

IN THE COUNTY COURT AT LEEDS

Leeds Combined Court Centre
1 Oxford Row
Leeds
LS1 3BY

Date: 06 October 2023

Before :

HH JUDGE DAVIS-WHITE KC

Between :

(1) MR TIMOTHY WILKINSON
(2) MRS MARGARET WILKINSON

Claimants

- and -

(1) MR KEVIN ROLPH
(2) MRS SERINA ROLPH

Defendants

**The Claimants and Defendants appeared in person other than 11 October 2021 when
Mr Paul Lakin (instructed by Walker Morris LLP) appeared for the Defendants**

Hearing and reading dates: 11 October 2021; 31 October-4 November 2022; 24-28 April 2023, 2
May 2023.

Judgment Approved

This judgment was handed down subject to editorial corrections on 6 October 2023. It was
circulated in this form to the parties on 12 December 2023.

HH Judge Davis-White KC :

Introduction

1. Nidderdale is an area of outstanding natural beauty in North Yorkshire. Among the over 16,000 people living in Nidderdale are the parties to this case. At the heart of Nidderdale lies Pateley Bridge. About three miles south of Pateley Bridge and nine miles or so north-west of Harrogate is the hamlet of Heyshaw. Here the parties live: in two adjoining properties out of the eleven or so comprised within the hamlet. From the hamlet there are wonderful views, including views down from the heights to the River Nidd as it passes through Summersdale and Dacre Banks. The beauty of the location and landscape is marred by the dispute between the parties that has been brought before the court.

2. The two relevant properties are Old Farm, a renovated farmhouse with what was a barn attached and, immediately behind and to the South of Old Farm, Heyshaw Spring Farm (“Spring Farm”).
3. The Claimants own and live in Old Farm. The Defendants own and live in Spring Farm.
4. This judgment deals with part only of proceedings between the parties commenced by claim form issued on 15 March 2019. It concerns claims in private nuisance. The claims are of two types. First, alleged interference with an easement, broadly to enter to carry out maintenance and repair to the buildings (or parts of them) at Old Farm, granted to Old Farm. Secondly, alleged interference with the Claimants’ comfortable and convenient enjoyment of Old Farm.
5. As originally brought, the proceedings in question sought a declaration as to the claimants’ rights with regard to an easement of access (granting, broadly, a right of access to carry out maintenance and do repairs to Old Farm (the precise scope of which is in dispute)) and damages in nuisance for interference with that easement and a determination of two boundary disputes. One boundary dispute related to the South-West boundary to the land at Old Farm, where it met the land of Spring Farm. The other boundary dispute related to the Eastern boundary of Old Farm.
6. The Eastern boundary dispute is recorded as having been agreed in an order of Deputy District Judge Whitehead dated 8 February 2021 as recorded by the following recital:

“AND UPON the parties being in agreement as to the position and ownership of the eastern boundary, but not in agreement as to the terms of the easement in relation to the eastern boundary.”
7. The South-West Boundary dispute was determined by me in a trial. I handed down judgment on 22 January 2022, following a three day trial of that issue between 17 and 19 January 2022 (the “Boundary Judgment”).
8. As regards the claim in private nuisance, that was limited by the claim form to a claim of interference with the easement that I have mentioned. The Wilkinsons have throughout the proceedings (but not throughout the disputes) acted in person. The Particulars of Claim, attached to the claim form, amount to seven and a quarter pages of closely typed material. They read as a piece of prose but with no paragraph numbers and simply the following headings: “Easement”, “Boundaries” and “The Defendants’ Conduct”.
9. The criticisms made of this document by the Defence are well founded. I understand that despite application being made to one of the District Judges who managed the case, no order was made as a matter of case management to clarify the allegations being made. Sadly, and no doubt with the benefit of hindsight, the parties were not well served in this respect.
10. Under the heading “The Defendants’ conduct” was a complaint about a campaign of harassment said to have been embarked upon by the Rolphs. This was said to have had three consequences, first the causing of a significant amount of emotional stress distress and anxiety to the Claimants which had a negative impact on their health and

wellbeing; secondly, making the claimants “fearful to use their easement” and thirdly having a negative impact upon the value of Old Farm .

11. The Wilkinson’s evidence in support was far from specific. Thus, in paragraph 7 of his initial witness statement, Mr Wilkinson referred to a claim that:

“the area of the easement has been eroded by successive owners of Heyshaw Spring Farm, culminating in the defendants’ accelerating this process to a level that constitutes substantial interference with the claimants’ right”

Other than reference to a letter of 1 March 2019, sent to Mr and Mrs Wilkinson by the Rolphs, and said to detail “*some of the physical structures that have been placed by the defendants on the area of our easement*” no further particulars were given.

12. The case was listed before me for a two day trial on 11 and 12 October 2021. The remaining issues for trial at that point were the south-west boundary, the express easement and alleged interference with it. The state of the papers before me was such that I had to enquire as to the details of the case being brought. A number of photographs and videos were being relied upon but there was no clarity as regards the individual episodes of which complaint was made, nor their alleged relevant dates nor the relevant incidents themselves. The particulars of claim identified a few alleged episodes in passing but it was self-evident that they did not cover them all. The witness statements gave details of more episodes but the full extent of the episodes was unclear and the dates and relevance of a huge number of the photographs relied upon was wholly unclear, a least to me.
13. At that point the Rolphs were represented by solicitors and counsel. Limited examination in chief of Mr Wilkinson was conducted by Mrs Wilkinson with a view to eliciting the Wilkinsons’ case regarding alleged interference with their easement with a view to identifying (a) each alleged interference; (b) the relevant contemporaneous video/photograph(s) relied on in connection with each episode and the causal loss said to flow. I have had a transcript of such evidence available to me and re-read it for the purposes of considering this judgment.
14. It became clear on 11 October 2021 that there was insufficient time to do any more than clarify (through examination-in-chief) the Wilkinsons’ case as to interference with their easement and to give case management directions. It was also clear that the Rolphs should have an opportunity to deal with each of the allegations being made against them in this respect.
15. Further, it became clear that the alleged “campaign of harassment” that I have referred to involved a number of alleged incidents which the Wilkinsons wished to rely upon as constituting the tort of private nuisance on the basis that it interfered with their enjoyment of their property generally (rather than the easement) (and causing loss in terms of an alleged significant diminution in value of Old Farm). Although the claim form limited its claim in damages to a £15,000 ceiling there was now said to be a diminution in value of Old Farm of between £125,000 and £150,000 as a result of the Defendants’ actions, based on an estate agent’s letter, which sum was now claimed by way of damages. There was however no formal expert evidence in relation to the same.

16. Accordingly, I ordered that a Scott Schedule should be produced to set out each and every incidence of alleged interference with the easement with an ability to the defendants to set out their case and defence with regard to each such incidence. I also provided for a timetable for any application to be made to amend the claim form to bring in a case of alleged private nuisance involving an interference with the Wilkinsons' enjoyment of their land (i.e. Old Farm). Finally, I re-set the trial date (for two days) in April 2022.

17. As regards the Scott Schedule dealing with the easement the relevant recitals to my order were as follows:

“AND UPON the Court considering it to be necessary and convenient for the Claimants to set out in writing each and every allegation relied upon in relation to obstruction/ interference with the said easement and any causal loss flowing therefrom, as given in evidence by the First Claimant on 11 October 2021, by way of a Scott type schedule to which the Defendants can and should respond, on an item by item basis and the Claimants then reply and the parties agreeing to this course (such agreement being without prejudice to any costs submissions in due course)

AND UPON the Claimants and the Defendants agreeing the form of schedule that the parties shall complete (“the Schedule”) a copy of which is annexed to this order”.

18. As regards the claim in private nuisance relating to interference with the enjoyment of Old Farm (rather than interference with the relevant easement), the relevant recital to my order was as follows:

“AND UPON the Claimants indicating that they intend either to amend the Claim or bring fresh proceedings so as to include a claim in nuisance or such other claim as they deem appropriate and upon it being recorded that the Court would be content for any new or amended Particulars of Claim to be in schedule form and the Defendants confirming, by Counsel, that no objection or point would be taken as to the form of any Particulars of Claim drafted in such manner. For the avoidance of doubt, the Defendants making no concessions whatsoever as to the contents or matters raised in or by any such Particulars of Claim”

19. Thereafter, an application to amend the claim form was made and granted. This resulted in a further Scott Schedule being ordered to be prepared which was to set out each and every new alleged incident of private nuisance relied upon. This was unfortunately referred to as the “malice” schedule by way of shorthand (though the schedule as produced was actually entitled “Alleged Private Nuisance-Alleged Loss of Quiet Enjoyment/Malice”). The use of the malice epithet was because it was a major part of the Wilkinsons' case that the Rolphs' relevant actions and conduct were motivated by “malice” and that this was a potent factor in making the conduct a nuisance.

20. Although substantial interference with an easement and other unlawful interference with enjoyment of property are both private nuisances, I distinguish between the alleged interference with the easement in this case and the alleged interference with

enjoyment of Old Farm in itself (but not the easement) by using the term “Enjoyment Nuisance” to refer to the latter only.

21. So far as concerns the Scott Schedule dealing with Enjoyment Nuisance, my order of 10 January 2022 provided as follows:

“(1) The Claimants shall be granted permission to amend their claim to add a further claim in private nuisance for alleged loss of quiet enjoyment of the Claimants' property due to the actions of the Defendants (“the Malice Claim”) as particularised in the form of the Scott Schedule appearing at pages 3 to 41 of the Application Bundle (“the Malice Schedule”), save that the Claimant shall add to the Malice Schedule any reference required in relation to further photographs relied upon that appear in the Supplemental Bundle by inserting the annotation at the appropriate place of a reference to the Supplemental Bundle and the page thereof in the format: prefix “[SB:[Page no]]” . The Claimants shall file and serve on the Defendants a copy of the Malice Schedule as so amended by 4pm on 17 January 2022.

(2) The Defendants’ responses as set out in the Malice Schedule and the Claimants’ reply to such responses contained in the Malice Schedule shall stand as the their respective Defence and Reply in these proceedings on the Malice Claim.”

22. At the time of my order of 10 January 2022, the Rolphs were still represented by Counsel, Mr Paul Lakin.
23. The trial of the remaining boundary dispute took place in January 2022.
24. The trial of the remaining issues, concerning the easement and the Enjoyment Nuisance claim was listed for November 2022.
25. By November 2022, the Rolphs were no longer represented. Their financial resources had run out. During the days set aside for the trial it was only possible to hear the evidence for the Claimants (being the evidence of Mr Wilkinson) and to conduct a site visit at the end of such oral evidence. The cross-examination of the Rolphs, and the remainder of the trial, was only able to be listed in April/May 2023, which is when it took place.
26. Any question of damage to the value of the freehold of Old Farm was left over to be dealt with by way of inquiry after judgment should the point arise. I should record however that the Wilkinsons, although limiting their claim form to damages not exceeding £15,000, have intimated a claim for damage to the value of Old Farm in a sum of between £125,000 and £150,000. The question of expert evidence regarding any diminution in value of Old Farm was stood over until after the trial so that it could be determined first whether there were any relevant acts of nuisance and, if so, what they were.
27. I apologise to the parties for the length of time that this judgment has taken to be produced. That is largely due to the mammoth nature of the these proceedings and the

fact that other cases are listed in the court such that it is not possible to “clear the list” to enable necessary time to be given to judgment writing.

28. The mammoth nature of these proceedings is illustrated by a number of indicators.
- (1) As well as the three trial days used for the adjudication on the south-west boundary dispute, this matter has involved a circuit judge in extensive trial time being one day in October 2021, five days in October/November 2022 and five and a half days in April-May 2023 (including reading days).
 - (2) I was originally provided with a combined authorities bundle containing 42 authorities, and in addition an extract from the Law Commission’s report No. 327: “Making Land Work: Easements, Covenants and Profits à Prendre” (7 June 2011). This was later added to by a further 15 authorities.
 - (3) During the trial about 68 video clips, taken from CCTV, were shown.
 - (4) There were over 245 photographs (or stills from CCTV) in the initial main trial bundle, some 110 of which were reproduced in a third trial bundle; some 48 or so in a second trial bundle and a further 16 photographs in a 4th further supplemental trial bundle prepared by the claimants. The “reproductions” were sometimes of different quality to the originals rather than being simply a repetition of precisely what was already in the bundle.
 - (5) The Scott Schedule setting out alleged incidents of interference with the easement contained some 41 incidents (there is no Item “16”). The Scott Schedule setting out the alleged incidents of private nuisance contained some 77 incidents. Between them the Scott Schedules extended to in excess of 65 (landscape) pages.
 - (6) I have also had the benefit of the site visit which took place on 4 November 2022, as I had concluded that the photographs did not always give me a proper idea of the position on the ground. That view was confirmed by the site visit.

Mediation/ADR

29. This case was ripe for mediation. Unfortunately, all attempts at mediation failed.
30. In September 2016, the Rolphs contacted the Local Community Police for advice. They visited on 29 September 2016 and suggested mediation. The Rolphs agreed. However, later that same evening the police rang to inform the Rolphs that the Wilkinsons refused point blank to consider mediation and that solicitors were dealing with the matter.
31. In October 2017, community mediation arranged by the police through ARCH mediation took place, but was unsuccessful.
32. In November 2017, a further community mediation took place but failed to result in settlement.
33. In June 2018, a commercial mediation was arranged with a retired District Judge as mediator. No settlement was achieved.

34. An “FDR” (family dispute resolution, taking its nomenclature from Family Court processes) conducted by DJ Troy was arranged in November 2019 and February 2020 but again settlement was not achieved.

The Properties

35. The two Properties were, in the 1970’s, all part of one larger property owned by a Mr Alec Gilchrist.
36. Old Farm lies primarily on what is approximately a West to East axis. At the eastern end of the farmhouse there is an attached barn which lies on a North-South axis. The Eastern and Southern walls of the buildings at Old Farm (the house and barn) abut immediately onto what is now Spring Farm land. The South wall of Old Farm (and its barn) runs along an area of land to the North of the house of Spring Farm which area forms part of Spring Farm. This area of land primarily comprises an area on which there are constructed a garage and some garden sheds, some hardstanding and gravelled areas and some garden beds. As the land slopes downhill from Old Farm to the building which is Spring Farm, this area of land effectively forms a wide terrace. Slightly below this area of land is the house at Spring Farm.
37. At its west end, the southern wall of Old Farm becomes the southern wall of the barn attached to Old Farm. The eastern wall of the house is the western wall of the same barn. The eastern wall of the barn fronts immediately onto a roadway, track or drive. This roadway, track or drive runs from the public road, Heyshaw Road (which public road runs broadly east-west to the north of Old Farm), to Spring Farm where it terminates in a parking/turning area. I refer to the roadway, track or drive as the “Roadway”. Old Farm has the benefit of a right of way over that part of the Roadway nearest to Heyshaw Road. It enables access to the front (or north side) of the Old Farm farmhouse and to the garden on that side.
38. The Roadway is now all a part of Spring Farm having been acquired by the Rolphs. Originally, when Spring Farm was sold off from other land owned by Mr Gilchrist, its owners did not own the Roadway. Instead, Spring Farm also had the benefit of a right of way over the Roadway. Other land to the east of the Roadway (currently under separate ownership) had and continues to have the benefit of a right of way over the Roadway too.
39. Where the eastern wall of the barn at Old Farm comes to an end at its northern end, the line of the wall continues as a (lower) self-standing wall all the way along the edge of the Roadway to Heyshaw Road but with a break in it where there is an opening into Old Farm. That opening is enclosed by a gateway and opens onto a parking/turning area in front of the house at Old Farm and its attached barn.
40. Close to this opening, on the north side of the entrance to Old Farm there is an underground culvert, under the Roadway.
41. Title to Old Farm is registered under number NYK237233. The Wilkinsons purchased Old Farm from a Mr and Mrs Charles in September 2016. Mr and Mrs Charles themselves had acquired Old Farm by a conveyance dated 21 April 1977 and made between Mr Alec Gilchrist as vendor and the Charles as purchasers. Under that conveyance two express easements were granted. First, the right of way I have

mentioned over part of the Roadway; secondly, a right of access, to enter the land retained by the vendor so far as necessary to carry out various works which I shall loosely describe as works of maintenance and repair (the “Access Right”).

42. There are three main issues before me. First, the extent and scope of the Access Right; secondly whether or not that Access Right has been substantially interfered with (and if so, what remedy should be granted); thirdly, whether or not the Wilkinson’s have established a case in private nuisance for interference with their enjoyment of Old Farm, and if so what remedy should be granted. Because there is a large amount of repetition between the incidents relied upon in each of the two Scott Schedules, I consider each of the incidents in order and then the issues of whether each one amounts to a substantial interference with the Access Right or an actionable nuisance regarding interference with the enjoyment of Old Farm.

The scope and effect of the Access Right

(1) The conveyance granting the easement and registered title

43. The Access right, was created by the conveyance dated 21 April 1977 and made between Alan Gilchrist (as vendor) and the Charles (as purchasers) (the “1977 Charles Conveyance”). That conveyance conveyed the freehold property more particularly described in the First Schedule thereto. The First Schedule identified the land and buildings thereon by reference to what was shown, for “the purposes of identification only”, on the “plans annexed hereto and thereon edged red”, together with two easements.
44. The first easement that was granted was a right of way over the first part of the Roadway from the public road to enable the owners of Old Farm to access their property. The part of the Roadway over which the right existed was identified by reference to that part of the Roadway as was coloured brown on an annexed plan.
45. The second easement that was granted was not by reference to any specific part of the land retained by Mr Gilchrist but was in the following terms:
- “The right with or without workmen and materials but on foot only to enter upon the said adjoining land retained by the Vendor so far as is necessary for repairing maintaining renewing painting and pointing any part of the Eastern and Southern walls of the buildings included in the property hereby conveyed”*
46. Unfortunately, confusion seems to have been made by the Wilkinsons between what I shall for convenience refer to in shorthand as a “repair/maintenance” access easement (or right) and a right of way.
47. A right of way has to be over specific identified land usually to get from Point A to Point B. There is an immediate issue as to the “way” which the right relates to. Thus, as is usual, the right of way over the Roadway granted to the owners of Old Farm was identified by reference to a coloured part of the relevant plan. However, the repair/maintenance right was over the land retained by Mr Gilchrist with no specific area of that land being identified. In reality only a small part of the retained land would be capable of being used because of the nature of the right and the limit that the

right to enter is only “so far as necessary” for maintaining/repairing the relevant parts of the buildings on the Old Farm property.

48. As it happens the land retained by Mr Gilchrist at the time of the 1977 Charles Conveyance owned a larger area of land than simply what is now Spring Farm. As is clear from a conveyance dated 28 September 1977 between Mr Gilchrist as vendor and Mr and Mrs Darnbrook as purchasers, Mr Gilchrist conveyed a large portion (or possibly all of) the land he retained ownership of at the time of the 1977 Charles Conveyance to the Darnbrooks. That land included what is now known as Spring Farm, several fields broadly to the South East of Spring Farm, the Roadway and some land and buildings to the East side of the Roadway, opposite Old Farm. Those lands were later further divided and sold off, Spring Farm having its own registered title created in 1988.
49. Secondly, a right of way is usually defined as exercisable at a certain time or times and is very often exercisable “at all times” or between certain hours of every day or most days of the year. A repair/maintenance access easement, as in this case, is much more limited in the time at which it will be exercisable. Equally, and as I have commented, it may be less clear in terms of the geographic area that is covered or can be used.

Registered title

50. Spring Farm is registered under title NYK259937. The registered title was created on 11 February 1988. The Rolphs were registered as proprietors, following a transfer, with title absolute on 6 February 2014. The Access Right of Old Farm under the 1977 Charles Conveyance is set out in terms in the Property Register of that title as being something to which Spring Farm is subject.
51. On 12 February 1988 title to the Roadway, and to an area to the east side of Spring Farm and then comprising a large field, largely to the south east of Spring Farm, was also registered. The Rolphs later acquired title to that large area of land pursuant to a transfer dated 8 April 2019 and were registered as proprietors on 10 April 2019. The Property Register to that title makes clear that that registered title is also subject to the Right of Way over the Roadway and the Access Right granted to Old Farm by the 1977 Charles Conveyance.
52. Title to Old Farm came to be registered on 23 June 2000 in the following circumstances (which are set out in greater detail in a letter dated 10 May 2021 from HM Land Registry to the Rolphs) (the “10 May letter”). Essentially, the Charles had mortgaged Old Farm to the Bradford & Bingley Building Society (“Bradford & Bingley”). At that time, title was unregistered. The relevant deeds were stored (with many other Bradford and Bingley mortgage conveyancing documents for other properties (“deeds packages”) at a storage depot at Hays Management Data Safe House in Birmingham. There was a fire at that storage depot. Many, if not all, deeds packages (approximately 60,000) were destroyed in the fire, including that relating to Old Farm.
53. It was necessary to reconstitute title for each and every unregistered property affected by making an application for first registration to HM Land Registry. In this connection a “*best solution to an imperfect solution*” described in the 10 May letter as

being one that balanced “*the interests of all parties whilst being as cost efficient and swift as possible*”, was adopted, described in that letter as the “Hays Process”.

