

Levington and Stratton Hall Parish Council

Report – Car parking on Church Field

Parish Council Meeting 25th March 2024

Cllr John Ross

A question has arisen about the use of Church Field for car parking. This report sets out the history of how Church Field came to be under the control of the Parish Council, and the legal terms and conditions of that arrangement.

Source documents for the information provided:

- Copy of signed minutes of Parish Council Meeting 18th April 1978
- Copy of legal bundle containing the Deed of Assent document for transfer of the land to the Parish Council and associated legal correspondence
- Church Field Management Working Party Report

Background

Since 1948 the land that now comprises of Church Field, Trickers Wood, and the plot that is now the dwelling 'The Driftway' was owned by Mr A. It was at that time all one parcel of land referred to as the 'wood and meadow'; The Driftway had not been built. See the plan at Appendix A.

In the late 1970s there was conversation with Mr A about the idea of the Parish Council purchasing the land from him. In a letter sent by Mr A's solicitor dated 1st April 1978 it is stated:

- *it was his "intention to give the greater part of the land (wood and meadow) to the Parish" in his will,*
- *his "executors would retain a small piecefor building a small house*
- *"My purpose in buying this land in 1948 was to prevent any sort of development which could spoil the view of the river from the Church and of the village from the river and I would make it a condition of the bequest that there should be no development there, but that it be kept as an open space for all time"*

The Parish Council Chairman and two other members of the Parish Council met with Mr A to discuss this, and reported to the Parish Council meeting held on 18th April 1978 (extract of minutes):

"Following a suggestion that the Parish Council should buy the wood for the village, the Chairman and two other members of the Parish Council met with Mr (A). He has offered the major part of the wood and meadow to the village on his death on condition that no building is erected, it is not used as a car park and the trees are protected against horses".

Mr A confirmed in a letter to the Parish Council dated July 1978 that he had changed his Will:

- *" which provides for the larger part of the land to be left to the parish, with a condition that no building shall at any time be erected on it out that it shall remain grass and woodland as at present"*
- *A small piece of land would be left to his daughter-in-law in case she wishes to build a small house there.*

The Parish Council did not buy the land; all except the parcel of land that is now The Driftway was bequeathed to the village by Mr A in his Will, upon his death in 1981.

A letter from Mr A's solicitors regarding the terms of the Will and land bequeathed to the parish stated that:

Land ... to be held by the Council... as an open space for the benefit of the inhabitants of Levington... subject to certain conditions:

a) Re. fencing

b) Prohibition was imposed that no building should be erected on the land apart from such permanent or temporary facilities as the Council decided were required in connection with the use of the land as a place for public recreation.

council given power to manage the land and to let for grazing but not for allotments.

A Deed of Assent to formally accept the bequest was signed by the Parish Council in March 1982.

In September 1982 the council sought and obtained planning permission for a change of use to a "Playing Field", and for some time subsequently it was referred to as such.

Legal Conditions

Mr A's Will

We do not have a copy of Mr A's Will, however in 1990 solicitors representing Mr A's son wrote providing an extract:

Under his Will the late (Mr A) included a bequest of land at Levington...:

Upon trust as permanent endowment for charitable purposes as an open space for the benefit of the inhabitants of Levington...

The Will included certain conditions:

"...no building, shed, house on wheels, or other erection shall be erected, bought on to or permitted to remain on the said land or any part thereof otherwise than such permanent or temporary facilities as the (Parish Council) decide in connection with the use of this land as a place for public recreation"

The Deed of Assent

This document provides us with some legal conditions:

"the Beneficiary hereby covenants with the Executors for the benefit of the said adjoining land that no building, shed, house on wheels or other erection shall be erected, bought onto or permitted to remain on the property hereby conveyed or any part thereof otherwise than such permanent or temporary facilities as the beneficiary may decide in connection with the use of the property as a place for public recreation, and that the said property shall not be used for the purposes of allotments."

The key aspect of the legal conditions as far as the question of using the land for car parking are:

- 'as an open space for the benefit of the inhabitants of Levington' (Will)
- 'use of this land as a place for public recreation' (Will and Deed of Assent)

Spirit of the Law

In a publication by the Cambridge University Press it states (2023):

The letter of the law is its literal meaning. Here, the spirit of the law is its perceived intention. We find that one can incur culpability even when the letter of the law is not technically broken.

In 1990 the Parish Council sought planning permission to build a Village Hall on the land; it is this application that stimulated the letter from Mr A (Jnr) solicitors. In that 1990 solicitor letter it states:

We have to say that it is unfortunate that within 10 years of this generous bequest it is proposed to infringe the underlying spirit of the gift by seeking planning consent to erect a village hall on the land. The deceased's wish was that it should be maintained as an open space not least when viewed from the opposing banks of the river Orwell. Apart from seeking to break the spirit of the agreement, the council accepted the land as an open space and it would be in breach of the terms of the gift for the village hall now to be erected on the site. While the gift acknowledged the possibilities of the erection of buildings, any were limited for use in connection with the land as a place of public recreation, and we would have thought it patent that a village hall is not a building which is ancillary to the use of the land as a place for public recreation.

