

HISTORICAL AND LEGAL NOTE

1. Shenfield was part of the Billericay Rural District Council until the Brentwood Urban District Council Order under the Essex Review Scheme took effect in 1934. The Public Health Act 1875 created Rural Sanitary Authorities, which were re-named as Rural District Councils by the Local Government Act 1894. Their powers included public health and sanitation, building control, and some highway powers. The legislation prohibited the building of new homes without connection to the main sanitation system, with owners of premises being entitled, at the owners' expense, to requisition communication to any local authority sewer.

2. Minutes of the RDC Council in the Essex Record Office dated 7 October 1902 and 4 October 1904 record the passing of plans for the layout of roads and sewers for Glanthams Park estate. The 1904 minutes record that amended plans were approved whereby the proprietors of the estate undertook to make up ground at disputed points so as to give fall of 1 in 40 to the sewer. There are no surviving minutes of the RDC's Hutton and Shenfield Committee at the Essex Record Office – these were not required to be made public – and there no plans with the Council minutes, which are in holograph.

3. The Glanthams Park estate was planned and laid out after the sale of the Middleton Hall Estate which was sold by auction in 1897. The Essex Record Office has a copy of the auction particulars. The estate comprised Middleton Hall in park land of 73 acres, the Cricket Ground on London Road, fifteen houses and cottages, Canterbury Tye Farm and accommodation lands – in 449 acres 1 rood and 14 perches, nearly two square kilometres in area. Building land fronting London Road, including a large portion of what became the Glanthams Park Estate was included in the sale.

4. The Glanthams Park estate was offered for sale in lots as freehold building sites in a series of public auctions. The Essex Record Office has a catalogue of one such auction with common covenants intended to be mutually enforceable. (Document 1) The particulars of sale state that "*The New Roads are Well Made, Steam Rolled, Sewered and Drained*". The fourth stipulation requires purchasers to covenant *not to obstruct the Vendor or any other person along or remove or disturb the soil or surface of any road except for the purpose of repairing the same, and requires owners to repair the footpath and the half part of the carriageway of the road or roads which the lot abuts and to keep the same in good order and condition until the public or local authority shall become liable for such repair*. The Catalogue has a plan of the estate marking areas already sold, and showing Glanthams Road connecting to Middleton Road which was not connected to London Road.

5.. Some purchasers acquired more than one lot. Document 2 is a copy conveyance dated 4 August 1904 of five lots 323-327 Glanthams Park Estate, now number 9 Worrin

Road, with a plan of part of the estate with the same estate covenants set out in the schedule to the conveyance. The width of Glanthams Road and Worrin Road, including footways, are both shown at 40 feet. The Conveyance is endorsed with a Memorandum recording the sale of the lots in two indentures dated respectively 24th June 1913 and 9th August 1915. The amalgamation of plots seems to have been quite common as shown in the following paragraph.

6 The same estate covenants as in the Auction of 58 lots on August 24th 1905 were imposed on the whole or parts of the properties now known as 2, 4, 6 and 12 Worrin Road. This is shown by the entries on the registered titles of those properties which are Document 3, namely:

2 Worrin Road : two conveyances with identical covenants set out in the Schedule to the Charges Register of title number EX89013, being first a conveyance dated 4 August 1905 made between John Jabez Bassett (1) and Arthur Henry Clark(2) and secondly dated 12 January 1910 and made between John Jabez Bassett(1) and William Arthur Wilson (2);

4 Worrin Road: the Charges Register of title number EX88496 also has a schedule of covenants imposed in identical terms by two conveyances, first a conveyance dated 12 January 1910 John Jabez Bassett (1) and William Arthur Wilson (2) being stipulations contained in a conveyance dated 8 May 1907 and identical to those in a conveyance dated 23 November 1923 made between John Jabez Bassett (1) and Hugh Marshall Hole (2);