54. The Hays Process is said, in the 10 May letter, to involve no investigation of surrounding registered titles, but instead HM Land Registry relying on a certificate of title from Bradford & Bingley and a statutory declaration from the borrowers in each case, supported by any copy documents that the borrowers might have held in their own right.
55. As regards easements, these were not recorded and guaranteed in the usual way. Instead, the “non-guaranteed entry” under what was then rule 254 of the Land Registration Rules 1925 was followed. This resulted in the Property Register to the Old Farm registered title not containing a statement that the land has the benefit of the specific easements set out in the 1977 Charles Conveyance but instead a notice (registered on 23.06.00) pursuant to the said rule 254 that “*the registered proprietor claims that the land has the benefit of a right of way over the land tinted brown on the title plan*”. That area of land comprises, in effect, the Roadway together with the area of land in front of the building/house which is Spring Farm and which together hugs the boundary of Old Farm on its east side and, where the adjacent land forms part of Spring Farm, its south side. The notice conflates the right of way over the Roadway and the repair/maintenance easement and shows the two as applying to an area of land that is greater than the Roadway and which, as regards the repair/maintenance easement, is not the entirety of the land to which notionally it applies.
56. The Statutory Declaration made by the Charles in connection with first registration of title to Old Farm was dated 9 June 2000. It exhibited a plan which showed an area over the Roadway which was said to mark the area where there was a right of way by vehicular access. It then, as a hatched area, showed the area of land being the continuation of the Roadway into Spring Farm and including the land of Spring Farm up to the boundary with Old Farm as being land over which the statutory declaration referred to a “right of way” but which in the plan is marked “Repair and Maintenance on foot only”. There is, was or seemed to be a dispute, at last at some time, as to whether the plan that I refer to (at page 175 of the Bundle) was in fact the plan attached to the Statutory Declaration or to the 1977 Conveyance but I am satisfied that it was attached to the Statutory Declaration and not the 1977 Charles Conveyance.
57. As the Land Registry explained to the Rolphs in the 10 May letter, the HM Land Registry drafter who drafted the registered title to Old Farm did not separate out the two separate easements referred to in the Statutory Declaration but instead used a generic description covering both and a plan which did not distinguish between the two rights but instead amalgamated the two areas which were shown separately in the plan annexed to the statutory declaration. As such, he wrongly assumed a plan was from the 1977 Charles Conveyance when it was not.
58. As the Land Registry has made clear, the relevant easements were protected whatever the registered title to Old Farm in fact shows.
59. Both the Wilkinsons and the Rolphs have at various times sought to amend the entries to the registered title of Old Farm but have eventually taken the matter no further because the Land Registry would not take steps to alter that title without first giving notice to the Wilkinsons (on any application by the Rolphs) and to the Rolphs (on any

application by the Wilkinsons). Both the Wilkinsons and the Rolphs seem to have been of the view that any such process would simply involve more money and dispute.

60. So far as it may assist, I can make clear that the 1977 Charles Conveyance (a) granted the two easements that I have identified; (b) that the right of way easement over the top portion of the Roadway is as identified on the relevant plan but that (c) the servient land in relation to the Access Way was simply all the land then retained by Mr Gilchrist (in 1977). The hatched area the subject of the Statutory Declaration does not reflect the extent of the Access Way and that (as per registered title to the surrounding land) the servient land is simply the relevant land identified generically and not parts thereof. This however is subject to the practicality that it is difficult to see that anything other than an area fairly close to Old Farm would in practice be used under the Access Way given both the “on foot” limitation, the purpose for which the Access Way is granted and the “necessity” limit.

(2) Legal Construction of the words of the Access Way as granted

61. I turn to the legal principles which apply in construing documents such as the 1977 Charles Conveyance.
62. The principles of construction of contractual documents applies equally to the construction of conveyances and for present purposes there are no special conveyancing presumption which might apply (for example, the special hedge and ditch presumption regarding boundaries).
63. There was no difference between the parties as to the principles of construction to be applied. I adopt the helpful summary and analysis of the most relevant Supreme Court cases in *Network Rail Infrastructure Ltd v ABC Electrification Ltd* [2020] EWCA Civ 1645 (“Network Rail”) at [18] and [19]:

“[18] A simple distillation, so far as material for present purposes, can be set out uncontroversially as follows:

- (1) When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. It does so by focussing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the contract, (iii) the overall purpose of the clause and the contract, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions;*
- (2) The reliance placed in some cases on commercial common sense and surrounding circumstances should not be invoked to undervalue the importance of the language of the provision which is to be construed.*

The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision;

- (3) When it comes to considering the centrally relevant words to be interpreted, the clearer the natural meaning, the more difficult it is to justify departing from it. The less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning;*
- (4) Commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made;*
- (5) While commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party;*
- (6) When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time the contract was made, and which were known or reasonably available to both parties.*

[19] Thus the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. This is not a literalist exercise; the court must consider the contract as a whole and, depending on the nature, formality, and quality of drafting of the

contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning. The interpretative exercise is a unitary one involving an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences investigated.”

64. A similar summary, to the same effect, is to be found at *Gale On Easements* (21st Edition, paragraph 9-20):

“The more important principles in this area can be summarised as follows:

(1) interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the execution of the document;

(2) the court will focus on the meaning of the relevant words in their documentary, factual and commercial context;

(3) the meaning of the words is to be assessed in the light of—

(a) the natural and ordinary meaning of the provision;

(b) any other relevant provisions in the document;

(c) the overall purpose of the relevant provisions;

(d) the facts and circumstances known or assumed by the parties at the time that the document was executed;

(e) commercial common sense;

(4) the process is an objective one in which one disregards subjective evidence as to the intentions of the parties;

(5) the general rule is that all relevant facts and circumstances can be taken into account as an aid to interpretation of the words used in the document;

(6) as an exception to the general rule referred to in (5) above, the court will not take into account the contents of pre-contractual negotiations save in so far as those negotiations reveal the existence of a background fact which is otherwise relevant;

(7) there is a further exception to the general rule referred to in (5) above where the document in question is only effective when registered in a publicly accessible register. (This latter point does not give rise to any issues in this case. I would in any event question its application in case like this where the land was unregistered at the time of the relevant conveyance).”

65. It has been clear, at least since *Ward v Kirkland* [1967] Ch 194, that a right such as the Access Right is a right which is capable of being an easement.

66. I turn to the purpose for which access may be gained under the Access Right.
67. The first question is whether, as the Wilkinsons submit, the relevant Access Right is to be read as relating to the entirety of Old Farm so that the reference to “walls” is limited to re-pointing. As put by the Wilkinsons, the clause (which has no punctuation) should be read as if it were punctuated as follows:

“The rightto enter....so far as is necessary for repairing, maintaining, renewing, painting (and pointing any part of the Eastern and Southern walls of) the buildings included in the property hereby conveyed.”

I have inserted parentheses rather than commas before (“and pointing” and “walls of” to make the construction argued for by the Wilkinsons more clear. The Wilkinsons in fact argued the case on the basis that where I have put parentheses there should in fact simply be commas.

68. I do not accept that this is the correct construction of the clause. It seems to me evident that the reference to “any part of the Eastern and Southern walls” qualifies each of the preceding present participles of the verbs in question and not just “pointing”.
69. First, this seems to me a natural reading of the sentence where a number of present participles are identified which may be overlapping in meaning and which are on their face directed to identifying all types of activity referable to the building (or part) thereafter described, namely the relevant walls. Secondly, the punctuation posited by the Wilkinson is theoretically possible but results in an unduly complicated and unnatural sentence. Furthermore, there would be a missing “and” between “renewing” and “painting” and the phrase starting “and pointing” would be better placed in parentheses rather than between commas. The identification of “pointing” of the specific identified walls would not have been needed had the present participles of the relevant verbs prior to that applied to the building as a whole. On the other side of the coin, it would be odd if repairing and maintaining the entire building was covered but, as regards the Southern and Eastern walls, only pointing. It also seems to me difficult to envisage that it would be “necessary” to enter (say Spring Farm) to repair windows at the front of Old Farm, facing onto the public highway.
70. Another way of looking at the matter is to refer to the background circumstances. After the conveyance, the Southern and Eastern walls of the Old Farm Buildings, would not be immediately accessible for repairs etc because they are bordered by land in separate ownership. In those circumstances the grant of an easement to Old Farm permitting access to the walls for the relevant repairing/maintenance issues of those walls, makes perfect sense. A right of access to repair the property generally does not make such immediate sense.
71. As regards the question of what is comprised within the term “Eastern and Southern walls”, the Rolphs, at a time when they were legally represented by Council and solicitors, filed a Defence which, in paragraph 13 provides as follows:

“The Defendants accept that the [Access] Right permits the Claimants to enter Spring Farm for the purpose stated above (i.e. for repairing etc.) and accepts that these purposes include cleaning the windows and gutters. It is also further

accepted that the [Access] Right on a true construction grants the Claimants a right to carry out work to the roof and chimneys of the building in question.”

72. Although the Wilkinsons suggested that the above concession only extended to cleaning of windows and gutters and not their repair and maintenance that is clearly incorrect. The concession is that the purposes (of repair etc) extend to cleaning the gutters and windows not that it only extends to cleaning those items. Although I personally have doubts that the easement as drafted extends to roofs and chimneys (see e.g. *Carnegie v Nolan* (Mr Hollander QC sitting as a Deputy Judge of the Chancery Division 19.03.18), the point has been conceded. In any event, it is quite possible that such a right would have been implied into the conveyance in any event (as Mr Hollander QC held in the *Carnegie* case though it is unclear whether as an easement of necessity, an easement arising more generally from the common intention of the parties or otherwise). The point conceded as to the existence of the easement rather than how it comes into being may therefore have solid foundations.
73. The Wilkinsons were also concerned that the relevant repair/maintenance rights should extend to items affixed to and which become part of the walls, either now or in the future. Provided that any such items are lawfully attached, so that they become part of the relevant wall I consider that that is correct.
74. So far as repair and maintenance are concerned, it is also fairly obvious that the Access Right can be used to enable checks to be made to see whether repairs or maintenance works etc are necessary and to identify what such works might be needed and how to carry them out (see e.g. *Dickinson v Cassillas* [2017] EWCA Civ 1254; [2018] 1 P&CR 8).
75. As the point has been raised in this case, I also consider that if it was “necessary”, a concept that I shall have to return to, the Access Right would, in my judgment, extend to the use by the dominant tenement (that is, Old Farm) of scaffolding, placed on Spring Farm, to enable relevant works to be carried out. Although there has been a holding in *Carnegie v Nolan* (supra), that the erection of scaffolding would amount to taking possession of the land on which the scaffolding is situated and therefore be inconsistent with the nature of an easement I consider that this is incorrect by analogy with the now established easement of parking and to be inconsistent with the reasoning of the House of Lords in *Moncrieff v Jamieson* [2007] UKHL 42; [2007] 1 WLR 2620. In this case, I would not have described this situation as a (separate) easement to put up scaffolding, rather as being a right to put up scaffolding as being included within the easement of access to repair etc. The analysis is, in my judgment, analogous to one where a right to stop for a sufficient time to load or unload is part of a right of way rather than a separate easement (see e.g. *Bulstrode v Lambert* [1953] 1 WLR 1064) or where a right of way may include an ancillary right to park (see e.g. *Moncrieff v Jamieson* itself).
76. A further point arises with regard to the ground conditions. At the most western part of the Southern Wall of Old Farm, I find that there always has been a change in level on the Spring Farm side of the boundary between Spring Farm and Old Farm where, in effect, the land would otherwise slope upwards. Rather than a slope there has, at least since the 1977 Conveyance, been a fairly low level retaining wall to a garden area or an area of vegetation (shrubs etc). The Wilkinsons say that the relevant wall has been rebuilt in a different location since 1977.

77. The first question is whether the right of access is a right requiring the land on the Spring Farm side to be levelled so that there is no retaining wall and no raised garden area. As regards the original garden retaining wall in place in 1977 I do not consider that the Access Way required that. Furthermore, although the line of the retaining wall may have been changed somewhat I also do not consider as regards the incidents to which I have been referred to that the existence of such a wall is something that the Access Right requires to be moved or levelled. It has been perfectly possible to access the southern walls and windows of Old Farm even if, say, any scaffolding might have to be adapted at the western end point. If the retaining wall is in a slightly different location the acid test is whether that re-siting makes the Access Right more difficult than it had been before to be exercised. I am not satisfied that it does, at least with regard to the incidents to date complained of by the Wilkinsons. Ultimately, the point can only be tested against specific facts and not a hypothetical. I cannot predict what the future might hold.
78. The Wilkinsons assert, as I have said, that the Access Right requires a strip of land three metres wide (although at least at one time they asserted that the width should be four metres) to be maintained cleared of all obstructions (including e.g. any planting, any pots or any wheelbarrows) all around the southern and eastern walls of Old Farm. As regards the eastern Wall they also object, for example, to the parking of a car by the Rolphs close to the eastern Walls (at any time) as being an actionable obstruction of the Access Right. In my judgment the Access Right confers no such rights.
79. I heard limited evidence of how often window cleaning is necessary but see no reason to think it would be any more frequent than the once a month referred to in *Ward v Kirkland*. It seems to me that the requirement that the Wilkinsons say should apply in this respect would be far too great an interference with the rights of the owners of the land (Spring Farm) in question. Further, as I go onto consider, there will only be an actionable obstruction of the Access Right if the same obstructs the right when it is legally capable of being used and is then sought to be used. In normal times, if there is say a 6 month period during which a monthly use of the Access Right (to clean windows) is needed, then there can only be a complaint in relation to obstruction on say 6 days out of the six month period and in between those times the owners of Spring Farm can “obstruct” the area outside Old Farm as much as they like. In my judgment, and as I have said, much of the problem in this case stems from the fact that the Wilkinsons have equated a limited right of access as equivalent to a right of way which can be exercised at any time of day or night throughout the year.
80. I appreciate that in an emergency it may be necessary to gain access in circumstances where there is no or little time to give notice. If that is not possible at that time, there may be a substantial interference with the easement and there may be a claim in damages. However, I do not consider that the court would or should grant any injunction in advance requiring the land to a depth of three metres surrounding Old Farm to be kept totally clear 365 days in the year against that eventuality.
81. I do not therefore agree with the Wilkinson’s case that the Access Right amounts to a right to have an area within three metres of the southern and eastern Walls of kept permanently clear of any plants, trees, shrubs, garden beds, pots, wheelbarrows or anything else. I will consider later in this judgment what would amount to an actionable interference with the easement because that might also bear on this submission of the Wilkinsons.

82. Another key point is that the Access Right is limited to entry (onto Spring Farm) which is “necessary” to carry out the relevant works. In my judgment in this context, “necessary” means “reasonably necessary” rather than “absolutely essential”. For example, I do not think that use of the Access Right could be defeated on the basis alone that it was possible to use cradles attached in some way to the roof/chimneys or elsewhere on Old Farm to lower from the roof line to clean the windows within the walls in question or, for example, from inside Old Farm using special equipment.
83. However, I do also consider that the test of “reasonable necessity” means that the owners of Old Farm are not able to insist on carrying out repairs in a manner or using equipment that they would like to or have available without any fetter. In the case of specific equipment, use of the same must be (objectively) “reasonably necessary” to carry out the specific works sought to be carried out pursuant to the Access Right. As I go on to explain later in this judgment, in September 2018, the Wilkinsons wished to use a 6 feet wide working platform with supporting stanchions extending a further five feet to carry out pointing to a section of the southern wall of Old Farm. The Rolphs’ response was to ask why something much narrower could be used, not least given that the roof had had major repairs in 2016-17, the works being carried out (at least in part) from much narrower scaffolding along the southern and eastern walls of Old Farm. If the Rolphs were correct and the work could as easily be done from ladders, a tower or something else which was much narrower than 6 feet wide, then in my judgment the Wilkinsons could not insist on using the platform they had in mind e.g. simply because it was something they happened to own or would like to use.
84. Another issue is whether notice is necessary before the Access Way can be utilised. In my judgment, the nature of the Right of Access is such that there can be implied into the grant a requirement that reasonable prior notice is given of any intention to use the Access Right (with relevant details of the time at which and scope of the access said to be justified). What is reasonable will of course depend on (among other things) the urgency of the need to use the Access Way and the nature of the particular use and what it will in practice involve both in terms of spatial and time need. Notice would usually be such as to enable the owners of Spring Farm to take any necessary steps to clear the relevant area permitted to be used under the Access Way.
85. In *Dickinson v Cassillas* [2017] EWCA Civ 1254; [2018] 1 P&CR 8, there was also an Access Right for repair and maintenance (and to read utility meters). A locked gate was erected by the owners of the servient land. At first instance the Recorder found that the erection of such a gate amounted to a substantial interference with the easement. The Court of Appeal held that that finding of fact was justified but largely because of the history of the relations between the parties. Lord Justice David Richards (as he then was) gave the lead judgment. On this aspect he said the following: .

“[35] On the basis that the above issues are decided against Mr and Mrs Dickinson, they appeal against the finding of the recorder that there had been a substantial interference with Mrs Casillas’ rights by the presence of a locked gate at the entrance to the drive running alongside the boundary wall to the house at Number 96. No injunction would be granted unless there had been a substantial interference with her rights or there was the threat of such an interference. Mr Nicholls pointed out that Mrs Casillas did not enjoy a right of way over the

property at Number 98 exercisable at all times and for all purposes but only a right of access for particular limited purposes. Unless there is an emergency, Mrs Casillas can reasonably exercise her rights of access by giving some reasonable notice to Mr and Mrs Dickinson who can then unlock the gate at a mutually convenient and reasonable time.

[36] Whether there has been a substantial interference with the exercise of the rights of access is a question of fact, which the recorder addressed in his judgment. He correctly directed himself that, in order for Mrs Casillas to maintain her claim, she had to establish on the evidence that there had been a substantial interference with the exercise of her rights. He carefully and fully reviewed the evidence, making detailed findings about the credibility of the evidence given to him by the parties.

[37] The recorder found that the gate was installed in or around 2003 and that before then Mrs Casillas and her agents had been able to, and did, enter the driveway of Number 98 for the purposes of maintenance and repair and that her meters had been read without difficulty. On numerous occasions since the gate was installed, Mrs Casillas had requested access but this had not been allowed by Mr and Mrs Dickinson. The recorder was satisfied on the evidence that they had behaved in a way that amounted to a substantial interference with the exercise by Mrs Casillas of her rights of access.

[38] There is no basis for interfering with the recorder's findings. Mr Nicholls' submission that the matter can conveniently be dealt with by notice to Mr and Mrs Dickinson when access is required founders on the evidence of their conduct in the past."

86. As I read matters, the giving of notice as a means of regulating the access right in that case to enable obstructions to physical access to be removed (the gate in that case) on prior notice being given was something that was capable, in theory and in an appropriate case, of preventing an obstruction from amounting to a substantial interference with such an access way. On the facts in that case, a substantial interference was found to exist because it was found that the servient owners would not act on prior notice as they should have done (or as it was submitted that they would do) so that the obstruction (the closed gate) would remain even after notice was given. However, an alternative way of looking at the matter is to say that a notice provision may be incorporated in any injunction that the court might grant to prevent substantial interference with the access right.
87. I appreciate that in this case I am not dealing with the question from the viewpoint of interpreting the Access Way rather than from whether the physical blocking of an access way can be said to be a substantial interference because on notice the obstruction can be removed (in the relevant case by unlocking). If I am incorrect about the interpretation of the scope of the right in this case, the same result is achieved by the analysis set out in the previous paragraph of this judgment.

(b) s62 Law of Property Act 1925, *Wheeldon v Burows* and Non-Derogation from grant

88. The Wilkinsons also rely upon s62 Law of Property Act 1925 (“LPA 1925”) and the principle in *Wheeldon v Burrows*. These represent two legal routes by which an easement may be taken to have been granted. So far as s62 LPA is concerned, that section has the effect of importing general words, set out in that section, into a conveyance. If the general words are apt to amount to the grant of an easement then the easement will have been expressly granted. The general words encompass relevant “rights enjoyed with” the land conveyed. .
89. In *Wood v Waddington* [2015] EWCA Civ 538; [2015] 2 P & CR 11, it was clearly established that s62 LPA 1925 can create an easement by grant in relation to rights that were enjoyed at the time of the conveyance, even where the two pieces of land (the dominant and servient land) had been in the same ownership, as they were in this case, immediately before the conveyance in question took effect. In such cases, because the “right” enjoyed prior to the conveyance was not an actual easement it is conveniently and commonly referred to as a “quasi-easement”. However, in such cases, *Wood v Waddington* establishes that the quasi-easement has to have been “continuous and apparent” in the sense developed in the cases applying the principle in *Wheeldon v Burrows*.
90. The Wilkinsons assert that the quasi easement of repairing and maintenance that they rely upon (if and to the extent that it is wider than that covered by the words of the 1977 Charles Conveyance) was “continuous and apparent” because, looking at the situation on the ground, the need to have access to repair etc. was obvious and it was so used by Mr Gilchrist.
91. However, this is not the relevant legal test for “continuous and apparent”. As was said in *Wood v Waddington*:
- “[37] In order to reach a conclusion about the applicability of s.62 it is necessary to consider both the features observable on the ground at the date of the conveyances in 1998 and the use made of the claimed rights.”*
92. There was no evidence at all as regards the use made of the claimed rights: I was simply asked to infer that repairs and maintenance must have been carried out. Given the nature of the then buildings: a barn, this by no means follows but in any event, as the analysis in the *Wood* case shows it is necessary to have evidence about the user in fact made in order to assess the quality and frequency of use so as to identify whether it amounts to a “continuous” use for the purposes of the “continuous and apparent” test.
93. Secondly, and in any event, there was no feature on the ground at the time from which the use could be said to be apparent. In *Ward v Kirkland* the general situation was similar to that in this case. However, as the second paragraph of the summary of the judgment in the headnote says:
- “(2) That since there was no apparent feature on the defendant's land designed or appropriate for the exercise of the right claimed, to maintain the wall and clean the windows and gutters, there was no continuous and apparent quasi-easement, and, therefore, the right claimed did not pass as an easement by implication of law, on the occasion of the conveyance of 1928”.*

94. In this case the position is exactly the same. It is not enough that from the land it may be possible to identify a need for a particular easement. What has to be shown is some feature on the ground making the relevant actual user of the easement “apparent”, for example, in the case of a right of way, a track or roadway.
95. The principle in *Wheeldon v Burrows* adds nothing to the s62 claim. As was pointed out in the *Wood* case:

“[36] It is common ground that, for the purposes of s.62, if a quasi-easement falls within the category of easements “enjoyed with” the land conveyed, there is no additional requirement that such an easement must be necessary for the reasonable enjoyment of the land: Watts v Kelson (1871) 6 Ch App 166. In this respect s.62 differs from and is broader than the rule in Wheeldon v Burrows. It is difficult to see how Mr and Mrs Wood could succeed under the rule in Wheeldon v Burrows if they fail under s.62. Since the rule in Wheeldon v Burrows is concerned with implication, while section 62 operates by way of express grant that is, perhaps, not surprising.”

