

In the Somerset Magistrates' court sitting at Bath

Appeal of Linda Gamlin pursuant to section 18 and section 8 Public Health Act 1925

Before District Judge (Magistrates' Courts) D W Taylor

23rd and 24th October 2019.

Ms Gamlin: in person

Mr Perry: for the respondent local authority

1. This is an appeal by Linda Gamlin against a decision made by Bath and North-East Somerset Council ("BANES").
2. I heard this appeal on 23rd and 24th October 2019. On 24th October, having heard all the evidence and considered the parties final submissions I dismissed the appeal.
3. Pursuant to section 8 of the Public Health Act 1925 and section 64 of the Magistrates' Court Act 1980 I ordered that Ms Gamlin pay the costs of the respondent local authority assessed at £11,000.
4. These are my reasons for dismissing the appeal.
5. In July 2018 BANES, acting by the delegated authority of Mr Mansfield (Head of Building Control and Public Protection), decided to exercise the power available to them under the Public Health Act 1925 ("The Act") to assign the name of "St James's Mews", to a hitherto unnamed area of land ("the land") at the rear of St James's Park in the city of Bath. BANES are the relevant local authority for the purposes of this case.
6. The land was and remains in private ownership. It consists of a roadway and parking areas accessed from Great Bedford Street. The decision to name the land as a street followed the grant of planning permission in 2016 to convert part of the rear of the existing properties on St James's Park into studio flats. Each of these flats front onto the land and the land provides their only access.
7. Ms Gamlin is a local resident who lives at Baden House which adjoins the land in question. She was aggrieved by this decision and has a right of appeal to this court under section 18(4) of the Act.
8. She exercised this right by a notice of appeal dated 21st November 2018. The two grounds of her appeal are now contained in her skeleton argument.
9. I have read the skeleton arguments submitted and the evidence bundles relied upon by both parties as their evidence. In addition, I have heard live evidence from three witnesses.

The Law

10. Section 18 (1) provides

“The urban authority by order mayassign a name to a street or any part of a street to which a name has not been given”.

11. Section 8(2) provides that in respect of an appeal under section 18

“The court may make such order in the matter as they consider reasonable and may award costs to be recovered as a civil debt”

12. Section 4 Public Health Act 1875 states

“In this Act if not inconsistent with the context the following words and expressions have the meanings hereinafter respectively assigned to them”.....Street includes any highway and any public bridge, and any road lane footway square court ally or passage whether a thoroughfare or not”

13. It was agreed that this definition is the one that applies to the Public Health Act 1925.

14. The only case law I have been referred to relating to the exercise of the appeal power under section 18 is Basildon Borough Council v James [2015] EWCH 3365(Admin) (“Basildon”). This case related to the renaming of a street rather than a first naming but in paragraphs 38 and 43 the court sets out the correct approach when dealing with a section 18 appeal as follows:

38. *“The question for the District Judge was whether, according to the Council, as Parliament’s delegate, appropriate respect for its reasoning and conclusions that decision could be properly be said to be wrong”*

43. *“Section 8 provides an unrestricted right of appeal; but a District Judge is obliged to pay great attention to the opinion of the Council as duly constituted and elected local authority and should not lightly reverse their conclusion; his function is to exercise the s 8 powers only if he was satisfied that the judgement of the Council could be shown to be wrong, not merely because he was not satisfied that the judgement was right; if, but only if, he was first satisfied the Council was wrong was it for the District Judge to substitute his opinion for that of the Council”*

Parties Positions

Appellant

1. Ms Gamlin’s principal argument is that the area of land is not a street. She says it is a car park. Accordingly, it cannot be named as a street under the Act.
2. She does not object to the name itself. It the naming of the area as a street she says is wrong.

3. If it is in law a street, BANES failed to have regard to important relevant matters and the reasoning used is simply to justify the decision already made. As such the Council have failed to take into account all relevant matters and the decision is flawed and wrong.

Respondent

1. BANES oppose the appeal. They say that the area is a street within the definition of section 4 Public Health Act 1875.
2. In naming this street as St James's Mews they have acted correctly and in accordance with their own adopted policy and their decision cannot be said to be wrong.