6 Worrin Road: the Charges Register of title number EX24655 has a schedule of estate covenants imposed in identical terms with a very minor variation noted on the Register by three conveyances dated respectively 8 May 1907, 9 November 1921 and 30 November 1923, the first being made between John Jabez Bassett (1) and Walter Parsons (2) (probably mistyped) and the second and third conveyances made between John Jabez Bassett (1) and Hugh Marshall Hole (2);

12 Worrin Road: the Charges Register of title number EX14590 has a schedule of the same estate covenants imposed in identical terms in four conveyances as follows:

Date	Vendor	Purchaser
26 July 1907	John Jabez Bassett	Bernard Richard Everett
24 February 1908	John Jabez Bassett	William Marven Everett
5 April 1909	John Jabez Bassett	Walter Parsons
9 November 1921	John Jabez Bassett	Hugh Marshall Hole

7. The covenants were building scheme covenants as defined in *Ellison-v- Reacher* [1908] 2Ch 665. We are now concerned with the unadopted part of Glanthams Road, and

the mutual enforceability of covenants as local law and easements of right of way - both of which are overriding interests in the statutory registration of land by Section 11 and Schedule 2 of the Land Registration Act 2002. In Reid –v- Bickerstaff [1909] 2 Ch 305, at page 219, the Master of the Rolls Lord Cozens Hardy said this:

“What are some of the essentials of a building scheme? In my opinion there must be a defined area within which the scheme is operative. Reciprocity is the foundation of the idea of a scheme. A purchaser of one parcel cannot be subject to an implied obligation to purchasers of an undefined and unknown area. He must know both the extent of his burden and the extent of his benefit. Not only must the area be defined but the obligations to be imposed must be defined. Those obligations need not be identical. For example, there may be houses of a certain value in one part and houses of another value in another part. A building scheme is not created by the mere fact that the owner of an estate sells it in lots and takes varying covenants from the various purchasers. There must be notice to the various purchasers of what I venture to call the local law imposed by vendors upon a defined area.”

8. On the 28th June 2016, the Court of Appeal handed down judgment in the case Birdlip Limited –v- Hunter and Another [2016] EWCA Civ 603 as to whether Mr and Mrs Hunter were entitled to enforce restrictive covenants against Birdlip Limited which had planning permission to build. The question turned on whether the properties were part of a scheme of development affected by mutually enforceable restrictive covenants. Lord Justice Lewison, at paragraph 2 of the Transcript said this:

“The characteristics of such a scheme are that:

- i) It applies to a defined area.*
- ii) Owners of properties within that area have purchased their properties from a common vendor.*
- iii) Each of the properties are burdened by covenants which were intended to be mutually enforceable as between the several owners.*
- iv) The limits of that defined area are known to each of the purchasers*
- v) The common owner is himself bound by the scheme, which crystallises on the first sale of a plot within the defined area, with the consequence that he is not entitled to dispose of plots within that area otherwise than on the terms of the scheme.*
- vi) The effect of the scheme will bind future purchasers of land falling within the area, potentially for ever.*

9. Apart from the unadopted part of Glanthams Road, the remainder of the estate roads were all adopted by Brentwood Borough Council as highways maintainable at public

expense in the period when the Council were the local Highway Authority between 1934 and 1974. The Glanthams Park Estate was laid out before the Local Government Act 1929 came into force. This Act transferred to the County Council responsibility for all roads in the Rural Districts in the County area. Under Section 30(2) and (3) of the 1929 Act, the Private Street Works Act 1892 was brought into force in all Rural Districts but administered by County Councils. The Conditions of Sale in the Auction of 24th August 1905 provide that each lot is sold subject to all easements and rights of way and water (if any affecting the same), and every conveyance shall be in the same form as nearly as circumstances permit as the model. The estate was defined on the plan with the auction particulars showing the location of lots sold in Worrin Road and Glanthams Road. Two lots fronting Glanthams Road sold on 30th June 1905 and 14th March 1906 referred to below were sold after the publication of the Auction particulars. Plot owners have reciprocal rights of way over all estate roads, and upon adoption the roads become public. Obstruction is prohibited and maintenance liability lies with frontagers. This was a local law intended to be mutually enforceable as between the several owners and essential to the road layout.

