[2018] UKFTT 449 (PC)

REF/2016/0460/0461

PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002

BETWEEN

PATRICIA LINACRE CLEGG
DAVID ANTHONY CLEGG

APPLICANTS

and

HEIDI JOANNE POLLARD
GUY PARKIN

RESPONDENTS

Property Address: Land at 29 Upper Holme, Slaithwaite

Title Numbers: YY29991 and WYK823307

Before: Judge Owen Rhys

Sitting at: Manchester Crown Court

On: 17th, 18th and 19th April 2018

O R D E R

IT IS ORDERED THAT the Chief Land Registrar shall cancel the Applicants' applications relating to the above titles in Form AP1 dated 11th January 2014 and 28th January 2014.

Dated this 17th day of July 2018

Owen Rhys

BY ORDER OF THE TRIBUNAL

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Applicant representation: In person
Respondent representation: In person

DECISION

THE APPLICATIONS

1. The parties are neighbours. The Applicants are the registered proprietors of 30 Upper Holme. The Respondents are the registered proprietors of 27, 28 and 29 Upper Holme. Nos 30-32 Upper Holme form a terrace of houses. Nos 26 to 29 Upper Holme also

form a terrace, situated to the west and slightly to the south of Nos. 30-32 and separated from it by an open yard area. I shall describe the physical layout in more detail below.

2. The Applicants have made two separate applications to the Land Registry in relation to two separate parcels of land, known as "the Blue Land" and "the Pink Land". Both applications were made in January 2014, using form AP1 and are based on adverse possession. It is the Applicants' case that they have been in adverse possession of both parcels of land since 1986. The application with regard to the Blue Land (AP1 dated 11th January 2014) is made under the transitional provisions of the Land Registration Act 2002 ("LRA 2002"), namely that they had already barred the Respondents' title by 13th October 2003 when LRA 2002 came into force. The provisions of section 75 of the Land Registration Act 1925 therefore apply, and, if the Applicants are successful, the Respondents would hold the title to the Blue Land on trust for them. The application relating to the Pink Land is also made in Form AP1 dated 28th January 2014. The Land Registry Case Summary states that it is made under para 5 of Schedule 4 to LRA 2002 – namely, on the basis that a mistake on the register needs to be corrected. The mistake in question must, be that the Applicants had already barred the title to the unregistered Pink Land by the date of first registration in 2006. In each case, the registered proprietors objected to the applications, and the dispute was referred to the Tribunal in June 2016. However, the issue is the same in both cases, since the Applicants' claimed title is based on possession, rather than a paper title. The Applicants have previously alleged that they have a paper title to both parcels of land, but the title documents which they have disclosed clearly do not support this contention. Indeed, the Land Registry has flatly rejected this claim on previous occasions. For example, on 5th December 2013, the Land Registrar at the Nottingham District Land Registry wrote to Mrs Clegg explaining that her claim to a paper title had previously been rejected, and that the decision had been reviewed and was regarded as correct. Accordingly, I am entitled – indeed obliged – to assume that the Blue Land is correctly registered in the name of the Respondents, and the Pink Land in the name of Lord Dartmouth. The only mistake that the Applicants can establish, therefore, is that they had been in adverse possession of the Pink Land for at least 12 years before the first registration took place in 2006. When I explained this to Mrs Clegg during the course of the hearing she seemed unwilling to accept the position, and indeed in her closing submissions she continues to press the point that Lord Dartmouth does not have paper

title to the Pink Land. However, that contention is simply not open to the Applicants and I pay no regard to it.

THE AFFECTED TITLES

3. The conveyancing history of the Applicants' land is as follows.

   (a) No.31 Upper Holme was first registered under title number WYK19631 on 1st October 1974. This title included a large parcel of garden land at the rear of Nos 30 and 31 Upper Holme.

   (b) On 23rd March 1978 Richard William Clegg and Patricia Linacre Clegg became registered as proprietors of title number WYK19631.

   (c) Richard William Clegg and Patricia Linacre Clegg purchased the property known as 30 Upper Holme, registered under title number WYK270364, on 19th April 1986. The title comprised the house known as No.30, together with an adjoining barn to the west ("the Barn").

   (d) At this point, the two titles (relating to Nos. 30 and 31) were merged into WYK270364 and title number WYK19631 was closed.

   (e) In 1999 the house known as 31 Upper Holme, together with a small strip of garden land at the rear, was sold to Christopher Slee. The remainder of the land, and the house known as No.30, remained in the Cleggs' title.

   (f) On 23rd September 2002 David Anthony Clegg (the second Applicant) became registered in place of his father Richard William Clegg, consequent upon divorce.

   (g) On 17th January 2007 the Applicants were registered with a possessory title to a triangular piece of land lying to the west of No.30. This is known as the "Gable End" land, since it adjoins the gable end of the Barn comprised within the title. Its western boundary is formed by a diagonal stone wall, now partially dismantled. The title number is WYK840560.

4. The Respondents are the registered proprietors of four separate titles. The first, No.27 Upper Holme, was first registered in 2000 under title number WYK666613. The first proprietor was Heidi Pollard (the first Respondent). The second title, No. 28 Upper Holme, was first registered in 2001 under title number WYK696999. The Respondents were registered as proprietors on 18th March 2002. No.29 Upper Holme was first registered on 23rd October 1984 under title number WYK324972. At that time it

comprised the house itself, and a small dog-legged area to the rear, which I shall describe in more detail below. On 31st January 2014 the Respondents purchased No.29 and its land at the rear, but on that occasion the previous title WYK324972 was split. The house itself was given title number YY29990, and the land at the rear title number YY29991. Both titles were registered in the Respondents' names on 14th February 2014. The Blue Land forms the eastern section of YY29991. The western section has been referred to in these proceedings as "the Orange Land". The reason that the titles were split in this way was because the Applicants had registered a unilateral notice against the Blue and Orange Land. Initially, their claim was based on an alleged paper title, but this was rejected by the Land Registry. The Applicants asked for a review of that decision, and eventually the Land Registry agreed to enter the notice but only on the grounds that they claimed title by adverse possession. The Respondents could not register the transfer of No.29 unless they hived off the land affected by the unilateral notice – i.e the Blue and Orange Land – hence the division of the title into two.

THE BACKGROUND

5. Unfortunately, the dispute between the Applicants and the Respondents is not the first time that they have been at loggerheads. The conflicts began in 2002, when the Respondents obtained Listed Building Consent for the installation of a door in the rear wall of No.28. Work began in May 2002 to convert Nos. 27 and 28 into a single dwelling, to include the new rear door, which was eventually installed in September 2002. This prompted a letter of objection from Mrs Clegg in September 2002 (p.1008) in which she says that the door "*would grossly invade my privacy and this is extremely distressing.*" In a subsequent letter (in 2008) Mrs Clegg referred to this door as having been "*predatorily inserted into the rear of 28 [which] can be seen as a threat to the rights of both 29 and 30.*" The nature of the language indicates the level of hostility. One of Mrs Clegg's principal complaints was that the Respondents did not have an express right of way to access the new rear door in the back of No.28. However, No.27 (and also No.29 since 1984) has the benefit of an express pedestrian right of way to the rear granted by the original vendor, The Rt. Hon. William The Tenth Earl of Dartmouth ("Lord Dartmouth"). This affects YY29991, and also another parcel of registered land, namely WYK823307, first registered in the name of Lord Dartmouth on 6th June 2006. The Pink Land forms part of this title. In many ways, it is this right of way that lies at

the heart of the dispute between the parties, although strictly it is not within the scope of the dispute referred to the Tribunal at all.

6. The dispute rumbled on. In Spring 2003 the Applicants constructed a garden wall across the front of the Pink Land, but inserted into it an unlocked pedestrian gate enabling the Respondents and owners of No.29 to continue to access the rear of their properties. There then ensued correspondence and meetings between Ms Pollard, Carter Jonas, Lord Dartmouth's land agents, and Mrs Clegg. Ms Pollard was concerned that her rights of way might be interfered with. For their part, Carter Jonas informed Mrs Clegg (see the letter dated 9th September 2004 at p.1021) that they owned the Pink Land, and they did not consider that she has ever been in adverse possession of it, the first possible acts of intended possession being the erection of the wall in 2003. Mrs Clegg gave evidence to the effect that she had a meeting or meetings with Carter Jonas after this letter was received, in the course of which they agreed that she was the owner of the Pink Land, but no corroborative evidence has been produced, and this evidence is inconsistent with the fact that Lord Dartmouth (through Carter Jonas) objected to the Applicants' application relating to the Pink Land. In 2008 Mrs Clegg wrote to Carter Jonas (see page 1029) suggesting that she might lay claim to the Pink Land by adverse possession and seeking confirmation that Lord Dartmouth would have no objection. Ms Pollard and Mrs Clegg met face to face in August 2008 in order to resolve these issues, but it seems that Mrs Clegg continued to claim that the right of way to No.27 was invalid. There was further correspondence between Mrs Clegg, solicitors instructed by her (Eaton Smith) and Carter Jonas in 2009. It appears that Mrs Clegg through her solicitors invited Lord Dartmouth to transfer the Pink Land to her for nil consideration. In July 2009 Carter Jonas wrote to the Applicants' then solicitors and requested that Mrs Clegg should remove any items that she had placed on the Pink Land and stating that Lord Dartmouth was not prepared to transfer the Pink Land to her.

