

**IN THE BLACK COUNTRY CORONERS COURT
IN THE MATTER OF MR DAVID WELLINGTON
BEFORE THE AREA CORONER, MRS JOANNE LEES**

RESPONSE OF WALSALL COUNCIL TO THE REGULATION 28 NOTICE

The council wishes to apologise for the lack of a response from it in the time specified by the Regulation 28 Notice.

The council has given careful consideration to the Notice of Prevention of Future Deaths. It has investigated the matter. Set out below are the results of the council's investigations, its proposals for action to prevent future deaths, and the reasons why some actions cannot be taken, or cannot be taken without the express consent of third parties over whom the council has no control. We also set out some further thinking on ways to achieve the objectives set out in the report. It must, however, be stressed that it might not be possible to put into effect any such scheme.

Ownership of the land

The council's researches indicate that the land which is bounded on two sides by Leamore Lane and by Bloxwich Road was bought by the council in various parcels in 1961. The land was at that time already developed. There was also an L-shaped road which ran into this land from Leamore Lane. The site was cleared and was developed much as it can be seen today. There were two pieces of development which are of importance. One of these developments was the L-shaped parade of shops with maisonettes above facing, but set back from, Leamore Lane. The other development of importance was the estate made up of blocks of flats which is bounded on one side by Bloxwich Road and on another side by the service road where the accident took place.

The council retained ownership of the service road which runs between the blocks of flats and the back of the shops fronting Leamore Lane.

The development of the land was by the council. The highway which ran into this land from Leamore Lane was stopped up by order of the court. The blocks of flats and the parade of shops with maisonettes above were then constructed.

In March 2003 there was a stock transfer of almost all of the council's housing stock. The housing stock was transferred to a consortium of housing associations operating in Walsall. The land bounded on one side by Bloxwich Road and on another by the service road was transferred to [REDACTED]. That transfer included the transfer of all the buildings on the land and of the rights of way attached to them. The transfer was registered in June 2003. Express rights of way on foot along the service road were granted to the residents of the flats on the housing estate (the Watmos estate).

The freehold to the land on which the parade of shops facing Leamore Lane was constructed was retained by the council. The shops were let on leases, all of which fall within the Landlord & Tenant Act 1954. Long leases were granted to most of the maisonettes above the shops. All of the leases granted express rights of way both on foot and by vehicle along the service road.

The freehold of the service road was retained by the council.

For the reasons set out above there are rights of way over the service road which can be exercised in various ways both by the residents of the [REDACTED] estate and, more significantly, by the lessees of the shops and maisonettes facing Leamore Lane. These rights of way extend across the whole width of the service road.

The council is not entitled unilaterally to seek to restrict the usage of any of these rights. It thus cannot legally restrict vehicular usage of the service road to one part only of the service road, nor can it restrict the residents to walking along only limited parts of the service road. As mentioned above, some of these rights are set out as express rights of access granted by long leases. Others are expressly granted in commercial leases falling within the Landlord & Tenant Act 1954. The tenants of these commercial premises will be entitled, on expiry of their existing leases, to the grant of new leases on much the same terms save for those relating to the rent. The council

would not be entitled on renewal of the leases to seek to limit the rights of access to the premises along the service road.

Public rights of way along the service road

Although the service road has some indications, such as double yellow lines running along both sides of it from Bloxwich Road to the barrier, that it is public highway, it is not public highway. The service road has not been declared to be public highway, and it is unlikely that public rights of way could have been established along it by long user. The council is unaware of any long user by others as of right, the service road does not lead to anywhere and it would thus be difficult for members of the public to establish long user along it to get from A to B, and access is obstructed by a lockable barrier. The only public rights of way would be by pedestrians using the footway on Bloxwich Road then crossing the bell mouth of the service road.