96. In any event, it is difficult to see that any right conferred by s62 or arising as a matter of implication would be any wider than the express right in fact granted, unless perhaps in conferring a right of access by vehicles but that was not the thrust of the Wilkinsons’ case (ie that there was any vehicular right of access) and indeed, that was not pleaded.
97. I also do not consider that the obtaining of an easement under the route of non-derogation from grant is going to produce any further easement for the Old Farm and accordingly do not consider it further.

Private Nuisance: general

98. The classification of different types of nuisances may be said to be an exercise to assist in analysis but in which categories are not capable of being applied rigidly (see e.g. Sir Terence Etherton MR in *Network Rail Infrastructure v Williams* [2018] EWCA Civ 1514; [2019] QB 601 at [41]:

“ The difficulty with any rigid categorisation is that it may not easily accommodate possible examples of nuisance in new social conditions or may undermine a proper analysis of factual situations which have aspects of more than one category but do not fall squarely within any one category, having regard to existing case law.”)

99. What is clear is that private nuisance involves a wrongful interference with the claimant’s enjoyment of rights over land. The legal concept of land includes not only the earth itself and the buildings and other things physically attached to it but also legal rights, for example, easements, which attach in law to the land (see *Fearn v Board of Trustees of The Tate Gallery* [2023] UKSC 4; [2023] 2 WLR 339 (hereafter “Fearn”) at [9]).
100. Because the gist of the tort is interference with rights of property, the tort does not protect a claimant against, for example, private discomfort but only with interference

with the utility and amenity value of the claimant's land (including rights attached to such land).

101. It is convenient to deal with private nuisance by interference with an easement separately from private nuisance in terms of interference with the enjoyment of property, even though they may share many incidents in common and the remedies may be applied using the same principles.
102. As regards interference of enjoyment with land (other than easements), there are three loose categories of interference: (1) causing an encroachment on land; (2) causing physical damage to land or building or works or vegetation upon it and (3) unduly interfering with the owner's comfortable and convenient enjoyment of his land. In this case as regards private nuisance not involving alleged interference with the Access Right easement, the focus in this case is on the third of these categories.

Interference with easement

103. To succeed in an action for interference with or disturbance of an easement, the owner of the dominant land must establish a substantial interference with the easement to which he is entitled. Further, in respect of past and non-continuing nuisances where the dominant owner claims damages, he must be able to prove injury or damage caused by such substantial interference.
104. As regards interference with an easement (as with interference with enjoyment of land), what has to be shown is summarised in *Gale on Easements* (21st Edn 2020) at 13-02 as follows:

“It is not every interference with the full enjoyment of the easement that amounts in law to a disturbance; there must be some sensible abridgment of the enjoyment of the tenement to which it is attached, although it is not necessary that there should be a total destruction of the easement. The injury complained of must be of a substantial nature, in the ordinary apprehension of mankind, and not one arising merely from caprice or peculiar physical constitution of the party aggrieved”.

I refer also to what I say about substantial interference with enjoyment of land when considering the other type of private nuisance alleged in this case.

105. If at a particular time an Access Right, such as that in question in this case, is not by its terms capable of being used or is so capable of being used but the owners of such right do not then seek or wish to exercise, there will usually be no actionable nuisance from the fact that at such a time the Access Right would have been difficult or impossible to use. The fact of a state of affairs where the Access Right would be impeded if it were capable of being used and sought to be used might give rise to a right to apply for injunctive relief but I consider that remedy separately.
106. In this case I consider that it is significant that the Access Right is only exercisable when “necessary” for the purposes of maintenance, repair etc. As I have indicated, on the face of things, even for regular maintenance such as window cleaning, it is likely that that maintenance for window cleaning would involve access on about 12 occasions in a period of 365 days. I accept of course the Old Farm is an old building

and that there can be more maintenance required (e.g. pointing) than in a modern house.

107. The Wilkinsons, whilst arguing for a three metre area around the walls of Old Farm to be kept permanently clear of any obstructions, do so on the basis that this would enable access to be gained to the walls in most situations whilst implicitly accepting (a) that there may be occasions when even three metres would not be an adequate space and (b) that the owners of Old Farm cannot expect the Spring Farm land to be kept permanently clear in such a large area as to accommodate a possibility that access of an area wider than three metres might be required at times.
108. A repeated case made by the Wilkinsons is that if at any time there is any physical items anywhere within 3 metres of the Southern Wall of Old Farm then that amounts to an actionable interference with the Access Right. I disagree. First, as I have said, there is only a substantial interference with the Access right if there is an occasion when it is legally capable of being used and sought to be used and cannot be (or it is to the appropriate standard made more difficult to do so) as a result of physical obstruction. In my judgment, the Wilkinsons can insist on an absence of physical obstructions but only in respect of a time or times when they wish to exercise the Access Right. Secondly, in considering if a physical obstruction on the ground is such as to interfere with the Access Right it is necessary to consider for what purpose the Access Right is sought to be used. For example, if what is being sought to be used is the Access Right in order to clean windows the real question is whether access to the windows is substantially interfered with, not access to all and any part of the southern walls to Old Farm.
109. Thirdly, as regards the concept of “necessity”, in my judgment and as I have said earlier in this judgment, this is a standard of “reasonable necessity” rather than “absolute necessity”.
110. When considering whether injunctive relief for the future is required to prevent the Access Right being blocked, it is necessary to consider the scope of the Access Right and the factual circumstances.
111. As I have also said, in my judgment, the nature of the Right of Access is such that there can be implied into the grant a requirement that reasonable prior notice is given of any intention to use the Access Right. Even if I am wrong about this, a similar result flows from my conclusion that there will not be a substantial interference with the easement, or that any injunction would be limited, if there is a notice regime in place.

Enjoyment nuisance

112. So far as concerns private nuisance arising from an interference with the enjoyment of land by the landowner, rather than interference with an easement, the matter has been extensively reviewed by the Supreme Court in *Fearn*. This case involved a viewing platform at the Tate Modern art museum which overlooked the nearby flats of neighbours, the walls of which were largely constructed of glass. I start with a number of general propositions.

113. First, I have already referred to the point that nuisance only protects rights in land (or rights attached to land) and not, for example, a claimant's personal discomfort or position (see *Fearn* at [11], [23]). Some of the complaints of the Wilkinsons fall into this category (see further below).

114. Secondly, there is no conceptual or *a priori* limit to what constitutes a nuisance (*Fearn* at [12]:

“Anything short of direct trespass on the claimant’s land which materially interferes with the claimant’s enjoyment of rights in land is capable of being a nuisance”.)

In some cases the Wilkinsons' complaints fall into the category of direct trespass and do not give rise to a cause of action in Enjoyment Nuisance.

115. The first question the court must ask is:

“[21] whether the defendant’s use of land has caused a substantial interference with the ordinary use of the claimant’s land.”

116. As regards “substantial” interference:

“[22] Courts have adopted varying phraseology to express the point that the interference with the use of the claimant’s land must exceed a minimum level of seriousness to justify the law’s intervention. The terms “real”, “substantial”, “material” and “significant” have all been used. Put the other way round, the courts will not entertain claims for minor annoyances....

[23] The test is objective. What amounts to a material or substantial interference is not judged by what the claimant finds annoying or inconvenient but by the standards of an ordinary or average person in the claimant’s position. As famously expressed by Knight Bruce V-C in Walter v Selfe (1851) 4 De G&Sm 315, 322, the question is whether the interference ought to be considered a material inconvenience not merely according to elegant or dainty modes and habits of living, but according to plain and sober and simple notions among the English people; see also Barr v Biffar Waste Services Limited [2013] QB 455, para 36(ii).”

117. As regards “ordinary use”:

[24] Fundamental to the common law of private nuisance is the priority accorded to the general and ordinary use of land over more particular and uncommon uses. In Fleming v Hislop (1886) 11 App Cas 686, 691, the Earl of Selborne encapsulated this well when he defined a nuisance as what causes material discomfort and annoyance for the ordinary purposes of life to a man’s house or to his property. (emphasis added). In the earlier case of Ball v Ray (1873) LR 8 Ch App 467, 470, the same judge, when Lord Chancellor, had expressed the converse proposition that:

“if either party turns his house, or any portion of it, to unusual purposes in such a manner as to produce a substantial injury to his neighbour, it

appears to me that that is not according to principle or authority a reasonable use of his own property; and his neighbour, shewing substantial injury, is entitled to protection.” (Emphasis added.)

.....

*[27] The other aspect of this core principle is that, even where the Defendant’s activity substantially interferes with the ordinary use and enjoyment of the claimant’s land, it will not give rise to liability if the activity is itself no more than an ordinary use of the defendant’s own land. In the leading case of Bamford v Turnley (1862) 3 B & S 66, 83, Bramwell B formulated a test which has since been regularly cited, approved and applied, including at the highest level. He gave what were then contemporary examples of acts such as burning weeds, emptying cess-pools and making noises during repairs which (**unless done maliciously and without cause**) [**emphasis supplied**] would not be treated as nuisances, even when they caused material inconvenience or discomfort to neighbouring owners. He then said at pp 83—84:*

*“There must be, then, some principle on which such cases must be excepted. It seems to me that that principle may be deduced from the character of these cases, and is this, viz, that those acts necessary for the common and ordinary use and occupation of land and houses may be done, **if conveniently done**, without subjecting those who do them to an action. (Emphasis added.)”*

118. The reference to “conveniently done” is a reference to the act or conduct being carried out with proper consideration for the interests of neighbouring landowners, all reasonable and proper steps being taken to ensure no undue inconvenience is caused to neighbours (see *Fearn* at [28], [37]).
119. As regards acts done or conduct engaged in maliciously or purposely to interfere with a landowner’s enjoyment of his property and they do so substantially interfere then a nuisance will have occurred. It is not an “ordinary” use of land to use it maliciously to create substantial interferences with an adjoining landowner’s enjoyment of his land. Such use is not an “ordinary” use of land. Another way of looking at this is to say that, such malice may demonstrate that a “use” is not being “conveniently done”, that is, with proper consideration for the interests of neighbouring landowners.
120. As regards acts which are necessary for the common and ordinary use of land, this will be judged having regard to the nature of the locality (see *Fearn* at [38]-[41]).
121. The other side of the coin, is that an occupier cannot complain if the use interfered with is not an ordinary use (see *Fearn* at [25]).
122. As regards the right to build on one’s own land:

“[36] [In Hunter v Canary Wharf Ltd [1997] AC 655] The House of Lords reaffirmed the general rule at common law that anyone may build whatever they like on their land, unless this violates an agreement not to do so or an acquired right to light or to a flow of air through a defined aperture: see p 685D—F (Lord Goff), p 699C—H (Lord Lloyd), p 709A—H (Lord Hoffmann) and p 726B—H (Lord Hope). It followed that interference with the use of the claimants land

caused by the mere presence of a building on the defendant's land could not give rise to a claim for private nuisance. The same principle explains why no claim lies for interference with a view or prospect.

[37] The right to build (and demolish) structures is fundamental to the common and ordinary use of land, involving as it does the basic freedom to decide whether and how to occupy the space comprising the property. It follows that interference resulting from construction (or demolition) works will not be actionable provided it is.. "conveniently done" that is to say, in so far as all reasonable and proper steps are taken to ensure that no undue inconvenience is caused to neighbours..."

123. A further rule is that "coming to a nuisance" is no defence (*Fearn* at [42]-[46]).
124. It is also not a defence for a claim to nuisance that the activity carried on by the defendant is of public benefit (*Fearn* at [47]).
125. I do not have to address the position in any detail of nuisance in the case of persons alleged to commit nuisance whose conduct does not arise from their use of neighbouring land. Nor do I have to address the nature of the interest in, or occupation of, land that a claimant must have to bring a claim in nuisance.
126. For present purposes, the following matters can be treated as having to be established by a claimant complaining of Enjoyment Nuisance:
 - (1) Substantial interference to the claimant's enjoyment of land caused by the conduct in question;
 - (2) The use of the claimant's land, which is being interfered with, being a "common and ordinary" use of the land, having regard to the character of the locality in which it sits;
 - (3) The substantial interference is caused not by some common or ordinary use of the defendant's land and is not the necessary or natural consequence of such use OR it is caused as a result of some failure to carry out the activity in question with proper consideration for the interests of neighbouring landowners such that all reasonable and proper steps are taken to ensure no undue inconvenience is caused to neighbours.

The burden of proof

127. The burden of proof, of course, lies on the Wilkinsons.

The Oral evidence

128. I heard oral evidence from Mr Wilkinson, Mrs Rolph and Mr Rolph. The evidence of each of them is treated by me with caution. They have been involved in this dispute or series of disputes for years. They have rehearsed the dispute and the evidence on a number of occasions in writing and no doubt orally. Over time and with repetition, attitudes harden, memories become inaccurate and so on. Accordingly, I treat all the oral evidence with care and primarily test it

against the contemporaneous documents where available as well as the inherent probabilities.

129. In this respect I have well in mind the body of case law about the court's approach to evidence. As regards the difficulty of assessing the "demeanour" of a witness as a guide to truth and accuracy and the effect on memory of a continued re-consideration of a case and of documents over time, I would also refer briefly to the convenient summary set out in the judgment of Warby J (as he then was) in *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin) at paragraphs 39 to 41 where he said (with emphasis removed, and inserting sub-paragraph numbers for bullets in the extracts from the judgment in the *Kimathi* case, referred to below):

"[39] There is now a considerable body of authority setting out the lessons of experience and of science in relation to the judicial determination of facts. Recent first instance authorities include Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3650 (Comm) (Leggatt J, as he then was) and two decisions of Mostyn J: Lachaux v Lachaux [2017] EWHC 385 (Fam) [2017] 4 WLR 57 and Carmarthenshire County Council v Y [2017] EWHC 36 [2017] 4 WLR 136. Key aspects of this learning were distilled by Stewart J in Kimathi v Foreign and Commonwealth Office [2018] EWHC 2066 (QB) at [96]:

"i) Gestmin:

- (1) We believe memories to be more faithful than they are. Two common errors are to suppose (1) that the stronger and more vivid the recollection, the more likely it is to be accurate; (2) the more confident another person is in their recollection, the more likely it is to be accurate.*
- (2) Memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is even true of "flash bulb" memories (a misleading term), i.e. memories of experiencing or learning of a particularly shocking or traumatic event.*
- (3) Events can come to be recalled as memories which did not happen at all or which happened to somebody else.*
- (4) The process of civil litigation itself subjects the memories of witnesses to powerful biases.*
- (5) Considerable interference with memory is introduced in civil litigation by the procedure of preparing for trial. Statements are often taken a long time after relevant events and drafted by a lawyer who is conscious of the significance for the issues in the case of what the witness does or does not say.*
- (6) The best approach from a judge is to base factual findings on inferences drawn from documentary evidence and known or probable facts. "This does not mean that oral testimony serves no useful*

purpose... But its value lies largely... in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth”.

ii) Lachaux:

(7) *Mostyn J cited extensively from Gestmin and referred to two passages in earlier authorities.⁴⁵ I extract from those citations, and from Mostyn J’s judgment, the following:-*

(8) *“Witnesses, especially those who are emotional, who think they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason, a witness, however honest, rarely persuades a judge that his present recollection is preferable to that which was taken down in writing immediately after the incident occurred. Therefore, contemporary documents are always of the utmost importance...”*

(9) *“...I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective fact proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities...”*

(10) *Mostyn J said of the latter quotation, “these wise words are surely of general application and are not confined to fraud cases... it is certainly often difficult to tell whether a witness is telling the truth and I agree with the view of Bingham J that the demeanour of a witness is not a reliable pointer to his or her honesty.”*

iii) Carmarthenshire County Council:

(11) *The general rule is that oral evidence given under cross-examination is the gold standard because it reflects the long-established common law consensus that the best way of assessing the reliability of evidence is by confronting the witness. However, oral evidence under cross-examination is far from the be all and end all of forensic proof. Referring to paragraph 22 of Gestmin, Mostyn J said: “...this approach applies equally to all fact-finding exercises, especially where the facts in issue are in the distant past. This approach does not dilute the importance that the law places on cross-examination as a vital component of due process, but it does place it in its correct context.*

⁴⁵ The dissenting speech of Lord Pearce in Onassis and Calogeropoulos v Vergottis [1968] 2 Lloyd's Rep 403, 431; Robert Goff LJ in Armagas Ltd v Mundogas SA [1985] 1 Lloyd's Rep 1, 57."

[40] This is not all new thinking, as the dates of the cases cited in the footnote make clear. Armagas v Mundogas, otherwise known as The Ocean Frost, has been routinely cited over the past 35 years. Lord Bingham's paper on "The Judge as Juror" (Chapter 1 of The Business of Judging) is also familiar to many. Of the five methods of appraising a witness's evidence, he identified the primary method as analysing the consistency of the evidence with what is agreed or clearly shown by other evidence to have occurred. The witness's demeanour was listed last, and least of all.

[41] A recent illustration of these principles at work is the decision of the High Court of Australia in Pell v The Queen [2020] HCA 12. That was a criminal case in which, exceptionally, on appeal from a jury trial, the Supreme Court of Victoria viewed video recordings of the evidence given at trial, as well as reading transcripts and visiting the Cathedral where the offences were said to have been committed. Having done so, the Supreme Court assessed the complainant's credibility. As the High Court put it at [47], "their Honours' subjective assessment, that A was a compellingly truthful witness, drove their analysis of the consistency and cogency of his evidence ...". The Supreme Court was however divided on the point, and the High Court observed that this "may be thought to underscore the highly subjective nature of demeanour-based judgments": [49]. The High Court allowed the appeal and quashed Cardinal Pell's convictions, on the basis that, assuming the witness's evidence to have been assessed by the jury as "thoroughly credible and reliable", nonetheless the objective facts "required the jury, acting rationally, to have entertained a doubt as to the applicant's guilt": [119]."

130. The result of treating oral evidence with caution is that where the Wilkinsons' case turns on resolution of disputed oral evidence, the fact that the burden of proof lies on them can fairly result in difficulties for them in proving their case.
131. As a generality, I tended to find the evidence of Mr and Mrs Rolph more reliable than that of Mr Wilkinson and that of Mr Rolph more reliable than that of Mrs Rolph. The Rolphs were much more prepared to accept where their previous conduct or previous stated position was wrong or inappropriate and much more prepared to engage with questions put to them on an open-minded basis rather than simply sticking to their position through thick and thin. This does not, however, mean that I found the Rolphs' evidence always to be reliable. As I have said, I have had to treat all evidence with caution. I should also re-iterate what I said in my earlier judgment with regard to the boundary dispute, namely that all witnesses were, in my judgment, seeking to assist the court and tell the truth as they saw it.

The Incidents referred to in the Scott Schedules

132. As the Scott Schedules are supposed to identify the Claimants' case as regards interference with the Access Right easement and with their quiet enjoyment of their land, I shall go through both schedules but in date order of the incidents complained of. As is often the case, some of the incidents are alleged to support claims under both heads of nuisance. For convenience I refer to the "Scott Schedule: Alleged Interference" (dealing with alleged instances of interference with the Access Right easement) as "SSAI" with the relevant number of the incident in question and the "Scott Schedule: Alleged Private Nuisance: Alleged Loss of Quiet Enjoyment /Malice", dealing with interference with enjoyment of Old Farm as "SSAPN", again with the relevant number.
133. I am holding the Wilkinsons strictly to the entry setting out their case in the first column of the Scott Schedule and to their pleaded case. I am not allowing in late claims of trespass and assault for which they do not have permission to amend their case. Further, I am not allowing them to raise a wider case by reference to allegations raised by way of reply to the Rolphs' answers in the Scott Schedules to the assertion originally brought.
134. The correspondence in this case is voluminous. I do not cite every part of every letter and only refer to letters where I consider that they assist in understanding the situation as it developed.
135. As I have said, as a matter of generality, damages will follow where causal loss is shown to have flowed from a substantial interference with or, in the case of an easement like that under consideration here, obstruction of an easement. The Court may also grant an injunction. However, as regards the past, the court will usually only grant damages. An injunction may issue either to end an actual ongoing interference or in anticipation of a future interference. Many of the incidents relied upon in this case are firmly in the past.
136. A number of incidents which, on their face, are assertions of interference with the Access Right are then relied upon in the SSAPN, apparently on the basis that it reveals "malice". As I have explained "malice" is something that may tip certain conduct into constituting an Enjoyment nuisance if it would not otherwise do so on the basis that the conduct in question will not then be an ordinary user of land. However, the point of the SSAPN was not to identify "malice" in general terms but to identify incidents where the Wilkinsons asserted that there had been an actionable interference with their enjoyment of Old Farm such that it constituted a private nuisance, independently of any interference with the easement (amounting to a private nuisance resulting from interference with that property right).
137. I now turn to the facts in a little more detail as set out in the two Scott Schedules. On an incident by incident basis I consider the SSAI primarily from the perspective of whether there has been an actionable interference with the Access Right and whether damages should be awarded in respect of any such incident. Once I have considered all the relevant allegations, I then return to the issue of whether or not any form of injunctive relief should be granted. I take a similar approach as regards the SSAPN.
138. I have referred in terms to considering certain incidents in the Scott Schedules in conjunction with other incidents. This is by way of particular emphasis rather than suggesting that such a comparison has only been carried out where so expressly

indicated. I have in fact considered every alleged incident not only in isolation but together with all other alleged incidents. This is because (for example) (a) “malice” may be demonstrated if the position is looked at in the round rather than each individual incident being looked at separately in isolation; (2) similarly a “substantial interference” or a “non-ordinary use” of land may emerge from a consideration of matters in the round compared with a consideration solely of each incident individually (e.g. power washing, assuming it to causer noise, once in a 6 months might be a very different situation to power washing every day all day for 6 weeks).