10. In the middle of the 1920s, pursuant to the Ministry of Transport Act 1919, the Ministry acquired some 52 acres of land for the north London Orbital Road scheme, a forerunner for what became the M25. Document 4 is an extract from the House of Commons debate on the 22 February 1926 with a question to the Minister by the local MP for the Chelmsford Parliamentary Constituency, Sir Henry Curtis-Bennett. Document 5 is a copy of the Conveyance dated 1st March 1929 and made between the Minister of Transport and Percy Alfred Bayman who, in 1931, transferred the greater part of the land conveyed to him in 1929 to the Trustees of the Brentwood District Hospital site subject to and with the benefit of covenants and stipulations in the 1929 conveyance. Part II of Schedule 1 to this 1929 Conveyance sets out the Glanthams Park Estate scheme covenants which bind the land shown dark yellow and numbered 2 on the plan annexed to the 1929 Conveyance and the land shown light yellow and numbered 3 on the plan. There were included in two conveyances dated respectively the 30th June 1905 and the 14th March 1906 and both made between (1) John Jabez Bassett and (2) Frank Landon.

11. In 1925 legislation was passed reforming land law. The Land Charges Act 1925 required entries of Restrictive Covenants in a Conveyance of land by Deed entered after the 1st January 1926 to be made in a Register of Land Charges. A search of the register is made by name: Document 6 is the results of searches made against Names in the 1929 Conveyance with plans showing Glanthams Road laid out to extend to Middleton Road. The 1929 Conveyance included the benefit of a covenant by John Jabez Bassett covenanted to carry out works which would have connected Glanthams Road to Middleton Road. It seems from the information on Land Charge entry 26568/1929 that the Ministry of Transport conveyed a total of 29 and a half acres to Mr Bayman.

12.. The 1928 Electoral Roll lists resident electors by name in alphabetical order. At that time there was no street and house numbering in this part of Billericay Rural District, so property details are given only with the road and the name of the property. There are only

three properties in Glanthams Road shown on the 1928 Roll – “The Croft”, “Kynnersley” and Glanthams House. There were 46 properties shown at Worrin Road including “Hillrise.” Ordnance Survey plans published from 1915 onwards show the road layout with road widths consistently 40 feet wide on the estate. Glanthams Road was never constructed as far as Middleton Road, although this was the developers of Crescent Road (Percy Alfred Bayman and the Trustees of Brentwood Hospital) did not abandon Glanthams Road. Document 7 is the result of a land charge search made against the name of Percy Alfred Bayman and shows that restrictive covenants were contained in a conveyance dated the 18th May 1929 relating to land on the Glanthams Park Estate purchased by Mr Bayman from Francis John Bassett. The plan with this search result shows an area of land including land necessary to connect Glanthams Road to Middleton Road under the original layout.

13. Document 8 is the Land Registry entries of two titles at 11 Worrin Close with plans and a copy of the registered title at 10 Worrin Close. These show two sites with a common root of title, namely a conveyance dated the 25th May 1929 made between Francis John Bassett (1) and Edward Henry Daniel (2). The covenants imposed are the Glanthams Park Estate covenants. The second title at 11 Worrin Close is an encroachment of the area of Glanthams Road abutting the property, registered with adverse possession subject to such restrictive covenants and easements as may have been imposed before 28 May 2004 and are still subsisting and capable of being enforced.

14. Document 9 is a copy of the Transfer by Percy Alfred Bayman to the Trustees of the Charity Brentwood District Hospital dated the 15th day of June 1931. The foundation stone for the Hospital was laid in 1933 by the Princess Royal (Princess Mary) with building work undertaken by 60 local workmen who had previously been unemployed. The Hospital was officially opened by Princess Helena Victoria in May 1934. Mr Bayman not only gave 20 acres of land for the Hospital; he donated and planted trees and shrubs in the grounds where a small wooden chalet was erected for patients with tuberculosis to enjoy the open air in secluded woodland glades of open space. Inside the front door of the Hospital, a tablet was inscribed with the following tribute to Mr. Bayman: ***“The site of 20 acres of land was his gift. The beauty of the grounds is due to his deep knowledge of the trees and shrubs that he planted. His generosity and staunch support will ever be remembered as an encouragement to continue his work.”***

