

BROCKLEY SOCIETY

Ashby Mews – Gate and Resurfacing Meeting

Thursday, 19 July 2018 at 7.30pm, Myatt Garden School, Rokeby Road, SE4 1DF

A G E N D A

1. **Welcome** and introduction
2. **Ground rules** for the conduct of the meeting to ensure a civil and productive discussion
3. **Why the gates and tarmac were installed:** the group responsible are invited to explain their reasoning
4. **Brockley Society's position**
 - The gates
 - The public right of way
 - Resurfacing the mews in tarmac
 - Drainage
5. **Contributions and questions** from the floor.
Speakers are asked to state their name plus the road where they live or their interest in Ashby Mews. Each speaker will be limited to 3 minutes.
6. Conclusion
7. Meeting to close no later than 9.15pm

M I N U T E S

1. Welcome & Introductions (Clare Cowen, Chair of Brockley Society)

Brockley's mews, byways and quasi mews are a unique feature of the conservation area. They are all very different and are very special. Campaigns to protect and enhance the mews go back more than 40 years and are intrinsic to the foundation of Brockley Society.

Brockley Society's planning committee is elected annually at the AGM and examines planning applications in the conservation area each month. We have to concentrate on planning considerations, good design and knowledge of the built environment, not subjective taste. The committee has considerable knowledge of the history of the area, of planning law covering conservation areas in general and Brockley specifically, including the mews. Our aim is to protect and enhance the conservation area and to influence local authority planning decisions. Inevitably, our support or objections for planning applications can meet with disagreement from some residents.

Ashby and all Brockley's mews fall in the area developed by the Tyrwhitt-Drake family from the mid 1850s. Deeds stated that each land plot fronting and within the Mews would include half the width of the mews access lane, to be maintained by the owner but with free access use by other frontagers and members of the public and with access for emergency and delivery vehicles and use of the wider central lay-bys for turning.

2. Ground rules for meeting's conduct

Feelings run very high on these issue and we want this meeting to have a positive outcome. Brockley has a long-established, mature community, developed over decades of campaigns and numerous community projects. I hope tonight we will live up to this tradition. I am going

to insist that people are allowed to speak without interruption or heckling.

The new buildings in the mews were given planning permission and now exist. Some people feel they are examples of modern architecture that have enhanced Brockley Conservation Area -- that is my personal view. Others think they should not have been built. Views of the two camps do not necessarily coincide on the issue of the gates and the tarmac.

Tonight we are discussing only the gates and tarmac in Ashby Mews and I will not allow divergence on to the building design or other historical disputes. We ask speakers to state their name and where they live, or their interest in Ashby Mews.

3. Presentation by Sam Djavit, Ashby Mews resident, on why the gates and resurfacing took place

- a. Shared interest in making Lewisham beautiful. We have a huge pride in the mews
- b. We have in writing from Lewisham Council that the resurfacing falls within permitted development rights
- c. Mews has been flytipped and abused with unsightly pot holes in the road, due to the lorries
- d. Gates: a planning application is being submitted. Those with the code still have the same access as before
- e. Nobody has produced a legal document proving there is a public right of way. However we've always allowed locals and dog walkers through. The gates are not designed to shut out the community but to provide a safer, cleaner environment and to protect our homes
- f. Ashby Mews is considered by Lewisham Council to have an industrial nature. It is not a leafy mews and has more deliveries than any other mews.
- g. Ashby Mews is not suitable for the public to use due to dust, vehicles etc. We are liable if any member of public has an accident
- h. There is an interesting collection of creative individuals and industries consisting of people who have been working there for over 20 years as well as newcomers. It is a hub of creativity: an Oscar-nominated documentary maker, furniture restorer, Royal Society sculptor, a craftsman in woodwork, a glass artist, a craft collective, set designers, metal artist, a 2012 Olympic torch manufacturer, ceramic artists, builders, storage and garages, etc. A group of people working in and looking after the mews. We look forward to an even more beautiful Brockley in future.

4. Brockley Society's position

a. Gates (Rhymer Rigby, Brockley Society)

The gates were erected to prevent fly-tipping in the mews, which is a laudable aim. But fly-tipping is endemic everywhere in Brockley and needs tackling strategically. The gates have caused a great deal of controversy and comment. The status of the gates – in planning terms – is relatively clear cut. They were put up without planning permission, which they require for several reasons:

First, they are over a metre high. Any gates over a metre high and next to a highway used by vehicles (such as Ashby Road) require planning permission.

Second, they are in a Conservation Area. This means that permission is needed to erect gates which are visible from the street.

