

Submission to North Somerset Council

Re: Locking Head Drove

Introduction

1. This Submission is put in by Mogers Drewett Solicitors (Wells Office, ref MJCC) on behalf of Mr & Mrs Edwards, of Lypstone Cottage, and their neighbour Mr Douglas Kerton Legg, of Drove Farm

2. Mr & Mrs Edwards's property and land is registered at H M Land Registry under title number ST206074. It was purchased by them in 2002 from Mr Legg (and his late wife). Their title includes freehold ownership of the section of the Drove between points C-A-D on the Landowners' Submission Plan ("LSP") attached (**Appendix 1**). [The lettering points which we use in this Submission are the points shown in red on the LSP].

History of landownership

3. Drove Farm (that is the part conveyed to Mr & Mrs Edwards, and the residue retained by Mr Legg but not yet registered at H M Land Registry) was conveyed into Mr Legg's family in 1919. That 1919 Conveyance was to Mr Thomas Kerton, who was Mr Legg's maternal grandfather, and it included the freehold of the whole of the Drove between points C-A-D-E on the LSP.

4. The vendors under the 1919 Conveyance were the Colston Trustees and the Society of Merchant Venturers ("SMV"). Attached is a copy extract from the 1919 Conveyance plan showing in green the length of the Drove sole to Mr Kerton with Drove Farm (**Appendix 2**).

5. Also attached is an extract from the 1919 Particulars of Sale (**Appendix 3**) setting out the schedule of acreage of Drove Farm then to be conveyed. It included the length of the Drove C-A-D-E. The stated acreage in both the schedule and on the Conveyance plan was 3,506 acres. The Drove was described as Pasture. It was OS parcel number 98, and shown as number 11a on the Tithe Map (see below).

6. At the foot of the schedule is some commentary: the farm was tenanted, and the Drove was within the extent of the land let to the tenant (Mr W J Cook) who paid rent for the occupation of the whole including the Drove ("Pasture").

7. Also at the foot of the schedule of acreage is a summary of the **private** rights of way position, namely that Drove Farm (Lot 6 in that 1919 sale) was sold with the benefit of a private right of way for all purposes from and over the portion of Locking Head Drove included in Lot 7 (Locking Head Farm) and subject to a right of way to, from and over the portion of Locking Head Drove included in Lot 6 (Drove Farm) for all purposes for the owners and occupiers of Lots 3 and 7 (Locking Farm and Locking Head Farm respectively). Thus, there were mutual private rights of way granted and reserved.

8. The facts that in 1919 the freehold of the Drove was sold by an institutional landowner who had owned it since 1708 (see below), to the family of the current owner, that it was pasture, that it was let to the farm tenant, and that it was expressly subject to (and with the benefit of) private rights of way, strongly suggest the absence of public right of way status. Private rights of way would not have been necessary had public rights of way existed.

9. Para 6 of the 1919 Special Conditions of Sale (**Appendix 4**) shows the history of the institutional landownership by the Colston Trustees and the SMV, going back to the

root of title in 1877. In fact, ownership of the land in the Manor of Locking dated back to 25th November 1708, the date of the Deed by which there was made over to the SMV by Mr Edward Colston the "mansion house in Bristol where the [Colston] Hospital was located, the Manor of Beere, and the Manor of Locking" (*The Merchant Venturers of Bristol*) by Patrick McGrath page 367.

10. It is rare in cases like this to be able to prove freehold ownership of the route, especially ownership going as far back as 1708.

11. Among the archives of the SMV (held by Bristol Archives and available for inspection under reference number SMM/6/7/3 1-14) are maps as follows:

- Locking plan (undated) (**Appendix 5**), showing the Drove gated at C and at H. It also shows some old annotations to identify the occupiers of each field and also of the Drove (the name written along the Drove between D and E was "J. Daniel" who must have been the grazing tenant);
- Locking plan 1883 (**Appendix 6**) shows the Drove gated at C & E;
- Locking plan 1904 (**Appendix 7**) shows the Drove gated at C & E & H.