15. The Transfer of the 15th June 1931 includes the benefit of covenants on the part of John Jabez Bassett as to the construction of Glanthams Road contained in an Indenture of Exchange dated 21st August 1907 shown on the plan annexed to the Conveyance, and was subject to, as regards the land coloured brown on the plan, the right of Francis John Bassett to call for a Conveyance of the land under an Agreement dated the 16th April 1929 between Mr Bayman and Mr Bassett. The land coloured brown would have enabled the construction and layout of Glanthams Road to connect to Crescent Road instead of Middleton Road under the original scheme, if revised plans were applied for and approved.

That alteration to Glanthams Road was not in the event constructed, but the fact remains that the title of the Site of Policy R18 includes the land coloured brown on the Transfer of 15th June 1931 and abuts the private road known as Glanthams Road. Until 2011, when the woodland was transferred to Brentwood Borough Council pursuant to an Agreement made pursuant to Town and Country Planning Act 1990 the NHS estate included lots in the Glanthams Park Estate and subject to the reciprocal estate covenants.

16. In 1938, Essex County Council submitted to the Minister a draft planning scheme under the provisions of the Town and Country Planning Act 1932. Schedule 2 of the 1932 Act lists matters to be dealt with in Schemes including Streets Roads and other ways. By statutory instrument during the war, draft submitted schemes were given permanent effect. On the Appointed Day of the Town and Country Planning Act 1947, existing development was deemed to have planning permission. The Ordnance Survey plan published in 1960 surveyed the area between 1950 and 1957 : at that time neither Glanthams Close nor Worrin Close had been constructed. There is no record of applications in the vicinity of Glanthams Road until Planning Permission referenced ES/BRE/30/54 dated the 6th May 1954 relating to land described as "rear of 'Hillside' Worrin Road", which became the development Worrin Close. The application plan did not encroach on Glanthams Road and shows rear garden boundaries abutting the road but with no rear access to the road.

17. In the 1960s Glanthams Close was developed with a private road constructed over lots numbered 312 and 313 shown on the plan annexed to Document 2. The unadopted part of Glanthams Road was resurfaced in 1997 and the cost shared between the six properties. Document 10 is the site plan at scale 1/1250 for a planning application referenced BRW/1198/03 showing the property 1 Glanthams Close, which incorporates the site of lot 313 shown on the plan annexed to Document 2. The width of Glanthams Road between 1 Glanthams Close and 2 Worrin Road on Document 10 is 40 feet. At the rear of 6 Worrin Road there is an outbuilding or garage with a vehicular access shown to Worrin Road. In the course of construction of development under planning permission referenced 13/00602/FUL a new boundary wall for 1 Glanthams Close was constructed by the builder in the unadopted road, and the rear boundary was extended by one metre into the woodland open space. The Council's Planning Enforcement team were informed and also that the owner of number 3 Glanthams Close had similarly extended the rear boundary by one metre, and flushes swimming pool residues into the woodland when emptying the swimming pool within his property. The open space encroachment totals approximately half an acre at the rear of numbers 1-3 Glanthams Close.

18. The owners of 2 Worrin Road obtained planning permission in 2004 and have developed a garage which obstructs unadopted part of Glanthams Road. Document 11 is a copy of the planning application and permission. The plan forming part of the application shows the track from the rear of number 6 Worrin Road, but was drawn before the development of an extension to 1 Glanthams Close. With the development as carried out by the owner of 1 Glanthams Close there is now only a narrow access available at that junction.

