

--- On Sun, 23/2/14, Jonathan Daymond [REDACTED] wrote:

> From: Jonathan Daymond [REDACTED]
> Subject: Right of Way over Old Mill Lane; RHE/CW/H00101-11

[REDACTED]
> Date: Sunday, 23 February, 2014, 20:19

>

> Dear Richard

>

> Thank you for providing my wife with the attachments to your email,
> sent to Anita Gardner on 5 February 2014, which was unfortunately not
> forwarded to us. We have therefore only just had an opportunity to
> review these.

>

> I note that the application has been refused but feel compelled to

> respond, and request that this response is added to the file, due to
 > the clear inaccuracies and omissions the email contains.
 >
 > Taking your points in turn, I would comment as follows:
 >
 > Point 1 - "we own the majority of Old Mill Lane and rights of way
 > would therefore be required in order to access the site and build the
 > new dwelling"
 >
 > (a) I agree that this is not a planning matter of itself but this is a
 > matter that your clients, or any subsequent owners, would need to
 > resolve prior to any building works.
 >
 > (b) Dealing with the title documents referenced, which we had in fact
 > previously reviewed, I would comment on your points as follows:
 >
 > • Title Number SX44491 - This is our title document which, as you
 > state, indicates that the large section of Old Mill Lane that we own
 > is subject to rights of way. This cannot, however, be taken to mean
 > that everyone has a right of way over the land in order to do whatever
 > they wish, which would effectively render the lane a public highway.
 > Furthermore, a newly built property would be a new dwelling which does
 > not have any rights of way over our land to either construct the house
 > or access it.
 >
 > • Title Number WSX201784 - This is the title to The Old House and
 > does contain rights of way (deriving from the
 > 1959 conveyance) over the lane "lying to the East of the said
 > garage....as have been heretofore enjoyed". Your clients at The Old
 > House only drive over the very end of the lane immediately to the
 > east/north of the garage, which does not form part of the lane that we
 > own. Your clients do not drive vehicles over our land to enter the
 > rear of their garden as there is no such access and there is no right
 > of way to do so. Furthermore, as pointed out above, if a new house was
 > built, this would be a new dwelling with no rights of way "heretofore
 > enjoyed" over the lane whatsoever.
 >
 > Point 2 - "the section of wall between the site and Old Mill Lane is a
 > party wall" and the proposed scheme would include "knocking down a
 > section of the flint wall that we part own"
 >
 >
 > (a) Part (b) of the definition of "party wall" under Section
 > 20 of the Party Wall Act 1996 also refers to "so much of a wall not
 > being a wall [...which forms part of a building and stands on lands of
 > different owners...] as separates buildings belonging to different
 > owners". Since our title includes the majority of Old Mill Lane as
 > well as the plot containing our house at the end of the lane, the said
 > wall does in fact separate buildings belonging to different owners as
 > this is the boundary which separates the two pieces of land.
 >
 > Even if this were not the case, the wall clearly constitutes a "party
 > fence wall" which is defined under the same Section as being "a wall
 > (not being part of a building) which stands on lands of different
 > owners and is used or constructed to be used for separating such
 > adjoining lands". This is clearly the case as the wall separates the

> garden of The Old House from the land that we own under title number
> SX44491.
> The fact that "the wall in question does not form part of any building
> whatsoever" is therefore irrelevant.
>
> (b) The flint wall in question does have inward facing 'T'
> marks along the inside boundary of the plan relating to the conveyance
> of 1959 to which you refer. As you will know, however, such 'T' marks
> have no special force or meaning.
> Since ownership of the wall is not specifically referred to under the
> title registers of either title number WSX201784 or SX44491, and the
> 'T' marks only appear in the 1959 conveyance plan, the 'T' marks carry
> no weight and will be disregarded. The flint wall in question is
> therefore a jointly owned wall which your clients have no right to
> simply demolish and traverse through without our consent.
>
> As can be seen above, the statement that my wife's email of
> 12 January has no foundation or basis whatsoever is therefore clearly
> inaccurate. It is also disappointing to note the manner in which your
> clients have thus far progressed this matter.
>
> Please note that, if planning permission is ever obtained for the plot
> in question and your clients, or any subsequent owners, have not
> obtained our formal consent I will ensure that our rights as owners of
> the majority of Old Mill Lane and joint owners of the flint wall are
> fully enforced.
>
> Kind regards
> Jonathan Daymond
> Solicitor
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