Third, Brockley Conservation Area has an Article 4 Direction. This removes the automatic right of homeowners to alter fences, walls and gates.

Taken together, these mean that planning permission must be applied for. LBL have confirmed this is their position.

There are several other issues: the gates – if locked – obstruct a public footpath which has been in use for over a century. Jens will explain this in more detail. Another is that the gates prevent access for emergency vehicles such as fire engines. Finally, there is the question of whether consent from all the frontagers in the mews was gained before the gates were erected. We do not believe it was.

The opinion of the Brockley Society is that the gates are not suitable for the location and should be removed and replaced with a simple gallows gate. This should be locked for vehicles, but have a space at the side to allow pedestrians unimpeded access at all times.

b. Public Right of Way (Jens Cole, Brockley Society)

The Access required divides into 3 types:

- Access for emergency vehicles.
- Access for Frontagers.
- Access for Public Right of way.

The Rights divide into 2 types of right:

- (i) **Public Right of way** established by usage for more than 20 years.
- (ii) **Frontagers Rights** by Lease or Prescriptive easement (again 20 years)

(i) Public Right of way: Public records - Lewisham

As an Inner London authority Lewisham is not required to keep a map of rights of way and footpaths. Ashby mews is in the Lewisham Highways list but is not adopted or maintained by Lewisham. Being on the highways list is indicative of it being a Right of Way. In the Lewisham Mews Design guide of 1987 at 9.3 Mews are described as "a legal Right of Way."

How a Public Right of way is created

It is usual for a highway to become dedicated to public use by consistent use by members of the public. If members of the public have passed over a particular road for a period of many years (the Highways Act sets out a period of 20 years) there will be a presumption that the road owner has offered up the road as a highway and that the public have accepted this dedication. (Ashworths Solicitors)

Almost all public rights of way are located on private land, but this has no bearing on the public's right to use the route without let or hindrance. (Technical Standard - Public rights of way Document no.: HS2-HS2-HW-STD-000-000002 Revision: P01)

There is the maxim "once a highway, always a highway". Case law states "Mere disuse of a highway cannot deprive the public of their rights. Where there has once been a highway no length of time during which it may not have been used will preclude the public from resuming the exercise of the right to use it if and when they think proper." (Harvey v Truro)

Can a Landowner put up new gates and stiles where none exist at present?

Not without seeking and getting permission from the highway authority (see Ramblers Association)

Public rights of way: landowner responsibilities at .GOV

As the owner or occupier of land with a public right of way across it, you must

- keep the route visible and not obstruct or endanger users. Keep public rights of way clear of obstructions.
- avoid putting obstructions on or across the route, such as permanent or temporary fences, walls, hedgerows, padlocked gates or barbed wire

Obstructing a public right of way is a criminal offence. The highway authority has the right to demand you remove any obstruction you cause. If you don't, the highway authority can remove the obstruction and recover the cost from you.

(ii) Frontagers Rights: Original lease agreements

A typical Tyrwhitt-Drake estate Indenture dated 9 January 1895 provides a description of a Back Road to the rear of 12 Wickham Road - line 20 onwards states that:

...to be used as a Back Road by the Tenants in Common.... Together with the free use and enjoyment during that demise in common with all other parties entitled thereto of the Road or Way in the rear of the said premises...

Prescriptive easements – how they may be acquired .GOV

Prescription is the acquisition of a right through long use or enjoyment; the law presumes that the right was lawfully granted, under the Prescription Act 1832. The use must be for at least 20 years and the use must be “without force, without secrecy and without permission”.

Conclusion

Both the General Public and all Frontagers have a Right of way *throughout* Ashby Mews, and that right cannot be casually extinguished.

Links to Right of Way law sources quoted:

<https://www.ashworths-solicitors.co.uk/news/private-roads/>

<https://www.gov.uk/guidance/public-rights-of-way-landowner-responsibilities>

<https://www.gov.uk/government/publications/rights-of-way-advice-note-9-general-guidance-to-inspectors-on-public-rights-of-way-matters>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/498941/Technical_Standard_-_Public_rights_of_way.pdf

<https://www.gov.uk/government/publications/easements-claimed-by-prescription/practice-guide-52-easements-claimed-by-prescription>

c. Resurfacing the mews in tarmac (Clare Cowen, Brockley Society)

Planning law is very complex and there isn't necessarily a simple solution. Brockley Society does not agree with the advice issued by Lewisham Planning Officer Patrick O'Connor directly to Sam Djavit on 13 July 2018 that “no further consent is required” for the resurfacing on two main counts:

(i) It neglects the unique context of the Mews in Brockley Conservation Area and the advice of the **Brockley Mews Design Guide** of March 1987 on road formation.

