

**Meeting of the Ernest Stevens Trust Management Committee -  
27<sup>th</sup> July, 2023**

**Report of the Acting Service Director - Environment Directorate**

**Benjamin Drive Traffic Regulation Order and Parking - Homer Hill Park**

**Purpose of Report**

1. To seek agreement for the way forward with the Traffic Regulation Orders on Benjamin Drive and proposals to assist with parking.

**Recommendations**

2. The Committee is recommended:
  - To accept that the Traffic Regulation Order prohibiting Parking and the associate double yellow lines are retained.
  - To approve the proposal to create parking provision using environmentally friendly parking areas that can be created using permeable paving or matting.
  - To agree that the car park accessed off Homer Hill Road is opened to the users of the park subject to a height restricting barrier being installed. The car park will be extended into the tennis courts.
  - To agree that the Traffic Regulation Order Prohibiting Parking is not enforced until such time as the measures detailed above are in place.
  - To note that the costs of this work will be found from budgets available to the Environment Directorate (Estimated £50,000).

**Background**

3. Benjamin Drive was constructed by Midland Heart as part of their development situated at the end of the park. The road is situated within Homer Hill Park with the consent of the Charity Commission.

4. The road is a private road on land in the ownership of Dudley Borough Metropolitan Council (DBMC), as Trustee, rather than as landowner, and Homer Hill Park is managed by the Ernest Stevens Trusts Management Committee.
5. Within a Deed of Transfer relating to the development and Benjamin Drive Midland Heart were required to construct Benjamin Drive to an adoptable standard. DMBC, as Highway Authority will then maintain the access road to the standards of a highway following the works required by Midland Heart. There is no obligation in the transfer deed that the Highway Authority will formally adopt the access road as a highway.
6. In 2021/22 requests were received for action to be taken to prevent parking that was restricting access to the Lime Gardens retirement village from two members of the public and resulting in concerns regarding access for emergency services. There was a request from a senior officer of the Council Street and Green Care team to prohibit parking on both sides of Benjamin Drive at all times. **(Appendix 1)**
7. The process for the implementation of the Traffic Regulation Order (TRO) was followed and the proposed restrictions were advertised in accordance with the Road Traffic Regulation Act 1984 (RTRA84) and The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 (LATOR1996). September 2022
8. Objections were received and these were presented to the Cabinet Member for Highways at that time, who took the decision to progress with the TRO. The TRO was then made in December 2022. In accordance with the regulations the making of the order was published and the objectors were notified. **(Appendix 2)**
9. On 30<sup>th</sup> January 2023 A complaint was received from the Secretary of the Friends of Homer Hill Park. This was regarding the proposed TRO and the process that had been followed. The Complaint was received by the Ernest Stevens Trusts Management Committee and requested that the proposed Traffic Regulation Order on Benjamin Drive would have a "stay of happening" pending a review. An instruction was issued to the works team not to install the Double Yellow Lines. **(Appendix 3)**.
10. A review of the process followed revealed that the Ernest Stevens Trusts Management Committee had not been directly contacted or consulted regarding the proposed TRO. It was also unclear as to why the request from the Street and Green Care team had been issued. The Cabinet Member for Highways agreed to the removal of the Double Yellow lines and a consultation to be carried out to revoke the TRO that had been

made. This was communicated to the originator of the complaint in February 2023.

11. In addition, the implementation of the TRO and the installation of the Double Yellow Lines can be referred to the Charity Commission who can investigate the Council's process and decision-making reasons and request that the Council undertake corrective measures to put the Access Road back into its previous situation.
12. On 22<sup>nd</sup> March 2023 despite the previous instruction the Double Yellow Lines were installed by a contractor working on DMBC's behalf.
13. Representations were received to both remove and retain the Double Yellow Lines. The Cabinet Member for Highways instructed the suspension of enforcement of the TRO and a review.
14. The issue of the Traffic Regulation Order was referred to by the Chair at the Meeting of the Ernest Stevens Trusts Management Committee on 3<sup>rd</sup> April 2023. The Chair requested a report to be submitted to the next meeting. **(Appendix 4)**
15. The detail of this review is included in this report and has been discussed with the Cabinet Member for Highways.

### **Ownership of Benjamin Drive**

16. Benjamin Drive is on Homer Hill Park and as such is contained within land being owned by the Council, as Trustee, rather than as landowner.