Background not in dispute and relevant Chronology

15. Mr Gordon Glass is the owner of number 41,45 and 48 St James's Park, Bath.
16. Ms Gamlin lives at 5 Baden House Great Bedford Street.
17. In 2016 Mr Glass was granted planning permission by BANES to create three separate flats out of the garages at the rear of his properties in St James's Park. Each of these flats have their own separate access on to the area of land in dispute. Other houses that have not been converted also have a rear access on to the land. However, as they front onto St James's Park they have St James's Park addresses.
18. The land consists of a tarmacked roadway with parking areas on either side and is itself accessed from Great Bedford Street. There are no pavements or curb stones. Looking from Great Bedford Street the new flats are on the left. On the right-hand side there is a staircase entry to part of Baden House (including Ms Gamlin's property) and also areas used by residents of Baden House to park. Further up, to the right, the land gives access to a number of garages in separate ownership. The land is in effect a cul-de-sac and just beyond the new flats there is a fence that has been in situ for many years separating the land from Northampton Buildings which is an adopted road.
19. At all material times the land has been in private ownership and not adopted by BANES as maintainable at public expense. The precise ownership of the whole was not clear from the evidence before me but in 2018 a major part of the land was owned by Bath Ground Rent Estate Ltd. This part has subsequently been purchased by Baden House Ltd a company wholly owned by Ms Gamlin. Various other persons exercise rights of parking and access to and egress from the several properties and garages served by the land either by legal right or actual usage.
20. In July 2018 Mr Glass gave notice to BANES that he wished to name the area affording access to the new flats as "St James Mews". He completed an application form and paid the appropriate fee. In his letter he did not specify the power that enabled the land to be named as a street and the application form used refers to both section 17 and 18 of the Public Health Act 1925

21. This application was dealt with by Mr Martin Laker who is the team leader in the Geographical Information Systems team (GIS). Mr Laker entered into an exchange of emails with Mr Glass between 17th and 20th July 2018.
22. Mr Laker informed Mr Glass that he considered there was benefit in the land being named. He approved the proposed name but amended it to “St James’s Mews” so as to accord with BANES naming policy. He also directed that the new flats to be numbered 2,6 and 9, as opposed to the numbering proposed by Mr Glass. This was to enable other numbers to be allocated in between if the rear of other properties fronting onto St James’s Park were also converted in a similar way in the future.
23. The authority to make a street naming order under section 18 is delegated to Mr Mansfield to whom Mr Laker reports. Following Mr Mansfield’s approval, on 20th August 2018 (pursuant to the requirements of section 18) the council displayed public notices as to their intention to name the area “St James’s Mews”.
24. This notice resulted in a considerable number of objections from local residents who did not consider that this area could be described as a street together with concerns as to the effect upon parking and rubbish collection that would arise if it was named as a street.
25. Mr Laker responded to these concerns by corresponding with those who objected and advising them of their right to appeal to the Magistrates’ Court.
26. In dealing with these concerns, Mr Laker realised that the statutory notice was incorrect as it erroneously referred to section 17 rather than section 18.
27. This notice was therefore withdrawn on 10th October 2018 and a further notice under section 18 was displayed from 31st October 2018.
28. It is this notification that led Ms Gamlin to appeal to this court.
29. Subsequently Mr Glass sought to submit his own appeal but this was considered by the court to be out of time. Mr Glass then applied to be joined as a party to Ms Gamlin’s appeal. This application was refused on 19th September 2019.

The evidence

30. In the course of preparing her case Ms Gamlin has undertaken considerable detailed research into the matters that concern her. This has resulted in her presenting to the court a bundle of evidence that exceeded 200 pages of witness statements, correspondence and documentary exhibits.
31. Mr Perry raised no objection to all the material in the bundle being before me in evidence. Save to observe that I should give no weight to any statement containing non- expert opinion, he did not challenge any of the evidence as such, nor any of the various witness statements submitted by Ms Gamlin. He also agreed a number of matters that were contained in a formal document in Ms Gamlin’s bundle.

32. During the hearing Ms Gamlin introduced new material, LJG 35, and LJG 36 that again Mr Perry had no objection to me considering.
33. On behalf of BANES, Mr Perry relied solely on the witness statement of Mr Laker and the various documents he exhibited.
34. As a consequence of Mr Perry's approach, it was not necessary to hear oral evidence from most of Ms Gamlin's witnesses, accordingly, I only heard oral evidence from Ms Gamlin, Mr Laker and a witness called by Ms Gamlin, Mr Logothetis.
35. Each gave evidence in a measured and careful way and I had no doubt that they were honest witnesses trying to give the best evidence that they could. I was also satisfied that Ms Gamlin and Mr Logothetis were motivated to become involved in this case out of their own concern for the immediate environment in which they both live, rather than any malice towards the council.
36. I do not need to comment further on Ms Gamlin's evidence itself. As Mr Perry very fairly acknowledged, the limited evidence as to fact she gave, none of which was challenged by Mr Perry, was not in dispute and it was inevitably mixed with submission, argument and explanation of some of the many documents she had so painstakingly assembled.

The First Issue: is the land a street under Public Health Act 1925?

37. In her skeleton argument Ms Gamlin identified several factors that she says show that the land is not and has never been considered to be a street. I summarise these as:
 - a. The definition in section 4 Public Health Act 1875 is not a definition establishing characteristics from which a street can be recognised or described but rather a list of descriptions that do amount to a street.
 - b. The definition section in this Act is prefaced by the words "*...if not inconsistent with the context*". Ms Gamlin says this means that the context of the land said to be a street must be considered in determining if it is a street or not.
 - c. A similar proviso ("*...unless there be something in the subject or context repugnant to such construction...*") also appears in the definition section (section 3) of the Town Improvement Clauses Act 1847 which Mr Laker referred to in correspondence with another potential objector as being "*the primary legislation for street naming and numbering* "
 - d. Numerous street plans including those prepared by BANES, Ordnance Survey, and the Land Registry do not identify (by marking, colouring or otherwise) the land as a street.

