Garden Halls, Cartwright Gardens Planning Permission

The Crescent Hotel is a family business now entering its third generation of management. It has flourished in Cartwright Gardens in no small measure to the tranquillity that stems from the private gardens. We fully subscribe to the position taken by The Cartwright Gardens Gardens Committee submission.

Our submission focuses on two issues:

1. The legal validity of the Applicant’s promise to open the Gardens of Cartwright Gardens to the public and hence their ability to commit to a section 106 agreement;
2. The scale of the development, in particular the9-stroey, monolithic façade facing across the Gardens to our hotel.

# The Legal Argument

This is summarized in Appendix 1 in the form of a letter from the Crescent Hotel to the Skinners. This arose following discussions with those in other squares in Camden who are anxious to protect their legitimate interests and who have undertaken considerable legal research. Similar arguments were sent to the University or London and to Camden[[1]](#footnote-1). The brunt of the argument is that the rights of access and responsibility of management is not vested in the freeholder because a series of statutes and a court case says so. This is contrary to the arrangements Skinners have written into a number of leases, if you will it is a mis-selling issue.

As Appendix 1 makes clear it is seeking to resolve this legal pickle amicably. The Skinners have agreed to their solicitors, Farrer & Co., investigating the argument and it appears that the University is also relying upon the freeholder’s opinion. Recently the Skinners asked for an extension of time – deadline unspecified. I have also pointed out in an email to Richard McEllistrum that Camden may be called upon to discharge its own responsibilities under these statutes, and asked whether Camden have the capacity to do that. The statutes, as we see it, vest the management rights of the Gardens in a Gardens Committee, who are charged to maintain the private Gardens as they see fit, and require the local authority to raise the required funds by a levy on the rates of the leaseholders who have private access to the Gardens.

While Skinners are researching within this amicable framework the issues raised by our letter it is difficult to see how the Planning Applicant may make any promise to open the Gardens to the public. Even if the research counters the argument advanced, we and possibly others will need time to determine our response. It would be helpful if Camden in the meantime also researched how it would fulfil its responsibilities if the legal argument advanced is eventually upheld. Not to do so would delay matters even further.

As matters stand at the time of writing, we do not see how either Camden’s Planning Officer can opine in favour of an undeliverable promise or the Development Control Committee decide in favour of any conditions imposed on the design, management or use of the Gardens. Moreover, since this is an issue effecting London Squares (the relevant statutes are for London only), the Mayor’s Office has an interest too for the precedents the outcome may set. We also understand that the Mayor of London has a tourism policy, unlike Camden, which if it is intended to support tourism must have as a general precept to “do no harm.” As the Cartwright Gardens Garden Committee has argued material damage could flow from opening the Gardens to the public in the specific conditions of Cartwright Gardens.

# The Scale of the Building

At present, the skyline of the Garden Halls presented to a viewer from the Crescent side of the Gardens is rather “gap-toothed”. The architectural bridge work of the new design is to fill in the gaps to create a monolith as high as the current highest point in the façade. Having looked at drawings which superimpose the new skyline on the old we have reluctantly come to the conclusion that the new building will be overbearing, and unbalance Cartwright Gardens. We think it should lose at least a floor, and that the Applicant should seek ways of reducing their space requirements. For example, their bike spaces seem large and a CycleDock solution might save space? Are the town houses really necessary?

The overbearing nature of the building, taken in conjunction with its unremarkable design will impoverish the visual environment, and from our business point of view weaken visitor attraction to Cartwright Gardens.