7. The application relating to the Pink Land was made in form AP1 and has been treated by the Land Registry as an application to correct the register on the grounds of mistake, under Schedule 4 paragraph 5 of the LRA 2002. Since the Applicants have never had a paper title to the Pink Land – as to which, please see above – their application is made on the basis that they had been in adverse possession of the Pink Land and had barred Lord Dartmouth's unregistered paper title prior to 6th June 2006. If that was the case,

clearly the registration of Lord Dartmouth with title to the Pink Land would have been a mistake. The Statements of Truth lodged in support of both applications – in relation to both the Blue and the Pink Land – make it entirely clear that the Applicants' case is based on adverse possession.

THE PROCEDURAL HISTORY

8. The procedural history of the two references is as follows. They were both referred to the Tribunal on 16th June 2016 under separate references. Pursuant to the Tribunal's directions, the Applicants served a combined Statement of Case relating to both parcels of land. In relation to the Pink Land, Lord Dartmouth's solicitors wrote to Mrs Clegg and copying in the Tribunal on 17th October 2016 withdrawing the objection, as follows: "*Having reviewed your Statement of Case and discussed the position with Lord Dartmouth's managing agents, our position is that we do not have sufficient knowledge or evidence of the history surrounding possession of this land to enable us to dispute in any detail the claim which you are making.*" The Tribunal responded as follows: "*[Lord Dartmouth] has indicated that he does not wish to pursue his objection, and therefore the reference will not proceed any further. Where a party withdraws, the Tribunal has discretion whether to accept the withdrawal and generally how it should be treated. In this case, the Tribunal does not intend to make a final order in REF/2016/0461 until the other reference has been finally disposed of.*"

9. The Tribunal's power to deal with withdrawals was considered by the Court of Appeal in the case of Silkstone v Tatnall [2011] EWCA 801. The relevant passages from the judgment of Lord Justice Rimer are as follows:

> 48. I would summarise the position in my own words as follows. A reference to an adjudicator of a 'matter' under section 73(7) confers jurisdiction upon the adjudicator to decide whether or not the application should succeed, a jurisdiction that includes the determination of the underlying merits of the claim that have provoked the making of the application. If the adjudicator does not choose to require the issue to be referred to the court for decision, he must determine it himself. In the case of an application under section 36 to which an objection has been raised, the relevant issue will be the underlying merits of the claim to register the unilateral notice. Neither party can by his unilateral act (including by his expressed withdrawal of his application, objection or case) bring the reference to an end. Equally, neither party can be compelled to advance a case to the adjudicator that he no longer wishes to advance. A party who conveys such a wish to the adjudicator can be regarded as conveying his wish to 'withdraw' his application, objection or

case but it is then for the adjudicator to rule in his discretion as to how to deal with any such withdrawal. That will require a consideration of all the circumstances.

49. It may perhaps, particularly at the early stage of a reference, be regarded by the adjudicator as just simply to permit the withdrawal and to make an order terminating the reference, making any appropriate direction to the registrar and dealing with costs. If the order says no more, it would no doubt leave an objector free to revive the same claim. That may not necessarily be unjust.

50. In other cases, particularly when the reference is significantly advanced, to deal with a withdrawal on terms like that may be unjust. It may still be appropriate in such cases for the adjudicator to terminate the reference but he may consider it just to do so not only on terms as to costs, but also on the basis of a direction to the registrar requiring him to reject any future applications of a specified kind from the withdrawing party (see rule 41(2) of the AR). The imposition of such a direction is not a matter that requires the consent of the withdrawing party. It may in other cases, particularly those in which the reference is far advanced, such as was the position in the present case, be appropriate for the adjudicator to proceed to the substantive hearing, rule upon the merits of the issue and then make such order as may be appropriate."

10. In the present case, the Applicants' Statement of Case invited the Tribunal to register them as proprietors of the Blue and Pink land free from the rights of way granted in respect of Nos. 27 and 28 Upper Holme. Registration of the Applicants with title might adversely affect the dominant owners – currently the Respondents – who therefore have a continuing interest in the outcome of the application relating to the Pink Land. Of course, the right of way is registered against the title to the Pink Land, and as a matter of law would continue to bind the Cleggs if they were registered as proprietors with a possessory title. However, given the level if acrimony between the parties, and the Applicants' previous conduct in blocking off the access as soon as the unilateral notice was entered, I am in no doubt that they would indeed block the access over the Pink Land if they were registered as proprietors. In any event, and in view of the wide discretion given to the Tribunal, as explained in Silkstone v Tatnall, the Tribunal took the view that it would hear all the evidence relied upon by the Applicants before making an order concluding the reference relating to the Pink Land. Although during the course of the hearing Mrs Clegg expressed herself to be surprised that the dispute relating to the Pink Land remained unresolved, the Tribunal's letter made it clear that no final order would be made until all the evidence had been heard.

11. I heard this case over a period of three days, with a site view taking place on the day prior to the hearing. Mrs Clegg and her son Anthony took it in turns to put forward their case, whilst Ms Pollard represented the Respondents. Both parties submitted extensive skeleton arguments and associated documents. Ms Pollard made closing submissions on the final day, but in view of the time I gave permission to the Applicants to lodge their submissions within 7 days. They did so, and there was a further round of submissions by the Respondents and a further response to that document by the Applicants. I have taken all these submissions into account in reaching my conclusions, and the fact that I have not mentioned any specific points relied upon by either side does not of course mean that I have not taken them into account. Equally, the fact that I have not itemised every single piece of evidence given by either party does not mean that I have not taken the totality of the evidence into account.

THE DISPUTED LAND

12. I shall now describe the physical layout of the site. Nos. 30-32 Upper Holme form a single block of buildings, roughly aligned east to west, with No.32 at the eastern end of the block and No.30 at the western end. These are old stone cottages, formerly housing workers on Lord Dartmouth's estate. Immediately to the rear of No.32 there is a gateway, giving vehicular access to the rear of these buildings from the public road to the east known as North Lane. There is also pedestrian access to the front (southern) side of these dwellings, over an unmade track which runs off North Lane. Nos 31 and 32 have small walled front gardens with a small garden gate. No.30 – at the western end of the block – consists of the original dwelling-house and an adjoining barn which is at the gable end, namely the Barn. The Cleggs obtained planning permission to convert both buildings into a single dwelling in 1998, and they knocked through the wall and combined the two buildings in or around 1999 or 2000. Prior to that time, the Barn had been used for a variety of agricultural and quasi-agricultural purposes. There is a low wall, with a wooden gate set into it, which encloses the area in front of the Barn and gives access to it from the unmade track. The evidence is that this wall and gate were constructed in around 2003 – before that time there was free access to the Barn which had been the case for as long as any of the witnesses could recall. The western end of this front wall meets the north-eastern corner of No. 29 Upper Holme, which forms the eastern end of a block of 4 houses, Nos. 26 to 29 Upper Holme. This block also follows a roughly east to west alignment, and is situated to the south and west of

Nos. 30-32. Thus part of No. 29 Upper Holme lies immediately to the south of No.30 – the eastern half of No.29 overlapping with the western half of No.30 (i.e the Barn), with a distance of some 3.75 metres between the rear wall of No.29 and the front wall of the Barn. No. 28 Upper Holme lies immediately east of No.29. Its rear wall projects beyond the rear of No. 29, so that its north-eastern wall forms a right-angle with the northern wall of No 29. There is a door set in this north-eastern wall of No. 28 which gives access to the open area between No.30 and Nos. 28 and 29 Upper Holme. This is the door installed by the Respondents in 2002 which so aggravated Mrs Clegg. The gap between the north-eastern corner of No. 28 and the south-western corner of the Barn is no more than about 2.5 metres. There is an old drystone wall ("the Drystone Wall") which runs from the north-western corner of No.28 northwards, to intersect with a substantial stone wall ("the Diagonal Wall"), over 3 metres high, which runs diagonally south-east in a line which (if projected) would intersect with the south-western corner of the Barn. This wall does not run all the way to the corner of No.30. There had been an archway which allowed access into the area by the gable end of No.30 (and thence to the rear of Nos. 30-32), but the archway had collapsed and dismantled some years ago leaving an open space. The area between the Diagonal Wall and the western gable end of No.30 is the area registered to the Applicants with possessory title under WYK840560.

13. Until recently, therefore, there was a completely open area behind Nos. 28 and 29 Upper Holme, and to the south and west of No.30. This was bounded (running clockwise from the south side) by the rear (north) wall of No.29, the north-eastern and northern wall of No.28, the Drystone Wall, the Diagonal Wall, the corner of the Barn, an invisible diagonal line running from the corner of the Barn to the (eastern) gatepost at the front of No.30, and the low stone wall enclosing the forecourt in front of the Barn. The Blue Land is a rectangular area that lies within this open yard, between the north wall of No.29 and the southern end of the Diagonal Wall. It is approximately 3.75 metres top to bottom, and 1.25 metres across. There are no visible boundaries to the east or west. The Pink Land – registered to Lord Dartmouth – is bounded by the Blue Land to the west, by the south wall of No.30 to the north, by the invisible diagonal line to the east, and by the front wall and gate of No.30 to the south. Copies of the Land Registry Illustrative Plans are attached to this Decision which might clarify this

somewhat complicated layout. The yellow land is No.30 and the Barn – the purple land the Gable End land registered to the Applicants with possessory title.