The management of Homer Hill Park is through the Ernest Stevens Trusts Management Committee made up of the following elected members: -

Councillor I Kettle (Chair) – Pedmore and Stourbridge East Ward  
Councillor T Crumpton (Vice-Chair) - Cradley and Wollescote Ward  
Councillor D Borley – Lye and Stourbridge North Ward  
Councillor J Cowell – Quarry Bank and Dudley Wood Ward  
Councillor A Hopwood – Wollaston and Stourbridge Town Ward  
Councillor S Clark – Norton Ward

Together with three Co-opted Members (Non-voting):

Friends of Stevens Park, Quarry Bank – D Sparks  
Friends of Wollescote Park – J Jones  
Friends of Mary Stevens Park – H Rogers

The powers under the Constitution of the Council provide that the Committee make decisions that are in the best interests of the Trust in connection with the management and control of the trust land and properties.

17. Midland Heart have access to Lime Gardens, their property, via Benjamin Drive, under the terms of an easement that was granted within a transfer deed dated 13<sup>th</sup> March 2015 made between the Borough Council of Dudley (1) and Midland Heart Limited (2). (**Appendix 5**)

### **Maintenance of Benjamin Drive**

18. The Fourth Schedule of the transfer deed confirms that the Council, as Highway Authority will maintain the access road to the standards of a highway following the works required by Midland Heart. There is no obligation in the transfer deed that the Highway Authority will formally adopt the access road as a highway.

### **Powers to implement a Traffic Regulation Order on privately owned trust land**

19. A TRO is an official order or by law made by a local authority that details the nature and extent of traffic restrictions in a certain area. These restrictions can relate to restricting access to or regulating the use of a road, (or of any part of); parking; bus lanes; etc.
20. A road is defined for the purposes of the RTRA 1984, s142 as a 'length of highway or of any other road to which the public has access and includes bridges over which a road passes.
21. The question of whether RTRA 1984 enabled traffic orders to be made on private roads used by the public was considered in *Bowen v Isle of Wight Council* [2021] EWHC 3254 (Ch). (**Appendix 6.**) The Road Traffic Regulation Act 1984 provides the appropriate powers for the Council to make the proposed Traffic Regulation Order. This means that the traffic authority, DMBC, can impose parking restrictions, with the consequent yellow lines, on any road open to the public—which includes un-adopted highways.
22. The Fourth Schedule of the transfer deed also states that DMBC can erect highway signage and directions including speed-bumps, speed limits and other measures to procure usage of the Access Way in accordance with the same standards of the public highway.

## **Powers of the Charity Commission.**

23. If a complaint is made by a beneficiary of the Trust (member of the public), to the Charity Commission (CC), then the CC do have powers to investigate the Council's process and decision-making reasons. They could, because of the investigation, request that the Council undertake corrective measures to put the Access Road back into its previous situation – without the yellow lines.

## **Concerns**

24. The original request for the Traffic Regulations was to deal with the issue of vehicles parking along one or both sides of Benjamin Drive both at School times and on the weekend when football matches are held.
25. Inconsiderate parking has been observed and there would be an issue should emergency services be required at The Lime Gardens residential village, or any other properties accessed from Benjamin Drive. The parking may pose a risk or hinderance to those wish to users of Benjamin Drive for walking and exercising as intended.
26. However, concerns have also been raised that the loss of parking on Benjamin Drive would be detrimental to the use of the park for football teams, many of whom serve younger members of the community. A communication from the Halas Hawks Junior FC via the friends of Homer Hill Park (29<sup>th</sup> January 2023) states that Halas Hawks Junior FC have used Homer Hill Park as their base for many years. They hold training sessions and matches for upwards of 200 children which are attended by parents and guardians.

In the summer, the park is used every evening of the week to hold coaching sessions for many of the teams. In the case of younger persons teams supporting parents and carers prefer to park close to the event. The TRO may also be restrictive to those who park to enjoy the use of the park for other purposes such as exercising and dog walking. **(Appendix A)**

27. It should be noted that there is parking. DBMC supply a key for the football teams to open the gate and utilise the car park. However, council officers have reported that footballers often want to park their vehicles at the closest point to the pitch.

