

This note has been prepared for the benefit of officers of The Borough Council of Calderdale only and any third party wishing to rely upon its contents should first obtain independent specialist advice.

In the following advice:

- the 'Development Land' is the land shown edged red on Site Plan reference LP0397 ("the Site Plan");
- the 'Access Land' is the land shown coloured green on the attached MapSearch Plan;
- the 'Yellow Land' is shown coloured yellow on the plan appended to the Deed of Partition dated 1st June 1921 and the plan appended to the Conveyance dated 4th March 1921;
- the 'Blue Land' is shown coloured blue on the plan appended to the Deed of Partition dated 1st June 1921 and the plan appended to the Conveyance dated 4th March 1921;

The Access Land

The freehold of the Access Land is registered under title WYK618761 and according to the registers for that title it is owned by Safdar Hussain and Moti O'Neil Jyoti Stephens.

There are rights including access rights that have been reserved over the Access Land for the benefit of the land coloured yellow on the title plan for WYK618761 and rights including access rights have also been granted over the Access Land for the four parcels of land edged green and numbered WYK635871, WYK635873, WYK635876 and WYK 644906 on the title plan for title WYK618761. None of these rights benefit the Development Land.

Entry C1 of the registers of title WYK618761 states that the Access Land is subject to a right of way benefitting [land that is not precisely identified] as follows:-

'a right of way over such part of the occupation road to the east of the [not defined land]for the purpose of access to and egress from [the undefined land] to and from Savile Park Road'.

The land that benefits from this right is not defined but would have been land retained by the vendor when the Access Land was conveyed on 1st December 1960. Unless the Land Registry has incorrectly set out the terms of the right the land that benefits from it must have been located to the west of the Access Land although that raises the question as to how land located to the west of the Access Land could gain access over the Access Land to Savile Park Road when Savile Park Road is itself located to the west of the Access Land.

Save for the rather cryptic right referred to at C1 above there are no other rights referred to in the registers of title for the Access Land that may be at all relevant to the Development Land.

The Council's Highways Department should be consulted to check whether the Access Land extends to the public highway to ensure that any rights that may benefit the Development Land over the Access Land that are identified in the following sections of this advice note do not fall short of the highway.

The Development Land

The Development Land is made up of three separate parcels of land:

- 1) Freehold land registered under title WYK373096
- 2) Freehold land registered under title YY90561
- 3) Unregistered land

The MapSearch shows the two registered titles coloured pink and separately numbered; the unregistered land is shown shaded grey.

Title WYK373096

According to the registers for this title the freehold is owned by Graham Arthur Holdsworth and Sandra Holdsworth.

Please note that the land registered under this title is greater than the area shown edged red on the Site Plan as it extends further south than the boundary on the Site Plan. This may be relevant when considering the rights set out in the 1921 Deed of Partition that relate to the Yellow Land and to the Blue Land.

(In addition to the official copy of the Deed of Partition I have attached an official copy of the plan that is referred to in entry A3 of the registers for title WYK373096 and although it has been marked 'Official Copy (Deed of partition) 01.06.1921) by the Land Registry it would appear to be from the Conveyance dated 4th March 1921 referred to in the Deed of Partition rather than from the Deed of Partition itself. The plan ("the Conveyance Plan") more clearly identifies the Yellow Land and Blue Land than the plan appended to the Deed of Partition where the Blue Land is so feint that it is difficult to make out).

The land in this title has the benefit of rights contained in the Deed of Partition dated 1st June 1921. These rights are set out in entry A2 of the registers of title but I have set out what I believe to be the relevant access rights below:

- *Right to pass and repass with or without horses carts and other vehicles over any streets, roads or passages then or thereafter to be made in or upon any part of the said premises containing 2 acres or thereabouts belonging to the said Wilson Richardson and Ernest Richardson between the premises conveyed and Savile Park Road*

(The land comprising 2 acres isn't defined but it is presumably the area shown on the plan appended to the Deed of Partition between Queens Club and Savile Park Road and marked 'W & E Richardson' – this right would not therefore affect the Access Land itself but would appear to apply to the land located immediately to the south of the Access Land).