The barrier

The barrier was erected some years ago to deal with a problem caused by unauthorised persons driving along the service road and then parking wherever they chose behind the shops facing Leamore Lane. These cars obstructed vehicular access to the shops and to the maisonettes behind. At the request of those who had rights of way along the service road the barrier was installed. Keys to the barrier are held by all of the lessees of the shops in the parade facing Leamore Lane. The installation of the barrier was found to be a reasonable compromise to deal with the problem of unauthorised parking of vehicles behind the shops. The situation now is that anyone wishing to take a vehicle beyond the barrier will need to unlock the barrier, perhaps by obtaining the key from one of the shops. Whilst this is an impediment to vehicular access to the rear of the shops, it is a much lesser impediment than that which was continually caused by the unauthorised parking of cars. Prior to the installation of the barrier vehicular access could be obtained only if the service road was clear, or if the owners of the vehicles blocking it could be found and persuaded to move the vehicles.

It is recognised that any emergency vehicle wishing to use the service road beyond the barrier would not have immediate access to the rear of the shops. Prior to the installation of the barrier there was a strong likelihood that access by such vehicles would be obstructed by parked cars. The current position is that emergency vehicles

can reach the barrier. Police Officers can proceed further on foot. Ambulance staff can proceed further on foot, but they can also wheel trolleys below the barrier. Access by wheeled trolleys might not be possible if the service road is blocked by parked cars. In the event of the fire brigade wishing to proceed beyond the barrier Fire Officers would, in a matter of seconds, cut through the lock to the barrier. All of the emergency services would be able to request keys to open the barrier, and there is of course the likelihood that the barrier would already have been unlocked by a keyholder if access were to be required by an emergency services vehicle.

Whilst the council recognises that the presence of the barrier poses an obstruction to the private rights of way along the service road, that obstruction was requested by those entitled to have vehicular access to their premises along the service road. The reality is that the barrier poses less of an obstruction to vehicular access than that caused by the unauthorised parking of vehicles behind the shops. The council has carried out the exercise of considering whether the concerns set out in the Prevention of Future Deaths Report could be met by the removal of the barrier. The historical experience of the service road being blocked by unauthorised vehicles has led the council to conclude that the problem of obstruction of access would be exacerbated, rather than lessened, by the removal of the barrier.

Speed limit

As the service road is not a highway the council cannot impose a legally enforceable speed limit along the service road.

The council notes the concerns set out in the report that vehicles could drive along the service road at excessive speed. That has not been a problem which has been observed by, or reported to, the council. The short length of the service road between Bloxwich Road and the barrier would prevent vehicles reaching any significant speed before they need to slow down and stop at the barrier. Likewise, a vehicle leaving that part of the service road which is behind the shops would have to stop at the barrier, either to open it, or to close it after having passed through it. The presence of the barrier is thus likely to have some effect in the reduction of the speed of vehicles using the service road.

The barrier thus operates, in some ways, as an alternative to a formal speed limit.

The council notes that the most unfortunate accident which led to the death of Mr Wellington was caused by a van reversing along the service road behind the shops. The council does not have any evidence of the speed at which the van was being reversed, so it has assumed that it was being driven at a very low speed. It has also assumed that it was being driven at a speed below any speed limit which could reasonably have been imposed if the council had the power to impose a speed limit. In the absence of any incidents of vehicles being driven along the service road at excessive speed, or of speed having played any part in the accident which led to the most unfortunate death of Mr Wellington, the council does not have any material which would indicate that signs indicating a maximum speed would reduce the risk of future deaths. Despite that, the council would be prepared to consider erecting signs indicating a suggested maximum speed limit of 5mph.

Designated pathway

As has been set out above all those persons who have rights of way along the service road are entitled to exercise those rights across the full width of the service road. It would be the duty of anyone using the service road to do so in a way which did not interfere with the use of it by anyone else. The council is thus not entitled unilaterally to designate parts of the service road as a pathway, leaving the rest of the service road for vehicular use.

The council has considered the possibility that a designated pathway could be installed with the consent of all those with rights of access along the service road. It has thus considered how such a pathway could be safely installed.

