

# Warrington Local Plan Examination

## Hearing Session Note

### Action 16

Matter 6e - Agenda Item 5 (Physical or other constraints on development)

Copy of 2007 Deed provided by Site Promoter - Liberty

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20th September 2022



## **Introduction**

- 1.1 This note has been prepared to address the point, raised in respect of Matter 6e, agenda item 5 by the Weaste Lane Area Residents Association, regarding restrictive covenants being in place on the land that would prevent its development for residential development.

## **2. Information Provided**

- 2.1 The Deed referred to by Mr Woodford from Avison Young (acting for the site promoter Liberty Properties) is attached.
- 2.2 The key part to highlight is paragraph 4.2 in the deed dated 16<sup>th</sup> November 2007.
- 2.3 In addition a copy of the site promoters 2017 master plan is attached, which shows the areas covered by the restriction as either open land or limited development respecting the covenant.

Duplicate

21

DATED 14<sup>th</sup> December 1980

THOMAS GRAY HILL      PETER MACE HILL

and ANN GRAY STUBBS

and

ANN GRAY STUBBS and JOHN ALFRED STUBBS

Duplicate/

C O N V E Y A N C E

of Thelwall Heys Grappenhall  
Warrington Cheshire

Alexander, Tatham & Co  
Solicitors  
MANCHESTER      M2 3DB

SWG 03

We certify that this is a true copy  
of the original

Bowcock Cueden LP 25-5-07  
Bowcock Cueden, South Cheshire House  
Manor Road, Nantwich CW5 5LX

## Appendix 2 Restrictive Covenants related to Thelwall Heys

Fourth Schedule hereto the Trustees are between them entitled to the whole beneficial interest in the property described in the second Schedule hereto

It has been agreed between the Beneficiary Mr Stubbs and the Trustees that upon the occasion of this Conveyance the covenants and easements should be entered into granted and reserved as hereinafter appears

NOW THIS CONVEYANCE WITNESSETH as follows:-

1. THE Trustees as trustees hereby convey unto the Beneficiary and Mr Stubbs All That the property described in the first Schedule hereto TOGETHER WITH the easements and rights specified in the fifth Schedule hereto BUT EXCEPT AND RESERVING unto the Trustees in fee simple for the benefit of the property described in the second Schedule hereto the easements and rights specified in the sixth Schedule hereto TO HOLD unto the Beneficiary and Mr Stubbs in fee simple as beneficial tenants in common in equal shares

2. IT is hereby declared that the Beneficiary and Mr Stubbs or other the Trustees for the time being of this Deed shall have full power until the expiration of a period of eighty years from the date hereof to mortgage charge lease or otherwise dispose of all or any part of the property described in the first Schedule hereto

C1. 3. THE Trustees to the intent that the burden of this covenant may run with and bind the property described in the second Schedule hereto and every part thereof and to the intent that the benefit thereof may be annexed to and run with the property described in the first Schedule hereto and every part thereof hereby covenant jointly and severally:

- (i) Not to construct any buildings on the land shown

hatched blue on the said plan annexed hereto  
11) Not to construct any buildings on the land shown  
hatched orange on the said plan other than agricul-  
tural buildings or residential buildings and in the  
latter case of a density of not more than four  
residential units per acre

Provided Always that none of the Trustees nor any of their  
successors in title shall be personally liable for any breach  
of such stipulations which may occur in respect of the property  
described in the second Schedule hereto or any part thereof (as  
the case may be) after he or she shall have ceased to have any  
interest therein respectively and Provided Also that if at any  
time hereafter the dwellinghouse Thelwall Heys referred to in  
the first Schedule hereto shall cease to be used as a single  
private residence this covenant shall cease permanently to have  
effect

By THE walls hedges gates and fences forming the boundaries  
between the properties described in the first and second  
Schedules hereto shall henceforth be the property of the  
Beneficiary and Mr Stubbs and their successors in title to the  
property described in the first Schedule hereto and the Benef-  
iciary and Mr Stubbs hereby jointly and severally covenant with  
the Trustees and their successors in title the owners for the  
time being of the property described in the second Schedule  
hereto and such parts thereof as adjoin the property described  
in the first Schedule hereto for the benefit of the property  
described in the said second Schedule that they and their  
successors in title the owners for the time being of the  
property described in the said first Schedule will henceforth  
keep the said walls hedges gates and fences in good repair and  
condition and stockproof and will replant such hedges and