14. As I have said, until recently the whole area between Nos. 28, 29 and No.30 was open and unobstructed. However, in 2013 the Applicants erected a barrier, partly within the Blue Land. They did this by using some of the large stone blocks from the dismantled part of the Diagonal Wall (the archway section), and piling them in a line leading due south to form a rough wall approximately 1 metre high, and adding a wooden fence panel attached to the rear wall of No. 29 to create a barrier preventing access to the rear door of No.28 and part of the northern wall of No.29. The effect is to leave part of the Blue Land to the west and part to the east of this barrier. This is apparent from the detailed plan included within the Land Registry Survey Requisition which the Applicants were able to supply after the hearing had concluded. The Pink Land is still open and accessible though the latched front gate to the Barn. The overall result is that the barrier effectively prevents the Respondents from using their express right of way over the Pink Land to access the rear of Nos. 27 and 29. Given the history of the dealings between the parties since 2002, and summarised above, it is evident that the real dispute between the parties relates to the right of way to which the Applicants so strenuously object.

THE RELEVANT LAW

15. As previously stated, both applications are based on adverse possession. In relation to the Blue Land, the Applicants have applied under the transitional provisions contained in paragraph 18 of Schedule 12 to the LRA 2002. This requires them to prove at least 12 years of adverse possession terminating on or before 13th October 2003. For this reason, their period of adverse possession must have commenced no later than 13th October 1991. As to the Pink Land, the task is slightly different. They must prove that they had barred the title of Lord Dartmouth no later than the date of first registration, 6th June 2006. Their adverse possession must therefore have commenced no later than 6th June 1994.

16. The requirements for a claim based on adverse possession are not controversial, namely (a) exclusive factual possession coupled with (b) the requisite intention to possess. The leading case is J.A Pye (Oxford) Ltd v Graham [2002] UKHL 30, in which the

following passage (at pp 470-471) in the judgment of Slade J in Powell v McFarlane (1977) 38 P & CR 452 was approved:

> "(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed. .... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."

17. The meaning of the phrase "*intention to possess*" was considered both in Pye v Graham and in the earlier case of Powell v McFarlane, from which much of the thinking in Pye v Graham was derived. The following passages from the judgment of Slade J in Powell v McFarlane are illuminating:

> "The question of *animus possidendi* is, in my judgment, one of crucial importance in the present case. An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. This, in my judgment, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. The position, however, is quite different from a case where the question is whether a trespasser has acquired possession. In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite *animus possidendi* and consequently as not having dispossessed the owner." (at page 472).

> "In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite *animus possidendi* in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner. The status of possession, after all, confers on the possessor valuable privileges *vis-a-vis* not only the world at large, but also the owner of the land concerned. It entitles him to maintain an action in trespass against anyone who enters the land without his consent, save only against a person having a better title to possession than himself. Furthermore it gives him one valuable element of protection even against the owner himself. Until the possession of land has actually passed to the trespasser, the

owner may exercise the remedy of self-help against him. Once possession has passed to the trespasser, this remedy is not available to the owner, so that the intruder's position becomes that much more secure; if he will not then leave voluntarily, the owner will find himself obliged to bring proceedings for possession and for this purpose to prove his title." (at page 476).

THE APPLICANTS' CASE ON ADVERSE POSSESSION

18. The Applicants' case with regard to the history of the Blue and Pink Land, and the acts of adverse possession relied upon, are set out in a number of places, perhaps most comprehensively in Mrs Clegg's Statement of Truth dated 14th June 2014, particularly at paragraphs 19-36 and 63-69 thereof. She verified this statement on oath and was cross-examined on it. I shall attempt to summarise the detailed explanation given.

19. She recalls that when the Bellamys bought No.30 Upper Holme, there was a paved/cobbled area at the front, as indeed is common ground. She says the area was located in front of the barn doors and front door of No.30, and was partially enclosed by the rear wall of No.29. There was a small garden area to the east of the cobbled area – this was in front of No.30's front window and was enclosed by a wall. She says that there was a "*level terraced garden area*" to the west of the cobbles, above a low retaining wall that bounded the western edge of the cobbles. "*The grassed garden area extended beyond the south-west corner of 30's barn, beyond the rear of no.29, and narrowed into an area bounded at the top by the boundary wall at the rear of No 28 Upper Holme, the field wall to the west (which became No 26 garden boundary) and the 10 feet high diagonal wall……. Part of the terrace was unregistered but there was nothing to differentiate the unregistered land from the registered land.*" She makes the point that the only access to the "garden" was through the gap between the front of No.30's barn and the rear wall of No. 29.

20. She says that in 1980 No.29 was bought by Mr and Mrs Sykes. At that time there was a coal store at the rear which, she says, "*in the angle of No.29 with the east facing wall of No.28 Upper Holme*". There is a dispute about the position of the coal store as to which I shall have to make a finding. It is common ground that the coal store was demolished shortly after 1980, and a new one erected at the front of No.29. It seems that Mr Sykes kept dogs and built a kennel where the coal store had been (see Mrs Sykes). Mrs Clegg says that the kennel was built on "*the grassed terrace in front of the*

barn" which would appear to be part of the Blue Land. She says that when Mr and Mrs Bellamy bought No.30 they asked Mr and Mrs Sykes to move the dog kennel, which they did. Mr Sykes then fenced off the area between the end of the Diagonal Wall and the rear wall of No.29 to create a dog pound. This left at left the Blue Land open. Mrs Clegg says that this was done with her express permission, and that she agreed that Mr and Mrs Sykes could have limited access to the dog pound, twice per day. She identifies the dog pound as being on the "Orange" land, as it is coloured on her plan LRT16. The orange land is also identified on the Land Registry's Illustrative plans. She also records that Mr Sykes spoke to the Bellamys who agreed that he would not object to limited access to the "orange land". Indeed, Mr Bellamy made a witness statement in which he says that he gave permission to Mr Sykes to use the Orange Land. The Orange Land is currently registered under title number YT29991, first registered on 23rd October 1984 and currently registered to the Respondents. The Blue Land was also registered under the same title number.

21. According to Mrs Clegg (paragraph 30) Mr Sykes subsequently demolished the curved rear wall to No.28, laid flags over the dog pound area, and erected a kennel against the Diagonal Wall. Eventually, the dog pound area included all the land behind Nos. 28 and 29. In 1984 Mr and Mrs Sykes purchased the freehold of No.29 from the Dartmouth Estate and it was registered under title number WYK324972. This included the Orange Land. According to Mrs Clegg "*My ex-husband and I had agreed with them that they could register the Orange Land in their ownership. It was never intended by us or Mr and Mrs Sykes that the Blue Land be registered in their ownership, and neither did any of us realise that it had been so registered by the Dartmouth Estate Office. The orange Land remained fenced off for almost 20 years until Mr and Mrs Sykes removed the unsightly dog sheds and fencing in preparation for their sale of No.29 Upper Holme which was sold to Mr Tim Fletcher and Mrs Jo Fletcher (now Jo Watkinson) in 2001.*" She continues: "*Before 1984, Mr and Mrs Sykes acknowledged that the Orange Land and Blue Land belonged to us and asked for permission to lay their sewage drains. After the Orange Land was fenced off, Susan Sykes asked me for permission to access the Blue Land whenever their sewage drains (which are laid partly in this land) needed attention.... After 1984, Mr and Mrs Sykes continued to have our permitted limited access to the Orange Land in order to reach their dog pound.*"

22. In 2001 Mr and Mrs Sykes sold No.29 to Mr and Mrs Fletcher. According to Mrs Clegg, they tidied up the Orange Land before sale by removing most of the fencing, but placed a large metal shed next to the Diagonal Wall which they did not remove after the sale. She says that "*Mr and Mrs Fletcher lived at No 29 Upper Holme for only 12 to 18 months during which I had conversations with them explaining the limited extent of the land they owned (the Orange Land) which was difficult for them to identify particularly in view of the removal of the former boundary wall at the rear of 28 Upper Holme. I also confirmed that they were permitted limited access by me to it over my land including the Blue Land, although they rarely ever accessed it.*" She continues (paragraph 45): "*In December 2002/January 2003 Mr and Mrs Fletcher sold No.29 to Graham Mitchell and Helen Coxan and had made clear to them the limitations of the extent of the land at the rear being the "Orange Land" on the plan. Jo Fletcher also informed me that she and Mr Fletcher told Mr Mitchell and Ms Coxan that they had no rights of access to that land except by our limited permission and that they had to take out an indemnity policy in case the Orange Land ever became "landlocked".*" I note at this point that Mr Fletcher had made a statutory declaration on 20th September 2002 as the registered proprietor of No. 29 (WYK324972) in which he states: "*When I purchased the property the sellers advised me that access to the rear was readily available and effected via a route on foot only but outside their registered title they having used this access for at least 25 years and their predecessors in title before them....... Since my purchase of 29 Upperholme Lane ...... I have had free and uninterrupted use of the area coloured yellow for access to the rear of the property on foot only without acknowledging the title of any other person to the land and without payment to consent from or objection by any other person whatsoever a situation I believe has been the case for a considerable number of years..*"

23. The section of Mrs Clegg's Statement of Truth headed "ACTS OF ADVERSE POSSESSION" commences at paragraph 63. She states that: "*From 1986 until my ex-husband left in 2000, we had exclusive possession and control of the Blue Land which connected our land south and west, around the south-west corner of the barn. Throughout this period, and indeed since 1978, access to the Blue Land and the Orange Land to lay or maintain sewage drains or to reach the dog pound on the fenced in orange land by Mr. and Mrs.Sykes of no.29 was with our permission........I continued to exclusively possess and control the Blue Land after my ex-husband left in 2000.*

Limited access across the Blue Land by subsequent owners of no.29 was also with our permission, as made clear to them by the vendors during process of sale(s) and subsequently made clear to them by me, though it was rarely accessed by any of them. No-one else ever accessed this private area to the best of my knowledge & belief, except previous owners of no's 30 and 31, and as agreed for occasional property renovation/maintenance which would be unreasonable to refuse."