The Manual for Streets, which was written after taking into account many years of experience of highways engineers, sets out minimum recommended widths for public highways. The minimum recommended width for a carriageway on a public highway is 4.8m. The minimum recommended width for a footway on a public highway is 1.5m. Whilst these recommendations are applicable to public highways, the thinking behind them must have application to private roads as well. The width of a carriageway needs to accommodate any vehicle which is likely to use that road. The width of a footway

needs to take into account that the footway will be used not only by those on foot, but also those travelling in buggies or in wheelchairs. It would thus not be sensible to disregard these recommendations.

The evidence of the use of the service road on the morning of the accident which led to Mr Wellington's death is that a delivery vehicle was delivering potatoes to the rear of the fish and chip shop in the parade, and that a panel van was delivering goods to another shop further along the parade. There is nothing to indicate that this usage was out of the ordinary. The carriageway of the service road thus needs to be wide enough to accommodate the passage of any commercial vehicle which is likely to want to make deliveries to the rear of the shops facing Leamore Lane. These vehicles would include box vans and modest sized lorries. Even if it were to be assumed that larger vehicles would not want to have access along the service road, there would be little justification in seeking to reduce the width of the carriageway much below the recommended width of 4.8m.

The assumption must be that any footway leading to residential accommodation must be wide enough to enable small children to be wheeled along it in buggies and prams, and that it will accommodate anyone using a wheelchair. The recommended width of an external door which needs to allow the passage of a wheelchair is 36 inches. The footway needs to allow some space each side of a wheelchair. Such a footway could not reasonably be much narrower than 1.5m.

The service road at the point where the barrier is installed is 4.85m wide. A modest reduction in the width of the service road at this point would not be sufficient to accommodate a footway approaching 1.5m in width. Whilst it would be possible to lay out a separate footway along one side of the service road, neither the footway nor the remaining carriageway would be sufficiently wide to allow proper use of either.

It needs to be remembered that the separation of the service road into a carriageway and a footway would require the consent of all of those with rights of access. It is unlikely that such consent would be given by all those with private rights of access if that would lead to difficulties of access by vehicles making deliveries.

Road markings providing a designated footway

There was a time when shared spaces were popular. These were spaces which were shared by both vehicles and pedestrians. The DfT stopped promoting shared spaces in 2018. This may have been because of the risks to partially sighted road users. Any attempts to mark out parts of the service road for use by vehicles and parts for use by pedestrians would be met with the practical problem that the service road is not wide enough to accommodate both a carriageway for vehicles and a footway for pedestrians. It is thus questionable whether marking out a designated footway on the service road would in fact increase the safety of a pedestrian. There is the risk that a marked out footway would give the impression to a pedestrian that he or she would be safe to use that footway. That might be leading the pedestrian into a false sense of security. Vehicles using the service road would frequently need to stray into any marked footway in order to drive along the service road. That would not provide the pedestrian with an increased level of safety.

The council would not be prepared, even if it had the consent of all those with private rights of way, to mark out the carriageway with a designated footway. Such markings would be contrary to the current advice about the safe usage of roads. There is the possibility that it would increase the risks to pedestrians using the service road. There is nothing to indicate that a marked footway would reduce those risks. There is also nothing to indicate that a marked footway would prevent accidents such as those which led to the death of Mr Wellington. A pedestrian walking along a marked footway would still be in the blind spot of many commercial vehicles reversing along the service road. The risks might be increased if there were a marked footway. The pedestrian might be under the impression that he or she would be safe by keeping to the footway. Not only would that impression not be correct, it might also lead to the pedestrian making fewer efforts to keep a lookout for his or her safety.

The council accepts that there has been a change in thinking about the use of what were termed as 'shared spaces', with both vehicles and pedestrians making use of the same space. There are very real concerns about such shared spaces at times increasing the risks to pedestrians. Those risks are particularly understandable where many of the vehicles sharing the same space with pedestrians would be reversing,

and there would be areas behind those vehicles which were completely obscured from the vision of the driver.