- e. The land did not appear as a street in the National Street Gazetteer.
 - f. The physical features of the entrance to the land from Great Bedford Street (including the single yellow parking lines running across the entrance, the lack of a bell mouth junction and the dropped curbs in situ) are all inconsistent with the land being a street.
 - g. The land has never previously been considered to be a street either by local residents, or by BANES in the guise of the GIS Team, the highways department, or the planning department. In particular, when the planning permission was granted in 2016, BANES own planning officer referred to the land as "*a garage forecourt*". Furthermore, the consequence of the land being named as a street is that the flats will be identified as having a different address from the rest of the building within which they are situated.
38. In response BANES simply say that the wide-ranging definition in section 4 is clearly apt to include the land in question. Mr Perry relies on the wide definition contained in section 4 of the Public Health Act 1875 that the parties agree is the correct definition section for the Public Health Act 1925.
39. Neither Mr Perry nor Ms Gamlin relied upon any case law relating the definition in the 1875 Act. Mr Laker believed that the question of what features are needed to constitute a street within the meaning of the Public Health Act 1875 have not previously been decided by any court.
40. In her skeleton argument Ms Gamblin invited me to find under her first ground of appeal that, as a matter of law and fact, that the land was not a street. If so her appeal must succeed.
41. Her skeleton set out that the Basildon case did not apply to the first ground of her appeal and sought to distinguish the principles set out in Basildon on the basis that the facts of that case related to an adopted council estate and a large scheme implemented by both council officers and elected members, as opposed to private land that had never before been considered as a street.
42. However, in her oral submissions she seemed to depart from this approach and accepted that the Basildon test could apply to both grounds of her appeal.
43. Mr Perry argued that the Basildon test applies to both grounds. He submitted that, although BANES do consider the land is in fact and law a street, the court do not need to determine this as a discreet preliminary point. Rather, it is for Ms Gamlin to show that BANES were wrong to conclude it was. Accordingly, applying the definition in the 1875 Act, if it was capable of being a street (and in BANES judgement it was) then they were entitled to do so and the court should not substitute its own view that it was not, unless the council were wrong to conclude that it was.

44. I accept the submissions of Mr Perry. I acknowledge that Basildon was a re-naming case which this is not. However, when the High Court set out the test to be applied in paragraphs 38 and 43 of the judgment they did not distinguish between the separate limbs of section 18. Had they wished to limit the test they set out to re-naming cases only they could have done so. They did not. I am not persuaded that the difference between the facts of these cases mean that the test set out in Basildon should not apply to this case.
45. In my judgement the correct test to apply is that set out in paragraphs 38 and 43 of Basildon and this applies to both grounds of Ms Gamlin's appeal.
46. I therefore conclude that I do not need to determine as a matter of law, and on the facts before me, whether the land was a street or not. The test I must apply is whether the council were wrong to conclude that it was.

What can be a street?

47. In my judgement the starting point must be the words of the statute, in this case it is agreed that this is the definition in the 1875 Act as set out above.
48. This definition does not describe characteristics that must be present for land to qualify as a street. It seems to me that this was a deliberate choice by the draftsman as it would have been easy for Parliament to have specified required characteristics if that was their intention. It does however specifically refer to the fact that it must not be "*inconsistent with the context*", a phrase that Ms Gamblin invites me to attach considerable importance to.
49. The court notes that in the index to Stones Justices' Manual 2019, in addition to the statutes the parties have referred to, there are a number of references to the definition of a street in several Acts of Parliament including, Highways Act 1980, Public Health Amendment Act 1907, Street Offences Act 1959 and Town Police Clauses Act 1847.
50. None of these contain a description of common features that need to be present for something to be a street but all contain a description of things that may be a street and each definition varies somewhat according to their context.
51. Each of the examples contained in the Act appear to describe an area that affords access to something. In his oral evidence Mr Laker told me that as a minimum he considered that a street must be "*a way*", that is something that affords access of some sort as opposed to a completely closed area which leads nowhere. Much the same point is made by Ms Gamblin in her skeleton argument under paragraph 4.2 when she submits that each of the examples in the definition are "*all the items are ground where people can move about*".
52. Given that the definition in section 4 only refers to examples of what is included as a street rather than identifying any characteristics, I next consider the ordinary and usual meaning of the word.

