

AGENDA ITEM

COMMITTEE: Administration & Regulation Committee

DATE: 29th January 2019

SUBJECT: Addition of a section of path at Langley Place to the Definitive Map and Statement.

REPORT BY: Service Director, Planning & Economic Growth

CONTACT OFFICER: Keith Dove, Strategic Policy Adviser

IMPLICATIONS:

LEGAL	x	COMMUNITY SAFETY
EQUALITIES		ENVIRONMENT
FINANCIAL	x	CONSULTATIONS
STAFFING		OTHER

WARDS AFFECTED: South

PURPOSE

To request authority to carry out the legislative process in order to add a section of path at Langley Place to the Definitive Map and Statement.

RECOMMENDATION(S)

Committee is recommended to authorise Legal Services to undertake the process pursuant to the Wildlife and Countryside Act 1981 and all other

enabling powers, in order to add a section of path at Langley Place as shown edged red in the plan on page 114 at Appendix 3(A), to the Definitive Map and Statement

BACKGROUND

At its meeting on 29th November 2018 the Committee considered a report with the same recommendation as above. A copy of that report and the appendices to it are included at Appendix 3 to this report and the advice/recommendation therein remains the same notwithstanding this update.

At that meeting, Members allowed the Developer of the site and the landlord of the Sugar Loaf pub to address the Committee. Further details of the issues each of them raised, together with any points raised by the Committee are recorded in the minutes of the meeting (Minute 73 refers), but can be summarised as follows, namely that:

- the paving of the walled garden and remaining length of Langley Place has not changed since the 1970s when Mr Duggan first visited the Sugar Loaf pub and subsequently became landlord;
- the paved section of Langley Place would be dangerous if used by pedestrians as the pub's cellar hatch was located in this area; and
- Mr Duggan conceded the area was under his control but not owned by him.

Members Resolved:

'Having considered the officer's report and the representations made by Cllr Castleman, Barrie Morris, for the Developer and owner of the Telmere Industrial Estate and Gerald Duggan, the Landlord of the Sugar Loaf pub, Committee decided there was insufficient information on which to make a decision and therefore deferred consideration of the matter, pending provision of further information, legal advice, including case law and custom and practice and a site visit.'

The site visit took place on 22nd January, and Members will discuss the outcome of that at the meeting. The remainder of this report therefore sets out:

- a) provision of further information, and
- b) legal advice.

With regard to the further information, attached at Appendix 1 is a letter from the Developer's legal adviser; to date no further information has been received from the landlord or the owners of the pub.

REPORT

Background to the development proposal

In May 2017, the Development Management service received a request for determination as to whether the prior approval of the Local Planning Authority

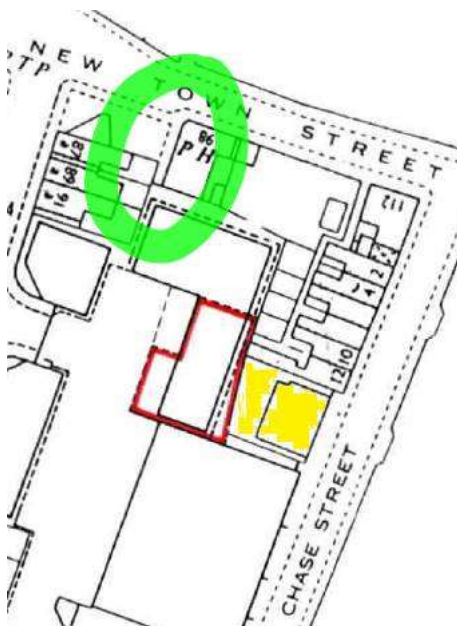
was required under Part 3 Class O of the Town & Country Planning (General Permitted Development) Order 2015) ("GPDO") to convert Unit 4 in the Telmere Industrial Estate in New Town to 12 bedsits. The decision subsequently made on 1st August 2017 was to grant prior approval subject to conditions, which have subsequently been satisfactorily discharged.