## **Support for the parking restrictions, in some areas, received since 22<sup>nd</sup> March 2023**

28. Support for the parking restrictions to be retained in some areas has been received from 3 residents and the late Councillor R Body. Councillor N Neale is in support of the restriction being retained throughout Benjamin Drive. **(Appendix B)**

## **Objections to the parking restrictions since 22<sup>nd</sup> March 2023**

29. Two objections to the parking restrictions and a request to remove the Double Yellow lines from Councillor T Crumpton have been received. However, it should be noted that many users of the park are aware the restrictions are not being enforced and are ignoring them. **(Appendix C)**

## **Proposal**

30. In order to balance the need to preserve Homer Hill Park, cater for the need for visitors to access the park by motor vehicle, and ensure the vehicles including emergency services can access the park without obstruction, the Traffic Regulation Order prohibiting parking is retained along with the associated double yellow lines. However, the Traffic Regulation Order Prohibiting Parking is not enforced until such time as the measures detailed in this report are in place.
31. To provide parking, encourage appropriate parking and minimise damage to the grassed areas alongside Benjamin Drive, environmentally friendly parking areas can be created using permeable paving or matting. The use of permeable paving or matting will enable the areas alongside Benjamin Drive to be used for leisure purposes. Benjamin Drive will also be more accessible to those who wish to walk etc. **Appendix D – Parking Arrangement Benjamin Drive, Off Slade Road Cradley - Drawing D084**
32. The car park accessed off Homer Hill Road will be opened to the users of the park subject to a height restricting barrier being installed. In addition, the tennis court area will be resurfaced and remarked to provide 22 parking spaces. **Appendix E - Homer Hill Car Park Plan June 23 DF. Pdf**

## **Finance**

33. The estimated cost of the proposed works is £50,000.
34. The cost of this work can be covered from Highways revenue budgets.

35. Capital costs – None. All costs will be covered from revenue budgets.
36. Ongoing maintenance costs will also be revenue and be included in the maintenance costs for Benjamin Drive and Homer Park.

### **Law**

37. Any amendment to the current Traffic Regulation Orders would require a revocation and/or proposed restriction to be advertised in accordance with the RTRA1984 and the LATOR1996.
38. The Council is the registered trustee of the Charity and in accordance with the Council's Constitution has delegated the administration of the charity to this Management Committee.
39. Section 139 of the Local Government Act 1972 empowers the Council to accept, hold and administer gifts of property, where it enables them to discharge any of their functions and where the gifts are for the purposes of benefitting the inhabitants of their area.
40. The law relating to trusts which are charitable is contained in various legislation. The key legislation being the Charities Act 1960, 1992, 1993, 2011, 2022 and the Trustee Investment Act 1962.

### **Risk Management**

41. The Charity Commission investigate the Council's process and decision-making reasons. They could, because of the investigation, request that the Council undertake corrective measures to put the Access Road back into its previous situation – without the yellow lines.
42. The car park and parking areas could become locations where anti-social or unacceptable behaviour takes place. This will be monitored, and appropriate action will be considered.

### **Equality Impact**

43. Provision of defined parking area and the restriction of parking may enable those members of the community with a disability to make better use of Benjamin Drive whilst allowing access, especially emergency services, to properties off Benjamin Drive.

## **Human Resources/Organisational Development**

44. The proposals in this report do not have any direct Human Resources/Organisational Development implications.

## **Commercial Procurement**

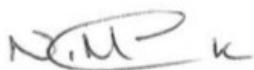
45. Any procurement activity will be carried out in accordance with the Council's Contract Standing Orders, and the relevant officers will take the procurements through the Procurement Management Group to monitor compliance.

## **Environment/Climate Change**

46. The proposals will have limited effect on the environment but may encourage the consideration of alternative modes of transport.

## **Council Priorities and Projects**

47. The proposal is trying to balance the Council priorities of ensuring people have a safe and welcoming indoor and outdoor environment, by providing access especially for emergency services, whilst continuing to promote a healthy, physical and active lifestyle.



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## **Appendices**

Appendix A - A communication from the Halas Hawks Junior FC

Appendix B - Support for the parking restrictions since 22nd March 2023

Appendix C - Objections to the parking restrictions since 22nd March 2023

Appendix D - Appendix D – Parking Arrangement Benjamin Drive, Off Slade Road Cradley - Drawing D084

Appendix E - Holmer Hill Car Park Plan June 23 DF. Pdf

## **List of Background Documents**

Appendix 1 - Original Requests for Traffic Restrictions.

Appendix 2 - Objections to the original Traffic Regulation Order.

Appendix 3 - Complaint was received from Friends of Homer Hill Park by the committee of Ernest Stevens Management Trust.

Appendix 4 - Relevant Section of Minutes of the Ernest Stevens Trusts Management Committee

Appendix 5 - transfer deed dated 13th March 2015 made between the Borough Council of Dudley (1) and Midland Heart Limited (2).

