



# Datchworth

## PARISH COUNCIL

SERVING THE COMMUNITIES OF DATCHWORTH, BULLS GREEN, BURNHAM GREEN & HOOKS CROSS

<b>Agenda item heading:</b>  <b>Update on the Coltsfoot Easement</b>	<b>Date:</b> 2 <sup>nd</sup> April 2024
	<b>Committee/Working Group:</b> G&L

### **Background**

When elected in May 2023 the present Datchworth Parish Council (DPC) inherited an unresolved dispute regarding access across part of the registered Common Land to the south of Whitehorse Lane, the whole known as "Bulls Green, Datchworth".

DPC appointed a working group comprising two parish councillors and two lay members, one a Chartered Surveyor and Datchworth parish councillor until May 2019, to advise on and seek to recommend a basis for resolving the dispute.

The working party, having fully considered the nature of the inherited dispute, has reported to DPC and as authorised, sought a resolution by discussion and subject to contract negotiations with the developer.

As per DPC's minutes, the following is recorded as reported at the February 2024 DPC meeting - "*A meeting between some members of the working group and the developer took place on 1st February 2024. No progress was made, and it appears a stalemate exists. To protect the public interest, a formal offer has been tabled on 8th February 2024 without prejudice save as to costs and is accompanied by the subject to contract draft Heads of Terms, as agreed by Full Council at its November meeting. No response has been received to date (as at 27<sup>th</sup> Feb) from either the developer or his solicitor.*"

### **Developer's Response**

On 20<sup>th</sup> March 2024 a 16-page response (the letter) with 50 attachments was received from the developer's solicitor dated 19<sup>th</sup> March 2024.

The chair of the working party was away on holiday until 25<sup>th</sup> March 2024.

For the following reasons, the remaining members of the working party, with the chair of DPC, met on 24<sup>th</sup> March 2024 to consider the following.

In the penultimate paragraph (para. 32) of the letter, the developer's solicitor says the developer "*will shortly be commencing constructional works for effecting access*" to his lands.

A Bulls Green resident had previously reported to the chair of the working group that a group of people were seemingly "inspecting" the developer's site. In the light of the letter, it was felt that this could indicate preparing to start the work in question.

Based on the arguments developed in his foregoing 30 paragraphs, in para. 31 the developer's solicitor claims that "No challenge can be made by the Parish Council to the rights granted by Mr Rush in the 1949 conveyance, and (the developer) intends to implement these rights, which are now held by him."

The developer's solicitors claims that DPC does not have title to the area of common land in question because it was enclosed in the late 19<sup>th</sup> century and in due course became owned by Mr Rush thus enabling him to grant the rights the developer now seeks to exercise.

Neither the developer nor his solicitor have responded to the specifics of DPC's offer dated 8<sup>th</sup> February 2024 embodied in the draft Heads of Terms sent with the offer letter.

### **DPC's Response**

In view of the statement that the developer "*will shortly be commencing constructional works for effecting access*" to his lands, and to protect the public interest, DPC was left with no choice but to seek urgent legal advice and advice from its insurers.

Subject to this advice, DPC's position is that the matters set out in the letter of 19<sup>th</sup> March 2024 do not negate the following –

1. DPC has statutory jurisdiction over what the developer intends to do, and
2. The developer does not have the following rights he needs to implement his planning permission –
  - a. Constructing an access drive.
  - b. Accessing the additional rear land not included in the alleged 1949 grant.
  - c. To bind parts of the Bulls Green land for vision splays.

The detail in this Briefing Note is given in the public interest, in the interest of openness and because of the costs DPC faces incurring. It faces these costs is because it considers -

1. It has a legal and public duty to challenge the assertions made in the letter regarding the status and ownership of the part of Bulls Green in question, and
2. At the very least, the 1949 rights the developer is claiming require a supplementary grant of Easement as outlined in 2 above which is a disposal of land for which DPC considers, subject to legal advice, is obligated as follows under the Local Government Act –

*"Local authorities are given **powers** under the Local Government Act 1972 **to dispose of land** in any manner they wish, **including** sale of their freehold interest, granting a lease, or assigning any unexpired term on a lease, and **the granting of easements**. **The only constraint is that a disposal must be for the best consideration reasonably obtainable** (except in the case of short tenancies), unless the Secretary of State consents to the disposal (section 123, LGA 1972)."*

On 25<sup>th</sup> March 2024 DPC appointed Mr George Burton of solicitors Nockolds to provide initial advice and to respond on its behalf to the developer's solicitor.

On 26<sup>th</sup> March 2024, in view of the long Easter weekend, Mr Burton emailed a letter to the developer's solicitor confirming that DPC refutes the developer's account of ownership of and his access rights over the land, that Mr Burton would respond on or by 23<sup>rd</sup> April 2024 and asking for confirmation that the developer will take no further action until that time.

## **How and when?**

### **The Coltsfoot Easement working group recommend the following actions:**

1. To ratify DPC's response as above.
2. To agree to proceed initially as proposed in Nockolds email sent 25<sup>th</sup> March 2024 at 12.26pm (circulated only to councillors and the working group because it is legally privileged).
3. To seek further council agreement if necessary.