



[2017] UKFTT 0003 (PC)

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

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2015/0678

BETWEEN

JOHN SALISBURY

Applicant

and

JOSEPH CALLADINE

Respondent

**Property Address: Land on the west side of Oakington Road, Girton, Cambridge
Title number: CB187330**

**Before: Judge McAllister
Cambridge County Court
4 October 2016**

Representation: The Applicant was represented by Martin Collier of Counsel instructed by Miller Sands; the Respondent appeared in person, assisted by Mr Newton.

DECISION

Introduction

1. The Applicant, Mr Salisbury, is the registered owner of land at ‘The Evergreens’, Oakington Road, Girton, Cambridgeshire, registered with title number CB135379 (‘the Property’). Mr Salisbury purchased the Property in June 1991. Access to the Property is along a driveway from the main road (‘the Access Way’). The Respondent, Mr Calladine, is the owner of small parcel of land to the south east of the Property, registered with title number CB187330 (‘the Plot’). Mr Calladine purchased the Plot

in 1995. Both the Property and the Plot land had previously been owned by the same vendor, Mr Newstead.

2. By an application dated 25 March 2015 Mr Salisbury applied to alter Mr Calladine's title by removing therefrom a triangular area which, on the ground, forms part of, and is at the entrance to, the Access Way ('the Disputed Land') There are no physical features on the ground to show where the Disputed Land lies within the entrance to the Access Way.
3. The application is made under Schedule 4 to the Land Registration Act 2002. The basis of the application was that, in simple terms, the plan to the registered title to the Property does not show the correct position of the entrance to the Access Way, and that the Disputed Land has at all times formed part of the Property. The Access Way is (or at least was) used by Mr Salisbury for his business ('The Evergreens' included a garden nursery).
4. Mr Calladine's case is that the Disputed Land properly forms part of his title, and that any use made by Mr Salisbury of this land was initially with the consent of Mr Newstead (since deceased) and subsequently with his consent. This is denied by Mr Salisbury.
5. For the reasons set out below I will order the Chief Land Registrar to give effect to Mr Salisbury's application. I am satisfied that the Disputed Land forms part of Mr Salisbury's title, and has been shown in error as forming part of Mr Calladine's title. The alteration of the register is to correct a mistake, and there are no exceptional circumstances which justify not making the alteration.

Background and evidence

6. Both the Property and the Plot formed part of a larger holding owned by Mr Newstead and used as a pig farm. It appears that Mr Newstead owned the pig farm between 1970 and 1985. In 1985 he split the farm, and sold the southern part to a Mr Owers. At that time Mr Newstead and Mr Owers used a shared driveway, approximately where the Plot now is. In 1987 Mr Newstead created a new driveway in the north eastern corner

of the retained land and by doing so created a new plot of land to the south east (the Plot). The plan attached to the planning consent granted on 29 October 1987 shows Mr Newstead's land before the creation of the Plot. The existing access way served Evegreens, Greenacere and Cambro Farms and cut across the Plot (the entrance to the then access way was in the corner of the Plot closest to Girton village). It is possible to this day to see the line of the old access way cutting through the Plot.

7. In 1991, Mr Newstead sold the Property to Mr Salisbury and on 14 July 1995 he sold the Plot to Mr Calladine. The transfer to Mr Calladine was made subject to a right of way on part of the land on the southernmost boundary (on the other side of the plot from Mr Salisbury's land) in favour of the property which had been sold by Mr Newstead to Mr Owers in August 1985. There was no right of way in favour of Mr Salisbury over the Disputed Land. On behalf of the Applicant it is submitted that this is a relevant factor: if it was indeed the case that any part of the Access Way formed part of the Plot, an express right of way would surely have been granted in favour of The Evergreens. In his letter accompanying his application to Land Registry on 25 March 2015 Mr Salisbury expressed the view that the division of the land, and the re-positioning of the Access Way, probably caused what he believed to be the mistake made by Land Registry.