# Appendix 1: Letter to the Skinners

23 March 2013

Deloitte Real Estate

Athene Place, 66 Shoe Lane,

London EC4A 3BQ

Delivered by Mail and E-mail to nickshepherd@deloitte.co.uk

Dear Mr Shepherd,

# Context of the letter

* 1. I would like to thank you for promising to ask your lawyers to comment on my concerns regarding the legal rights and responsibilities of the various stakeholders in Cartwright Gardens (Gardens) under statute law. For their benefit in referencing my points I have unconventionally numbered paragraphs in this letter.
	2. I am not a lawyer but my attention has been directed to legal research undertaken for another local square. This research seems cogent and relevant to the Skinners Company’s (Skinners) current willingness to allow the University of London (UoL), who are seemingly the leaseholder of the Gardens, to open them to the public while the Skinners retain their ownership.
	3. I wish to make clear that I would much prefer if the conflicts of interest raised by Skinners’ expressed willingness to open the Gardens to the public could be resolved by negotiation. I feel I have legitimate concerns though the impression is abroad that the Hotels in the Crescent have no say in this matter. The argument below would indicate the contrary.
	4. You expressed willingness to entertain an alternative future for the Gardens about which we have corresponded. I have put a preliminary proposal to a key partner who is currently studying it. However, if that partner wishes to carry the idea forward we all need to know who has what rights and responsibilities to do what in the Gardens. Therefore, let us see if we can at least agree on what the relevant law is in this matter before each of us has to reflect on our subsequent actions.

# The Argument Summarised

* 1. Since my argument draws upon old acts of parliament whose language is now arcane, I transposed some of my reportage into contemporary terminology for easier comprehension, though quotes where provided are from the acts themselves.
	2. In essence I argue that statute law grants lessees in the Crescent private use of the Gardens, that law is without time limit and the licence to use the Gardens is invalid and the amounts the Crescent Hotel paid for that licence should be returned to me with interest.
	3. Following upon this nobody can divest me, or other lessees, of the right of exclusive use of the Gardens, and so the promise to open the Gardens to the public cannot be made by either UoL or Skinners in support of UoL’s development of the Halls of Residence.
	4. Moreover the management of the Gardens is vested by statute in a Gardens Committee and should not have been handed to the UoL, who in any event have not acted in accordance with the statutory provisions, were it interpreted that they were acting as a Gardens Committee.

## 1808 Act

* 1. The Skinners’ development of the Sandhills Estate[[2]](#endnote-1), which includes the Crescent now known as Cartwright Gardens, was governed by an 1808 act of Parliament[[3]](#endnote-2). This Act empowered Commissioners not only to develop the buildings, paving and utility infrastructure but gave them the powers to manage the estate for the benefit of existing and intended occupants. They not only maintained the roads and paving but managed the water system, street cleansing, the watch (police), parking (carriages), rubbish and the upkeep of the gardens. In order to fund the maintenance and upkeep of the Estate they were empowered to levy a series of separate charges on various relevant properties. These were capped at so much in the pound (i.e. percentage) of the relevant rack rent for each of the properties. Thus they operated a rates system for the upkeep of the estate analogous to the Council Rates that preceded the present Council Tax; the capital costs of the development being financed by the sale of leases (see also 3.11).
	2. Thus statute law was used to create a system of rights and responsibilities embracing the Commissioners, leaseholders and tenants of the properties soon to be constructed, the effect and principle of which was to create a market value for the lease. A lessee knew that if they took up a long term lease the amenities’ future management was ensured, and they could not be unreasonably exploited over the charges, not least because they could elect the commissioners (from 24th June 1813). The lease value provided the basis for financing the development by the Skinners.
	3. With respect to the present Garden situation, certain features of the 1808 Act need to be noted, notwithstanding that the 1808 Act was repealed in 1901.

The Commissioners

* 1. Paragraphs III-IV deal with the annual election of Commissioners, following their original appointment by the Skinners for the development period. Though inhabitant householders of the ‘estate’ are broadly entitled to vote those who enjoy the rents or profits of the estate properties may also so do. This seems to enfranchise buy-to-let investors, widening the market for the leases.

