



[2018] UKFTT 177 (PC)

**PROPERTY CHAMBER  
FIRST-TIER TRIBUNAL  
LAND REGISTRATION DIVISION**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY  
LAND REGISTRATION ACT 2002**

**REF NOS: 2017/0277**

**BETWEEN**

**C & C Equine Services Limited**

**Applicant**

**and**

**Ms Penelope Jane Gilchrist**

**Respondent**

**Property address: Land at Old Helyers Farm, Kirdford Road, Wisborough Green,  
Billingshurst RH14 0DD**

**Title number: WSX377831**

**Before: Judge John Hewitt**

**Sitting at: Victory House, Kingsway, London**

**On: 11 and 12 January 2018**

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**ORDER**

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**Representation:**

<b>Applicant:</b>	<b>Mr Max Thorowgood</b>	<b>Counsel</b>
<b>Respondent:</b>	<b>Ms P J Gilchrist</b>	<b>In Person</b>

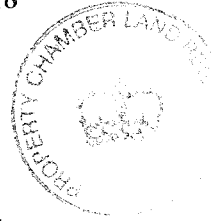
**Upon hearing** counsel for the applicant and the respondent in person

**It Is Ordered that**

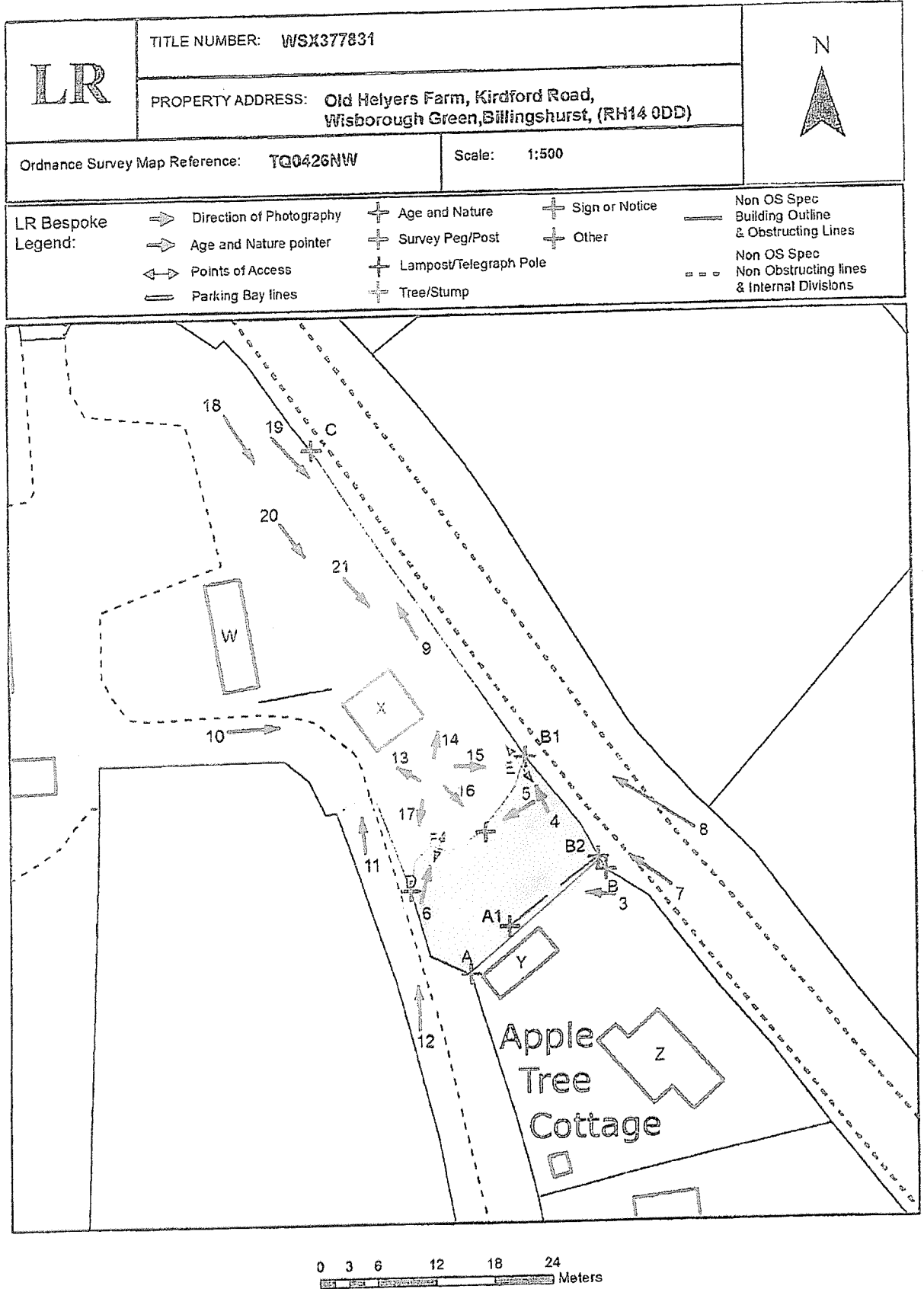
1. The Chief Land Registrar shall:
  - 1.1 Give effect to the application as regards the Yellow Land as if the objection of the respondent had not been made; and
  - 1.2 Cancel the application as regards the Pink Land
2. Any application(s) for costs shall be made in accordance with the directions set out in paragraph 93 of the decision dated 5 February 2018

**Dated this 5 February 2018**

*John Hewitt*



**By order of the Tribunal**





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**DECISION**

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**Representation:**

<b>Applicant:</b>	<b>Mr Max Thorowgood</b>	<b>Counsel</b>
<b>Respondent:</b>	<b>Ms Penelope J Gilchrist</b>	<b>In Person</b>

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*KEYWORDS – adverse possession – identity of paper owner – capacity of paper owner*

### **The issue before the tribunal and its decisions**

1. The issue before the tribunal is an application by the applicant to be registered as proprietor of two parcels of land described below and shown on the attached plan as 'The Yellow Land' and 'The Pink Land' on the basis that it has acquired a title thereto by dint of adverse possession
2. The decisions of the tribunal are that:
  - 2.1 The Chief Land Registrar shall:
    - 2.1.1 Give effect to the application as regards the Yellow Land as if the objection of the respondent had not been made; and
    - 2.1.2 Cancel the application as regards the Pink Land
  - 2.2 Any application(s) for costs shall be made in accordance with the directions set out in paragraph 93 below.