Appendix 6 - App Bowen v Isle of Wight Council [2021] EWHC 3254 (Ch).

## **Appendices**

### **Appendix A – A communication from the Halas Hawks Junior FC**

Sent: 29 January 2023 23:37

Subject: Re: Fw: [EXTERNAL EMAIL] Re: TRO Consultation - Benjamin Drive

"Halas Hawks Junior FC have used Homer Hill park as their base for many years, currently having sole use of the parks football pitches on Saturdays for girls teams and most of the pitches on Sundays for boys teams.

On average, I would say that up to 200 girls and their parents come to the park on Saturdays and about 300 on Sundays.

In the summer, the park is used every evening of the week to hold coaching sessions for many of our teams.

As you are aware, parking is at a premium in the area and parking restrictions in Benjamin Drive would only exacerbate matters and make access to a public recreation area more difficult for everyone involved with Halas Hawks and other users of the park.

I must also point out that when the park is being used by our club, Green Care are extremely unlikely to be present or need access, so parking restrictions would be of no help to them at all".

### **Appendix B – Support for the parking restrictions, in some areas, since 22nd March 2023**

1.  
23/3/23 Resident

It seems that the parking proposals for Benjamin Drive have been turned down although the lines have been laid down by error and will be removed. I do however fail to see how any considerations to not have them trump pedestrian safety.

I thought at the time that certain parties were happy with the proposals covering all of the Drive as it would make it easier to lobby for cancellation.

Is there anything further that can be pursued to at least keep lines on the passing points on the upper part of the Drive on the bend and for some portion further toward Slade rd on the straight part.

This would allow parking and at least allow for vehicles to pass without the situation which exists whereby vehicles have to reverse a considerable distance with all the inherent dangers to children adults and animals, and allow for disabled buggies to negotiate the drive at school time and organised events.

2.

29/3/22 Resident.

Just had double yellow lines put up Benjamin drive and outside our house and the neighbours.

We have been informed that the yellow lines were put down by mistake and are going to be removed.

Can we please ask that the double yellow lines are kept outside our house as its helping with people and parents from the schools NOT parking outside of our house anymore and by them not parking outside our house means there is better view of the road from people trying to exit from Benjamin drive.

Many thanks

3.

2/5/23 Resident

Could you let me know the TRO status for Benjamin Drive Halesowen. The site notice posted back in September indicated proposed prohibition of waiting, double yellow lines have now been installed but the management at Lime Gardens informed me they have been told the lines cannot be enforced?

My mother lives at Lime Gardens and when visiting at school times or Saturday & Sunday mornings it's very difficult to drive up and down Benjamin Drive as it's full of cars completely ignoring the double yellow lines.

4.

30/3/23 Cllr Richard Body

Good morning

Following the TRO mistake/error of judgement can I kindly request the double yellow's recently painted at the junction with Benjamin Drive and Slade Rd. Cradley, be let in place.

It has stopped parents parking right on the bend of junction, making the visibility from Benjamin Drive much safer.

5. 22/3/23 Cllr Natalie Neale

After many years of campaigning this is what residents asked for and wanted. I have fought the issue and the safety aspects of not blocking Benjamin Road and allowing emergency vehicles access.

To take the lines away now is ridiculous and a waste of money and will make the Council look incompetent.

Can you resolve this and keep the double yellow lines and make them enforceable.

The park has numerous parking spaces.

## **Appendix C - Objections to the parking restrictions since 22nd March 2023**

1.

23/3/23 Resident

I was outraged this morning when I visited Homer Hill Park to find "Double Yellow Lines" covering the whole length of Benjamin Drive. I also found NO dog walkers on the field to the left of the drive, normally there are three or four there, having parked their car on the drive.

Why have they been applied when you assured us that this would not be happening?

It will result in no children's football on Saturdays and Sundays as well as discouraging dog walkers and people exercising.

Why? Why?

2.

28/3/23 Resident

Yellow lines on Benjamin Drive. As a local resident whose children play football at Homer Hill Park I was under the impression that no yellow lines were being out in place at Benjamin Drive however they have appeared today. I have heard that this is an error and they will be removed. Can you please confirm the situation.

3.

29/5/23 Cllr. T Crumpton

I am at a loss here. We have a set of yellow lines which can easily be removed, the TRO can be rescinded. Nobody wants such restrictions Val is totally correct in that local concerned people who know, love and use the park are thoroughly fed up. No consultation with those people has ended up in a right mess.