(ii) **Article 4 Direction:** Brockley Conservation Area had an Article 4(2) Direction applied to all properties in the area on 26 January 2006. Since this date Nos 2,3,4,5, 81 and 101 Ashby Mews were approved for the creation of live/work units from what were

originally industrial units. The “live” elements of each qualify as “dwellinghouses” for consideration under the terms of the Article 4(2) Direction. (Live-work is not the same as “residential” nor as “industrial”.)

Each of these units has a frontage of land which extends half way into the mews. Thus the curtilage of each property is also extended by this unique ownership feature, in common with all of Brockley Conservation Area’s Mews properties and, in the cited cases above for Ashby Mews, transfers with the original light industrial uses to include the dwellinghouses now created.

What is “curtilage”?

‘curtilage’ means: ‘a piece of land, whether enclosed or unenclosed immediately beside or around the building in light industrial use, closely associated with and serving the purposes of that building...’

The frontage area of each unit has been recently resurfaced to form a hard surface within the curtilage so defined. In accordance with points 1&4 of Schedule 1 of the Article 4(2) Direction we consider that planning consent should have been obtained and more so as the area resurfaced has created a “highway” from which the dwellinghouses are visible.

d. Drainage (Rhymer Rigby, Brockley Society)

We also have concerns about the drainage of the new surface

- Prior to the resurfacing, this stretch of the mews was a mixture of cobbles, grass, packed earth, some tarmac and gravel.
- This was a largely permeable surface which allowed rainwater to soak in. The new surface may not be permeable. At the very least it is likely to be *less* permeable.
- As the new surface now runs up to properties, there is concern that it may result in flooding and/ or water ingress and damp in the properties where they abut the mews.
- There is also concern about the shape of the surface – is it designed so that water can run off? Ideally, in a narrow, pavementless roadway like this, there would be gullies at either side or in the middle. There do not appear to be either.
- Lewisham has published (historic) guidelines on how mews surfaces can be made permeable if they are changed. There has also been considerable concern over the last few decades about non-permeable surfaces and their contribution to run-off and flooding as well as other environmental concerns.
- Because no application was made, it is impossible to know the extent of these risks. If steps have been taken to mitigate them we would like to see evidence.
- There are a number of solutions which provide a surface that is hard enough to drive on but allows water to soak in. Many of these also permit other vegetation to grow. We would view such a surface as more suitable.

Chair: A map in the **Brockley Mews Design Guide** shows that there is inadequate storm water drainage in all of Ashby Mews except Units 1-5.

The planning permission for Units 1-5 included proposals “to re-pave 1-5 Ashby Mews in reclaimed cobblestone and provide a shallow stepped walkway along the building entrances, fitted with soft down lighting to increase evening light and security”. Although

cobblestones, or more accurately “setts”, would be prohibitively expensive, we feel there could have been a much more attractive solution, including perhaps a “stepped walkway” as suggested.

5. Questions from the Audience

Q1 Toby (resident of Breakspears Road but also building in Ashby Mews, one of the group who installed the gates and resurfacing)

- a. The Brockley Design Guide 1987 says there is a legal right of way, not a public right of way?

Jens: Several rights exist at the same time. By the 1930s a public right of way was established as being after 20 years of use. This use had in existed in Ashby Mews since the 1880s or before.

Clare: the gallows gates were erected in 1981

- b. Barriers were present in 1981 and exist to this day. They did not allow wheelchair access and to get around the gate everyone was forced to trespass on the garden of 1-3 Ashby Road.

Jens: That is irrelevant to public right of way

- c. The tarmac is made of a semi-permeable material so drainage will not be an issue

Q2 Deac, Manor Avenue

- a. 1-3 Ashby Road was once public land and a public building

Q3 Phil, Manor Avenue

- a. Who paid for the work?

Toby: solely the residents and landowners

- b. Was there a committee?

Toby: people agreed a sum depending on the type of property they owned and whether they had a garage or not

- c. This was not representative of all the residents. Who instructed the builders to install the gates without formal planning permission?

Toby: the same people.

- d. You made an assumption that the gates were a permitted development?

- e. **Toby:** There was an assumption that the gate was under permitted development.