**NB** Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the trial bundle provided for my use at the hearing.

### **Background matters not in dispute**

#### **Old Helyers Farm**

3. On 21 July 1987 a parcel of land known as Old Helyers Farm (the Farm) was registered at Land Registry with title number WSX119028 [385]. The title plan is at [388]. The first registered proprietor was a Miss Caroline Douglas. In 1997 the Farm was transferred to a Mr Guy Landau. In October 2000 the Farm was transferred to the applicant.
4. At all material times the Farm has been used in connection with an equestrian business and the Farm provides livery stables, an indoor training facility and outdoor facilities and grazing. There is no constructed residential accommodation on the Farm but late in the day planning consent has been granted for a static caravan (or mobile home) to be placed on the Farm for occupation by a person concerned with the equestrian business operated from the Farm.
5. The applicant was incorporated on 22 August 2000. Directors appointments and resignations (as recorded at Companies Registration Office) have been as follows:

<b>Name</b>	<b>Date of Appointment</b>	<b>Date of Resignation</b>
Laura Weatherley	22 August 2000	12 December 2015
Stuart Lindon Clark	22 August 2000	12 December 2015
Jane Elizabeth Cannon	22 August 2000	12 December 2015

6. The Farm was put on the market for sale in March 2015. For reasons which are not material, in the event instead of a property sale there was a sale of the shares in the applicant company. The transaction was completed on 11 December 2015. Ms Butler thereby acquired OHF.

#### **Appletree Cottage**

7. Appletree Cottage (the Cottage) lies just south of the Pink Land as shown on the attached plan. Land which lies to the west of the Yellow Land, west of the Pink Land and west of Appletree Cottage comprises the northern part of the Farm.
8. In or about 1962 the Cottage was conveyed to a Miss Pamela Brunel Cohen (Miss Cohen). In or about 2004 the Cottage was first registered at Land Registry and was allocated title number WSX283988.
9. To the south of the Cottage there is a field or pasture. In 1964 that field was conveyed to Miss Cohen.
10. In 2004 attorneys for Miss Cohen contracted to sell the Cottage and the field to the respondent (Ms Gilchrist). The contract for sale/purchase is at [853]. On 15 March 2005 both parcels of land registered at Land Registry under title number WSX288094 and Ms Gilchrist was registered as proprietor.

#### **Adverse possession applications - the objection – the hearing**

11. For reasons which I shall explain shortly I have come to the conclusion that the successive owners of the Farm assumed or were led to conclude or believe that both the Yellow Land was part and parcel of the Farm.
12. Following detailed and exhaustive enquires and investigations undertaken by Ms Gilchrist, Ms Gilchrist came to learn that neither the Yellow Land nor the Pink Land formed part of the registered title of the Farm. In March 2015 Ms Gilchrist shared this information with the then directors of the applicant and the selling agents.
13. The upshot of that was that on 20 April 2015 the applicant made an application to Land Registry in form FR1 for first registration of the Yellow Land and the Pink Land claiming a title by dint of adverse possession [700]. The application was supported by a statutory declaration made by Ms Laura Weatherley [707]. Land Registry raised requisitions which the then directors of the applicant were unable or unwilling to answer fully and by letter dated 2 December 2015 Land Registry notified Ms Weatherley that the application was cancelled [728]. It may be noted that occurred around the time of the completion of the share sale to Ms Butler.
14. Again, for reasons I shall give shortly I find that Ms Butler was under the impression that both the Yellow Land and the Pink Land was part and parcel of the Farm. In or about January 2016 during the course of a telephone conversation between Ms Butler and Ms Gilchrist, Ms Butler came to learn that it was being said those parcels of land were not part of the registered title to the Farm. Ms Butler made enquires of her then solicitors who, eventually, confirmed to her that that was so.

15. On 20 January 2016 the applicant (at the behest of Ms Butler) made an application to Land Registry for first registration of the Yellow Land and the Pink Land [733]. That application was supported by a statutory declaration made by Ms Butler which (I find) was made on 14 January 2016 – although the solicitor who took the oath may have dated it incorrectly [741].
16. Ms Gilchrist objected to the application. In the course of subsequent enquiries by Land Registry and Ordnance Survey on its behalf a surveyor came to the view that the Pink Land appeared to be part of the northern garden of the Cottage. The Case Summary prepared by Land Registry [797] records that the applicant withdrew its application to part of the land in its original application – that part is what is now referred to as the Pink Land.
17. On 4 March 2017 the disputed application as regards the Yellow Land was referred to the tribunal by the Chief Land Registrar pursuant to s73(7) of the Act.
18. Directions were given and statements of case, documents and witness statements have been filed and served.
19. Prior to the hearing I was provided with a trial bundle which runs to some 834 pages. Each of the parties have provided me with chronologies, skeleton arguments and lists of issues which, in the main, have been helpful to me and for which I am grateful.
20. On 10 January 2018 I had the inestimable benefit of a site visit. Present were:  
  
Applicant: Ms Butler, her solicitor, Mr Wilkes and her counsel, Mr Thorowgood;  
  
Respondent: Ms Gilchrist and her son, Mr Kieran Gilchrist  
  
I was able to see and walk around and over the Yellow Land, the Pink Land and adjacent areas. Both parties drew to my attention a number of physical features of the land that would feature in the evidence.
21. The hearing commenced on 11 January 2018. The applicant was represented by Mr Thorowgood. Ms Gilchrist represented herself, assisted by a friend, Ms G Pass and supported by her two sons, Kieran and David Gilchrist both of whom were present during most of the hearing.
22. The applicant sought permission to file late and rely upon two Google aerial photographs and a witness statement of a Mr Hockin. Having heard representations from both parties and in the absence of any real objection by or prejudice to Ms Gilchrist I decided to allow them in, the two photographs were page numbered [835 - 836]. The witness statement of Mr Hockin was numbered [271a – h]. Later more complete versions of some documents were, by agreement between the parties, provided to me and these were page numbered [837- 865].
23. I heard oral evidence on oath or affirmation from:  
  
My Guy Landau [261]  
Ms Jane Butler [229]

Mr Charles Hockin [271a]  
Ms Penelope Gilchrist [83, 236 and 242].

All witnesses were cross-examined by the opposite party.

The applicant wished to rely upon the statutory declaration made by Ms Laura Weatherley [707] and submitted that I should have some regard to it.

Ms Gilchrist had filed and served witness statements by her son David Gilchrist [245] and her son Kieran Gilchrist [252]. Mr Thorowgood said that he did not wish to cross-examine either of those witnesses and was content that I accept their evidence as read. I have done so. Those witness statements tend to deal mostly with the unhappy relationship between the former directors of the applicant (notably Mr Clark and Ms Cannon) and Ms Gilchrist from the late 2000's until they left in late 2015. They both describe a number of mean and unpleasant events which occurred. I note and accept that evidence but, at the end of the day, it is not material to question of adverse possession and when it started that I have to determine.

24. On 12 January 2018 I heard closing submissions from both parties.

#### **The land in dispute**

25. Before summarising the parties' respective cases it may be helpful to give a brief description of the land in dispute. As mentioned above the land in dispute is the Yellow Land and the Pink Lad shown on the attached plan.
26. On 29 March 2016 Land Registry sent to Ordnance Survey a survey requisition. This was made in connection with the processing of the subject application. Attached to the requisition was a Land Registry survey plan [768] showing the whole of the disputed land tinted blue.