8. I have taken the above summary from Mr Salisbury's statement of case, and have not seen the conveyancing documents in relation to the division of the farm in 1985. The plan attached to the conveyance dated 7 June 1991 from Mr Newstead to Mr Salisbury is in evidence, and indeed this plan was used as the previous office copy plan for Mr Salisbury's title. This plan shows a thick straight black line running south east from Oakington Road, and the Plot adjacent to it, to the south-east. The definition on the plan is such that it is difficult to make out the exact position of the boundary between the two properties. However, it is clear that the entirety of the Access Way, as it was then, formed part of the title sold to Mr Salisbury. The plan also shows a small sliver of land between the edge of the driveway and the boundary of what is now the Plot. The southern boundary is shown in a straight line. In reality, there is a slight kink along the Access Way: this is where the pre-1987 access way, which cut across the Plot, turned eastwards to meet what is now the Access Way to the buildings.

9. On 30 September 1998 Cambridgeshire District Council granted Mr Salisbury permission to widen the Access Way. The plan attached to the notification of permission (which was produced, for the first time, at the hearing) shows that the access giving on to Oakington Road was to be widened in the Oakington direction, that is, on the other side of the Access Way from the Plot. That is what happened. The Access Way was originally only some 3 metres wide, and Mr Salisbury wanted to allow larger lorries to come in and out. The widened Access Way is 5.5 metres wide. The gates were put back 12 metres or so from the road, to allow lorries to turn in and out safely. The plan was not followed in its entirety, in that the splay was not cut back on the Girton side to the extent shown on the plan, which would have meant taking the curb away, but this omission is not relevant to the matter in dispute.
10. In 2000 or thereabouts Mr Salisbury found himself in dispute in relation to another boundary. The issue of the Disputed Land arose then, but was not pursued. In May 2002 he raised the issue of the Disputed Land again with Land Registry. On 1 June 2002 Land Registry replied enclosing a plan showing the Disputed Land, and asking for confirmation that this was the area in dispute. A manuscript note on the letter states ‘ *no reply. Application cancelled.... Further app to be allotted on further reply from Mr Salisbury*’.
11. Mr Salisbury’s evidence is that he never received this reply. He believed the matter had been dealt with, until this dispute arose. He did not have discussions with Mr Calladine about the Disputed Land until 2015, and was never given permission, either by him or by Mr Newstead, to use any part of the Access Way. He also stated that when he purchased the Property from Mr Newstead in 1991 there was a 6 foot high feather-board fence between the Property and the Plot, following, he says, the correct boundary. This fence remained in place until 2011 when most of it blew down in a gale. The post furthest from the road is still in place, however. As he believed the fence to belong to Mr Calladine, he stacked it up on the Plot, and erected a temporary fence on his side of the boundary, using chicken wire, to keep his dogs in. This was done without any discussion with Mr Calladine. The new fence was removed, on his case, by Mr Calladine in 2015. The Plot was fenced in with the same fencing on the other three sides.

12. Mr Salisbury also stated that Mr Calladine has never lived in any caravan or mobile home on the Plot: two caravans had been parked there over time, but they were removed as a result of the Council's intervention.
13. Mr Calladine's evidence is that he always believed that the Disputed Land formed part of his title, based on what he claims Mr Newstead told him. Without this assurance from Mr Newstead (on his evidence) it would be very difficult indeed to see why Mr Calladine would have believed that any part of the Access Way formed part of the Plot. There is nothing on the ground to suggest this demarcation, and it makes little sense to extend the boundary of a piece of grassland into the access way to another plot. I should also add that Mr Calladine also claimed that Mr Salisbury widened the Access Way further to include more of the Plot. This is plainly not the case, since the Access Way was widened in the Oakington and not the Girton direction.
14. Mr Calladine saw that the Plot was for sale (by seeing a for sale sign with a telephone number) and spoke to Mr Newstead's brother in law. He paid £2,000 for the Plot. He was helped by a friend, and instructed a solicitor in nearby Fen Stanton. Asked whether he mentioned the Disputed Land, and whether Mr Salisbury had a right of way over it, he says that he did not recall doing so, then added that told the solicitor that he was not bothered about this. His evidence is that he told Mr Salisbury in 1995 that he could use this land. Mr Salisbury then erected a mesh fence at some point between 1995 and 2000 to keep his dogs in. In his letter of objection to Land Registry in May 2015, Mr Calladine stated that the agreement whereby Mr Salisbury was allowed to use part of the Access Way was at a peppercorn rent. In evidence he said that this was merely an informal agreement.
15. Mr Calladine's evidence is that he lived in a caravan on the Plot for a few months, then went to Australia, and subsequently returned. His evidence relating to the fence around the Plot was not entirely clear. He claimed that the fence had been moved before he returned from Australia. The original fence was, he says, not a boundary fence. A plan with what might be called the 'internal fence' was used in 2011 in support of an appeal against a refusal of planning permission to live on the Plot. When asked why this plan was used, if it did not show the correct boundary, Mr Calladine

