

Briefing Note for Customer Focus Scrutiny Committee : 5 December 2019

Petition re Alphington Allotment Holders and Residents

Introduction

In summary the allotment holders have raised concerns about the loss of trees on the boundary between the allotments and a small new development of two self-build houses. They also allege that the erection of the close boarded fence has encroached onto ECC land and wish for the authority to take enforcement action against the 'developer'.

This is a historic complaint on which a large number of questions have been answered by officers from Public and Green Spaces, Estates and Planning since 2013. The matter was also referred by the main petitioner, to the Local Government Ombudsman who decided not to investigate his complaint further.

The petitioners feel strongly about this and a number of trees have undoubtedly been removed on the boundary and replaced with a fence. The question is, have any offences been committed and if so, could and would the council take any action?

Land Ownership

One question raised by the petition is that by replacing the hedge with a fence there has been encroachment onto council land. This is not correct, the Council sold the land in 1972 including the boundary on which the trees were situated. The plan overleaf shows the extent of land transferred and the 'Enquiries before contract' associated with the 1972 sale, show that the transfer included the ownership of the southern boundary (the boundary between the allotments and the development site).

The conveyancing is therefore perfectly clear and there is no ambiguity nor dispute between the Council (the seller) and the purchaser. Furthermore the location of the boundary was agreed on the ground, with the ECC allotments manager and the new owner, with reference to the planning documents and land transfer. This was subsequently confirmed by our engineering team.

The replacement of this boundary with a fence has not therefore encroached on any ECC land.

Tree Removal

A number of trees were removed by the homeowner, after they had moved into their new home, as they were diseased. These were removed from their boundary, within their own private residential garden. As they were removed by the homeowner, there has been no breach of planning conditions. Planning conditions are for the development phase and not post occupation.

At the time of removal the trees were **not** protected by a TPO nor was the area within a conservation area. The homeowner therefore did not require any permission or prior approval to do work to them and no offence has been committed.