A site visit was undertaken by a surveyor on 8 April 2016. During the course of the visit a conversation took place with Ms Gilchrist who drew a number of features to the attention of the surveyor.

The Ordnance Survey Report dated 11 April 2016 is at [757 – 759]. The appendices to the report appear to be at [764-788].

The attached plan was appended to the report, save for the pink tinting, which I have added. That is plainly the case because the report makes references to a number of fences by reference to A – B - B1 - C by way of examples. Thus, in my view, the attached plan must be read in conjunction with the body of the report. But, the body of the report also makes reference to "*area tinted pink*" and "*area tinted yellow*".

There is also a further (and different) plan at [763]. It has been marked by Land Registry with the words: "*This is the plan referred to in the accompanying letter dated 10/04/2016 Title no. WSX377831*". The letter dated 19 April 2016 is at [761]. It is addressed to the applicant's then solicitors and makes reference to the application and to an inspection. It attaches the plan at [763] plus photographs, numbered 3, 4 and 6. It draws attention to the Yellow land and the Pink land on plan [763]. It makes the observation that the Pink Land "*...is confirmed as being enclosed as part of the*



*garden of [the Cottage]. On this basis Land Registry invited the applicant to withdraw its application as regards the Pink Land and the applicant did so.*

27. What I have not been able to ascertain is who drew up the plan at [763] and on what basis. It may be that both plans were prepared by Ordnance Survey and appended to its report. In the event that may not matter too much. I mention this because a significant feature of this case is a barn. On the attached plan it is marked with an 'X' and it can be seen it stands wholly on the Yellow Land. On the plan at [763] the barn is not marked but is shown by a square box. It can be seen that it is located mostly on the Farm, but partly on the Yellow Land. It is fair to say that the plan at [763] bears the warning: *"This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground."*
28. In the circumstances I prefer and have adopted the attached plan as my preferred plan. I find it is more detailed and hence I infer likely to be the more accurate of the two. This plan and the accompanying report appear to have been prepared with care and attention to detail. And this plan does not bear the caveat or warning that is on the plan at [763].
29. By reference to the attached plan, the western boundary of the both parcels run along the line marked B-C which is alongside a bank and a country lane which is a public highway.

The eastern boundary of the Pink Land is the line B-B2-B1 which the survey report records as being a wooden feather board fence, 1.7m high and which appeared to be over 12 years old.

The eastern boundary of the Yellow Land is the line B1- C which the survey report records as being a wooden post and rail fence 1.2m high (with some wooden post and sheep wire fence) some of which appeared to over 12 years old and some over 20 years old.

Just to the north of the tip of the Yellow Land there the main entrance gate giving access from the lane into the Farm.

The boundary between the Yellow Land and the Pink Land is marked by the line B1-D and on the ground, this comprises *"Chicken wire/Sheep wire fence attached to the trunks of conifer trees and some posts, Approx. 1.0m high. Appears to be over 12 years old"*. There is a bank, quite a steep bank, which drops down about 3m, and which separates the Yellow Land from the Pink Land. The conifer trees and fencing run along the top of the bank and the trees have now grown to quite a good height.

The western boundary of both the Yellow Land runs alongside the applicant's registered title to the Farm and is open to the extent that there are no physical boundary markers or features delineating the boundary on the ground. That is in contrast to the Pink Land where its western boundary is marked by hedging.

30. It is convenient to record here that the Ordnance Survey report states:

*“The area tinted pink forms part of the garden of Apple Tree Cottage. The area tinted yellow appears to be part of Old Helyer Farm. The building X is used by the farm and the area to the south east is used as a dump for stable manure.”*

31. It was not in dispute that since about 2006 the Pink Land has been cultivated by Ms Gilchrist and, on the ground, looks to be part of the garden land to the north of the shed marked ‘Y’ on the attached plan which is located on the registered title to the Cottage.

The photograph (number 3) at [770] shows part of the garden of the Cottage, the Pink Land behind it and the bank which is the boundary with the Yellow Land behind that.

32. The barn which features in this case is shown in the photographs at [777, 778 and 780] The manure heap to the right of the barn is shown in the photographs at [781- 784] The photograph (number 16) at [783] is a useful shot, north to south which shows the manure heap, the top of the bank being the line B1- D with the fencing and conifer trees in the background, which is the boundary between the Yellow Land and the Pink Land.

[All of the photographs appended to the Ordnance Survey report are numbered and the orientation of them is recorded on the attached plan.]

### **The gist of the respective cases**

#### **The applicant**

33. The gist of the case for the applicant was that it and its predecessors in title have been in possession of both parcels of the disputed land since at least February 1991, alternatively at latest 1997.
34. The applicant says as to the Yellow Land the barn was erected in its current position on a date prior to February 1991 and that since then and down to the present day it has been used as a barn to store hay and other equestrian materials and the area immediately adjacent to the barn has been used as a manure heap for stable waste.
35. As to the Pink Land the applicant says this lies adjacent to the Yellow Land and that on 1 September 2006 a director of the applicant gave Ms Gilchrist permission to go onto the Pink Land, that she did so and that she remains in occupation thereof with the continued permission of the applicant.
36. The applicant says that in consequence it has been in adverse possession of both parcels of the unregistered disputed land for a continuous period in excess of 12 years and thereby acquired a title to it by virtue of ss 15 and 17 Limitation Act 1980.

#### **The respondent**

37. Ms Gilchrist, a retired social worker, asserts that the barn has not been in its present position since 1991. She says a barn was erected in or about 1991 but it was in a different location on a part of the Farm within its registered title. Ms Gilchrist originally argued that the barn was moved to its present location in 2001 just after the applicant acquired the Farm, but later she asserted that it may not have been moved

until 2004, just before she purchased the Cottage. Ms Gilchrist thus says that the applicant has not made out 12 years of possession of the Yellow Land. Ms Gilchrist also asserts that representatives of the applicant have falsified and altered planning documents in order to bolster their case.

