



[2017] UKFTT 0244 (PC)

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

REF/2016/0113

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN:

**MR DAVID WILSON
MRS EILEEN ELIZABETH WILSON**

Applicants

-and-

MRS MARY ELIZABETH BOWE

Respondent

**Property Addresses: Land at Wood Field, Otterbank Farm, Skelsmergh, Kendal,
Cumbria and
Strawberry Bank, Skelsmergh, Kendal, Cumbria LA8 9JU.**

Title Numbers: CU273221 and CU287729

Before: Judge Jefferis

Site Visit 23rd January 2017

Hearing dates 24th, 25th and 26th January 2017

**Sitting at Kendall Magistrates Court, The Court House,
Burneside Road, Kendal, Cumbria, LA9 4TJ.**

Applicants' Representation: Mrs Serena Eustace (Counsel)

Respondent's Representation: Stephen Fletcher Esq. (Counsel)

DECISION

Keywords

Application for prescriptive easement. Did an unsolicited permission, after user started, prevent time running? What was the true construction of a letter referring to a previous verbal permission? Was there a radical change in the track and/or the user to take the user outside the permission?

Provisions, authorities etc considered

Section 2 of the Prescription Act 1832

Healy v Hawkins [1968] 1WLR 1967

Winterburn v Bennett [2016] EWCA Civ 482, [2016] P & CR 11

Odey v Barber [2006] EWHC 3109, [2008] Ch 175

Matthews v Herefordshire Council REF/2011/0056

The Applicants

1. The Applicants are the owners of a plot of land with an area of about one and a half acres, which lies just off the A6, near Kendal. On this plot of land there is, amongst other things, a House called “Strawberry Bank”. I shall refer to the whole plot of land as “Strawberry Bank”. The Title to Strawberry Bank is registered at the Land Registry under Title Number CU287729.

The Application

2. This reference to the Tribunal concerns an application by the Applicants for a prescriptive easement to be noted on the Register. The Applicants applied, in Form AP1, for the registration of a prescriptive easement over part of the adjoining land in Title Number CU273221. This strip of land was shown coloured brown on the plan attached to the Form ST4, Statement of Truth, dated 14th May 2015, which was filed on behalf of the Applicants. The land coloured brown had pecked lines within it, depicting a roadway running along its length, but the brown colouring went outside this roadway to the boundary lines shown on either side of the parcel of land on the Ordnance Survey map. The land coloured brown was called different things during the hearing but “Wood Field” was most used and I will adopt that name. Wood Field was shown on the Ordnance Survey map with field number 222 and an area of 0.325 acres. The period of prescriptive use relied upon in the ST4 was stated to be “Old Roman Road post 21/12/51 still used as of right to date”. The Applicants’ Statement of Case relied on a period from “at least 1926”.

The Respondent

3. The owner of the land in Title Number CU273221 is the Respondent, Mrs Mary Bowe. Mrs Bowe, owns over 100 acres of land, known as Otterbank, of which Wood Field forms a small part. Otterbank has been in the Bowe family since 1925. Mrs Bowe’s late

Husband was James Bowe. James's father farmed Otterbank, then James Bowe and Mrs Bowe, then on down the family to the current farmers, who are Mrs Bowe's son in law and her daughter. The farmhouse on Otterbank is also just off the A6 and not far from the South end of Wood Field.

The Site

4. Prior to the start of the hearing, I attended a site visit with Counsel for the Applicants and Counsel for the Respondent and others. The relevant parcels of land are near the A6. As you approach from the South, you come to a cul-de-sac lay-by on the right of the A6. This cul-de-sac used to be part of the A6 but the main road has been straightened, leaving this cul-de-sac to one side. On the right-hand side, part of the way down the lay-by, there is a gateway. This gateway leads into Wood Field. The parties agreed that this gateway was about 12 feet wide. The gate is a metal barred gate. It has a wooden carved sign on it reading: "Please close the gate farm animals". I will refer to this gate into Wood Field as "the South gate". There is a public footpath sign to the right of the South gate, signalling a public footpath over Wood Field.
5. There is a hard-surfaced roadway running through Wood Field from the South gate. The land slopes quite steeply uphill from the South gate. The surface of the roadway is somewhat uneven and appears to be made of stone and road scrapings. This hard surface goes all across the full width of the roadway. There is no grass or mound in the middle, as is often seen on farm tracks. The roadway runs approximately up the middle of Wood Field. There are grass verges either side. There are fences on either side of these grass verges. On the West side, from the outer edge of the verge, the land slopes steeply downhill towards the A6. There was a second fence near the foot of the slope, at the edge of the lay-by. I was told that this second fence is actually the boundary fence of Mrs Bowe's land. The "inner fence" was to stop animals falling down the steep slope to the lay-by.
6. A short way up the roadway, there is a gateway on the right leading into a field on Otterbank, which is called "Atkinsons". I will call this the "lower side gate". As you walk up the roadway, it is rather wider than 12 feet in places. Witnesses for the Respondent said it was nearly 17 feet wide in places but neither side formally measured it. At the top of the roadway, (at the North-Western boundary of Wood Field) there is a