53. Although neither party referred me to a dictionary definition, I note that the Shorter Oxford English Dictionary on Historical Principles (1973) Vol 2, refers to a street as:
“a paved road; a highway. A road in a town or village comparatively wide as opposed to a lane or ally running between two lines of houses or shops”.
54. This does not indicate any specific characteristics that must be present but distinguishes a street from some types of a “lane or ally”. However, both “lane and ally” are referred to in section 4 which must therefore have a wider scope than the dictionary definition.
55. Under the established rules of statutory interpretation, if the definition of a word in a statute is uncertain and, after giving the word its ordinary and usual meaning, the proper interpretation of that word is still in doubt, then the court should adopt the meaning that best leads to the suppression of the mischief and advances the remedy that the legislature had in view.
56. Both the 1875 Act and the 1925 Act are Public Health Acts. Ms Gamlin invited me to consider that her historical research on the internet indicated that one of the purposes of the Public Health Acts was to identify the location of infectious diseases and accurate naming of addresses would assist in controlling any such outbreaks. If correct this may be an illustration that the one of the purposes of the Act, was to provide a better and more orderly urban environment in the general interests of public health.
57. I have no reliable source material in evidence as to whether Ms Gamlin is right or not, but on the information before me, it may well be that clear identification of individual properties, in the interests of public health, was one of the remedies the legislature had in mind.
58. Interesting though this is, save for indicating that street naming perhaps relates only to urban environments, it does not in this case assist in determining what is or is not a street.
59. Although the Basildon test does not require me to reach a definitive ruling it appears to me that a street within the meaning of section 4 is likely to be an area that affords access to a building or structure that can be identified, provided that the physical or legal context suggests otherwise. Given that Parliament must have intended this definition to have been intentionally very broad whether any particular area is a street or not is fact specific to the particular circumstances in question.

The Process

60. The application by Mr Glass is dated 14th July 2018. His accompanying letter is date stamped by BANES on 17th July 2018.
61. It was not entirely clear when Mr Laker had first seen the application but his evidence was that he considered it on 17th July 2018. He acknowledged that he may have had only a short time available to him between receiving the letter from Mr Glass no earlier than 9.30am and his initial response to Mr Glass by email timed at 1451, but he told me that in the time

available to him he had given proper consideration to it and it was on 17th July that he had concluded it was a street.

62. His evidence was that he had reviewed the planning documents on the planning portal and several plans that he had access to as part of his job. He had not undertaken a site visit but was broadly familiar with the area in the course of his duties over many years. He had access to and had looked at recent photographic images including aerial shots commissioned by the council as part of their ongoing record keeping in Bath.
63. He had noted that the plans he had seen had lines or markings running across the mouth of the land where it joins Great Bedford Street and that the land was not coloured in the same way as other existing roads or streets. He was aware from the images he had viewed that a single yellow line ran in an unbroken line across the mouth that itself only had dropped curbs.
64. None of these features caused him to be concerned that the land may not be street. He considered that he was exercising a street naming decision only which would not alter any rights of ownership, or rights of way. In naming the street doing so his aim was to ensure that the relevant council policy and guidance was applied in a way that gave the best solution and the clearest outcome.
65. Having decided that the land could be named as a street he informed Mr Glass that, although not a legal requirement, the freehold owner of the land should be notified to seek their consent. Mr Glass did so and Mr Laker considered that giving them 2 weeks to response was adequate.
66. Ms Gamlin suggested that his correspondence with Mr Laker was akin to communications with a colleague and in failing to make a proper enquiry of the freeholder gave the impression of simply *"smoothing the way for Mr Glass"* rather than properly and carefully considering it. This Mr Laker did not accept.
67. Having approved, with a grammatical amendment, the name and having revised the numbering from that suggested by Mr Glass, he consulted Mr Maddison, his manager who authorised the decision. As a result, an administration assistant was tasked with issuing the relevant notices which were subsequently displayed.
68. It seems that as a result of the objections received Mr Laker became aware that the notices referred to section 17, not section 18. He described this as technical error made by his colleague who by then had retired.
69. In addition to acknowledging the error in the notice he also accepted that he had in correspondence with Ms Gamlin referred to the wrong statutory definition of street. On 23rd August 2018 he wrote in an email to Ms Gamlin *"I have now found the definition of a street for street naming purposes, section 3 of Town Improvement Clauses Act 1847"*. In evidence he confirmed that having taken legal advice he realised that he should have referred to the 1875 Public Health Act.

