

## The Courtyard Background

The Van der Graafs run a wine merchants' business in Bridge Street in the town of Wetherbridge. Their shop premises backs onto a courtyard which they part own with the Hamiltons (see hatched area on the plan attached) who live in The Granary, which also backs onto the courtyard.

The Hamiltons bought The Granary shortly before the Van der Graafs took over the lease of the shop premises in Bridge Street, but only started living there recently. For a number of months, The Granary was let to tenants.

In a bid to promote their business, the Van der Graafs have laid on promotional wine tasting evenings at the shop. Whilst these events have been very popular with the Wetherbridge wine drinking fraternity, they have not always been appreciated by the local residents, particularly the tenants of The Granary who complained about the noise levels emanating from the shop premises.

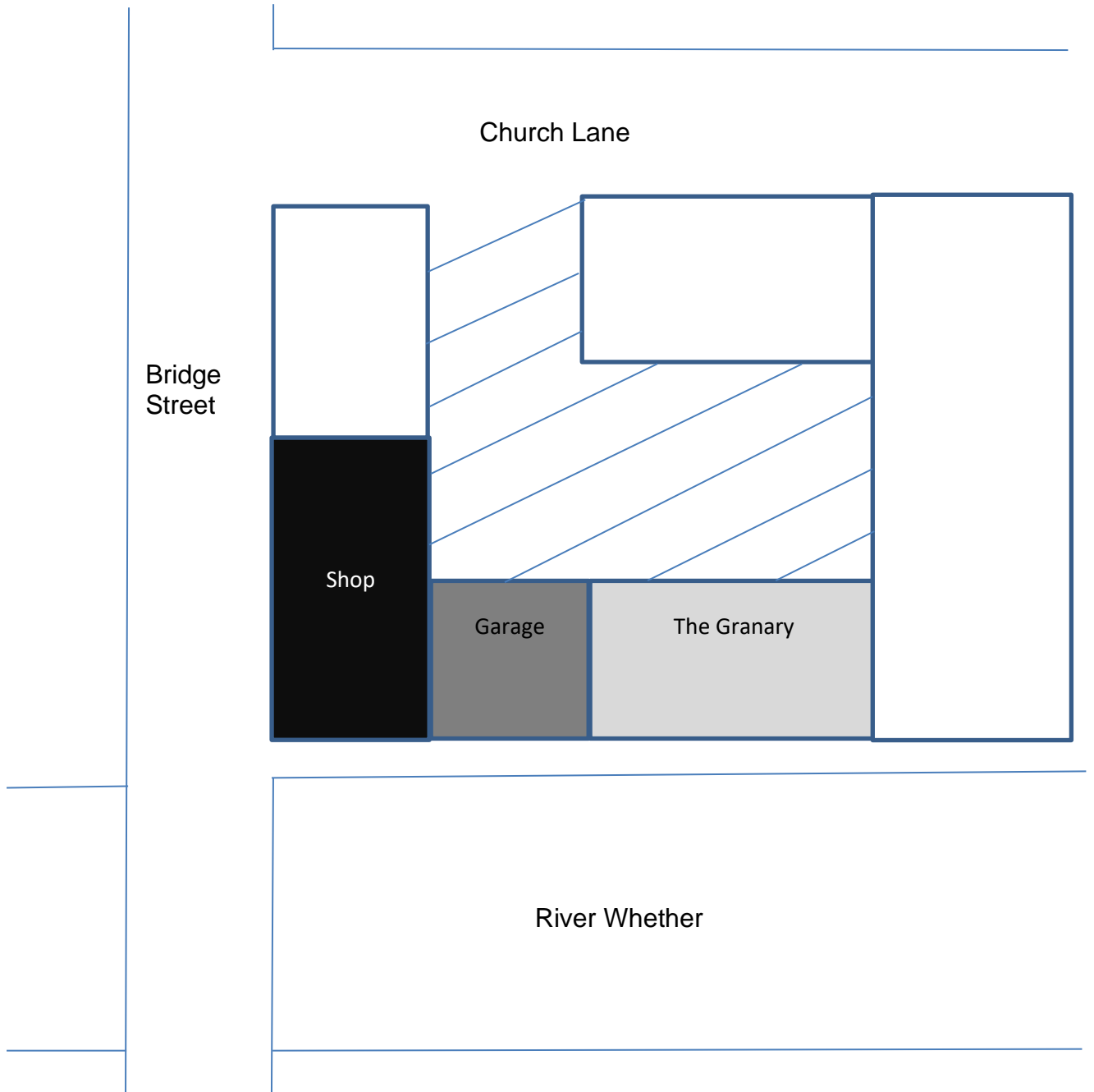
The courtyard has been the subject of quite a few comings and goings over the past few months, with regular deliveries being made to The Granary; these have been in the nature of large items of furniture, which are seemingly being stored in The Granary's garage at the corner of the courtyard. There are also some stone statues, which have mysteriously appeared in the courtyard. The only access to the Van der Graaf's shop premises for deliveries is via their rear entrance, which opens onto the courtyard. On several occasions, stock deliveries could not be delivered due to lack of access to the courtyard. The deeds of both properties contain a covenant allowing *...free unrestricted access to the respective properties over the courtyard...*, but nothing more than that.