stone wall with a gateway in it. There is a new metal gate here hung on a wooden post. There is another wooden post at the far side of the gate way. This gate and the posts were recently installed by Mrs Bowe. I will refer to this as “the top gate”. The old gate was in poor condition and has been left lying on the verge within Wood Field. There is a dispute as to who owns the top gate and the adjoining wall. The “T” marks on a plan to the Conveyance of Strawberry Bank dated 23rd May 1925, which in the Trial Bundle, suggests the Applicants own them but the Respondent installed them and claims to have a plan that shows the contrary. That plan was not put in evidence. I was told the top gate was 11 or 12 feet wide.

7. When you go through the top gate on Wood Field into Strawberry Bank, there are two diesel tanks to your left. Then there is a stone building to your left. This has large metal sliding doors and a slate roof, with four Velux type windows in the roof (on the near side). The back wall of the building, facing out to the A6, is all stone faced. On the right of the entrance way into Strawberry Bank is a tall stone retaining wall. As you walk on, there is an area with a hard surface, which one could call a yard, on which Mr David Wilson keeps his tractor and trailer, a lorry, slurry tanker, muck spreading equipment and big digger type vehicle with an arm for hedge cutting. Mr David Wilson has changed the natural slope of the land in the yard to make it more level. From this small yard, there is a side gate into a field on Otterbank. This field on Otterbank is known as “the Seeds”. I should mention that there was a second big machine with a bucket on the lay-by by the A6. I was told that it was kept there by Mr Wilson for convenience, as that is where the road salt is delivered and stored.
8. At the far end of the yard, there is a stone wall. This was erected as a condition of a planning permission for use of the yard, to separate the yard from the rest of Strawberry Bank. There is a gate in this stone wall. From there you can walk along a flat track within Strawberry Bank, which lies to the right-hand side of the natural slope down to the A6. This track leads a gate giving onto a sharp bend in a little lane, which the parties called Watchgate Way. I will refer to this gate onto Watchgate Lane as “the North gate”. There is also a small hard surfaced private roadway leading up from the A6, past the house called Strawberry Bank and a new building called Strawberry Cottage, up to this track leading to the North gate. This private roadway was created by David Wilson, after he and his wife purchased Strawberry Bank.

Oral Evidence

9. The oral evidence was heard over two days. All the witnesses who gave oral evidence were subjected to rigorous cross-examination by Counsel.

The Witness Evidence for the Applicants

10. In the Trial Bundle, there were three Witness Statements for the Applicants. The first was that of David Wilson, who is the First Applicant. The second Witness Statement was that of Martin Wilson. Both these witnesses gave oral evidence and were cross-examined. Mr Martin Wilson was an owner of Strawberry Bank from 1976 to 1980. Mr Martin Wilson came across to me as an truthful, reliable and direct witness. Mr David Wilson and his wife have owned Strawberry since 1980. Mr David Wilson appeared to me a less reliable witness. I did not feel he was misleading me at any point but, under cross examination, assuming he was truthful, his knowledge and his memory of events was incomplete. The third Witness Statement was that of Mrs Jane Richardson. Alas, Mrs Richardson was too unwell to give evidence. I was invited by Mrs Eustace, Counsel for the Applicant, to admit this statement into evidence and to give it such weight as I considered appropriate, given it was not tested in cross examination. Mr Stephen Fletcher, Counsel for the Respondent helpfully did not object to this course of action.