Lewisham Planning Officer said the only aspect that was not compliant was the height of the gates

Q4 Marian, Manor Avenue

- a. The Article 4 Direction says quite clearly that permitted development rights are removed
b. GPDO (2015) ruling gave residents permitted development rights – but Article 4 still stands

Q5 Cllr Jimmy Adefiranye

- a. I met with the Enforcement Officer and the Acting Head of Planning on Monday

- b. They confirmed that Article 4 is still in place

Marian: so permitted development is restricted

- c. Yes. I have received several emails and telephone calls about Ashby Mews but not one was supportive

- d. I believe planning permission is needed for each of these developments. It is in the hands of the planning officer.
 - e. I cannot express an opinion one way or the other about this particular issue.
- Jens:** We hope the planning system will allow everyone to express their concerns.

Q6 John C, Garsington Mews

- a. I live in similar mews, dating from the 1880s. I'm interested in the principle
- b. I have the right to take a cart and horse down my mews
- c. I would hate to have gates in the mews
- d. We have CCTV so don't have a problem with fly-tipping

Q7 Sally D, Harefield Mews

- a. I have walked through all of the mews for 20 years
- b. What allowances have been made for local people like us? Do we press a button? Do we have a number?

Sam: the gate is unlocked.

Audience: No it's not. Some disorder

Q8 Carol, Upper Brockley Road

- a. I was born and bred on Upper Brockley Road, backing on to Ashby Mews
- b. I was not consulted about the gates. Nobody consulted anyone
- c. I used to walk and drive through the mews. What makes you think it's OK to close it?

Audience: Applause.

- d. You have locked residents out of the mews and you think it is OK

Sam: 7 or 8 years ago there was a padlock and the key got lost with the gallows gates

We put a lock on the new gate and a note to say one of the residents will let you in.

The lock has been vandalised and has now been removed and we're leaving it off.

I apologise and I will give you the code for the new lock

Carol: If it's not OK to use your end, why is it OK to use the other end? Segregated, it has created a north/south divide in the mews.

Q9 John, 119 Upper Brockley Road

- a. Drainage – I am not convinced that the new surface is permeable to water
- b. There is only one normal size drain culvert in the north end but no other connection to the main drainage
- c. In previous years there has been flooding
- d. There is a strong case for additional culverts for drainage
- e. Some people are going to be flooded. At the moment we are relying on the non-tarmac bits to absorb the water

Q10 Sandra, Upper Brockley Road

- a. Pedestrians should have access
- b. Locals should support the mews by keeping it clean, not littering, not vandalising, not fly tipping. Support each other working together.
- c. I can no longer walk or drive out of the mews
- d. I've seen drugs on the floor of the mews. We need to be vigilant. But don't lock people out of the mews.
- e. Be respectful, don't abuse it. Be happy

Audience: Applause

Clare: Also, don't forget the police horses need access. Flytipping happens everywhere. We need to develop a strategy for this with the borough.

Q11 Kate G, Upper Brockley Road

- a. Cheeky anecdote: Two weeks after the gates were erected I stopped a constable on horseback while out walking my dog, not in the mews because I didn't have access. I asked him about emergency access and right of way. He joked: "You could always get an angle grinder for the gates!"

Audience: laughter

Q12 Deac, Manor Avenue

- a. Question for Jens – who enforces the public right of way and what are the penalties?

Jens: it's a muddy position due to the definitive rights of the inner/outer boroughs which have different rules. For an outer borough e.g. Richmond it is the Highways Authority Brockley is an inner borough. This position is not clear and needs further research

Clare: there have been substantial cutbacks in Lewisham Council which also means historical knowledge has been lost. The role of conservation societies is key to defending our incredible enclaves of Victorian heritage

Q13 Toby, Breakspears Road (mews group)

- a. It is clear that there has been a negative reaction to what we have done
- b. Huge apology to the frontagers who were denied access to the mews
- c. It has been difficult to contact all frontagers because some don't live in this country
- d. Is it only the pedestrian access that is causing an issue?

Jens: I cannot define that. Access was originally for horses and carriages, so if it is accessible to horsedrawn vehicles does this flip onwards to motor vehicles? The gallows gates were installed for a reason, with community consensus. But right of way doesn't disappear because a gate was put up in 1981. This is supported by case law

Toby: My main concern is vehicle access. The mews has been used as a rat run by cars, racing through. Restricted vehicle access should be for frontagers. If the Ashby Mews restricted vehicle access has to go, then it must for all the mews.

Audience: disagreement

Q14 Juliet, Wickham Road, backing on to Wickham/Manor Avenue

- a. All gallows gates allow open pedestrian access footpath space beside them. Gallows gates can be cheered up by design or paint
- b. The Fire Brigade has a key for the gallows gates
- c. The gates are open during the day and locked at night

Q15 Georgia, Breakspears Road

- a. I go up and down Ashby Mews quite a lot with my one-year-old
- b. Cars use it as a cut through from Geoffrey Road to Ashby Road, some quite fast
- c. How can you enforce a speed limit in a private road?

