road, Caversham, Reading, RG4 5HE

REASONS

1. The proposal has been assessed against the Town and Country Planning Act 1990 (as amended) and Class E, Part 9, Schedule 2 of the Town and Country Planning (General

SFB
Date: 20 March 2019

Head of Planning, Development
& Regulatory Services



Permitted Development) (England) Order 2015 (as amended) and it has been confirmed that the proposal would be lawful on the basis of the following submitted information:-

1. Photo of a wooden planter with three reflective markers at the end WD-200 Working drawings pinch point planter.
2. Tree Preservation order, Derby Road with 3.5m pinch point indicated Application letter from the Honorary Trustee of the Derby Road Fund Received 23 November 2019.
3. Register of title of the covenant ownership on behalf of the Derby Road Fund.
4. Proposed Block plan, location plan and position of the planters.

Received on 16th January 2019

Therefore the Local Planning Authority can issue the Applicant with a Certificate of Lawfulness for the proposed development

INFORMATIVES

1. The Applicant is advised to consider putting up signage indicating to users of the private road that there is a 'pinch point' with reduced access, potential periods of closure and to distinguish which direction has right of way through the planters.

Reason: to give advance warning to road users

2. The Applicant is advised to consider putting up reflective strips to improve visibility of the planting boxes to road users, due to their low height, their visibility may be restricted and difficult to see at night. You are also advised to consider yellow lines at each side of the wooden planters.

Reason: to protect road users and pedestrians and ensure the wooden planters are visible.

3. The Applicant is advised that the planters should be maintained regularly and not be left in a state of disrepair. The Council will not be responsible for the upkeep and maintenance of the planting boxes.

Reason: to maintain a presentable appearance for the area and to prevent injury or damage to any passing pedestrians or road users.

SFB
Date: 20 March 2019

Head of Planning, Development
& Regulatory Services

4. The Applicant is advised to seek advice and permission from the Fire Brigade, Emergency Services and waste collection services.

Reason: to protect the safety and security of the area and its local residents

5. The Applicant is advised to ensure that residents living in roads connected to Derby Road that are maintained by the local authority are still able to access their properties.

6. The Local Planning Authority has worked positively and proactively with the applicant to resolve relevant matters to allow permission to be granted within the prescribed target or agreed extended timescale for the decision to be issued.

SFB
Date: 20 March 2019


Head of Planning, Development
& Regulatory Services

c. RBC legal dept re legal advice and the Certificate of Lawfulness

1. Tavernier, Patricia

18 MARCH 2021

Good afternoon Mr Mullaney,

Wendi has asked me to assist her with this matter. I am in charge of seeing that a response is provided to you by our client department.

Please note that the Local Authority cannot provide legal advice to residents and we will answer your queries where we believe private legal advice to the Derby Road Fund isn't required.

I will let you know of any progress I have made with regards to your queries as soon as I can.

Happy for you to call me when required.

Kind regards

Patricia

Patricia Tavernier
Locum Highways Lawyer

Legal Services | Directorate of Resources

Following discussions with RBC Patricia Tavernier (Highways lawyer for Reading Borough Council) and Wendi Batteson (Planning Solicitor at Reading Borough Council),

2. Email 6 September 2021

*From: Tavernier, Patricia, Batteson, Wendi
To: John Mullaney
Sent: Mon, 6 Sep 2021 10:18
Subject: RE: Derby Road*

Thank you for your emails and apologise for the delay in responding back to you. Here are my responses to your queries.

1. Does the Certificate of Lawfulness for the Derby Road pinch point override the rights of way held by residents?

No. It is the opposite in fact. Rights of way usually trumps everything else and can only be extinguished by way of a legal order.

2. The corollary to this is that the Certificate of Lawfulness merely allowed for the construction of the PP, whilst its operation with regards to the rights of individual residents, remains the responsibility of DRFA. Is this correct?

Yes, that's correct. The Certificate is only for the implementation of the Pinch Point by the siting of a wooden planter with three reflective markers.

I hope this is helpful.

Kind regards

Patricia

*Patricia Tavernier
Locum Highways Lawyer
Legal Services | Directorate of Resources*

*Wendi Batteson
Planning Solicitor at Reading Borough Council*

Comment.

It should be noted that 'rights' by the public, which RBC clarified in a phone conversation, means those who live on or connected with DR, are not affected by the Certificate of Lawfulness and that this was confined to siting the two planters and their reflectors. It did not give authorisation for any barrier.