12. The points about private ownership raised thus far in this Submission relate to the section of the Drove now within the Edwards/Legg ownership, emanating from the SMV. The stretch of Drove beyond E was in 1919 conveyed with Locking Head Farm. The section beyond H is owned by the Edwards family who owned the old Lypstone Farm. It is an anomaly of this case that it is not the whole of the Drove which is contained within the current claim, but only A-B, for reasons apparently connected with the public-maintainability status of C-A, and beyond B (which we deal with below).

13. As mentioned, the section of the Drove north of G was part of the old Lypstone Farm title. This was at the south/east end of Moor Lane. As the way through the old farm buildings turned southwards (just beyond the electricity substation) the way was gated, and the Drove down as far as G was and is in the private ownership of Lypstone Farm. Originally, Lypstone Farm was owned by a Mr H King, who conveyed it in 1961 to a Mr A Fewes, who in turn in 1965 conveyed it to Mr & Mrs Edwards (parents of our client Mr Allan Edwards). The deeds to Lypstone Farm show that the Drove north of G was part of the Farm, and subject to private rights of way, and that it was gated at both ends. The Statutory Declaration of Mr A Edwards gives further details on this.

Documentary evidence re the status of the Drove

Locking Inclosure 1800

14. The Inclosure Award of 1800 required public roads in Locking to be of a width of 40ft. The Award set out the first section (C to approx A) as a private road/droeway of a width of 25ft, for the use of the occupiers of the allotted land abutting it. East of A up to the gate at G the Drove was given a number (47) and actually allotted to the SMV, to be used as a private way or drove. The words "The Merchants" are written on that part of the Drove on the Inclosure plan. The schedule to the Award showed that parcel number 47 was owned by the SMV, and described as "The Feed of Locking Head Drove", with a proportionate contribution due to be paid for the maintenance of it of 2s 2d. A grazed and stocked way is most unlikely to be a public carriageway.

Locking Tithe & Apportionment 1838/1840

15. This tithe documentation shows the Drove as tithe number 11a (which coincides with that same number shown on the SMV maps). 11a was said to be owned by the

SMV, and occupied by one Arthur Bishop. It was described as a "Road etc" - the only way shown in the tithe apportionment - and tithe was payable on it in the sum of 5s and 9½d. There is no doubt that the Drove was a "Road etc", but it was a private road, privately owned and occupied, and subject to a tithe apportionment payment. This must rule out any public carriageway status on the Drove in 1840, in the same way as the Inclosure provisions had done in 1800. The route was shown gated at C, E, and G on the LSP. See copy Tithe Map extracts attached (**Appendix 8**), showing those gates and the numbering 11a.

O S Maps

16. First Edition 1880 - this (**Appendix 9**) shows gates at C and E, and at the northern end of the Drove at Lypstone Farm.

17. Second Edition 1903 - this shows the Drove gated at C and E. This is the base map for the Finance Act 1910.

Finance Act 1910

18. This map shows the Drove **included** within hereditament 1, being Drove Farm. The Book Entry shows the owner as the Treasurer of Colston's Charity, Merchants Hall, Bristol, and the occupier as W J Cook. Crucially, the red edging of hereditament 1 clearly runs along the southern edge of the Drove but not the northern edge, thus incorporating that length of the Drove within the farmstead at Drove Farm, and shows a red line across the Drove at the gated entrance (point C LSP).

Handover Map 1929

19. The copy extract we have seen, from Axbridge RDC, appears to be the handover map, and represents the northern section of the Drove, from Lypstone Farm down towards Locking Head Farm as being publicly maintainable, and numbered 139. This was obviously a cul-de-sac way serving Locking Head Farm, and not a public carriageway through-route. Likewise, at the south-west end, the Drove was shown as publicly maintainable from points C-A (LSP) and numbered 137; and likewise this was a cul-de-sac way serving Drove Farm and not a public carriageway through-route.