38. Ms Gilchrist has plainly spent a considerable time and effort in historic research of the land in question. I do not intend to demean that work, but much of it is not relevant to what I have to decide. Thus, I do not intend to go into the detail of all of the materials included in the 850+ pages which comprise the hearing bundle. For example, Ms Gilchrist is quite clear that she did not purchase the Pink Land from Miss Cohen's representatives in 2004. Ms Gilchrist produced her survey report which questioned whether the Pink Land was within the registered title on offer. Ms Gilchrist said that she attempted to have the Pink Land included in her purchase but the vendors refused. Ms Gilchrist is suspicious as to the alleged circumstances of the loss of title deeds by Miss Cohen's representatives and/or her/their solicitors. Ms Gilchrist takes the view that Miss Cohen's representatives effected first registration of the Cottage excluding the Pink Land for a quiet life and so as not to endure a confrontation with the applicant's then directors.
39. Ms Gilchrist has formed the view that Miss Cohen did have title to the Pink Land, that her representatives should have effected first registration of the Cottage to include the Pink Land and should have sold her the Cottage and the Pink Land. Documents to try to support that position have been put in. But the fact is, as is not disputed, Miss Cohen's representatives did not sell and Ms Gilchrist did not purchase the Cottage to include the Pink Land. Thus, whether or not Miss Cohen is or was the paper owner of the Pink Land is not directly relevant. On the limited information provided I find that on the balance of probabilities Miss Cohen was not the paper title owner of the Pink Land. I am reinforced in this view by the replies given to pre-contract enquiries. Whilst accepting that Miss Cohen's representatives would have less historic knowledge about the Cottage and the Pink Land than Miss Cohen herself, it was not in dispute the representatives were close to her and visited regularly such that they would have heard of any major disputes about the land, the boundaries and the neighbours. The replies given do not flag up any such disputes.
40. Ms Gilchrist also asserts that by about 2004 Miss Cohen was suffering from dementia and ceased to have mental capacity for the purposes of s28 Limitation Act 1980, so that time did not run against her. Ms Gilchrist has somehow obtained some of Miss Cohen's medical records. Those records tend to support the view that from about 2003 Miss Cohen was experiencing memory difficulties and that her condition gradually worsened. But on 27 June 2003 Miss Cohen executed an enduring power of attorney. The signature of one of the attorneys was witnessed by Miss Cohen's family GP. On 4 May 2004, whilst in a residential care home, Miss Cohen executed a codicil to her will. The will and codicil were duly admitted to probate. I thus find that in 2003 and 2004 it is to be inferred that Miss Cohen had capacity.
41. S28 Limitation Act 1980 only applies where the disability existed at the date on which the cause of action arose, that is to say when Miss Cohen was dispossessed – if she was the paper owner. On the applicant's case that was 1997 at the latest. Ms Gilchrist accepted there was no evidence Miss Cohen lacked capacity at that time. If the applicant cannot make out its case that adverse possession commenced by 1997 at the

latest, it will fail to establish a title. If it is shown that adverse possession commenced in 1997 or prior and that Miss Cohen was the paper title owner, the question of lack of capacity falls away because it is of no relevance.

42. For the combination of these reasons I do not propose to go into any further detail as to whether Miss Cohen had or might have had a paper title to the Pink Land or the detail of Miss Cohen's capacity in 2003/4.

#### **Principal findings of fact**

43. Having given careful consideration to the oral and documentary evidence, I make the findings of fact set out below.

44. In 1991 the Farm was owned by Miss A C Douglas – this was not in dispute. On 14 February 1991 a complaint was made to the local planning authority that a barn had been erected on the farm and that planning consent for that barn had not been sought or obtained [631].
45. By letter dated 18 March 1991 [632] the Area Planning Officer wrote to Miss Douglas raising the lack of consent and explained that if the barn was to be retained it would require a planning permission.
46. On 21 March 1991 the planning authority received from Miss Douglas a retrospective application for planning permission. The application was allocated reference WR/18/91. At [630] there is a plan seemingly drawn to scale as regards an indoor riding school and adjacent stable yard and loose boxes onto which there has been rather crudely annotated a square box with a number of 'x's marked on two sides, evidently illustrating "screening or shrubs". The plan is dated stamped by the planning authority "WR/18/91 21 Mar 1991". I infer this plan accompanied the planning application. I also infer the square box was intended to show the location of the barn. The box is plainly not drawn to the same scale as the indoor riding school or stable yard. It is however located close to the road and, by reference to a tabbed line it is broadly alongside a track which turns to the right about where the Yellow Land is. From my site visit and bearing in mind the physical features of the indoor riding school and the stable yard which still remain I am satisfied that in broad terms the box shown on this drawing is where the barn is located today.

Also dated stamped "WR/18/91 21 Mar 1991" is a rather crude drawing of the locality (referred to by the parties as a 'Location Plan' which appears to mark with thick black edging the Farm and in the top right-hand corner a black blob which Ms Gilchrist has taken to be the location of the barn.

47. The planning application dated 20 March 1991 signed by Miss Douglas includes a certificate in these terms: "*1. At the beginning of the period of 21 days ending with the day of the accompanying application nobody, except the applicant, was the owner of any part of the land to which this application relates.*" In connection with the application Miss Douglas wrote to the planning authority on 2 May 1991[194] and her letter included: "*3. My intentions regarding the proposed use of the building are for dry storage of hay and shavings, farm machinery and horse box.*"

48. A planning officer carried out a site visit on 5 June 1991 [635] and recorded: "*Dark green corr materials, Close to Road, Landscaping has been carried out since bdg [?] built. Compare photos 6.3.91 and 2.5.91. NB Mound between bdg and road*". Following further commentary, the Conclusion was: "*Not demonstrably harmful. OK subject to landscaping scheme*".

At [638 and 639] there are four photographs. [639] bears in manuscript the legend "*WR/18/91 1 of 2*" and [638] bears the legend "*WR/18/91*".

These historic planning documents and the photographs are of extremely poor quality and are not easy to read or decipher. I suspect this is because the originals were committed to microfiche or similar media from which the present copies have been taken.

I will refer to these documents later when analysing Ms Gilchrist's submissions.

49. A further planning application was made in 1995. I have not seen the application itself but at [640-642] there are three identical copies of a drawing dated stamped by the planning authority "*WR/95/0/1546/FR 24 Aug 1995*". At the bottom of the drawing there is a box in which there has been typed: "*Caroline Douglas Old Helyers Equestrian Establishment Kirdford Road Wisborough Green Location Plan No.596022B Proposed Site for Staff and Student Mobile Home*". Entered by hand by thick black edging there is a small rectangle to the south of the stable yard. Opposite that and close to the road is a small rectangle which I infer is the barn. That is broadly consistent with the plan at [630] and the location of the barn as I saw on it my site visit.
50. In 1997 Mr Guy Landau purchased the Farm and he sold it to the applicant in October 2000. Mr Landau gave oral evidence on oath. His witness statement is at [261]. Mr Landau said that throughout his ownership of the Farm the barn was in the location shown on a drawing produced by him [266]. He said the barn was in that location when he purchased the Farm and he never moved it.
51. Mr Landau's attention was drawn to a different but better plan at [643]. This is a plan dated 29 July 1999 and shows the barn in relation to the indoor riding school and the stable yard. Mr Landau confirmed that this plan accurately shows the location of the barn and the adjacent manure heap during his period of ownership. In the top right-hand corner of this plan is a location plan, but of a very small scale
52. There is a curiosity about this plan. Someone has written on it in manuscript the legend "*6 stables WR/99/01820/Cou*". In a box in the bottom righthand corner it records: "*Proposed Stationing of a Mobile Home at Old Helyers Farm ... for GL Landau Esq Drawing No. 99/07/01 Scale ... Drawn by ... date 28/7/1999.*" Ms Gilchrist said, and I accept, that she obtained this drawing from the planning authority and that it accompanied a planning application made in Mr Landau's name. Mr Landau accepted that he was the owner of the Farm at that time but he was very clear that he did not make any applications for planning during his period of ownership. He did however accept that he did speak with a planning officer about a potential application but the project did not progress.

