

[2017] UKFTT 0711 (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 2016 790/791/792/793/794/795/796/797

BETWEEN

- 1. COLIN WHORMSLEY**
- 2. HELEN WHORMSLEY**

Applicants

and

- 1. KAREN CHALLINOR**
- 2. DAVID PINCHES AND J.A. JERIBI**
- 3. CHRISTOPHER PICKARD**
- 4. MALDWYN GRIFFITHS AND CHRISTINE GRIFFITHS**
- 5. GARETH SHONE, WILLIAM SHONE AND MARGARET SHONE**
- 6. KERRY BURKHILL, DENNIS BURKHILL, AND LEE BURKHILL**
- 7. STUART FOX AND JANE WILKINSON**
- 8. GRAHAM CHALLINOR**

Respondents

**Property address: Land lying to the rear of Brunswick Road, Buckley, Flintshire
Title number: CYM659807**

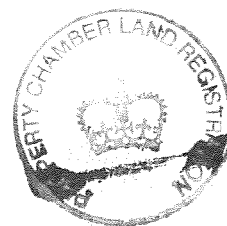
ORDER

The Tribunal directs the Chief Land Registrar to give effect to the Applicants' application in Form FR1 dated 29th September 2015 for first registration of an area of land to the rear of

Brunswick Road in Buckley Title No. CYM659807 with the exception of the area shaded black on the plan attached to the order.

BY ORDER OF THE TRIBUNAL

Sara Hargreaves



15TH SEPTEMBER 2017



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Respondents

**Property address: Land lying to the rear of Brunswick Road, Buckley, Flintshire
Title number: CYM659807**

**Before: Judge Hargreaves
Chester County Court
24th August 2017**

Applicant representation: in person

Respondent representation: in person, organised and presented by Andrew Forshaw

DECISION

Key words – adverse possession – two areas of unregistered land – 12 years made out in part

1. For the following reasons I direct the Chief Land Registrar to give effect to the Applicants' application in Form FR1 dated 29th September 2015 for first registration of an area of land to the rear of Brunswick Road in Buckley Title No. CYM659807 with the exception of the area shaded black on the plan attached to the order. This represents what was often described as the "newly fenced" area.
2. The Applicants, now divorced, acted in person, as did the Respondents and I am grateful to them for organising themselves as efficiently as they did through Mr Forshaw. The Applicants both gave evidence whereas only some of the Respondents or their witnesses did and by not referring to all the oral evidence in detail it is not because I am ignoring any part of it. I can make the relevant findings of fact by taking all matters into consideration. Some of the evidence was not directly relevant to the issues I have to decide. Mrs Whormsley still lives at 73 Brunswick Road. The Respondents live at various addresses on Brunswick Road and Dukesfield Avenue. I am grateful to those who turned up at the site visit, and to those who attended the hearing. As both sides produced a trial bundle I shall pre-fix reference to the relevant bundle and page number by "A" or "R". I am also grateful to those who produced additional photographs, which are being returned to Mr Forshaw to return to the rightful owners. The opposition to the application was characterised by a sense of local grievance: the Respondents had clearly understood the Applicants to *own* the disputed land for a long time and were annoyed when served with the FR1 application to find that was far from the case. They felt they had been duped by the Applicants' "land grab" for several years and wanted their claim investigated accordingly. Both sides will accept that, as I observed at the hearing, their approach to the relevant factual history was at times confused or vague and required some untangling and the application of the law relating to adverse possession was a matter they were happy to leave to me, having not made any relevant analysis.
3. I had the advantage of attending a site visit on the afternoon of 23rd August, which was attended by the Applicants and various Respondents. The land in question is an enclosed area behind Brunswick Road, which is the main road through

Buckley, a village in Flintshire. The Brunswick Road houses and terraces appear late Victorian/Edwardian. For years the rear of the houses numbered 63-115 have had access to the rear yards and gardens by one of three access roads off Brunswick Road, the closest being the gap between 93 and 95 Brunswick Road (R30). The disputed land is – roughly – across the rear of 87-105 Brunswick Road, and much of the cause for consternation has been triggered by that frequent problem, sufficient room for access by and parking spaces for cars owned by the occupiers of Brunswick Road near the disputed land (R31-32). It is proximity which motivates the Respondents, (and for some of them I suspect some regret that they did not take the same steps as the Applicants to secure a slice of this land), as none of them have or claim to have a competing interest in or title to the disputed land.

