



DROUGHT GARDEN - LEGAL

This item is carried over from December 2020 Community Assets meeting where no decision was reached and Cllr. Norton hoped to obtain more information on the matter.

Molly Frankham of Ellisons was approached to seek legal advice on behalf of the committee:

"The councillors wish to discover whether Stanway Parish Council has any legal rights over the land, known as The Drought Garden, which was gifted by JLG Ltd, since the council has maintained it for thirty years and received grants on the understanding of their ownership."

Ms Frankham has reviewed all the information I have been able to send her and had several conversations with Cllr. Norton to establish the background and history of this grant of land. She has stated that unless there are people who were present at the time of the gift who could give valid testimony as to the terms of the gift and the extent of the land, or there is any documentary evidence to provide for the gift, such as written documents or Minutes of the meeting when the gift was made, or even evidence of the specific date when the gift was made, it is very hard to think the council has a valid case. All the verbal evidence in legal terms is just hearsay. Her advice is given below, and unlikely to change unless written evidence can be presented, and then there may be scope to amend the advice headed Option 2, 'Proprietary Estoppel'.

Option 1: Adverse Possession

Adverse possession is essentially 'squatter's rights'. Acquiring land by adverse possession is the process by which a person who is not the legal owner of the land can become the legal owner by possessing the land for a specified period of time. In order to claim title by adverse possession an applicant needs to establish:

- Uninterrupted factual possession of the land by the claimant for the requisite period.
- Intention on the part of the claimant to possess the land during that period of possession.

The land must have been in the squatter's factual possession for the requisite period, this is generally 10 years for registered land.

There must be a sufficient degree of exclusive physical control over the land. What is sufficient will depend on the circumstances and, in particular, the nature of the land and the manner in which land of that nature is commonly used. Broadly, the person in possession must have been dealing with the land as an occupying owner might have been expected to deal with it and, most importantly for the Council's purposes, no one else must have done so.

The applicant must have the necessary capacity to exercise exclusive physical control. This is slightly difficult to do when land is used not for the benefit of the applicant solely, but for various unknown or unnamed individuals. Because of the absence of physical control, and the wide use of the land by local people, it is doubtful that a claim by the Council for adverse possession would succeed.



Option 2: Proprietary Estoppel

In general terms, estoppel is where a party has been induced into acting in a certain way on the promise of another person who then reneges on that promise. Estoppel allows for the person who has acted to their detriment to seek to force the second party to complete the promise, or seek damages in the alternative. Estoppel on its own is not a cause of action unless it relates to property. This means, people can make a claim against another person who promises them property, and then changes their mind/denies the promise made.

Proprietary estoppel has three key elements:

- A representation, promise, assurance or other encouragement by the defendant giving rise to an expectation by the claimant that it would have a certain proprietary interest.
- Reliance by the claimant upon that expectation.
- Detriment to the claimant in consequence of its reasonable reliance (for instance, spending money on the asset or giving up other property).

On the face of it, this might seem to be an ideal route for the Council, however, the issue is the uncertainty over the terms of the gift. It appears that there is no evidence on when the gift was made and on what terms. For instance, what was the extent of the land gifted, were there conditions to the gift, what was the date of the gift etc? In claims such as this, the claim is likely to be only as strong as the promise, and the Council is most certainly on the back foot here.

This principle of the basis of the promise would also be applicable to the money which has been expended. Even in the absence of an estoppel claim, there is no basis upon which the Council could argue that they are entitled to the return of any monies. Again, the issue is evidence, what evidence is there to show that it was anything other than the Council's choice to spend money on the land? It is not because there is doubt that there was a true belief as to the ownership, but the facts need to be considered from the perspective of a judge. If there has ever been an offer to reimburse for the costs, then this might be something to work with, however, the offer of repayment will not in of itself equate to an acknowledgement of ownership.

Costs so far: £450.00 estimate

Conclusion and Next Step:

At this stage Ms Frankham suggests there is nothing to prevent Stanway Parish Council from writing to the owner of the land, JLG Ltd. to ask that the legal transfer of land be effected. This would be done 'without prejudice', in order for the correspondence to remain confidential. The letter would outline, in brief terms, the promise and quite simply ask JLG Ltd. to complete the transfer. There is a chance JLG Ltd. could respond positively, so it may be a worthwhile next step.

Ms Frankham would be happy to provide an outline for this letter if that is how the councillors wish to proceed.



Stanway

Parish Council