

Anya Newman successfully fends off an attempt to use Constructive Interpretation to obtain a more extensive right of way in this neighbour parking dispute.

**Manor Farm Barns (Essington) Ltd v Clair [2020] EWHC 3030 (QB) confirms the importance of the wording used in formal documents.**

### *The Background*

Mr Clair bought a farm cottage which was situated next to barns which were being converted into 6 dwellings. His property (which he has always let to tenants with multiple vehicles) did not include any parking spaces. In order to access his property, he had a right of way over *part* of a driveway (known as the “Shared Driveway”) which was to be used to access the new barn conversions. The shared driveway ran up the side of Mr Clair’s property, along his garden wall. At the end of the shared driveway, there were areas of parking reserved for the barn owners.

Parking was not an issue to start with for Mr Clair’s tenants as there were no occupiers in the barns. However, after the development of the barns had been completed, a pair of gates were installed across the shared driveway and later electrified so that only those with fobs for the gate could gain access to the part of the Shared Drive and parking area beyond. Mr Clair was not given a fob, as the management for Manor Farm Barns deemed that his right of way was only over the part of the Shared Driveway which ended at the point where the developers had installed gates. In response Mr Clair unilaterally tore up an area of the Shared Driveway, alleging that it was trespassing on his land and thereby creating an area for his tenants to park on.

### *The Claims before the County Court*

Manor Farm Barns sued for trespass and Mr Clair Counterclaimed for interference with his right of way, which he contended extended beyond the gate and was such that he would be able to open a vehicular access into his rear garden.

At first instance HHJ Gregory found that Mr Clair had committed a trespass and agreed with Manor Farm Barns’s construction of the extent of the right of way, holding that:

*“The obvious and sensible construction, it seems to me, adopting the approach from the two cases to which I have referred, bearing in mind that the gates existed on the plan before the transfer took place before the driveway was constructed, is that the part of the driveway over which Mr Clair has a right of way is that part of the driveway which leads up to the gates and no further beyond. That is the part of the driveway which serves his property.”*

## *The Appeal*

Mr Clair appealed against the dismissal of his counterclaim, contending that there was a clear mistake in the language of the transfer as it failed to define which part of the Shared Driveway Mr Clair's right of way was over. He averred that by reference to external documents such as planning permissions and auction particulars from a failed attempt to sell his property at auction, it was obvious that there was a mistake and that his right of way extended over all of the Shared Driveway. Mr Clair contended that the judge had reached an incorrect finding of fact in relation to whether or not a planning permission decision related to his property and criticised the judge for not dealing with the particulars from the failed sale at auction in his reasoning.

Mr Justice Griffiths dismissed the appeal, holding that the Judge was not wrong in fact in relation to the planning permission, nor was the judgement wanting for not dealing with the auction particulars which were "*in connection with a different transaction which did not take place.*"

In relation to the failure to define the part of the Shared Driveway which was subject to Mr Clair's right of way, Griffiths J held that HHJ Gregory was entitled, and in fact correct, to decide that nothing had gone wrong with the language of the transfer, referring to the principles provided in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896 and specifically that courts do not easily accept that people have made linguistic mistakes, particularly in formal documents. Griffiths J observed that "*there are very few documents as formal as a conveyance or transfer of real property containing the express grant of a right of way.*" There was ultimately no need to depart from the language used in the transfer which was capable of being interpreted simply by reference to the background facts:

*"The most obvious reason that a Right of Way was being granted was that, without it, there was no access to the highway at all without passing over MFB's land, since Mr Clair's boundary narrowed to a single point as it reached and touched the highway at the bottom of the Plan. The Judge's construction provided Mr Clair with a Right of Way between the front door of his Cottage and the highway "with or without vehicles... at all times and for all purposes". It therefore made perfect sense in accordance with the background facts, as well as with the language. Much as Mr Clair might have liked a right of way which passed within the Gates, there was no need for it. There was, however, an obvious need for a right of way outside the Gates, between the Cottage and the highway. That is what the Judge's construction gives him."*

### *What Should we Take Away from the Decision?*

The crucial lesson from this case is that language in construction issues is key. No matter how badly a party would like to assert that the Court should correctively interpret a document, there needs to be a clear and obvious mistake for the Court to engage in such an exercise. Even if, as in this case, the language is slightly ambiguous, the background facts may resolve that ambiguity without the need to "do violence to" the words used in the contract.

The Court also made plain that 'constructive interpretation' is not a separate, second test or question to ask when interpreting a contract, but rather part of the overall exercise of interpretation.

**Anya Newman was instructed for Manor Farm Barns shortly after the matter was issued and provided drafting, advocacy and advice to her client throughout. If you have a parking or a right of way dispute that you would like to discuss, please do not hesitate to contact Anya's clerks, Ross Hands and Catherine Merry.**