

Introduction

This submission is made on behalf of:

Church Walk Limited (hereinafter referred to as, "CWL")



CWL owns the freehold title shown on the plan to title number NGL414078; i.e., it owns the freehold title to the land adjoining The Earl of Listowel's proposed development site along the entirety of the eastern boundary of the proposed development site.

I am a director of CWL and hereby state that CWL **objects to the proposed development.**

Background: Church Walk Development

The five homes, six garages and four off-street parking bays at Church Walk (hereinafter referred to as the "**Church Walk Development**") were constructed in the early 1980's following the sale by the Church of England of a plot of land associated with St Anne's Church.

This was the third sale of land associated with St Anne's Church, the first being conducted in or around 1928 when the Church sold what is now The Earl of Listowel's property, and the second in the 1950's (approx.) when the houses at St Anne's Close were developed. The Church Walk Development site includes a strip of land which had been a walkway from Swain's Lane to the substantive part of the Church's property. This was the original "Church Walk".


Background: Creation of the Modern Private Roadway Known as 'Church Walk'

Running lengthways along the eastern boundary to the original Church Walk there was previously a driveway to the rear of Hillway Garage. The developer of the Church Walk Development agreed (again in the early 1980's) with the owner of Hillway Garage (a) to pave over the walkway and the driveway into what is now commonly referred to as "Church Walk"; and (b) that the owners of each side of Church Walk would have restrictive covenants over the other's property, to the effect that they would not park vehicles on Church Walk except for the purposes of loading or unloading good to be supplied from or to their respective premises.

The developer of the Church Walk Development subsequently sold five freehold titles within the land purchased from the Church; namely, the homes at 1-5 Church Walk and their associated garages and off-street parking. To avoid confusion, certain documents submitted in support of **The Earl of Listowel's submission erroneously refers to these homes as 1-5 St Anne's Close.** The remainder of the land within the Church Walk Development, i.e. the land not part of the five freehold titles which had been sold by the developer, is currently owned by CWL.

Background: Existing Ownership and Other Rights Over Church Walk

As a consequence of the agreement between the developer of the Church Walk Development and the owner of Hillway Garage in the early 1980's, the freehold ownership of Church Walk is split lengthways. The western side of Church Walk immediately adjacent to (and abutting) the eastern side of The Earl of Listowel's property is registered under title number NGL414078 and is currently



owned by CWL. The eastern side (formerly the driveway to Hillway Garage) of Church Walk is registered under title number 303694.

To complete the picture of existing co-existing rights in Church Walk, the homes at Church Walk have contractual and prescriptive rights to use the western side of Church Walk, as well as prescriptive rights to use the eastern side of Church Walk. The property currently comprising one of the two Kalendar Cafés (namely the café closest to Church Walk) has a covenant over the eastern side of Church Walk (formerly the Hillway Garage driveway) permitting it to use that driveway during ordinary business hours so long as such use does not obstruct ingress or egress to the rear entrance to Hillway Garage.

There is an unresolved dispute which escalated a few years ago to an exchange of solicitors' letters as to the extent of that café's, and indeed its sister café's, right to use Church Walk.

Summary: As well as CWL, the owners of five homes, the owner of Hillway Garage (currently used as an antique furniture warehouse) and the owner of one cafe currently have either a freehold interest in, or other registered and/or prescriptive rights to use, Church Walk. A few years ago the cafe owner claimed via his solicitor, *inter alia*, that his other cafe also had prescriptive rights to use Church Walk; however, this was (and remains) robustly disputed by CWL, and CWL did not receive a substantive response from the cafe owner's solicitors when CWL refuted that claim to him.

There is also a degree of existing unlawful use of Church Walk by delivery vehicles and tradespeople attending the shops and cafes on Swain's Lane, and by customers visiting those shops and cafes. Reference is made to the submission which I made in my personal capacity as a resident of Church Walk in this regard.

Proposed closure of service entry to The Earl of Listowel's property

There are currently two existing service entries to The Earl of Listowel's property: one in the middle of the existing buildings to Swain's Lane, the other onto Highgate West Hill. The Earl of Listowel's proposal; however, is to block the existing service entry from his property on Swain's Lane. It is submitted that, in practice, the effect of this will be to push demand by pedestrians and vehicles attending The Earl of Listowel's property from his own accessway onto CWL's property. **CWL objects to this in the strongest possible terms.**

Proposed access to The Earl of Listowel's property from CWL's property

The Earl of Listowel's plans (E. Building East Elevation (Church Walk)) also show an open space blocked only by a "cast iron bollard" and a single chain opening onto CWL's property. It is assumed that this marks an access to and from The Earl of Listowel's property via CWL's property. The plans (E. Building South Elevation (Swain's Lane)) also show "Painted Metal Railings" which appear to open onto Church Walk, i.e. onto CWL's property.