53. Mr Landau said that throughout his ownership he used the barn for storage and he used the muck heap to the right of it. He said that he assumed the Yellow Land, the barn and adjacent muck heap were all part and parcel of Farm which he owned. He said that he presumed the bank to the right of the muck heap was the boundary of the Farm – that is to say the boundary between the Yellow Land and the Pink Land shown on the attached plan. Mr Landau said that he did not go down the bank onto the Pink Land and he never used any of the Pink Land as part of the Farm.
54. Mr Landau also said that if he had made a planning application (which he was certain he did not) and if it related to the Yellow Land he would have signed a certificate to the effect that he owned that land because he believed he did own it.
55. Mr Landau considered that the plan at [643] was a more accurate representation than the plan at [642].
56. I accept the evidence of Mr Landau who impressed me at a careful and thoughtful witness and a businessman with experience in property matters. In cross-examination Ms Gilchrist accepted that Mr Landau seemed clear and that the barn was there when he bought the Farm in 1997. Ms Gilchrist said she had no reason to think that Mr Landau was not truthful and that he seemed to be very honest. Ms Gilchrist also accepted that like Mr Landau, Miss Douglas also may well have believed that she owned the Yellow Land.
57. Oral evidence was given by Ms Butler who purchased the shares in the applicant in December 2015. Ms Butler's witness statement is at [229]. Ms Butler said that prior to purchase she had been provided with a copy of the title plan but this was her first property purchase and she did not then really know how to read it. Ms Butler said that she viewed the Farm before she bought the shares. From walking around the Farm her assumption was that the Yellow Land was part and parcel of the Farm, but that the Pink Land was not. Ms Butler said that she assumed from the conifer trees along the top of the bank and the fencing they marked the boundary of the Farm and that the Pink Land was part of the garden land of the Cottage.
58. Ms Butler said that she was not aware of any disputes that had occurred between the previous directors of the applicant and Ms Gilchrist and that it was not until Ms Gilchrist called her in January 2016 that she learned of the dispute and that she might not own the Yellow Land as it was not part of the registered title.
59. In cross-examination Ms Butler explained that part of the deal with the vendors was that the muck heap was to be emptied or removed. It was supposed to have been removed prior to completion but it was not. It was removed soon after completion at the expense of the vendors who made the arrangements with the contractors. Ms Butler said she was not present at the Farm when the muck heap was removed and that she had no knowledge of any confrontation that occurred between the contractors and Ms Gilchrist.
60. I accept the evidence of Mr Butler without hesitation. Her evidence was given in a clear and careful manner. Ms Butler acknowledged with frankness that her statutory declaration at [135] was not very accurate. Ms Butler said the declaration was drafted by her then solicitor and she did not really read it. Ms Butler agreed that she had no

knowledge of the Farm prior to her interest in buying it in 2015 and that only paragraphs 1 and 2 of her statutory declaration were true to her personal knowledge.

61. Oral evidence was given by Mr Charles Hockin. His witness statement is at [271a]. He said his witness statement was true. Mr Hockin can only speak of the period October 2016 to date and his rental of the Farm. The only paragraph of his witness statement which was in contention was paragraph 10. Mr Hockin clarified that there was always a fence along the line of the conifer trees at the top of the bank separating the Yellow Land and the Pink Land shown A to B on his plan at [271d] which is the same line as D to E on the attached plan. That fence line was reinforced to some modest extent since October 2016 because on 3 or 4 occasions Ms Gilchrist entered the Yellow Land with her dog. He said he asked her not to do so because there was potential for the dog to spook the horses and also there was a health and safety issue. He said that in order to gain access Ms Gilchrist had moved or bent back some chicken wire forming part of the fence and he replaced it into position with a little reinforcement where he could, sometimes wedging it with pieces of wood in order to deter and prevent Ms Gilchrist gaining access.
62. I accept Mr Hockin's evidence. I found him to be an honest witness. His evidence was not really controversial but also it was not directly relevant to what I have to decide. As will be seen shortly I have found that the applicant can show adverse possession of the Yellow Land since February 1991 so that it had acquired a title to it by February 2003. Thus, save for the possibility of a third party dispossessing the applicant (which is not the case here) events which occurred post February 2003 do not affect or defeat that title.
63. Mr Thorowgood said the applicant also wished to rely upon the statutory declaration of Ms Weatherley made in support of the first application to Land Registry [708]. I find I can give some weight to it as it corroborates other evidence and some of it is not disputed by Ms Gilchrist.
64. Ms Gilchrist gave evidence and affirmed that her statement of case [83-106], witness statements [236-244] and her skeleton arguments were all true. In cross-examination Ms Gilchrist accepted that the barn was in its current location on the Farm when she first came across the Cottage in 2004. Ms Gilchrist also accepted that she had no direct evidence as to when the barn was moved but she originally thought it was post 2000 but later changed that to probably 2004, and she believed it was moved by Mr Clark who was then a director of the applicant. Ms Gilchrist was not able to explain what evidence she relied upon for these conclusions. In cross-examination Ms Gilchrist conceded that the barn was not moved by Miss Douglas or Mr Landau.
65. Ms Gilchrist said that she came to the conclusion that the barn was originally in a different location for several reasons. First in the 1991 planning application Miss Douglas certified that the barn was on land she owned and therefore it could not have been on the Yellow Land because she, Miss Douglas, did not own the Yellow Land. Ms Gilchrist also relied heavily on the location plan which she believed showed the barn in a different location. Ms Gilchrist also relied upon the photographs at [638/9] and by reference to the distinctive shape of the a tree which is still in position and which showed the barn in a different location, opposite the indoor riding school, a bit north of where the mobile home is now. Ms Gilchrist was reinforced in this view by

the absence of a bank to the right of the barn in the top photographs on [639]. For reasons which I shall explain shortly I was not persuaded that the barn was ever moved and my finding is that the barn is in the same location today as it was in February 1991 when Miss Douglas sought retrospective planning permission to retain the barn.