Title number CH527089

## C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (08.10.2004) A Conveyance of Thelwall Heys dated 1 December 1980 made between (1) Thomas Gray Hill, Peter Mace Hill and Ann Gray Stubbs (Trustees) and (2) Ann Gray Stubbs and John Alfred Stubbs (Beneficiaries) contains the following covenants by the Vendors:-

"The Trustees to the intent that the burden of this covenant may run with and bind the property described in the second Schedule hereto and every part thereof and to the intent that the benefit thereof may be annexed to and run with the property described in the first Schedule hereto and every part thereof hereby covenant jointly and severally:"

"(ii) Not to construct any buildings on the land shown hatched orange on the said plan other than agricultural buildings or residential buildings and in the later case of a density of not more than four residential units per acre

Provided Always that none of the Trustees nor any of their successors in title shall be personally liable for any breach of such stipulations which may occur in respect of the property described in the second Schedule hereto or any part thereof (as the case may be) after he or she shall have ceased to have any interest therein respectively and Provided Also that if at any time hereafter the dwellinghouse Thelwall Heys referred to in the first Schedule hereto shall cease to be used as a single private residence this covenant shall cease permanently to have effect"

NOTE:- The land in this title comprises part of the "property described in the second Schedule" and also the land hatched orange referred to.

- 2 (08.10.2004) The land is subject to the following rights granted by the Conveyance dated 1 December 1980 referred to above:-

"TOGETHER WITH the easements and rights specified in the Fifth Schedule hereto"

### "THE FIFTH SCHEDULE

(Easements and rights granted by this Conveyance)"

"(iii) The exclusive right to use for all purposes connected with present and every future use of the said property described in the first Schedule hereto the septic tank which is now on the property described in the second Schedule hereto subject to and conditional upon maintaining in good repair and condition the said septic tank and all sewers drains and pipes connecting therewith

(iv) The right (in common as aforesaid) to use for all purposes connected with the present and every future use of the property described in the first Schedule hereto all drains watercourses pipes cables wires or other channels or conductors now or hereafter during a period of 80 years from the date hereof laid in under or over the property described in the Second Schedule hereto with power upon reasonable notice to enter at any time or times during the said period upon the property described in the second Schedule hereto for the purpose of tying in or making connections with the said drains watercourses pipes cables wires channels or conductors subject to and conditional upon making good any damage caused in exercise of such power of entry and subject also to and conditional upon payment of a due proportion determined according to use of the cost of maintaining repairing and renewing all such drains watercourses pipes cables wires channels or conductors such proportion in the absence of agreement to be determined by a surveyor nominated by the President for the time being of the Manchester Law Society or appointed in such other manner as the parties may agree such surveyor to act as an expert and not as an arbitrator Provided That this right shall not be exercised in such manner as to cause such drains watercourses pipes cables wires or other channels or conductors to be overloaded and this question shall in the event of dispute be determined in the absence of a ruling by the

The land has the benefit of the rights granted by but is subject to the rights reserved by a Transfer dated 16<sup>th</sup> August 2004 between Peter Mace Hill and Ann Gray Stubbs and Eric Robinson. This Transfer also contains a provision as to light or air.

**B: Proprietorship Register:**

Details of the existing registered proprietor will be substituted by the buyers details upon conclusion of the transaction and completion of registration.

The price paid for the land in CH527089 on 16<sup>th</sup> August 2004 was £55,000. There is a Certificate needed confirming that the provision of the conveyance 16<sup>th</sup> August 2004 have been complied with.

**C: Charges Register:**

In the Charges Register there is a Conveyance dated 1<sup>st</sup> December 1980 between Thomas Gray Hill, Peter Mace Hill and Ann Gray Stubbs (1) Ann Gray Stubbs and John Alfred Stubbs which contains a covenant not to construct any buildings on the land hatched orange on the plan other than agricultural buildings or residential buildings and in the later case of a density of not more than four residential units per acre this covenant is for the benefit of Thelwall Heys until it ceases to be a single private residence. The land in this Title is subject to such covenant.