70. When he reissued the statutory notice on 31st October 2018 he also issued to local resident's question and answer information sheet ("Q&A") He told me that his aim in doing so was to be as transparent as possible and the questions he posed and answered had all arisen from those people who had contacted him to object to the first notice.
71. Mr Laker was cross examined extensively and in considerable detail by Ms Gamblin as to the decision-making process he adopted in concluding that the land was a street.
72. In particular, she suggested that he had failed to give any proper consideration, as required by the statute, to the physical context of the land and in particular the lack of any features that suggested it was a street. Again, Mr Laker did not accept this.
73. The overall thrust of Ms Gamlin's cross examination was that Mr Laker had only given superficial consideration to whether the land could properly be described as a street, he had acted in haste and without proper consideration of the context. He had dismissed as of no relevance important features that should have alerted him to the fact that the land was not a street. Indicative of his "slap dash" approach was that he made important mistakes including referring to the wrong Act and in the first notice, referred to the wrong section.
74. Furthermore, he was simply trying to justify his earlier decision to explain away his previous failings rather than accepting that he had been wrong.
75. Having listened carefully to the evidence of Mr Laker I am unable to accept this as an accurate characterisation of his approach. I am satisfied that he did not approach this case in a slap dash way nor that his actions were designed to smooth the way for Mr Glass. I note that his apparent acceptance of the comment by Mr Glass that the then freehold owners *"are not renowned for speedy replies"* chimes with Ms Gamlin's own experience in dealing with them. In my judgement he made appropriate enquiries and had before him sufficient information to deal with the application. Given his overall knowledge of the area I consider that it was not necessary for him to have made a specific site visit before making his decision.
76. In my judgement Mr Laker answered all of Ms Gamlin's cross examination questions in an open and fair way. He did not prevaricate or seek to justify himself when he could not. He readily made concessions as to mistakes that had been made. He candidly accepted that *"before the application, no one needed to determine if it was a street"*.
77. Having said this I ask myself has Ms Gamlin demonstrated that he was wrong to conclude that the land was a street?

Indicators that it is not a street

78. I acknowledge the force in some of the submissions by Ms Gamlin that in the eyes of some, perhaps many, people that this area did not appear to them to be a street. The evidence from the local residents that Ms Gamlin relies upon makes this clear.
79. At face value the plan markings, the yellow line, the plan colouring and the photographic evidence of previous usage (including vehicles obstructing the area for some time and someone even having their hair cut in the open) all may suggest that this was not a street. However, I accept Mr Perry's submission that I can attach no weight to the opinion of a lay person that it was not a street and very little to that of a professional observer such as Mr Lambah-Stoat (a retired RICS surveyor) as he was not relied on by Ms Gamlin as an expert witness.
80. Although Ms Gamlin presented a formidable amount of material that she says shows that the land is not a street, in my judgement the weight of this evidence is in itself limited in the context of the test in Basildon
81. Firstly, I am not satisfied that I should give any real weight to the description of the land contained in the 2016 planning reports as "a garage forecourt".
82. I accept Mr Laker's evidence that how the land is described in such a report is not necessarily a true reflection of how it should be seen in the future let alone a statement of legal status at any time. As such I consider it a description of the land for planning purposes rather than a significant feature when considering street naming. Whilst I accept the evidence of Ms Gamlin's witnesses that no planning notices were displayed adjacent to the land in 2016, I do not accept that this undermines the view taken by Mr Laker in 2018 that upon completion of the flats that the area they front onto should be named as street.
83. I am also unable to give any significant weight to the fact that this land did not appear as a street in the National Street Gazetteer. Mr Laker helpfully explained how this is compiled from local submissions by Local Authorities and that in fact he had recorded the land as a street in his own submission in July 2018. As such I do not accept that it amounts to objective independent evidence as to the status of any street or piece of land. I reach the same conclusion in respect of Ms Gamlin's submissions relating the colouring or other making on the maps and plans she relies upon.
84. I do, however, accept Ms Gamlin's submission that it is of concern that Mr Laker was initially unaware of which statute defining a street he should have considered. In some cases, if the definition of a term is fundamentally different, this may well mean that any decision based on the wrong definition is fatally flawed.
85. However, in this case the definition in the 1847 and the 1875 Act are remarkably similar. They both refer to a list of places that are included in the definition of a street. The only significant difference is that the 1875 Act refers to the definition applying "*whether a thoroughfare or not*" whereas the 1847 Act specifically refers to "*any road, square, court, ally and thoroughfare*" thus potentially excluding areas that do not amount to a thoroughfare.

86. In this case it is agreed that the land is in effect a cul-de-sac and does not provide a through way, save to the buildings it serves. This was known to Mr Laker when he made his decision and thus in my judgement nothing turns on his failure to use the correct definition. On the facts of this case I do not consider that Mr Laker's mistake carries any real weight. Neither do I attach importance to the difference identified by Ms Gamlin in the emails between Mr Laker and Mr Glass describing the land in inconsistent ways as a new street or an existing street.
87. I agree that it is also of potential significance that the plan submitted by Mr Glass differs from the plan attached to the first notice and yet against from the plan attached to the second notice.
88. Ms Gamlin has analysed Mr Laker's correspondence with other objectors in a way that enabled her to produce a third plan, showing that all that is left to name are 3 small squares, entirely inconsistent with them being a street. By this means she sought to demonstrate that Mr Laker had in effect not understood what he was doing and as a consequence ignored the context of matters on the ground.
89. Ingenious though this is, I am not persuaded that it supports her submissions. The section 18 notice displayed on 31st October 2018 is referred to as plan D in the bundle. It is this plan that BANES rely upon. I accept Mr Laker's explanation he had altered the area shown to take into account the representations that had been made and his understanding of the correct area to name. Rather than suggest a state of confusion and error, in my judgement the issuing of a more accurate plan was indicative of the careful way that Mr Laker went about the process and demonstrates that he had listened to and took note of the concerns of the objectors, rather than ignoring them. In addition, I note that plan D clearly states in it that it is intended for the purposes of indicating location rather than anything else.
90. The tone of the correspondence between Mr Laker, Ms Gamlin, Ms Cullen and Sir Geoffrey Tatum, from which Ms Gamlin constructs her alternative plan, was professional and not dismissive of their concerns. This in my view, together with the Q&A leaflet demonstrates that Mr Laker was seeking to explain his position rather than attempting to wriggle out of a problem that he had not properly considered.
91. Accordingly, although the existence of differing plans is confusing and unhelpful, the discrepancies between them do not in my view demonstrate that Mr Laker failed to consider relevant physical features when he determined that the land was capable of being a street.
92. Mr Laker accepts that when he made his decision he had received no response from the then freeholders. They had not responded to the notification given by Mr Glass. Accordingly, at that time Mr Laker was unaware of any views they may express. It is clear from his correspondence with Mr Glass that he considered that the views of the owner should be taken into account but on the evidence before me they did not object.
93. In his evidence he explained that the only duty imposed by the statute was to post a street notice under section 18. Whilst he considered it was right to forewarn the owner so they