66. As to the Pink Land, Ms Gilchrist said, and I accept, that when she first visited the Cottage, there was a low crude post and wire fence which ran just behind the shed marked 'Y' on the attached plan which separated the garden of the Cottage and the Pink Land. There was a gate in that fence giving access to the Pink Land. The Pink Land was very overgrown at that time but it was clear to Ms Gilchrist, a keen gardener, that in prior years the Pink Land had been cultivated as garden land. Ms Gilchrist was aware from pre-purchase enquiries that the Pink Land had not been sold to her. At that time Ms Gilchrist assumed that if Miss Cohen was not the owner of it, then the owner was the Farm. Ms Gilchrist also assumed that the Yellow Land was owned by the Farm. In these circumstances in 2006 Ms Gilchrist spoke with Mr Clark, then a director of the applicant on 1 September 2006 and asked if "*I could have the southern, by now overgrown section of the land in question [the Pink Land] as it was not being used by them*". In her objection at [140] Ms Gilchrist states: "*he told me that I could have it as he was not using it*". Ms Gilchrist then went on to complain that Mr Clark had not informed her that the land was not his to give. In 2011 Ms Gilchrist was still under the impression that the applicant owned the Pink Land and the Yellow Land and on 3 March 2011 asked Mr Clark for permission to place some chicken wire along part of the fence separating the Yellow Land from the Pink Land (in order to prevent her cat from escaping) and Mr Clark agreed. Again, Ms Gilchrist was critical of Mr Clark for not informing her that the applicant did not own either parcel of land. Ms Gilchrist has concluded that this omission was a subterfuge designed to keep secret the fact that the applicant was in adverse possession of those parcels of land. In these circumstances Ms Gilchrist relies on s32 Limitation Act 1980.
67. As I have mentioned, Ms Gilchrist also wished to rely upon the witness statements made by her two sons. Mr Thorowgood did not wish to cross-examine either witness. In those circumstances I can take their evidence as read and unchallenged. I do so. That said, those witness statements tend to focus on the poor relationship between Ms Gilchrist and the previous directors of the applicant and their spiteful conduct. I have no hesitation in accepting the evidence but it does not really bear on the legal issues I have to determine, namely whether or not the applicant can make out its case to have acquired a title to both parcels of land by dint of adverse possession. The fact that the previous directors of the applicant were not very nice people is not something I can properly take into account. There is no suggestion that Ms Butler, the present director of the applicant is tarred with the same brush.

#### **The law**

68. The law in question is reasonably straightforward and I have set it out in an Appendix to this decision.

#### **Discussion and conclusions**

69. In my view there is overwhelming evidence to support the conclusion that barn has not been moved and it is still in its original pre-1991 location. Ms Gilchrist accepted that



the barn was not moved by Miss Douglas or Mr Landau. Mr Landau's every clear and compelling evidence was that the barn remains in the location that it was when he was the owner of the Farm between 1997 and 2001. That evidence is supported by the detailed and professionally drawn plan at [643]. There is no evidence that I can rely upon with any confidence to support Ms Gilchrist's view that between 2001 and 2004 the barn was moved to its present location. The barn is a large heavy structure and moving it would not be easy or inexpensive and I infer it is not something that would be undertaken lightly. I am further reinforced in this view by the plan [630] prepared by Miss Douglas in 1991. The annotation showing the barn is crude and out of scale but, in my view, it does show the barn broadly in its present location on the ground. Miss Douglas was seeking retrospective planning permission for an existing structure. There would be no point in her placing the location of the barn somewhere other than where in fact it was. I am reinforced in this conclusion by the aerial photographs at [835/6].

70. I acknowledge that the 1991 photographs produced by Ms Gilchrist raises a point, which I can understand. But, those photographs are of extremely poor quality and it is not clear where the photographer stood when he took them. I find that the overwhelming evidence is the effect that the barn was not moved and remains in its original location.
70. I reject Ms Gilchrist's submission that the barn cannot originally have been on the Yellow Land because Miss Douglas certified she was the owner of the land on which the barn was situate and Miss Douglas was not the registered owner of the Yellow Land. I find that a more likely explanation is that Miss Douglas thought she was the owner of the Yellow Land, but it is now clear that was an error. I come to this conclusion having regard to the evidence of Mr Landau and Ms Butler both of whom thought that the Yellow Land was within the registered title of the Farm. Mr Landau said that if he had made a planning application in relation to the Yellow Land, he would have signed a certificate to the effect that he was the owner of it. On the ground that was the strong understanding they arrived at. I am reinforced in this conclusion by the observation of the Ordnance Survey surveyor who inspected the parcels of land and who recorded at [758] *"The area tinted yellow appears to be part of [the] Farm. The building X is used by the Farm and the area to the south is used as a dump for stable manure."*
71. For the same reasons I infer that the previous directors of the applicant were also of the understanding that they owned the Yellow Land. I further infer that it was not until March 2015 when Ms Gilchrist alerted the selling agents that the Yellow Land and the Pink Land was not within the registered title of the Farm, that the former directors learned of that position. The fairly swift response was the first application to Land Registry in April 2015 [700]. I find that on the balance of probabilities if the then directors of the applicant had been aware of the defect in their title earlier, then they would have sought to cure the defect before putting the property on the market and not afterwards. Ms Gilchrist submits that for a number of years the previous directors of the applicant knew they did not own the disputed land, knew they were in adverse possession of it and kept this quiet and concealed from her to mislead her. I reject that submission because there is no evidence to support it.

72. Ms Gilchrist also said that she relied heavily on the various certificates of ownership and location plans given in connection with various planning applications to support her case. I find that Ms Gilchrist places too much store by the location plans. They are not definitive. They cannot be scaled off. They are intended to show broadly the site of the proposed development and, so far as I am aware, are not required to be particularly accurate.
73. I do not accept Ms Gilchrist's conclusion that the barn must have been moved to its present location sometime between 2001 and 2004.

#### **Adverse Possession – the Yellow Land**

74. The evidence before me is that since at least February 1991 the barn has been used for storage purposes in connection with the equestrian businesses operated from the Farm by successive owners. There is no very early evidence as to the use of the manure heap to the right of the barn but Mr Landau says there was such a heap there when he purchased the Farm in 1997. I find it reasonable to infer that such use started sometime prior to 1997 and quite probably at about the same time as the construction of the barn.
75. The use of the barn and the muck heap was open, obvious and clear to any visitor to the Farm. There is no evidence before me that any efforts were made to conceal or hide that use. The barn was very large and was not hidden, it would be difficult if not impossible to hide or conceal it. The size of the muck heap may well have altered and changed from time to time but doubtless at all times it was obvious to the eye and nose. Such use of the subject land is a typical use of such land by an owner of it operating such an equestrian business. I therefore conclude that all the required elements to acquire a title by dint of adverse possession are made out. On that basis such a title accrued to the applicant by February 2003.
76. There is no evidence before me of any events which have occurred post February 2003 which can defeat that title. I accept that on occasions the conduct of one or some of the previous directors of the applicant was nasty and vindictive, but that conduct does not undermine the title. Even if, in 2006 Mr Clark was aware that he did not have a registered title to the Yellow Land and even if he did seek to mislead Ms Gilchrist on that point, that would not amount to concealment of the use of the land. But, on my findings at that time the applicant did have a title to the Yellow Land, albeit it was not a registered title.