The Conveyance 1<sup>st</sup> December 1980 was made together with easements and rights to use all drains watercourse pipes cable wires or other channels or conductions will power to enter for the purpose of lying in or making connections upon reasonable notice subject to and conditional upon making good all damage and payment of a due proportion according to the use of the cost of maintaining repairing and renewal all such drains watercourses pipes cables wires channels or conductions. There is an Arbitration provision in respect of any dispute or disagreement.

The Transfer dated 16<sup>th</sup> August 2004 contains restrictive covenants to erect and maintain stock proof boundaries marked with a 'T' mark on Plan 1: not to use the existing farm buildings other than for agricultural or commercial or not more than two dwelling houses; not to use the stock yard other than for agricultural or commercial purposes and not more than two private dwelling houses, to be crated without the prior written consent under the terms of a Deed dated 16<sup>th</sup> August 2004 such consent not to be unreasonable withheld or delayed.

The Transfer grants rights of way, services and other easements for the benefit of the Property and reserves easements for the benefit of the retained land and contains agreements and declarations between the property and the retained land.

The right of way requires payment of 1/66 of the cost of maintaining and keeping the roadway in repair with Arbitration provisions in the case of dispute. These



DATED 16th November 2007

**DEED**

**MARK ERNEST HOWARTH and JULIE ANN HOWARTH**

and

**ANN GRAY STUBBS and JOHN ALFRED STUBBS**

and

**PETER MACE HILL and ANN GRAY STUBBS**

Bowcock Cuerden LLP  
South Cheshire House  
Manor Road  
Nantwich  
CW5 5LX

E:\Documents\Clients\Hill & Others\H3209-08 Boundary Dispute\Documents\Deed-12.07.07.doc

"WE HEREBY CERTIFY THIS  
TO BE A TRUE COPY OF THE  
ORIGINAL" *Rowlands*  
ROWLANDS  
SOLICITORS

A DEED DATED

16th November

2007

**PARTIES :**

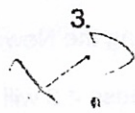
1. The Howarths : MARK ERNEST HOWARTH and JULIE ANN HOWARTH
2. The Stubbs : ANN GRAY STUBBS and JOHN ALFRED STUBBS
3. The Owners : PETER MACE HILL and ANN GRAY STUBBS

**DEFINITIONS :**

1. The House : Thelwall Heys, Cliff Lane, Grappenhall, Warrington, Cheshire registered with Absolute Title at HM Land Registry under Title Numbers CH416081 and CH416082 shaded yellow on Plan 1.
2. The Estate : land at Thelwall Heys, Grappenhall, Warrington, Cheshire shaded yellow on Plan 1.
- 3.1 The Driveway : shaded brown on Plan 1.
- 3.2 The Blue Drive : shaded blue on Plan 2. X
- 3.3 The Red Drive : shaded red on Plan 2.
4. The New Boundary : shown by a red line on Plan 3.
5. The Pink Land : shaded pink on Plan 4.
6. The Orange Land : shaded orange on Plan 4.
7. The Conveyance : dated 01 December 1980 made between Thomas Gray Hill, Peter Mace Hill and Ann Gray Stubbs (1) and the Stubbs (2).
8. The Transfers : two transfers both dated 07 July 1997 and made between the Stubbs (1) and the Howarths (2).
9. The Restrictive Covenants : contained in clause 3 of the Conveyance.
10. Plans 1, 2, 3 and 4 : the plans attached to this Deed and numbered accordingly.

**BACKGROUND :**

1. The Conveyance :
  - 1.1 transferred to the Stubbs the :
    - 1.1.1 House; and
    - 1.1.2 Blue Drive.
  - 1.2 created the Restrictive Covenants and gave the Stubbs the benefit of them.
  - 1.3 granted the Stubbs a right of way over the Red Drive.