The Witness Evidence for the Respondent

11. In the Trial Bundle, there were eight Witness Statements for the Respondent. I will address the witnesses in the order in which they were called.
 - (1) The first witness was Mrs Rigby, who is a nurse. I found her to be a wholly reliable witness. I found her evidence about her father telling her that he had given Mr David Wilson oral permission to use the track on Wood Field, to gain access to Strawberry Bank, wholly convincing.
 - (2) Mrs Bove, the Respondent, was a good, clear witness, if somewhat inflexible in her approach. Mrs Bove stated in oral evidence that her late husband, James Bove, visited Mr David Wilson in 1991, before James Bove's Solicitors sent a crucial letter to Mr David Wilson, dated 4th July 1991. This visit was not mentioned in her Witness Statement. Her memory of some events was not

complete. Her Solicitors' letter of 25th June 2015 elided two events, which actually occurred many years apart, (see page 604 of the Trial Bundle).

- (3) Mrs Cook was, at times, rather vague and argumentative as a witness but I accept her evidence as to Mr Richardson coming past her house on his grey Ferguson tractor. Her children used to wave to Mr Richardson. He used to turn off the A6 by Strawberry Bank house and he did not go up the track on Wood Field.
- (4) Mrs Cornthwaite's evidence was short. I accept her evidence that Mr and Mrs Flood, who owned Strawberry Bank for a long period, did not own, or drive, any motor vehicles.
- (5) Mr Ellis is the current tenant farmer of most of Otterbank. He is the son in law of the Respondent. He came across as a clear and frank witness. I accept his evidence that the gates at the top and bottom of Wood Field were often left open and that he did sometimes put animals on Wood Field for short periods of time. It was a convenient short term holding pen or isolation area.
- (6) Mr Christopher Cook was a witness who gave clear evidence. He addressed the change of the appearance of Wood Field over the years. It went from "a lot of grass", when he played there as a child. The vehicle tracks through Wood Field became more evident over the years. They started as narrow tracks, with grass in between them, as well as grass on either side. They developed to what I saw on the site visit, namely a roadway with a hard surface all across (and no grass in the middle), with grass verges on either side.
- (7) Mrs King was the last witness for the Respondent, who gave oral evidence. She appeared to have limited knowledge but was clear that she saw that Mr David Wilson only had one tractor on Strawberry Bank in the early years.
- (8) There was one further Witness Statement for the Respondent in the Trial Bundle. This was the Witness Statement of Mr Eric Cook. He was unable to attend the hearing. Mr Fletcher invited me to accept the Statement into evidence. Mrs Eustace did not object to this course, with the usual caveat that it should be given the evidential strength commensurate with the fact that it was not tested in cross examination. It was not very controversial in any event.

The relevant periods of time

12. Counsel sensibly suggested that I should address the evidence in relation to separate periods of time, which I shall do.

The “Roman” Road

13. Mr David Wilson gave evidence that he thought that Wood Field formed part of an old Roman road. Mr Fletcher explored the question of whether Wood Field was part of a Roman road with me. There is insufficient evidence before me to decide whether this route was once, or is now, subject to more extensive public rights of way than a public footpath, as shown on the current Ordnance Survey map. Fortunately, both Counsel agreed that the question whether there are highway rights over Wood Field was not an issue that is before me to decide. Mrs Eustace told me that the appropriate application to change the definitive plan would have to be made to the County Council. The question whether there was a highway could have been relevant as to the nature of user of the roadway on Wood Field by Mrs Richardson. Was Mrs Richardson exercising a right of way or simply using a highway first created in Roman times? Mrs Eustace submitted that user would have been referable to Mrs Richardson’s use of a building or buildings at the Southern end of Strawberry Bank, even if there had been a public right of way with vehicles. Accordingly, I am not deciding whether there was a Roman road, or are still any public highway rights over Wood Field, so those issues are not *res judicata* between the parties.

Prior to 1976

14. I am not satisfied, on the evidence before me, that there was relevant user of the track through Wood Field with vehicles prior to 1976. I will shortly state the position. There is no firm evidence of user prior to 1951. In 1951, Mary Kellett (now Mrs Flood) transferred Strawberry Bank to herself and Mr Flood. Mr Flood subsequently died and the property re-vested in Mrs Flood. Mr and Mrs Flood did, not own, or drive any motor vehicles and there is no evidence that persons used the track with vehicles to get to Strawberry Bank, in a manner that could be counted as user by Mr and Mrs Flood. Mrs Flood sold Strawberry Bank to Mr Martin Wilson and his wife in December 1976.

