

QLTR Queen's & Lord Treasurer's Remembrancer

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<http://www.qltr.gov.uk>

Your ref:

Our ref: BV/868/08

Date: 31/01/2013

Dear

**OWNERSHIP UNDETERMINED
DISPOSAL BY QLTR TO RENFREWSHIRE COUNCIL
SUBJECTS: LAND AT HARVEY SQUARE, LOCHWINNOCH
JOHN KELLY**

Thank you for your request dated 22 January 2013 under the Freedom of Information (Scotland) Act 2002 (FOISA) for sight of all evidence that was provided to the QLTR by Renfrewshire Council which satisfied the QLTR that there was no legal owner of the land at Harvey Square which was subsequently conveyed to the Council.

I enclose the following (appropriately redacted): -

1. Copy letter from Renfrewshire Council dated 21 October 2008 with copy relative plan; and
2. Copy letter from Renfrewshire Council dated 30 October 2008 with copy enclosures comprising copy letter from Millar & Bryce dated 3 October 2008 and copy title report from Landownership Scotland dated 19 June 2008.

Copies of any titles specified or referred to in the above are already in the public domain.

If you are dissatisfied with the way in which your request has been handled, you do have the right to ask us to review it. Your request should be made within 40 working days of receipt of this letter and we will reply within 20 working days of receipt. If you require a review of our decision to be carried out, please write to The QLTR, Unit 5, 14a South St Andrew Street, Edinburgh EH2 2AZ, or for requests sent by e-mail to coqltr@copfs.gsi.gov.uk.

The review will be undertaken by staff not involved in the original decision making process.

If our decision is unchanged following a review and you remain dissatisfied with this, there is a right of appeal to the Scottish Information Commissioner under section 47(1) of FOISA.

Should you subsequently wish to appeal against the Commissioner's decision on such an appeal, there is a right of appeal to the Court of Session on a point of law only.

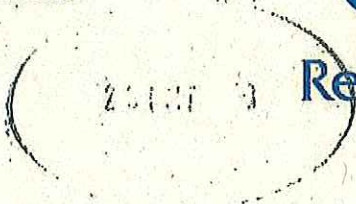
Yours faithfully

Telephone: [REDACTED]
Fax: [REDACTED]
Text Phone: [REDACTED]
E-Mail: [REDACTED]
Your Ref: [REDACTED]
My Ref: [REDACTED]
Contact: [REDACTED]
Date: 21 October 2008

BVB68/08



Renfrewshire
Council



Crown Office
25 Chambers Street
Edinburgh
EH1 1LA

Dear Sirs

Land at Harvey Square Lochwinnoch W/C

The Council has, for a considerable number of years, maintained the land at Harvey Square, Lochwinnoch which is shown on the attached plan. You will see from the plan that this land forms a public square and that the war memorial is situated in the middle of the square.

The Council had always assumed that it had title to this area.

However, in or around 2001, the proprietors of the house known as Armannoch dug up part of the grassed area of the square adjacent to their property and formed an area of tarmac for car parking. This initially came to light due to the planning implications and the proprietors were advised that a planning application would be required for this change of use. The application was subsequently submitted and refused. It was further rejected following an appeal.

It then came to light that the owners of this house, Mr and Mrs Kelly, had registered an a non domino disposition over the whole of the south east side of the square shown hatched on the plan. At this time, the Council checked its title deeds and established that it did not, in fact, have a title to any part of the square. The only option available to the Council at that point was to register its own a non domino disposition to prevent Mr and Mrs Kelly obtaining an unchallengeable title after a period of 10 years. It also registered a separate a non domino disposition of the remainder of the square.

The Council then sought advice from Counsel as to how to proceed in the circumstances of this case. He advised that it may be useful to carry out further, more detailed, title enquiries as the only way by which the matter could be resolved, without taking court action, would be to trace the actual owner and obtain a disposition from him.