Jens: Frontagers would be entitled to agree among themselves that signage should be put up or you could even create a chicane or other things making it inconvenient as a rat run. The main point is not to create a permanent gating that creates a gated community both by look and by design.

Audience: Applause

Q16 Eryka, Ashby Mews (mews group)

- a. I like the idea of a chicane but large lorries would not be able to get through
- b. Already the lorries cause damage to the sides of the houses. Huge potholes make them tip.

Carol: You've now made it even easier for people speeding in the mews

Clare: Many mews have open gates. Garsington, Harefield, Breakspears mews is a working mews. Wickham Mews gates are open all the daytime

Eryka: Ashby mews is an industrial mews and needs to have a flat surface.

Audience: disorder

Carol: We never had problems for 50 years with the garages and car mechanics

Eryka: Since then there have been developments that have damaged the road and we had to repair it

Q17 Marian, Manor Avenue

- a. You knew it was a conservation area when you moved in. Who advised you? Did you seek any advice from the planning department beforehand?

Toby: I didn't

- b. And you knew about the Article 4?

Toby: yes and we got it wrong. It's a very complex situation. So we're applying for retrospective planning permission

- c. Did you consider granite sets rather than tarmac? A better colour than black tarmac which a lot of people find really insulting

Toby: tarmac is outside every building in the conservation area and it will age and in time. Other surfaces have massive price tag.

Eryka: we did look at lots of options but it was very expensive. Resin bonding was c. £60k + VAT ...

Marion: bonded gravel is not that expensive

Audience: disorder

Q18 Rupert, Manor Avenue

- a. I have worked a lot with the planners. If there are a lot of objections it will have to go to planning committee and they may have to take enforcement action
- b. The issue will be the height of the gate – it is very clear cut. I deal with this professionally in Southwark
- c. Your application for retrospective planning permission will give the public the opportunity to comment.

Q19 Tony, Manor Avenue

- a. I like the improvement, I have no objection to that
- b. But you road roughshod over the frontagers. [After this meeting had been called] you sent a letter out to the houses but none of us knew beforehand. You went the wrong way about it.
- c. You could have got us all together
- d. If it's a security problem, get a camera. It's the modern world.
- e. A gated community creates a north/south divide in the mews and an us-and-them situation. A gated community living in the mews – but you don't use the mews like we have always used the mews, for 100 years
- f. You thought you'd get away with it.

- g. When there is a flood, you will find that frontagers who have not been consulted may sue and you may have some court cases.
- h. You have created a bad buzz. We want a good buzz for Brockley. We don't want this.
- i. We need to talk. Brockley Society doesn't need to sort this. We can do this ourselves, talk to each other

Audience: greatest applause of the evening

Q20 Paul, Brockley Road

- a. I was consulted. I have no issue with the improvements because there was a problem
- b. Improving the mews is a good thing
- c. The new gates are in keeping with the area
- d. I'm talking about style not principle
- e. The tarmac is better than what was there before
- f. The cobbles had all but disappeared – does it need to be like for like? It's arguable
- g. I am a lawyer and Jens did an admirable job explaining the right of way
- h. It is definitely a public right of way
- i. 3 weeks ago the gates were vandalised and the locks cut – this is not acceptable

Audience: applause

Q21 Sam Djavit (mews group) is given the opportunity to close the meeting

- a. We'll leave the pedestrian gate open
- b. Leave the gate open to vehicles in the day, but look at shutting it at night. We need to look at this and get together as a community
- c. I agree we should have consulted all frontagers and the community with a letter
- d. I apologise for not notifying everyone
- e. This has brought the community together – we can sort this out. This can only be a good thing for all of us
- f. I invite everyone to join the Friends of Ashby Mews mailing list and invite all your friends
- g. If you haven't got the access code for the vehicle gates, I will give it to the owners for the moment until we decide if it's a public highway

Audience: They can't do that. Uproar

We're here to work with everybody. We want to be together.

Closing Remarks – Clare Cowen

- a. This has been a very fruitful discussion. Everyone has been extremely community minded. You don't want Brockley Society running your life (laughter) but I hope we can work with the mews residents and other people where appropriate and where we have expertise.
- b. Thank you very much

Audience: enthusiastic applause

Meeting ended shortly before 9.15pm

Based on hand-written notes taken by a minute-taker and checked against a rough recording of the meeting. (E&OE)