4. The access road behind Brunswick Road is not made up and so far as I am aware is not adopted. It is maintained on an ad hoc basis by some of the parties before me (R34). There is no real dispute that since 1999 the Applicants have maintained their own access to the disputed land and gradually taken it over in ways described below, in two main stages. The land in dispute can best be described as a now enclosed on four sides area which is used for storage and parking by the Applicants, and as a garden area, with hard standing, grassed area, summer house, and sheds. All these are obvious features. Access is and always has been controlled by the Applicants and exclusive to them, via (now) a metal gate (A45). The focus of the evidence has been how and when the fencing or enclosing was carried out on the south side of the rectangular area. The north and west sides were fenced off by adjoining land owners (eg the north is fenced off by the rear garden fences of Dukesfield Drive properties). There are good photographs of how the disputed land looked in 1999 at A12-13; it was rough, overgrown and neglected. By 2015 it had been transformed: see eg A46, R15, 17, 25, 35, for example. There is no dispute that the work of transformation has been effected by the Applicants.
5. This is in fact a real story of a planned “land grab” as the Respondents complain. However, that is one good way of describing the acquisition of land by the process of adverse possession: there has to be (i) exclusive control and factual possession and (ii) an intention to possess the relevant land, for a period of twelve years. The

Respondents are aggrieved because the Applicants behaved as if they owned the disputed land when they did not, in such a way as to convince the Respondents that that was in fact the case. So they feel deceived by long standing neighbours. In my judgment the Applicants have demonstrated both requirements for the requisite period of twelve years with the exception of the land shaded black.

6. The story of the disputed land starts some time after the development of Dukesfield Drive. The bungalows in that development, late 60's to early 70's, were to be heated by oil fired central heating, the oil to be stored in one central tank. That was situated under part of the disputed land. Access was via a gap between two bungalows: see R23. The rest of the land was possibly to be developed for garages, but for reasons unknown to me, never was, and of course it was open land accessible to the rear of Brunswick Road. The oil tank fell into disuse.

7. In November 1990 the Applicants moved to 73 Brunswick Road and had children. They had no garden and wanted more space for them to play and for storage. They looked about for what they could acquire: Mr Whormsley eyed up the open space to the rear and instructed a solicitor to make inquiries. He found two pieces of land which they could buy. They acquired two additional areas of land. On 3rd November 1999 they acquired what can be more easily described as the oil tank land and the access path to it from Dukesfield Drive, WA360184. To all intents and purposes, the oil tank land (outlined as a white square on the attached plan) is now subsumed into the disputed land. On 16th November 2000 they acquired a small strip of land (CYM1664) which now (to the eye) forms the eastern part of the disputed land: for example, it is enclosed to the east by the fences apparent in the photographs at R25 (and can be identified on the plan attached as well as the rectangle between the disputed land and a garage). Although it then had a boundary of conifers to the east, and a fence to the north (rear of Dukesfield Drive), the strip, a remnant of land belonging to someone else, was otherwise unremarkable and as overgrown as the rest of the disputed land. However the Applicants now had good reason to say they owned land and to expand their activities to the west over the rest of the disputed land. I should add that I reject Mr Whormsley's evidence that his solicitor told them they now "owned" the disputed

land; I prefer Mrs Whormsley's candid account to the effect that he explained what adverse possession was and told them how to go about claiming land which they did not own. However, I find they gave the Respondents and other neighbours at least the impression that the whole of the area they first enclosed was theirs.

8. The first thing the Applicants did in 1999-2000 was to re-fence the east side of CYM1664 with larch lap fencing, and remove about 200 tons of rubble to level the rest of the site. They fenced (with Mr Muia's help¹) across the south side of the disputed land except where they created an access gate, excluding the land hatched black on the accompanying plan. The fence was at first a temporary plastic orange fence (the type familiar on building sites) strung between metal supports (see eg picture 3 A12) before it was replaced with a more substantial and obvious fence, best seen in pictures 7 and 8 at A13. I was also handed a photograph of Graham Shone standing in front of the fence by his car and his evidence was that this was taken in about 2008. Although not directly referable to the claim, the Applicants paid for investigatory work to the oil tank in 2005 (A18), and plainly used the area as a garden and storage and play space as they intended. The Respondents and other neighbours parked to the south of the fence and observed the Applicants' activities without comment. As Mr Pickard wrote (A23) "they have been informing people in an assertive manner that they own the land through purchase and have gone to great lengths to ensure that no one else uses or has access to it."
9. Much of the Applicants' case is admitted by the Respondents in their statement of case: see A35-43. By 2008 the disputed land was obviously used as a garden area (A13). The Applicants' have a strong case save as follows.
10. The main factual dispute relates to the area shaded black on the plan attached to the order. It is clear that this was not included when the disputed land was first fenced off in 1999-2000. Apart from anything else, the weight of the evidence is that two or more cars were more or less permanently parked/dumped there and if they were not, it was otherwise used for general parking. At some time after the original southern fence was erected, the Applicants took steps to incorporate more