#### **The Pink Land**

77. The applicant's case as regards the Pink Land is much less clear cut.
78. There is no evidence before me that Miss Douglas used any of the Pink Land. Mr Landau was clear that he did not at any time use the Pink Land. Mr Landau did not say that he thought he owned the Pink Land. Mr Landau said that when he was the owner of the Farm the Yellow Land and the Pink Land was separated by a bank along the top of which was hedge and a line of trees and a fence about 4 or 5 feet from the edge of the bank.
79. The applicant did not adduce any evidence as to its use of the Pink Land since ownership of the Farm was acquired in 2000.

80. The applicant relies solely on the statement of Ms Gilchrist that in 2006 Mr Clark gave her permission to use the Pink Land and in 2011 gave her permission to run some chicken wire along part of the dividing fence. Mr Thorowgood relies upon that as an act typical of an owner asserting control over his land. No clear evidence as to what Mr Clark actually said was put before me. The best that Ms Gilchrist could recall was that he said; "*You can have it.*" Such an expression is not necessarily only made by an owner or a person who thinks he is an owner. Such a casual remark may well be made by a person who simply does not care what is to be done on the land or by whom.
81. It is plain from Mr Landau's evidence that at some point prior to 1997 someone had gone to the trouble and expense of erecting a fence along the tree line to form a boundary between the Yellow Land and the Pink Land. It is not obvious to me why the owner of the Farm would want to do that. What purpose would it serve?
82. There is clear and uncontested evidence that in 2005 when Ms Gilchrist first became aware of the Cottage there was a fence between the garden of the Cottage and the Pink Land with a gate set in it. I infer that was intended to afford ready access in to the Pink Land from the garden of the Cottage. The evidence of Ms Gilchrist, which I accept, is that she gained the strong impression the Pink Land had formerly been cultivated as garden land but had become overgrown over time. Perhaps this was due to age and infirmity of Miss Cohen as time took its toll. In corroboration of this there is some evidence from a former friend/gardener of Miss Cohen that cuttings and other garden waste from the Cottage was placed on the Pink Land.
83. There is a strong inference that the former cultivation of the Pink Land was undertaken by, or at the behest, of Miss Cohen rather than by the Farm. It would make no sense for the Farm to have cultivated the Pink Land in that way and with the only ready or viable access to it being from the garden of the Cottage.
84. In these circumstances I find that the applicant has not made out a case or discharged the burden of proof on it that it possessed the Pink Land in such a way and for such a period to have acquired a title to it.
85. In argument Mr Thorowgood relied upon the authority of *Roberts v Swangrove Estates Ltd* [2007] EWHC 513 (Ch) to support the proposition that acts on part of a parcel of land can extend as if acts to the whole of the land. This is discussed on paragraphs 54-65. It is quite that this is a fact sensitive point and in each case a question of fact and degree. Having considered a number of authorities, Lindsay J in paragraph 63: "*There is ample authority for the proposition that acts on one part of an area may be treated as constituting possession of the whole area provided that there is 'such a common character of locality as would raise a reasonable inference' that, if a person were possessed of one part of it as owner then he would so possess the whole of it.*"
86. In the present case the history of the use of the two parcels is quite different. There is a steep bank which separates them. At the top of the bank a line of conifers was planted and fencing erected. I infer that was intended to be a significant boundary feature. In all practical terms the use of one parcel cannot be said to be use of both parcels.

Whilst the two parcels are contiguous access from the Yellow Land to the Pink Land would be via the Farm main gate, along the highway, into the garden of the Cottage and then onto the Pink Land.

87. In all of the circumstances despite Mr Thorowgood's valiant and brave advocacy I am not persuaded that this case fits in with *Roberts v Swangrove*. I hold that there was not a sufficient 'common character of locality'.
88. Accordingly, I conclude that the applicant has not made out its case as regards the Pink Land.

#### Order

89. I have therefore made an order that the Chief Land Registrar shall give effect to that part of the application as regards the Yellow Land as if the objection of the respondent had not been made, but shall cancel that part of the application as regards the Pink Land.

#### Costs

90. In this jurisdiction, as with the civil courts, costs follow the event save in exceptional circumstances. The applicant has succeeded with part, but not all of its case. The main focus has been on the Yellow and that may have been because that land is the more important to the applicant.
91. Although Ms Gilchrist did not claim to be the paper owner of either parcel of land the question of title to the parcels was something that she was entitled to take a legitimate interest in. The more so perhaps as regards the Pink Land. I have found that the applicant does not have a title to the Pink Land and so it is not in a position to interfere with Ms Gilchrist's current use of that land.
92. Ms Gilchrist was a litigant in person throughout and obviously the costs which she may entitled to recover will be much less than those incurred by the applicant whom has engaged solicitors and counsel. To try and do justice between the parties I am minded to make a costs order in favour of the applicant but limited to one half of the costs it has reasonably and properly incurred since 4 March 2017 when the disputed application was referred to the tribunal. I will of course, however give careful consideration to any application(s) for costs which may be made.
93. If the parties are unable to reach agreement on costs, any application(s) for costs shall be made in accordance with the following directions:
- 93.1 Any application for costs shall be made in writing by **5pm Friday 23 March 2018**. The application shall be accompanied by a schedule of the costs and expenses incurred/claimed supported by invoices/fee-notes where appropriate. A breakdown shall be given of any work carried by solicitors and the charge-out rate and grade(s) of the fee-earner(s) shall be set out. A copy of the application and supporting schedule shall be sent to the opposite party at the same time as it sent to the tribunal.
- 93.2 The recipient of an application for costs shall by **5pm Friday 13 April 2018** file with the tribunal and serve on the applicant for costs representations on the

application and on the amount of the costs claimed and any points of objection they wish to take.

93.3 The applicant for costs shall by **5pm Friday 27 April 2018** file with the tribunal and serve on the opposite party representations in reply, if so advised.

94. In the absence of any objections I propose to make a determination on any application for costs, and if appropriate, to assess any costs ordered to be paid, without a hearing and on the basis of the written representations filed and served pursuant to the directions set out in paragraph 93 above.

**Dated this 5 February 2018**

*John Hewitt*

**By order of the Tribunal**



## **Appendix**

### **Legal Considerations**

1. In order to establish adverse possession a squatter or adverse possessor has to show that he has dispossessed the paper owner by taking possession himself and that he has remained in such possession for the requisite period.
2. In relation to unregistered land the requisite period is twelve years.

### **The Limitation Act 1980**

3. The Limitation Act 1980 provides as follows:

"15 (1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

"17 Subject to:-

(a) ..., and

(b) section 75 of the Land Registration Act 1925;

at the expiration of the period prescribed by this Act [12 years] for any person to bring an action to recover land... the title of that person to the land shall be extinguished."

"28 (1) Subject to the following provisions of this section, if on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration

of six years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period of limitation has expired.

(2) This section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims.

(3) When a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person.

(4) No action to recover land or money charged on land shall be brought by virtue of this section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims.