So please get the lines burnt off as quickly as possible and remove the TRA. Discussion and consultation on providing better parking for park and school users can then take place without further loss of park land.

This should be local consultation with the community and would not need the Stevens trust committee to be involved.

## Background Documents

### Appendix 1 – Original Requests for Traffic Restrictions.

6<sup>th</sup> October 2021 User

I pick a resident of Lime Gardens (at the old Cradley high school site) up each Sunday morning at half past ten, to take him to church. Getting up to Lime Gardens from Barracks Lane, coming up Benjamin Drive, is increasingly difficult to the point of being dangerous - caused by the parking relating to the football taking place in the field in front of Lime Gardens. It has been the same when I have picked him up on Saturday mornings, for church events. The biggest issue is the parking of cars on the double bend part way down, meaning that drivers coming down have to approach a blind corner on the wrong side of the road. Last Sunday I met 4 vehicles coming up at this point, and was obliged to make a tricky and lengthy reverse with pedestrians around and no footpath. My passenger has regularly expressed concerns about how emergency vehicles might manage to access Lime Gardens during football sessions. Double yellow lines on both sides of the bend would go some way to solving the issue and reducing the safety risks being created.

Please could you look into this issue, with a view to making things safer for drivers, pedestrians (mostly young families) and residents of Lime Gardens.

19<sup>th</sup> July 2021 (Street and Green Care)

I would like to get a Prohibition of Waiting (24 hrs a day) in place on Benjamin Drive, from Slade Road to the boundary of our neighbour, Midland Heart on both sides of the road.

Regards,

Grounds Maintenance/Parks Operations & Performance Manager

20<sup>th</sup> March 2022 Resident

I am a resident of Lime Gardens retirement village, Benjamin Drive, Halesowen.

The only road in and out of our village is Benjamin Drive.

I would like to make you aware of the parking situation when Homer Hill Park is used for football matches.

There is a small carpark for the footballers but that fills up very quickly.

Therefore, Benjamin Drive is used as an overspill parking area. The road is narrow and bends but the whole drive is full of cars and vans leaving just a narrow passage way for other vehicles. I have lived here for eighteen months

and dread trying to get up and down Benjamin Drive when the football is on.

My daughter has had to reverse the whole way back up the road due to vehicles coming towards her and refusing to move backwards. One day I had to walk to the bottom of Benjamin Drive and stop traffic turning off the main road and into Benjamin Drive so that she could get down safely after

attempting three times to get down the drive onto the main road. She has also been verbally abused by other drivers wanting to get up the drive to park for the football matches. I know this is not your problem but just want to show the gravity of the situation.

I am not the only resident here who has this problem. We are sick to the back teeth of parked cars and vans causing issues. There are many people here who use wheelchairs and motorised scooters and they are scared to leave the building when the football is on. Other residents are unsteady on their feet and use walking aids ... football days and evenings make it difficult for them to get along Benjamin Drive.

I would be really grateful if someone could get back to me regarding this problem. Thank you.

## Appendix 2 – Objections to the original Traffic Regulation Order.

Location	Comments	Cabinet Members Recommendation
Benjamin Drive, Slade Road, Homer Hill Road and Ormonde Close, Halesowen (TM5258)	<ul style="list-style-type: none"> <li>23 members of the community wrote in to object to the proposals on the grounds of loss of parking for funeral cars and mourners visiting the churchyard, loss of parking for parents/carers dropping off and collecting pupils at Colley Lane School and Cradley CofE School and a detrimental effect on the health of children and adults who access the park as a recreation ground, in particular for football. 12 of the 23 objectors were parents and officials of a local girls football club, whose teams base is this park. 100s of children use the park all year round, which would not be possible without parking provisions. Requests were made for additional parking, rather than reducing it as the proposals are reducing childrens ability to access recreational grounds for their</li> </ul>	<p>Implement as advertised in Benjamin Drive and Slade Road only.</p> <p>Based on comments and objections received, do not proceed with Homer Hill Road and Ormonde Close at this time.</p> <p>See plan TM5258 Rev1</p>

	<p>physical and mental wellbeing. Concerns were also raised about parking being displaced into neighbouring streets, creating potential dangers to road users, in particular school children.</p> <ul style="list-style-type: none"> <li>• 2 people wrote in to support the proposals based on vehicle parking inconsiderately which leads to difficulty for visitors accessing Lime Gardens, obstructions to disabled users of the park, and potential dangers to children.</li> </ul>	
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**Appendix 3 – Complaint was received from Friends of Homer Hill Park by the committee of Ernest Stevens Management Trust.**

Secretary of the Friends of Homer Hill Park.