Definitive Map process

20. The Drove was not claimed under the 1949 Act, save for the short stretch of public footpath which enters the Drove at point F. It was numbered FP8. The walking survey card suggests that FP8 started at a point opposite Locking Head Farm and then went not along the Drove but across the fields northwards.

Surface & maintenance

21. Looking at the claimed stretch of the Drove A-B, this is a muddy grass track. It has from time to time been privately maintained by hardcoring (see Mr Legg's Stat Dec). It has received no public maintenance.

22. The stretch C-A has very occasionally received some public maintenance of the surface. This first happened in the late 1920s, and only infrequently and haphazardly ever since. Mr Legg and Mr Edwards have done their own potholing work on that first stretch of the Drove.

23. The circumstances in which the C-A stretch first became publicly maintainable are unclear. What is clear is that it was only the stretch up as far as the farm entrance which became maintainable. This suggests that that was done by arrangement with the

farmer, which is what often happened in practice; likewise, the northern section between Locking Head Farm and Lypstone Farm. The A-B section of the Drove (the claimed route) was never the subject of public maintainability.

24. This, of itself, demonstrates that the Drove was never regarded as a public carriageway through-route, and that effectively the two end sections of the Drove were accommodation roads serving the farms, and not used as public roads.

UCR status

25. It is presumed that the first stretch of the Drove C-A (and also the northern section) is an Unclassified County Road. **This is a maintenance status and not a use status.** The fact of public maintenance in these circumstances, especially bearing in mind the limited extent of maintainability, is not such as to indicate any public use status.

26. It is clear that UCR status does **not** necessarily mean that public vehicular rights exist. See for example the Carter Letter (**Appendix 10**). It is not possible to state with certainty what the status of any UCR is without considering all the circumstances and all the evidence.

27. Whatever public status (if any) exists on the C-A stretch, it can only have been a cul-de-sac, as it did not continue beyond A. It is our submission that **no** public status exists C-A. The fact of private rights of way being granted/reserved on both end stretches shows that public rights were not deemed to exist, which itself goes to emphasise that although a way is allegedly publicly maintainable it does not necessarily mean that public vehicular rights exist. The two concepts are not inextricably linked.

Dedication

28. If any public status does exist on C-A it will have had to be dedicated. We are fortunate in this case to have successive private ownership of the Drove going back to 1708. However, there is not the slightest evidence of any dedication to any public status on the whole or any part of the Drove by the SMV or by Mr Legg's family.

29. It is not possible to infer public status without dedication. Yes, dedication can come about by use but there is no evidence of public use as of right (see below). It is possible to infer dedication from the documentary history, if the documentary evidence proves that, but in this case there is no documentary evidence to suggest dedication to the public use.

30. In these circumstances, it is clear that the reason why the maintenance gang took to maintaining the C-A stretch was by arrangement with the farmer at Drove Farm so as to help with maintenance in relation to farm vehicles getting to the farm entrance; in respect of the stretch north of E, presumably the same applies to the owner of Locking Head Farm. The arrangements which were then entered into about maintenance cannot amount to evidence of any intention to dedicate those stretches of the Drove as public rights of way.

NERC & byway extinguishment

31. The claim for the A-B stretch is as a BOAT. It is well known that the NERC Act extinguished all unrecorded byways. There are exceptions but we assert that none of those exceptions applies in this case. It would be for the Applicant to prove one or more of these exceptions, but we assert that in the circumstances that would be impossible.

32. The Drove was not created as a way for mechanically propelled vehicles; the claimed route is not shown on the List of Streets and **is** shown in part as a public footpath (FP8); and it hasn't a hope of passing the five year test (main lawful use by the public with mechanically propelled vehicles in the years 2000 – 2005).

33. If public vehicular rights can be shown to exist – and we assert that in the circumstances they cannot be shown to exist – then the route could still qualify as a restricted byway. That cannot happen in these circumstances.