stated that he had been told by the surveyor acting for him to use this plan. The wooden fence, he said, blew down in 2007 and was replaced by a fence which was placed further into his land. He believed that went into the tarmac of the Access Way. During the course of the hearing an aerial photograph taken in March 2015 was produced, overlaid over an OS plan. Mr Calladine accepted that the lines shown represent the physical boundary of the Plot. If this boundary is also the legal boundary, it is plain that the Disputed Land is part of the Property.

Conclusion on the evidence

16. Looking at the evidence as a whole, it seems to me clear that no part of the Access Way formed part of the Plot. The plan attached to the transfer to Mr Salisbury shows the Access Way (as it was then, before it was widened in 1998/9) belonging exclusively to the Property, and shows a gap between the edge of the access way and the boundary with the Plot. The edge of the boundary (but drawn very thickly) is straight. I accept that there was and is a slight deviation or kink where the old access way through the Plot met the Access Way. This slight deviation also appears in the notice plan prepared by Land Registry as a result of Mr Salisbury's application, and can be seen, on the ground, in the March 2015 aerial photograph. The plans in support of the application to move the Access Way in 1987 are consistent with this way being part of and only used for the Property.

17. I do not accept Mr Calladine's evidence that he was told by Mr Newstead that the Disputed Land formed part of the Plot, nor that, at any point, did he give Mr Salisbury permission to use this land. This evidence is not consistent with the express right of way granted over the Plot in favour of other neighbouring land, nor with Mr Calladine's evidence relating to his own purchase. His solicitor would surely have dealt with this issue, if, as Mr Calladine says, he told him about it. And it is difficult to see why Mr Salisbury would have purchased land where part of the only access belonged to someone else without an express right of way over all of it.

18. I accept Mr Salisbury's evidence relating to the fence. The same fence was in position between 1991 and 2011. This fence marked the boundary of the Plot, and is consistent

with the plan used on behalf of Mr Calladine in 2011, and the overlay of the OS plan on the 2015 aerial photograph.

19. It seems to me that a mistake was made by Land Registry when the plan for the title of the Plot was drawn up. The reason for this mistake is not clear, particularly in the light of the previous filed plan (which was the 1991 conveyance plan) but the subdivision of what had been Mr Newstead's farm into various smaller plots over time may well have been a causative factor. I should add that although the Disputed Land is but a small part of the Plot, and an even smaller part of the Property, it is not suggested that this land falls within the margin of possible error arising from the fact that filed plans show general boundaries only. I agree that the application is properly an application for altering the register. Finally, it is abundantly clear that the Disputed Land has been in the exclusive possession of Mr Salisbury since 1991, but, again, the case was not put on the basis of adverse possession.

Costs

20. In principle, as the Applicant is the successful party, he is entitled to his assessed costs. A schedule in Form N260 or the like is to be filed and served on the Respondent by 25 November 2016. The Respondent may raise such objections or make such representations as he deems appropriate by 16 December 2015.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 11^h day of November 2016