In the correspondence with/by Mr A/his solicitor in relation to the land, some prior to his death, we acquire a clarity on Mr A's intentions - the spirit behind his bequest:

1. *"My purpose in buying this land in 1948 was to prevent any sort of development which could spoil the view of the river from the Church and of the village from the river and I would make it a condition of the bequest that there should be no development there, but that it be kept as an open space for all time"* - letter sent by Mr A's solicitor dated 1st April 1978, quoting Mr A.
2. *"He has offered the major part of the wood and meadow to the village on his death on condition that no building is erected, it is not used as a car park and the trees are protected against horses"* Report to the Parish Council meeting 18th April 1978 by the Chairman following his meeting with Mr A.
3. *"Land ... to be held by the Council... as an open space for the benefit of the inhabitants of Levington... use of the land as a place for public recreation"*. Letter from Mr A's solicitor after his death in 1981.

Conclusion

The key terms for consideration by the Parish Council in respect of the use of the land to park cars are:

- A. Spoil the view of the river from the church, and of the village from the river
- B. Open space
- C. Car park
- D. Use of land as a place for public recreation

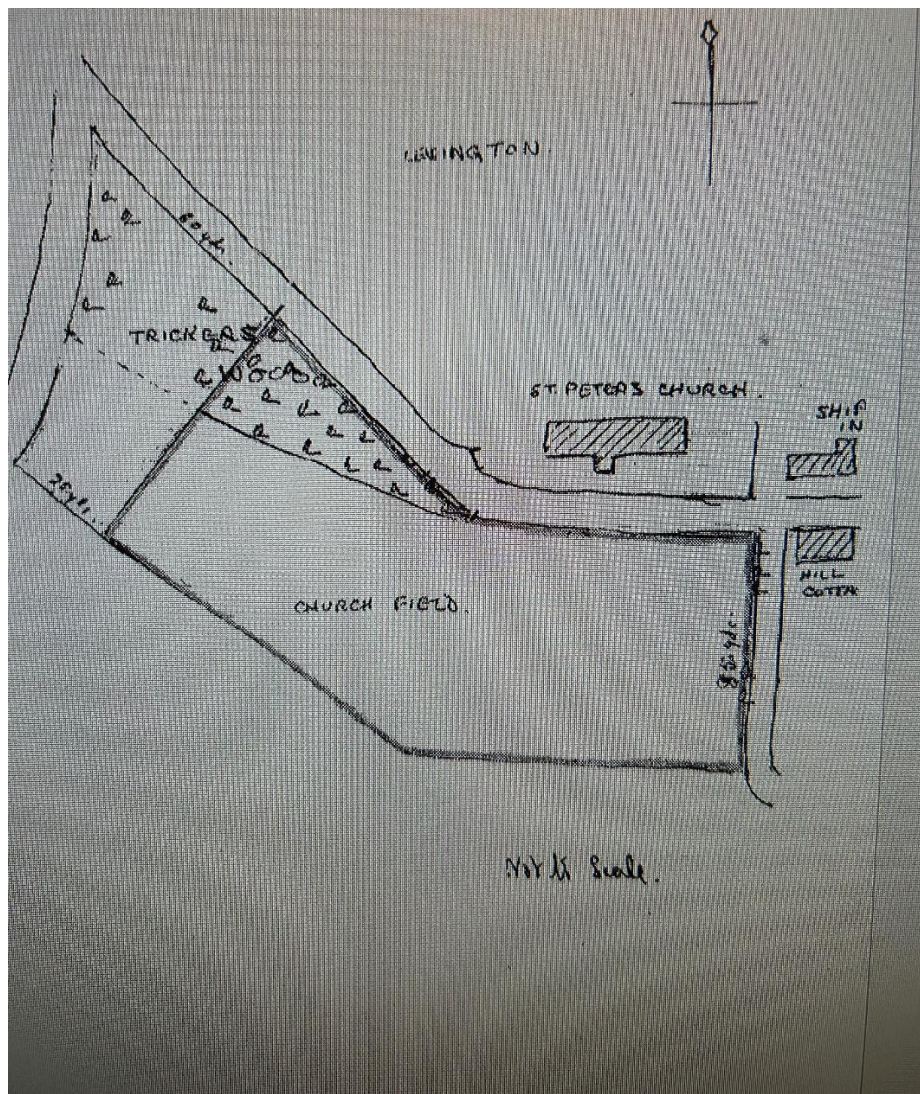
Recommendation

The Parish Council is not permitted to allow use of the land for the parking of cars.

Rationale

- i. Most obviously, to do so would, for the time that it is operational, make the land a car park, and this is expressly contrary to the wishes of Mr A as reported to the Parish Council by the Chairman in 1978.
- ii. The parking of cars cannot be considered a recreational activity, and the legal condition is that the land is used 'as a place for public recreation'.
- iii. The land for the time it is an operational car park is not an 'open space'.
- iv. It could be considered that for the time it is operational as a car park, the presence of the cars would 'spoil the view.....'

Appendix A



END