

[2019] UKFTT 0728 (PC)

PROPERTY CHAMBER  
FIRST-TIER TRIBUNAL  
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2018/1072  
BETWEEN

RAY JAMES DOWSE  
KATHLEEN DOWSE

Applicants

and

CITY OF BRADFORD METROPOLITAN  
DISTRICT COUNCIL

Respondent

Property: Land to the east side of Staveley Road, Keighley

Title number: YY84053

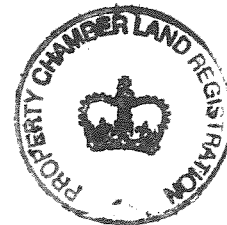
ORDER

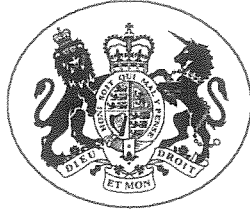
The Chief Land Registrar is ordered to cancel the application dated 10 May 2017

BY ORDER OF THE TRIBUNAL

*Ann McAllister*

Dated this 15<sup>th</sup> day of November 2019





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LAND REGISTRATION DIVISION**

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**REF No 2018/1072  
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**ROY JAMES DOWSE  
KATHLEEN DOWSE**

**Applicants**

**and**

**CITY OF BRADFORD  
METROPOLITAN DISTRICT COUNCIL**

**Respondent**

**Property: Land at the east side of Staveley Road, Keighley, West Yorkshire**

**Title number: YY840053**

**Before: Judge McAllister  
Leeds Magistrates Court  
8 October 2019**

**Representation: Andrew Williams of Counsel instructed by Milners Solicitors appeared for the Applicant; Nicholas Mason of Counsel instructed by Legal and Democratic Services of the Respondent appeared for the Respondent. (change this to in house legal department)**

## **DECISION**

### **Introduction**

1. By an application dated 10 May 2017, the Applicants (Mr and Mrs Dowse) applied to be registered as owners of part of the land currently registered in the name of the

Respondent (the Council) under title WYK828330. The Council were registered as freehold owners on 7 August 2006. The disputed land forms part of some 8 or 9 acres designated by the Council as surplus housing land. Mr and Mrs Dowse are the registered owners of adjacent land, No 135 Staveley Road.

2. The application was made under the provisions of section 97 and paragraph 1 of Schedule 6 to the Land Registration Act 2002. In essence, Mr and Mrs Dowse's case is that they have been in exclusive possession of the disputed land for the past 42 years. The Council objected by letter dated 8 March 2018 and enclosed an NAP form, requesting that Mr and Mrs Dowse bring themselves within one of the conditions set out in paragraph 5 of Schedule 6. Mr and Mrs Dowse rely on paragraph 5(4) of the Schedule Paragraph 5(2) was also initially relied on, but was not pursued at trial.
3. Paragraph 5(4) (so far as relevant) requires the applicant to show first that the disputed land is adjacent to land belonging to the applicant; secondly that the exact line of the boundary has not been determined in accordance with section 60 of the Act; and thirdly that for at least 10 years of the period of adverse possession ending on the date of the application, the applicant reasonably believed that the disputed land belonged to him.
4. The letter of objection dated 8 March 2018 stated that Mr Dowse was the tenant of the disputed land from about 2005 and in the past had been asked to sign a licence. It is common ground that Mr Dowse was never a tenant of the disputed land, and that he never signed a licence for any part of the disputed land.
5. The Council's case, as developed in these proceedings, is that Mr and Mrs Dowse cannot show that they have exclusively occupied the disputed land with the requisite intention to possess for the last ten years, and, further, that they cannot bring themselves within paragraph 5(4) of Schedule 6.
6. For the reasons set out below I will order the Chief Land Registrar to cancel Mr and Mrs Dowse's application.

### **Background and evidence**

7. Mr Dowse became a Council tenant of 135 Staveley Road in 1977. He purchased the freehold with his wife on 27 March 1982. Mr Dowse has also been granted grazing licences of three plots adjoining the disputed land: two to the north, and one to the south east. The first licence was granted in 1994. The licences continue to this day.