The Developer's view is that it would be inappropriate that their development is accessed through the remaining units and circulatory space within the Telmere Industrial Estate. The developer has presented the Council with evidence of an historic path known as Langley Place which ran through the land now occupied by the industrial estate and connected with New Town Street. The path ran alongside the Sugar Loaf pub. That evidence was included as Appendix B to the report to the last meeting of this Committee.

Additional information not previously presented

Alternative means of access to the site

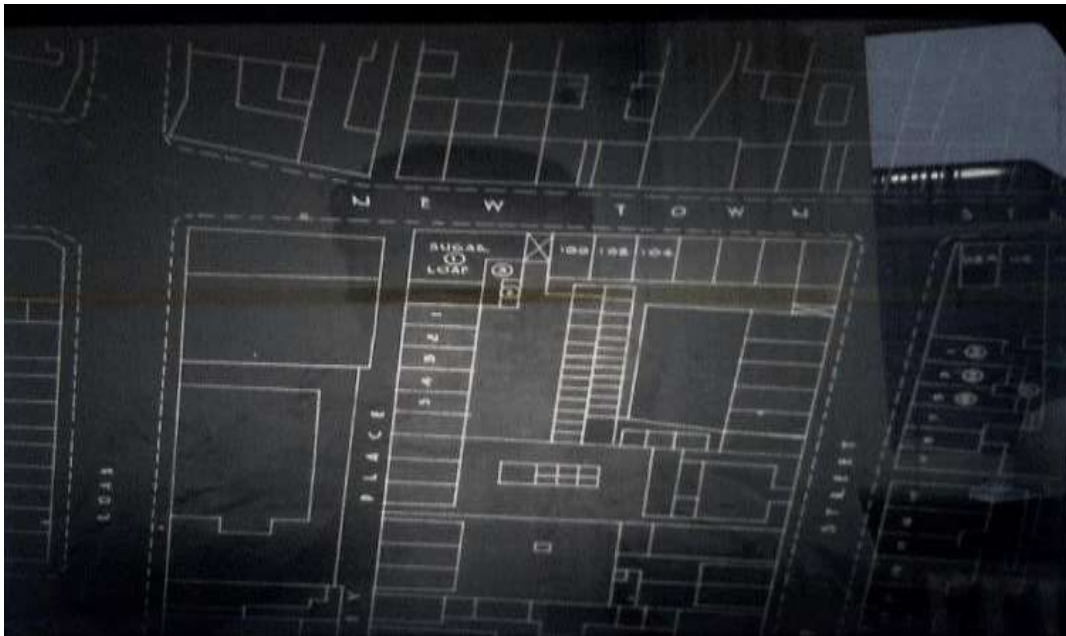
Since the last meeting, the Council became aware that two planning applications (16/01960 and 18/00082) had been submitted to convert an industrial unit at 14-16 Chase Street (shaded yellow on the plan below), which backs on to the Telmere industrial estate and could provide an alternative way of accessing the Unit 4. Both applications, for three 2 bed terraced properties, were refused and the 2018 application was dismissed on appeal. Notwithstanding this, the opportunity of creating a path in this area was explored further with the developer, but the site on Chase Street adjoins Unit 2 (outlined red on the plan below). Unfortunately this would therefore be of no benefit to the Developer at Unit 4, who has stated that they can easily install concrete stairs and /or ramp to retain the land and overcome the 1m change in levels at the boundary to the side of the Sugar Loaf pub.



Stopping up of Langley Place

As recorded in the minutes of the last meeting, Councillor Castleman had queried why officers had not been able to provide evidence of any Stopping Up Order. Further requests have been made to both the Councils Legal and Land Charges administration teams. To date we have been unable to locate the Stopping Up Order and plans. However we have found further information on the Council's microfiche records relating to the site that is presented below.

A Compulsory Purchase Order Plan published in connection with the Borough of Luton Housing Act 1930 confirms the existence of Langley Place, an extract of which is shown below.



We have also found a plan of land sold by the Council in 1939 that was subsequently developed as the Telmere industrial estate in 1980.



