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NEIGHBOUR DISPUTE CONCLUDES AFTER COURT OF APPEAL VICTORY

A couple from Ellesmere Park, Eccles have recently won a Court of Appeal battle concerning a small parcel of land at the front of their home. In a case that serves as a reminder of the intensity of neighbour disputes, three Court of Appeal judges ruled that the parcel of land owned by Anthony and Jane Kearsley was not available for vehicular use by one of their neighbours.

Back in May 2007, Jane and Anthony Kearsley were faced with a claim from neighbour, David Sinclair. Mr Sinclair, of Victoria Crescent, Eccles claimed that he was entitled to open up and use a vehicular access between the back of his property and private road - Ellesmere Road. Although he had access for his cars at the front of his house on Victoria Crescent, the space at the front was limited and there was no room for a garage. Mr Sinclair's intention was therefore to build a garage to the rear of his property and access that garage via Ellesmere Road.

Mr Kearsley explained: "In order for Mr Sinclair to achieve this, he had to prove that he was entitled to take vehicles over the land immediately outside our house. However, the land belonged to my wife and I, and we were determined not to allow him access. We were absolutely shocked when Mr Sinclair issued legal proceedings claiming a right to drive over our land."

The case proceeded through the Manchester County Court and in August 2009 judgment was handed down in Mr Sinclair's favour. However, an undeterred Mr and Mrs Kearsley appealed to the Court of Appeal in London, and earlier this year, their appeal was upheld. The Court of Appeal ruled that no part of the cul-de-sac on Ellesmere Road had been dedicated for use as a highway, or accepted as such, other

than for use as a footpath. As a result, Mr Sinclair was not entitled to gain vehicular access to the rear of his property via Ellesmere Road.

Whilst the facts of this case are in themselves intriguing, it is the impact that such innocuous disputes can have on homeowners, which ought to be borne in mind.

Simon Barnett, Partner at Manchester's Boote Edgar Esterkin, and advisor to Mr and Mrs Kearsley, said: "Although we were always confident that we could protect Mr and Mrs Kearsley's rights over their land, it was surprising that we were required to take their case all the way to the Court of Appeal. Whilst the facts of this case are relatively straight forward, the legal issues behind it were extremely complicated. It is these complicated legal issues which can sometimes push a straight forward neighbour dispute into the legal abyss, and it took great strength and courage on Mr and Mrs Kearsley's part to see this case through the appeal process to its successful conclusion."

Mrs Kearsley, said: "Whilst we are delighted with the final outcome, we are relieved that this black cloud has been lifted. It has been a stressful time for us both, as we never expected to be caught up in legal proceedings, however, we felt that we had no choice but to defend our position. To have a judgment from the Court of Appeal in our favour has given us a great sense of justice."

She added: "This case has not just affected us, it has also impacted upon our neighbours. I don't think we would have been able to get through it without their support - they have been our rock. This case has brought us closer as a community, so close in fact that some of us even go on holiday together."

Simon Barnett insists that this case should act as a reminder to all neighbours that disputes of this nature can often get out of hand both financially and emotionally. He explains: "Disputes between neighbours can often become extremely costly and complicated from a legal perspective. Evidence is often required from experts, historic records such as Ordnance Survey data and other third party sources.

“On a human level, the losing party can be left to feel the impact for years after the final decision. In this case, although Mr Sinclair had the benefit of legal expenses insurance, the extent of that cover was exhausted by his own legal costs and he has been personally required to pay Mr and Mrs Kearsley’s costs, which are likely to be in excess of £40,000.”

Shortly after judgment was handed down by the Court of Appeal, Mr Sinclair put his home on the market.

Simon offers some words of advice for those who are faced with any type of neighbour dispute:

1. Try to resolve the dispute quickly and amicably;
2. If this cannot be achieved, seek advice from a reputable solicitor with a proven track record in dealing with neighbour disputes;
3. Consider very carefully what you have to gain but more importantly, what you have to lose;
4. If there is an ongoing dispute concerning your home, you will find it extremely difficult to sell your home unless the dispute is unequivocally resolved;
5. If legal proceedings have already been issued, try and mediate early on or find another way to reach a settlement;
6. Be aware that even if you have an insurance policy, which covers you for legal expenses, these policies are often limited in scope and value. Even if you have such cover, there may be circumstances, as in this case, where you will have to pay a proportion of legal costs yourself.