This reiterates the wording of the original Certificate as reproduced above

5 INSURANCE COVER

As it is clear that locking the gates, and so creating a barrier to a right of way, is unlawful, and as this could lead to charges, our insurers were approached with the following request

a. Correspondence with Ashburnham

John Mullaney

Ashburnham Insurance

Tony Fassenfelt

Policy number B 9707840003455

Derby Road Fund Association

Dear Mr Fassenfelt,

We would be grateful if you could help us in addressing the following issues.

Are you aware that three years ago the previous committee erected a lockable barrier about half-way along Derby Road? This was done following a planning application by the previous committee to Reading Reading Borough Council (RBC),

The previous committee also wrote to the Fire and Ambulance Services, as part of RBC's conditions. The current committee has followed this up and we can supply their written answers if required.

In summary the Fire Service wrote:

I have insufficient information on which to express a view as to whether the barrier/pinch point is lawful in terms of not being in contravention of planning legislation; nor not an unlawful obstruction of a vehicular public right of way – which may subsist notwithstanding that the street is maintained privately.

Even assuming the barrier is lawfully constructed it would not be possible to rule out, dependent on the circumstances of how, when, why, and by whom, the barrier came to be locked, potential offences under the Emergency Workers (Obstruction) Act 2006.

And the Ambulance Service wrote:

You mentioned further about ambulances having to double back, if they were unable to pass through the barrier and then getting caught in heavy traffic and delaying the response times. Hopefully, with the above being instigated with our mapping this would not happen; but if it did unfortunately we have no control over the traffic and would expect our ambulances to progress through it using blue lights and sirens safely so that we achieve an adequate response time.

We can supply full copies of the correspondence if required.

Both bodies also said that we should seek legal advice before writing to our insurers. In fact, legal advice was sought and this stated (Thorowgood p 19)

I understand that a practice has been adopted for some time of closing a set of gates at the end of Derby Road; and (more recently, to try and prevent it from being used as a "rat-run") of blocking a "pinchpoint" for a period. Neither of these expedients would be lawful. If it is a highway, to obstruct it in that way is an offence; if it isn't, it would still be an obstruction of the private right of way granted by the original conveyances.

Further legal comment, from a retired Circuit judge, was provided which indicates that the consequence of locking the gates could lead to actionable charges. It is unclear whether this would be against the Fund as a body, the Fund's committee, individual members of the fund who voted for or enacted a locking of the barrier, those who actually locked the barrier, or indeed all the members of the DRF Association who are not on the committee, namely the residents of the Derby Road and its offshoots. It should be noted that we all volunteers.

Should charges be brought, we should be grateful if you could advise whether our insurance with you covers any such eventuality and indemnifies whoever is charged.

In conclusion we wonder if this is an issue experienced by other private roads and, if so, what insurance if any such is available, would you recommend.

*Yours sincerely
John Mullaney
Co-chair DRF*

ASHBURNHAM REPLY

Tony Fassenfelt

To 'John Mullaney'
Our Ref: 00086114

Dear Mr Mullaney,

Re: Policy Type : Land Liability
Policy Number : B97078470003455
Insurance Company : Covea Insurance plc

Thank you for your email dated the 13th of April 2021 in respect to the pinch point. I can confirm that if charges were brought due to the gate being locked/ closed the insurance policy will not cover this eventuality.

*I have not come across this issue via any of our policyholders.
Yours sincerely,*

Tony Fassenfelt

b. Correspondence with ANSVAR

The same covering letter was sent to Ansvar, except the references were to their insurance policy

-----Original Message-----

From: Jemma Wyllis

To: 'John Mullaney' <

Sent: Mon, 26 Apr 2021 11:56

Subject: RE: Derby Road Fund Insurance.

Good Morning,

Thank you for your reply.

You will not be covered for any claim brought against you resulting in the gate open or closed.

I have been advised by Daniel at Ansvar (the insurers) that the insurance is for the administration side of the fundraising (raising funds for the upkeep of the road) and not the road itself or anything erected on the road.

Therefore this policy would cover Liabilities i.e an injury to any person volunteering or attending an event held on the road.

So in essence the answer to your question may lay with your private home insurances or a specialised private road insurance but not this policy.

I would also like to confirm this policy is not due to be renewed until November, as the previous email advised the urgency is due to the imminent policy renewal.

I have previously sent this email.

I hope this helps.