8. The disputed land lies to the east of a number of properties on Staveley Road, and is bounded, at its eastern border, by a number of allotments, and to the south east, by land abutting a railway line. To the south it is bounded by a fence dividing the disputed land from the land belonging to Worth Valley School, owned by the Council.
9. Access to the disputed land is from a lane running down between two properties on Staveley Road, which lane leads to a gate which is currently locked (although there has always been a pedestrian access next to the gate). It is also accessible from the rear garden of No 135 Staveley Road. Other than these two points of access, the disputed land is entirely fenced and inaccessible.
10. It is important to note that the gate leads also to a path which in turn leads to the allotments to the east of the disputed land. The allotments, owned by the Council, have been transferred to Keighley Town Council for management purposes.
11. The disputed land has been divided, for the purposes of these proceedings, into A, B and C. C is a small area of land to the north of the gate and access way to the allotments. It is not marked on the ground, by any physical feature. B is the land immediately to the south of C (bounded to the west by the back of the houses on Staveley Road) and to the east by the allotments. There is a fence dividing this area from the back gardens, which, on the evidence of Mr and Mrs Dowse, has been there since 1977. There is also a fence dividing this land from the allotments. Area B, to the south, is divided from A by a fence (with a gate) erected by Mr Dowse in about 1977. Area A is bounded to the east by two further back gardens; to the west by a ditch leading to the allotments and a wall dividing the land from the railway embankment. To the south area A is bounded by a fence, part of which was erected by Mr Dowse in 2002/2003. Part of the land to the south of area A is the grounds of Worth Valley School.
12. The disputed land is uneven, and slopes west to east. There are no permanent structures on the land, although it has been used for storing a caravan and horse box. It is Mr Dowse' evidence that, over the years, the disputed land has been used to make and process hay, to store bales and animal feed, for grazing animals, and, as I have said, storing caravans, and a horse box, and other materials and machinery. It was put to him that the disputed land is not suitable for growing hay. Mr Dowse denied this, and stated that he grows hay every couple of years, on the lower part of 'B' land and some of 'A' land.

13. I have seen a number of photographs which Mr Dowse stated were taken from 2002 onwards showing the caravan, horse box, horses, and the cutting of grass with a sit-on mower. These are not dated, but Mr Dowse gave dates from his recollection.
14. It is also Mr Dowse's case that he has erected and maintained fencing, and installed new fencing when necessary. The first fencing was erected in 1982, and the most recent repair was in 2017. After 2002 further fencing was erected along the south east of the disputed land. The wall separating the disputed land from the railway embankment has been maintained and repaired by him. The fencing consisted of posts, pig netting and barbed wire on top. Along the back of the houses the fences were stronger to prevent horses pushing it over. The original low fencing put up by the Council at the back of the houses was, on Mr Dowse's evidence, replaced by him after 2004.
15. Mr Dowse has had an allotment since 1975. It is his case that, other than him, his brother and two other persons have had allotments. Mr Robinson has not been seen for 15 years. Paul Cook has had an allotment since 1989. In July 2008 the Council granted Keighley Town Council an easement to cross the disputed land along the access way to the allotments on foot and with vehicles. The route is marked on the plan attached to the deed, and runs in a straight line from the gate leading to the disputed land to the allotments.
16. In cross examination Mr Dowse accepted that other people might have used the land before 2001 but not after that date, because he prevented people coming onto the land.
17. The Council seem to have taken little interest in the disputed land. In about April 2001, however, Mr Melvyn Jagger, Senior Estates Surveyor of the Council, received, he said, a number of complaints from neighbouring properties. The allotment officer was also concerned that a gate had been erected across the access road, and a 'No Entry' sign placed on the gate. Anyone wanting to go to the allotments had to climb over the gate, or go around it.
18. As a result of these complaints Mr Jagger visited the land. Mr Dowse's evidence is that he saw a man walking across the land and asked him what he was doing on his land. He denied that there had been any complaints, and said that any complaint related to other land. Mr Dowse stated that the purpose of Mr Jagger's visit was to encourage him to take a licence of other land. Mr Jagger's evidence is that he and Mr Dowse agreed that he could have grazing licences of parcels B and C. Mr Dowse did

not want a licence of parcel A as it was rough and unsuitable for use, and he did not want to effectively police the land.