24. In paragraph 65 she says this: "*From 1986 up until the present I have used and maintained the Blue Land in the same way as I have treated the rest of my surrounding land. In fact, I have treated it all as one piece of land, there having been no difference to me. I was not even aware that the Blue Land had been … included in 29's title deeds until after 2008. Year after year I have sprayed stinging nettles and dock and dandelion weeds and dug out their roots in the Blue Land as well as clipping the grass. There has been a marked contrast between the "Blue Land" and the unkempt land at the rear of no.28 and on the Orange Land which grew dock weeds over 1 metre high at times. I also from time to time placed various planters and other objects on the Blue Land, and on the lower level adjacent to the Blue Land on the east side. My son and I excavated round the edges of the Blue Land in 2002 including up to the back wall of no.29…."*

25. According to paragraph 67, the Blue Land has been completely enclosed since the late summer of 2003 by the Applicants since the garden wall and gate was installed at the front of the cobbled area. The other paragraphs in the Statement of Truth deal with events that occurred after 13th October 2003, which as I have explained is the cut-off date for the application in relation to the Blue Land and therefore not relevant as regards these proceedings.

26. The other Applicant, Mrs Clegg's son Anthony, also made a Statement of Truth, dated 28th January 2014, which formed his principal evidence in these proceedings. He was born in May 1982, and necessarily his knowledge of events during childhood, particularly early childhood, is limited. He says that he was a childhood friend of Luke Sykes, and "*I recall from what Luke told me that even as a child he knew that all the land in front of our barn, right up to the dog pen, (which included the Pink Land and the Blue Land) belonged to us and that their sewage pipes and drain chambers were on our land with our parents' permission.*" He says that "*I remember that Mr Robert Sykes*

only went to the dog pen before work and after work to feed and exercise the dogs as had been agreed between him and my parents." As to the specific acts of adverse possession, those that he mentions occurred in 2002 and 2002 at a time when a new bedroom was being constructed in the Barn and generally after 2000.

27. Although the Applicants have made a number of other Statements of Truth, and a detailed Statement of Case has been filed, these do not contain any additional factual allegations with regard the claimed adverse possession were given.

28. In addition to their own evidence, the Applicants relied on a large number of witness statements – some 16 in number, included in section 2 of Trial Bundle 1. However, in the event only four of those witnesses attended to verify their statements and be cross-examined. The witness statements of those who did not attend are of course admissible hearsay evidence, the weight to be attached to them being a matter for the Tribunal. Where, as in the present case, there is a clear conflict between the evidence of the parties, my general approach will be to concentrate on the evidence which was verified on oath and tested by cross-examination, although of course I have read the other statements and have regard to them. I have no means of knowing how these statements were prepared – Mrs Clegg has clearly had some input into them, judging by the layout, commonality of expression and generally hostile tone. The Applicants' "live" witnesses were Marianne Bray, Irene Aspinall, Norma Hallett, and Luke Sykes.

    (a) **Marian Bray**: Her statement of truth dated 23rd February 2016 is prefaced as follows: "The purpose of this new statement is to refute the misinformation propagated by supposed "Statements of Truth" subsequently produced by Heidi Pollard, which I have been shown, and I know tell a story which is at best thoroughly misleading , and completely false to a large extent". It was her evidence was that she had lived at No.30 in the between 1960 and 1967. At other times she has lived at No.16 Upper Holme. No.29 had no back door but a coal store at the rear. As to No.28, this had a rear yard but no access from the direction of Nos. 29 and 30. No. 27 had no rear access either.

    (b) **Irene Aspinall**: She is the sister of Linn Clegg. Her evidence is broadly to the effect that "*It has always been common knowledge among family and friends that Linn and Richard owned and used all the land around the barn and up to* *the back of the houses in front, including the disputed Pink Land regarding which the Dartmouth Estate has now withdrawn their objection, and the disputed Blue land, and that no-one else ever used that land.*" She also makes some pejorative comments about Ms Pollard.

(c) **Norma Hallett:** She lived at 18 Upper Holme from 1974 until approximately the mid-1990s. She came to know Doris Dolan, the occupier of No.27, very well. She says that she is certain that "Aunty Doris" never accessed the rear of her property via the rear of No.29. She concludes her statement with this comment: "*It appears to me that these claims by Heidi Pollard are all 'smoke and mirrors'*".

(d) **Luke Sykes:** He was born in 1981 and lived at No.29 between that time and 2001, when the house was sold. He confirms the position of the fencing which formed his father's dog pound, stating that there was no way along the rear of No.29 to Nos.27 and 28 because of the fencing. He recalls that the fencing remained in position after his father moved out, and subsequently his brother erected a steel bike shed where he kept his motorbike.

THE RESPONDENTS' CASE

29. The Respondents' primary evidence was in the form of Ms Pollard's witness statement dated 28th April 2017. She says that she bought No.27 in 1999 and No. 28 in 2001, and the two houses were knocked into one in 2002. She and her husband bought No. 29 and the Blue and Orange Land in January 2014. She says that her family has lived at Upper Holme for many generations. Her grandmother Doris Dolan (nee Bamforth) originally lived at No. 16 Upper Holme, the main smallholding in the village, but moved to No.27 in the 1950s. Her mother Susan Pollard, and her siblings, were brought up at No. 27. She herself, and her sister and cousins spent almost all their weekends and school holidays playing around Upper Holme. Upper Holme was approximately a mile away from where she lived as a child and she used to walk there to visit. She would also visit after school on a Friday and all four cousins would stay with Doris during the school holidays because their parents were working. Her uncle Frank Bamforth owned No. 30 until he sold it in the early 1980s. His sister Hilda Broadley lived there for some years, followed by his niece and her family until they moved out in the 1970s. She makes the point that she has a longstanding and detailed knowledge of Upper Holme in general, and the area around No.27 and No.30 in particular, and is supported in her

recollection by a number of other witnesses. She has lived within a mile of Upper Holme from birth until 1999, when she bought No. 27 and began to live there. Throughout that time she has been a regular visitor to Upper Holme and to No. 27 in particular.

30. In relation to the Pink Land, her evidence, in a nutshell, is that it has always been covered with stone cobbles and flags, and was a forecourt in front of the barn door, and could not be described as a garden. On occasions she witnessed her Uncle Frank reversing a trailer up to the Barn to unload hay bales. He sometimes hatched chicks there and would take the children and show them the incubator. Once he sold the Barn in the early 1980s (together with No.30) it remained more or less unused until the Applicants began to convert it into residential accommodation in the early 2000s. At all times until 2003 – when the Applicants built the stone wall in front of the Pink Land to enclose it – the cobbled area remained the same. At or around that time she accepts that they began to landscape the area within the wall, as indeed Mrs Clegg herself accepts (see para. 60 of the Statement of Truth dated 14th January 2014. Prior to that time the Pink Land remained open, unenclosed and unoccupied.

31. As regards the Blue Land, Ms Pollard's evidence is as follows. Until 2013, there was no sign of any gardening or maintenance of the areas at the back of Nos. 27 to 29, which consisted of rough grass and dock leaves. However, it has always been accessed by the residents of Nos. 27 to 29 Upper Holme, for numerous purposes. These included maintaining the rear of the buildings and their drains, cleaning windows, keeping motorbikes, gardening (such as bringing garden rubbish to the front of the properties for disposal) and in the case of No.29 depositing and fetching coal from the coal shed situated at the rear of No.29. She says that the Applicants took no interest in the Blue Land until 2013, after they discovered that the Respondents had bought No. 29 and the land behind it. She dates their first activity on the Blue Land – trimming the grass – to October 2013, at around the time that they applied for a unilateral notice. In December 2013 they put stones, rubble sacks and plant pots on the disputed area. Ms Pollard says that Mrs Clegg told her that this was a temporary measure while she repaired a drain at the corner of her barn. The stones for the wall had come from the already existing wall running diagonally to the corner of the barn and which had hitherto marked her boundary. Mrs Clegg then extended the makeshift wall with a fence in February 2014.