Mrs Richardson

15. Counsel for the Applicants, Mrs Eustace, sought to rely on evidence of user of the track by Mrs Richardson. Mrs Richardson’s evidence suggests that she and members of her family used the track through Wood Field, with a horse and cart and later a tractor, to go to land to the North of Strawberry Bank. Given the evidence of Mrs Cook, I am not

satisfied this is correct. Also, in my judgment, this user through Wood Field and through Strawberry Bank to go on to land to the North is not sufficient to give rise to rights in favour of Strawberry Bank.

16. Mrs Richardson also refers to using some of the Floods' sheds, at the bottom of the field at Strawberry Bank, to overwinter some cattle. Mrs Richardson's Witness Statement refers to accessing the cattle twice a day but she does not expressly state that this was with vehicles. Further, Mrs Richardson does not give any dates for the period when this use of the Flood's sheds occurred. Furthermore, there is evidence from the Respondent that members of her family rented the field in Strawberry Bank next to Wood Field (as it then was, before it became a yard), from before 1962 until 1976. There is documentary corroboration before me of the tenancy for the period 1967 to 1973. I accept the Respondent's evidence on this. I consider it improbable that Mrs Richardson was using the Floods' sheds at the same time as the Bowe family had a tenancy of the field in which the sheds stood.

User 1976 - Mr Martin Wilson

17. I am satisfied that Mr Martin Wilson did use the track through Wood Field, with a motor vehicle, during his period of ownership of Strawberry bank from 1976 to 1980, with sufficient regularity to amount to "user" for prescriptive purposes. There is no evidence before me that Mr Martin Wilson was given permission to do so.

User post 1980 - Mr David Wilson

18. I am satisfied that Mr David Wilson has used the track through Wood Field, with motor vehicles, during his period of ownership of Strawberry bank from July 1980 to date, with sufficient regularity to amount to user for prescriptive purposes. He started with just one tractor and equipment to go with the tractor. Over the years, he has acquired, and used, further equipment. He now has a tractor and trailer, a lorry, slurry tanker, muck spreading equipment and a large hedge cutter, which he keeps in the yard at Strawberry Bank, when it is not in use. One key question before me is whether Mr David's Wilson's user was permissive or "as of right".

The 1991 letter

19. It is common ground that Mr James Bowe caused his Solicitors, Arnold Greenwood, to send a letter addressed to “Mr DH Wilson Esq”, at Strawberry Bank. It was dated 4th July 1991. It is common ground that David Wilson received the letter. What is not common ground is the background to this letter being sent and what happened after it was received. I should start by quoting the terms of the letter, as its effect was the subject of much argument by Counsel. The letter of 4th July 1991 reads:

“Dear Mr Wilson,
Track at Otter Bank Farm

Our client Mr J O Bowe tells us that some nine years ago he gave you verbal permission to make use from time to time of the track coloured brown on the appended plan to meet your own land on the north side.

We have advised that it is desirable that letters be exchanged to record that the License for use of the track is a personal one between yourself and Mr Bowe, and is terminable at will by either of you.

It is understood that you have placed material to improve the surface for vehicles. Our client believes this track is a public footpath, and we must make clear that it is your responsibility to ensure that it remains safe for foot passengers

We shall be grateful if you will please sign the enclosed copy of this letter and return it to us in the stamped addressed envelope provided”.

If you have any query, please contact our Mr Hopkinson, or alternatively consult your own Solicitor.

Yours faithfully

[signature]
Enc”,

20. No plan was attached to the copy letter in the Trial Bundle but it was common ground that the letter was referring to the track over Wood Field. An oral permission about nine years before July 1991, would take one back to about July 1982. That is less than 40 years ago, which is relevant for the purposes of section 2 of the Prescription Act 1832. Also, as Mr Fletcher rightly submitted, a permission at any time during the 40 years stops time running for prescription purposes, (see Healy v Hawkins [1968] 1WLR 1967 at pages 1973 and 1974).