would not be taken by surprise, he told me that the council had limited resources and was only able to take limited steps beyond complying with the statutory duty.

94. I accept that if the land is capable of falling within the definition of a street then the fact that it is in private ownership and the owner objects, this does not of itself mean that the land cannot properly be described as a street. It would however be a relevant factor that depending on the other circumstances may carry some weight. However, that is not the position here. The previous owners did not respond at all. Baden House Ltd now do object and Mr Laker has fully considered their views as the facts of this appeal demonstrate.
95. I am satisfied that Mr Laker has taken, throughout this process, adequate steps to inform himself of the views of the freeholder and as such this point carries no weight when determining the first ground of this appeal.
96. Ms Gamlin also challenged Mr Laker on his choice of other streets that he chose as examples to support Mr Glass's view description of the land as a "*traditional mews Road*"
97. Within Ms Gamlin's evidence bundle there are a number of examples of other locations that are mews roads. Ms Gamlin sought to demonstrate the difference between such roads and this area of land.
98. She criticised Mr Laker for his choice of Lambridge Buildings Mews in his Q&A document and suggested that his selection of other roads, such as Union street, when he was giving examples of other streets depicted on maps in a similar way to this area of land were "*weak analogies*"
99. I do not accept that his choice of alternative examples undermines his conclusions. I accept that in suggesting these examples he was not seeking to justify himself after the event. Again, he was merely responding to the views of others in an attempt to explain the decision he had made rather than look for reasons to justify it when it was plainly wrong.
100. At the end of Ms Gamlin's extensive cross examination Mr Laker remained of the view that the land was a street for street naming purposes.

Decision on First Issue

101. In my judgement there is nothing in the definition in the 1875 Act, nor the dictionary definition, nor in the purpose to be achieved by the Public Health Acts I have been referred to, that require specific features to be present before an area can be named as a street.
102. It is clear that this legislation can relate to streets in private ownership and streets that have not been adopted by local authorities as being maintainable at public expense. The land is in an urban area and as such falls within the ambit of statutes covering public health in urban areas. It has historically provided rear access to properties in St James's Park, including those owned by Mr Glass, and separately to several garages which on the evidence of Ms Glass are in separate ownership. It now provides access to the new flats.

103. I find that none of the features that Ms Gamlin asks me to consider, either individually or collectively, prevent the land falling within the definition of a street. As such I am satisfied that on the evidence before me the land is capable of being a street in law within the definition in section 4 of the Public Health Act 1875.
104. Applying the test in Basildon, I conclude that the decision of Mr Laker, adopted and approved by Mr Mansfield, that the land was a street, was a reasonable and logical one for him to have made. In doing so he had sufficient information to make that decision. I remind myself that the decision Mr Laker had to make related solely to the naming of a street and had no impact on private property rights.
105. Giving due weight to the importance of the context as required by the preamble in section 4, Ms Gamlin has not satisfied me that it was wrong for Mr Laker and BANES to reach the conclusion that this was a street that could be named as such within the definition contained in section 4 of the Public Health Act 1875.

The second Issue: As they had the power to do so, was BANES wrong to name it as a street?

