

From: **Gary O'Leary** <olearyg2014@gmail.com>
Date: Thu, Sep 22, 2016 at 11:51 AM
Subject: Re: Panshanger Lower Broadwater
To: Mike Pendock <mike.pendock@tarmac.com>
Cc: Various

Dear Mike,

I was disappointed to read the Tarmac statement regarding the Lower Broadwater at Panshanger Country Park within the Grade II* listed landscape. I see this is now published on your website. <http://www.tarmac.com/panshanger-park/news/2016/september/statement-on-lower-broadwater/?platform=hootsuite>

I note that this statement is being used as a standard response to enquiries of concern regarding the English Heritage Grade II* landscape and your excavation proposals for the Lower Broadwater.

In the statement Tarmac asserts its property/planning rights to excavate the Lower Broadwater, that flow from a 2003 planning consent. It does this despite the very wide public concern and the informed opinion of heritage experts (Historic England and The Gardens Trust) as to the impact of the proposed work on nationally significant cultural heritage.

I would like to point out that the companies property rights are not the only rights in play at this point and all public authorities (County/District/Parish) have an obligation to consider the wider public interest. In this case the rights to see the protection and preservation of cultural heritage, here in the form of landscape. A landscape that is already enjoyed by thousands of people a year and one which should be preserved for future generations.

(See more on how these rights may be considered in links/text below)

As the current Chairman of Hertingfordbury Parish Council, I shall be proposing that all rights are considered through our Neighbourhood Planning process, as it looks at land use and development within the Grade II* Park.

I would request that all other public authorities (Hertfordshire County Council and East Herts District Council), engaged in policy and decision making with regard to the Park, also consider all relevant rights.

I hope a decision will be confirmed soon, by Tarmac, that they will not, at any point excavate or breach the Lower Broadwater. This is a matter of great public concern and the publicity surrounding the matter will no doubt continue.

I also respectfully request that in considering future aspects of land use and development in Panshanger Park that Tarmac do consider the protection and preservation of its unique cultural heritage.

The following links should be self explanatory. However I have selected some key extracts which I hope explain relatively clearly the application of property rights (within the Human Rights act) and public authority responsibilities. I then include some key decision material from European Court of Human Rights in relation to Cultural Heritage.

Regards,

Gary O'Leary
Chairman, Hertingfordbury Parish Council

1 LINKS

<https://www.justice.gov.uk/downloads/human-rights/human-rights-handbook-for-public-authorities.pdf>

http://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf

2 KEY EXTRACTS FROM LINKS

What impact does the Human Rights Act have on public authorities?

Public authorities have an obligation to treat people in accordance with their Convention rights (see pages 7–49 for a more detailed explanation). Anyone who feels their rights have been infringed by a public authority can take their complaint to a UK court or tribunal.

Article 1 of Protocol 1: Protection of property

Everyone has the right to the peaceful enjoyment of their possessions. Public authorities cannot usually interfere with a person's property or possessions or the way that they use them except in specified limited circumstances. The protection extends to businesses as well as to individuals.

What must a public authority do?

Where possible, a public authority should try to ensure that policies or decisions do not interfere with peaceful enjoyment of possessions, restrict the use of possessions or take away possessions.

- Where this is unavoidable, then the interference must be lawful and necessary in the public interest.
- If a public authority does decide that it is necessary to interfere with someone's possessions, there must be an objective and reasonable justification for that.
- A public authority may be asked to produce reasons for its decisions.
- Public authorities should take action to secure the right to property, as well as refraining from interfering with it.

European Court of Human Rights on RIGHT TO THE PROTECTION OF CULTURAL AND NATURAL HERITAGE (extracts)

35. Although the Court has never recognised the right to the protection of cultural and natural heritage as such, it has accepted that the protection of that heritage is a legitimate aim that the State may pursue when interfering with individual rights, especially with the right to property enshrined in Article 1 of Protocol No. 1.

It reiterates that the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court will respect the legislature's judgment as to what is "*in the public interest*" unless that judgment is manifestly without reasonable foundation (see *James and Others*, cited above, § 46, and *Beyeler*, cited above, § 112). This is equally true, *mutatis mutandis*, for the protection of the environment or of a country's historical or cultural heritage.

53. The Court also considers that the protection of a country's cultural heritage is a legitimate aim capable of justifying the expropriation by the State of a building listed as "*cultural property*". It reiterates that the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. Finding it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, the Court will respect the legislature's judgment as to what is "*in the public interest*" unless that

judgment is manifestly without reasonable foundation (see *James and Others*, cited above, § 46, and *Beyeler*, cited above, § 112). This is equally true, *mutatis mutandis*, for the protection of the environment or of a country's historical or cultural heritage.

54. The Court points out in this respect that the conservation of the cultural heritage and, where appropriate, its sustainable use, have as their aim, in addition to the maintenance of a certain quality of life, the preservation of the historical, cultural and artistic roots of a region and its inhabitants. As such, they are an essential value, the protection and promotion of which are incumbent on the public authorities

Who can bring a case under the Human Rights Act?

Any 'victim' can do so. It is not necessary to be a UK citizen. Anyone bringing proceedings must be directly affected by an act or omission of a public authority.

FURTHER READING

PS Please see attached some further reading on these topics on conservation and landscape conservation which may be of interest.

<https://books.google.co.uk/books?id=qGXoF1-UHvMC&pg=PA266&lpg=PA266&dq=landscape+conservation+and+human+rights&source=bl&ots=9gJxQnjhRa&sig=BVgM3sVq75kK4zHcspOo-3ecxOk&hl=en&sa=X&ved=0ahUKEwiB-Lqd06LPAhWoLsAKHWpQAHoQ6AEIOTAF#v=onepage&q=landscape%20conservation%20and%20human%20rights&f=false>

<http://www.buildingconservation.com/articles/humanrights/humanrights.htm>

https://books.google.co.uk/books?id=-GAnBgAAQBAJ&pg=PA38&lpg=PA38&dq=landscape+conservation+and+human+rights&source=bl&ots=6agGNf2yJS&sig=YgDCQ5MfKWIDbG7GQHbvzLDrv_0&hl=en&sa=X&ved=0ahUKEwiB-Lqd06LPAhWoLsAKHWpQAHoQ6AEIKTAB#v=onepage&q=landscape%20conservation%20and%20human%20rights&f=false

<http://www.birdlife.org/sites/default/files/attachments/conservation-and-human-rights-lr.pdf>