- 1.4 required the Stubbs to contribute one-third of the costs of maintaining and repairing the Red Drive.
- 2. **The Transfers :**
  - 2.1 passed to the Howarths the :
    - 2.1.1 benefit of the :
      - (a) Stubbs' right of way over the Red Drive; and
      - (b) **Restrictive Covenants.**
    - 2.1.2 Stubbs' obligation to contribute one-third of the cost of maintaining and repairing the Red Drive so that the Stubbs and the Howarths became jointly liable to contribute one-third of the cost of maintaining and repairing the Red Drive.
  - 2.2 granted the Howarths a right of way over the Blue Drive.
  - 2.3 required the Stubbs and the Howarths to contribute "a proportionate part according to user" of the cost of maintaining and repairing the Blue Drive.
- 3.  The Howarths have previously agreed with the Owners that the Howarths will pay one-third of the cost of repairing and maintaining the Driveway and that the Owners and their successors in title to the Estate will pay the remaining two-thirds.
- 4. The Pink Land is currently vested in the Owners.
- 5. The Orange Land is currently vested in the Stubbs.
- 6. The House is currently vested in the Howarths.
- 7. The Parties have agreed to enter into this Deed to correct inaccuracies in the Transfers by :
  - 7.1 codifying the position about maintenance of the Driveway.
  - 7.2 transferring the Pink Land and the Orange Land to the Howarths.
  - 7.3 arranging for the erection of a fence and railings along the New Boundary.
  - 7.4 effecting a release of the Restrictive Covenants.

**OPERATIVE :**

- 1. The Owners and their successors in title to the Estate will :
  - 1.1 carry out any work on the Driveway which becomes necessary to keep it in a reasonable state of repair and condition.

- 1.2 not carry out any work under 1.1 without first obtaining the Howarths' approval of the estimated costs such approval not to be unreasonably withheld.
2. The Owners will today transfer the Pink Land to the Howarths by completing a Transfer in the form attached at Schedule 1.
3. The Stubbs will today transfer the Orange Land to the Howarths by completing a Transfer in the form attached at Schedule 2.
4. The Howarths will :
  - 4.1 on completion of any work required under 1.1, pay to the Owners one-third of the cost of the work carried out.
  - 4.2 in consideration of 1, 2 and 3 above, release the Owners and their successors in title to the Estate and each and every part of it from the Restrictive Covenants so far as they are able and so far as the benefit attaches to the House.
  - 4.3 at their own expense and as soon as reasonably practicable after completion of the Transfers in 2 and 3 above erect a new barbed wire fence and railings along the New Boundary provided always that the fence and railings referred to in this clause 4.3 will :
    - 4.3.1 be of a similar size and type to the fence and railings which are currently in place along the House's existing boundaries.
    - 4.3.2 when they have been completed will become the Howarths' property and be repairable and maintainable accordingly.
5. All work required to be carried out under this Deed must be carried out to a reasonable standard to be agreed between the parties or in default of such agreement as conclusively resolved by an independent expert to be appointed (if the parties cannot agree on his identity) at the incidence of any of them by the then president of the Royal Institute of Chartered Surveyors and whose fees and expenses are to be borne as the expert directs.

Signed as a Deed by

MARK ERNEST HOWARTH

MEH x 

In the presence of :

Witness: Signature:

x



Address

x

34 at St Manchester

Occupation:

x

Solicitor

(Leo J Byrne)

Signed as a Deed by  
JULIE ANN HOWARTH

JAH x ~~JAN~~ JAN

In the presence of:

~~Witness~~ Signature

P Berke

Address x 27. DORSET AVE Cheale Hill  
STOCKPORT SK 8 5Q

Occupation: \* THERMAL ENGINEER

Signed as a Deed by

ANN GRAY STUBBS

AGSX

Ann G. Stubbs

In the presence of:

~~Witness~~ Signature: x

M Beard

Address v

29 Field Lane Appleton,  
Warrington, WA4 5 J

Occupation: x

Accountant

Signed as a Deed by

JOHN ALFRED STUBBS

JAS x

p.p. John A. Stubbs

In the presence of:

~~Witness~~ Signature: x

Ann G. Stubbs under  
Enduring Power of Attorney

Address v

M Beard  
29 Field Lane, Appleton  
Warrington, WA4 5 J R

Occupation: v

Accountant

Signed as a Deed by

PETER MACE HILL

PMH x

[Signature]

In the presence of:

~~Witness~~ Signature: x

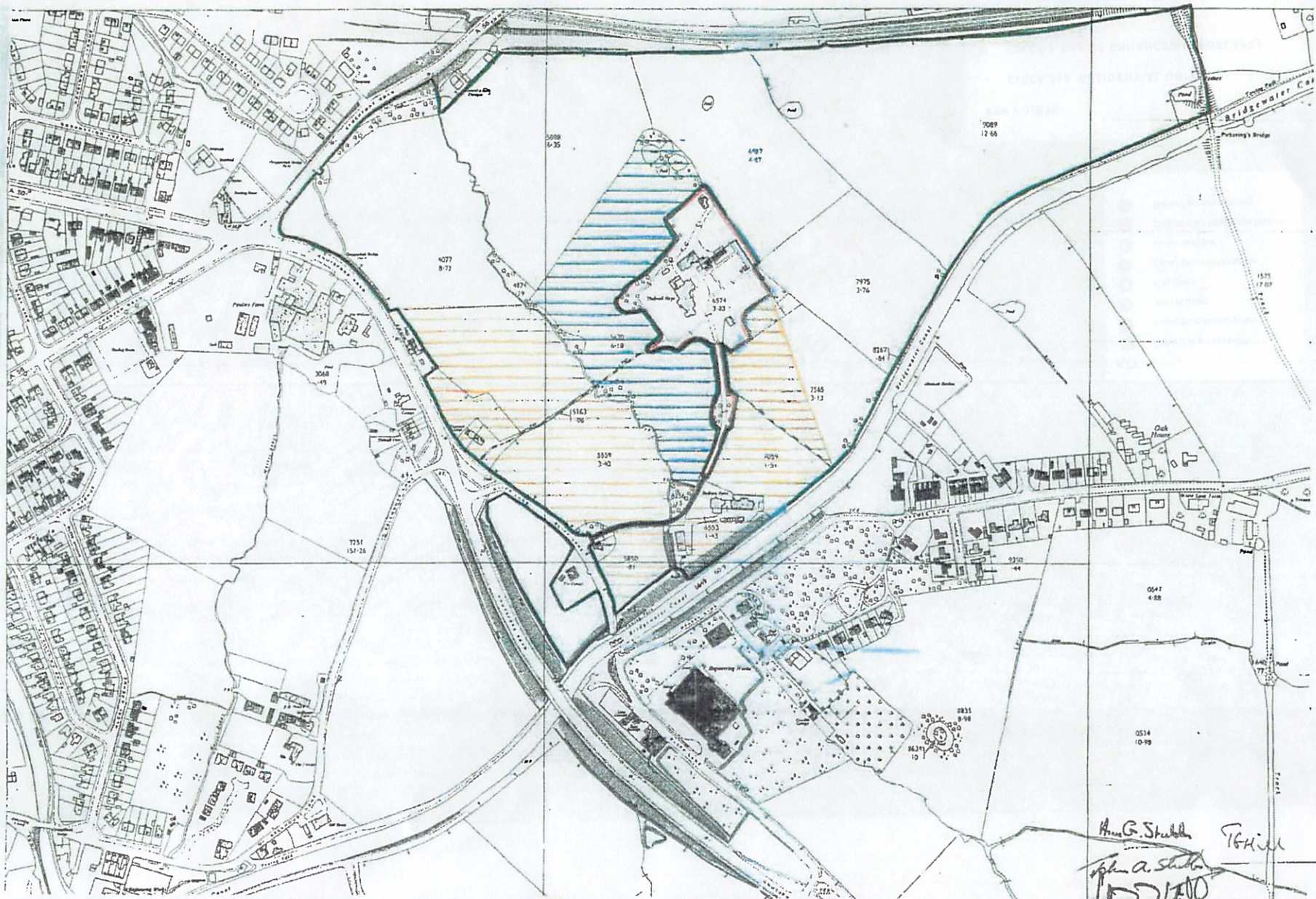
[Signature] E WILLIAMS

Address x

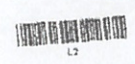
APPLE COTTAGE, WELL LANE, KUTLEY  
TOWN, PRESTBURY SK10 4DZ

Occupation: x

SOLICITOR



H. G. Stubb  
 for a sketch  
 1876



## 5.7 Illustrative masterplan