Corporate Services
Director: Paul Gannon
Head of Legal & Administrative Services: Kenneth Graham LLB Dip.L.P.
Renfrewshire House, Cotton Street, Paisley PA1 1TT
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A further title report was sought which confirmed that while the remainder of the state was sold to the predecessors of the Department of Environment and Rural Affairs in 1937, this did not include the area of land at Harvey Square which remained in the ownership of the Trustees of James Widdrington Shand Harvey by means of a disposition recorded in 1911. The trustees appear to have been appointed for behoof of creditors and several parts of the estate appear to have been sold under powers of sale under bonds. The title report confirms that the land at Harvey Square was not disposed by the trustees at any time.

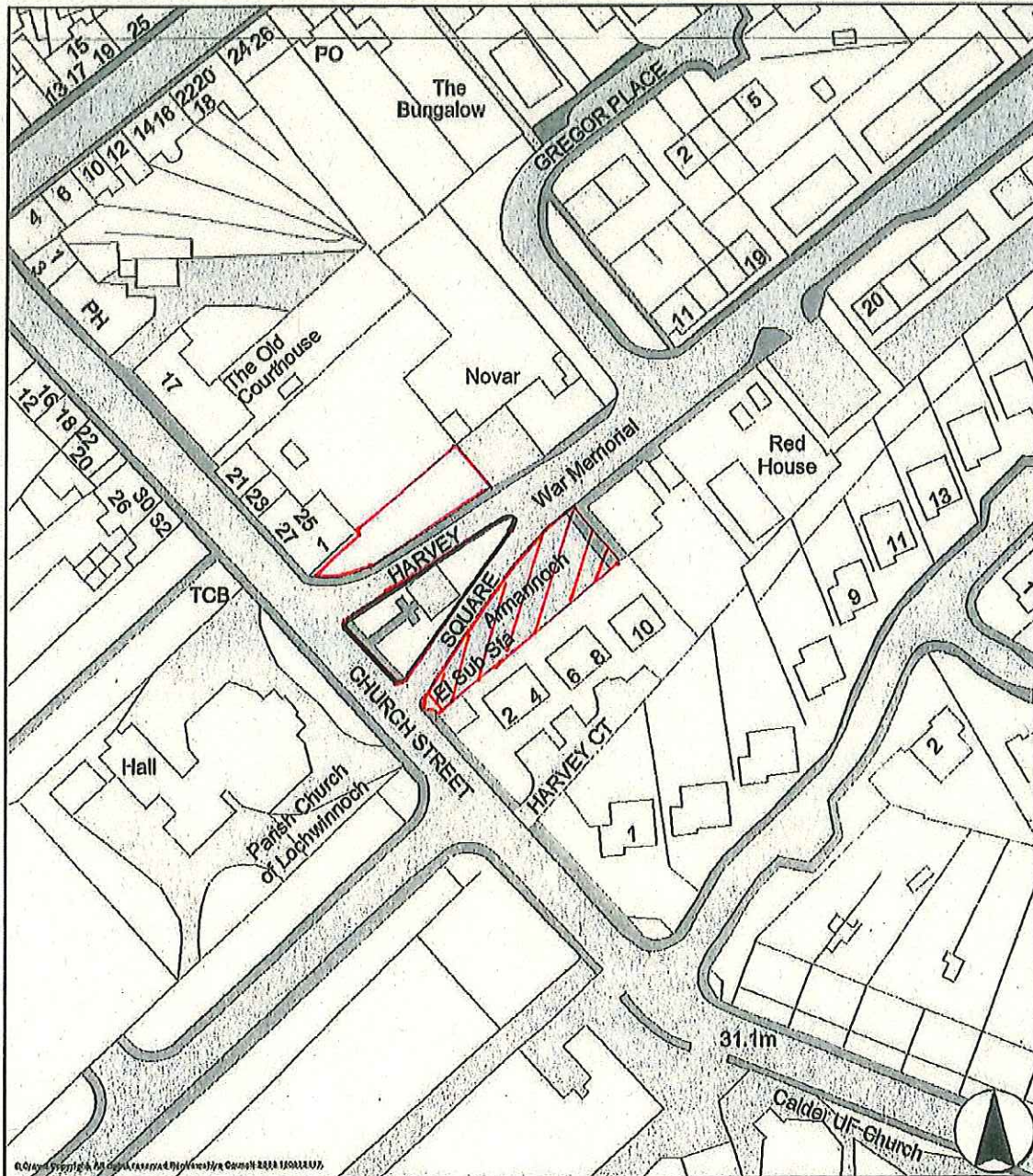
The Trustees in 1911 were Messrs Millar and Bryce. The Council has contacted the current firm of Millar and Bryce to try and establish if they are aware of the identity of the successors of the trustees. They have been unable to assist. The only information available is that the agents presenting the 1911 deed were J A Campbell and Lamont. The Law Society was able to confirm that the present day successors to that firm are Gillespie McAndrew. They have advised the Council that they have no knowledge of any successors to the trustees.