139. As will become clear, I have found some limited examples of private nuisance to have been established as explained below. Where this is the case I have indicated my preliminary view as to the quantum of damages I would award in relation to the specific incident in question. This is with a view to assisting the parties to avoid having any further hearings and settling any remaining issues. In theory, the Wilkinsons have outstanding a possible claim to diminution in the value of their property. I have also not heard argument on the quantum of any damages. If the matter cannot be agreed then it may be necessary to have an inquiry as to damages on which my preliminary views as to quantum as expressed in this judgment would not bind the parties.
140. I should also add that I have not detailed the many times on which the police were called in by one side or the other. That in itself shows the strength of feeling and the fact that the disputes between the parties got out of control.
141. I turn now to the Scott Schedules.

12.06.15 SSAI no. 1

142. This incident is not in fact alleged to be an interference with the Access Right. Rather it shows what the Wilkinsons say were the limited obstructions on the ground in 2015, before the Wilkinsons moved into Old Farm. The photograph relied upon shows the Spring Farm area by the southern wall of old Farm to have been largely a gravelled area but with some items upon it such as a garden bench, a table and what looks like an animal (probably a dog) cage. Further away from the walls are at least one garden shed and a garage. The Wilkinsons say that the area was like this since 1977. However, I do not accept their evidence on this point as they were not at the property before they viewed it to buy. They purchased it in September 2016.
143. I bear in mind the evidence relied upon as set out in SSA1 no. 1 but it does not of course amount to any actionable nuisance for which the Wilkinsons can claim damages as they did not own Old Farm at the time of the photograph.

20.09.16 SSA1 No. 2

144. This incident is a letter sent to the Wilkinsons by the Rolphs.
145. Before I deal with the detail of the letter, I should set out the background. The Wilkinsons had taken possession of Old Farm on about 10 September 2016. They proceeded to take out a hedge, and a fence, on or near what both the Rolphs and the Wilkinsons thought to be on or near the south west boundary of Old Farm where it met Spring Farm. No advance warning was given. In fact the relevant boundary line

was later determined by me in my earlier judgment on that issue. The Wilkinsons were also proposing significant works to Old Farm which would require scaffolding on (at least) the southern wall of Old Farm. Further, a sun room extension (with foundations and further ground works) was then built by the Wilkinsons on the south-western end of Old Farm (within the Old Farm land). The removal of the fence and hedge left the whole area between the two properties opened up with no barrier. As the Rolphs had at least one dog, and leaving aside their children, this removal of a physical boundary, not least while works were going on, was a matter of concern to them.

146. The letter in question set out, under numbered points, first the Rolphs' upset that the hedge had been sawn to ground level without their consent. Secondly, their lack of understanding as to the detail of what was proposed by the Wilkinsons regarding the building of a boundary wall along the boundary of the properties. Thirdly, it went on:

"..we are aware that you require access onto our property in order to carry out works. Now, due to the lack of regard which you have proven to us and the immediate area around Old Farm we are very worried about how your future works will affect us and our property so, we are proposing a way forward that should avoid further upset.

With regard to any intended works by yourself or workmen on your behalf we will now require that the notice procedure be carried through and adhered to. All future works concerning points two and three and any others that are likely to cause disruption can be detailed in "notices" served by you (owner) to us (adjoining land owners) at least one month before you wish to start work. Due to the planned nature of the works this means that you may need to serve several notices so that the correct notice procedure is carried out following the relevant guidelines. Hence, prior to any works being done as outlined above we shall then have an opportunity to reply within the permitted time period; meaning that further discussion and or amendments is requested and agreed or not by either party BEFORE the start date. You will no doubt agree that by following the notice procedure any further upset and damage caused shall be kept to a minimum or at best avoided"

147. The Wilkinsons categorise this letter as a "hostile" letter:

"beginning a chapter of behaviour, belligerence and resistance to the easement and access that continues to this day...the "way forward" as suggested was especially draconian and by no means an invitation to discuss openly. It clearly illustrates the controlling and hostile nature of the defendants".

148. Having seen Mr Wilkinson in the witness box and observed his expostulations during the course of the trial I can well believe that the Wilkinsons' categorisation in the Scott Schedule reflects his position at the relevant time and not just after some years of litigation when attitudes have hardened and, potentially, recollections and assessment of the past become more unreliable.

149. For what it is worth, I consider that the Rolph's letter, understandably less amicable that might have been the case had there not been the history to that date, was a

genuine attempt to try and sort out a working procedure for minimising disputes and for ensuring there were no nasty surprises nor precipitate action. Indeed, ultimately, through discussion, the scaffolding did eventually go up on an agreed basis.

150. In any event, I am satisfied that a letter seeking to agree how the Access Right might be exercised in practice does not amount to an unlawful interference with that right.

28.09.16 SSAI No. 3

151. Reliance is placed upon a letter dated 28 September 2016 from the Wilkinsons' then solicitors, McCormicks, to the Rolphs. This letter sets out a number of allegations regarding threats to prevent access by way of blocking of gates and obstructing access for works to the roofs (including on the north side of the building). The obstructions referred to include raised planters and trees and, in effect, trespass to the wall of Old Farm by banking soil up against it.
152. I accept the Rolphs' case that the letter is not evidence (or at least primary evidence) of actual (as opposed to alleged) obstruction or damage. The Wilkinsons assert that the damage and obstruction materialised when the scaffolders turned up and I will deal with that incident later in this judgment.
153. In answer to the letter of 28 September 2016, by letter dated 2 October 2026. Mr Rolph entirely accepted that the Wilkinsons were entitled to access over Spring Farm for the purposes of the Access Right (but by foot only), denied that access had ever been refused, confirmed that there were no substantial obstructions on the ground and confirmed that the Police had spoken to the Wilkinsons to request agreement to an independent mediation regarding both the Access Way and the boundary, that this option had been rejected by the Wilkinsons but that so far as the Rolphs were concerned, the offer remained open.
154. I am unable to determine the underlying truth of the position at this time and the burden of proof lies on the Wilkinsons which they have failed to discharge. I am not satisfied that the letter itself amount to an interference with the Access Right. Nor am I satisfied that any of the allegations in it are substantiated as establishing a substantial interference with the Access Right.

30.09.16 SSAI No 4

155. The position on 30 September 2016 is shown by a photograph of that date. First there is a raised flower bed said to have been present until Spring 2018 when it was removed. A shed to the south of the south western corner of Old Farm is also shown. Planting close to the boundary between Spring Farm and Old Farm, running out at an angle from the southern wall of Old Farm is also shown.
156. Whilst I note the items in the photograph and the assertion that this stopped the Access Right being exercised "safely and conveniently" there is no evidence that on 30 September 2016 the Wilkinsons were entitled to and sought to exercise the Access Right and were prevented from doing so. Accordingly there was on that date no actionable interference with the Access Right.

157. I also note that although the Wilkinsons in their Scott Schedule assert that the planter was 18 inches away from the wall of Old Farm at its closest point, their then solicitor's letter of that time refers to it being 2 feet away.
158. As regards the shed I also note that in answer to a question from me on 11 October 2021, Mr Wilkinson, in evidence, confirmed that the sheds had not inhibited any works to date (i.e. between 2016 and October 2021). His concern was that they might do in the future. However, I do not consider that this vague concern is a case for any form of *quia timet* or anticipatory injunction. If and when there is an identified issue, that is the time to raise it.
159. Accordingly, I do not consider that item 4 SSAI demonstrates any actionable obstruction of the Access Way.
160. I will deal with the current state of the land between Old Farm and Spring Farm later in this judgment but for present purposes it suffices to note that the raised flower bed has been removed, and that it is no longer an issue.

02.10.2016 SSAI No. 5;
SSAPN No. 1

161. This incident is an email dated 2 October 2016 from Mr Rolph to McCormicks. The Access Right is acknowledged but it is stressed that it allows for access on foot, and not vehicular access, and that it is limited to access to do relevant works etc to the walls identified and not more widely.
162. Again, this letter setting out a party's case does not amount to any actionable interference with the easement.
163. The letter is also relied upon as being a or part of a course of conduct said to be an Enjoyment nuisance. It is said that the for two and a half years the defendants maintained that the Access Right was limited to the walls although they "knew" it included the windows. I do not consider that a letter setting out a party's case as to the scope of an easement can amount to a private nuisance, either as amounting to a substantial interference with such easement or as involving a substantial interference with the enjoyment of the property. I also do not consider that it evidences any "malice".

03.10.16 SSAI No. 6

164. By letter dated 3 October 2016, McCormicks wrote again to the Rolphs, responding to the email of 2 October 2016. They explained that the urgency was because of rainwater coming through the unrepaired roof. Scaffolding was required to be put in place "only for two weeks". A request was made to clear the area around the Walls to a distance of 10 feet, alternatively to agree that the Wilkinsons could do so.
165. This letter does not demonstrate any interference with the Access Right. Rather it is simply an assertion of the Wilkinson's case at the time.

03.10.16 SSAI No. 7

166. By six page letter dated 3 October 2016, the Rolphs set out their then position regarding the Access Right and the boundary. As regards the Access Way the Rolphs stressed in a number of places that the Access Right conferred under the 1977 Conveyance was one on foot only and not by vehicles and that it was limited to repairing, maintaining etc. the walls and not the roofs nor any works to the boundaries.
167. The Wilkinsons say that this is an example of obstruction of the easement. In my judgment, an assertion of the legal position does not obstruct the easement. Assuming the point to be wrong, it might have been grounds for taking court action and for declaratory and even anticipatory injunctive relief to prevent an interference but would not of itself have amounted to an interference. No actionable interference with the easement is established as a result of this letter having been sent.
168. By letter dated 16 October 2016, the Rolphs accepted that scaffolding could be undertaken. They sent a plan suggesting placement points for scaffolding poles. As regards a then raised planter they did not object either to scaffolding bridging the raised planter or scaffolding uprights being placed in the planter on boards as required. As regards a freestanding planter, it was said to be so small that upright poles could be placed either side of it. The plan, which appears accurately to reflect contemporaneous photographs, shows a raised planted flower bed (which was in effect a flower bed with planked sides raised some inches off the ground) and a freestanding planter, a freestanding structure with a raised bed some feet from its bottom, at right angles to the wall and which appears to have been a self-contained item of garden furniture.

01.11.16 SSAPN No. 3

169. Scaffolding was put in place along (among other walls) the southern wall of Old Farm on 1 November 2016. It remained there until about February 2017 when it was taken down. I have been shown photographs of the scaffolding. Certain upright poles were footed into the raised garden bed as envisaged by the Rolphs' letter. The Wilkinsons say that there was a substantial interference with the Access Right because (a) a car was parked making access from the Roadway onto Spring Farm difficult and another route (from Old Farm) was found to get the scaffolding to the southern Wall of Old Farm, although this route was also chosen to avoid interaction between the Wilkinsons' workmen and the Rolphs (b) the scaffolding was not safe and/or as they would have liked to have it erected in a different manner with regard to access points. They also rely upon the width of the scaffolding (with ladders) as being 3 metres and this is why a 3 meter area should, they say, be kept permanently clear. In this respect however I note how rarely scaffolding around the building is going to be needed.
170. There is no evidence at all that these alleged incidents caused any loss whatsoever in terms of any increased costs or delay to the project. Indeed, Mr Wilkinson confirmed to me in November 2021 that there were no extra costs and no delay. In the circumstances I cannot identify any actionable interference with the Access Right in connection with the erection of scaffolding at this time.
171. There was no independent evidence that a request was made to move the alleged car nor that there was any refusal to move it or that the car was parked there specifically to block the scaffolders. On the face of things, the car was parked on the Rolphs' own

land as they were entitled to do, subject to any question of substantial interference with the easement.

172. I should also note that I do not accept that experienced scaffolders/builders would have erected and/or used (as the case may be) scaffolding that, because of its manner of erection, was unsafe (as alleged by the Wilkinsons). Had there been any issues I am confident they would have been raised at the time and there is no evidence any issues were raised at the time.
173. This matter was also raised as a matter of Enjoyment nuisance as interfering with the general enjoyment of Old Farm. I do not see how matters going to solely to interference with an easement can be extended to say that they also involve this somewhat different form of private nuisance.

09.10.16 SSAPN No.2

174. The Wilkinsons assert that Mrs Rolph shouted that she would kill Mr Wilkinson when he asked when trellis and stored scaffolding of the Rolphs would be removed.
175. There is a dispute as to whether the incident took place on 9 October (as the Wilkinson say) or 13 October (as the Rolphs say).
176. Mrs Rolph has explained in her two witness statements that, in essence, she returned to her house to find Mr Wilkinson standing on the driveway to Spring Farm taking photographs of Spring Farm. He accused her of interfering with his access rights by allowing plants to grow next to his property and purposely placing a dismantled tower scaffold (which was awaiting collection) in a place to block his access. She initially thought he was joking. He said he was gathering evidence and appeared to be filming her given the manner in which he was holding out his phone. He would not leave when asked. He stood “rooted to the spot, steely eyed with pumped up posture”. She became distraught and frightened, She ended the incident by swearing at him and then went inside her house.
177. The Wilkinsons say that this description is at odds with the evidence of builders given to the police but neither these witnesses nor their earlier evidence have been produced. The Rolphs deny that they, at least, were ever asked for evidence by the police or questioned about the incident. The alleged witness statements to the police have not been produced.
178. I am not satisfied that any death threat was made. I am also not satisfied that this incident amounted to an Enjoyment nuisance. In effect, and at most, there was abuse by Mrs Rolph levelled at Mr Wilkinson when he was on Spring Farm for an unauthorised purpose and when he refused to leave. This is not something impacting on his (or Mrs Wilkinsons’s) enjoyment of Old Farm (or of the Access Right).

02.12.16 SSAI No. 8

179. The incident relied upon is by reference to a photograph taken on 2 December 2012 but in reality the points raised are those that I have considered regarding the erection and use of the scaffolding between November 2016 and February 2017. As I have

said, I am not satisfied that there was any actionable interference with the Access Way nor any causal damage caused in this connection at this time.

16.12.16 SSAPN No. 4

180. The allegation is that Mrs Rolph trespassed on Old Farm and threw soil and stones at Mr Wilkinson and at the caravan that the Wilkinsons were living in whilst Old Farm was the subject of extensive renovations. In my judgment, any claim in this respect is for trespass and/or assault not private nuisance. There is therefore no relevant Enjoyment nuisance arising from this incident as alleged.

17.02.17 SSAI No 9

181. This is a letter dated 17 February 2017 from the Rolphs to the Wilkinsons setting out their position regarding the boundary and the Access Right. Among other things, the Rolphs were asserting that they had permitted scaffolding pursuant to a licence which they had terminated and were now seeking licence fees from the date of termination of the licence on 25 January 2017.

182. Again, I cannot see how this letter making assertions as to the legal case of the parties can amount to an actionable interference with the Access Right. By this time the scaffolding had in fact been removed. It was removed on 11 February 2017. Thus the letter was claiming sums for the past but not seeking to interfere with any then existing scaffolding.

02.05.17 SSAI No. 10

183. This incident is a letter from the Wilkinsons to the Rolphs referring to the former's intention to install new windows in the southern wall to Old Farm. Obviously a letter from the Wilkinsons cannot amount to a substantial interference with the Access Right.

184. In the SSAI the Wilkinsons went on to say that in the light of the situation they did not, as threatened in their letter, go onto Spring Farm to abate the alleged nuisance. However, they say they delayed installing the windows until May 2018 because although the site was measured, from the Spring Farm land, on 8 May 2017, as shown by photographs of that date, they delayed carrying out the works whilst entering into mediation to try and sort the matter out. The mediation took place in October 2017.

185. In November 2021, in answer to questions from me, Mr Wilkinson did not identify any financial loss caused by the delay in the works of installing new windows.

186. I am not satisfied that there was any actionable obstruction to the Access Right in respect of this matter. Any delay in inserting the new windows was caused by the Wilkinsons' decision to await the outcome of mediation rather than because they were prevented from inserting the same by the Rolphs' conduct.

19.04.17 SSAPN No. 5

187. This incident is said to involve Mr Rolph going to the caravan that the Wilkinsons were temporarily living in on the Old Farm land, whilst Old Farm was being

revovated, after he had been “banned” from Old Farm. This, even if made out, involves trespass not nuisance and I need say no more about it.

18.05.17 SSAI No. 11

188. This incident relates again to the issue of replacement windows. The letter in question from the Rolphs re-iterated the legal advice that they had received that the Access Right to permit repairs/maintenance only applied to relevant works to the walls and not to the windows. As I have already said, I do not consider that a letter setting out a party’s legal position can amount to unlawful interference with an easement.
189. Although this may be relevant to declaratory and/or injunctive relief the position, as regards the latter, is that the issue of the scope of the easement in this respect has been resolved by the concession made by the Rolphs in their defence.
190. The letter in question responded to a letter from the Wilkinsons, whereby the Wilkinsons gave notice that they intended to install new windows to the rear of Old Farm (ie along the southern elevation), that they would exercise their right to abatement if they could not gain access and that they would hold the Rolphs responsible for any damages or injury to their (the Wilkinson’s) equipment, themselves or their workmen that were the result of a failure by the Rolphs to make the area safe,
191. The Rolphs’ letter refers to the fact that Mr Wilkinson and his contractor had gained access to the southern Wall of Old Farm by way of ladders on Spring Farm to enable them to measure up for the new windows.
192. It also refers to the fact that in February 2017 guttering along the southern and eastern elevations of Old Farm had been removed and renewed as carried out by workmen acting for the Wilkinsons and working from ladders placed on Spring Farm land.
193. This suggests that the Access Right was in fact used in the respects identified by the letter. There is no suggestion that the letter was incorrect in this respect.
194. Finally, I note that the letter does not suggest that any works to install windows, using Spring Farm land, would be prevented by the Rolphs. Rather, the Rolphs sought comfort regarding the insurance, risk assessments, safety measures and so on and suggested consultation with Mr Rolph prior to the commencement of any works to Old Farm from Spring Farm land.
195. I am not satisfied that this letter amounted to any actionable interference with the Access Right.

23.05.17 SSAI No 12

196. This is a photograph showing the immediate gravelled area along the Southern elevation of Old Farm to be clear, save for the then raised garden bed. The Wilkinsons say that (a) the raised bed was an obstruction and (b) that a chicken shed (shown in the photograph) as having been moved in front of a garden shed on the Rolphs’ land, (with other unspecified items) was later moved back closer to the

Southern wall of Old Farm which there caused an obstruction and a substantial interference with the Access Right. More generally, the Wilkinsons assert that if they are dependent on co-operation from the owners of Spring Farm in clearing the area that they need to work from then there is a substantial interference with the Access Right.

197. First, I find that there is no evidence that the Wilkinsons (a) sought to but could not gain access to exercise the Access Right on 23 May 2017; (b) after the chicken house was moved back and in the days after 23 May 2017, sought to exercise and were prevented from exercising the Access Right, in each case because of any physical obstructions.
198. Secondly, I repeat my finding, that, as a matter of generality, some form of reasonable notice to exercise the Access Right can be expected and that the existence of such a requirement is to be implied into the Access Right and does not amount to a substantial interference with its exercise.

26.07.17 SSAPN No. 6; SSAPN No. 7

199. This incident involves wind chimes placed in the area of Spring Farm immediately behind Old Farm.
200. There is a dispute as to how long the wind chimes were in this location.
201. SSPN No 6 is a complaint about the position on 26 July 2017 at 5:51pm. The Rolphs accept that the windchimes were placed there on about 26 July 2017.
202. A letter dated 27 July 2017 from the Claimants complaining (among other things) of the wind chimes was sent to the Rolphs (being the “incident” at SSAPN NO 7).
203. The Rolphs say that the windchimes were moved on 1 August 2017, following receipt of the letter dated 27 July 2017. This is confirmed by a letter of that date.
204. However, in the “reply” column a complaint is raised that the windchimes were in situ at later dates. I will come to those allegations, which are separately identified incidents in the SSAPN, in due course.
205. I have seen and heard the Rolph’s wind chimes at the location on my site visit. At that time they were situated elsewhere on the Rolph’s property.
206. Although I consider the hanging of the windchimes in this case to have been an ordinary use of the Rolph’s land, I do not consider that placing wind chimes so close to their neighbour’s property as to interfere with their sleep would have been done “conveniently”. I consider that, especially at night and in the Summer when windows may be open, that they can amount to a substantial interference with enjoyment of an adjoining property as they can interrupt or prevent sleep. I accept the Rolphs’ evidence that they did not deliberately place the windchimes there to cause annoyance but they liked to hear the sound of them while they were working in that area.
207. However, this is subject to the following caveat. A substantial interference with enjoyment of the land and/or that the use being made of the adjoining land (in this case by the Rolphs) causing such interference is not being carried out “conveniently”

would, in my view, not apply to the innocent placing of windchimes in the location in this case, unless and until complaint had been made and time given to remedy the position. In this case the windchimes were not that loud and would often not be ringing (eg if there was no breeze). I am satisfied that the Rolphs acted promptly when alerted of the issue and that they moved the windchimes.