(4A) If the action is one to which section 4A of this Act applies, subsection (1) above shall have effect—

(a) in the case of an action for libel or slander, as if for the words from “at any time” to “occurred)” there were substituted the words “by him at any time before the expiration of one year from the date on which he ceased to be under a disability”; and

(b) in the case of an action for slander of title, slander of goods or other malicious falsehood, as if for the words “six years” there were substituted the words “one year”.

(5) If the action is one to which section 10 of this Act applies, subsection (1) above shall have effect as if for the words “six years” there were substituted the words “two years”.

(6) If the action is one to which section 11 or 12(2) of this Act applies, subsection (1) above shall have effect as if for the words “six years” there were substituted the words “three years”.

(7) If the action is one to which section 11A of this Act applies or one by virtue of section 6(1)(a) of the Consumer Protection Act 1987 (death caused by defective product), subsection (1) above—

(a) shall not apply to the time limit prescribed by subsection (3) of the said section 11A or to that time limit as applied by virtue of section 12(1) of this Act; and

(b) in relation to any other time limit prescribed by this Act shall have effect as if for the words “six years” there were substituted the words “three years”.

#### Schedule 1

“8

(1) No right of action to recover land shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as ‘adverse possession’); and where under the preceding provisions of this Schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.

(2) Where a right of action to recover land has accrued and after its accrual, before the right is barred, the land ceases to be

*in adverse possession, the right of action shall no longer be treated as having accrued and no fresh right of action shall be treated as accruing unless and until the land is again taken into adverse possession.*

(3) ...

(4) *For the purpose of determining whether a person occupying any land is in adverse possession of the land it shall not be assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter's present of future enjoyment of the land.*

*This provision shall not be taken as prejudicing a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case."*

#### **General Principles**

4. The right of action accrues when the squatter goes into adverse possession of the land.
5. There is a presumption that the paper title owner of land is both in physical possession of the land and has the intention to possess it. The paper owner is deemed to be in possession as being the person with the prima facie right to possession. If the law is to attribute possession to someone who has no paper title to be possession, he must be shown to have both **factual possession** and the requisite **intention to possess**. Both elements are equally important and both must be shown.
6. The burden of proof rests on the adverse possessor. The standard of proof from an adverse possessor who takes land without the true owner's consent is a high one – see *Powell v McFarlane* [1977] 38 P & CR 452 at 472. The evidence in support of the claim must clear, affirmative and unequivocal – see per Sachs LJ in *Tecbuild Limited v Chamberlain* [1969] 20 P&CR 633 at 641 and per Rimer LJ in *Sava v SS Global & anor* [2008] EWCA Civ 1308 at paragraph 74.
7. The law is now clearer, at least to some extent. The modern principles were reviewed and clarified by the House of Lords in *J a Pye (Oxford) Limited v Graham & anor* [2002] UKHL 30; [2003] 1 AC 419 in which Lord Browne-Wilkinson (with whom the other members of the House agreed) approved the much-admired approach of Slade J in *Powell v McFarlane*. It is clear from this authority that the question for a judge dealing with a claim to adverse possession is whether the occupier has been in factual possession over the relevant period, i.e. has he used the land as an occupying owner might have been expected to use it while no-one else has done so; there must be "*a sufficient degree of exclusive physical control*".

#### **Factual possession**

8. The principles may be summarised as follows:
  - 8.1 Factual possession signifies an appropriate degree of physical control of the land.
  - 8.2 Control must be unitary or single and exclusive; there can be only be one person in possession at any one time.

- 8.3 The question what acts constitute exclusive physical control must depend on the circumstances of each particular case, having regard to the nature of the land and the manner in which it is commonly used or enjoyed.
- 8.4 Broadly what must be shown to constitute factual possession is that the adverse possessor has dealt with the land as an occupying owner might have been expected to do with it and that no-one else has done so.
- 8.5 It is sometimes difficult to determine what side of the line the facts of a particular case will fall. See, for example *Treloar v Nute* [1977] 1 All ER 230 where the Court of Appeal assumed that the trial judge found that acts such as grazing cows, taking spoil and partially filling a gully, storing materials and riding motor-cycles on the land were sufficient acts and which the Court considered to be on the border line, but just sufficient to constitute factual possession. In *Buckinghamshire County Council v Moran* [1990] Ch 623; [1989] 2 All ER 225 the crucial acts of possession consisted of securing a complete enclosure of the plot and the changing of locks on a gate.
- 8.6 The Court of Appeal has said that it is not possible to lay down any specific rules as to what may or may not constitute possession. In *Lord Advocate v Lord Lovatt* [1880] 5 App Cas 273 at 288 Lord Hagan's regularly approved statement said:
- "The acts implying possession in one case may be wholly inadequate to prove it in another. The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow with due regard to his own interest – all these things, greatly varying as they must, under various conditions, are to be taken into account in determining the sufficiency of possession."*
- 8.7 Possession must be open and obvious such that if the true owner, if he took the trouble to be aware of what was happening on his land, would know that the adverse possessor was in possession. In *Prudential Assurance Co Limited v Waterloo Real Estate Inc* [1999] 2 EGLR 85, Peter Gibson LJ said;
- "It would plainly be unjust for the paper owner to be deprived of his land where the claimant had not by his conduct made clear to the world including the paper owner, if present at the land, for the requisite period that he was intending to possess the land..."*
- 8.8 Possession can be obtained or continued through an agent such as a contractor, licensee or a tenant provided it is clear that the acts done and relied upon were done with the adverse possessor's authority – see *Roberts v Swangrove Estates* [2007] EWHC 513 (Ch).
- 8.9 Once the possession has been established it can only be ended within the requisite period by the occupier vacating the property, by the occupier giving a written acknowledgement of title, by the true owner granting the occupier permission or a tenancy of the land or by the true owner physically re-entering the land, or part of it, and recovering possession.

#### **Intention to possess**

9. The intention to possess is best explained by Slade J in *Powell v McFarlane* as;
- "...the intention, in one's own name and on one's own behalf to exclude the world at large, including the owner with the paper title, so far as was reasonably practicable and so far as the processes of the law would allow."*



10. The principles may be summarised as: -
- 10.1 The intention must be to possess the land for the time being to the exclusion of all others, including the paper owner.
  - 10.2 The adverse possessor need not also show or demonstrate an intention to own the land; it is sufficient if he intends to possess the land for the time being.
  - 10.3 The adverse possessor must show the absence of the paper title owner's consent to the use of the land.
  - 10.4 The intention to possess must be unequivocal and manifest throughout the requisite period to establish the claim. In *Inglewood Investment Company Limited v Baker* [2002] EWCA Civ 1733 at para 19 Slade J said:  
*"...the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner."*
  - 10.5 Promises to move off the land, even if such promises are not kept, amount to evidence that the occupier did not have the requisite intention to possess the land.