21. The Respondent's evidence is that, in 1982, Mr Wilson had asked for, and been given, oral permission to use the track. Years later, in 1991, Mrs Wilson had asked Mrs Bowe if she could purchase a right of way. I accept this evidence. Mrs Bowe also claimed, in oral evidence, that Mr Bowe went to see Mr David Wilson shortly before the letter of 4th July 1991. I consider Mrs Bowe is confusing dates here and I do not accept that this happened. I accept Mrs Bowe's evidence was Mr and Mrs Bowe were prepared to grant a terminable licence, so they kept control, but they were not prepared to grant a legal easement that would last forever.
22. The Applicants' case is that the letter came out of the blue. Mr David Wilson's evidence is that he chose to ignore the letter. He did not sign and return a copy to the Respondent's Solicitors, as requested. He did not reply to the letter. He did not raise the subject when he next saw Mr James Bowe. My understanding of his evidence, under cross examination, was that he did see Mr James Bowe after the letter and that relations between them, as neighbours, were good but he did not raise the subject, to say that he disagreed with the statement in the letter that his user was permissive. He thought it was an old Roman road, so he did not need permission. Mr Wilson also thought it was up to Mr Bowe to pursue the matter, if Mr Bowe wanted to.
23. Mrs Bowe's evidence was that she and James Bowe thought the letter had been signed and returned to their Solicitors by Mr David Wilson and nothing more needed to be done by them. They did nothing more until the advent of the present proceedings. No copy of a signed returned copy of the letter has been found. I am told that Mr and Mrs Bowe's Solicitors' records do not go back far enough. On the evidence before me, I find that Mr Wilson did "ignore" the letter, in the sense that he did nothing in response, and he did not sign and return a copy.
24. Both Counsel addressed me, at length, about the effect of the letter and the parties' respective reactions to it. They saw the matter in diametrically opposite terms.

The Respondent's Submissions

25. In summary, Mr Fletcher submitted as follows. The letter was cogent evidence that a verbal permission had been given in about 1982. Mr James Bowe must have given appropriate instructions to his Solicitor for the letter to be written. James Bowe was an

honourable man and a good and friendly neighbour of Mr David Wilson. Why should he lie? The letter itself amounted to an ongoing licence to use the roadway. It showed Mr Bowe's understanding that Mr Wilson had permissive user. If Mr Wilson thought otherwise, he should have said so. Mr Wilson should not have said nothing, if he thought his user was not by actually permissive and time was running for prescription purposes. In a sense this made his user secretive. The letter made the user "contentious" because it made clear Mr Bowe did not think the user was "as of right". He thought it was permissive.

The Applicants' submissions

26. In summary, Mrs Eustace submitted as follows. The letter was self-serving and should not be relied upon as evidence of a verbal permission. Mr Bowe and his Solicitor could have realised that 20 years' prescriptive user could have run, with the user by Mrs Richardson, Martin Wilson and David Wilson. Mr James Bowe's evidence may not be reliable because he suffered from clinical depression. It could be there had been less than a formal permission. Just a wave that Mr James Bowe convinced himself amounted to a permission. Mrs Eustace went as far as suggesting it could have been a trap. If Mr Wilson had signed and returned a letter the next day, then Mr Bowe would have terminated the licence.

Conclusions

Verbal permission

27. Taking the evidence before me as a whole, in my judgment, it is probable that Mr James Bowe did give Mr David Wilson verbal permission to use the track in about 1982 and did so expressly and not just by a wave. Mr David Wilson did not consider it was significant at the time and he does not remember the event, over thirty years later.

The 1991 letter

28. Mrs Eustace dismissed the letter as "self-serving" and of no evidential value. In her submission, the letter was not itself a permission. Mr Fletcher argued, in my judgment correctly, that the 1991 letter confirmed the basis on which the track was used and amounted to a written permission to continue to use the track. Accordingly, I find that the user was first by oral permission and then by written permission. I am fortified in this conclusion by the recent Court of Appeal case of Winterburn v Bennett [2016]

EWCA Civ 482, [2016] P & CR 11 referred to by Mr Fletcher. In that case, it was held that the erection and maintenance of an appropriate sign is way of avoiding adverse rights arising, without conflict, physical acts or threats of proceedings. A letter to the user, to the effect that the owner has given the user oral permission to use a track and is prepared to continue to allow such use on that basis, should, without more, be sufficient to make the user remain permissive, pursuant to a written permission.

The Extent of the Permission

29. In my judgment, what Mr James Bowe did was give Mr David Wilson permission to use the track. This was in the context of Mr Wilson only owning one tractor at that time and Mr Wilson saying words to the effect that the use would only be from time to time. There was evidence, which I accept, that James Bowe would have known that Mr David Wilson did contracting work, as a commercial venture, before and after Mr Wilson came to Strawberry Bank. In my judgment, the permission was not just to drive a tractor up and down the track for the purposes of farming Strawberry Bank but to drive a tractor with equipment attached to it and as part of a commercial venture, which was run from Strawberry Bank.