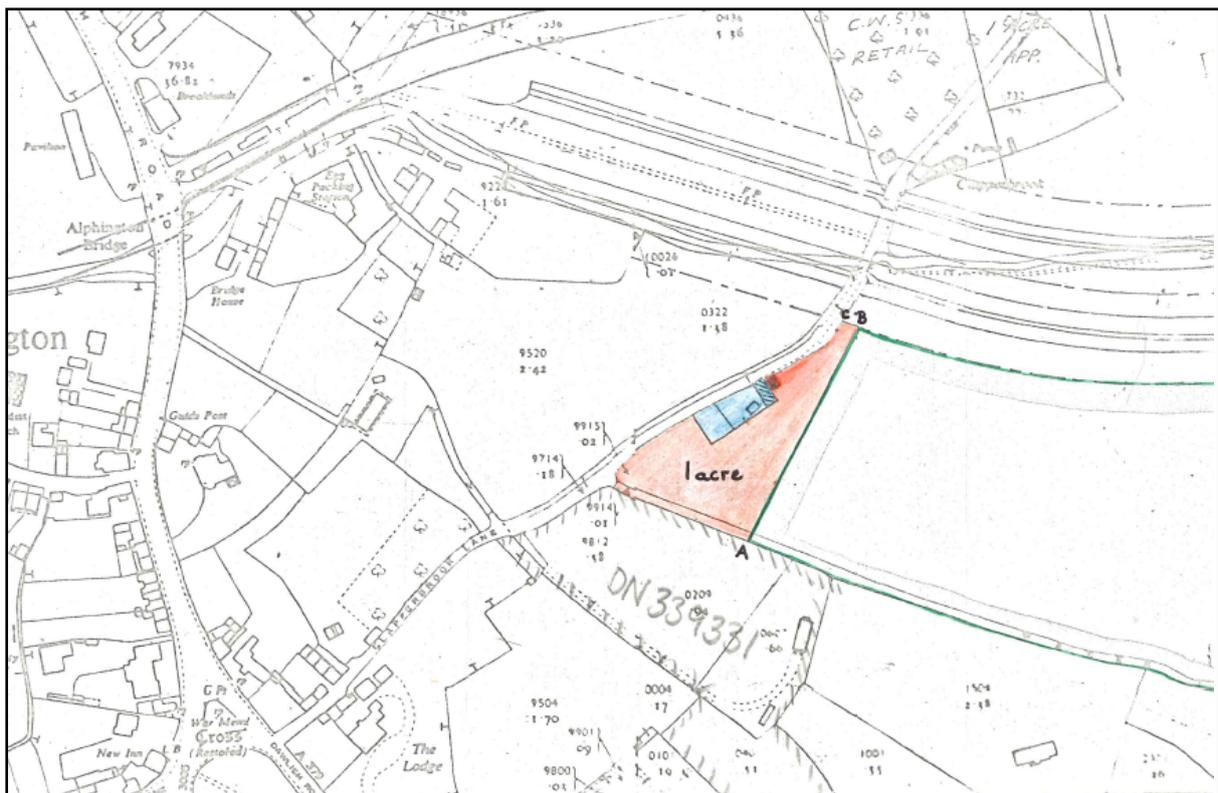
Summary

So in simple terms the boundary hedge was not on our land and the trees were not protected by a TPO. Therefore no one has committed any offence (under any legislation) and so we have no recourse to take.

We do however we recognise the loss of screening to the allotment holders. We will therefore investigate options to plant a new hedge or trees along the allotment boundary to go some way to reinstate the loss of tree cover. This planting would be subject to agreement with the allotment holders and would be on the allotment side of the boundary. Our officers will be in touch with the allotment holders in due course.

The homeowner has already gone to some considerable expense and planted new semi mature trees along the boundary in an effort to replace some of those lost. In addition they have offered to plant more native trees to offer greater screening.

Plan 1 showing land sold in 1972. The allotment site is identified by the slight hatching and the number DN339331.



Appendix 1: Clarification questions raised during the land transfer in 1972

<p>Short description of the property</p>	<p>re <u>Land part O.S. Nos.9914, 9915 and 3116</u></p>	<p>ADDITIONAL LH</p>
<p><u>Exeter City Council</u></p> <p>to <u>Commander and Mrs.B.S. Arnold</u></p>		<p>ENQUIRIES BEFORE CONTRACT</p>
<p>To the Vendor's Solicitor</p> <p><input type="checkbox"/> Town Clerk, Town Clerk's Dept., Civic Centre, Dix's Field, Exeter. Your Ref: 707/RM</p>		<p>In cases of property subject to a tenancy, form Con 290 should also be used. Other extra enquiries may be added on the back of this form.</p> <p>Please strike out enquiries which are not applicable</p>
<p>FOLD</p>		
<p>GENERAL ENQUIRIES</p>		
<p>1. Title Documents</p> <p>(A) UNREGISTERED Land: Do all the documents necessary to prove the title of the Vendor consist either of the originals or complete abstracts marked as examined against the originals and showing where the originals were produced?</p> <p>REGISTERED Land: Will all the documents leading to the first registration of the title to the property be handed over upon completion?</p> <p>(B) If no definite indications exist, please specify any which the Vendor has maintained or regarded as his responsibility.</p> <p>2. Boundaries</p> <p>(A) Please specify and where possible supply a plan showing to whom all the boundary walls, fences, hedges and ditches belong.</p> <p>(B) If no definite indications exist, please specify any which the Vendor has maintained or regarded as his responsibility.</p> <p>3. Disputes</p> <p>Is the Vendor aware of any disputes at any time regarding boundaries, easements, covenants or other matters relating to the property or its use?</p> <p>4. Services</p> <p>(A) Is the property connected directly to the public sewer and the water, electricity and gas mains, without any such connections passing through the property of some other person?</p> <p>(B) (i) Specify which main services are not available. (ii) Specify any main services which are available but not connected. (iii) Give details of any alternative service. (iv) Supply a plan showing any service situated partly on or passing over the property of some other person and the position of the nearest main service of any which are available but not connected. (v) Give details of any easement, grant, wayleave, licence or consent relating to any service.</p> <p>5. Adverse Rights</p> <p>Is the Vendor aware of any rights or informal arrangements affecting the property other than any disclosed in the Contract which are not immediately apparent on inspection and which are exercisable by virtue of an easement, grant, wayleave, licence, consent or otherwise or which are in the nature of public or common rights?</p> <p>6. Restrictions</p> <p>Have all restrictions affecting the property or its use been observed up to the date hereof? If not, please give details.</p> <p>7. Consents</p> <p>Have all consents required under any covenant affecting the property been obtained? If not, please give details.</p> <p>8. Planning</p> <p>(A) (i) What is the present use of the property? (ii) When did this commence?</p>	<p>2.</p> <p>The northern boundary against the land owned by the Devon River Board is owned by that Authority. The fence on the east side will be erected and maintained by the Council. The remaining boundaries will belong to the property.</p> <p>3.</p> <p>No.</p> <p>5.</p> <p>No.</p> <p>6. & 7.</p> <p>Which restrictions and covenants?</p> <p>8.</p> <p>(A) Agricultural use of longstanding.</p>	