At least since the 1920's when The Earl of Listowel's property was constructed, The Earl of Listowel's property and CWL's property has been separated by a brick wall. I.e., neither The Earl of Listowel nor his tenants have enjoyed any access to their property via CWL's property.

Despite CWL's ownership of the land opposite the entire eastern boundary of The Earl of Listowel's property, CWL has not been consulted in this matter. Had that not been the case, The Earl of



Listowel would know that **CWL objects in the strongest possible terms to The Earl of Listowel's proposal to create access to The Earl of Listowel's property via CWL's property.**

CWL's right to retain a solid boundary wall

The aforementioned brick wall which separates The Earl of Listowel's property from CWL's property has two small windows towards the Swain's Lane end of Church Walk well above head height, one of which appears to open in part, the other does not. Apart from via those windows, again it would appear that at least since the 1920's (and certainly in the last 30 years since my neighbour moved into Church Walk), neither The Earl of Listowel nor his tenants have enjoyed any light or airflow from CWL's property.

Given the above, CWL maintains its right either to retain, or if necessary to build on its own side of the boundary, a solid boundary wall at least to the height of the existing wall running down the entire eastern boundary to The Earl of Listowel's property.

I would query the health and safety aspects surrounding the proposed entrance to the East Building on the basis that it has no legal right of access, air or light from Church Walk.

Construction of Pavement On CWL's Property

It is abundantly clear from the plans to titles NGL414078 and 303694 that the land which falls within the respective freehold titles covering Church Walk, and over which the reciprocal restrictive covenants relate, runs all the way to Swain's Lane; i.e., it includes the area which is currently cobblestoned adjacent to the Swain's Lane pavement.

The document titled "Site Plan" to The Earl of Listowel proposal includes constructing pavement on freehold property owned by CWL as well as on freehold property on the eastern side of Church Walk and over which CWL has restrictive covenants which permit vehicular use.

On 15 December 2008, an enquiry was made of Camden Council on behalf of CWL. This included the following:

"I am trying to find out if Camden has adopted a section of the road where the cobbled pavement runs at the bottom of Church Walk, N6 6QY. Church Walk is owned by two owners who have the east and west halves of this private road. At the bottom there is a section of cobblestone where the pavement of Swain's Lane crosses and there is an inclined ramp to the pavement."

On 27 January 2009, Camden Council wrote in response:

"As far as the Highway Department is concern[ed] CHURCH WALK is privately maintained and not the responsibility of Camden Council."

This response accords with the Council's actions in practice; e.g., when the Council grits the pavement along Swain's Lane, it specifically omits to grit the cobblestoned (or indeed any) part of Church Walk, and certainly no-one locally can recall any upkeep of this land by the Council.

Accordingly, it is submitted that the land shown on The Earl of Listowel's Site Plan where he proposes to construct pavement has not been adopted by the Council and remains in private freehold ownership. Again, this is abundantly clear from the title plans associated with the two relevant freehold titles.

Although CWL understands that it is possible to seek planning permission over any property regardless of whether the applicant owns or has any interest at all in the property, in practice it would have been common courtesy for The Earl of Listowel to have contacted CWL prior to making the present planning application. Had The Earl of Listowel done so, he would have known that **CWL objects in the strongest possible terms to The Earl of Listowel's proposal to pave over CWL's freehold property**, as well as to The Earl of Listowel's proposal to pave over the eastern side of the cobblestones in a fashion which would deprive CWL of the benefit of the restrictive covenants over such property.

Construction Management Plan

It is noted that (a) the documents supporting The Earl of Listowel's application do not include a construction management plan, and (b) The Earl of Listowel's proposed development embodies an abject failure to recognise his neighbour's property rights; namely that The Earl of Listowel proposes to pave over part of CWL's property, and it would appear to provide access to The Earl of Listowel's property from CWL's property.

Accordingly, on behalf of CWL (and the various parties who have existing rights to use CWL's property), I am extremely concerned as to how The Earl of Listowel's proposed demolition and construction will take place without trespass on CWL's freehold property; note again that CWL's property physically abuts the proposed development for the entire length of the proposed development site's eastern boundary.

This concern is not merely theoretical. The unauthorised use of CWL's property by tradesmen employed by one of The Earl of Listowel's tenants was a source of persistent aggravation during a relatively minor renovations conducted by that tenant.

In practice, how on earth will The Earl of Listowel carry out the significant demolition and construction job on the proposed development site, in particular the works which physically abut CWL's freehold property along the length of Church Walk, without significant trespass on CWL's property?

In addition to the objections set out above, **CWL objects to the proposed development** on the grounds that (a) the supporting documentation does not include a construction management plan, and (b) there is nothing in the documentation submitted in support of The Earl of Listowel's planning application to suggest how The Earl of Listowel will respect CWL's property rights and see to it that those working for him do the same.