106. Ms Gamlin argues that notwithstanding that the land can be considered in law to be a street, that BANES were wrong to do so because they failed to consider a number of relevant factors before reaching this decision. In failing to do so, the decision was flawed and wrong.
107. In her skeleton argument, Ms Gamlin identifies a number of relevant areas that she says BANES failed to consider, or properly consider including: unauthorised parking; rubbish collection; failing to consider that the flats could be converted back into single units; who would pay for cross curbs and a failure to consider alternative naming arrangements that provide a better solution. In essence, these submissions flow from her earlier argument that the decision made by Mr Laker was made in haste, without any proper consideration of the true context nor the consequences for other residents.
108. In his skeleton argument, Mr Perry suggested that whether or not these were legitimate concerns, it was not necessary for the court to adjudicate on them. He argued that if it did, then the court would be attempting to form its own view, rather than focussing on whether the decision by BANES to name the street could be said to be wrong and thus not properly applying the Basildon test.
109. I do not accept that Mr Perry is right in seeking to simply dismiss the concerns raised by Ms Gamlin in this way. If Ms Gamlin is right in what she says, then in my judgement it is properly arguable that the failure by BANES to consider and assess areas of relevant concern could in some cases, amount to such a significant failing by a public body that it fatally undermined their decision to such an extent that it was wrong in public law terms.
110. In considering the separate aspects of this ground I apply the conclusions I have already reached as to the motivation Mr Laker and the quality of his decision making. I add that Mr Laker has, in my view, been far from dismissive of Ms Gamlin's concerns. This is

reflected in his correspondence with Ms Gamlin and other objectors and the fair and professional way in which he gave oral evidence.

111. Although I have not been shown a copy of any complete policy document issued by BANES, the bundle prepared by Ms Gamlin contains an extract from the relevant guidance at LJG18. This is headed "*BANES street naming and numbering guidelines v 5.0 (November 2018)*". Mr Laker told me that this was a guidance document in force at the relevant time and issued to help users understand and apply the policy.
112. Mr Perry invited me to accept that the decision taken by Mr Laker followed this guidance. Accordingly, when considering whether BANES had been wrong to act as they did, the court should attach considerable weight to the fact that they were following their own policy.
113. In considering Ms Gamlin's concerns I remind myself firstly, that the process of naming the land as a street did not in any way affect the private law rights of the owner nor those who have legal or prescriptive rights over it. Secondly, as BANES did not wish to adopt the street as maintainable at the public expense, there is no obligation placed on the frontagers to upgrade the street to any particular standard or design nor to install any particular type of curb.
114. Accordingly, the issues raised by Ms Gamlin must be seen in this context. In my judgement, it is only if the naming of the land as a street has a discernible impact on the private law rights of others or creates an unreasonable state of affairs arising as a direct consequence of the naming do any such issues have any significant weight relevant to BANES decision making.

Parking/Curbs/Planning

115. Applying this approach, the fact that there are no cross curbs has no relevance and the prospect that the flats may be reconverted back into the main house is purely speculative. If there are any concerns that the flats have not been constructed in accordance with planning permission then this can be dealt with separately and has no relevance at this stage.
116. Likewise, some of concerns raised by a number of objectors related to the danger of increased unauthorised parking if members of the public erroneously thought they can park on the land if it was named as a street.
117. On the evidence before me, this is already a risk in a city where parking is at a premium. I do not accept that the installation of a street name sign will be likely to increase this already existing risk but, if so, this can be controlled by the installation of signs making it clear that it is private property and parking is not permitted.

Numbering

118. I accept that the numbering system devised by Mr Laker will not produce a numerically logical sequence of numbers. Ms Gamlin is right when she points out that the sequence may well look confusing, including as it will include numbers that relate both to James's Mews and then, only a foot or so away, numbers that relate to the other side of the building in St James's Park.

119. She relied on evidence she had collected to show that nothing else like this exists in Bath and that in a survey of postman and delivery drivers the general opinion was that such a system would be "odd", "unique" and "it wouldn't be clear what is going on"

120. However, Mr Perry argued that the numbering system adopted complies with the 2018 council policy guidance:

(vi) "If a building has entrances onto more than one street, is a multi-occupied building and each entrance leads to a separate occupier, then each entrance will normally be numbered onto the street it is accessed. Exceptions to this may be necessary in some instances "

121. This he argued provides clarity in that the flats will be numbered in a way that identifies them from which street their front door opens onto. If they were numbered in a way that identified them by a St James's Park address then visitors would expect to find them in St James's Park and not at the rear.

122. He accepted that other naming systems could be devised but he invited the court to conclude that the scheme adopted by BANES was clear, understandable and in accordance with their adopted policy. If, Ms Gamlin felt a different system was preferable she was entitled to that view but that did not make the council's decision wrong.

123. Ms Gamlin suggested that the evidence she presented showed that the council should have accepted that this was a case that fell within the exception provisions of their policy and in doing so BANES could have created a more logical and understandable system of addresses.

124. I accept that Ms Gamlin has gone to considerable lengths in attempt to show that BANES were wrong when they sought to apply their policy in the way that they did. I accept that there may well be some merit in what she says. However, in my judgement any such merit falls far short of satisfying the Basildon test that BANES were wrong to apply their own policy in the way that they did.

Rubbish and Recycling collection

125. I am satisfied that when Mr Laker made his initial decision in July 2018 he gave no real thought to the effect the naming of the land as a street may have on the arrangements

for collecting rubbish and recycling. However, as a result of receiving objections to the first notice he had given consideration to this by November 2018. In his Q&A letter he stated, *“the question of waste collection will arise whether the street is named or not since the three new properties now have no access to St James’s Park”*.