As it has now proved impossible to trace any successors to the Trustees of Mr Harvey, I shall be grateful if you will advise me if a disposition can be granted by you to the Council in order that the title position can be put beyond doubt and the public square retained in its entirety for the benefit of the inhabitants of the area.

Yours faithfully

[Redacted signature block]

Harvey Square Lochwinnoch



Printed: 21 October 2008
Department: Corporate Services
Scale: 1:1250

Visit 'RenfoMap' Renfrewshire Council's Intranet GIS

Telephone: [REDACTED]
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Your Ref: BV/868/08
My Ref: [REDACTED]
Contact: [REDACTED]
Date: 30 October 2008



Renfrewshire
Council



Crown Office
25 Chambers Street
Edinburgh
EH1 1LA

Dear [REDACTED]

Land at Harvey Square Lochwinnoch

I thank you for your letter of 24 October.

I enclose a copy of the title report obtained by the Council over the land at Harvey Square, Lochwinnoch together with a copy of the most recent search obtained at the beginning of this month.

I also enclose a copy of the Council's Land Certificate and that obtained by Mr and Mrs Kelly.

I confirm that the Council would seek to obtain a title to all three areas outlined in red on the plan attached to my letter of 21 October. I had shown the area towards the east of the square hatched to highlight that this was the area over which Mr and Mrs Kelly had registered an a non domino title.

I thank you for your assistance.

Yours sincerely

[REDACTED]
[REDACTED]



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Landownership Scotland

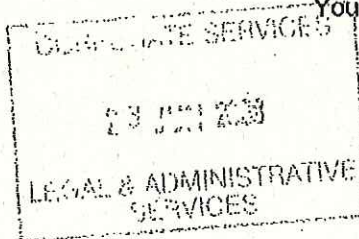
59 Hainburn Park, Edinburgh EH10 7HH
Tel/Fax 0131 477 7736
search@landownership-scotland.co.uk

Renfrewshire Council
Legal & Administrative Services
Renfrewshire House
Cotton Street
Paisley
PA1 1TT

Date: 19 June 2008

Our ref: [REDACTED]

Your ref: [REDACTED]



Dear Sirs,

Land at Harvey Square, Lochwinnoch

We refer to your instructions of 8 April 2008 and to our subsequent correspondence regarding the above subjects.

We have carried out a search in the Land Register and in the Search Sheets for the County of Renfrew up to 9 April 2008, the latest date of entry, against Harvey Square, Lochwinnoch, including the areas subject to a non domino titles marked 1, 2 and 3 on your plan.

With regard to the two areas of ground that were sold to the Glasgow and Southwestern Railway Company in 1903, we think that Millar & Bryce have been misled in plotting these because they did not find a second sale from them to Ladeside Property Company that is mentioned in the letter from BRB (Residuary) Ltd and is probably part of the ground now in the houses at 1 and 3 Station Rise. In our experience, British Rail's records are extremely good, and their interpretation also fits the historical map, so we are sure that the two 1903 titles did not include any of the ground in question.