This is shown in page 42 of HP1. The effect was to isolate the Blue Land from the Rear of Nos. 27-29, and the barrier remains to this day. Prior to these events, Ms Pollard says that the Applicants had never made any claim to own the Blue Land and had indeed acknowledged on various occasions that it belonged to No.29. I shall consider this point in more detail below. In summary, therefore, it is her evidence that the Applicants had never been in possession of the Blue Land until, at the earliest, 2013, and that it has been open and freely accessed on a regular basis by the occupants of Nos.27-29 Upper Holme for very many years.

THE RESPONDENTS' WITNESSES

32. The Respondents relied on no less than 19 witness statements, of whom some 14 attended the hearing to verify those statements and to be cross-examined on them. I have adopted the same approach to the statements relied on by the Respondents as I have with regard to the Applicants. In other words, I have relied primarily on the evidence of witnesses who attended to be cross-examined. These witnesses were as follows:

    (a) **Helen Coxan:** She and her husband bought No.29 in 2002 and moved in the same year. They eventually sold to the Respondents in 2013. Her evidence, in essence, is that they always knew that the Blue Land belonged to them, and used it for storage of various items, such as bikes, pots and a wheelbarrow. She also maintained the space and cleared it regularly. No.29 does not have a back door and access to the rear has always been over the Pink and Blue Land. Mrs Clegg had never suggested that the land was hers until the occasion of the unilateral notice in October 2013. She was aware of the ongoing dispute between Mrs Clegg and Ms Pollard and tried to keep clear of it. She and her husband had wanted to put a shed at the rear of No.29, on the Blue and Orange Land, but Mrs Clegg asked her to hold off because they were thinking of rebuilding the Diagonal Wall. Under cross-examination, she categorically denied that Mrs Clegg had ever told her that she owned the Blue Land.

    (b) **John Bolton**: He and his family lived at No.28 between 1980 and 1987, while they renovated the property to which they moved. This lies immediately to the north of Nos.30-32 Upper Holme. He rented the house from Donald Bamforth, who told him that there was a right of access to the rear around the gable end of No.29 and through the gap in front of No.30 – in other words, over the Pink and

Blue Land. He says that there was no mains gas at No.28 so he kept gas bottles at the rear of No.28 for the hot water system. He says that he "*regularly went around the gable end and back of number 29 Upper Holme, passing in front of the barn attached to number 30, to change the gas bottles.*" He never asked for permission to do this and did not think he needed it. He recalls that Robert Sykes, his neighbour at No.29, asked him if he could remove a wall at the rear of No.28. This wall (which is shown on the plans) separated the yard at the rear of No.28 from the strip of land at the rear of No.29. Mr Bolton said that he would have to ask Mr Bamforth, but he does not know if he did. In the event Mr Sykes did take down the wall, which created an open space behind Nos.28 and 29. In cross-examination, he recalled the dog pound created by Mr Sykes, but said that he left a 3 foot gap between the dog fence and the rear wall of No.29 so that access could be obtained to the rear of both Nos. 28 and 29.

Mr Bolton had also made a statement which the Applicants relied upon. This is a curious document, which, although bearing a statement of truth, contains a section which consists of a question and answer session, in which various statements are made by Mrs Clegg and Mr Bolton is asked to comment. This second statement was put to Mr Bolton in cross-examination by the Applicants.

(c) **Charles White**: He and his wife bought and moved into No.26 Upper Holme in 1978, and have lived there ever since. It is his evidence that originally there was a wall enclosing the rear yard on No.28 which ran more or less parallel to the Diagonal Wall and created the "ginnel" that other witnesses have mentioned, leading to a well at the end close to the back garden wall of No.26. When they moved to No.26, the Pink Land was an open area of stone cobbles and flags, and there was free and open access to the rear of Nos 28 and 29 and also Nos 31 and 32 through the gap in the Diagonal Wall (the collapsed archway). He recalled John Bolton living at No.28 and he often helped him move the gas bottles to and from the rear of No.28 over the Pink and Blue Land. "*The Blue and Orange Land appeared to be common land as it was not gardened in anyway and the Pink Land was open and cobbled/flagged as you would expect it to be in front of what had, until fairly recently, been a working farm building. We were not stopped by any one or challenged when we did this*" [i.e moved the gas bottles]. He also recalled Mr and Mrs Sykes moving in to No.29 in the early 1980s. There were and are no mains drains at Upper Holme and Mr Sykes installed a soil pipe to run from No.29's bathroom into the septic tank in the back garden of No.26. The pipe was laid over the Blue and Orange Land. He recalls Mr Sykes telling him that he had purchased the freehold of No.29 from the Dartmouth Estate, together with the land over which the soil pipe ran (i.e the Blue and Orange Land). He also recalled Mr Sykes taking down the curved rear wall of No.28 (the left hand wall of the ginnel) to create a dog pound. However, this did not interfere with access to the rear of No.28. Mr White recalls that over the years (until approximately 3 years ago) he has regularly walked across the Pink and Blue Land to reach the plum tree in the garden of No.26 that overhangs the land behind No.28, to pick the plums on the overhanging branches. It was open access.

(d) **Linda White:** Her evidence was to the same effect as that of her husband, Charles. Under cross-examination she added the detail that she used to wash Doris Dolan's windows.

(e) **Charlotte Bamforth:** She is Heidi Pollard's cousin, and the same age. She says that she has never lived more than 6 miles from Upper Holme, and was a regular visitor to her grandmother Doris Dolan at No.27, until her death in 1997. She confirmed the evidence of Heidi Pollard as regards the free access over the Blue and Pink Land, the appearance thereof over the years, and the fact that the Applicants were never in possession of either parcel.

(f) **Susan Pollard:** she is the mother of Heidi Pollard, and the daughter of Doris Dolan who lived in No.27. She was born at No.27 and lived there for some 21 years until she got married in 1969. She describes the appearance of Upper Holme throughout this period, and also subsequently, since she continued to visit her mother on a regular basis until she died in 1997. She continued to visit Upper Holme after that time, at least weekly, to visit her two uncles who lived at No.16. She describes, in some detail, the appearance of this part of Upper Holme: "*7. The only access to the back of 27, in order to wash the windows and clear the land drain which ran along the back of 27's back wall, was round the gable end of 29, passing in front of the barn adjoining number 30 (across the Pink Land) and between the back of 29 and its attached coal place (across the Blue Land), through an opening in the wall which led into a triangle shaped piece of land behind 28 in front of 28s kitchen windows. We then had to climb over the field wall between number 28 and 27 to get to the back of our house.*

We did not need to ask for permission, nor were we ever prevented from doing so as it was all open and free access." She recalled that there was a well or trough at the end of the "ginnel" – the corridor formed by the rear garden wall of No.28 on the west and the Diagonal Wall on the east – and the field wall ran across it. She also recalls the position of the coal store at the rear of No.29 as follows: *"It was attached to the end of number 28s kitchen across the rear wall of number 29. I remember a small window in 29's rear wall and the coal place came a good way up to that. The end of the coal place nearest to the barn angled inwards away from the barn joining the back wall of number 29 at a point level with corner of the barn. On the attached plan the coal place would cross both the Orange and the Blue Land across the back of number 29. There was still a gap between the corner of the barn and the coal place. The gap was big enough to walk through and across the Blue Land, which I frequently did. Those who lived at 29 had to walk across the Pink Land, round the back of their property in order to get their coal, as did the coal man who delivered it."* Generally, she confirmed the evidence of other witnesses for the Respondent that there continued to be free access over the Pink and Blue Land until very recently, and so signs of any possession of the Blue Land by the Applicants. She saw no sign of *"visible occupation or maintenance of the Pink Land until the Applicants built the wall in front of the barn .... in 2003........."*

(g) **Sarah Pierce:** she is the sister of Heidi Pollard, and was born in 1969. She is familiar with Upper Holme for the same reasons, namely that she has lived no more than 2 miles away throughout her life, and visited and stayed with her grandmother at No. 27 on a regular basis. She confirms the evidence given by Heidi Pollard and other witnesses, to the effect that the Blue Land has always been open and untended and provided an access to the rear of Nos.27-29 Upper Holme. She also confirms their evidence regarding the Pink Land, namely that it was not until 2003 that any signs of possession or maintenance could be discerned. Prior to that it was open and consisted of a stone forecourt.

(h) **Rita Brook:** she lived at 23 Upper Holme between 1934 and 1963. Subsequently she lived at numbers 21 and 25 Upper Holme. She confirmed that, during her time, there was open access over the Blue Land to the rear of Nos.27-29.

(i) **Glenn Dolan**: He is the son of Doris Dolan and the uncle of Heidi Pollard. He was born in 1945 and lived at Upper Holme (latterly at No.27) until he married in 1964. He conforms the layout of the rear of Nos.27-29 Upper Holme as explained by his sister Susan Pollard, and recalls that access to the rear of No.30 was obtained across the Blue Land and through the archway in the Diagonal Wall.