19. There are very few documents available from the Council's files. Mr Jagger has attached a draft licence agreement dated 10 June 2002 which included land to the north of parcel C, and parcel B. The plan appears to have been returned by Mr Dowse, on which he had written (and signed) 'Not agreed'. Mr Jagger's evidence on the lack of records is that various files were kept, that the disputed land was inspected every 6 months and photographs taken, but that no-one has been able to locate these.
20. A further document retained by the Council is a letter dated 4 August 2003 from a Mrs McManus who lived at 137 Staveley Road. The letter stated that she has been the owner of her property for 29 years. During those years the land behind her house was open to the public. All the neighbourhood used the land to play football, walk the dogs etc. It was her grand-daughter's birthday on the 3 August. The children played on the field. Mr Dowse approached her son in law and told him that the land was his, and he should have asked for permission to be on it. Mrs McManus added that she had heard that Mr Dowse had grazed the land in the past, but that, if so, it had not been grazed properly because it was over-grown. Mrs McManus rang the Council, to be told that Mr Dowse did not own the land.
21. Mr Dowse's response to this, in evidence, is that he had told the children to leave the land because he considered it dangerous, as he had horses on the land. In about 2002 he locked the gate to stop people with dogs entering onto the land and to stop them as he put it 'messaging around with the hay.' He also did so to prevent people getting to the railway and to stop them using the disputed land to dump rubbish. Pressed on the point whether other people used the disputed land Mr Dowse stated that other people might have used the land before 2001, but not after that date.
22. In late 2001 or early 2002 Mr Dowse applied to be registered as owner of the disputed land (and, it seems, other land) on the grounds of adverse possession. No copy of the application is available, but by letter dated 26 April 2002 the Land Registry rejected his application. This, of course, was before the introduction of the 2002 Act and before the creation of the office of Adjudicator (now the Tribunal).
23. The letter was clearly written following a survey of the land. The writer states that, having considered the results of the survey, Mr Dowse could not be registered as owner because (a) the land is clearly only used for grazing, which in any event was limited and (b) it was also used for access to the allotments, and the stile (presumably

the gate) had only recently been blocked off. Before that date access was available by third parties. Reference was also made to the land on the far side of the railway track. This land is not part of the disputed land.

24. The refusal of the Land Registry to give effect to this application does not, of course, bind me. Nonetheless, the summary of the surveyor's conclusions is of some evidential assistance.
25. Mr Dowse's evidence at trial is that he responded to this letter, pointing out that the disputed land was not just used for grazing, but that he also mowed the land, and placed various things on the land, including caravans. He had 6 or 7 horses grazing on the land at this time. There is no copy of any further correspondence between Mr Dowse and the Land Registry. He heard nothing further from the Land Registry, and was not asked by the Council (or anyone else) to leave the disputed land. He believed the disputed land belonged to him.
26. As for the need to cross the disputed land to reach the allotments, Mr Dowse accepted, as stated above, that this is necessary (there is no other way to reach the allotments) but repeated that only himself, his brother, Paul Cook and Mr Robinson had used the allotments in the last 15 years.
27. In addition to the activities set out above, Mr Dowse's evidence is that, before the gate was locked, he cleared the disputed land of all kinds of rubbish, including mattresses, bottles, cookers etc.
28. On 15 January 2008 the Council granted Skipton Properties Limited a deed of easement to run an underground sewer over part of the disputed land from the back of Worth Valley Primary School to or under the railway. Mr Dowse is adamant that the work was done in 2005 and that he was paid £1,000 by Skipton. I have seen a receipt dated 24 November 2005 for £1,000 in cash from Hayfield Robinson on behalf of Skipton. The receipt states that the payment is a one off payment to allow Skipton to come onto the land to carry out necessary drainage and fencing works. There is a further note stating that the work was to start on 24 November 2005 and end on 24 December 2005. Mr Jagger confirmed that the deed of easement had been granted retrospectively.
29. Mrs Dowse stated that both she and her husband used the disputed land every day, by grazing horses, tidying the land, cutting down nettles, erecting and maintaining the fencing. She confirmed, too, that she believed the land was theirs. As for the number of horses, this varied from 2 to 14 at the most.