We found very little in the indexes to the search sheets under Harvey or Harvie Square, just the properties adjoining it. We enclose a copy of the title sheet for REN83133, which is for part of the property known as Novar fronting Harvey Square. We looked at the search sheet for this property and noted in 1923 a Memorandum in respect of feudal casualties where the superior was Andrew Kirkwood McCosh. What caught our eye, however, was the original description of the whole property known as Novar and we enclose a copy of a Sasine of George Logan recorded 20 March 1820 proceeding on a Feu Charter by John Harvey of Castlesemple. This property was described as being (i) a steading of ground on the north side of the new square in the village of Lochwinnoch laid off for a market place and (ii) another steading of ground to the east of this bounded on the west partly by the said square and on the south by the new street leading east from the Church of Lochwinnoch. We eventually made sense of the description in this deed and the compass directions are not quite correct, making sense if you turn the map approximately forty five degrees clockwise. This title seems to include all the ground to the northeast of the area numbered 3 on your plan up to John Gregor Place (presumably named after the Doctor who was the owner of this property from 1920 to 1953) and also ground to the west of this. The significant point to us, however, is that Harvey Square and the road now known as Harvey Terrace were both described as being new in 1820. The subjects in the 1820 Feu Charter were described as forming part of the lands of Calderhaugh.

locus in present

We also enclose a copy of the title sheet for REN110267, which is for one of the flats in Square House, Harvey Square. This title includes an area that had to be excepted from your a non domino title. We looked at the search sheet from which this title came and the area along the northwest side of Harvey Square was 23 falls of ground on the north side of the new Square laid off for a Market Place, being part of the lands of Calderhaugh. The bounding description is noted on the search sheet as being 139 feet (amended by the Keeper to 132 feet) in front along Harvey Square on the south, 49 feet along Chapel Street on the west and unspecified distances along ground owned by other proprietors on the north and east. This description fits for 25 and 27 Church Street, but does not suggest that there is an extra area jutting into Harvey Square. There is nothing on the search sheet to suggest that extra ground has been acquired, so we think that this extra area has been acquired a non domino at some stage, possibly in the 1963 deed referred to in the burdens for REN110267. Again, this title spoke of the new Square in the description, but there is no reference on the search sheet to the date of the original Feu, although we later found what we think must be it in our search of the Abridgments in a Sasine of the Trustee on the Sequestrated Estate of James Walker recorded 26 August 1822 proceeding on a Feu Charter by Margaret Harvey.

Given that the Square was new in 1820 and the owner of the Estate was called John Harvey, we decided to look for the title of John Harvey and at sales by him and his successors. We apologise for the length of time it has taken for this, but we have had to carry out extensive searching in the old Abridgments to the deeds and, since these were all scanned and have to be searched by computer instead of the books, this takes a long time, especially since there are problems with the system that cause it to crash and to give false negative results. However, we have searched thoroughly by using the system available in a way which is slow, but where we do trust the results.

We found a Sasine of John Harvey of Castlesemple recorded 29 June 1814 in the 50s land of Calderhaugh, commonly called Calderhaugh Semple proceeding on a Charter of Resignation and Confirmation to the Parliamentary Trustee on the estates of William McDowall of Garthland and another deed. Nearly all the other deeds involving John Harvey from 1814 to 1820 were Sasines of John Harvey acquiring more property, so he owned a large number of separate titles. On 22 February 1821, the Trustees of John Harvey recorded a Sasine to the 50s land of Calderhaugh, commonly called Calderhaugh Semple. However, we also found another Sasine of the Trustees of John Harvey recorded on 22 February 1821 to a large number of other lands, all parts of the barony of Castlesemple, including the 50s land of Calderhaugh commonly called Browns Calderhaugh. There were two more Sasines of the Trustees of John Harvey recorded on 13 September 1821 of a large number of other areas including several smaller parks or enclosures of Calderhaugh. We are therefore not sure which of these various lands of Calderhaugh is the relevant one.