208. If I am wrong in this, and the incident does amount to an actionable interference with the enjoyment of Old Farm as matter of Enjoyment nuisance, then doing the best that I can my initial view would be that the damage for which compensation should follow, would be in the region of £100 a day (taking into account that the chimes may not have been chiming constantly and that the protection I consider the law should give is in respect of night time only). Accordingly, if contrary to my view, the placing of windchimes where they were placed amounted to Enjoyment Nuisance, my initial view is that the Wilkinsons would be entitled to a maximum sum of £700 as regards the maximum 7 days which the Rolphs accept that the wind chimes were in place.

29.07.17 SSAPN No. 8 Review

209. The factual allegation (which is admitted) is that Mrs Rolph was videoing the Wilkinsons from the Spring Farm side of the boundary.
210. It is no defence to say (as the Rolphs do) that the Wilkinsons were also taking photographs, looking over the boundary fence or videoing at various times as a matter of generality.
211. However, I accept the Rolphs' case that the videoing was undertaken to show that Mr Wilkinson was himself taking pictures of them on their land at this time.
212. I do not consider that this limited incident, lasting for a short period and in the particular circumstances, amounted to a substantial interference with the Wilkinsons enjoyment of Old Farm and thus consider that no actionable nuisance occurred in this respect.

01.08.17 SSAPN No. 9

213. This "incident" is a letter dated 1 August 2017 from the Rolphs by which the Rolphs claimed payment of £1,700. This was said to be due as a result of a letter dated 18 January 2017 by which the Rolphs gave one week's notice to remove the scaffolding which the Wilkinsons had originally been asked to be put up for two weeks. The scaffolding had in fact been there since 1 November 2016. The letter, in the alternative, offered the option of leaving the scaffolding in place at the rate of £100 a day, starting with expiry of the one week's notice. It was said that there was therefore an agreement to pay such rent. In my judgment no such agreement can be brought about in this unilateral manner and, on the face of it, the Wilkinsons were entitled to maintain the scaffolding there being no case raised that such user was excessive or no longer "necessary" within the terms of the Access Right.
214. Nevertheless, I do not consider that this letter or claim amounted to an Enjoyment nuisance. It seems to me that this matter could only possibly amount to an actionable interference with the Access Right. I find that it was not such an actionable

interference. I reject the Wilkinson's attempt to add to complaints of actionable interference with the Access Right not by amending the relevant Scott Schedule but by seeking to bring it within the new Scott Schedule dealing with Enjoyment nuisance.

01.08.17 SSAPN No. 10

215. This "incident" relates to another matter contained in the Rolphs' letter to the Wilkinsons dated 1 August 2017. In the letter, the Rolphs refer to the "*Unnatural attention of Mr Wilkinson to Mrs and Ms Rolph from Old Farm windows*", which is used in a heading to the letter. The letter goes on to refer to having raised this issue on many times. Whilst appreciating that Mr Wilkinson might wish to enjoy views from his windows, it questions what views he can be enjoying when "*seen late evening, standing back from your windows, with no lights on whilst Mrs Rolph is maintaining our area behind your property. This is especially concerning when it is dark outside and the only view would be Mrs Rolph working by light from the security lights we have installed.*" It then goes on to refer to Mr Wilkinson having watched Mrs Rolph from a ground floor window with no lights on at 9:50pm "for a concerning length of time." The police were said to have been informed.
216. First, I am not satisfied that these allegations reflect anything other than the genuinely held belief of the Rolphs at the time.
217. However, secondly, I am not satisfied that Mr Wilkinson was in any way showing any unnatural or (if implied) sexual interest in Mrs or Ms Rolph. I am however satisfied that he was frequently keeping an eye on what was going on on the Rolph side of the boundary and was almost looking for things to complain about. This is shown by, among other things, a number of video stills or photographs taken by the Wilkinsons of Mrs Rolph working in the Spring Farm land behind Old Farm. All of which appear to be attempts to gather evidence of conduct that the Wilkinsons say interfered with their enjoyment of their property.
218. I am not satisfied that this letter amounts to an Enjoyment nuisance. I do not accept that the letter would have discouraged the Wilkinsons from using their house for normal purposes ((including looking out of their windows at the views). However, it would have discouraged Mr Wilkinson from looking out to see precisely what the Rolphs were doing on their side of the boundary for extended periods. However, in my judgment, that in itself would have been behaviour which would have amounted to a private nuisance to the Rolphs or, at the least, not behaviour which would be within the "ordinary use" of the land.

05.08.17 SSAI No. 13;
05.08/17 SSAPN No. 11

219. This incident is illustrated by a photograph taken on 5 August 2017 showing a number of containers, a coiled hose reel with hose, a small dustbin and various other items stored against part of the Southern Wall to Old Farm.
220. There is no evidence that the Wilkinsons sought to exercise the Access Right on 5 August 2017. Accordingly I am not satisfied that this incident demonstrates an actionable interference with the easement.

221. The Rolphs say that the items were stored in this location temporarily whilst they were tidying their shed(s). They accept that periodically they use their land, including up to the southern Wall for placing items, for a longer or shorter period but say they would move them if asked to enable the Access Right to be used.
222. The Wilkinsons deny that the items were placed as shown in the photographs for the reason given. It seems to me nothing turns on this point and I do not need to resolve it. The Wilkinsons also refer to a photograph taken on 15 December 2017 showing garden items placed within the 3 metres that the Wilkinsons assert should be kept clear at all times. This confirms what the Rolphs have said, namely that they do use their land even up to the boundary for storing items from time to time. However, there is no evidence that the Access Right was sought to be exercised (or was prevented from being used) in December 2017 and no actionable interference with the Access Right at this time is established.
223. This matter is also relied upon separately as being an incident of an Enjoyment nuisance. In my judgment, the matters complained of are relevant solely to interference with the easement and do not raise a separate cause of action in Enjoyment nuisance. The Wilkinsons say that the items were stored as shown in the photograph as a deliberate and malicious attempt to prevent them using their easement. This might be relevant ultimately to a case in private nuisance as regards other incidents (as being relevant to intention and/or propensity) but I am not satisfied that this instance is shown to be a deliberate and malicious attempt to stop use of the easement.

08.11.17 SSAI No. 14;
08.11.17 SSAPN No.12

224. This is a photograph showing various items, including a garden bench and a form of table or staging with things on it and pots and containers beneath it close to the southern wall of Old Farm. The Wilkinsons rely on this as evidence of a “change of material” outside the kitchen window to Old Farm and showing “the constant” which is that they cannot get to the window.
225. There is no evidence that the Wilkinsons sought to exercise, or were prevented from exercising, the Access Right on 8 November 2017. There is therefore no actionable interference with the Access Right.
226. The Wilkinsons also rely upon this matter as constituting an Enjoyment nuisance. As with SSAPN No.11: in my judgment, the matters complained of are relevant solely to interference with the easement and do not raise a separate cause of action in Enjoyment nuisance.
227. The Wilkinsons say that the items were stored as shown in the photograph as a deliberate and malicious attempt to prevent them using their easement. This case might be relevant ultimately to a case in private nuisance as regards other incidents (as being relevant to intention). However, I am not satisfied that this instance is demonstrated to amount to a deliberate and malicious attempt to stop use of the easement.

12.11.17 SSAPN No.13

228. The Wilkinsons assert that the wind chimes had been moved closer to their bedroom windows again and rely on a letter dated 12 November 2017 from them to the Rolphs asking the wind chimes to be moved again as they were disturbing their (the Wilkinsons' sleep again).
229. The Rolphs deny receiving this letter. They say that the wind chimes were not moved at this time. However, Mr Rolph in his witness statement referred to the wind chimes as being only hung up during the day time so as not to inconvenience or disturb the Wilkinsons. It may well be therefore that they were hung up during the day and inadvertently not taken down on the night of 11 November 2017.
230. On the balance of probabilities, I am satisfied that the windchimes had been moved back. The only complaint made in SSAPN No. 13 is of the incident referred to in the letter dated 12 November 2017. My preliminary view is that an award of £100 damages in respect of the incident apparently on the night of 11 November 2017 would be appropriate but no more.

15.12.17 SSAI No. 15;

15.12.17 SSAPN No. 14

231. On 15 December 2017, the Wilkinsons wished to gain access to the rear (south wall) of Old Farm to do some works to their newly installed kitchen window. The installer had sealed the window unit with silicone on its outside and left quite a lot of silicone on the window, so the Wilkinsons went round to clean it. They could not gain access due to items being stored on the land. Mrs Wilkinson asked Mrs Rolph to move the materials. She moved all of the items. This took about 10 minutes.
232. In oral evidence in November 2021, Mr Wilkinson confirmed that the relevant windows had all been installed. He also confirmed that Mrs Rolph removed the items shown in the photograph on 15 December 2017, following a request from the Wilkinsons, and that this took about 10 minutes.
233. I have been shown over 15 photographs/stills in connection with this item on SSA1 (though some related to March 2018 when further windows were installed, the photographs showing Mr Wilkinson and a contractor assisting each other). It appears both sides were taking photographs as at December 2017.
234. The Wilkinsons' objection is essentially that they have to ask for things to be moved rather than having free access whenever they want it. As I have explained I consider that this interprets the Access Right too widely.
235. I do not consider that this incident demonstrates any actionable interference with the Access Right.
236. The Wilkinsons also complain that photograph show other obstructions that might have taken longer to move but which at the time they did not ask to be moved and did not need to be moved to exercise their Access Right for the purpose that they wished to at the time (i.e. to gain access to a specific window to clean off silicone sealant or equivalent). I do not consider that this amounts to an actionable interference with the Access Right.

237. They also complain that they were filmed and that Mrs Rolph patrolled nearby to watch what they were doing. I do not consider that this amounted to an actionable interference with the Access Right.
238. This is also relied upon in the SSAPN as an instance of private nuisance by way of interference with the Wilkisons' general enjoyment of Old Farm rather than just interference with the easement. I do not consider on the facts of this case that this incident (if established) would go beyond a private nuisance founded on interference with an easement. As regards it being an example of "malicious" conduct, this incident might be relevant ultimately to a case in enjoyment nuisance as regards other incidents (as being relevant to intention and/or propensity) but I am not satisfied that this instance is an example of a deliberate and malicious attempt to stop use of the easement.

15.12.17 SSAI No. 17

239. The Wilkinsons, as an alleged separate incident of substantial interference with the Access Right, rely on a further 15 or so photographs showing the position on the ground on 15 December 2017 when they went to "clean" (by scraping off rather than simple glass cleaning) the relevant window. There were also various video clips of the position on this date. They say these photographs demonstrate that the Access Right was blocked. I do not propose to address each and every photograph and the detailed points made as regards each by the Wilkinsons. Essentially the point remains the same, there was no actionable obstruction regarding the Access Right and the Wilkinsons were able to exercise the Access Right for the purposes that they wished to on 15 December 2017.
240. One point however I must pick up on is a complaint by the Wilkinsons that a photograph of a ladder (at page 449 of the bundle) shows a ladder propped against the southern wall of Old Farm at an "unsafe angle". I cannot gauge that from the photograph but the photograph does show there was plenty of room to step the foot of the ladder further away from the southern Wall of Old Farm. The only possible obstruction is a tape, in red and white, roughly following the line of that southern wall at some distance away and then, as other photographs show, running parallel to the eastern wall of Old Farm. The precise circumstances in which that tape had been put up (and by whom) was unclear to me but I consider that the Rolphs (if they had erected it) would have moved it had they been asked (and a proper case for doing so been put to them).
241. Accordingly, I find no actionable nuisance established as regards these matters.

15.12.17 SSAI No.18

242. This is in fact the same incident that I have been dealing with above. Under this incident the Wilkinsons rely upon a photograph of the table and material that Mrs Rolph was asked to move and did move. Other photographs show the area once cleared. This does not substantively add to the case or cause me to change the relevant findings and evaluative exercise that I have already made and carried out.

15.12.17 SSAPN No. 15

243. This again, is the same window cleaning incident. The Wilkinsons complain that Mrs Rolph videoed them rather than taking photographs which, they say, would have been adequate. The videoing is said to have been distressing for the Wilkinsons. Given the Wilkinsons own use of videos including CCTV and their apparent agreement that independent evidence would protect all parties, this might be regarded as being somewhat rich.
244. In any event, if anything this is an interference with the easement and I do not see that it can be bought under the heading of Enjoyment nuisance.
245. For the avoidance of doubt, I would not have held it to have substantially interfered with exercise of the easement in any event.

26.12.17 SSAI No. 19

246. This incident is evidenced by a photograph dated 26 December 2012 of various items said to be not easily moveable and to prevent convenient access to Old Farm. I disagree with these descriptions. In any event, it is not suggested that at the time (which seems to be late afternoon as it is dark or almost so) the Access Right was sought to be, or prevented from being, exercised.

26.12.17 SSAPN No. 541

247. This relates to flashing Christmas lights erected around the Rolphs' garage, said to have been on "day and night" for 10 days from 23 December 2017.
248. The lights although flashing were not, in my judgment, unusually bright, erected especially close to Old Farm or erected with any intention to disturb the Wilkinsons. I accept the Rolphs' evidence that the lights were turned off at night when they went to bed and that this was at the latest usually at about 11pm..
249. First, in this day and age I do not consider that this amounted to a substantial interference with the Wilkinsons' enjoyment of Old Farm as that test is objectively applied.
250. Secondly, I consider that this amounted to a perfectly ordinary user by the Rolphs of their land in this day and age. I also consider that the erection of the lights and their illumination met the test of being "conveniently done".
251. Somewhat surprisingly, given police resources, the Wilkinsons called on the police on 23 December 2017 quite late at night with regards to these lights. This confirms me in my view that the Wilkinsons, at least at times, have lost any sense of proportion or objectivity.

03.01.18 SSAI No. 20; SSAPN No. 17

252. This incident is a letter dated 3 January 2018 from the Rolphs to the Wilkinsons. In it the Rolphs refers back to the "window scraping clean" incident of 15 December 2017. It asserts that on 15 December 2017, the Wilkinsons entered Spring Farm and went to the area where the Rolphs had their garden sheds, oil tank, hen house and

miscellaneous items and were seen taking photographs and measurements of Spring Farm and that this was not within the Access Right but amounted to an act of trespass. The limits to the Access Right were stressed and that it did not amount to a private right of way but a right of access for the specific purposes set out in the 1977 Charles Conveyance.

253. The letter made clear that if the Wilkinsons wished to access Spring Farm for purposes outside the Access Right then they should contact the Rolphs in writing and explain why and when they wished to enter the Rolphs' land. Any temporary permission would only be offered when Mr Rolph was at home at a time of the Rolphs' choosing and convenience. In addition, the letter "reinforced" the Rolph's written request that due to:

"historical and disturbing events involving your presence at our home, Mrs Rolph would prefer that you do not enter our property at will without an independent witness being present. Our request is reasonably offered to protect both parties against any chance of any false accusations/allegations/claims being raised in the future".

254. The Wilkinsons assert that this letter amounted to:

"a clear indication of the attempt to place restrictions on Cs legitimate access, including not entering [Spring Farm] without an independent witness being present or for unspecified reasons not determined by the Ds to be legitimate".

255. I disagree with the Wilkinsons' characterisation of this letter. The suggestion of an independent witness was just that or, at the most, a request. It was entirely sensible. As regards the "unspecified reasons", the Rolphs were simply insisting on their legal rights, that if access was sought as a matter of permission with there being no right to the same, then the Rolphs would consider whether to grant access.
256. The Wilkinsons assert, in the SSAI, that taking photographs and measurements are completely within the Wilkinsons' rights. This however depends on the purpose for which they were being taken. Of course, if related to the upkeep and maintenance of Old Farm, and if properly justified, the matter falls within the Access Right. However, if the operation was an evidence gathering operation to begin a case against the Rolphs or defend a case brought by them, then that was not permitted by the Access Way. In the SSAI, by way of reply, the Wilkinsons do not clearly address this issue. They do not deny taking photographs and measurements on 15 December 2017, nor do they say what they were in fact doing the same for.
257. There is no evidence that the letter itself substantially interfered with any actual or proposed exercise of the Access Right and I find therefore that there is no actionable interference with the Access Right caused by this letter.
258. In the SSAPN the Wilkinsons list this incident as an incident also of Enjoyment nuisance. If this incident gave rise to any cause of action it can only relate to the easement and not to the enjoyment of Old Farm generally and cannot therefore give rise to an Enjoyment nuisance.

259. This relates to the placing of a sign saying “You are evil” “outside the kitchen window” of Old Farm. As regards this, it seems that the sign was originally placed on a shed roof so it was visible from at least one bedroom window at Old Farm. The sign then seems to have been stored in or beside the shed. It is the latter storage that is complained of in the SSAPN as put forward.
260. I am not satisfied that when stored in or beside the shed the sign was readily visible from the kitchen of Old Farm. The kitchen window of Old Farm was, at this stage, a frosted window with a pattern of small leaves, the small leaves being clear glass. The window is set back in a thick wall and in front of that there is the kitchen counters. In effect, unless someone stood up and placed their eye to one of the leaves the sign would not realistically be seen. These observations are made with the benefit of the site visit. The photograph relied upon by the Wilkinsons was, in my judgment, taken by placing the lens of the camera up against one of the “leaf”, clear non-frosted areas of the window. I do not therefore consider that any Enjoyment nuisance arises from the sign being visible from the kitchen window. In short, it was not readily visible and was indeed apparently stacked on its side and was not “displayed” in front of the kitchen window.
261. As regards the placing of the sign on the roof of the shed, I would have found this to be a private nuisance and would have been minded to limit any damages to £200. However, this point is raised in effect in “reply” on the Scott Schedule and, as I have said, I am not prepared to permit new cases to be raised in this manner.

29.04.18 SSAPN No. 19, No. 20

262. This incident is the issuing of harassment notices to Mr and Mrs Rolph by the police. The Notices recite relevant allegations but make clear that at that stage the police are not commenting on the truth of the allegation. The SSAPN refers to the wind chimes being in situ between July 2017 and April 2018. I have dealt with the position in July and November 2017. I am not satisfied that the windchimes were put back after November 2017.
263. The notice to Mr Rolfe refers also to knocking over the Wilkinsons’ wood stack. If this did take place it would be a trespass not, in my judgment, a nuisance. The allegation in the SSAPN about this refers to witness statements from neighbours about this incident but none were produced.
264. The notice to Mrs Rolph, as well as the wind chimes, refers to circulation through the village of CCTV photographs, taken from CCTV, of the Wilkinsons. This seems to me matter personal to the Wilkinsons and nothing to do with their enjoyment of Old Farm. I do not consider that it can amount to a private nuisance as affecting their enjoyment of Old Farm.

23.05.18 SSAI No. 21

265. The “you are evil” sign is also relied upon as a substantial interference with the Access Right. It is said that this sign was a deterrence to use of the Access Right, as I understand it, taken in conjunction with other conduct of the Rolphs. The Wilkinsons say that they do not exercise the Access Right when Mrs Rolph is at home and that

this also means that Mrs Rolph is not there to remove obstructions when they do wish to use the Access Right.

266. I do not consider that this sign has in any way acted so as to prevent the Wilkinsons exercising their Access Right as they assert. Further, and as I have said, I do not consider that they are entitled to demand to march onto Spring Farm land and have obstacles removed with no reasonable notice.
267. Accordingly, I do not consider that this sign amounted to any actionable interference with the Access Right.

11.06.18 SSAI No. 22; SSAPN No. 21

268. This incident is simply a photograph of the southern wall of Old Farm and close environs. It shows what appear to be easily moveable items stored by the Rolphs on their land close to the southern wall of Old Farm.
269. The original photograph relied upon by the Wilkinsons, also shows wicker panels appearing roughly parallel to the southern wall at its eastern end and running about one half of its length. This was to protect plants and the panels have since been moved. In my assessment they would not have prevented the use of ladders against the southern wall. Certain pots, a bench and a filing cabinet etc, would have had to be moved depending on where access was required and for what purpose.
270. There is no evidence that the Access Right was sought to be exercised on this day and that it was in any way prevented. I am not satisfied that any actionable interference with the Access Right occurred on this day.
271. The Rolphs, also in the context of this item in the SSAI, rely upon a further 16 or so photographs showing clear access notwithstanding the presence of the wicker panels (which it is agreed have since been moved). Some of the photographs show the Wilkinsons using ladders.
272. One of the Wilkinsons' ripostes is to say that access to wash a ground floor windows is not the same as access to wash an upstairs window, clear a gutter or repair a roof or repoint a wall. They have not identified cases when they were in fact inhibited in Accessing their property for these purposes. This also harks back to their general case that they are entitled to a totally clear area of at least 3 metres from the wall of their house.
273. I should add that I do not accept that the Wilkinsons have been unable to wash their upstairs windows to date. Those windows looked remarkably clean at the time of my site visit.
274. In the SSAPN, the Wilkinsons also assert that the filing cabinet was banged as it was moved around and that it was rattled late at night and in the morning deliberately to disturb them. I am not satisfied on the balance of probabilities that the filing cabinet was deliberately banged about or rattled deliberately as alleged. I can understand that there may have been noise from the same as it was moved or if anything was stored in it, in opening or shutting drawers (including doing so for the purposes of moving it), but I do not regard storage of the filing cabinet as unusual user and, as I have said, I

am not satisfied of the alleged deliberate conduct which, if established, would otherwise have tipped the conduct into constituting a nuisance. For the avoidance of doubt I am not satisfied that the Rolphs' exercise of their right to store the filing cabinet in the location in question, and any contact they then had with the filing cabinet in that location, amounted to a situation where they were not acting for proper consideration of the Wilkinsons.

