

SP to A, 22 Sept:

In brief, the building - the Bowring Library, a fairly small 3-storey building in the middle of the town, was given to the town by a local worthy in 1901/2. In 1962, the town passed the building to the county council as part of a general transfer of its rights and responsibilities as a library authority. Since then, the library has suffered cut-backs, and now is open 6 hours a week; and the building (a listed building) has been poorly maintained. The County Council now needs to make more cuts, and proposes to move the library from the present building to another building in the town, sell the library building, and pocket the proceeds. The natural reaction here is that if the building is sold, the proceeds should go to the town, not to the county council. But what's the legal position? I fear it may not be simple ... but the CC has a history of trying it on and then backing down when necessary.

I attach the only relevant documents that I'm aware of - the two transfer documents; both are mercifully short; neither envisages or provides for what happens if the building is sold.

A to SP, 22 Sept.

Not something I have had cause to look at before, and research is not that easy out here. However, for what it is worth, the 1902 conveyance is obviously to the Parish Council for the purposes of the Public Libraries Acts. The Council would have had statutory power to sell or exchange the land with the consent of the Local Government Board, to transfer the library to another suitable location, or to spend the proceeds for "authorised capital purposes"; i.e: for purposes within the powers of a Parish Council. The LGB was abolished long ago, and it looks to me as if the libraries supervisory function is now exercised by the Department for Media Culture and Sport. The 1962 Agreement just transfers responsibility for the library from the Parish Council to the County Council, as could be done for other things like closed churchyards. This did not operate as a transfer of the freehold title to the library building so, as far as I can see, this is still vested in the Parish Council, which is the body competent to sell it, with ministerial consent. I hope this is of some help to get things moving, and if the County Council claims further powers which we have not come across yet, we can consider them in due course

SP to B, 23 Sept.

The Bowring Library, a fairly small 3-storey building in the middle of the town, was given to the town by a local worthy in 1902 (copy of conveyance attached). In 1962, the town passed the building to the county council as part of a general transfer of its powers and responsibilities as a library authority (copy of 1962 agreement attached). Since then, the library service has suffered cut-backs; the library is now open 6 hours a week; and the building (a listed building) has been poorly maintained. The County Council now needs to make more cuts, and proposes to move the library from the present building to another building in the town, sell the library building, and pocket the proceeds. The natural reaction here is that if the building is sold, the proceeds should go to the town, not to the county council.

B to SP 24 Sept.

I attached the registered title, which you will see is in the name of the County Council.

I also attach a link to an article on

reverter. <http://www.practicalconveyancing.co.uk/content/view/9821/0/>.

There may be an argument that the sale proceeds should go to the Bowring family. This is a complex area of law. I suggest you put the onus on the Council to explain why the Reverter of Sites Act does not apply.

I note the covenants on the title. It would require further research to establish whether they are still enforceable by the Bowring family.

SP to B 24 Sept.

If I've understood it correctly, what the article on reverter suggests is that if the County Council cease to use the building as a library, the Bowring family are entitled to the proceeds of sale. That's a bit different from what [A]'s e-mail suggested, which, as I understood it, was that the building came back to the parish. Either way DCC's position is weak, but the results may not be the same.

If the proceeds revert to the Bowring family, who would that be at this point? Would it be Thomas Bowring's heirs and assigns? At this point I don't know whether that would be the Bowrings we are in touch with - it's a large family.

B to SP 25 Sept.

Yes; [A] hadn't appreciated that the CC is the registered proprietor. I believe it would be Thomas Bowring's heirs. If you asked the CC whether they have considered the Reverter of Sites Act, it would be interesting to see how they respond. Certainly it will be a concept their legal and estates departments will be familiar with.

I have put this question to DCC and have as yet had no reply.

SP to A, 10 Oct.

Another of our working group ... suggested that we consult a local lawyer, again informally; his view is that as DCC has registered title to the Bowring Library building, they are free to sell it; but that the Reverter of Sites Act probably then applies, in which case the proceeds of sale would have to go back to the original donor and so to his heirs - presumably members of the Bowring family. Does that make sense to you?

A to BP 10 Oct.

It is correct that there is a right of reverter contained in section 4 of the Library and Scientific Institutions Act 1854, but this applies only to lands granted for the purposes of a public library by the Duchies of Cornwall or Lancaster; there is provision for the grant by individuals, but no right of reverter. Also, the Conveyance must be stated to be for the purposes of the L&SIA 1854; unfortunately, your attachment has not come through on the UK computer, but my recollection is that there was no mention of the Act. Apart from this limited provision, the only other Acts under which reverter of sites applies are the School Sites Act 1841 and the Places of Worship Act; even then, there are exceptions. It may be that my local colleague has done more thorough research, as this is just an off the cuff reaction but, as things stand, I would respectfully disagree with him. What I have not been able to do is to pin down section 2(1) of the Public Libraries Act 1919, as I cannot find it anywhere on the internet, but I suspect all this does is to empower County Councils to take over the running of public libraries from local Councils, and will have nothing to do with title.