The plan on page 133 of Appendix 3(B), the report and appendices to the last meeting, also shows the length of Langley Place that was extinguished when the industrial estate was built. Before the land was sold, this would have also led to numerous homes in Langley Place. That plan is also consistent with our records of Rights of Way within the Excluded Area.

Based on the above and aforementioned plans, together with the plan on page 114 of Appendix 3(A), the one thing that is consistent on all of those is that they all exclude the same area at the New Town Road end of Langley Place.

It is reasonable to conclude therefore that this section of Langley Place was not formally stopped up. It is unfortunate that we cannot find the Stopping Up Order for the section of Langley Place referred to as 'extinguished' on page 133 of Appendix 3(B), which encompasses the area of the Telmere industrial estate. However, again if it could be found, it is reasonable to assume that it would not have stopped up the area of Langley Place in question.

Layout of the pub entrance

The photo of the Sugar Loaf pub included on page 130 of Appendix 3(B) of the report to the last meeting pre-dates the construction of the industrial estate, as it shows no building behind the pub. It also shows the entrance door to the pub is on the splayed corner of the building. The subsequent photo on page 131 of Appendix 3(B) of the same report shows the location of the entrance door to the pub has been re-positioned, which would have been taken after the Telmere industrial estate was completed as part of the unit behind the pub is clearly visible.

The former waste land between the pub and Albert Road, which fronts onto New Town Street, is bordered by a brick wall which forms the northern boundary of 87 Albert Road. As evidenced in the Her Majesty's Land Registry records of the Title Deeds at Appendix, 2 that area of land is now in the ownership of the Wellington Pub Company PLC and has been developed into a paved walled garden.

Langley Place continued to be used to give access to the Sugar Loaf side door (in the area with the lower roof), presumably then leading to staff accommodation / non-public areas.

The following photos show the existing layout of the side entrance.



Comparing photo A with that in Appendix 3(B) of the report to the previous meeting shows that the pub has changed the position of its public entrance door and have also built steps to that new entrance and a short wall at the same time. It is likely from the appearance of the paving (photos A, D and E) that the paved walled garden and remaining parts of Langley Place were all paved by the pub at the same time. As recorded in the minutes of the last meeting, Mr Duggan stated that he had been at the pub since 1984/85 and had drunk there in the 1970s and that nothing had changed at the location since then. On this basis it is likely that this area was paved in the late 1970s.

The pub has chosen to hard landscape and build steps and a wall on the highway part that clearly isn't within the demise of either the pub (Title Number 185122 at Appendix 2 refers) or the walled garden (Title Number 185122). Even if acquired by adverse possession, the public right of way over the land still exists as "once a highway always a highway". However, the fenced and gated off part by the old side door needs to be opened up for access to the boundary through the end of the highway.

Photos D and E show the location of the existing draymen's delivery hatch, which is at a slightly higher level to the surrounding area, and photo C shows the location of the former delivery hatch in New Town Road. Mr Morris contends that even if the draymen's hatch is open, there is sufficient space to the right hand side to pass along into Langley Place, and that in any case the draymen's deliveries last quite a short time.

Legal advice

Paragraphs 3 to 13 of the report to the last meeting of this Committee (see pages 110-111 of Appendix 3 to this report) summarise the legal requirements of the Definitive Map and Statement (DM&S). The key points can be summarised as follows, namely that:

- the Duty to produce a DM&S of Public Rights of Way (RoW) was first required by the National Parks & Access to the Countryside Act 1949, which included 'exceptions to survey' where the area was so fully developed it would be inexpedient to do so (the case in much of Luton);
- the Duty under Section 53 of the Wildlife and Countryside Act 1981 to review the DM&S, making modifications resulting from, amongst other things, evidence of the existence of a RoW not shown on the current DM&S;
- since 1997 the Council has been the surveying authority with responsibility for preparing the DM&S;
- the Excluded Area in Luton remains largely un-surveyed but all rights of way in that area need to be added to the DMS by 1st January 2026.