The Van der Graafs are unhappy with the Hamiltons parking vehicles on the courtyard for prolonged periods, which they are convinced is not permitted. On the contrary, the Hamiltons want to enjoy unrestricted access to their garage and the right to park on the courtyard.

The Van der Graafs have instructed solicitors who have written to the Hamiltons threatening litigation unless their clients are reimbursed for loss of profit to their business exceeding £10,000. They also require that the removal of obstructions in the form of statues forthwith. The Hamiltons have themselves responded, claiming rights over the courtyard and requiring reimbursement for lost rent exceeding £5,000 due to early termination of their tenant's tenancy which they blame on the Van der Graafs. They also require quiet enjoyment of their property and the sum of £7,500 in damages for irreparable damage caused to an ornate Oriental statue.

At the suggestion of the Van der Graaf's solicitors, the parties have agreed to mediate. In attendance will be Robert/Roberta Van der Graaf and Peter/Peta Hamilton.

Plan



## Confidential Instructions Pete/Peta Hamilton

You are Peta/Peter Hamilton. You and your spouse Allie retired early and moved to Wetherbridge from London. Part of your retirement plan was to run a small business in town selling antiques imported from the Far East. You accept that you are both a little disorganised and laid back in your approach to life, but you want to enjoy your retirement!

Two years ago you bought The Granary, a lovely old 17th century building backing onto the River Wether. As it was in need of renovation, the property was a real bargain. Since then you have not had time to do it up and have only lived there for a short while. When you've sold your holiday home in Portugal you'll have the funds to renovate The Granary and open up the antiques shop in town. Last year, you and Allie were away in the Far East buying furniture, including stone statues which you acquired cheaply in Thailand with a view to selling them and making a huge profit. All the purchases were shipped back to Wetherbridge.

Whilst travelling you let The Granary but three months into the nine-month tenancy, the tenants terminated, and you lost 6 months' rent (£5,100). You claim that this is entirely due to your noisy neighbours; the Van der Graafs who run an off licence. When pressed, you admit that this is only partly true, but mostly due to the premises being damp, draughty, and leaky. The tenants terminated the tenancy and moved to better accommodation. Frustratingly, you had to return from your travels early and you want the Van der Graafs to reimburse you for lost rent.

Although you've never met your neighbours you have disliked them. You have received reports that they are constantly complaining about access to their back door; due to parked cars (necessary for your antiques deliveries). They have also had the audacity to complain about your rights of way over the courtyard. You are positive your solicitor told you that you had unlimited rights over this. However, you can reveal if pressed, that the deeds do suggest that permanent parking is not allowed, and the area must be kept obstruction free. Admittedly some statues had been placed in the courtyard as your garage was full. Your neighbours have had the habit of throwing raucous parties and during one of these, a Thai Buddha statue was irreparably damaged.