30. Paul Cook confirmed that he has had an allotment since 1989. His evidence is that the disputed land has always been known locally as 'Roy's land', and that there has always been a locked gate at the entrance to the land, although it has always been possible to walk through a small side gate. He has helped Roy bring hay off the land over the years. He was brought up on Staveley Road, and has lived in the area apart from a period of 4 years between 1984 and 1988 when he lived in South Africa. He visits his allotment most days, most weeks. If he needs to get a vehicle to the allotment he asks Mr Dowse to open the gate. The allotments are not used to grow vegetables, but rather to store things. The reason for this is that whatever grows is stolen. He stated that many years ago children played on the disputed land, and it was used for motorbikes, but this was stopped by Mr Dowse in the late 1980s. Mr Dowse also prevented fly tipping in the past.
31. I also heard from Roy Foulds. He has been a resident in Staveley Road for 40 years, and has known Mr Dowse as a neighbour for that time. He stated that he took his dog for walks on the disputed land fairly regularly. He could access the land whenever he wanted to, and was never stopped. He also confirmed that other people used the land to walk their dogs, and stated that although he did not recall children playing there, this might have happened.
32. Mr Jagger, for the Council, re-iterated that he had visited the disputed land in 2001, where he met Mr Dowse. Mr Dowse told him that he used parcel B to run two ponies from time to time. When offered a grazing licence of parcel A, Mr Dowse stated that he did not want this, and in effect that he did not want to police the land for the Council by preventing fly tipping. A licence was granted, as a result of the discussions, but, as stated above, of an area to the north east of parcel C. Mr Jagger accepted in evidence that, whatever discussions took place on site, and whatever may or may not have been discussed regarding a possible licence of area A, Mr Dowse did not enter into a written agreement and that, in consequence, there was no agreement in place for any part of the disputed land.
33. Following his visit in 2001, it is Mr Jagger's evidence (disputed by Mr Dowse) that the No Entry sign was removed from the gate, and the gate itself was removed. It was also possible to enter parcel A from the south without any obstruction. There was, he said, no fencing between plot 1 and parcel A. This again is disputed. Mr Jagger saw no evidence of adverse possession in 2001, but did see a camper van or horse box in parcel C.



34. Mr Jagger also stated that he visited the disputed land on a number of occasions between 2001 and 2007, and never saw any signs of adverse possession. Mr Dowse's evidence is that Mr Jagger visited no more than twice. Mr Jagger also stated that none of the photographs relied on by Mr and Mrs Dowse correspond to anything he saw on any of his visits. He also stated that the disputed land was completely unsuitable for growing hay. He grew up on a farm, and can speak from personal knowledge. The land marked parcel A (ie the land abutting the school land) was completely overgrown and unsuitable for any use.
35. As I have said, the documentation kept by the Council in relation to the disputed land is limited. There is a file note dated 16 March 2006 of a meeting between Mr and Mrs Dowse and Mr Jagger on that day. Mr Dowse was complaining of the flooding caused by the Skipton sewer and the damage caused to the wall by the railway embankment. The note appears to record Mr Dowse's concern that any agreement he signed with the Council could result in its termination, and in Skipton building houses on the land.
36. Mr Jagger also stated that following his visit to the disputed land in March 2006 he made sure that the allotment gate was open, and the allotments were in regular use. He also stated that he cannot comment on how the disputed land was used after 2007.
37. In the period between 2001 and 2006 there were times when ponies were reported on the disputed land. The Council's general attitude was that there is a culture of keeping horses in Bradford and that, so long as no damage is done to people, there is a tendency to leave horses alone. Mr Jagger did not deal with these complaints, which were dealt with by someone else in the Council, and generally resolved.

### **The parties' submissions**

38. There was no dispute as to the principles which apply to a claim to be registered as an owner of land based on adverse possession. The law has been reviewed in the well known case of *JA Pye v Graham* [2003] 1 AC 419, and re-stated in the more recent case of *Balevents Ltd V Sartori* [2014] EWHC 1164.
39. The position can be stated as follows. There is a presumption that the owner with paper title is in possession of the land in dispute. The burden is on the person asserting a claim by adverse possession to demonstrate both the appropriate degree of physical control of the land, that his occupation is exclusive, and that he has dealt with the land as an occupying owner might have been expected to deal with, and that no-one else

has done so. These are issue of fact, depending on all the circumstances, and in particular the nature of the land and the manner in which the land is commonly enjoyed. In addition, the person claiming the land must also show that he had an intention to possess the land to the exclusion of all others. This intention must be manifested clearly, so that it is apparent that the person claiming to be in possession was not merely a persistent trespasser.