275. It further appears that the filing cabinet was not in this location for more than a month though the Wilkinsons originally asserted that it had been there for months.

11.06.18 SSAI No. 23

276. This "incident" is simply another photograph taken on the same day as SSAI No 22. All my previous comments and findings in relation that that item of the SSAI apply (*mutatis mutandis*).

20.07.18 SSAI No. 24; SSAPN No. 22

277. On this occasion there was an altercation between Mrs Rolph and Mr and Mrs Wilkinson. The former attempted to stop the Wilkinsons bringing their ladders onto Spring Farm. According to the Wilkinsons, Mrs Rolph said words to the effect of "You can't come on, No, you can get off my land. I don't feel safe. You are not doing this." Most people would have retreated at that point but the Wilkinsons physically forced or barged her out of the way holding their ladder. Mr Wilkinson told me that he was saying words to the effect of "we're coming to clean our windows, There's no reason why we cannot. If you're afraid call the police". This largely gives the lie to any case that before this the Wilkinsons were in fear of Mrs Rolph and that such fear prevented them using the Access Right.
278. When the ladder was placed against the southern wall of Spring Farm Mrs Rolph knocked it down.
279. The overall incident was fairly short, measured in minutes (no more than three minutes) and thereafter the Wilkinsons carried on and cleaned their windows (as Mr Wilkinson confirmed in evidence November 2021) and Mrs Rolph left the Wilkinsons alone. I have seen different video clips of the incident a number of times.
280. The Wilkinsons assert that their fear of Mrs Rolph means that they will not exercise the Access Right when she is at home without an independent witness being present and they are frightened of the consequences of approaching Mrs Rolph. This fits ill with their behaviour on this occasion, their subsequent correspondence and their attitude in court. Put simply the Wilkinsons are not lightly intimidated by anyone. On this occasion whereas most reasonable persons might have retreated rather than confronting Mrs Rolph and simply telling her she should call the police if she didn't like it, the Wilkinsons physically marched on and got on with their window cleaning.
281. I consider that on this occasion there was a substantial interference with the Access Right. However, although substantial enough to involve an actionable interference, in real terms the interference was of short duration. My initial view is that an award of £200 in damages for the interference is the maximum, which in my judgment reflects the limited (in time and effect) interference in question.

282. Both sides apparently involved the police who ultimately took no action. It is at the least unfortunate that valuable police resources should have been wasted on this domestic dispute, which, if either side had behaved more sensibly could have been avoided.
283. The Wilkinsons also rely on this incident as a Enjoyment nuisance. I do not consider that anything that occurred amounts to such a nuisance.

20.07.18 SSAI No. 25

284. This incident is said to be an example of the Wilkinsons being unable to access (by ladder) their bedroom window, above the kitchen window, at the west end of the southern wall. The job was said to be incapable of completion because of obstructions. However, the evidence of the Wilkinsons themselves is that obstructions would be removed if they asked for them to be removed. There is no evidence that they asked in this case and that the Rolphs refused to do so.
285. In SSAI the Wilkinsons assert that the “whole area” is inaccessible without a “working platform” being put in place, but I am not satisfied that the Wilkinsons have never properly asked for access for a working platform or that it would not be possible to erect one or an equivalent solution, given, as I say that the whole wall was covered in scaffolding in 2016-2017. This issue arises in relation to SSAI No. 29 and No 30. In my judgment, the problems that the Wilkinsons identify with regard to the extreme western end of the Southern wall (obtaining access to repoint the wall next to their bedroom window on the western side by using a ladder for access) is a result not of obstruction by the Rolphs but by the physical nature of the ground and the change in garden levels at that point.
286. I consider that these are ground features which the Rolphs have not exacerbated and which existed (whether or not in the same precise locations) in 1977. If, which may well be right, a ladder is inadequate to do a particular job falling within the Access Right then complaining that ladder access is not possible does not get the Wilkinsons, in their case, very far, The complaints the Wilkinsons make are primarily directed at repointing or foam filling of cavities but this is not what they were doing on 20 July 2018. What they were doing then was cleaning the windows and I am satisfied that, ultimately they were able to do so
287. I am not satisfied that any separate actionable interference with the Access Right is demonstrated as at 20 July 2018 arising from physical obstructions on the ground.

20.07.18 SSAI No. 26

288. As a separate matter of substantial interference with the Access Right, also on 20 July 2018, the Wilkinsons also rely upon a photograph of the wicker fence then in place which was set back from the southern wall and has since been removed. I am not satisfied that this prevented Mr Wilkinson from cleaning his windows on this day and accordingly am not satisfied that there was any actionable interference with the Access Right on this day flowing from the presence of the willow panels.

20.07.18 SSAI No. 27

289. This involves a complaint relating to planting at the east end of the southern wall of Old Farm. The Wilkinsons say that the planting prevents use of ladders. Part of the problem is not planting as such but plants in pots, which could be moved. I cannot see from the photograph where on the wall access by ladder is said to have been prevented. I am not satisfied that an actionable interference with the Access Right took place on 20 July 2018 caused by the then wicker panels and pots in front of them.

20.07.18 SSAPN No. 23

290. This incident is said, by the Wilkinsons, to be the leaving on of a radio for two hours at high volume outside their kitchen window in “retaliation” for the earlier events of that day outlined above, and accordingly a private nuisance.

291. I am satisfied that Mrs Rolph was working in the area and that she had the radio on whilst doing so. I am not satisfied that the volume was deliberately high or that the radio was turned on as retaliation.

292. I do not consider that there was a substantial interference with the enjoyment of Old Farm on the facts.

293. I also consider that working in the garden with a radio on is an ordinary user of land in this day and age. I am not satisfied that the use made was “not conveniently done”.

294. Standing back, I consider that the use by landowners of their radios whilst gardening or using their gardens is the sort of thing neighbours have to put up with so that it is not usually a substantial interference with adjoining landowners use. Further, it is not a non-ordinary use of land. Finally, any requirement, to use the radio “conveniently” in this context would in effect require it not to be used at all and that is not workable.

20.07.18 SSAPN No. 24

295. The Wilkinsons complain of the blocking of the easement as referred to above. As I have already said, I do not see that something that is alleged to amount to an interference with the easement in this case can separately also amount to enjoyment private nuisance in the sense in which I made using that expression.

296. Separately, they also complain about coloured spinners which the Rolphs erected for a period on a line outside their shed and which line of spinners was visible from the Wilkinsons’ kitchen window (but only to a limited extent given the frosted windows). The spinners were put up, say the Rolphs, and I accept, to deter wildlife access to chicken food stored in their shed and fed to chickens which were kept in a chicken house fairly close to the shed though at a later stage it was moved to a different location.

297. I do not consider that the spinners amount to an Enjoyment nuisance.

298. First, I do not consider that the limited view that the Wilkinsons had through their kitchen window resulted in these spinners causing a substantial interference with the Wilkinsons’ enjoyment of Old Fram.

299. Secondly, I do not consider that the erection of spinners (however ineffective the Wilkinsons say that they were) is a non-ordinary use of land and I do not accept that the erection in question was not “conveniently done”.

26.08.18 SSAI No.28

300. This relates to an occasion where there had been an ingress of water above the kitchen window to the West end of the southern wall of Old Farm. As an emergency measure, at the bank holiday and whilst the Rolphs were away, Mr Wilkinson sought to apply foam to the stone work of the wall, above a steel girder which is situated above the kitchen window. I understand Mr Wilkinson to have been successful. Although the job may not have been as easy as it would have been had the whole area been cleared, he was able to carry out the emergency work using a long “foam gun” and did not himself even think it necessary to move such temporary obstructions as were there. There are various relevant photographs.
301. I am not satisfied that there was any actionable obstruction of the Access Right at this time.

03.09.18 SSAI No. 29

302. This incident is a letter of 3 September 2018 sent by the Wilkinsons to the Rolphs. In it, the Wilkinsons explain about the ingress of water the subject of the emergency works under SSAI No. 28. The urgent requirement, they said, was to repoint the southern wall of Old Farm at its western end. They asked for obstructions to be moved and noted that they wished to erect a temporary working platform approximately 6 feet wide with supporting stanchions extending a further 5 feet. They also noted that a build-up of stones, soil and plants at the south west end of the wall which they said did not exist before 2017 was preventing any form of platform or ladder being erected conveniently and safety and asking for that area to be cleared. As regards the need for an independent witness, they explained that they could not find one but that their intention was to install CCTV security to cover the area and that they hoped that that would provide a “balanced and pragmatic” solution.
303. This letter is not, of course, an actionable interference with the Access Right but it is part of the history.

07.09.18 SSAPN No. 25

304. This is a complaint that a wicker panel was placed against the Wilkinsons’ kitchen window. As the photograph shows, the wicker panel base was fairly close to if not along the bottom of the south wall where it was “moored” in place by some garden plant boxes. The panel was then angled away from the wall, not necessarily deliberately but probably as a result of gravity, and probably at about 60 degrees or so. The kitchen window at this time was largely frosted as I have described.
305. The Rolphs accept that the wicker panel was placed as shown in the relevant photograph. It was there for a few hours whilst the Rolphs were working on their sheds and planting area.
306. I do not consider that this incident amounts to an Enjoyment nuisance.

307. No easement of light is relied upon.
308. There was no substantial interference with the enjoyment of Old Farm: given the frosted window there is no view as such and only a sight of some form of panel in effect limiting light (but not appreciably).
309. Secondly, the use was an ordinary use and I am not satisfied that it was not conveniently done.
310. There is no right to a view and in this respect the Rolphs are entitled to erect whatever they want on their own land if it is an ordinary use and this was.

10.09.18 SSAI No. 30; SSAPN No. 26

311. This item is a letter dated 10 September 2018 from the Rolphs to the Wilkinsons replying to the latter's letter of 3 September 2018 (SSAI No.29). A number of points are made which the Wilkinsons say amounts to an interference with the Access Right.
312. Among other points the letter:
- (1) Offered a meeting on site to discuss requirements;
 - (2) Pointed out that the roof of Old Farm had been repaired in 2016-17 using scaffolding and that the alleged raised ground at the western end of the Southern wall had not caused any issues then;
 - (3) Asserted that the ground in fact had always been raised at the west end of the southern wall of Old Farm;
 - (4) Asked who would be carrying out the works.
 - (5) Asked that no property be left on Spring Farm overnight;
 - (6) Asked if a mobile tower, ladders or trestles and boards would be used and then removed each day;
 - (7) Asked that all debris and materials would be removed and not left for the Rolphs to tidy up as, it was asserted, had occurred when the windows in the southern wall were replaced;
 - (8) Asked for detailed information about the proposed CCTV installation;
 - (9) Asked why a 6ft platform was considered necessary when the scaffolding used to effect the roof repairs had been only 4ft wide;
 - (10) Pointed out that three mediation meetings had failed to result in an agreement to resolve the issues between the parties but invited the information requested to be provided so as to avoid antagonism.
313. I reject the case that this letter amounts to an actionable interference with the Access Right. I also reject any case that as a result of such letter the Wilkinsons were deterred

from exercising their Access Way when the conditions for its exercise were otherwise met, either at the time or thereafter.

314. The Wilkinsons also rely on this letter as amounting to an Enjoyment nuisance. In this respect they fasten upon the following sentence in the letter made in the context of a paragraph asking if the Wilkinsons would remove all debris and materials at the end of each working day:

“Furthermore, there is concern of materials left causing us personal injury as they have previously done so.”

267. I fail to see how this can even begin to amount to Enjoyment nuisance.

17.09.18 SSAI No.561

315. This incident is a photograph of what is said to be an extra panel added to the eastern end of the wicker fence which was parallel to the southern wall of Old Farm in June/July 2018. It is said that this restricted access more than previously and, is said by the Wilkinsons, to amount to a substantial interference with the Access Way. The extra panel appears smaller than the other wicker panels and to be braced like a door. The Wilkinsons say that it was tied into the wicker panel and in the relevant photograph looks not dissimilar to a door. It is said to have been in place at the time of the incidents SSAI Nos. 24-27 on 20 July 2018. Access to the southern wall of Old Farm was said to be restricted to a narrow point of entry.
316. I am not satisfied that there was a substantial interference with the Access Right caused by this extra panel. First, the windows were cleaned on 20 July 2018 and there is no evidence that the extra panel (since removed) prevented cleaning of the windows. Secondly, as regards access, there is no specific right to access over a specific route. Access was still possible and was obtained. Further, the panel could have been removed (and I find would have been removed) had the Wilkinsons asked it to be removed for the purposes of gaining access (although this may have only taken place if they could have justified the need to remove the extra panel to obtain access).
317. The alternative “access route” involved going around the wicker fence panels at the south east end of the wall and then to enter about midway along the south wall a “corridor” between wall and wicker fence. This was as opposed to entry to the “corridor” immediately along the edge of the south wall from its east corner, between the wicker fence and the wall). I do not regard the access as it was (i.e. at the midpoint of the “corridor”) as being one that was so inconvenient compared with the alternative access that the Wilkinsons say they were entitled to, that it can be said that the Access Right (which by its terms was not access to the wall by a specific route) was substantially interfered with as a result of the extra panel of fencing having been erected.

17.09.18: “Pre-action protocol” letter from the Wilkinsons

318. As part of the history I note that the sending of the pre-action protocol letter by the Wilkinsons.

23.09.18 SSAI No. 32

319. This incident is illustrated by a photograph said to show the interference caused by the wicker fence or panels erected by the Rolphs along (but at a distance of between about 1.3 to 2.15 metres: see SSAI No. 34 below) the southern wall of Old Farm.
320. There is no suggestion that the wicker panels in fact inhibited any attempt to use the Access Right on 23 September 2019. Rather, the case is that this illustrates a general problem in exercising the Access Right. There is therefore no case of actionable interference on 23 September 2018.
321. As the wicker panels have since been removed, there is no need for me to consider injunctive relief as to their removal in this connection.

23.09.18 SSAI No. 33

322. This “incident” is in fact illustrated by a photographs of the other side of the then wicker fence panels running parallel to the southern wall of Old Farm. The same comments as regards SSAI No. 32 apply.

26.09.18 SSAI No.34

323. This “incident” is in fact a photograph said to illustrate a state of affairs. It is, again, of the wicker panels showing what had been the end panel closing the “corridor” at the rear of Old Farm at the eastern end of the southern wall of Old Farm having been moved to a position further along the wicker panelling.
324. The photograph shows annotations by the Defendants showing various measurements that they took. The relevant measurements show distances between the south wall of Old Farm and a panel as being between 1.3 metres to 2.15 metres, the measurements having been made at various points along the south wall of Old Farm.
325. There is no suggestion that the wicker panels in fact inhibited any attempt to use the Access Right on 26 September 2019. Rather, the case is that this illustrates a general problem in exercising the Access Right. There is therefore no case of actionable interference on 26 September 2018.
326. As the wicker panels have since been removed, there is no need for me to consider injunctive relief as to their removal in this connection.
327. The Wilkinsons make the point that wicker panels (or anything else) could be re-erected and that the various plants shown will grow over time. I will deal with these points when considering the issue of injunctive relief with regard to the Access Way.

02.11.18 Rolphs’ Response to “pre-action protocol” letter of Wilkinsons dated 02.11.18

328. By letter dated 2 November 2018, the Rolphs’ then solicitors wrote a “pre-action protocol” response to the Wilkinsons’ letter of 17 September 2018, which they explained they were treating as a Pre-Action Protocol Letter.

329. Having dealt with the south western boundary dispute, the letter went on to deal with the Access Right. As regards this it was accepted that the Access Right encompassed (among other things) window cleaning and repairs to the windows of the southern and eastern walls of Old Farm but not the roofs, “or any part of the roofs such as the gutters” but asking that, if this analysis was disagreed with, for full particulars of matters relied upon in support of a wider construction of the grant.
330. As regards conduct the letter referred to the large amount of bad feeling generated over the years. As regards a number of allegations as to the conduct of the Rolphs made by the Wilkinsons, the letter said that there had been much earlier correspondence on the matter, that in the interest of taking a “*good deal of the heat and light out of the situation*” it was not intended to respond to the allegations other than to say that they were strenuously denied.
331. The letter also asked for full particulars of other aspects of the Access Right (e.g. it being “on foot” and limited to “necessity”) and as regards interference and damage claims/assertions.

04.12.18 SSAI No. 35; SSAPN No. 27

332. This incident involved Mrs Rolph banging (once) on the kitchen window of Old Farm as shown on a video still at 21:03 at night. There is a dispute as to whether she was swearing loudly or not but in my judgment, resolution of this issue would take matters no further and is unnecessary.
333. Mrs Rolph, in her witness statement, explains what had triggered this conduct. By a six page letter dated 3 December 2018 and received by the Rolphs’ then solicitors, and passed on by them to the Rolphs on the same day, the Wilkinsons addressed a large number of matters that were or had been in dispute. Towards the end of the letter it was said:
- “We fear that this dispute has become an obsession, particularly for Mrs Rolph which must be damaging to her mental health, her family and certainly to our wellbeing. When children feel compelled to get involved on their parents’ behalf. Someone needs to call a halt.”*
334. From Mrs Rolph’s perspective, as she put it in her witness statement, the letter contained
- “false, harmful and discriminative comments about me, damming [sic] me as a mother by accusing me of harming my children. On sight of the letter I was so distraught when I read the comments that I admit to banging on the claimants window, swearing and shouting I didn’t want to see them but I wanted them to hear me”.*
335. As regards the Access Right, the Wilkinsons say that this conduct demonstrates Mrs Rolph’s “violent and unpredictable behaviour” and that this incident is part of a pattern of conduct that has to be considered when determining whether the use of the Access Right has been impeded and/or injunctive relief is required. I consider that question in more detail later in this judgment.

336. For present purposes I simply note that there is no suggestion that the conduct in fact inhibited any attempt to use the Access Right on 4 December 2018. There is therefore no case of actionable interference on 4 December 2018.
337. The Wilkinsons also rely upon the banging on the window once (which is admitted and was probably a trespass) and the swearing as amounting to an Enjoyment nuisance. As regards this, it seems to me that it does amount to such a nuisance. However, my initial view is that fairly nominal damages of £100 in this respect would be appropriate.
338. On the evening of 7 December 2018, Mrs Rolph said that she had a mental breakdown that nearly ended in tragedy. She visited the Crisis Resolution Team at Harrogate District Hospital.
339. As a separate matter, the Wilkinsons complain in SSAPN that Mrs Rolph tore up the solicitors' letter from the Wilkinsons solicitor and threw it into the Wilkinsons' garden. This is admitted.
340. I consider that the letter throwing incident might amount to trespass rather than enjoyment private nuisance but even if it does amount to enjoyment private nuisance I would only award purely nominal damages. My initial view that they would be in the region of £10. The Wilkinsons actually complain that this conduct was a demonstration that proceedings would have to be issued. The suggestion that this conduct of Mrs Rolph caused them considerable distress is something I find not to be the case.

19.01.19 SSAPN No. 29

341. Mr Rolph at night will go to his sheds for various perfectly proper reasons. In the past, when he did so he wore a head torch. (since this incident, electric lights have been installed, as I deal with later in this judgment). The Wilkinsons assert that he was deliberately shining the torch into the rooms of Old Farm.
342. In my assessment the video footage is perfectly clear: Mr Rolph is not shining his head torch deliberately into the windows of Old Farm. In turning, the head torch might play against the south wall of Old Farm for a moment but there simply is not the deliberate sustained behaviour that the Wilkinsons allege.
343. For completeness, and as I have said, I understand that security lights have now been erected by the Rolphs to avoid the use of a headtorch. Separate complaint is made about that which I will come onto.
344. I do not consider that either substantial interference is established nor non ordinary user of land by Mr Rolph nor that the use of the headtorch was not "conveniently done".

22.01.19 SSAPN No. 30 (08:55pm)

26.01.19 SSAPN No. 31 (07:45pm);

26.01.19 SSAPN No. 32 (10:13 pm)

20.02.19 SSAPN No. 33 (08:33pm)

21.02.19 SSAPN No. 34 (09.01pm)

21.02.19 SSAPN No. 35 (09.35pm)

345. All of these incidents are said to be further incidents of Mr Rolph shining his head torch into one or more rooms of Old Farm.
346. I have considered each incident and the relevant videos very carefully and also their collective effect with SSAPN 29. As with SSAPN No. 29, it seems to me perfectly plain that Mr Rolphs is not deliberately shining his torch into any of the rooms of Old Farm and that if and when this momentarily happens it is the natural result of using a head torch and Mr Rolph moving to get to and from his shed.
347. I also reject the Wilkinsons' assertion that there is no reason for Mr Rolph to go to his shed in the evenings or at this time of night and that he is doing so purely to shine his torch into their property.
348. My previous judgment as regards SSAPN No. 29, that I do not consider any of the elements of substantial interference, non-ordinary user or that the user was not conveniently done to be made out, applies as regards each incident.
349. I reject the case of Enjoyment nuisance in each case.