John Harvey's heir was his cousin Margaret Rae, who was the wife of Major James Harvey of Castlesemple, formerly Major James Lee, so it looks like one of the conditions of inheritance was to take the name Harvey. Margaret Rae recorded a Sasine on 28 December 1821 in some of the Calderhaugh lands on a Disposition and Deed of Entail by the Trustees of John Harvey. James Harvey recorded a Sasine on 28 December 1821 to the Superiority of the 50s land of Calderhaugh commonly called Calderhaugh Semple on a Charter of Resignation in the Great Seal to Margaret Harvey of Castlesemple and a Disposition and Assignment by her.

We identified a Sasine of the Trustee on the Sequestrated Estate of James Walker recorded 26 August 1822 in 23 falls of ground on the north side of the New Square in Lochwinnoch, being part of the lands of Calderhaugh proceeding on a Feu Charter by Margaret Harvey and James Harvey, her husband. This suggests that the appropriate part of the lands of

Calderhaugh was in the name of Margaret Rae or Harvey by this time. We think the titles were in the name of Margaret Rae, but all sales had to be subscribed by her husband, which was the practice of the time.

We had been rather puzzled by two of the earlier Notices of Title of the Trustees of John Harvey, which seemed to partly refer to the same subjects. There were two separate Sasines of Margaret Rae both recorded on 26 March 1823, which both seemed to include many of the same subjects. The only possible explanation for this is that one of the deeds was of the superiority interest in the subjects. Both the 50s land of Calderhaugh called Calderhaugh Semple and the 50s land of Calderhaugh called Brown's Calderhaugh were included in the first deed for what we think is the superiority interests, with the second deed only including a large number of parts of the lands of Calderhaugh. Both of these deeds proceeded on Charters of Resignation dated in 1821, so probably the Sasine of James Harvey on 28 December 1821 came from the first of these two 1823 Sasines. We think that all the lands of Calderhaugh owned by John Harvey were vested in Margaret Rae or Harvey by the 1823 Sasines. We checked the abridgment for every deed involving John Harvey, Margaret Harvey, Margaret Rae and James Harvey and found a large number of Feus of parts, but none of these was of Harvey Square. Margaret Harvey seems to have been widowed in 1849 and she died around 1855. Her heir was her son, James Octavius Lee Harvey. He recorded a Sasine on 10 November 1855 to the superiority subjects and on 21 November 1855 to the much larger list of other subjects, which would have included the immediate superiority of all the parts feued. We think that all the ground formerly owned by John Harvey was then owned by James Octavius Lee Harvey.

We then extended our search to include all deeds involving James Octavius Lee Harvey. We found a feu of ground on the south side of the new road and east side of Harvey Square in a Sasine of the Trustees of Alexander Orr recorded 4 May 1866. None of the sales was of Harvey Square.

The next owner of the Estate was Henry Lee Harvey, as heir of tailzie of his brother, and he recorded two Extract Decrees of Special Service on 7 June 1872, the first to the large list of lands and the second to the smaller list of superiority titles. We enclose copies of the pages from the Abridgments showing these two deeds, so that you can see the subjects.

This takes us to the search sheets, which started in Renfrew in 1871. We checked against Harvey Square in these old search sheets and found nothing. We have looked through the search sheet and have not found any sale of Harvey Square. There were two Extract Decrees of Special Service of James Widdrington Shand Harvey, as heir of Tailzie and provision of his uncle Henry Lee Harvey recorded 10 October 1883 and 24 October 1883, one to the superiority interests and the other to the whole other interests. There was an Instrument of Disentail by James Widdrington Shand Harvey recorded 1 November 1883 of the whole subjects, both the superiority and the other interests. The next transfer of title was a Trust Disposition and Conveyance by James Widdrington Shand Harvey to the Trustees under a Trust Disposition and Conveyance by him recorded 8 March 1911 and we enclose a copy of the Abridgment for this deed, from which you will see that there is no mention of Harvey Square.

