

RE: SHENFIELD CRICKET CLUB

OPINION

1. The Asset and Enterprise Committee of the Brentwood Borough Council considered, on the 27 March 2015, a report relating to the Courage Playing Fields in Shenfield and the use made of them by the Shenfield Cricket Club. At the heart of the report lies the intention that the use of the Playing Fields should be, as it may be called, regularised.
2. In order that such regularisation may be better effected, by agreement, as would be sensible, it is as well to see the legal position as it bears on the Playing Fields.
3. By deed of gift made on 27 February 1950 Donors (who were members of the Courage brewing family) wishing to make a free gift in order that land could be held as public open space recreation grounds and playing fields, conveyed a little more than 13 acres of land in Shenfield to the Urban District Council of Brentwood. That Council was the predecessor to the (current) Brentwood Borough Council, who owe their existence to the Local Government Act 1972.
4. The Urban District Council covenanted with the Donors, amongst other things, to allow Shenfield Cricket Club to have the use of the cricket ground situate upon the property as long as the Club remained in existence upon such reasonable terms as might from time to time be agreed.
5. It is plain from the terms of the deed that the Cricket Club as such secured no interest in the land or any particular rights over it. The preceding covenant was not with the Cricket Club and the deed did not seek to give any interest to the Cricket Club. Further, the deed makes it plain that such use as might be made by the Cricket Club of the Playing Fields would be, absent any other agreement, as a licensee of the Urban District Council and not otherwise.

6. The Cricket Club have, in fact, consistently played at the Playing Fields and have a distinguished place in cricket in Essex. The Cricket Club continues to play at Shenfield. It is, as recorded in its club rules (9th December 2013) a members' club. Accordingly, it does not appear to be a legal person but rather is an unincorporated association. This means that any land, if any were held, would have to be held by (for example) members of the committee.
7. However, the Playing Fields are owned by the Brentford Borough Council being the successor to the Urban District Council. The Urban District Council were perfectly entitled to own the land just as the Brentwood Borough Council are empowered, under the Local Government Act 1972, to hold land.
8. A further deed of gift was made on 5 October 1951. The effect was to add to the land given to the Urban District Council.
9. Any buildings on the land at the time of the deeds would have transferred with the land (as part of it) to the Urban District Council. Similarly, any buildings constructed on the land subsequent to the deeds of gift, assuming they are not chattels, would have become part of the realty i.e. part of the land.
10. It should be noted that the 1950 deed refers to use of the cricket ground situated on the property. It is plain that the property given to the Urban District Council was far more than just the ground where cricket was played. There is no suggestion in the deed that the Donors had anything else in mind than the ability to play cricket on that part where cricket had been played.
11. It is worth having in mind the legal position that arose in 1950. The land was conveyed to the Urban District Council. The land was (see clause 1) to be held by the Council in fee simple free from any trust in favour of the Donors for the purpose (see recital C) that the land could be held and administered by the Council for the purpose of a public open space, recreation grounds and playing fields subject (amongst other things to) the covenant with the Donors that has already been mentioned.
12. It is not known whether the Donors are still alive. If they are not the question of enforceability of the covenant must arise. We do not propose to explore this matter at

length as we do not understand the Brentwood Borough Council to have any present intention of not permitting cricket.

13. However, the following can be observed. It is difficult to see how the covenantees, whatever the Donors owned by way of surrounding land, had a legal estate in the land to be benefited as there was no surrounding land to be benefited. It is also difficult to see how the covenant protects other land. These considerations may pose obstacles in the way of enforcement of the covenant but for the reasons given we express no concluded view.
14. We have seen a detailed history of matters touching upon activity on the land. It can here be observed that the Cricket Club have, in seeking planning permission, asserted that a tenancy existed. None the less there is nothing in any document we have seen suggestive of a tenancy having been created between the Brentford Borough Council and the Cricket Club, which appears to be an unincorporated association. A unilateral assertion of tenancy does not create a tenancy. Further, a record ascribing a payment of £10 for a calendar year cannot create, in the circumstances, a tenancy.
15. There is nothing to suggest there ever was a grant, which needs to be subject to a definite temporal limit or a limit capable of being defined. Further, there is nothing to suggest exclusive possession was ever granted of an identifiable parcel of land. Furthermore, no formalities were ever fulfilled. In most cases a leasehold interest requires formalities see chapter 17 of Megarry and Wade on Real Property.
16. It can also be observed that in 1996 the Brentwood Borough Council wrote to the Cricket Club suggesting there should be a lease but the Club, apparently on advice, declined to enter into a lease. It follows that such occupation as has taken place can only have been in pursuance of a licence from the Council. It is clear that the Council have never given up their rights and that no adverse rights have been acquired in respect of the land.
17. In those circumstances the general position can be stated in brief terms. First, the land in question is owned by the Council. Second, the land is appropriated, in the sense that local authorities appropriate their land to various uses, to recreation and open space. Third, the Cricket Club has no particular rights over the land; their use of it depends on the agreement of the Council.