- *Right to pass and repass with or without horses carts and other vehicles over and along the strip of land shown coloured blue on the Deed of Partition plan and on the Conveyance Plan (shown as part of the land between dotted black lines with the remainder of the land within those lines coloured yellow).*

(This is the land referred to as the Blue Land in this advice)

- *Right to pass and repass with or without horses carts and other vehicles over and along the strip of land coloured yellow on the Deed of Partition plan and of the Conveyance Plan so far as such strip is coterminous with the plots of the other owners of the yellow strip.*

(This is the land referred to as the Yellow Land in this advice. I believe this provision means that the owner of each of the lots shown on the Deed of Partition plan can exercise the rights of access over the parts of the Yellow Land that are owned by the owners of the other lots. Looking at the Deed of Partition plan it would appear that the Access Land would fall within lots numbered 4, 5 and 6 and would include the Yellow Land although perhaps not the Blue Land. Unfortunately, it is difficult to match up the lots shown on the 1921 Deed of Partition plan with the land that now forms the Access Land).

- *Where the owners in severalty of the several lots or any of them made a road on the land shown coloured yellow on the Deed of Partition plan and Conveyance Plan [the Yellow Land] they would have the right to include in that road the Blue Land.*

(There is a reciprocal right for the owner of the Blue Land that if he made a road on the Blue Land he would be permitted to include the Yellow Land in the road. The vendor of the plots of land also reserved a right for the benefit of its retained land to use the Yellow Land for access purposes).

It would appear that with regard to the rights set out in the registers of title for title WYK373096 the ones that are going to be relevant to the question of access over the Access Land will be those set out as bullet points above. I will deal with those rights in more detail below.

Title YY90561

According to the registers for this title the freehold is owned by Ian Taylor and Andrew David Bateman.

Please note that as with the land registered under title WYK373096 the land registered under this title is greater than the area shown edged red on the Site Plan as it extends further south than the boundary on the Site Plan. Again, as with the land registered under title WYK373096, this may be relevant when considering the rights set out in the 1921 Deed of Partition that relate to Yellow Land and the Blue Land .

As is the case with the land registered under title WYK373096 the land in this title has the benefit of legal easements granted by the Deed of Partition dated 1st June 1921 (please see previous section dealing with title WYK373096). The relevant rights from the 1921 Deed of Partition are dealt with in more detail in the following section.

1921 Deed of Partition

It is difficult to relate the lots shown on the Deed of Partition plan with the current layout of the land but it appears that lot 1 is the unregistered part of the Development Land, lot 2 is the part of the Development Land registered under title YY90561 and lot 3 is the part of the Development Land registered under title WYK373096. The title plans for WYK373096 and YY90561 also appear to extend southwards sufficiently to include not only the corresponding areas of lots 2 and 3 that include the Yellow Land but also the corresponding areas of the Blue Land. However, the Development Land (ie the area shown edged red on the Site Plan) appears to exclude the Yellow Land and Blue Land.

I would conclude from the rights set out in the bullet points in the preceding section that the owners of the individual lots shown on the Deed of Partition plan would have a right of access with or without horses carts and other vehicles over the Blue Land and also on the parts of the Yellow Land that formed part of the other lots.

It is tricker to identify which lots shown on the Deed of Partition plan comprise the Access Land but it would appear that it is made up of part of lots 4 and 5 (and possibly part of lot 6). Again, it is difficult to identify which parts of the Yellow Land or Blue Land are included in the Access Land. I would suggest that the Yellow Land would extend for the entire length of the Access Land but perhaps the Blue Land is wholly excluded from the Access Land (it is noticeable that the southern boundary of titles WYK373096 and YY90561 extend further south than does the boundary for title WYK618761 – this may be clearer to see on the MapSearch plan).

Scope of an Easement

With regard to the references to ‘horses carts and other vehicles’ in the rights of access over the Yellow Land and the Blue Land referred to in the Deed of Partition there is case law to the effect that reference to carts and animals does not infer simply an agricultural user as commonly those uses were illustrative of wheeled vehicles of their day and so motor cars and suchlike would be permitted now (*Kain v Norfolk* 1949). Accordingly, the references to ‘horses carts and other vehicles’ in the 1921 Deed of Partition would extend to motor vehicles today.

Whilst the case law appears to be clear on the question of the modes of transport that would be able to use the Yellow Land and Blue Land it is less certain regarding the type of use such access rights could be put to where the nature or use of the land benefitting from the rights of access has changed (or is to change). The authorities suggest that case law can be contradictory and that each case should be considered on its own merits taking into consideration the terms of the original grant and the surrounding circumstances when the grant was made. In the circumstances it is recommended that counsel’s opinion should be obtained to confirm whether the Development Land would be able to exercise the rights of access over the Access Land that would be required for any proposed development of the Development Land.