(j) **Eric Broadley**: He lived at No.30 between 1938 and 1961. Generally, he confirmed that access to the rear of Nos. 27-29 was obtained over the Pink and Blue Land. He recalled the stone coal shed at the back of No.29. He says that this was built along the rear wall of No.29 and ended parallel with the corner of the Barn's gable end. There was space to walk between the corner of the coal shed and the corner of the Barn in order to reach the rear yard of No.28. he recalled the "ginnell" and the well at the end of it.

(k) **Clare Fielding:** She is the cousin of Heidi Pollard, born in 1969, and has lived close to Upper Holme (within 2 miles) for her entire life. She spent a great deal of time at No.27 as a child and teenager. She confirmed the evidence of Heidi Pollard.

(l) **Margaret Smith:** She lived at Upper Holme between 1948 and 1969, first at No.28 and latterly at No.20. She is not related to Heidi Pollard. She recalls the coal shed at the rear of No.29 being built along the back wall of No.29 and ending opposite the corner of the Barn.

(m) **Diane Taylor:** She was born in 1950 at No.29 Upper Holme. She lived there for 8 years with her parents. She remembers the coal shed at the rear, which she says contained a workbench where her father would work. They also housed rabbits there. The coal shed extended about three-quarters of the length of the rear wall of No.29. Access to the rear of Nos.27-29 could only be obtained by entering via the Pink and Blue Land.

(n) **Penelope Parkin:** she is the mother of the second Respondent and mother-in-law of Ms Pollard. She and her husband purchased No.28 in 2001 and shortly thereafter sold it to the Respondents. She referred to a conversation with Donald Bamforth, the vendor of No.28, who informed them that the land at the rear of No.28 went with the house, and confirming that access to it was obtained over the Pink, Blue and Orange Land. Generally she confirmed the evidence of Ms Parkin as to the free access to the rear of Nos.28 and 29 over the disputed land,

and as to the absence of any visible possession of the Blue Land by the Applicants.

ACKNOWLEDGMENTS OF TITLE

33. An acknowledgment of title stops time running under the Limitation Act 1980. However, an acknowledgment made after title has been barred will not have that effect. In this case the Respondents rely as part of their case in regard to the Blue Land on alleged acknowledgments made by Mrs Clegg in 2012 and subsequently. Clearly, if she succeeds, she will have barred the paper title by 2003, so an acknowledgment after this date has no effect. However, such acknowledgments in the non-technical sense may have significance in other ways. First, because it would cast doubt on her evidence to the effect that she has always believed that the Blue Land belonged to her, and that she gave express permission to Mr and Mrs Sykes and others to cross it. Secondly, because it might demonstrate an absence of an intention to possess.

34. Ms. Pollard referred to a number of letters and photographs on this point.

    (a) These begin with an email dated 14th October 2012 (p.398) from her to Helen Coxan (the then co-owner of No.29) referring to a confrontation with Mrs Clegg at the back of No.29. Ms Pollard was clearing up the weeds and debris outside the rear of No.28 when she was approached by Mrs Clegg in aggressive fashion, according to her evidence. She wrote: "*Unfortunately, Lynn has taken exception to this and has taken it upon herself to play a childish, petty game of moving plant pots directly outside our door onto the space I have cleared.*" She also attached some photographs identifying the plant pots placed there by Mrs Clegg – these photographs are included in the evidence. It is clear that one of the plant pots – containing a large conifer – is situated on the Blue Land, immediately to the west of No.29's downpipe.

    (b) This is followed by an email from Mrs Clegg to Helen Coxan dated 18th October 2012 (p.1070) which includes this: "*I hate to bother you but I think you need to write to Heidi, as my placing of planters **on your land** as requested has not been well received, though I have not obstructed or confronted in any way. Basically I think she is surrupticiously [sic] making claim to the land and hoping you will let her get away with it.*" [my emphasis].

(c) Attached to this email was a letter written by Mrs Clegg to Ms Coxan, which includes the following passages: "*I'm sorry too have to bother you with this, but I think you need to write to Heidi re your land at the back of 29. Before leaving in August for your year abroad, you realised you needed to mark your ownership of that land to protect your interests. You and Graham managed to move the large green garden storage chest onto your land, against our high diagonal wall, and asked me to place objects such as garden planters or other things onto the land adjacent to the rear wall of 29 (adjacent to 28)...... Anthony had been painting the rear of 29 for Graham just before you left for Spain, and had had to move an existing heavy planter with conifer in it, which he had moved just out of the way into the middle of the grassed area – and hadn't moved it back. I managed, with difficulty to move it back over against the rear wall of 29 near the drainpipe, and it was not moved again. Gradually, over the next few weeks, I sorted some planters out to put on 29's land as requested by Helen. They were neatly placed along 29's rear wall from the drain pipe up into the corner of the party wall with 28's extension, not protruding, and clear of 28's door.*" She then recounts the incident on 14th October 2012 as follows: "*I set out for church at 9.45 a.m. I looked and saw that two planters I had placed had been moved from the back of 29's house wall/corner with 28..... I put them back before I went to church..... *" She then told the Respondents that "*... before Helen went away she asked me to keep an eye on her house and property interests. She particularly asked me to put plants and other things on their land at the rear of 29, but it appears that one or other of you have been moving them. Heidi, very stroppily said (and I quote) "Well, Linn, as you are aware, we do <u>not know who</u> that land belongs to!!!!" I said – "It is perfectly clear from the deeds that Helen and Graham own the land......."*

(d) On 30th October 2012 Mrs Clegg emailed Ms Coxan and chased her for a reply to the letter of 18th October. In this she presses Ms Coxan to write a letter confirming that she instructed Mrs Clegg to place planters etc "*on your land|*".

(e) On 1st November 2012 Ms Coxan writes: "*As far as Heidi's access is concerned, I don't have a problem with her standing on 'our land' – though I understand that for you it means she is able to use the door. Please don't try and stop her doing so on our behalf -it will only lead to further conflict between you two. I* *am not sure I asked you to do anymore than keep an eye on the house for me – I am sorry if it was misunderstood....*"

(f) On 2nd November Mrs Clegg replied to Ms Coxan (p.1072) which includes this section: "*I am simply asking you to write a short letter to Heidi smoothing the waters and confirming that you asked me, on your behalf, to put a few planters on your land (without obstructing access from their door to the back yard) to indicate that you have not abandoned your land in their absence.*"

(g) On 14th March 2013 Mrs Clegg emailed Ms Coxan (p.1083"), a letter which includes the following: "*We did have a conversation not so long ago about the possibility of you transferring either all or part of the land at the back of the property to us – you said it was more bother than it was worth to 29 and wonder whether that is something you would please consider now, and on what terms? – you said, "As long as we get some money for it." I know you don't want battles with Heidi, though she is the trouble maker not me.*"

(h) Helen Coxan replied on 20th March 2013 (p.1087) as follows: "*Graham and I have talked about what's best to do with the land at the back of the house. Both you and Heidi have expressed an interest in buying some or all of it. We feel that unless you can work together to agree a way forward regarding this strip of land, it is best left attached to number 29. We are clear about what constitutes the land in question and I attach a copy of the Land Registry document that shows it.......*"

(i) On 20th March 2013 Ms Pollard wrote to Mrs Clegg suggesting that they try and agree between themselves "*on splitting the land to enable each of us to get something out of it – rather than both of us getting nothing.*"

(j) On 1st April 2013 Mrs Clegg wrote to Helen Coxan, including this comment: "*Thankyou for your response which is perfectly reasonable.* ***I know that your deeds are perfectly clear about what land you own – I have never had a problem with that.***" This is a reply to the letter referred to at (h).

(k) Mrs Clegg responded on 13th April 2013 with a letter headed "WITHOUT PREJUDICE". Mrs Clegg objected to the admission of this letter in view of its heading, but I ruled that it was not privileged from production on the grounds advanced by the Respondents. Essentially, because there was no ongoing dispute between the parties at that time as to the ownership of this land. The Respondents did not own it, and the Applicants had not made any claim to it.

In this letter she put forward a proposal on dividing the land, that would result in the Respondents buying what is now referred to as the Orange Land. "*By this agreement we would purchase the small square of 29's land from the opening between the end of my high diagonal wall and the corner of our converted barn, across to 29's rear house wall (including the site of 29's former outbuilding) which would ensure our privacy in private areas all around from the south side to the west side of our property, and retain easy access to all of 29's rear house wall when needed for painting/maintenance.*" This perfectly describes the Blue Land.

(l) On 25th July Helen Coxan informed Mrs Clegg that they had agreed to sell No.29 to the Respondents. Mrs Clegg replied as follows: "*Yes, it is my worst nightmare come true, Heidi being like she is. Can you please let me know what date the transfer is expected to take place..... We have at last got a builder on with doing the groundworks round the west end of the barn and new solar space, which will include putting in surface drainage. Drains will have to pass round the corner of the barn to the south side and connect into the drains at the front...... And finally, could I please beg you to let us have a teeny bit of land from the end of our 10 foot high diagonal wall protecting our access around the corer of the barn because I expect that madame H will be as stroppy and difficult as she always has been with Tim and Jo and ourselves in the past.*" The piece of land referred to includes the Blue Land, upon which the sewage pipe is laid.