BP to A, 11 Oct

Your local colleague referred to the Reverter of Sites Act 1987; do I take it from your reply that this doesn't apply in our case? He also seemed to think that the fact that the DCC had registered title made a difference - does it? I'll attach a copy in case - as you'll see, DCC appear to have registered title in 2006.

A to BP 11 Oct

Sorry, this is the end of the road. I do not know how DCC came to be the registered proprietor, when the original conveyance was to the local council; there must be some intervening conveyance, or a statutory vesting under some legislation of which I am not aware. In any event, your Council has lost its freehold interest in the land, and cannot claim on any proceeds. If the title was registered so recently, surely there must be some council minutes which record what happened? I was involved in the lead-up to the 1987 Act, and it is of no relevance to this situation. The only right of reverter that could possibly arise in connection with a public library is if it had originally been granted by either of the Duchies of Cornwall and Lancaster, and not by the Bowring family. In any event, it is now the County Council's problem. The only remaining avenue open to your Council is to investigate how the property came to be vested in DCC, as I have known these things to be the result of questionable practices.

BP to A 21 Oct

Moretonhampstead Parish Council passed the building to Devon County Council as part of a general transfer of library rights and responsibilities in 1962 - I think I copied the relevant agreement to you before, but here it is again just in case. I assume that this is what DCC are relying on - I've looked for other and subsequent correspondence but found nothing. It looks as if DCC only registered title in 2006 - I attach copies of the title and plan. As far as I know, they didn't consult MPC or the Bowrings - I don't know whether they should have. One of our working group who knows more about this kind of thing than I do is trying to check whether the Land Registry has anything else that's relevant. He says that it's odd that DCC didn't do anything earlier, and that he'd expect the Land Registry to have other documents

and correspondence; it sounds as if they may have things, but that they aren't very accessible - they seem to have closed a lot of offices and reorganised things recently. I've asked DCC for copies of whatever they have - so far they've produced nothing, but say that they are still looking ...

The one question that does occur to me is whether and to what extent the covenants in the original conveyance (and are repeated as charges in the register) are still binding - in particular Covenant 1, which says "That Inhabitants of Moretonhampstead shall be entitled to the use and enjoyment of the benefit of the said Library <the capital is there in the Land Registry entry> free from any charge." Is there a reasonable argument that if DCC sell the building, the inhabitants of Moretonhampstead would no longer have use and enjoyment of the Library, especially as the library itself only ever occupied the ground floor of the building - the other two floors were also used and enjoyed by the inhabitants - the first floor as a council meeting room, a snooker room, and an adult education room, and the second floor as a caretaker's flat? Or would it now be unenforceable? If it is enforceable, what would the consequences be if DCC close the library and put the building on the market?

A member of the Bowring family (who lives in Hong King and is irritated that DCC think they can sell the building and keep the money without any constraint on its use) has offered to put up a couple of thousand pounds for legal advice; but I wouldn't want to start down that road unless there's a reasonable chance of a good outcome.

A to BP 21 Oct

I think the date of DCC's Land Registry application is explained by the fact that all land had to be registered by that year, and there was a general clearing-up. In the absence of any conveyance between the PC and the CC, presumably they relied for title on the 1962 Agreement, from which you will have noted that clause 3 provides: "All *property* and rights.....vested in the Parish Council..... as a library authority shall be transferred and vested in the County Council"; you will remember that I said Ministry consent was required to any disposition by the Parish Council, and you will see that the Minister of Education's consent is endorsed on the Agreement. Any disposition of land must be under seal rather than under hand, and this Agreement is indeed expressed to be by way of deed and executed under seal. My problem is that I have looked for clause 2 of the Public Libraries Act 1919, which they say is the enabling legislation, and I cannot find it anywhere on the internet; however, I do not think it will add anything to our assessment of the situation. The Parish Council had powers under the Public Libraries Acts to sell or exchange the building for another suitable site for the library, or to sell it and, with Ministry consent, to apply the moneys for any capital purpose within their statutory powers; I am sure DCC have similar powers.

If you want my honest opinion, legally it is a lost cause locally but, if someone is offering to pay for the services of a proper lawyer, why not? My own view is it would be far better to go to Counsel specialising in administrative/property law than to a local solicitor, and Charlie would know who is in that field now. As far as the Parish Council is concerned, I would be inclined to play the moral rather than the legal card. Can you not identify some local project for which there is a great need, and then apply all the political pressure you can muster on DCC?

BP to A 21 Oct

Do I take it that this means that the covenant doesn't have much value? or might it have value for the Bowrings but not for MPC?

A to BP 21 Oct

No, with ministerial consent, I think DCC will have the power to sell the building free of the library trusts, so long as they use the proceeds for some capital project within their powers. The local Council could certainly put up some case for the building to be transferred back to them for some local use within their powers, but I should be surprised if this did not fall on deaf ears; I am sure DCC have a very clear idea of what they want to use the proceeds for.