¹ I accept his written and oral evidence: A27-28

land (the coloured area on the plan attached) by removing the wire fencing and enclosing the shaded black area with new and obvious larch lap fencing clearly pictured in A22, 45, and R19, 29, 31, 32, 35, for example. They maintain they did this to improve parking for everyone but I have my doubts: this is largely rejected by the Respondents who complain vigorously about reduced space to drive and park. My concern is whether the Applicants have acquired title to this space whatever the parking regime, but the fact that it was used as such for years does indicate a lack of control by the applicants which is relevant to their claim. The area shaded black has now been levelled and seeded and forms part of the disputed land.

11. Much time was spent trying to extract the relevant evidence on the later incorporation of the shaded area by the larch lap fencing. It was a shame that Angela Shone, who gave careful evidence for the Respondents, had noted all relevant dates in her calendars but had thrown them away before the proceedings. But it is interesting to note that the Respondents' generally referred to this feature as "the newly installed fencing" or words to that effect, making it an entirely different feature from the area originally taken over and fenced off in 1999-2000. Doing the best I can on the basis of the written and oral evidence I heard on this point, the fencing materials were purchased in July 2009: see A19. Prior to 2009 the additional area was fenced off by the Applicants using temporary orange fencing, but it was arguably not totally part of the disputed land as the wire fence remained and separated it off. It was a separate acquisition in my judgment and time started to run for the purpose of an adverse possession claim in favour of the Applicants several years after 1999-2000, when time started to run in their favour in respect of the land they took control of at that time. Access to the additional area was achieved by moving the orange fencing, but there is no real evidence that the Applicants did anything to the additional land apart from fencing it off with temporary fencing until the larch lap fencing was installed after July 2009.
12. Mr Paul Anderson (A51) giving evidence for the Respondents produced some useful photographs (PA1-4) which clearly show the additional coloured land occupied at least in part by two cars in the early 2000s. It then transpired that Mr Whormsley had arranged for the abandoned vehicles to be removed but he was

unable to remember precisely when and suggested 2008, in part relying on his picture 7 at A13, which he again dated by reference to the age of his daughter (in the photograph) as 2008. So long as the additional area was occupied by other people's vehicles, abandoned or not, the Applicants did not have exclusive possession of the additional area of land. Even if the abandoned cars were fenced off by temporary orange fencing (which Mr Shone did not recall), then so long as other people's property was on the additional land or used for parking, the Applicants cannot claim that time was running in their favour.

13. Karen Challinor/Murphy's evidence (R14) is that the new fencing appeared in 2010, but she could not attend to give oral evidence. Mrs Burkhill's written evidence is to the same effect (R18), and although she could not give evidence, she is the nurse whose driving activities are reflected in the notice about obstruction now attached to the fencing, to which her statement refers (see R19). I give weight to her evidence because she is directly affected by the new fencing so far as it affects her driving in and out of her garage.

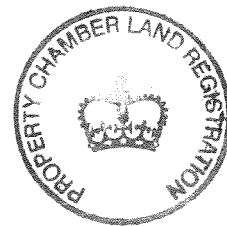
14. So far as the area shaded black is concerned, it must be treated separately to the main disputed area for reasons given. The Applicants approached its incorporation later and after the removal of abandoned cars belonging to other neighbours (who seem to have had unfortunate personal histories around that time). For some time probably in 2008 they put up temporary orange fencing, but it was not until 2009 July at the earliest that it was fenced off by the larch lap fencing visible today. Notably, the Applicants' chronology relies on July 2009 as the relevant date. Although it is now incorporated into the disputed land as a whole, the requirements of adverse possession set out above had not been satisfied for 12 years prior to September 2015 when the FR1 application was made. Assuming at best that time began to run in favour of the Applicants in July 2009, they fall several years short of the twelve years required to make out their claim in respect of the land shaded black, and because it was clearly treated as a second acquisition, and requires to be considered on its own facts, I cancel the application so far as that area is concerned.

15. As for costs, I consider it appropriate to make no order for costs. The Applicants have not been entirely successful and the Respondents have managed to demonstrate that they do not have title to the shaded area, as to which the Applicants' case was not as clearly set out as it might have been. That was the cause of a great deal of resentment. However, I am mindful that I have not heard submissions on costs. If the Applicants wish to apply for costs as litigants in person from 22nd September 2016 then they must file and serve an application on Mr Forshaw with a schedule of costs claimed by 5pm 29th September 2017. The Respondents have permission to respond by 5pm 10th October after which I will deal with the question of costs if required to do so.