Waste bins

In the absence of anywhere, other than the service road, more suitable to leave the trade waste bins for collection, the council is in the process of altering the procedure for collecting trade waste from the rear of the shops. The proposal is in the future the crew of the waste collection lorry will be provided with a key to the barrier across the service road. The waste collection lorry will reverse along the service road to the rear of the shops. Any trade waste bins will be collected from the rear of the shops. The waste collection lorry will then drive forwards along the service road towards Bloxwich Road, locking the barrier behind it. There will thus be no need for trade waste bins to be left on the carriageway of the service road.

Skips

As can be seen from the opening paragraphs of this response the council owns the service road but the occupiers of adjoining premises have private rights of way along it. Those rights of way allow for people to pass and re-pass along the service road. They do not give anyone the right to place a skip on the service road. A wrongly placed skip could obstruct the rights of way of others along the service road. The council does, however, recognise that there are occasions when skips do need to be placed near buildings. The council has thus written to all of the lessees of the shops and the maisonettes facing Leamore Lane to remind them that they are not permitted to place skips on the service road. The letter took the opportunity to point out that the Prevention of Future Deaths Report took the view that the presence of a skip obstructed the service road and presented a risk of future deaths. Such a situation is clearly unacceptable. If, in future, any lessee needs to make use of a skip that person must first obtain the written consent of the council to place a skip on the service road. That written consent, if it is given, will require the skip to be placed in a position which does not obstruct the service road.

Signage

As mentioned above, the council would be perfectly prepared to consider installing signs if that would increase the safety of anyone using the service road. Exactly what

signage would be of assistance is a matter which would require careful consideration. We have already mentioned above the possibility of installing a sign indicating a maximum speed along the service road. As mentioned above, there would be no means of readily enforcing a maximum speed limit. Consideration would need to be given to the signs which would increase the safety of the road users. The erection of a multiplicity of signs is unlikely to be helpful; one carefully positioned sign which gives important information is likely to have a greater effect. The question of what, if any, signs should be erected needs to be considered over a reasonable period of time.

An alternative proposal

The council takes very seriously the fact that an accident occurred on its land. That was made more serious by the fact that this was a fatal accident. It regards the Prevention of Future Deaths Report as a request to take whatever action might be possible to deal with the concerns raised in that report. The council has thus considered what scheme might be implemented which takes account of all of the concerns set out in the report. Those considerations have included the taking of steps which are beyond the present powers of the council and would require the express consent of other parties.

A senior council officer, in consultation with other officers, is considering a scheme for stopping up a pedestrian entrance from the service road to the [REDACTED] estate, the provision of a crossing diagonally across the service road behind the barrier, and a footway along the Watmos land beside the service road leading to Bloxwich Road. We enclose a rough sketch of this scheme. This would require consideration by the highway engineers, and negotiation with [REDACTED], which owns the land along which the proposed footway would run. The scheme also assumes that any long lessee of a flat in the [REDACTED] estate would be agreeable to a change in the pedestrian rights of access to that flat from the service road. The suggested scheme would not remove any pedestrian rights of access to the flats in the [REDACTED] estate, but it would require a detour in the most direct route from one block of flats to the shops facing Leamore Lane. The potential scheme under consideration would require signage to be erected and reasonable expenditure to lay out a new footway alongside the service road, if such were to be acceptable to [REDACTED].

It must be stressed that this potential scheme is not even in the embryonic stages. It has been produced to show that officers are giving consideration to the matters raised in your report. It would need a great deal of further consideration, even if Watmos were to give its consent to the construction of a footpath along its land, as to whether such a scheme would increase the safety of pedestrians. One of the factors which would have to be considered is whether a pedestrian crossing of the service road similar to the one hatched red on the plan would improve the safety of pedestrians.

Conclusion

The council has attempted to show that there are both legal and practical difficulties in adopting the measures suggested in the Prevention of Future Deaths Report. It has, however, not stopped there. It is considering whether there are any measures which might be adopted, albeit requiring the agreement of others, which would deal with all of the concerns which were raised in the report. As the council was not a party at the Inquest, it was not then able to raise the matters set out in this response. It is, however, quite prepared to enter into conversations with you as to what may be needed.

Signed



Head of Law (Contentious)

Dated

17 July 2024