The Gardens or ‘Pleasure Ground’

* 1. Paragraph XIII makes clear that the development of the Crescent enclosure or ‘Pleasure Ground’ and its continuing maintenance and upkeep is vested solely in the Commissioners who are required at all times to maintain it in proper order.
	2. Para XIV deals with the inheritance of the pleasure ground. “*Provided always, and be it further enacted, that nothing herein contained shall be construed, adjudged, deemed, or taken to alter the inheritance or property, and the use thereof, shall remain and belong to and for the said Guild and Fraternity of Skinners aforesaid their successors and assigns, in such and the same manner as this Act had not been made.”* In short, the Skinners always own the Pleasure Ground or Central Area of the Crescent.
	3. Paragraph XXIV grants Crescent lessees exclusive right to the Pleasure Ground. “*And be it further enacted, that the lessees of the time being of the said pieces or plots of ground, and the occupiers of the several houses erected and to be erected and built and encompassing the said Crescent, shall be entitled unto and have exclusive use of, free liberty, way, and passage to go into and along the said inclosure or Pleasure Ground; but that no other person or persons whomever shall be entitled, except as hereinafter mentioned.”[[4]](#endnote-3)* This makes clear that lessees encompassing the Gardens have exclusive use.
	4. The exception referenced in Paragraph XXIV is contained in the Paragraph XXV. This provision gives the Commissioners, for the time being appointed, the power to grant in writing the same use of the gardens “*unto all and every occupiers of the houses to be erected and built in several streets and public passages and places, such occupier contributing and paying such proportionable part of the rates and assessments …. for forming, making and embellishing the said inclosure or Pleasure Ground, and for keeping the same in repair as the said commissioners shall judge reasonable.”* Solely from the Act we do not know how the Commissioners exercised this power but it seems likely given the extra revenue it would have raised for managing the development that some occupiers of properties not encompassing the gardens might have been given such use.
	5. Paragraph XLI begins a section on rates to be levied on houses. In essence this paragraph allows the collection of rates or assessments distinguishing them (a) by purpose of the rate or Levy (b) upon which class of dwelling it should fall and (c) the cap on the rate in the pound applied to the value of rack rent.
	6. As far as the Garden Levy is concerned it is (a) for “forming, making, inclosing, ornamenting, and embellishing the centre, Area, or middle space of the said Crescent … and for supporting and maintaining the same” and is levied (b) “on the houses and buildings to be erected and built, and encompass the said Crescent” but with (c) a cap of one shilling in the pound (i.e. 5% of the rack rent).
	7. Paragraph LIV deals with reimbursing the Master and Wardens of the Skinners for the initial costs of providing the gardens in the first instance. The provision directs the commissioners from monies received under this Act to reimburse the Warden etc and their successors and assign a sum which to the commissioners “*shall appear fair and reasonable, with lawful interest for the same from the time the houses and building respectfully surrounding the crescent shall become rateable.*” One imagines this initial investment has long been reimbursed.

## 1855 Metropolis Management Act

* 1. The range of competences heaped upon the Commissioners for this small part of London was multiplied across the Capital. This presumably created sufficient difficulties to warrant the passing of the 1855 Metropolis Management Act. The 1855 Act transferred those powers, which we would now associate with local authorities, from the Commissioners to the Vestries or the District Board of Works, presumably consolidating the provision of amenities in a wider area. The 1808 Act remained in force for all other respects, not least those granting rights of exclusive use of the Gardens to the Crescent lessees.
	2. Most of this act was repealed in 1965 but Sections 239 and 240 remain in force. Section 239 of the 1855 Act, relevant to Cartwright Gardens passes the Commissioners’ responsibility for Garden maintenance and upkeep to a garden committee, while the Vestry ‘shall cause to be raised’ the income to maintain the Gardens. The Gardens Committee therefore decided what reasonable maintenance was required and the Vestry made sure that the necessary sums were collected.
	3. Section 239 deals with three cases. The case governing Cartwright Gardens is where the controlling body under the 1808 Act, the Commissioners, also control an area beyond the Garden itself. This much is clear from the 1808 Act[[5]](#endnote-4).
	4. The relevant case under section 239 states:



* 1. At this juncture the legal responsibility for the upkeep and maintenance of the Garden was defined in the 1855 Act, referencing the provisions of the 1808 act with respect to the boundaries of, in this case, the entire Sandhills Estate. The 1808 Act remained in operation in all respects except where competences were transferred. Thus a levy for the cost of upkeep and maintenance, the exclusive use of the Garden for Crescent lessees and for any residents whom the Commissioners had granted the same, remained; the levy cap remained, even if the St Pancras Vestry administered it. The Commissioners’ discretionary payment to the Master and Warden etc., if then extant, and being part of the management of the Garden, passed to the Gardens Committee. The Gardens Committee would then have produced an estimate of Gardens upkeep works to pass to the Vestry who would levy an appropriate Garden Rate on those properties referenced in the 1808 Act. The Skinners still retained the inheritance of the Gardens, but not its management, which it never had.

## 1899 London Government Act and Scheme and Orders in Council Made There under

* 1. This act transferred the powers and responsibilities from the Vestries and District Boards to the Metropolitan Borough Councils. It permitted, among other things, the repeal of the Special Acts of Parliament such as the 1808 Act. Any changes using this legislation had to be confirmed by an Order in Council.
	2. Generally where acts were repealed it was subject to the certain provisos as the 1928 Royal Commission on London Squares (cmnd 3196, p16) explains:



* 1. It is our understanding that this gave rise to the 1901 St Pancras Order, transferring powers from the St Pancras Vestry to its Metropolitan Borough Council counterpart. The provisos carried forward, as did the 1855 Act the rights and responsibilities of the original 1808 Act, specifically the rights of exclusive use for the lessees of the Crescent and the role of the Garden Committee.

## 1901 St Pancras Order

* 1. The Order, page 800, references a Third Schedule that lists Burton Crescent (now known as Cartwright Gardens). The Order also refers to the cap that the Burton Crescent Garden Committee can charge under the 1855 Act of “1 shilling in the pound”, a continuation of the 1808 Act provision. So, the Order confirms that Burton Crescent was regulated by the 1855 Act and that a Garden Committee existed, empowered to manage and maintain the Crescent Gardens and to raise funds through the Garden Levy.
	2. The Order, page 801, then repeals the 1808 Act. It does not repeal the 1855 Act but rather carries it forward, expressly recognizing the rights of the Garden Committee.

## 1928 Report of the Royal Commission on London Squares (cmnd. 3196)

* 1. The Royal Commission provides a very useful history of the development of the legal framework governing London squares. Appendix IV confirms that Cartwright Gardens was set up by the 1808 Act and Appendix VIII confirms that it was also subject to the London Squares and Enclosures (Preservation) Act, 1906.
	2. The latter Act occurred in the wake of the 1904 Bird v Allen judgement (Edwardes Square, Kensington). Lord Kensington sold the Square for development after the House of Lords refused to consider a bill preventing the sale. The case went to litigation. As a consequence of the House of Lords attitude, the London County Council promoted the 1906 London Squares and Enclosures (Preservation) Act intended to prevent development on squares. The House of Lords continued its opposition and the bill had to be restricted to squares where the owners approved of the restriction, 64 in all at the time of the Royal Commission.
	3. The Judge in the Bird V Allen case ruled in favour of the Garden Committee upholding the original 1819 Private Act laying out square which essentially vested management in Trustees (subsequently the Garden Committee) for inhabitants who had been granted private use. He upheld this right since nothing in the original act limited its use in time. The 1808 Act establishing the Sandhills Estate contains no limits in time.
	4. I am unaware of any later legislation that has changed the rights and responsibilities in relation to the Garden. It is clear that whenever attempts have been made to amend the legislation affecting them, the principle of continuing those enshrined in the original act, in this case the 1808 Act, has prevailed.