You have since received a very threatening letter from the Van der Graaf's solicitors suggesting that you are trespassing on the courtyard, liable for their lost profit to their clients' business (something about deliveries not being made and other spurious claims concerning lost profit) and requiring the removal of certain artefacts causing an obstruction to their rear entrance.

Your solicitor, although a conveyancer by specialism, does have some litigation experience and suggests that you may have a claim for asserting your rights for unrestricted access to your garage and temporary parking rights on the shared courtyard. Whilst you would want to avoid a trial, recognising the claim for lost rent might be weaker, there are grounds to stop neighbourly interference, noisy parties in the courtyard and damages for the statue, which if pressed you concede is probably worth a fraction (a few hundred pounds) of that indicated in your claim (you will therefore negotiate on this).

You can see weaknesses in your case, but do not easily concede this and only if pressed; you're out for what you can get! Conversely, you realise that you will have to live in close proximity to these 'odious foreigners' and accept that litigation can be costly and uncertain, so you are willing to compromise. Strangely, this might be a chance to do some business with these people (furniture sales perhaps?) and make money out of them, see what you can do. You've never been to mediation before so are sceptical. You will need your spouse's consent on any final settlement if one is reached, but you're confident that can be done with a quick phone call.

## **Confidential Instructions for Robert/Roberta Van der Graaf**

You and your partner Syd are a young couple who have recently emigrated from South Africa. You run a wine merchants' business, which you like to think is somewhat 'upmarket' or certainly has the potential to be. In reality, you got into the wine trade after Syd took a BTec in wine tasting at the local FE College and whilst ambitious and hardworking, you are both inexperienced.

You bought the premises with your inheritance, it lacks atmosphere at present, is in real need of smartening up and refurbishing, but it has real potential. You are both keen to make a success of your new business, which you are gradually building up. You soon hope to have sufficient income to invest in the business to develop it, particularly to furnish it with stylish furniture. You want to get on with your neighbours, as you are keen to make a good impression.

Unfortunately, you fell out with occupiers of The Granary, the neighbouring house that backs onto courtyard at the rear of your shop, whilst rented out by the owners. The owners are the Hamiltons, and their tenants complained about late night parties in the shop as well as courtyard encroachments, including complaints about vehicles constantly coming and going; this is all a load of rubbish. Admittedly, when you first moved in, some customers did park their cars in the courtyard, but you soon politely put a stop to this. Otherwise, the only vehicles have been those delivering wine stock.

Regular deliveries of what appear to be artefacts have been made to the Hamilton's property, most of which seem to be stored in their garage. The timing of these deliveries has proved very inconvenient. Garish statues (of Asian origin) started appearing in the courtyard causing further obstruction. Due to the obstructions of cars and statues, wine deliveries have been hampered and the failed deliveries have caused your stock to deplete with a consequent downturn in sales.

You are eager to get your business going and have tried several marketing ideas including wine tasting evenings. Towards the end of the summer, about the time when the neighbouring tenants moved in, you had a few promotional wine tasting events, which did go on quite late and became a little noisy. If asked, confirm that on one occasion, some guests climbed a statue in the courtyard causing it to collapse and break. You are embarrassed about this, but your wine tasting guests were to blame. This is probably a small price to pay as these events did prove to be good for business!

Your solicitor has drafted a claim, which includes; a requirement that the Hamiltons stop parking on the jointly owned courtyard for prolonged periods and reimbursement of lost profit due to inability to either deliver wine stock or run wine tasting sessions. There is also a requirement that in order to comply with a covenant, the statues be removed due to the obstruction they cause in the courtyard. You recognise that some aspects of the claim are weaker than others, particularly the claim for lost profit, which in real terms probably only amounts to a few hundred pounds, but you are out for what you can get from your neighbours! Ideally, you want to be able to go about your business without hindrance from the Hamiltons and would want to avoid a trial, which would undoubtedly be costly.

You have never been to mediation before, and whilst your solicitor has explained a little bit about the process, you need convincing that it is likely to work and want the support, guidance and if need be, some legal advice, from the mediators. Your partner is happy for you to make decisions for both of you.