18. Compulsory Land Registration on the transfer of freehold land was extended to Shenfield in the mid-1970s. On first registration, covenants and encumbrances in the unregistered title will be noted on the title. It is not the practice of the Land Registry to note the existence of building schemes and restrictions. Easements and local law restrictions are overriding interests. The Land Registry prepare later editions of titles and plans and do not necessarily carry forward to new editions entries noted on earlier editions

19. Brentwood Hospital closed in 2005. In connection with the development of the Brentwood Community Hospital in its place, the South West Essex Primary Health Care Trust transferred the woodland area comprising 3.7 hectares (9.14 acres) under a Transfer dated the 14th October 2011. The Transfer was made pursuant to a Section 106 Agreement with a commuted sum for land management. The Council covenant not to use the Property transferred other than as woodland open space. At the time of the 2011 transfer the woodland was registered under title number EX971716, created out of title EX549143. It was not known in 2011 that the previous edition of the Land Register had assigned the number EX549143 to the previous title number P87971 but had not carried forward entries attaching to P87971. Document 12 is a copy of the revised site plan for the redevelopment of the Hospital. The eastern boundary of that site does not seem to align exactly with the western boundary of the proposed R18 development, and if that is correct should be reconciled.

20. The woodland had been neglected for a considerable period of time. There were a series of circumstances which have prejudiced the restoration of the open space:

(i) A fierce storm swept across Southern England on the 28th October 2013. Very significant work is required to clear timber and dead wood. In discussion with the Forestry Commission it was estimated that 40 large HGV lorry load movements would be required

(ii) It was not until May 2014 that the Land Registry disclosed the Transfer of 1931 and annexed entries from the Transfer to the Registered title. It was not until November 2014 that the 1929 copy conveyance from the Minister of Transport to Mr Bayman was disclosed.

(iii) The Land Registry have issued possessory titles in respect of plots encroaching onto Glanths Road in breach of covenants, and have declined to amend these possessory titles unless a Court Order is obtained relating to the existence and enforceability of the entries sought to be registered.

21. The Council have received complaints of dumping in the woodland. One correspondent described the lack of management "a national disgrace". The proposal in Draft policy R18 offers an opportunity to restore Glanths Road and the open space woodland, before construction of the residential units commences. The site owners and the Council should co-operate in the public interest to make effective use of R18 site and

the adjoining right of way and open space woodland. The R18 proposal is an area with open space deficiency. Paragraphs 91-92 of the NPPF require an integrated approach to housing and community facilities; paragraph 96 requires robust and up to date assessments of the need for open space; paragraph 98 requires rights of way and access to open space to be protected and enhanced; under paragraph 104d plans should set out high quality walking and cycling networks. The need for on-site public open space should therefore be reviewed and deleted, enabling higher density – it would be wrong not to take the opportunity to consider the residential proposal in R18 and the enhancement of the woodland open space and Glanthams Road infrastructure together. I invite the Inspector to make the modifications I propose. I suggest that the sad history of neglect, mismanagement, right of way and easement obstructions, trespass, dumping and breaches of covenant set out above will only be compounded and aggravated, contrary to NPPF principles and policies, unless the opportunity to restore the vision of Percy Bayman is grasped firmly. I invite the Inspector to make the modifications I propose accordingly.

Philip Cunliffe-Jones

14th March 2019

List of Documents attached, separated by blue sheets with each document number:

1. 1905 Auction catalogue of Glanthams Park Estate Priests Lane Portion
2. 1905 Conveyance of lots 323-327 Glanthams Park Estate with plan
3. 2014 registered titles of 2, 4, 6 and 12 Worrin Road with covenants scheduled
4. Extract from Hansard 22 February 1926
5. Certified copy conveyance 1st March 1929
6. Land Charge entries and plans: 26568/1929; 26596/1927; 26587/1927
- 7 Land Charge entry and plan : 37380/1929
8. Land Registry titles at Worrin Close
9. Copy Transfer by Percy Alfred Bayman to the Trustees of The Brentwood District Hospital Charity dated the 15th day of June 1931
10. Site plan for planning application BRW/1198/03 – 1 Glanthams Close 8th December 2003, scale 1/1250
- 11 Planning application and permission BRW/57/04 -2 Worrin Road
12. Revised planning application site plan for Brentwood Community Hospital – the woodland open space is shown edged in blue