Kind Regards

Jemma

Jemma Wyllis

RECORD OF ADVICE TO COMMITTEES FROM 2018 TO 2020

The following is a summary of the record of the advice previous committees received regarding the lawfulness of a locking the pinch point

Since the start of the pandemic in spring 2020, the Derby Road Committee decided not to close or lock the barrier of the Pinch Point (PP). A new committee was elected in October 2020 which decided to continue this policy and moreover to look into the lawfulness of closing the PP. At the AGM in June 2020, a new committee was elected and the meeting agreed that the barrier would not be locked until further clarification of its lawfulness was completed.

This letter details the minuted record of advice the DRF committees received concerning the erection of the PP from April 2018 to Feb 2020. It includes the comment about the lawfulness of closing the PP from a solicitor that the committee had engaged.

RECORD OF EXTRACTS FROM MINUTES. The full minutes may be found on the Derby Road website.

Derby Road Fund AGM 4 April 2018

Gate closure. After discussion, the meeting agreed in principle to shut the gates in order to preserve the resident's right to maintain the road as a private road without a public right of way. Legal advice was that this needed to be done at least once every 20 years, but it was thought more practical to do this once a year. The date suggested was August Bank Holiday or Good Friday to avoid congestion at the entrance of Derby Road on weekdays. The feeling at the meeting was that this should be put to a vote. A majority vote in favour of the gate closure was returned.

The agreement was subject to the following points:

- Closure should not be on the same day as a Grosvenor Road closure
- The gate should be shut from dawn till dusk (6.00am till 8.00pm) and not manned for opening.
- A board could be placed at both the Grosvenor Road and Peppard Road end to warn drivers of the closure.
- Emergency services should be notified in advance of the closure.
- The closure should be publicised on the new website.
- Consultation with Grosvenor Road committee.

Installation of a pinch point in the road was proposed by DB and TW. This has been discussed for many years, about half way along DR with it been close for one or two days or even up to a week, as on Grosvenor Road. Some potential problems with this were raised: it would inconvenience Derby Road residents as well as the public; it could cause problems with lorries turning half way along the road, endangering pedestrians and causing damage to the verges; we may need to be notify RBC, the emergency services who may have objections. Nonetheless, the feeling at the meeting was that this should be put to a vote. A majority vote in favour of installing the pinch point was returned. The decision of location, design and notification would be left to the Committee*

* Factual note: The minutes record that DB made this proposal. This is factually incorrect and the Chair subsequently accepted this. The resident in fact opposed the PP.

Committee Meeting 18th April 2018 –

Following on from the AGM and members vote to agree to the closure of the Derby Road gates to preserve the Private Road status, a number of dates were put forward. It was agreed this should be on a Bank holiday to cause the minimum of disruption.

It was in the Deeds of IL that " Free and un-obstructed access should be available at all times".

SM reminded the meeting that members at the AGM had also voted for the installation of a pinch point. One similar to Grosvenor Road would not be at great expense constructed of timber. It was agreed this would be discussed in more detail at the next meeting together with location.

Committee Meeting 23rd August 2018 –

The following comments were made

We do not have the right to obstruct the road in any way however we can close the Peppard Road gate according to the deeds providing it is manned as was the gatehouse in the 19th Century. Any traffic can use the road as if it were a public road.

This is in part correct. We do not have the right to obstruct the road to residents detailed in some deeds, however as in the closure of the gates they may be closed but not locked. The use of a key operation of any description to gain passage is classed as an obstruction.

The full minutes of this meeting on this topic are as follows. It will be noted that although there is a difference of opinion concerning several points there is agreement, in point 3 and the reply, that **We do not have the right to obstruct the road in any way however we can close the Peppard Road gate according to the deeds providing it is manned as was the gatehouse in the 19th Century.**

Minutes of 23rd August 2018 committee meeting concerning the pinch point.

Legal Position of Derby Road with respect to the fund.

IL status update of Derby Road

1. Derby Road was built by the Berkshire Estate Company (now defunct) it is possible to resurrect the company however it might make the new owner liable for costs.

2. Unlike Grosvenor Road we are not a private road, we are an un-adopted road.

3. We do not have the right to obstruct the road in any way however we can close the Peppard Road gate according to the deeds providing it is manned as was the gatehouse in the 19th Century. Any traffic can use the road as if it were a public road.

4. Houses with Road frontages are liable to maintain the road, those without frontages do not have to pay, the fund would have to seek a court order to enforce those houses without frontages but use the Road.

5. What do we pay the Grosvenor Road fund for using their road? Accordingly plans to create a pinch point cannot take place as they are plainly illegal and lay us open to action. The plans to create a pinch point should [be] halted without delay. Also, it calls into question the legality of the speed bumps which could be challenged in court and should any car be damaged we could be liable.

In contrast to the above and IL's understanding.