40. At the outset I invited Counsel to make submissions on whether it was open to me, in all the circumstances of the case and assuming I found on the facts that the claim was made out, to allow Mr and Mrs Dowse to rely on their occupation prior to the coming into effect of the Land Registration Act 2002 (13 October 2003).
41. Mr Mason, for the Council, submitted that the Council would suffer prejudice if I were to allow Mr and Mrs Dowse to put forward an alternative case, namely that they had acquired title by adverse possession prior to coming into force of the new provisions set out in Schedule 6 to the 2002 Act.
42. I do not agree. It seems to me that no further evidence would have been adduced by the Council. Some of the Council's documents, as shown above, relate back to 2001, and it was clear from the evidence given that no further documents are available. For whatever reason, the file or files are incomplete.
43. Mr and Mrs Dowse' evidence relates to the entire period of occupation (that is, since 1974). This was made clear in their Statement of Truth dated 10 May 2017, their Statement of Case, and witness statements. There is no further evidence that they could adduce.
44. Although the application was made under Schedule 6 of the 2002 Act, it has been held that paragraph 5(3) of Schedule 6 can apply to cases where the applicant has been in possession for 12 years before 13 October 2003 (see *Balevents* at paragraph 86). This paragraph reads as follows: *'The second condition is that the applicant is for some other reason entitled to be registered as proprietor of the estate.'*
45. The issues therefore are these: first, can Mr and Dowse establish, on a balance of probabilities, that they were in possession (in the sense set out above) for 12 years before 13 October 2003? If not, two further issues arise. The first is whether adverse possession can be established in the 10 year period prior to the date of the application (10 May 2017). If the answer to that question is yes, the second question is whether Mr and Mrs Dowse can bring themselves within paragraph 5(4) of Schedule 6. Clearly, it would not be open to them to rely on paragraph 5(3), as, on this analysis,

they would not have been in possession of the land for 12 years before the coming into force of the 2002 Act.

46. Mr Mason submitted that the evidence put forward by Mr and Mrs Dowse is not such as to allow me to find that they can show any period of adverse possession. The conclusion of the Assistant Land Registrar in April 2002, based on a surveyor's inspection of the land, is clear: the disputed land was clearly only used for grazing. Of itself, grazing is insufficient: see *Techild v Chamberlain* (1969) 20 P&CR 633, and *Powell v Macfarlane* (1977) 38 P&CR 452.
47. The letter from Mrs MacManus also makes it clear, in his submission, that, certainly prior to 2003, the disputed land was used by a number of people, and was not used exclusively by Mr and Mrs Dowse. The evidence of Mr Foulds was to the same effect. Mr Cook also stated that he played on the land. On any basis, part of the land has to be crossed to gain access to the allotments.
48. The other evidence relied on by Mr and Mrs Dowse is also, in Mr Mason's submission, insufficient to establish adverse possession for any period of time. The land is unsuitable for growing hay. This is the view of Mr Jagger, an experienced surveyor, and someone who grew up on a farm. The use of part of the land to store a caravan/horse box is de minimis. While some fencing may have erected or at the very least maintained this was done, it was submitted, primarily to keep horses in, rather than to keep the rest of the world out of the disputed land.
49. Finally, Mr Mason submitted that if Mr and Mrs Dowse need to rely on paragraph 5(4) of Schedule 6, they simply cannot do so. It is fanciful to suggest that the conditions are met. The purpose of this provision is to deal with boundary disputes: this is not such a case. Nor can it be said that Mr and Mrs Dowse reasonably believed that the land belonged to them. Their claim in 2002 failed, and their actions since then are consistent with their recognition of the Council's title: in March 2006, when Mr Jagger visited them, they were at pains to complain to the Council about the fact that the Skipton sewer works had not been carried out properly.
50. Mr Williams, for Mr and Mrs Dowse, submitted that there was clear and cogent evidence of adverse possession both before and after 2003. He referred to the evidence of Mr and Mrs Dowse, including the photographic evidence, and submitted that they were both honest and straightforward witnesses. Whilst grazing of itself may not be sufficient to give rise to a claim for adverse possession, this must be seen in context. The land was also used to grow hay. More importantly, the disputed land is fenced and

inaccessible. Mr and Mrs Dowse either erected or repaired all the fencing. The letter from Mrs McManus confirms that Mr Dowse believed the land to be his, as does the evidence of Mr Jagger who stated that he was challenged by Mr Dowse in April 2001 with the question: 'what are you doing on my land?'. The land was generally known as 'Roy's land'.

