From: Edward Wrench <>
Sent: 18 June 2020 15:00
To: Planning (SMDC)
Subject: Planning application SMD/2020/0290
Attachments: Letter to Rose Hill owners 26.5.16.pdf; ATT00001.htm

Categories:

Dear Sir/Madam,

I have today been alerted to the re-submission of plans for a proposed separate dwelling within the grounds of Rose Hill, Stoney Lane, Endon - planning application SMD/2020/0290.

In brief, the access lane via Clay Lake detailed in the access statement, is owned by myself and Eve Clowes (The Stables) and Alan and Jennifer Wallbanks (Hideaway).

Ms Walker's attention was drawn to the subject of ownership when it became clear of her original intention to sell the plot, complete with outline planning permission back in 2016, whilst nominating the "back lane" as access to the proposed new build.

Originally, Ms Walker & Mr Byworth were approached informally by myself but on their failure to acknowledge my correspondence, legal proceedings followed. To date, she has not challenged my solicitors findings by providing any evidence to the contrary. I attach the solicitors letter for your information but for clarity this states:-

1. We are the owners of the private driveway that adjoins Clay Lake (this is detailed on the title plans)

2. The land on which Rose Hill sits does not include any part of the private road adjoining Clay Lake (again detailed on the title plans)

3. Joanne Walker therefore does not own any freehold rights over and across the private driveway

4. Our solicitors have reviewed the Official Copy of Register Title for Rose Hill and this confirms that there is no right of way access granted across the private driveway.

As such, Ms Walker has no legal access off Clay Lake, to her property or any new dwelling, either to be occupied by herself or others.

Notwithstanding the documented access rights, which has been formally acknowledged by her legal representatives (and not disputed). In any event, the existing infrastructure would not support the anticipated volume of construction traffic, exceeding 3.5 tonnes.

Site access via Clay Lake is simply too narrow nor is the in situ surface sufficiently stable to ensure safe transit on and off site. Damage to the lane and hard boundaries notedly at The Stables and Hideaway would be inevitable.

With the aforementioned in mind, I strongly oppose this application and kindly ask you to consider my legal position during the evaluation process. I would anticipate legal/ viable site access being a fundamental requirement to the credibility of any planning application?

I would also like to bring to your attention that neither we or the owners of the Hideaway (as legal owners of the land detailed in the access statement) have received correspondence pertaining to Ms Walkers latest application. An explanation for this omission would be most appreciated and we'd ask that we are included in all future correspondence relating to this planning application.

To that end, we trust that Ms Walkers latest application will be promptly rejected and we eagerly await a suitable decision based on the objections brought forward.

Kindest Regards,
Ed Wrench and Eve Clowes
The Stables
Clay LakE
Endon
Stoke on Trent
ST9 9DD

Please ask for: Alex Finney
Email: alex@rjssolicitors.com
Our Reference: AF/Clowes
Date: 26 May 2016

Mr P B Byworth & Miss J Walker
Rose Hill
Stoney Lane
Endon
Stoke on Trent
Staffordshire
ST9 9BX

Dear Sirs,

Our Clients: Ms Clowes & Mr Wrench
Re: Redevelopment of Land at Rose Hill

We refer to our above named clients, the owners and occupiers of your neighbouring property, 'the Stables'.

We have been instructed to address our clients' concerns regarding your planned redevelopment of the land situate next to/forming part of Rose Hill. Consequently, please note our interest in this matter and ensure that all further relevant correspondence is addressed to our office.

We turn to address your reply to our clients' recent correspondence dated in relation to this matter.

Rights of Way

We understand from our clients' conversation with Hunters estate agents that you have indicated that you have a right of way over and across the private road which adjoins Clay Lake and provides access to a small selection of properties, including our clients' property. Regrettably, however, you have not disclosed or otherwise explained *the basis* upon which this right of way is said to exist.

We have therefore consulted the relevant Official Copies and Title Plans. Having done so, it is clear that:

1. To the extent demarked by the Title Plan (No: SF313600), our clients are the owners of the private road which adjoins Clay Lake;

2. By contrast, the land shown edged red by Title Plan (No: SF390619) (i.e. your property) does **not** include any part of the private road adjoining Clay Lake. Consequently, you clearly do not own any freehold rights over and across the private road.

In this proprietary context, the question therefore becomes: have you been *granted* or otherwise *acquired* a right of way over the private road adjoining Clay Lake?

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A) Granted Rights

Neither your letter nor our enquiries have disclosed any *expressly* granted right of way over and across the private road. Indeed, the Property Register of your property's Official Copy of Register of Title simply states [at para. 3]:

> *"The land has the benefit of the following rights granted by a Conveyance of the land in this title dated 21 March 1977.....*
>
> *"together with such right as the Vendor is able to grant to use the back road giving access to the rear of the premises hereby conveyed""*

Thus, your property does not have a clearly defined, express right of way over the "back road" (i.e. the private road adjoining Clay Lake). Rather, your property merely has the benefit of any right which John William Dennis Davies (i.e. the Vendor) was able to grant when he conveyed the property on 21st March 1977.

That being the case, we must therefore ask you to prove:

1) That the Vendor was actually *entitled* to grant a right of way over the "back road";

2) That the Vendor actually *did* grant such a right of way;

3) That such an express grant affects the whole of the private road adjoining Clay Lake.

Absent positive answers to these enquiries, we would suggest that your property enjoys an entirely hollow express right, namely a right to an undefined and non-granted right of way.

B) Acquired Rights

We accept that, subject to certain common law and/or equitable pre-conditions, easements may be acquired by: (1) use "as or right", and/or; (2) necessity.

However, we consider that the latter basis of acquiring a right of way must surely fail. After all, your property does not "need" access via the private road adjoining Clay Lake. Instead, your property may be - and commonly is and has been - accessed via its frontage to Stoney Lane.

We also question whether you (and/or your predecessors in title) have acquired an easement by use of the private road "as of right". However, we must accept that such a claim is, ultimately, for you to raise and prove.

Accordingly, we take this opportunity to invite you to confirm whether or not your claimed right of way over the private road is premised upon an acquisition by prescription. If so, we invite you to detail and evidence that claim. Our clients will then consider the same, doing so with a view to offering their consent to your registration of the claimed easement.

Of course, it must follow that - if you cannot prove your claim to a right of way over the private road - any access to and/or use of our clients' property will be an actionable trespass of land. To that end, our clients duly reserve their rights.

We look forward to hearing from you.

Yours faithfully



RJS Solicitors