Radical change in user?

30. Mrs Eustace argued that the user by Mr David Wilson became so much more extensive than the permission and the track so changed, that his user should be considered to be outside the original oral permission and “as of right”.
31. I accept Mr Fletcher’s submission that the question whether a user, that was permissive, continued as such, over the years and in changed circumstances, is a question of fact, (See Healey v Hawkins [1968] 1 WLR 1967 at page 1974). I accept Mrs Eustace’s submission that one needs to see if there has been a radical change in the character of the track, or in its use from that permitted, along the lines discussed in Odey v Barber [2006] EWHC 3109, [2008] Ch 175 at paragraphs 38 and following. The question is: was there a radical change as Mrs Eustace asserted?

The Changes

32. There was reliable evidence before me that James Bowe was concerned about David Wilson making greater use of the track than James Bowe had originally envisaged. Mr

Wilson used to keep his tractor near his house at the North of Strawberry Bank. When the Council planning department banned Mr Wilson from using the North Gate, he may have used the South gate more often. I also accept that there came a time when Mr Wilson had an employee, who used the track, as well as Mr Wilson, albeit one machine is kept on the lay-by. Mr Wilson also acquired a lorry, as well as a tractor, and the hard surface on the track became more extensive over the years. In these circumstances, I do accept that the user of the track did increase and the extent of the hard surface changed but it is a question of degree.

33. It should also be borne in mind that the vehicles were only brought to Strawberry Bank, when they not in use. Mr Wilson described the yard as a place for them to be kept overnight. So, overall, the user of the track was not that great, in any event. An additional worker or more machinery did not change the nature of the user. In my judgment, on balance, the change in the track and its user was still for Mr Wilson's business and not so radical as to stop the user being permissive.

Unsolicited permission

34. I questioned Counsel as to the effect of an unsolicited permission. After researching the point, Mr Fletcher referred me to the Case of Odey v Barber (above) at paragraphs 71 and 72, which clearly shows that an unsolicited permission is inconsistent with any claim to user as of right and prevents a claim arising under lost modern grant. It was ultimately common ground that an unsolicited permission could stop time running for limitation purposes.

Contentious Use

35. Mr Fletcher argued that, after the 1991 letter, any user by Mr Wilson was not only permissive but also contentious. I consider it was permissive and not contentious. If I am wrong that the letter amounted to a permission, then I can see force in the argument that the 1991 letter made the user contentious. The reader was meant to understand that the owner did not want the track to be used, unless it was pursuant to a licence.

Acknowledgement

36. Mr Fletcher also argued that the Applicants' separate requests buy a right of way in 1991, 2008 and 2012, (see Mrs Bowe's Witness Statement in the Trial Bundle at page

386 paragraph 19), were inconsistent with any assertion that by that time the Applicants had acquired a prescriptive right of way and inconsistent with the concept of use as of right. In my judgment, this is correct, (see Odey v Barber (above) at paragraph 71). It is certainly consistent with the Applicants realising their user was permissive and not as of right. Mrs Eustace referred me to the case of Matthews v Herefordshire Council REF/2011/0056, decided by Deputy Adjudicator Owen Rhys. Mrs Eustace correctly submitted that quite extensive negotiations did not prevent the prescriptive claim succeeding in that case. Given that we do not know the precise terms of the requests in this case, I do not rely on this part of Mr Fletcher's arguments in coming to my conclusion.

Conclusion

37. In my judgment, the user was permissive and not as of right. The Applicants have not established a right of way at common law, under the Prescription Act or the doctrine of lost modern grant. Accordingly, I propose to direct the Chief Land Registrar to cancel the Applicants' application to note a prescriptive easement.

Costs

38. In the ordinary course, in this Tribunal, costs follow the event. Subject to any offers or other matters of which I am unaware, my preliminary view is that this would seem appropriate in this case. i.e. the Applicants should be ordered to pay the Respondent's costs of the reference to the Tribunal. The parties' respective Solicitors should try to agree costs and provide the Tribunal with a draft consent order as to costs. In case the questions over costs cannot be agreed, I will make preliminary directions as to costs.

Dated 1st March 2017.

Michael Jefferis

Judge of the Property Chamber First-tier Tribunal

BY ORDER OF THE TRIBUNAL