1. This is documented in most home owner's deeds and is correct. It was agreed not to pursue the adoption of the Road as advised by XX in house solicitor not necessary to request payment of Road fund. See below points.

2. This is incorrect GV tabled a Freedom of Information Request to RBC listing all private roads in the district which includes Derby Road and Grosvenor Road.

3. This is in part correct. We do not have the right to obstruct the road to residents detailed in some deeds, however as in the closure of the gates they may be closed but not locked. The use of a key operation of any description to gain passage is classed as an obstruction.

However, with the agreement of all that live on Derby Road and Grosvenor Road in the past this has been wavered by an AGM vote and the gates in the past have been locked and unmanned. GV stated in the thirty years plus no objection had been received to the locking of the gates.

In addition, this is a requirement to keep the road private. This would also apply to the pinch point voted at the last AGM and contrary to the last statement the public have no right of way to Derby Road or Grosvenor Road.

4. This is also partly incorrect, houses with road frontages are liable to maintain the road to halfway, but the Positive Covenants on the land remain which dictate all who use the road are liable to contribute to its upkeep: Whom so ever owns the said land (not house or property fronting on to the road) and takes the benefit of the use of i.e.: Derby Road can be held responsible for their share of the upkeep of the road to halfway. Secondly there is case law to further reinforce this in: This is a 'positive' covenant a 'burden' and so a covenant which can run with the land ref to Halsall v Brizell. We would also bring to your attention a more recent case law in Goodman and others v Elwood [2013],

5. We pay Grosvenor Road nothing for the use of the road by way of mutual use i.e. Grosvenor Road have free use of Derby Road and vice versa.

It was there for accepted by all at the meeting to proceed with obtaining three tenders for the construction of the pinch point without further delay.

GV confirmed to the committee that no complainer or actions relating to the speed humps had been received in her thirty years of living on the road.

GV and DM had met with Xxxxxx Xxxx Chairman of Grosvenor Road and discussed a number of mutual topics and shared useful information. The coordination of the Road closures was thought to be a good thing by both parties.

DM to write to solicitors requesting a quotation for a letter of comfort confirming lawful rights to request payment following above details. Committee agreed a cost of approx. £600.00 for this service.

SM reiterated the insurance company he was with would not offer Liability Insurance to nonlimited companies.

IL to recheck with his own solicitors with regards the above. IL stated he would investigate the possibility of cover for the committee in respect of the pinch point and any other actions undertaken by the DRF committee relating to the road in the future.

Planning Permissions DM / GV to email RBC Planning Dep and Highways to check if planning permission would be required for the pinch point and confirm DR as private.

Planned Construction of Pinch Point

DM tabled a drawing of the pinch point for the committee's approval and to request quotations. DM reported cost would be in the order of less than £1000.00, which considering GV had saved double this in the lighting conversion to LED budget allocated at the AGM was considered satisfactory. IL offered left over material from the acoustic fence for its construction as a cost saving option. IL and SM to request Gary Pearse and Matt Carter for a quotation. One quotation received from Four Oaks Design £420.00.+ vat. Location at the fourth speed hump was proposed by DM and agreed by all the committee members present. The construction as detailed in meeting dated 25th July 2018. IL requested a Method Statement be drawn up with regards the pinch point. DM agreed to undertake this task.

Lawyer's letter 27th January 2020

Mr Thorowgood of Clifton Ingram solicitors wrote to the committee as follows

6. I understand that a practice has been adopted for some time of closing a set of gates at the end of Derby Road; and (more recently, to try and prevent it from being used as a "rat-run") of blocking a "pinchpoint" for a period. Neither of these expedients would be lawful. If it is a highway, to obstruct it in that way is an offence; if it isn't, it would still be an obstruction of the private right of way granted by the original conveyances.

Committee meeting 5th February 2020

X had produced the deed document of 58 Grosvenor Road (passed on to 33 Derby Road) which clearly stated that there was a Right of Way over DR (Ap. page 18)

AGM 26th June 2021

As recorded in the minutes of this AGM, the owner of 33 Derby Rd corrected the assertion that no minutes contained a reference to a right of way over Derby Road. This is the same as seen above.

DM presented a document by the Private Roads Association to the chairs. He went on to say that previous committees had looked into every other alternative proposed over the past 10–20 years and due to hesitancy or nervousness expressed by previous committees about being taken to court, nothing has been done with regard to the closure of Derby Road. He added that he had acquired 15–20 deeds of residents living on the road and that none of these mentioned a right of way.

BC disputed this and stated that his deeds state he has rights giving him access along the road.