

Peter Tavy Parish Council Meeting of 8 November 2023 - Statement by Mr V A Nail

Having read the draft minutes of the 25 October Parish Council meeting, I share the view of the Council that a line should be drawn under our adverse possession claim. This matter has consumed too much of both the Council's time and our own, over a nine-month period, to no great purpose.

However, I feel that some of the recent comments by councillors in relation to the matter should not stand unchallenged in the public record. As you are aware **all matters set down in the public record should be properly recorded so that matters of fact are presented as fact and matters of opinion are expressed as such and are not stated to be matters of fact.** It is important that members of the public are not misled and are presented with supportable facts rather than conjecture.

This is a basic requirement at all levels of government and is particularly important where matters of opinion on the correct course of action clearly differ.

In this respect we suggest it is important that the draft minutes of 25 October should be corrected at the earliest opportunity, or that the stated points below should be removed from the minutes. Of particular concern:

- It is entirely misleading to say that the land was "used for free and unrestricted access for Gate House Mill and Cottage". **In the context of this application this is not correct either factually or legally.** In fact, there has been a Deed in place since 1987 which covers the restrictions on access over the land to and from the adjacent field. Councillor Dodd is fully aware of this; his father witnessed the signing of the Deed. The Deed has been honoured throughout our 22-year ownership of Lower Mill.
- It is not correct (factually or legally) to say that our application "posed a threat and could restrict the free access of Gate House Mill and Cottage". As you are perfectly aware the Land Registry made it patently clear in its correspondence to all parties that should we succeed with our application for adverse possession of the land it will be subject to the said 1987 Deed. This has been made clear to Councillor Dodd. In addition, your solicitors would have advised of this fact.
- Leaving aside whatever the perceived unspecified threat was, in fact we merely wished to protect the exclusive use of the land evidenced in our deeds since 1947 and modified by the 1987 Right of Way Deed.
- In contrast to the Parish Council's practice of conducting its discussions of this issue in closed meetings, without a resolution on each occasion explaining the Council's reasons for doing so, we note that the statements above are presented in the parish record which is on public display in the bus shelter and online.

It has always been unclear to us why the Parish Council felt they needed to intervene and take sides in what is essentially a private matter between neighbouring property owners. There was never a valid legal question of wider public access or ownership. There were never any legal rights over the land in favour of the public that you had any duty to protect. Had the Parish Council sought legal advice at the start and properly understood the law relating to adverse possession the whole saga could have been avoided.

I am not sure what is meant by the statement in the minutes that the Council “with its knowledge of history will do our utmost to preserve the freedom of access, our rights of way and unregistered land”.

This seems an apparently laudable aim, but **freedoms are based on the law of the land and not on the opinions of individual councillors**. They should of course utilize the forum of a Parish Council meeting to voice their opinions, but these should not be presented as facts.

A stated objective that the Council should seek to “ensure unregistered land remains unregistered” suggests a misunderstanding of the law, and the role/duties of the Council. We suggest that the Parish Council seek legal advice on this point. As our solicitors made the Parish Council aware, unregistered land is land owned by an individual that has not yet been registered at the Land Registry. It is not open land for the public to use as they would be trespassing if they did so. It is for the actual owner to preserve his / her own unregistered land and not for the Parish Council to do so.

The Council acquired further legal advice shortly before the matter was to be referred by HM Land Registry to the First Tier Tribunal in September. It should have been evident from our solicitor’s letter at the beginning of July that **legal advice was needed as a matter of urgency**. The availability of informed legal advice would have perhaps encouraged a more measured approach from the Council, including negotiations which reflected some legal realities. The Parish Council’s letter of 9 August following a Part II meeting implied that they had taken legal advice. This advice did not prevent the Council from presenting three options, doubtful from a legal and practical perspective, to gain agreement with us. This included, firstly, an offer for the Council to take over the relevant unregistered land for 12 years; the second was “not intended as a bribe but a trade-off for the piece of land they seek to acquire”. The third would require us to claim the land and register it as common land without restrictive access.

I understand that the Council wishes to issue a statement concluding the matter, following the swift withdrawal of their Objection after legal advice. If they feel the need to publish a comprehensive statement, I hope the Council will be clear on the specifics of the advice they received. It is to be hoped that these address the many issues raised by our solicitor four months ago, to which a response has never been received.

From our perspective, there has been a lack of transparency in the work of the Council, exemplified by the large number of Part II meetings (6 in number). The Council now proposes to ask the West Devon Borough Council legal adviser whether they may use content of these Part II meetings in their statement. As stated above, I would contend that this matter should not have been discussed in so many closed meetings without a proper resolution on each occasion to explain their purpose.

I am also puzzled by the statement concerning a meeting with DCC Highways officials (PTPC minutes of 12 July) that “Mr Nail has expressed that he would like to attend any such meeting, but this was deemed unnecessary now that Lawyers were writing to the Parish Council on behalf of Mr and Mrs Nail”. This stance was taken despite the specific request

the Council had received, two weeks earlier from our solicitor, for us to be present at the meeting. By chance, we came across this meeting and were able to witness DCC Highways' definitive marking of the highway boundary.

It is not for me to comment on the wisdom of the Council's secretive approach, but it would seem apparent that members of the public had only limited knowledge of the potential financial risks to which the Parish precept had become exposed or of the flawed underpinning logic of the Council's objection to our application. It is questionable whether this meets the Council's responsibility of open and accountable government.

At times we consider that individual Councillors have presented our behaviour in a manner that borders on defamation. A lack of regard to the facts of this issue opens the Council to potential libel if published in the public record. An example of this is the statement by Councillor Chanter in the 25 October minutes that my wife and I had verbally abused and sworn at him "on [his] own doorstep". The Council might revisit its choice to include this very personal statement in the minutes of the meeting as recollections of events may differ. The context of this short exchange was finding the slate nameplate of Lower Mill, personally made by our then 13-year-old son, apparently stolen from the bridge entrance. This opened with a polite enquiry asking if Councillor Chanter, our nearest neighbour, knew what had happened. I refer the Council to the unattributed suggestion for its removal contained in the minutes of the 14 June Council meeting.

We request correction of the 25 October minutes. May I also suggest that in its forthcoming statement the Council simply reports that it has withdrawn its objection after legal advice to do so. If the Council feels it necessary to further explain its actions, we would be grateful if any future statement by the Council on this matter would contain only factual and legally relevant material. It should also contain a clear recognition that our own position throughout has merely been aimed at defending our own legal rights.