Based on evidence presented in the report to the last meeting of this Committee, along with the additional information presented above, in your officer's opinion this reasonably demonstrates that a public right of way over Langley Place exists, as the section of Langley Place in question is not in the ownership of the Public House (although even if it was, this would not be conclusive as "once a highway always a highway") and has never been stopped up.

Consequently, Committee approval is sought to formally add this section of Langley Place to the Definitive Map and Statement. The legislative procedure requires notices of the order to be served on the interests in the land, posted on the route and advertised in a local newspaper. If no objections are received, the order will be confirmed, and a new Definitive Map and Statement for Langley

Place created. However, if objections are made and not withdrawn, the Council will have to forward the order to the Secretary of State for Environment, Food and Rural Affairs who will determine whether it should be confirmed or not.

PROPOSAL/OPTION

Not to progress this based on the evidence supplied could result in a legal challenge compelling the Council to do so, especially in light of the developer's interest in developing Unit 4. Progressing this application does however run the risk that further applications will be received to map other areas of the excluded area where there are similar circumstances to this case, which will have to be considered by officers.

HUMAN RIGHTS AND CRIME AND DISORDER ACT - IMPLICATIONS

The recommendation notes the rights to respect for private and family life and protection of property but acknowledges and recognises the duties under Section 53 above. In addition there are not considered to be any crime and disorder implications arising but again the Section 53 duty is noted.

EQUALITY ACT 2010

There are no disproportionate effects on people with protected characteristics namely: age, sex, gender assignment, sexual orientation, disability, marriage/civil partnership, pregnancy/maternity, race, religion or belief, arising from this report.

APPENDICES

Appendix 1 Letter from Bevan Brittan (acting on behalf of the Developer)

Appendix 2 Title Deed for land at the junction of New Town St and Albert Rd.

Appendix 3 Report to Administration & Regulation Committee on 29 November 2018

LIST OF BACKGROUND PAPERS **LOCAL GOVERNMENT ACT 1972, SECTION 100D**

None

FAO Steven Sparshott
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Bedfordshire,
LU1 2BQ

Date 15 January 2019
Your ref
Our ref MTMT\137496\1
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By e-mail only

Dear Sirs

Langley Place, Luton

We write further to our previous letters of 24 July 2018 and 24 April 2018. You will recall that we act on behalf of Chalmor Limited in relation to this matter. We understand that the matter is to be considered by the Administration and Regulation Committee of 29 January 2019.

The officer report to the Committee dated 29 November 2018 clearly sets out and delineates the reasons why, in the view of the Council's officers, a public right of way is considered to exist over Langley Place. The proposition set out in that report is supported by detailed evidence which demonstrates conclusively the existence of a historic highway¹.

The legal question for the Council² is whether evidence has been discovered which shows that a right of way either subsists or is reasonably alleged to subsist. There is a very substantial body of information which supports the existence of a right of way.

If the Council accepts that the right of way existed historically, no combination of actions by the current landlord or any representations about the current status of the land are capable of undermining that designation. We have previously referred the Council to the common law rule of 'once a highway, always a highway' – legal authority confirms that a highway continues to exist even if it is blocked, not physically apparent, or not used for a number of years. Accordingly the highway and its associated right of way subsist.

We are instructed that at the meeting of 29 November 2018, a number of points were raised which do not relate to right of way or highway status. These points include land ownership, use of the land at present, whether a highway is appropriate, control of drinkers, planning permission, health and safety concerns, differences in levels, the effectiveness of the historic stopping-up order, whether a new stopping-up order should be made, and other points. We would encourage the Council to confine its considerations to matters which are relevant to the specific legal question before it.

Stopping-up Order

¹ The evidence supplied to date which supports this proposition includes the Council's own plans from 1888 and 1938, the 1900, 1938 and 1946 Ordnance Survey plans, the historic map dated 1922, the previously-supplied witness statement, pictures of the Sugar Loaf, the plans from 1842 and 1924, the Street Index extracts, the extract from a WWI diary, Index of Drawings, the informal Facebook post relating to passing Langley Place and the content of the book 'World's End'.