We now come to the Disposition you have already examined, being the Disposition by the Trustees under Trust Disposition and Conveyance by James Widdrington Shand Harvey to Andrew Kirkwood McCosh recorded 3 July 1912. We have not looked at the deed, which is very complicated, but often find it easier to look at the abridgement for complex deeds like this, since it can be easier to follow the numbering and exceptions and you can then check the deed to see that it agrees. We therefore include a copy of the abridged version of this 1912 deed, along with copies of the abridgments for other deeds referred to in this deed. These are the Instrument of Disentail recorded 1 November 1883 and the Minute of


Consolidation recorded 6 March 1912. Our interpretation of the 1912 Disposition to Andrew McCosh is that the road called the New Road including that square called Harvey Square is excepted from the subjects disposed and this is not just the superiority interest. From the list of Feu and tack duties and the later Memoranda in connection with casualties, Andrew McCosh was sold the superiorities of the properties bounding Harvey Square in this deed, but it appears to us that Harvey Square itself was specifically excluded. Since we have shown from our searching that it had never been feud, this could not have been purely a superiority interest. We therefore believe that the solum of Harvey Square was retained by the Trustees of James Widdrington Shand Harvey.

We have found no indication that Harvey Square has subsequently been sold. The Estate had a large number of Bonds over the years and the final sale from the Estate was in virtue of power of sale in one of these Bonds. We enclose a copy of the last two pages of the search sheet for the Estate, along with one earlier page showing Bonds. The final sale was a Disposition to the Department of Agriculture for Scotland recorded 11 August 1937. What was sold was the subjects I and II described in a Bond recorded 25 January 1932 (under exceptions). This Bond referred to the lands coloured pink on the plan relative to a Bond recorded 24 March 1931 and both these Bonds can be seen on the same page of the search sheet enclosed. We have no access to the plan with the 1931 Bond, but assume that this must be the plan that the Department of Agriculture copied to you. The 1931 Bond says that the subjects are part of those in the 1911 Disposition to the Trustees of James Widdrington Shand Harvey, not the whole subjects under exceptions.

We therefore believe that the solum of Harvey Square, which will include the areas marked 1, 2 and 3 on your plan, is still owned by the Trustees under Trust Disposition and Conveyance by James Widdrington Shand Harvey by the Disposition recorded 8 March 1911.

We trust this meets your requirements and enclose a note of our fee.

Yours faithfully,


Authorised signatory

Enc

Millar & Bryce Limited
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DX: 550301 Edinburgh 24 – Legal Post No LP125 Edinburgh 2
Registered in Scotland No. 134475



Renfrewshire Council
Legal Services
3rd Floor, North Building
Cotton Street
Paisley
PA1 1TT

Our Ref: [REDACTED]
Your Ref: [REDACTED]
Date: 03-Oct-2008

Dear Sirs,

Subjects Harvey Square, Lochwinnoch

We refer to your instructions of 2nd inst and to our subsequent telephone conversation over the above subjects .

We have carried out a search in the General Register of Sasines for the County of Renfrew by the Search Sheets thereof as at 16 Sep.2008 and annex hereto the last recorded title relating to the Lands and Estate of Castlesemple and others . We have to advise you that we have been unable to identify the presenting Agents in the Disposition as noted below .

We trust that this information is of some assistance to you in this matter and now enclose a note of our fee.

Yours faithfully

Millar & Bryce

Annexation /

11 Aug.1937 Disposition (in virtue of power of sale in Bond recorded 25 Jan.1932 for £500 by Trustees under Trust Disp and Convey by James Widdrington Shand Harvey with consent recorded 8 Mar.1911) by Trustees of deceased James Glassford Gordon Glassford with consent of Trustees under Trust Disp. and Convey by James Widdrington Shand Harvey – To Department of Agriculture of Scotland – of dominium directum and dominium utile of lands and Estate of Castlesemple and others (under exception of Skippers Yard and West Gates)

DISCLAIMER

While we exercise all reasonable care in searches of this nature, because of the limitations of the information available to us, it is not always possible to be certain that all relevant titles have been traced. Accordingly we cannot accept any responsibility for any direct or indirect or consequential loss which may occur as a consequence of this Report.

