

CUR REF MPM/NE/BOR30/5

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YOUR REF JMS/161/083.0002

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WITHOUT PREJUDICE

Dear Sirs

Our Client: Borough Green Parish Council

Your Client: [REDACTED]

Boundary Hedge adjoining A25, Borough Green

We act for Borough Green Parish Council ("the Council") and have been instructed by them in relation to the dispute which has arisen with your client over the hedge and fence on the boundary between her property, Dark Hill Farm, and the A25 at Borough Green. As all recent correspondence between the parties has been sent on a without prejudice basis, this letter is also marked without prejudice.

The history of this matter has been set out in detail in correspondence between the parties since your client's email of 23 July 2020 and we do not therefore propose to rehearse the nature and detail of the dispute. It is sufficient to state that the parties have reached an agreement over the settlement of the dispute save in relation to one point. Your client has insisted on our client planting along the 40metre gap where the previous vegetation used to be an "instant" evergreen root-balled hedge, not less than 2metres in height at our client's expense (although your client is prepared to pay the additional costs of the hedge being 3metres in height if she chooses). Because it appears to be agreed between the parties that such an "instant" hedge would not survive without considerable care, your client is also insisting on the installation at our client's expense of a water supply and irrigation system.

Because of the very considerable expense of planting such a hedge and installing such an irrigation system, our client is not prepared to do this and has instead offered to plant a normal native hawthorn whip hedge. As the parties appear to agree, on the basis of advice from arboricultural expert Treeability, that such a hedge would have very good prospects of thriving

without an irrigation system and with minimal care and would produce a structured two-metre high hedge within a fairly short space of time – one to two years – our client regards your client's insistence on her choice of hedge as entirely unreasonable and disproportionately expensive.

This is particularly the case because your client does not even live at Dark Hill Farm. The farmhouse itself is some distance away and no longer forms part of your client's title. Your client's land has no house on it and the only buildings are two barns/stables. Owing to a steep bank on your client's land to the west of the area where the hedge has been cut away, the area of your client's boundary which is now without a hedge is not even visible from the two barns/stables. If your client had a house close to where the section of removed hedge used to be, your client's insistence on an "instant" hedge would be more understandable – in reality, your client has no objective need whatever for privacy/sound deadening etc along her boundary and her only immediate need is for stockproof fencing to keep the horses in – which our client has already installed to your client's satisfaction.

Your client's choice of hedge seems to be based upon an assertion that she has an unanswerable claim for trespass against our client for having entered her land and removed the vegetation which was present. That is, however, an entirely one sided and inaccurate portrayal of the legal position.

Since your client acquired Dark Hill Farm (from her family) in 2014, Kent County Council have repeatedly approached your client to cut back the hedge because, not only was it in very poor condition, it was encroaching substantially onto the pavement and creating an obstruction for pedestrians and obscuring the 30mph speed limit sign, causing significant problems over speeding. Your client did not respond to any of these approaches. On several occasions, falling/fallen trees and parts of the hedge had to be cut back or removed due to the risk to pedestrians and vehicles. On one occasion, Kent County Council used its tractor hedge cutter to trim back the hedge.

Consequently, on the day on which our client (through its chairman Mr Mike Taylor) entered Dark Hill Farm land and used a mini-digger to remove the 40 metre section of dilapidated hedge and rotten fencing, there had been a considerable history of your client not responding to lawful and reasonable requests to deal with the problems which her hedging was causing the public.

When Mr Taylor arrived on site, his intention was simply to remove that part of your client's hedge which was obstructing the sight line to the 30 mph sign. The more he cut back, however, the more obvious it became that the hedge was composed of dying and dead hawthorn, adventitious

damson (it used to be a fruit field) and bramble. The hedge was not continuous and the stock fence was in a very poor state of repair with every fence post rotten and lying on the ground.

It also became apparent that cutting back the hedge would leave an earth bank two feet or more in height that would fall back onto the pavement. The bank was also filled with roots that had spread as the bank had increased in size. As a result, Mr Taylor resolved that the most sensible way to deal with this was to reprofile the bank away from the pavement with the digger and to replant any sound rootstock along the fence line. Our client also intended to install a new stock fence and plant a new whip hedge on the southern edge of the strip of land. Our client's intention was to work along the entire hedge length, cutting it back and clearing the build-up of earth to ensure that the pavement was unobstructed and that the hedge line would not encroach again and would be cut annually by our client's contractors. The reason that our client started at the point that it did – effectively the middle – was to restore the sight lines for the 30 mph speed limit sign and to ensure that the village gateways could be installed, with a 4 foot wide gateway on your client's side of the A25 and 9 foot one on the opposite side of the road.

As you will be aware, any obstruction to the highway is a criminal offence under Section 137 of the Highways Act 1980. Our client, acting as agent for the Highways Authority Kent County Council, has an ongoing duty under Section 41 of the 1980 Act to maintain the highway. It also has a duty under Section 130 of the same Act to protect public use of the highway and to prevent obstructions to it and has powers to commence legal proceedings against offenders. Under Section 154 of the Act, our client can require a land owner to cut back/remove overhanging vegetation within 14 days of that demand; if the land owner fails to do this, the Highways Authority has the power to carry out the cutting back itself and to recover the cost from the land owner. Under Sections 143 and 149 of the Act, the Highways Authority also has the power to remove obstructing structures on the highway and to remove anything deposited on the highway (with or without a court order) if it presents a danger to the public and to recover the cost from the land owner.

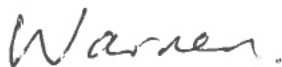
As we have pointed out above, our client (and Kent County Council) have repeatedly over the last few years asked your client to cut back and remove the vegetation which was obstructing the highway/pavement but your client did not respond. Our client was therefore entirely within its rights in entering your client's land in order to cut back/remove the offending vegetation rather than seeking the prosecution of your client for offences under Section 137.

Our client has sought to reach an amicable resolution with your client. Our client has already installed at its own expense a high-quality post and rail fence which is stockproof and has agreed

to the removal of cuttings at its own expense and has agreed to plant a high quality hawthorn hedge which will afford a high degree of visual protection to your client, entirely at our client's expense. This is despite the fact that, since your client's email of 23 July, two trees have fallen from your client's land across the highway (as a result of their poor condition), resulting in our client (at its own expense) cutting back and removing those fallen trees.

On the basis of this, we trust you will appreciate that our client's offer to plant the hawthorn hedge on the terms offered is more than reasonable. It would be entirely unreasonable on any assessment of the situation for our client to be expected to plant at considerable expense an "instant" evergreen hedge and to install, at its own expense, an irrigation system for that hedge. Such a hedge would afford your client's land far more protection from the road than your client had been enjoying until 22 July this year. We therefore urge your client to agree to our client's proposal.

Yours faithfully

A handwritten signature in cursive script that reads "Warners".

Warners