I'm very concerned about a Traffic Regulation Order made on Benjamin Drive, Homer Hill Park, by Transportation & Engineering Services: Traffic/Road Safety.

Following a very badly advertised consultation I was told by email that despite objections it had been decided that a proposal for yellow lines to prohibit parking on Benjamin Drive would go ahead. Benjamin Drive is not a public highway, therefore we believed that any lines would only be advisory. Also, Benjamin Drive was built by Midland Heart as access to Lime Gardens, and under the terms of the Trust that cover the land an easement only was granted by the Charity Commission as the land is protected for leisure use only. It's also a war memorial obtained for the use of the families of those who died and suffered in WW1, and the returning ex service people themselves. If the parking available on Benjamin Drive is taken away the teams of very young and adolescent football players of both sexes will not be able to use the park. Parents stay with their children, they can't just drop them off. There isn't enough parking available even taking into account Homer Hill Road and the carpark off it. So much for exercise, health, wellbeing and leisure!

On 24 January I received a further email following a complaint I'd made it includes that "The request to consider yellow lines in Benjamin Drive was made from the Green Care management team who are responsible for the maintenance of the private access road. The Council as highway authority may

make a TRO on a road that is not public highway when the owner of the road makes a request which is considered in accordance with formal laid out TRO procedures.” So the owner of the road Dudley MBC is asking Dudley MBC for approval – surely a conflict of interest under the Trust.

I’m also astounded that they say it was Green Care who requested the lines so that they can maintain the road. Green Care are not responsible for road maintenance, they tend the pitches etc. From 15 years experience I know that it’s Transportation Engineering services that are involved when we have tarmac laid in the park, they supply the spec, quotes and inspect the work. Also, I’m aware that DMBC have been refusing for 5 years to maintain the road and lights on it, and say that’s up to Midland Heart\*.

Green Care can’t possibly be affected by the vehicles parking on the road, teams train and play matches after their working hours and over weekends. There are very few cars parked there during the day, visiting disabled drivers and dog walkers. Drivers tend to stay for a short time only, in view of their vehicles and are easily found if necessary.

I am asking that the committee stops the Order from being made as it goes against the terms of the Trust and is also based on mis-representation of facts.

#### **Appendix 4 - Relevant Section of Minutes of the Ernest Stevens Trusts Management Committee**

Monday 3rd April, 2023 at 6.00pm  
in Dudley Town Hall, St James’s Road, Dudley

Present:

Councillor I Kettle (Chair)

Councillor A Hopwood (Vice-Chair)

Councillors D Borley, T Creed and T Crumpton

Co-opted Member

D Sparks (Friends of Stevens Park, Quarry Bank)

The Chair referred to double yellow lines that had been painted on an access road through Homer Hill Park. A report would be submitted to the next meeting.

#### **Appendix 5 - Transfer deed was signed between DMBC and Midlands Hart Limited in March 2015**



Transfer dated  
13.03.2015.pdf

*The Fourth Schedule of the transfer deed confirms that the Council, as Highway Authority will maintain the access road to the standards of a highway following the works required by Midland Heart. There is no obligation in the*



*transfer deed that the Highway Authority will formally adopt the access road as a highway*

**Appendix 6 - AppBowen v Isle of Wight Council [2021] EWHC 3254 (Ch).**

It was accepted that the road in question was not a highway, and the road owners only tolerated the public use. The Court held that a road will be a 'road to which the public has access for the purposes of RTRA 1984, and thus a road for which a traffic order may be made, provided that:

a) the land is capable of being a 'road' within the statutory definition, only if it is a

road according to normal usage and language (e.g. a car park would not meet the test)

b) a road is capable of being within the statutory definition only if the public do in fact have access to it. There must be factual access, not merely the opportunity for factual access

c) the access must be by the public generally, not by some special class or subset of the public

d) the access must, in some sense or other, be 'lawful' or at least not prohibited. This means that members of the public must not have obtained access either by overcoming a physical obstruction or in defiance of an express or implied prohibition

e) the general public do as a matter-of-fact exercise access to it and provided that those members of the public 'have not obtained access either by overcoming a physical obstruction or in defiance of prohibition express or implied'

The Road Traffic Regulation Act 1984 provides the appropriate powers for the Council to make the proposed Traffic Regulation Order. This means that the traffic authority can impose parking restrictions, with the consequent yellow lines, on any road open to the public—which includes un-adopted highways.