BY ORDER OF THE TRIBUNAL

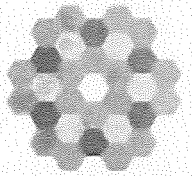
Sara Hargreaves

DATED 15TH SEPTEMBER 2017



Land Registry Notice plan

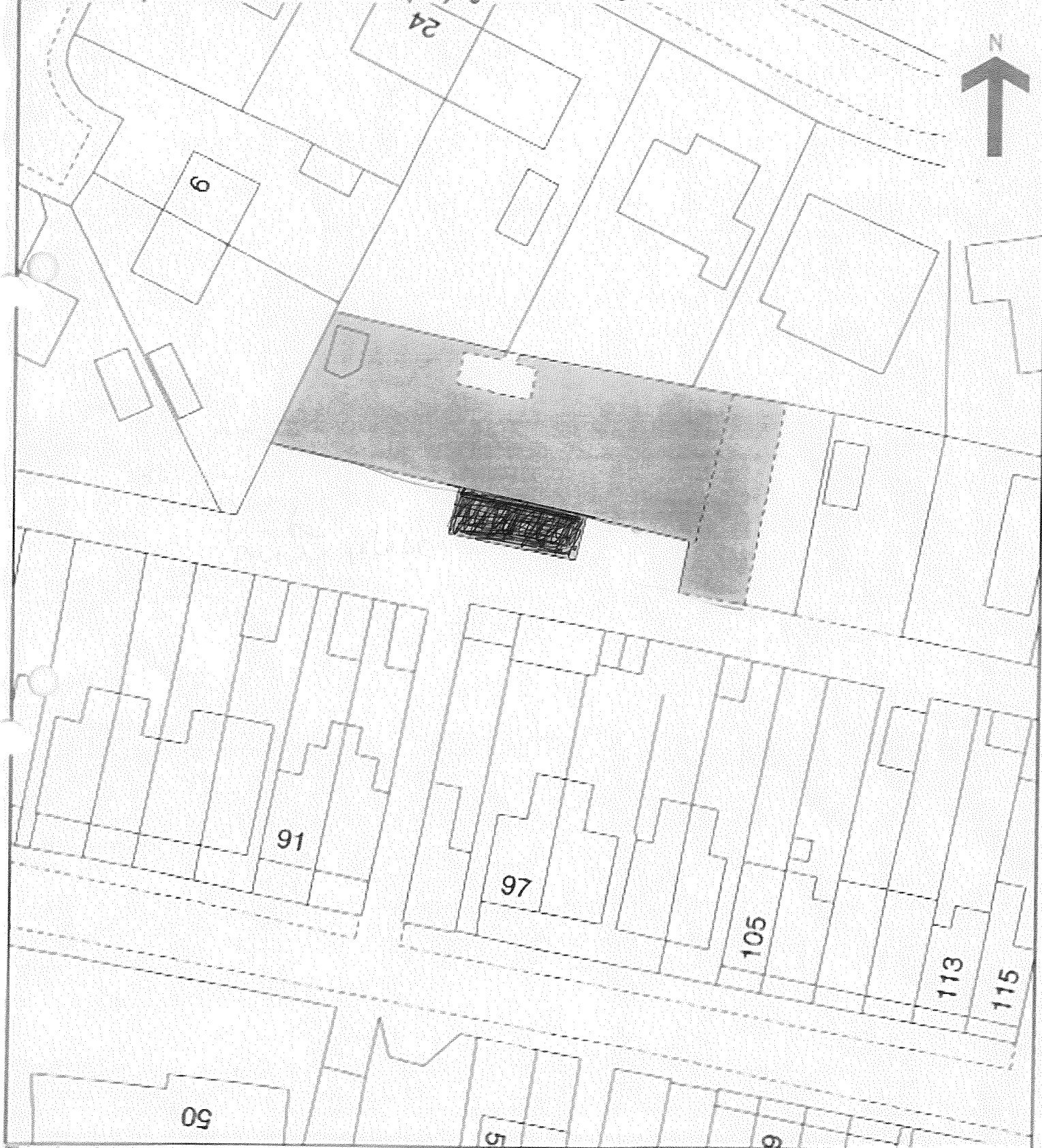
Title number **CYM659807**
Ordnance Survey map reference **SJ2863NW**
Scale **1:500** enlarged from 1:2500
Administrative area **Flintshire / Sir y Fflint**



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This is the plan referred to in the accompanying notice dated 15/02/2016 Title no. CYM659807



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.