04.03.19 SSAI No. 36

350. This "incident" comprises a photograph which, it is said by the Wilkinsons, shows a build-up of soil and planting at the south west end of the southern wall.
351. It is not suggested that there was an actual inability to exercise the Access Right on 4 March 2019, in the sense that the Wilkinsons wished to exercise it on that day but were thwarted in doing so. Accordingly, there was no actionable interference with the Access Right on 4 March 2019.
352. The Rolphs say that the position on the ground has changed since this date: they have reduced the area of planting, soil and walling to how it was before the photograph on 4 March 2019 was taken. They refer to a photograph of taken in February 2021. I will deal with the position as it is currently later in this judgment when considering the issue of an injunction.

26.03.19 SSAPN No. 36

353. This incident is said to involve Mr Rolph going into his shed and deliberately banging and making a loud noise for no purpose other than to annoy the Wilkinsons. I have considered this incident both on its own and in conjunction with the other similar alleged incidents.
354. First, I do not consider that any noise amounted to a substantial interference with the enjoyment of Old Farm given its short duration.
355. Secondly, having heard the evidence I am satisfied that Mr Rolph regularly checked the shed for rats and in so doing would lift the lid off a metal bin used as a rat trap to check if any rat had been caught. I am not satisfied that he deliberately sought to make a noise or that the exercise was carried out not for any genuine reason but simply to annoy and disturb the Wilkinsons.

356. I consider that the relevant use of land was an ordinary use of land and that it was carried out “conveniently”.
357. I do not therefore consider any Enjoyment nuisance to have been established in this respect.

13.05.19 SSAPN No. 38

19.05.19 SSAPN No. 39

358. These incidents involves Mr Rolph having looked at the (frosted) kitchen window of Old Farm whilst working in that area.
359. In my judgment, these were not deliberate attempts to intimidate the Wilkinsons, who may have been able to see Mr Rolph’s shadow or shape outside their property through the frosted window and at most that he was for a very short period facing the window. Mr Rolph says that when he looked at a window of Old Farm it was because he had heard a sound from the window that attracted his attention which he described as a “knock” on the glass. The Wilkinsons deny that they could have knocked on the window given the kitchen worktop being 111 cm wide (and I would add the window being set back in quite a thick wall).
360. I accept that the Wilkinsons (or more likely, Mrs Wilkinson) did not tap the window in some way try and attract Mr Rolph’s attention. However, I also accept Mr Rolph’s evidence that he thought he heard something and that is what caused him to look at the window for a short period from a position quite close to Old Farm. In the second instance he is further away.
361. In my judgment, this is the sort of overlooking that will only exceptionally sound in nuisance as explained in *Fearn* at paragraph [103]. In short, and in this case, the south wall of Old Farm was and is obviously overlooked by the Spring Farm land which lies to the south of it. I do not consider that the odd looking at Old Farm by someone in that part of the Spring Farm land amounts to a substantial interference with the enjoyment of Old Farm. Further, I consider that someone may look across is an ordinary use of the land and that such use is “conveniently done” unless there is something out of the ordinary, which I find was not the case here.
362. I should add that I have considered this aspect in conjunction with other similar allegations in case that alters my view, but it does not.
363. I find no Enjoyment nuisance to be established.

30.06.19 SSAPN No. 40, 41

364. The complaint in this case is from power washing carried out by Mrs Rolph in the area of Spring Farm land south of the southern wall of Old Farm. In particular, it is said that the noise, on a Sunday at about 11:31am, was a substantial interference with the Wilkinsons’ enjoyment of Old Farm.
365. I do not consider that any Enjoyment Nuisance is made out.

366. First, I do not consider that this sort of noise on a few occasions a year amounts to a substantial interference. Many electrical tools that cause a noise are used by landowners in and about their land and gardens at the weekend, including Sundays.
367. Secondly, I do not consider that the use is other than an ordinary land use. The real complaint of the Wilkinsons seems to be that the work was not done “conveniently” as what they describe as the generator (but is in fact the electrical pump through which water is pumped from the mains and then expelled at pressure through a hose and spray attachment) should, they say, have been sited further from their property. I do not consider that the use in fact made of the power hose and its location was in any way unreasonable and, for the avoidance of doubt I reject any suggestion that these matters were arranged maliciously so as to trouble the Wilkinsons.
368. The complaint in SSAPN No 41 is that the power hose was placed and used for 3 hours or so. I accept it may have been used intermittently over this period but I do not accept that it was on for 3 hours constantly with the pump directly outside the sitting room window of Old Farm.

04.07.19 SSAPN No.37

369. This is an admitted incident in which Mrs Rolph made what is often referred to as a “V” sign (but not in the Churchillian sense, the fingers being reversed) to the CCTV camera established by the Wilkinsons. Mrs Rolph has since apologised for this incident. She puts it down to the position taken by the Wilkinsons, the ongoing surveillance of herself and her family and derogatory comments made over time by the Wilkinsons (to some extent referred to in this judgment).
370. As regards this, I do not consider that this conduct amounts to a substantial interference with the Wilkinsons’ enjoyment of Old Farm, directed as the sign was to a camera. My conclusion is not altered by the other similar incidents relied upon.
371. I also consider that the Wilkinsons’ conduct in establishing the CCTV amounted to the sort of surveillance and spying that the Supreme Court in *Fearn* indicated was capable of amounting to a nuisance (see especially at [100] to [104]). On the facts here I also consider that it did amount to such a private nuisance.
372. First, I consider that the surveillance amounted to a substantial interference with the Rolphs’ enjoyment of Spring Farm.
373. Secondly, I do not consider that the wide range of footage was justified by the Access Right or by security concerns regarding Old Farm. It was not limited to any narrow area immediately around Old Farm (until Mr Rolph took steps to block the area that could be covered by the camera as I come onto) and it was constant. I do not consider that, in the circumstances, it amounted to either a usual use of land or that the camera use and area of coverage was “conveniently done”. The camera was said to have been put up to protect both parties when the Access Right was being exercised so as to provide an independent record of any evidence, not for any other reason. However it was clearly on night and day.
374. As the taking of footage itself was a nuisance, I do not consider that the Wilkinsons have grounds in law to complain of what footage the camera caught.

18.07.19 SSAPN No. 42 (06:57pm)

375. This incident involves Mr Rolph scraping gravel or stone chippings from the flagstones on his property using a shovel. The Wilkinsons assert that this amounted to an “unnecessary noise related activity” and that it could have been effected by a brush.
376. I find that Mr Rolph did not deliberately carry out this activity so as to cause noise to disturb the Wilkinsons but that he was genuinely clearing the stones from the flagstones which was an entirely proper activity for him to engage in. I accept his evidence that this would not have taken very long. I also accept his evidence that he would tend to clear the gravel as and when it had built up and he was passing rather than necessarily as a separate task and that he would tend to use whatever was to hand be it a shovel or a brush. I accept this evidence.
377. In my judgment there was no substantial interference with the quiet enjoyment of Old Farm caused by this activity. It is a normal sort of noise that neighbours have to put up with as flowing from the normal activity.
378. Further, I also find that the activity in question was itself an ordinary use of land and that it was done “conveniently”.
379. I am not satisfied that an Enjoyment nuisance is made out.

03.10.19 SSA1 No. 43 (07.01pm)

380. This incident is another one where Mr Rolph was using a head torch to get to his sheds. It is said that he was standing there shining the torch into the Wilkinsons’ kitchen window.
381. I have considered this incident both individually and together with the other similar incidents relied upon by the Wilkinsons. As with SSAPN No. 29, it seems to me perfectly plain that Mr Rolphs is not deliberately shining his torch into any of the rooms of Old Farm and that if and when this momentarily happens it is the natural result of using a head torch and Mr Rolph moving to get to and from his shed.
382. I also reject the Wilkinsons’ assertion that there is no reason for Mr Rolph to go to his shed in the evenings or at this time of night and that he is doing so purely to shine his torch into their property.
383. My previous judgment, that I do not consider any of the elements of substantial interference, non-ordinary user or that the user was not conveniently done to be made out, apply again.
384. I reject the case of Enjoyment nuisance.

03.10.19 SSAI No. 37

385. This incident is in fact a letter from the Rolphs to the Wilkinsons dated 3 October 2019 (“03.10.19 Letter”). It replies to a letter dated 20 September 2019, which I have not been able to locate in the trial bundles. The 03.10.19 Letter refers to the September letter as recording the agreement of the Wilkinsons to paragraph 13 of the

Wilkinsons Defence and saying that the (easement) aspect of the case was (therefore) settled. Paragraph 13 of the Rolphs' defence records the concession that the Access Right extended to works to the windows (including cleaning of the them) and the roof and gutters that I have referred to.

386. The Wilkinsons queried whether the easement issue was settled but in any event recorded (again) their agreement to enter into a document clarifying the wording of the Access Right and to register the relevant deed with the Land Registry. The Rolphs stressed the limits to the Access Right in terms of it being "on foot" and "so far as necessary" and that access was only for the permitted purposes stated. They went on:

"In consideration of the limiting characteristics of an easement, being a proprietary right recognised by English law, it is reasonable to expect the Law to uphold the restrictions imposed in accordance with the interest of using land not belonging to you; as owners of the servient tenement we retain absolute dominion and we can use our land as we like subject to any limitations imposed, which based on the wording there is none stated pertinent to the easement".

387. The Wilkinsons fix upon the wording "absolute dominion" and assert that this position is inconsistent with the advice of the Rolphs' own counsel that they should keep the relevant area as clear as possible and that they are wrong to seek to impose conditions such as that the Wilkinsons put in a request to use the Access Right and that they only then clear the area.
388. There is no evidence that this letter of itself has prevented the Wilkinsons exercising the Access Right on any occasion when they wished to do so. I do not consider that, of itself, it amounts to an actionable interference with the Access Right. Its relevance is more as identifying different cases as to the construction of the easement as created (which point I have dealt with) and the issue of whether any form of injunction is appropriate, which I deal with separately in this judgment.

19.10.21 SSAPN No. 44

389. This is another incident where Mr Rolph looks at the kitchen window of Old Farm. Both parties make the same points as they made in relation to SSAPN Nos. 38 and 39.
390. My conclusions are the same as those reached in relation to SSAPN Nos. 38 and 39.
391. I should also add that the relatively small number of occasions identified and the passage of time between them is such that I do not consider there to be evidence supporting a case that this was part of some ongoing harassment involving unusual behaviour which is necessarily explained as being harassment.
392. Accordingly, I find no Enjoyment nuisance to be established.

10.01.20 SSAPN No. 45 (08.12pm)

393. This incident is said to be another case of Mr Rolph wearing a head torch and shining it into a room, this time the sitting room, of Old Farm.

394. I have considered this incident both on its own and together with the other incidents alleged of the same conduct.
395. My conclusions are the same as in relation to SSAPN Nos.29-33 and the other incidents of this nature relied upon.
396. I do not consider any of the elements of substantial interference, non-ordinary user or that the user was not conveniently done to be made out.
397. I reject the case of Enjoyment nuisance.

07.02.20 SSAPN No. 46 (05.26pm)

398. Two matters are relied upon, first alleged shining of Mr Rolph's head torch directly into a window of Old Farm (this time the kitchen window) and a loud banging of a metal dustbin lid.
399. As regards the head torch, I have considered this both in isolation and in conjunction with the other similar incidents alleged.
400. My conclusions are the same as in relation to SSAPN Nos.29-33 and the other incidents of this nature relied upon.
401. I do not consider any of the elements of substantial interference, non-ordinary user or that the user was not conveniently done to be made out.
402. I reject the case of Enjoyment nuisance.
403. As regards the banging of the metal dustbin lid, I have considered this in isolation and in conjunction with the incident alleged as SSAPN No. 36 and the other similar incidents relied upon.
404. My conclusions regarding this incident reflect my findings in relation to SSAPN No. 36. I do not consider that the noise was created maliciously. I am not satisfied that it amounted to a substantial interference with the enjoyment of Old Farm. I am not satisfied that the user was not an ordinary use of Spring Farm nor that the conduct in question was not carried out "conveniently".
405. Accordingly, no Enjoyment nuisance is made out.

08.02.20 SSAPN No. 47 (08.06am)

14.02.20 SSAPN No. 48 (12:13am)

29.02.20 SSAPN No. 49 (05:36pm)

406. These incidents are all said to be ones where Mr (and or Mrs Rolph) made loud noises in their shed with the intention of disturbing the Wilkinsons.
407. I have considered these incidents both individually and together with each other and the other incidents alleged of similar conduct.
408. In each case, I am not satisfied that the Rolphs were deliberately attempting to make a noise to disturb the Wilkinsons.

409. As regards each of the incidents, save that one occurring at 12:13am (SSAPN No 48), I consider that the conduct complained did not amount to a substantial interference with the enjoyment of Old Farm. I have ultimately come to the same conclusion, though with more doubt, as regards SSAPN No 48. It was a one off incident, and of limited duration in time. Had there been repeated conduct of this sort at this time of night my conclusion would likely to have been different.
410. I am also not satisfied that the conduct in question amounted to a non-ordinary use of Spring Farm nor that it was not carried out “conveniently”.
411. Accordingly, I find that no Enjoyment nuisance is made out.

SSAPN No. 50 (05:51pm)

412. The allegation is that Mr Rolph looked into the Wilkinsons’ kitchen window and then shouted abuse. The Wilkinsons assert that their case in this respect is demonstrated because Mr Rolph went into his shed and came out in both cases with no items and that this demonstrates that his only purpose was to stop and shout abuse. I disagree with that inference.
413. I accept that Mr Rolph was talking to someone facing away from Old Farm. I doubt that he would be looking into Old Farm given the frosted windows but if he did momentarily do so then in my judgment that does not amount to an Enjoyment nuisance for the reasons that I have previously given regarding other incidents of alleged looking into the windows.
414. I am also not satisfied that he swore either at the Wilkinsons or at all.
415. Accordingly, no Enjoyment nuisance is made out.

01.03.20 SSAPN No 51 (06:11pm)

416. The allegation is again one of loud banging in the shed and in addition shouting and abuse outside the Wilkinsons’ sitting room window.
417. As regards alleged loud banging in the shed I have considered this incident against the other alleged incidents of a similar nature. My conclusions mirror those reached in relation to the other incidents of alleged banging in the shed and especially SSAPN 47 and 49.
418. Accordingly, I find no Enjoyment nuisance to have been established in this respect.
419. As regards the allegation of shouting abuse, the video appears to show Mr Rolph talking to someone on his own drive, facing away from Old Farm. I am not satisfied that the factual allegation is made out and accordingly am not satisfied that any case of Enjoyment nuisance is made out.

07.03.20 SSAPN No. 52

420. This incident relates to the blocking of the vista that the CCTV erected, towards the south east corner of the farmhouse of Old Farm by the Wilkinsons, otherwise enjoyed by the placing of a plank in front of it.

421. In my judgment, the CCTV was itself an Enjoyment nuisance looking at the position from the owners of Spring Farm and this was therefore a lawful act of abatement of such nuisance. Again, I refer to *Fearn* at paragraphs [100] to [104]. In my judgment, not only was the erection and operation of such camera capable of being a nuisance, it was actually a nuisance. The only ground put forward to have the camera there was to protect the parties when the Access Right was being exercised (ie as independent evidence) but the camera was clearly on and running most of the time. This goes way beyond mere occasional overlooking.
422. Accordingly, no Enjoyment nuisance is established by the actions of blocking the vista of the camera. I reject that the Wilkinson's case that this was "malicious" conduct: it was conduct carried out in effect as an abatement and in the genuine belief that it was such an abatement.

20.04.20 SSAPN No. 53

423. This incident is a letter from the Information Commissioner to the claimants saying that in the opinion of a case officer of the Information Commissioner's Office and based on what Mr Wilkinson had told him that the location of the cameras complied with data protection legislation.
424. I do not of course know what Mr Wilkinsons told the case officer. Further this case does not turn of data protection legislation but on the law of private nuisance. Finally, even if it did, it would be for the court to determine whether or not data protection was breached, not the case officer.
425. The letter itself cannot amount to any private nuisance committed by the Rolphs. As an alleged incident of the same, no case of private nuisance is made out.
426. Secondly, the letter does not otherwise assist on any issue that I have to decide.

01.05.20 SSAPN No. 54 (05:27pm)

01.05.20 SSAPN No. 55 (05:19pm)

427. These are two more incidents of what I have referred to as "V" signs (see 04.07.19 SSAPN No. 37).
428. For the reasons given earlier, I consider that the gestures did not substantially interfere with the Wilkinsons' enjoyment of Old Farm (especially given the gesture was to a camera not them in person) and also that the use of the CCTV was itself an Enjoyment Nuisance to the Rolphs and that as such any product from it cannot be complained of as an Enjoyment nuisance. Accordingly I find no Enjoyment nuisance to be established.

02.05.20 SSAPN No. 56

429. The allegation of Enjoyment nuisance is that the first claimant was falsely accused of having a plan to extort money from the defendants. It arises from what Mr Rolph says in his witness statement dated 5 May 2020 at paragraph 70. He refers to having overheard Mr Wilkinson on a phonecall in Mid-July 2018 stating to another person

words to the effect “we have spent much more on renovating [Old Farm] than we can afford but we have a plan to get the money back from our neighbours”, On receiving a letter of 18 September 2018 claiming 10% of the value of Old Farm as compensation for alleged diminution in value of Old Farm, Mr Rolph says that he realised that that is what Mr Wilkinsons meant on his phone call.

430. Mr Wilkinsons makes the point that in his witness statement Mr Rolph refers to the conversation overheard as being in July 2018 whereas in a response to a Part 18 request dated 6 May 2021, it was said that the conversation was mid-May. Mr Wilkinson says that this discrepancy is unaccounted for and “The fact that it is fictitious can only be explained by malice”. I regret that this is the sort of leap of logic that the Wilkinsons are all to prone.
431. The real point is that this allegation has nothing to do with interference with enjoyment of land and is not capable of founding a claim in Enjoyment nuisance.

25.05.20 SSAPN No. 57 (12:55pm)

432. This is a repetition of the conduct complained of as taking place on 18 July 2019 (SSAPN No. 42). I have considered this individually and together with the other incident. My conclusion with regard to SSAPN No. 42 applies equally to SSAPN No. 57.
433. I find no Enjoyment nuisance to be established.

05.06.20 SSAPN No. 58

434. The allegation is that the second defendant has implied that the claimants may have caused criminal damage to the defednants’ oil tank. This arises from a statement in Mrs Rolphs witness statement dated 5 June 2020 where she refers to having seen the claimants on the Rolphs’ property via CCTV at about noon on 15 December 2017. They were apparently taking photographs and measuring things in the vicinity of the oil tank but were out of sight when near the oil tank. The oil tank was shortly after advised to be damaged and in need of repair. Mrs Rolph went on to say “I have no proof the claimants damaged the tank and it might be pure coincidence that happened around the time the claimants were viewed off camera and many metres away from Old Farm building.”
435. The Wilkinsons say of this incident that “The only reason this implausible accusation can have been made must have its foundation in malice”.
436. First, I consider that the Rolphs were only setting out their view of matters given the circumstances. I reject the suggestion of the Wilkinsons of malice which again is a leap of logic.
437. In any event, this so-called implication cannot affect the Wilkinsons in their enjoyment of Old Farm and cannot found a claim in enjoyment nuisance and I so find.

11.07.20 SSAPN No. 59

438. This allegation relates to the further blocking of the vista covered by the CCTV cameras installed by the Wilkinsons and overlooking Spring Farm. In essence, Mr

Rolph added a further piece of wood to further narrow what would be visible to the camera.

439. I reach the same conclusions as I did with regard to the blocking of the camera view as set out in SSAPN No. 52. Accordingly, I find no Enjoyment nuisance to have been established as regards this incident.

11.07.20 SSAPN No. 60

440. This concerns an allegation that Mr Rolph was clapping outside the Wilkinsons sitting room window and that there was also shouting and banging from the shed.
441. I am not satisfied that any noise from the shed was any different to that which I have already considered and held not to amount to an Enjoyment nuisance.
442. I also accept, in line with Mr Rolph's evidence, that the clapping was probably a reaction to success in some sporting event, I do not consider it was maliciously carried out so as to inconvenience the Wilkinsons. It appears to have been of fairly short duration. I do not consider that it caused a substantial interference with the enjoyment by the Wilkinsons of Old Farm, that it was a non-ordinary use of Spring Farm land or that it amount to conduct "not conveniently" conducted.

21.07.22 SSAPN No. 61

21.07.20 SSAPN No. 62

22.07.20 SSAPN No. 63

443. This incident is another power washing incident (see SSAPN Nos. 40-41, 30 June 2019). It is said to have involved 4 hours of power washing over 2 days. I am unable to find that there was any non-genuine power washing.
444. My findings are the same as regards the earlier incident in 2019, in this day and age I find that the power washing did not involve a substantial interference with the enjoyment of Old Farm. I also find (as I have already done) that the use of land by the Rolphs was an ordinary use of their land. I also find that the use passes the "conveniently done" test. I do not accept that the power unit was placed unduly close to the Wilkinsons house, either maliciously or with some other state of mind (such as carelessly),
445. Accordingly I find no Enjoyment nuisance to be established as regards these incidents.

24.08.20 SSAPN No. 64

446. This incident involves the Rolphs in power washing a section of the eastern garden boundary wall, north of the eastern wall of Old Farm itself and . As such it has nothing to do with the Access Right. The Rolphs say that at this time the boundary was in dispute and only later was it agreed that the eastern boundary wall belonged to the Wilkinsons (as set out in the Order of DJ Whitehead dated 8 February 2021). The Rolphs admit they were asked not to do this by the Wilkinsons but in the absence of what they regarded as any explanation or justification for the Wilkinsons' request, just carried on regardless. The Wilkinsons say that the wall boundary was agreed, at least

in principle, prior to the date of the order and that this was in March 2020, before the power washing.