² As set out in section 53 of the Wildlife and Countryside Act 1981.
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We have been asked if our clients hold further information about the stopping-up order referred to in previous correspondence with reference DX159. My clients have supplied a photograph of a map within the Council's records which puts DX159 in context.

There are some errors associated with this map – particularly if you look at LX127 to the north, this has been displaced from its actual location, and in actuality the LX127 path is directly across New Town Street from Langley Place.

The stopping-up status of DX159 is relevant to the point which is being considered by the Council but it is not determinative. In circumstances where the Council's records do not confirm the existence of a stopping-up order, the highway identified by evidence continues to subsist across its entire length. In circumstances where the Council's records confirm that the highway has been partially stopped-up, this stopping-up was only partial in nature. In either event, we would respectfully submit that the evidence confirms that a right of way subsists.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M. Tucker', enclosed within a faint rectangular border.

Matthew Tucker
Solicitor
for Bevan Brittan LLP
Enc: Plan

Title Number : BD107050

This title is dealt with by HM Land Registry, Peterborough Office.

The following extract contains information taken from the register of the above title number. A full copy of the register accompanies this document and you should read that in order to be sure that these brief details are complete.

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This extract shows information current on 18 JAN 2018 at 22:52:16 and so does not take account of any application made after that time even if pending in HM Land Registry when this extract was issued.

REGISTER EXTRACT

Title Number	: BD107050
Address of Property	: land at the junction of New Town Street and Albert Road, Luton
Price Stated	: Not Available
Registered Owner(s)	: WELLINGTON PUB COMPANY PLC (Co. Regn. No. 3406623) of Windsor House, 50 Victoria Street, London SW1H 0NW.
Lender(s)	: Deutsche Trustee Company Limited

Title number BD107050

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A: Property Register

This register describes the land and estate comprised in the title.

LUTON

- 1 (22.11.1984) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land at the junction of New Town Street and Albert Road, Luton.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (10.12.1997) PROPRIETOR: WELLINGTON PUB COMPANY PLC (Co. Regn. No. 3406623) of Windsor House, 50 Victoria Street, London SW1H 0NW.

C: Charges Register

This register contains any charges and other matters that affect the land.

- 1 (02.04.1998) REGISTERED CHARGE dated 2 March 1998 affecting also other titles to secure the moneys including the further advances therein mentioned.