(m) On 9th September 2013 the Applicants applied for a unilateral notice against the title to No.29 based on a claimed paper title. In the event the Land Registry rejected this claim, but entered the notice on the basis of alleged adverse possession. This is clear from the correspondence from the Land Registry dated 5th December 2013 and referred to above. The effect of the application was to delay completion of the sale of No.29 to the Respondents. This caused Helen Coxan to write to the Land Registry on 22nd October 2013 (p.1105) stating that: "*Obviously, this claim has halted the sale and we are pretty much in the dark as to what is happening. Mrs Clegg has never made such a claim before in the 11 years that we have lived in the property, nor have we ever had any legal communication from her regarding our small area of land.*"

FINDINGS OF FACT

The Pink Land.

35. The burden of proof is, of course, on the Applicants. Although, as I have noted earlier in this Decision, the Applicants – Mrs Clegg in particular – maintain that the Pink Land was never in the ownership of Lord Dartmouth, the land is registered within his title. Furthermore, the Land Registry has robustly rejected the Applicants' claim to have a better title. For present purposes, therefore, the Applicants can only succeed by showing that they had barred the title prior to 2006. The Pink Land lies between No.30 and the carriageway. The evidence is that it constituted a cobbled forecourt to the barn that forms the most westerly part of No. 30. It is common ground that this barn was used by previous owners for parking a car, as a store for machinery, and as a workshop. The area in the front of the barn was open and unenclosed. The Applicants did not purchase No.30, including the Barn, until 1986. They did not convert the Barn into residential accommodation until the late 1990s/early 2000s, and did not enclose it with a wall until 2003. Even then, the access gate was not locked. The only activities on the Pink Land to which the Applicants refer amount to "keeping tidy", keeping weeds down and parking on it.

36. The Respondents' evidence is that the Pink Land had always been open and accessible until the wall was built in 2003, and the gate inserted in that wall. When the wall was built, Ms Pollard complained to Lord Dartmouth, since she was concerned that this was might demonstrate an intention to block the express right of way granted by Lord Dartmouth over the Pink Land in 1984 (No.29) and 1999 (No.27). This resulted in a visit to the site by the estate's surveyors, Carter Jonas, who wrote to Mrs Clegg on 9th September 2004 [Vol 4 p.1021]. It was their view that there had been no acts of adverse possession until the construction of the wall. There is overwhelming evidence that free access was obtained to the rear of Nos. 27-29 over the Pink Land over a period of many years prior to 2006. There is also overwhelming evidence that the cobbled area in front of the Barn was no more than an open forecourt, at least until the erection of the wall in 2003. The 2001 aerial photograph shows the area in front of the Barn as open and accessible, which is entirely consistent with the evidence given by the Respondents' witnesses.

37. In my judgment, the Applicants have never been in adverse possession of the Pink Land. None of the acts which they are rely on are more than trivial, and do not amount to exclusive factual possession, or indeed any form of possession. Whilst conceivably the construction of the wall in 2003 might have indicated an intention to exercise some control over the Pink Land, for the entire period between 1986 and 2003 the land was open and accessible by the owners and occupiers of Nos. 27-29 Upper Holme and the Applicants were not in possession, nor did they have the intention to possess. I appreciate that land can be exclusively possessed even if it is subject to a right of way – that is the position of any servient tenement. However, where a squatter is claiming to be in adverse possession, the fact that use of the land is effectively shared with others, in this case the owners of Nos.27-29 Upper Holme, is fatal to the claim, particularly in view of the trivial nature of the acts of possession relied upon. The critical question is whether they can prove that they were in adverse possession for a period of 12 years prior to 2006, and I find that they were not. Their application must therefore be rejected. As I have explained, although the registered proprietor has withdrawn his objection, the matter had already been referred to the Tribunal by that stage, and the Tribunal is entitled to reject the application on the evidence.

The Blue Land

38. My findings in relation to the Blue Land are as follows:

(n) The Applicants have never been in possession, leave alone exclusive factual possession, of the Blue Land at any time prior to 2013.

(o) The Blue Land was essentially part of an open area used in common by the owners of Nos.27 to 29 Upper Holme at all times prior to 2013.

(p) The coal shed attached to No.29 was constructed partly on the Orange Land and partly on the Blue Land. The stone flags that formed the floor are still visible partly within and partly outside the line of the Applicants' new fence separating the Blue and Orange Land.

(q) Mr Sykes used the whole of the land behind the houses as a dog pound. He did this without asking for or receiving permission from Mrs Clegg. He left a corridor along the back wall of Nos. 28 and 29 as confirmed by Mr Bolton and Mr White. I find that Luke Sykes was mistaken in saying that there was no access to the rear.

(r) Other owners and occupiers of No. 29 used the Blue Land for storage, for example Ms Coxan used it for bicycle storage and Carl Sykes used it to park his motorcycle.

(s) The Blue Land was open to all and was part of the access route to the rear of Nos.27-29 and used for that purpose from the earliest living memory to 2013. Even Mr White at No.26 was able to access it for the purpose of picking fruit from his plum tree. Mrs White recalls accessing the rear of No.27 to clean Doris Dolan's windows.

(t) The Blue Land remains unenclosed to this day, albeit that the Applicants have fenced it on the Respondents' side. Since late 2013 the Applicants have begun to carry out some work on the Blue Land, such as the placing of stones and a fence upon it and the storage of materials. Prior to that time the Applicants did virtually nothing to the land – described by Mrs Clegg herself as a "damp dark corridor". The photographs produced by the Respondents show very clearly the state of the Blue and Orange Land prior to 2013 – rough grass, unkempt, with various items such as bicycles stored on it. It is manifestly not a tended garden or living area.

(u) The curtilage of No.30 was clearly marked by the Applicants as separated from the Blue Land. They had constructed a low wall which continued the line if the Diagonal Wall as far as the corner of the Barn. The stone flags inside the curtilage of No.30 (as extended by the Gable End land acquired by possessory title) were cut to this shape. There was no attempt to extend the occupied area to the Blue Land.

39. Accordingly, I find that the Applicants have never been in exclusive factual possession of the Blue Land, certainly not before late 2013. Any activities that may have been carried out were minimal. Furthermore, they have never had any intention to possess it. Quite the opposite. Mrs Clegg went out of her way to assure Ms. Coxan that her actions in placing plant pots and other items on the Blue Land were carried out as agent of the owner of No.29. The correspondence referred to at paragraph 34 makes this abundantly clear. I appreciate that an intention to possess, rather than own, is the relevant consideration, but Mrs Clegg expressly stated that any acts carried out on the Blue Land were carried out on behalf of the legal owner. I wholly reject Mrs Clegg's evidence that she has given express permission to various people, such as Mr Sykes and

Fletchers, to make use of the Blue Land. This claim is contradicted by other evidence. For example, Mr White was quite clear that Mr Sykes knew perfectly well that he owned the Blue and Orange Land, having bought it from Lord Dartmouth. The suggestion that the Fletchers asked for permission to use the right of way is completely undermined by the statutory declaration that Mr Fletcher made when he sold No.29 to Ms Coxan and Mr Mitchell. Accordingly, I conclude that the Applicants have not been able to prove adverse possession of the Blue Land for the necessary period. I shall therefore direct the Chief Land Registrar to cancel the Applicants' application.

40. In reaching these conclusions and making these findings, it will be apparent that I have largely accepted the evidence of the Respondents and their witnesses, and I have preferred their evidence to that of the Applicants where there is any conflict between them. I have done so for a number of reasons. I regret to say that I did not find Mrs Clegg to be an entirely reliable witness. It is absolutely plain that she is driven by a very strong antipathy to Ms Pollard, which is presumably a result of her vigorous, long-standing and well-documented objection both to the installation of the rear door of No.28 and the existence of the right of way to No.27 granted to the Respondents when they bought it from Lord Dartmouth. It seems to me quite obvious that the purpose of the claim to the Blue and Pink Land is to as part of a long-running campaign to prevent the Respondents from using the right of way and, indirectly, the rear door. Indeed, Paragraph 167 of the Statement of Case makes this abundantly clear. I have set out at some length the correspondence over the years from which it is apparent that it never occurred to her to make a claim to the land until she became aware that it had been bought by the Respondents. Her reaction on hearing that the Respondents had agreed to buy No.29 was this: "*Yes, it is my worst nightmare come true, Heidi being like she is. Can you please let me know what date the transfer is expected to take place.....*" Almost immediately, she applied to enter a unilateral notice on the grounds that she had a paper title to the Blue Land. This was clearly designed to impede the sale, despite her protestations to the contrary. In the words of Helen Coxan: "*Obviously, this claim has halted the sale and we are pretty much in the dark as to what is happening. Mrs Clegg has never made such a claim before in the 11 years that we have lived in the property, nor have we ever had any legal communication from her regarding our small area of land.*" Not only had Mrs Clegg never made a claim to the land previously, she had gone out of her way to reassure Ms Coxan that she was well aware that she owned it.

In her own words: "*I know that your deeds are perfectly clear about what land you own – I have never had a problem with that.*" I can only conclude that the claim to the Blue Land was not a genuine claim, and that she only pursued the adverse possession route once the Land Registry had rejected the claim to a paper title, which was hopeless.