## Implications of the Statutory Provisions for Cartwright Gardens

* 1. If, the Skinners sold a Gardens lease to UoL, then it was not their right to do since the management of Cartwright Gardens is vested in a Cartwright Gardens Garden Committee. If it was intended at some point in the past that UoL should act as if it were the Gardens Committee, then it would have been obliged to hold an election each June, provide accounts and probably seek a rate levy via Camden. Indeed, when a couple of years ago I asked Shona Turnbull of Deloitte’s to provide such accounts she said I was not entitled to see them. When I also asked to be represented on the UoL committee that seemingly, but illegally, managed the Gardens I was told I was not entitled.
	2. It is also clear that the rights of exclusive use of the Garden are neither within the power of Skinners nor UoL to alter, since these rights are given to Crescent lessees in the 1808 Act, and are carried forward in subsequent legislation and upheld by the Bird v Allen Judgement. The Gardens Committee as the inheritor of the Commissioners has the discretion to extend the access rights but only to those occupants of the properties within the original Sandhills Estate making them liable to a Garden Levy.
	3. Moreover, it would appear Skinners in granting a licence and charging Crescent lessees for the private use of the Garden were “selling” rights which lessees and some occupants already enjoyed under statute. They were not and are not entitled to do this. If the argument is that these charges are for the maintenance and upkeep of the garden then it is not in their power to make such charges – they need to be established by the Garden Committee. I, therefore, conclude that the lessees are due a refund of their payments with interest. A back of the envelope calculation for the partnership trading as the Crescent Hotel shows roughly £24,000 is owed to us. If UoL expended money they too might be due a refund, but this could not be claimed back from the lessees because the costs should have been managed by the Garden Committee and not UoL.
	4. Finally, if the rights of exclusive use of the Garden is held by the Crescent lessees, then both Skinners and UoL are now infringing the value of my rights by publicly saying they are going to open the Gardens to the public thereby destroy my rights and their value. Both may be advised to withdraw these offers immediately and publicly since it may be a tort.

# The Questions

* 1. I think you would agree that it would be interesting to hear from your lawyers the answers to the following questions:
		1. Why do they think that the Crescent lessees’ exclusive access to the gardens, established in the 1808 Act, is not carried forward by the 1855 Metropolis Management Act and the 1901 St Pancras Order?
		2. If they agree that the above Acts did carry forward those rights what subsequent legal device(s) do they rely upon to argue that these rights are no longer held by those lessees?
		3. Why do they think that the responsibility of the Garden Committee for the upkeep and management of the Gardens, referenced above, is not transferred to them by the Section 239 of the 1855 Metropolis Management Act?
		4. If they agree that the 1855 Metropolis Management Act passed the Commissioners former Gardens management responsibilities to the Gardens Committee, why do they think the 1901 St Pancras Order does not reaffirm the responsibility of the Gardens Committee to manage the Gardens and fund management costs via an appropriate local authority Garden Rate?
		5. If they accept the Gardens Committee role and the operation of the Garden Levy is affirmed by the 1901 St Pancras Order what subsequent legal device(s) do they rely upon to have placed the management of the Gardens with UoL?
		6. In the light of their answers to the above questions, what is their response to all of the implications I have drawn in Section 9?
1. I look forward to meeting you on 26th March and for your reply to this letter. I was thinking of submitting this letter to Camden’s Planning Department public comments on the Garden Halls of Residence development. Of course, if your lawyers advance cogent rebuttals this may not be necessary.

Yours sincerely,

Paul Cockle

1. E-Mail to UoL ( ) and Camden ( ) [↑](#footnote-ref-1)
2. See <http://www.british-history.ac.uk/report.aspx?compid=65565> for an historical account of Sandhills Estate. [↑](#endnote-ref-1)
3. An act for forming, paving and otherwise improving certain streets and other public passages and places in the Parish of St Pancras (Georgii III Regis Cap 86, 1808) [↑](#endnote-ref-2)
4. ‘Time being’ in this case refers to the predevelopment occupants of the three pieces of land, consolidated by the Skinners for the Sandhills Estate development. [↑](#endnote-ref-3)
5. Section XVI of the 1808 Act makes specific reference to Tonbridge Place, some distance from the Crescent. [↑](#endnote-ref-4)