447. The Wilkinsons effectively are complaining of trespass to their wall. That is not a cause of action which they have pleaded or which they have permission to bring by amendment.
448. I find that any cause of action as regards this incident lies in trespass not Enjoyment nuisance and find no Enjoyment nuisance to be made out.

10.09.20 SSAPN No 65

449. This incident also related to the garden wall eventually agreed as belonging to Old Farm which borders the west side of the Roadway. At each side of the entranceway into Old Farm (capable of being shut off by a gate) this wall slightly curves in, so that the gateway is slightly further set back from the roadway than the garden wall. On the North side of the entranceway into Old Farm a culvert runs under the Roadway. The Rolphs say that the wall near the culvert was damaged. Repairs were needed to the culvert which, as owners of the Roadway, they undertook, and they also repaired the garden wall where it had fallen down. The Wilkinsons say that the Rolphs “dismantled” approximately 6 feet of the wall. The photographs suggest that the Rolphs’ version of events is nearer to the truth.
450. However, the real point is that any complaint in this respect is one in trespass. The Wilkinsons say that the repairs were not carried out to the standard that they want and that they have suffered damage as a result. The Wilkinsons have no permission to amend their case to bring in such a claim.
451. I find that no Enjoyment nuisance is made out as regards this incident.

20.09.20 SSAPN No. 66

452. This incident involves the erection of further wood parts to restrict the vision of the CCTV camera erected by the Wilkinsons.
453. For the same reasons as I have given in relation to earlier incidents of this sort (see SSAPN Nos. 52 & 59), I do not consider that any Enjoyment nuisance is made out. In effect the Rolphs were abating a nuisance committed by the Wilkinsons.

26.09.20 SSAPN 67

454. Mr Rolph was charged with criminal harassment and damage. A charge does not amount to a nuisance. If reliance is placed upon the individual incidents charged then they should be identified elsewhere in SSAPN. I can take this matter no further.

15.11.20 SSAPN No. 68 (10:44pm).

455. This incident involves Mr Rolph in chopping wood in the area outside the Old Farm (in fact outside Mr Rolph’s sheds) Although it is said that this occurred at 10:44pm the photographs shows Mr Rolph sitting on a stool chopping kindling without apparently any lighting. I am not satisfied that this occurred at 10:44pm.

456. I am not satisfied that the relevant noise amounts to a substantial interference with the enjoyment of Old Farm. I am also not satisfied that it was carried out maliciously and deliberately to make a noise to disturb the Wilkinsons. I am also not satisfied that it was not done “conveniently”. Had it been a question of a chainsaw and chopping logs that position would have been different.
457. Accordingly, I find no Enjoyment nuisance to be made out.
458. I deal later in this judgment with the general point made by the Wilkinsons that the Rolphs have other land and so that this activity (and presumably any activity causing light or noise that the Wilkinsons do not approve of or find irritating) could be carried on elsewhere on the Rolphs’ land so that, in effect, they should move their sheds, paving and other matters and not do any work in that area.

15.02.21 SSAPN 69

459. This incident is apparently a reference to a witness statement of Mrs Rolph dated 5 June 2020 in which she refers to the effect on her of the Wilkinsons’ CCTV cameras (in addition to the one that I have mentioned towards the corner of the South and western walls of the Old Farm house, there are others) which she says make her feel “imprisoned”. She also refers to her daughter being worried by Mr Wilkinson’s behaviour in “watching” her.
460. The Wilkinsons refer to the Rolphs making an accusation of an “unnatural interest” in Mrs Rolph and her daughter. I would not described the relevant passages from the witness statement as going so high. In any event, I do not consider that this can be said to interfere with the Wilkinsons’ use of their land: rather it is a personal matter.
461. I consider that no Enjoyment nuisance is made out in this respect.

05.04.21 SSAPN No. 70

462. The allegation is that the Rolphs attempted to circumvent Land Registry procedure to alter Old Farm’s title without the Wilkinsons’ knowledge. The reference is to a letter dated 5 April 2021 to the Chief Land Registrar where an application in the form of an A1 is explained as not being pursued because the Wilkinsons would be likely to challenge it. Instead the Rolphs asked the Chief Land Registrar to consider exercising powers under certain Schedules of the Land Registration Act 2002. In a letter dated 10 May 2021, the Land Registry explained why the Land Registrar would not act unilaterally in this case and that an application, ultimately involving the Wilkinsons, would have to be made.
463. I cannot see how this letter, asking the Chief Land Registrar to exercise his powers, can possibly amount to an Enjoyment nuisance. Further, if there was a legal avenue to pursue, the Rolphs cannot be criticized for seeking to deploy it.

02.05.21 SSAPN No. 71

464. This relates to further steps taken by the Rolphs to block the line of vision of the CCTV camera installed by the Wilkinsons and which panned on the Rolphs’ land at Spring Farm. As I have said with regard to previous complaints in this respect, I

consider no Enjoyment nuisance to be made out. The CCTV was itself a nuisance and the Rolphs were, in effect, abating it.

02.05.21 SSAI No. 38

465. This “incident” is the same one that I have just considered. There is a photograph of the CCTV camera installed by the Wilkinsons at the rear of their property and the angle of coverage of which has been restricted by the Rolphs having placed a plank with an attached board in front of it (the “CCTV Blocker”) so that it can only capture images along the Southern wall and not a larger area of the Rolphs’ property.
466. So far as the Access Right is concerned, it is said by the Wilkinsons that the CCTV Blocker restricts access to the southern wall of Old Farm for the purposes of pointing and placing a ladder or working platform against the building. They also say that the absence of camera coverage over a wider area inhibits their use of the Access Right.
467. First, as regards physical obstruction, there is no evidence that the CCTV Blocker in fact prevented exercise by the Wilkinsons of the Access Right on 2 May 2021 (or indeed on any other occasion). I do not consider that any actionable interference, flowing from any physical obstruction, with the Access Right has been demonstrated, either on 2 May 2021 or at any other time.
468. Secondly, again as regards physical obstruction, in my judgment this is a form of obstruction which, to the extent there is any, is fairly easily removeable on notice should the need arise and be demonstrated.
469. However, thirdly, I have also seen other photographs of the southern wall of Old Farm with the CCTV Blocker in place. There is no challenge to the Rolphs’ case that the upright post is some 4” x 2” and I am not satisfied that, on the face of things, it would prevent access for pointing and/or by a ladder.
470. Fourthly, as regards concern about the Rolphs, I do not consider that there is any right by reason of the Access Right to maintain CCTV to cover any wider area than the CCTV currently does (I leave aside the question of whether even that area is an Enjoyment nuisance from the Rolphs’ perspective). I consider this aspect further in the context of the issue of injunctive relief.

01.09.21 SSAP No. 72

471. The complaint is that the Rolphs left a wheelbarrow full of manure outside the Wilkinsons’ dining room for a week, whilst they were away on holiday. (I am however not satisfied that the wheelbarrow was full of manure. I accept that the wheelbarrow was left close to the sitting room window as complained of and for the period in question. However, I am only satisfied that it contained soil and compost (and not animal manure)).
472. In the circumstances I am not satisfied that there was a substantial interference with the amenity of Old Farm and am not satisfied either that the use made of Spring Farm land was not ordinary or was not done “conveniently”.

473. Accordingly, I am not satisfied that this incident is made out as being an Enjoyment nuisance.

01.09.21 SSAI No. 40

474. This “incident” is a photograph taken on 1 September 2021. It shows the (or most) of the wicker panels formerly parallel to the southern wall of Old Farm having been removed and the shrubs and other plants as having become established and having grown up.

475. The Rolphs say that they prune the relevant plants at least annually. The Wilkinsons assert that (a) the plants are in effect limiting the Access Right as much as the wicker panels did and (b) the position will get worse. Indeed, in oral evidence in 2021, Mr Wilkinson referred to the bamboo planted (being one of the plants) in the following terms:

“I mean they used to use it as a torture method. Its lethal. I’ve dealt with it at my daughter’s and it grows like...”

476. As regards the planting from after the wicker panels were taken down, I am not satisfied that it has on any single occasion in fact prevented the Wilkinsons from exercising the Access Right. Accordingly, I am not satisfied that on 1 September 2021, or any other time, it has caused an actionable interference with the Access Right. Indeed, Mr Wilkinsons main concern seems to be that it will interfere with the right in the future.

477. As regards the future, I am satisfied that there is no reason to think that the Rolphs can not and will not (as they say they do and I accept) keep the area properly pruned and under control.

01.09.21 SSAI 39

478. This “incident” is in fact a photograph taken on 1 September 2021 and relied upon as showing that the planting on Spring Farm is less than a metre from Old Farm and, it is said, an impediment to basic safety, especially when using ladders. This is a reference to the planting parallel to the southern wall of Old Farm.

479. The Rolphs’ answer to this is that the nearest point that the planting reaches the south wall of Old Farm is at a distance of 1.3 metres. It is fair to note that the distance between the planting and the wall varies and that it may not be necessary to put a ladder precisely at the narrowest point between the two.

480. The Wilkinsons assert that the minimum angle for a “safe” ladder is a 1:4 ratio. This is the familiar rule that the base of a ladder should be placed so that it is one foot away from the building for every four feet of height to where the ladder rests against the building, so that it is angled at 75 degrees. This would mean, on the Wilkinsons’ measurements of the height of the South wall (5 metres), that the foot of a ladder erected to full height should be about 1.25 metres.

481. The Wilkinsons, with no explanation, say they need to employ a 1:3 ratio for safety which, on their measurements requires the foot of the ladder to be at least 5ft 6” from

the foot of the wall. They say in addition they need another three feet or a metre to be able to get on and off the ladder with equipment so that in all they need an area from the base of the wall of where a ladder is placed of 2.7 metres or nearly 9 feet and this explains why 3 metres cleared area needs to be maintained at all times. I regret to say that I regard this as somewhat typical exaggeration by Mr Wilkinson. Health and safety advice is that ladders are not suitable for work lasting for longer than about 30 minutes. I am not satisfied on the evidence before me that e.g, for window cleaning it is necessary to have ladders fully extended to the full height of the wall at every point along the length of the southern wall of Old Farm.

482. There is no evidence that on 01.09.21 the Wilkinsons were prevented from exercising the Access Right There was therefore no actionable interference with that Right on that date.

483. I deal with the question of possible injunctive relief later in this judgment.

01.09.21 SSAPN No. 73

484. The allegation (which does not seem as date specific as the SSAPN would suggest) is a repeat of the complaint that I have just dealt with but now looked at from the perspective of Enjoyment nuisance. It is again that the Rolphs have planted trees and shrubs in front of the windows of Old Farm, that this established a corridor along the southern wall of Old Farm and that the Rolphs walk along this corridor which is close to the windows of Old Farm farmhouse and often causes a “disturbance”.

485. No specifically identified behaviour (in terms of using the “corridor”) is set out which I can find to amount to a substantial interference with the enjoyment of Old Farm. In any event, the Rolphs seeking to screen their property by the planting of trees and shrubs is an ordinary use of their land which they are entitled to do and there can be no suggestion it has not been done “conveniently”. There is no right to a view as regards the owners of Old Farm and no right to require the owners of Spring Farm not to use their land because it is close to Old Farm.

486. I am wholly unsatisfied that this complaint establishes an Enjoyment nuisance.

487. So far as it amounts to a complaint of interference with the Access Right that is not appropriately raised by way of the SSAPN. Further, part of the complaint appears to be that in the future the planting will get out of control and interfere with the Wilkinsons’ view (which they have no right to as a matter of the law of private nuisance, if the obstruction occurs as a result of the ordinary use of land) or the easement (as regards which, this has not yet happened and it is not appropriate to order that the planting be removed in anticipation).

08.09.21 SSAPN No. 74

09.09.21 SSAPN No. 75

488. This is a complaint about the Rolphs having placed sandbags at the area of the culvert that I have referred to earlier. The sandbags were placed there at the time of the repairs to the culvert and to highlight a temporary cover over the culvert.

489. This matter does not interfere with the enjoyment of Old Farm. If anything it might give rise to an interference with the separate right of way granted by the 1977 Charles Conveyance. However, this is not a case which the Wilkinsons have been given permission to raise. I find that the matters complained of do not amount to an Enjoyment nuisance.
490. For the avoidance of doubt, I also reject any suggestion that the Rolphs' behaviour in this respect was malicious.

09.09.21 No. SSAI 41

491. This is a photograph of an area showing the gateway into Old Farm from the Roadway with sandbags around a hole which marks where the culvert is that I referred to earlier in this judgment. The Access Right does not apply to this area. There is accordingly no actionable interference with it flowing from the placing of the sandbags where they were placed (and indeed they would have need to be placed there for safety reasons). In the SSAI the Wilkinsons appear to seek to raise a case that the sandbags amounted to an interference with the right of way (rather than the Access Right) granted by the 1977 Charles Conveyance. I am not prepared to permit them to raise a new case about an infringement of a different easement in this manner. In any event, I would not have considered that it amounted to an actionable interference with the relevant right of way.

19.09.21 SSAPN No 76

492. This is a complaint that the Rolphs have planted trees and shrubs and that the vegetation came within a metre of the Wilkinsons' bedroom window. Broadly I reject this claim as an Enjoyment nuisance. The Wilkinsons have no right to a view. The planting of trees and shrubs is an ordinary use of the land in question. It seems to me this is no different to the situation where an owner of land makes an ordinary use of its land and erects a building which blocks a view. I am wholly unsatisfied that there is any malice and I accept that the Rolphs regularly prune the trees and shrubs complained of.

19.09.21 SSAI No. 42

493. This "incident" is again illustrated by a photograph of planting on Spring Farm, the photograph being taken from inside Old Farm and in reality demonstrating nothing beyond there being vegetation growing on Spring Farm land. It is impossible to verify from the photograph that, as alleged by the Wilkinsons, the vegetation impedes access "by window or working platform". There is no evidence that on 19 September 2021, the Wilkinsons were deterred or prevented from using the Access Right. I am not satisfied that the photograph demonstrates any actionable interference. I will deal with the question of the future when considering possible injunctive relief.

02.10.21 SSAPN No. 77

494. The complaint is of the installation of security lights, operated by motion sensor, and covering the area to the south of the southern wall of Old Farm. They were installed to avoid the issue of the use of the head torch by Mr Rolph. The Rolphs have also

agreed that the lights would be turned off (so they would not be motion sensor activated) (on a timer) after 10pm. This follows complaints by the Wilkinsons.

495. The Wilkinsons complain that the Rolphs used their shed frequently (e.g. for storing coal and they say Mr Rolph frequently goes out in the winter to get coal to bring indoors); they say the lighting is unnecessary; that they should be turned off at 9pm as they go to bed early and that sometimes the lights go off after 10pm.
496. I am not satisfied that the lights regularly go on after 10pm. I am also not satisfied that the lights are not reasonably necessary, nor am I satisfied that they were installed maliciously or that the Rolphs are acting otherwise than by way of ordinary use of their land when they go out to their sheds in the dark in the winter.
497. In short, this claim to Enjoyment nuisance is not made out.

Conclusions: the Access Right

498. The scope of the Access Right has been considered earlier in this judgment.
- (1) It is clear that it is limited to access on foot.
 - (2) There is no specific area to which the Access Right applies other than as flows from the fact that access is limited to that to carry out certain identified maintenance works to the relevant walls of Old Farm and is further limited by the test of “necessity”.
 - (3) In this context I have held that the “necessity” is one of “reasonable necessity” rather than being a requirement of being “absolutely essential”.
 - (4) Whilst the works in question must relate to the southern and eastern walls of Old Farm this includes not just the walls but the windows, gutters and roof above. The works include maintenance in the widest sense (including inspection and also cleaning).
 - (5) The works permitted also permit (where necessary) erection of scaffolding or scaffolding towers or platforms.
 - (6) However, the Access Right is not the same as a right of way exercisable e.g. at all hours every day of the week. Of its nature it is unlikely to be exercisable very often in a year or for very long periods. Events such as the major works of 2016-17 are unlikely to occur every year. The Access Right does not require a specific area to be kept totally clear on Spring Farm at all times such as, in effect, to make the land unable meaningfully to be used by the owners of Spring Farm.
 - (7) The Access Right is subject to the implied term that reasonable notice must be given before the Access Right is sought to be used. That will enable the owners and occupiers of Spring Farm to clear an appropriate area if clearing is required. Given the likelihood that window cleaning will be required once a month or so, an area around the south and eastern wall of Old Farm is likely to need to be easily cleared of any obstructions.

499. As regards historic interference with the Access Right, I have found that there is only one incident where this occurred, namely on 20 July 2018 when there was an altercation between the Wilkinsons and Mrs Rolph. The Wilkinsons were not challenged on their case that they were properly exercising the Access Right on that occasion, in the sense that it was necessary for the window cleaning they were seeking to (and then did) carry out. My preliminary view is that I would award nominal damages of £200 in respect of this matter which I consider to amount to a substantial interference with the easement in the terms of the legal authorities but to have caused very limited actual damage. However, I have found no other substantial interference with the Access Right to have been made out. In particular, much of the complaint is either directed at what might happen in the future, or is based on the false premise that there will be an actionable interference with the Access Right even in circumstances when the Access Right was not exercisable and/or the Wilkinsons did not intend to or attempt to and were not deterred from exercising it and/or is based on the false premise that the Access Right carries a right to have a 3 metre zone around the relevant walls kept totally clear (and level) at all times.
500. As regards the future, an injunction will lie where (among other criteria) there is a sufficient risk that there will be a substantial interference in the future and it is in all the circumstances just to grant the injunction.
501. I do not accept that the Rolphs will not clear a sufficient area and provide access if proper notice is given. This includes clearing/pruning vegetation if that becomes necessary. The Rolphs' responses in correspondence and their response to e.g. warnings from the police over windchimes, satisfies me that they will take note of this judgment and give effect to it.
502. I am not satisfied that the area to the south west corner of Old Farm, and close to the western boundary as earlier determined by me, has been altered by the Rolphs (by way of changing levels and/or inserting shrubbery) such as to make it substantially more difficult to exercise the Access Right as regards routine maintenance. Further, I am not satisfied that the erection of the CCTV Blocker has, on the face of things, substantially interfered with routine maintenance of the relevant walls (including gutters, windows and roofs). However, these issues may need to be reconsidered in the light of the particular facts if more extensive works are required (and are such as e.g. to require scaffolding to be erected) in the future. Although scaffolding has been erected in the past, I am unable to predict whether the CCTV Blocker might interfere with the same or prevent it being erected at the relevant point.
503. Accordingly, I do not consider that any injunction is appropriate to be granted against the Rolphs at this point with regard to the Access Right.

Conclusions: Enjoyment Nuisance

504. I have come to the conclusion that there are very few cases where an Enjoyment nuisance has been established. Where it has been I have given a preliminary indication of my view as to the sort of level of damages that might be appropriate. In each case the level is fairly nominal. I have not considered diminution in value of land and there would need to be expert evidence in that respect if that is to be pursued further. In that event it will be necessary to avoid double-counting.

505. As regards the future, I consider that the Rolphs are well aware of what living in a neighbourly way requires and that they will take heed of this judgment and take care in the future. I see no grounds to award any form of injunction with regard to their behaviour in the future.
506. Having heard Mr Wilkinson give evidence and the submissions made by the Wilkinsons, I have come to the conclusion that, just as the Wilkinsons consider they are entitled to a physical area of 3 metres kept clear around their house on the basis of the Access Right, they also want a noise free and light free zone around their house so that, to that extent, the Rolphs cannot use their land to a significant extent to any normal extent. Taken to its logical conclusion, the Wilkinsons' position would appear to be that because the Rolphs have other areas of land available to them, they should move their sheds and garage, their garden and plants and even their paving in the area immediately to the south of Old Farm to some other area where any activity carried out in conjunction with such things will be out of earshot and sight of Old Farm.
507. I consider that the Wilkinsons have identified every possible incident that they can to assert that they have been seriously upset and disturbed in their occupation and use of, and whilst living at, Old Farm. They have lost all sense of proportion. In short, their expectations and demands have, unfortunately, occasionally driven Mrs Rolph to act in ways that she regrets and has made normal life between neighbours, where there should be some give and take, as impossible. All of this seems to stem from a failure by the Wilkinsons to recognise that they have bought land where the rear wall of their house is in effect on or just beside the boundary of their land with that of Spring Farm and where they cannot live as if their house is surrounded by an ample area of their own land, far from any boundary.
508. The irony is that, although the Rolphs have not raised claims against the Wilkinsons, it is quite possible that the value of the Rolphs' land and/or at least its saleability has been affected by reason of the Wilkinsons' conduct.

The next steps

509. As handed down this judgment is subject to editorial corrections. If there are any obvious mistakes or typing errors the parties are invited to submit them in writing as soon as possible. This is not of course an invitation to seek to upset my decision or the key findings that I have made or to re-argue points.
510. On handing down this judgment I make an order that there should be a further hearing with a time estimate of half a day (though I would hope that it would not take that long) to deal with consequential matters arising from this judgment and in particular the precise terms of any order that should be made to give effect to this judgment and any other matters arising. I also extend the time for filing any notice of appeal to the expiry of the period of 21 days after the sealing of any order giving effect to this judgment. The matters that will need to be dealt with will include (and this list is not necessarily exhaustive):
- (1) The form of any declaratory relief regarding the scope and extent of the Access Right;

- (2) How, if damages are not agreed, any damages in respect of the private nuisances (of both types) that I have identified are to be determined by the court (including the nature and scope of any further inquiry in that respect and appropriate directions);
- (3) Costs;
- (4) Permission to appeal (if it arises).

The parties should engage with each other and seek to agree as much and, where they disagree, to agree to what extent and on what issues they disagree.