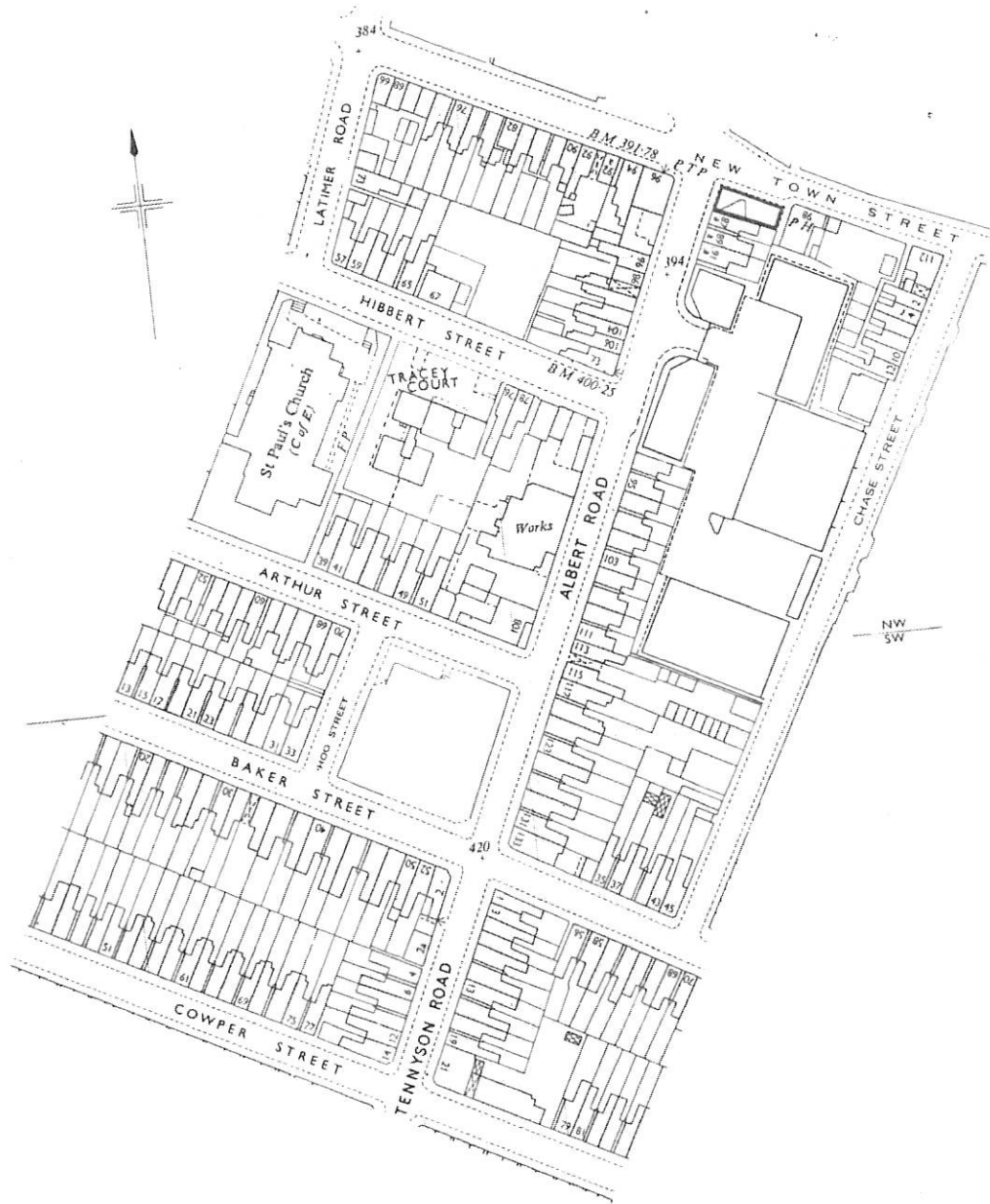
NOTE 1: Original charge issued in a separate cover and should be lodged at the Land Registry on any dealing with the charge

NOTE 2: Copy filed under HS223935.

- 2 (02.04.1998) Proprietor: DEUTSCHE TRUSTEE COMPANY LIMITED (Co. Regn. No. 338230) of Winchester House, 1 Great Winchester Street, London EC2N 2DB.

End of register

H.M. LAND REGISTRY ®		TITLE NUMBER	
		BD 107050	
ORDNANCE SURVEY PLAN REFERENCE	COUNTY	SHEET	NATIONAL GRID
	BEDFORDSHIRE		TL 0920
Scale: 1/1250		LUTON DISTRICT ADMINISTRATIVE AREA LUTON © Crown Copyright 1981.	



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Title Number : BD185122

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REGISTER EXTRACT

Title Number	: BD185122
Address of Property	: 98 New Town Street, Luton (LU1 3ED)
Price Stated	: Not Available
Registered Owner(s)	: WELLINGTON PUB COMPANY PLC (Co. Regn. No. 3406623) care of GOSSCHALKS of Queens Gardens, Hull HU1 3DZ.
Lender(s)	: Deutsche Trustee Company Limited

Title number BD185122

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A: Property Register

This register describes the land and estate comprised in the title.

LUTON

- 1 (20.10.1994) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 98 New Town Street, Luton (LU1 3ED).

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (10.12.1997) PROPRIETOR: WELLINGTON PUB COMPANY PLC (Co. Regn. No. 3406623) care of GOSSCHALKS of Queens Gardens, Hull HU1 3DZ.