126. In his oral evidence he maintained this view and added that if there were any concerns then these had been dealt with by the planning process on 2016 and accordingly it was now not relevant to street naming.

127. Ms Gamlin’s concern was that in 2017, that is since the planning permission was granted, BANES had changed their waste collection arrangements. The new system required that waste to be collected had to be bagged in accordance with BANES policy which involved each bag being identified by a postal address. This then would be collected from the edge of the adopted highway.

128. She argued that given that the land is private and will not be adopted, then the nearest adopted highway is Great Bedford Street. However, the council policy also required that waste for collection should not obstruct the pavement.

129. As the flats have no right to deposit their rubbish on the private land adjacent to Great Bedford Street (as this is privately owned by either No 40 or Ms Gamlin’s company) the bags can only be left on the pavement thereby obstructing it. She produced correspondence showing that problems of this sort had already arisen.

130. Although the disposal of rubbish was briefly considered during the planning application Ms Gamlin said that it had never been satisfactorily dealt with and the combination of the new scheme together with the naming of the street now made this problem much worse. As a result both she and Mr Logothetis had to spend time dealing with rubbish from the flats wrongly placed on Baden House Ltd land. This had led to problems with rats and other vermin as testified to by several of Ms Gamlin’s witnesses.

131. These difficulties had been exacerbated by the fact that the flats had been let to students who were only resident for a short while and some of whom were not motivated or willing to deal with the situation sensibly.

132. Ms Gamlin suggested that this problem could have been alleviated if the land had not been named as a street and the flats had been numbered or otherwise described as part of St James’s Park. If this had been done, because of the numbered bagging system, the rubbish would have to be placed in St James’s Park thereby removing the risk of it obstructing the pavement in Great Bedford Street.

133. In my judgement this is a relevant issue that ought to have been considered by Mr Laker when considering the naming of the land as a street.

134. It was BANES who introduced the new waste collection scheme and given the prescriptive nature of the collection arrangements, and the naming of the street as St James’s Mews would inevitably mean that the bags for the flats would be allocated the name St James’s Mews.

135. As such the occupants of the flats would be compelled to leave them adjacent to the nearest adopted road which is Great Bedford Street. If, however the flats had been numbered in a way that had a St James's Park address this would not arise.
136. I accept that the current arrangement has the potential to cause confusion in the minds of short term occupants such as students and they may or not deal with this in a way that is acceptable to Ms Gamlin. However, in my judgement the root of the problem lies in the willingness and ability the flat occupants to make appropriate and considerate arrangements for their own rubbish. If necessary they could agree with BANES to make alternate collection arrangements.
137. Whilst I am satisfied that when considering the benefit of naming the land as a street Mr Laker should have taken into account the impact this would have on the rubbish collection arrangements, in my judgement the problems arising now are not of such a magnitude that this ground alone the decision by BANES to name the land as a street was in itself wrong.

Respect for democratic decision

138. The *Basildon* test requires me to pay great attention “ *to the opinion of the Council as duly constituted and elected local authority*”
139. Ms Gamlin says that in this case the decision was only made by Mr Mansfield on the flawed recommendation of Mr Laker, whereas *Basildon* was a decision made with the clear involvement of councillors. Thus, by implication I should not give the decision the weight that was considered appropriate in *Basildon*.
140. Ms Gamlin did not challenge the process by which the power to name streets had been delegated by BANES to Mr Mansfield. I note that in the evidence bundle it is clear that one councillor, Andrew Furse, had reservations about the decision and in October 2018 he had raised these concerns with Mr Laker stating that he considered there was no benefit to the local residents in naming the street.
141. However, it also appears in his email dated 29th October 2018 he erroneously understood that the consequence of the naming was that the street would also be adopted.
142. When considering the weight I give to the decision of BANES as the elected local authority, I am satisfied that there was some involvement by at least one elected councillor and furthermore, the decision made by an officer, Mr Mansfield, has not been overturned by the elected council.
143. However even if this was not the case, the council were acting in accordance within the authority delegated by the council to Mr Mansfield and, on the evidence before me, in accordance with their own adopted policy relating the street naming and numbering. Accordingly, I am satisfied the decision making by BANES in this case was not undermined in

the way suggested by Ms Gamlin and thus I give no weight to this issue when I consider the decision they made.

Decision on Second Issue

144. Having considered the above points raised by Ms Gamlin I am not satisfied that either individually or collectively they show that the decision taken by BANES was wrong within the meaning of *Basildon*.

What order under section 8 is reasonable to make

145. In the light of my conclusions on both grounds of appeal I have considered what order should be made pursuant to the appeal powers in section 8. I remind myself that there are no issues over the name St James's Mews itself.
146. Given that I am not satisfied that BANES were wrong to decide as they did, the only decision I can make is that this appeal must be dismissed.