51. Mr Williams also accepted that the use of the disputed land intensified after 2002: the gate was locked, and the 'keep out' sign erected (or re-erected). The problems with fly tipping and motorbikes stopped. Mr Dowse was paid £1,000 by Skipton to allow the drainage to be laid over the disputed land. To the extent that he asked the Council to help with flooding, this related to the plot which Mr Dowse did rent from the Council (plot 2).
52. The Council, by contrast, had little documentary evidence regarding the use of the disputed land and were simply wrong, in asserting, by their letter of objection that the land had been rented by Mr Dowse.
53. Finally, Mr Williams submitted that Mr Dowse does in any event meet the requirements set out in paragraph 5(4) of Schedule 6. The disputed land is adjacent to land belonging to Mr and Mrs Dowse, and the exact line has not been determined in accordance with section 60 of the Act; for at least ten years before the application Mr Dowse believed the land belonged to him, and the disputed land was registered in the Council's name more than a year before the application. There is no reason, in his submission, to read 'belonging' as meaning having legal title to: there is no definition of 'belonging' in the Act, and this term should be given its ordinary, wide, meaning to include ownership by adverse possession.

## **Conclusion**

54. Mr Dowse has not, in my judgement, provided sufficient evidence to satisfy me that he had exclusive occupation of the disputed land with the necessary intent to exclude all others for the period prior to the coming into force of the 2002 Act. I accept that some grazing may have taken place on this land, and that caravans and other vehicles may have been stored there. I am not, however, persuaded that hay was grown on the land, at least not so regularly or so extensively as to put the Council on notice that a claim was being made to the land. The results of the survey carried out on behalf of the Land Registry in 2002 confirms this conclusion.

55. I accept that fencing was either erected or maintained with the aim of ensuring that the horses did not escape. But neither grazing, nor storing of the odd vehicle, nor fencing to keep animals from escaping are, of themselves, sufficient. Moreover, and more significantly, the land was clearly open to and used by others. This is clear from the evidence given by Mr Dowse, who accepted that other people came onto the land prior to 2001, from the letter written by Mrs McManus in August 2003 which stated that the land behind her house was open to the public and used by the neighbourhood for a variety of reasons, and from the evidence of Mr Foulds, who stated that he walked over the land on a regular basis, as did others, without any difficulty and without seeking permission. The Land Registry also took the view, in 2002, that the fact that access to the allotments was over the disputed land also negated exclusive occupation.
56. In my judgement, however, if the only evidence of other user was the use of the access way and defined path to the allotments, I would not have found that the claim failed on this ground alone.
57. But the overall picture, in my judgment, is one where Mr Dowse may have been making some limited use of the disputed land but not to the exclusion of others. I also accept Mr Jagger's evidence that Mr Dowse was offered but did not want a licence to graze this, as it would mean that Mr Dowse was effectively policing the land.
58. The position changed, it seems to me, after 2002. Mr Jagger was not able to comment on the use of the land after 2007. It seems to be very likely that, having failed in his first attempt to obtain title by adverse possession, Mr Dowse set out about making access to the disputed land very much more difficult, and to have intensified his user of this land, possibly for growing hay, certainly for grazing and storing materials.
59. However, and even assuming that Mr Dowse used the land exclusively for the 10 years before he made his application with the necessary intent to occupy, he does not satisfy the conditions set out in paragraph 5(4) of Schedule 6.
60. Notwithstanding Mr Williams' ambitious submission, it is clear in my judgment that paragraph 5(4) is intended to, and does deal with, the not uncommon situation where there is a dispute as the exact position of the boundary between the applicant's land and the disputed land, and where the applicant reasonably believed that he had paper title to this disputed land. This provision is, in a sense, a safety valve to deal with one of the problems associated with general boundaries. It is tightly drawn, and limited in scope.

61. The disputed land in this case extends far beyond the boundary with No 135. There is no mistake in that boundary. In any event, Mr Dowse did not believe that he had paper title to the disputed land. He knew that he did not, which is why he applied to the Land Registry on two occasions for possessory title. To suggest that a belief in ownership by adverse possession is sufficient is to render the provision nugatory: paragraph 5(4) only comes into play when the applicant can show ten years adverse possession. This is not enough under the 2002 Act: the applicant must go further and establish that he reasonably believed that he owned (in the sense of having paper title to) the land. Without this additional element, and unless he can bring himself within one of the two other conditions in paragraph 5, his claim will fail.
62. I will accordingly order the Chief Land Registrar to cancel the application.
63. In principle, as the successful party, the Council is entitled to its costs from the date of the reference (10 May 2017). A schedule in Form N260 or the like is to be served on Mr Dowse and sent to the Tribunal by 3 December 2019. Mr Dowse may make such representations as he deems appropriate within 14 days of receipt of the schedule.

**BY ORDER OF THE TRIBUNAL**

*Ann McAllister*

**Dated this 15<sup>th</sup> day of November 2019**