34. It could not be a bridleway without evidence and there is no (or no sufficient) evidence of public bridleway use as of right (see user evidence below). Likewise, there is no evidence of public footpath use (again save for FP8).

Statutory Declarations

35. We attach three Stat Decs, from Mr Edwards, Mr Legg and from Mr Arthur Dunn, the tenant of Locking Head Cottage Farm. These Stat Decs confirm the position about maintenance (or lack of), use (or lack of), challenges, gates including locked gates, and signs making plain to any attempted user that no public right exists.

36. The existence of long-standing signs, and also locked gates (especially at E) negate any possible presumed intention to dedicate. The gate at E, for example, has been locked continuously since **at least** 1965. It may well have been locked before then.

37. The locking of a gate operates as a bringing-into-question of any public right; user evidence would have to be proved throughout the previous twenty years period namely 1945-1965 (or earlier if we can get further evidence to show earlier locking than 1965).

User evidence

38. There is only one user witness – Miss H S Tonkin. Her user form requires detailed study. We understand that Miss Tonkin moved to the Weston area in 1942, when she was a child. It is highly doubtful if she was riding the route in the war years. She may conceivably have ridden the Drove intermittently between 1945 and 1965 but surely not as of right. The purpose of her use was "picnics"; this is not passing & re-passing as a member of the public. Having picnics on other peoples' land constitutes trespass, unless permission had been granted, which we say it had. Miss Tonkin admits that she was with a Riding School. She admits that "the gates were locked". She deletes neither the Yes nor the No on section 12 of the farm, about permission. We assert that she/the Riding School had permission from the respective owners (see Stat Decs). This user form of Miss Tonkin tends to confirm the Landowners' submission that no public use as of right has been enjoyed, sufficient to amount to a public right of way or at all (save again for FP8).

Conclusion

39. In conclusion we make the following points:

- private ownership of the freehold of the Drove going back to 1708.
- private occupation of the Drove by tenants/graziers.
- private rights of way expressly granted and reserved.

- a series of gates, some locked, some signed, going back to the mid 19th century at least.
- Inclosure – the first stretch C-A was a private way 25ft wide; the rest of the Drove was allotted to SMV as “the Feed of Locking Head Drove”.
- tithe – this was a way subject to tithe, confirmed as privately owned and occupied, and gated.
- OS map – these show the route gated twice or three times.
- Finance Act 1910 shows the route included in the hereditament, privately owned and occupied.
- Handover Map – does not show the claimed route.
- Definitive Map – nothing claimed (save for FP8).
- Surface – the claimed section entirely privately maintained; some alleged public maintainability at both ends, but we assert that this was no more than an amenity to the farms those accommodated. They were accommodation roads.
- UCR status – no guarantee of public vehicular status (see Carter Letter).
- dedication – there is no evidence on the documents or by use that any dedication has taken place.
- NERC – any byway will have been extinguished, and none of the exceptions applies; and no lesser public rights either.
- user evidence – general paucity and infrequency; one user form only, and that is palpably insufficient, and in fact more helpful to the landowners than the Applicant.
- Finally, it is strongly asserted that no public right of way has come about on the claimed route, or on any other part of the Drove (save for FP8), and thus that the County Council should resolve to reject this claim and to make no Order.

Signed 
Mogers Drewett

Dated: 27th January 2017

LIST OF APPENDICES

1. Landowners' Submission Plan
2. Extract from 1919 Conveyance Plan
3. Acreage Schedule Drove Farm 1919
4. Extract from 1919 Particulars of Sale
5. Locking Plan (undated)
6. Locking Plan 1883
7. Locking Plan 1904
8. Tithe Map 1840
9. 1st Edition OS 1880
10. Carter Letter
11. Statutory Declaration of Mr A Edwards
12. Statutory Declaration of Mr D K Legg
13. Statutory Declaration of Mr A Dunn