18. A proposal has been made that certain cricket nets be installed. This, as proposed, amounts to development within the Town and Country Planning Act 1990. We presume this is, at least partly, because an engineering operation is involved. In any event given that the land belongs to the Brentwood Borough Council with the Club merely having permission to use the part of it laid out for cricket, whether or not the land can be utilised in the way sort depends on the consent of the Borough Council as owner. This is nothing to do with the role of the Borough Council as local planning authority but simply a function of their rights as owner.
19. The covenant made to the Donors cannot avail the Cricket Club. First, the Club is not the covenantee. Second, the permission was merely use of the cricket ground; it was not a permission to construct nets. Third, it is perfectly possible for cricket to be played without there being nets. Indeed nets are used by a limited number of people to practise skills which come to be used when playing cricket.
20. Car parking may next be mentioned. This, as a matter of day to day life, is far more significant in 2015 than it was in 1950. The land, as we have seen, belongs to the Council. The Club has been permitted to use some of it for the playing of cricket. There is nothing in any document we have seen to warrant the Club securing a part of the land and using it as a car park; still less is there any warrant for the Club to charge motorists for the parking of cars on the land.
21. By section 4(2) of the Essex Act 1987 in the interests of persons resorting to any park, pleasure ground or open space under their management and control a local authority may set apart an area of the park, pleasure ground or open space not exceeding the prescribed area for the parking of vehicles. The prescribed area in this case would appear to be one half of a hectare: see section 4(1)(b) of the 1987 Act. (This is on the basis the Courage Playing Fields are 5.76 hectares).
22. It must be noted that the use of subsection (2) is based on the interests of persons resorting to the park, pleasure ground or open space. In other words this provision does not enable parking in the interests of the residents of the Borough at large. It would enable car parking for those using the playing fields, including the cricketers. It should be noted that the Brentwood Borough Council have power to make reasonable charges for the use of such parking: section 4(4) of the 1987 Act.

23. A further provision of public general legislation should next be noticed. By section 33(2) of the Road Traffic Regulation Act 1984 a local authority may adapt for use as a temporary off street parking place any land owned by them or under their control not being land appropriated by them for use as an off street parking place.
24. The land in question has not been appropriated for use as an off street parking place but is owned and controlled by the Brentwood Borough Council. Accordingly, it appears that section 33(2) of the 1984 Act enables the Borough Council to use land at the Courage Playing Fields as a temporary parking place. We would not suggest use of more than the prescribed area under the Essex Act 1987.
25. It is now sensible to revert to the report mentioned in the opening paragraph of this opinion. This report had a number of recommendations. The first suggests that delegated authority be granted to the Strategic Asset Manager to negotiate and enter into a management agreement with the Cricket Club as summarised in the report.
26. We leave over for a moment the suggested ingredients of the management agreement to note that it is plainly sensible and desirable for there to be such an agreement. Plainly, the relevant officer can be given the delegated power under section 101 of the Local Government Act 1972. An agreement is plainly envisaged under the Deed and is, in any event, a sensible way to proceed. If no such agreement is made then the terms on which the Cricket Club uses the ground will be simply as stated from time to time by the Borough Council or arising from necessary implication.
27. An obligation to light the cricket ground might be thought unnecessary. Further, the language of assignment, underletting or charging might not be apposite as no interest in the land is to be given. Beyond those observations the other ingredients of the management agreement appear prudent.
28. The second recommendation is that delegated authority be granted to the same officer to negotiate and enter into a lease in respect of the pavilion, score box and practice nets as approved under (planning permission) 14/00836. First, such delegation is plainly lawful. Second, any lease would have to be with named individuals given the status of the Club, as discussed above. Third, although it appears that the pavilion was adjacent to rather than on the cricket ground that is a matter of indifference given that the pavilion is not a chattel and is incorporated in the land. It follows that as the land is owned by the Borough Council

the pavilion is the Council's just as the land is the Council's. Accordingly, a lease can be granted of the pavilion, score box and practice nets. The terms contemplated appear reasonable especially when it is remembered that the Borough Council have the power to exclude the Club from those premises or decline permission as owner for erection of the practice nets.

29. A point can here be noted about the use of the pavilion or any bar contained within it for the sale of alcoholic refreshment. In the second deed of gift made on the 5th October 1951 the Brentwood Urban District Council covenanted with the Donors that that they would not permit any sale of alcoholic refreshment on the Courage Playing Fields. That expression clearly embraces the pavilion. There is a suggestion that the Courage family may have indicated to the Cricket Club that the Club could sell alcoholic refreshment. However, this does not constitute a waiver of the covenant that the Council as covenantor gave to the Donors as covenantee.
30. We are not able definitively to say whether the covenant can still be enforced. However, it is clear that it is open to the Council to provide that any lease should reflect the covenant. In any event the necessary licence would be required and the licensing committee would be likely to want to know whether sale of alcoholic refreshment had the landlord's consent.
31. The third recommendation was that the Business and Town Centres Committee be recommended to add the Courage Playing Fields Car Park to the relevant off street parking order. As stated the land on which the car park sits is the Council's land. Further, legislation, as stated, enables, following proper consultation, off street parking.
32. The fourth recommendation is that there be delegated authority to the same officer to enable legal action to protect the Borough Council's interests if the Club fail to agree. It is apparent that the Local Government Act 1972 empowers the Council to take such action. Further, should action would be soundly based. The Council have to bear in mind not merely their property interests but also the rights of other members of the public. It is clear that the Courage Playing Fields are a borough asset not a private preserve, however important or significant cricket may be.
33. We should add that we have read through a large file of documents provided on behalf of the Cricket Club. It is clear that from time to time somewhat differing arrangements have been made. However, there is nothing that has undermined the legal position, which is

absolutely clear. Further, the proposed new arrangements are being made following extensive consideration and consultation with the Cricket Club.

CONCLUSION

34. The rights of the Shenfield Cricket Club depend entirely on agreement with the Brentwood Borough Council, who own and control the land. It is clearly appropriated, as a matter of local authority law, to use for open space and the users of it are not restricted to the members or visitors of the Shenfield Cricket Club. It is however perfectly lawful for the Council to permit use of part of the land as a cricket ground. Whilst cricket is being played on such a ground others can be excluded from the cricket ground, i.e. the area described by the boundary.
35. It is plainly sensible for the arrangements signalled in the report for the meeting of 27th March 2015 to be made. The Borough Council are in a position to vindicate their rights if such or similar arrangements are not made.

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