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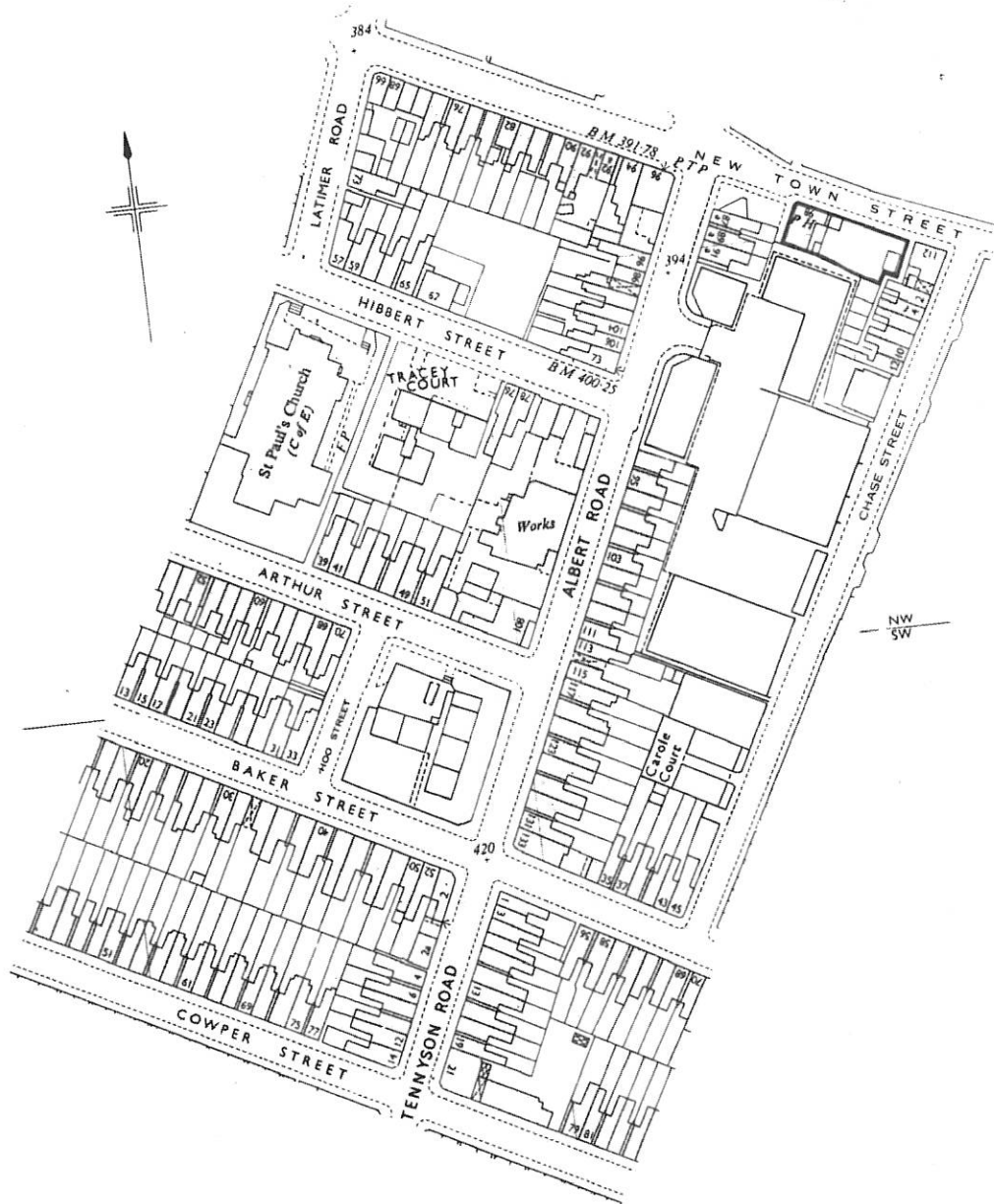
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End of register

H.M. LAND REGISTRY ©		TITLE NUMBER	
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