41. Equally, Mrs Clegg on numerous occasions asserts that the owners and occupiers of Nos.27 to 29 used the land with her express permission. I have already rejected this evidence, not least on the basis that it is wholly contradicted by other credible evidence. For example, she does not explain how it is that she felt able to give permission to Mr Sykes in 1980, for example, to use the land at the rear of No.29, when she did not become the owner of No.30 and the Barn until 1986. With regard to the Pink Land, Carter Jonas robustly rejected her claim to ownership in correspondence in 2003 and 2004, yet, according to Mrs Clegg, they agreed in a subsequent face to face meeting that she did own the land. This is not recorded anywhere in writing, and is wholly inconsistent with the objection lodged by Carter Jonas to the Applicants' application regarding the Pink Land. These are merely some examples of Mrs Clegg's ability to say anything which might assist her case. I think it is entirely possible that she has simply convinced herself of the truth of these matters, rather than putting forward deliberate falsehoods. Overall, however, I am unable to accept her evidence where it is in conflict with the evidence put forward by the Respondents.

42. Her son, the second Applicant, did not add anything much to her evidence. Some of it was inherently improbable, and I reject it. For example, his evidence that Luke Shaw told him that "......... *even as a child he knew that all the land in front of our barn, right up to the dog pen, (which included the Pink Land and the Blue Land) belonged to us and that their sewage pipes and drain chambers were on our land with our parents' permission.*" It is noteworthy that Mr Shaw did not say this himself in his witness statement, and, given that Anthony was not even born when the permission was allegedly given (in 1980 or thereabouts) it seems extremely unlikely that this is a conversation that small children would have had. As to the other witnesses called by the Applicants, other than Luke Shaw, I regret to say that they manifested the same extreme and personal animus towards Ms Pollard as Mrs Clegg, which in my view seriously undermined their reliability.

43. As regards the evidence tendered on behalf of the Respondents, some at least of the witnesses were relatives of Ms Pollard, and naturally this connection must be taken into account when assessing the overall credibility of the evidence. However, I found the Respondents' witnesses to be credible and reliable, and there were enough independent witnesses to act as a cross-check on the witnesses who had a personal connection. Ms Pollard herself struck me as a witness who was prepared to give careful and considered answers to questions that were put to her. Overall I regard her as a credible witness.

REASONABLE BELIEF

44. Although the applications which have been referred to the Tribunal are not made under Schedule 6 of the LRA 2002, it appears that two such applications have been made and are awaiting the outcome of these references. These applications depend, of course, on the Applicants' ability to establish adverse possession for the period of 10 years expiring on the date of the application. I have held that the Applicants have not been in adverse possession of the Pink or the Blue Land for the necessary period or at all as regards these references – prior to 2006 and 2003 respectively. Even if the Applicants were able to establish some period of adverse possession after those dates – which is at least conceivable in relation to the Pink Land – their applications would be bound to fail because they would be unable to satisfy any of the conditions required under para.5 of Schedule 6. Specifically, they would be unable to satisfy the third condition – that they reasonably believed that they owned the Pink and Blue Land. I have already pointed out the numerous occasions (as recently as 2012) on which Mrs Clegg specifically acknowledged that the Blue Land was in the ownership of No.29. As regards the Pink Land, Carter Jonas, on behalf of Lord Dartmouth, asserted his title to the land on various occasions in correspondence with Mrs Clegg between 2003 and 2005. In 2008 Mrs Clegg threatened a claim to adverse possession – which necessarily recognises that she did not have a paper title to the land. In 2009 her solicitors proposed that Lord Dartmouth should transfer the Pink Land to her. At that time Carter Jonas asked her to remove certain items from the Pink Land. Even if Mrs Clegg originally entertained a belief that she owned the Pink Land, manifestly it would have been quite unreasonable and against all the known facts to maintain that belief at any time after 2004.

CONCLUSION

45. I shall therefore direct the Chief Land Registrar to cancel the two applications that are the subject of the references to this Tribunal. Generally speaking, costs would follow the event – i.e the loser would pay the costs. I am therefore proposing that the Applicants should pay the Respondents' costs. Before making that order I shall give the Applicants an opportunity of arguing for a different order, if they so wish, and this must be done in writing no later than Friday 27th July 2018. The Respondents may reply within 7 days thereafter. I direct that the Respondents should also submit to the Tribunal (and serve on the Applicants) a costs statement, limited however to the costs and disbursements recoverable by a litigant in person under Part 46.5 of the Civil Procedure Rules and the Practice Direction made thereunder. This should be done within 7 days. When all the arguments are to hand, I shall consider whether to make a summary assessment or order a detailed assessment by a costs Judge.

46. As a final point, the jurisdiction of this Tribunal is to resolve the dispute as referred by the Land Registry. The Tribunal does not have power to order removal of any items placed on either the Blue or Pink Land, nor to prevent any interference with the existing easements. Dare I say it, this would have to be the subject of separate proceedings.

Dated this 17th day of July 2018

Owen Rhys

BY ORDER OF THE TRIBUNAL

Land Registry
Illustrative plan

Title number **YY29841**
Ordnance Survey map reference **SE0614SE**
Scale **1:500** enlarged from 1:2500
Administrative area **West Yorkshire: Kirklees**

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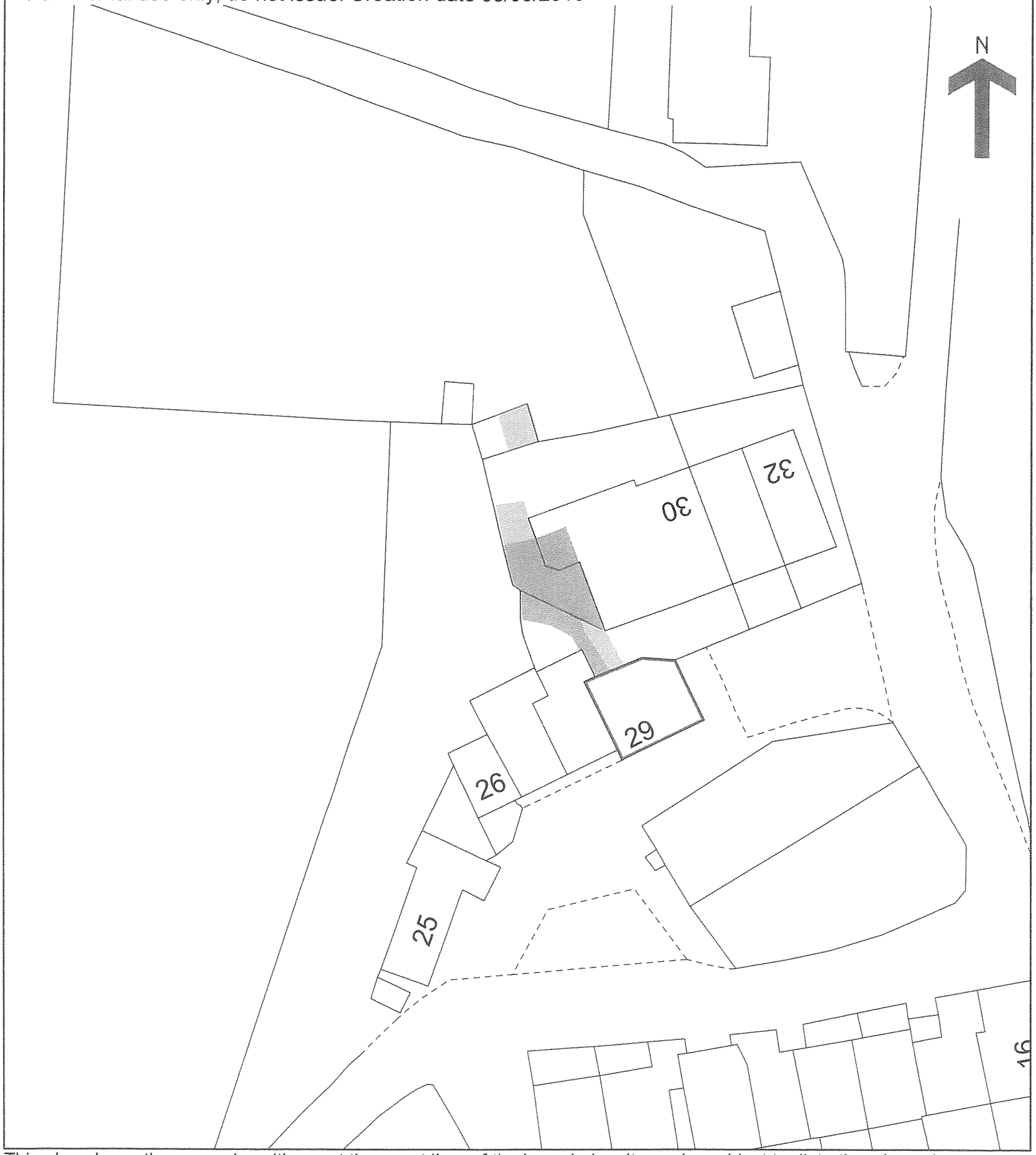

This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.