PROPERTY CHAMBER
FIRST –TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF/2021/0470

BETWEEN

(1) Sarah Elizabeth Waters
(2) Gerard Waters

Applicants

and

Andrew Stott

Respondent

Property Address: 6 Boardman Fold Close, Middleton, Manchester M24 1PX
Title Numbers: LA225289 LA258819

Judge Colin Green

Hearing via CVP
On: 16 and 17 November 2023

Applicants' Representation:	**Stephen Jourdan KC of Counsel**
Respondent's Representation:	**Christopher Moss of Counsel**

DECISION

Introduction

1. The Applicants, Mr. and Mrs. Waters, are the registered proprietors of the leasehold title to the house known as 6 Boardman Fold Close, Middleton, Manchester ("Number 6"). Despite the address, it is the rear of the house that faces towards Boardman Fold

Close. The front of the house faces towards Hardfield Road, at the point where Hardfield Road turns from running east-west to running north-south.

2. The house next door to the south-east is 4 Boardman Fold Close ("Number 4"). Until 22 July 2022, the registered proprietors of the leasehold title to property to Number 4 were Mr. Andrew Stott and Mrs. Andrea Stott. Mrs. Stott passed away on that date however, and the legal title to Number 4 therefore vested by survivorship in Mr. Stott. Accordingly, Mr. Stott is now the sole registered proprietor of Number 4. By paragraph (1) of my order made at the Telephone Pre-trial Review on 8 November 2022, pursuant to rule 10(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, Mrs. Stott was removed as a party to the proceedings.

3. Like Number 6, Number 4 also fronts onto Hardfield Road, as does Number 2, positioned on the corner. The other properties having the Boardman Fold Close address face into the cul-de-sac, but it is the rear of Numbers 2, 4 and 6 that are accessible from the close.

4. On 15 October.2020, the Mr. and Mrs. Waters applied to the Land Registry to be registered as proprietors of the Disputed Land. Mr. and Mrs. Stott objected, and on 17 August.2021, the Land Registry referred the matter to this Tribunal. The Waters claim to be entitled to be registered as the proprietor of the Disputed Land under paragraph 18 of Schedule 12 of the Land Registration Act 2002 based on 12 years adverse possession prior to 13 October 2003. I will expand on the legal basis of their claim below.

5. The land in dispute ("the Disputed Land") forms a roughly triangular area, incorporated in the registered title to Number 4. A plan was prepared at the time of the Land Registry survey in January 2021 ("the Survey Plan") that was referred to by witnesses, which shows the Disputed Land and the direction from which photographs were taken at that time, with the boundaries and other features of the Disputed Land marked with letters. The triangular boundary of the Disputed Land is marked A-D-F.

6. I had the benefit of a site view the day before the hearing, accompanied by Mrs. Waters and Mr. Stott. The hearing took place over two days via CVP, and each of the witnesses mentioned below were cross-examined on their statements, sometimes at length. I also

had skeleton arguments and heard submissions from both counsel, to whom I am grateful for the detailed presentation of their respective cases.

7. There are certain matters that are largely agreed, uncontentious, or unchallenged. Leases of each of the parties' properties were granted in 1970. By a lease dated 21 April 1970 ("the Number 4 Lease") Whelmar Limited demised to David Goodfellow ("Mr Goodfellow") a plot of land ("the Number 4 Land") together with the newly built house and garage standing on that plot of land, for a term of 999 years from 29 September 1967. Title to the Number 4 Lease was registered shortly after the Number 4 Lease was granted with good leasehold title under title number LA258819. Mr Goodfellow moved into Number 4 with his wife at or about the time of the grant of the Number 4 Lease in about April 1970.

8. By a lease dated 26 June 1970 ("the Number 6 Lease") Whelmar Limited demised to William Charles Slater and his wife Theresa Slater ("Mr. and Mrs. Slater") a plot of land adjacent to Number 4 ("the Number 6 Land") together with the newly built house and garage standing on that plot of land, also for a term of 999 years from 29 September 1967. Title to the Number 6 Lease was registered shortly after the Number 6 Lease was granted with good leasehold title under title number LA225289. Mr. and Mrs. Slater moved into Number 6 at or about the time of the grant of the Number 6 Lease in about June 1970.

9. The boundary between the Number 4 Land and the Number 6 Land, as shown on the lease plans and title plans, is a straight line running from Hardfield Road to the north to Boardman Fold Close to the south.

10. In 1988 Number 4 was transferred to Derek and Angela Perrin ("Mr. and Mrs. Perrin"). On 30 July 2001 Mr. and Mrs. Waters were registered as proprietors on Number 6. In about 2008 the Mr. and Mrs. Perrin ceased living at Number 4 for a period, and on 19 November 2018 title to Number 4 was transferred to the Mr. and Mrs. Stott who were registered as proprietors on 27 November 2018.

Evidence and findings

11. There is a statutory declaration made by Mrs. Slater on 24 May 2001, which exhibits the filed plan for Number 6 showing the straight line marking the boundary with Number 4. Mrs. Slater states that she and her husband moved into Number 6 on 26 June 1970, and paragraph 2 of her declaration provides:

> *"On moving into the property I noticed that the garden to Number 4 Boardman Fold Close (which property was already occupied) had already been laid out excluding the pice [sic] of land tinted orange of the said plan and I assumed the said land formed part of my garden. I have since that time (in excess of 30 years) used occupied and enjoyed the said area as part of the garden belonging to the property without having received any objection from any other person including the owner or owners for the time being of number 4 Boardman Fold Close aforesaid or without making any payment to or acknowledging the right of any other person to ownership of the said area."*

The land tinted orange on the plan is the Disputed Land. The words "foundations of brick wall" have been written on the plan with an arrow directed to the line D-F, the boundary between the Disputed Land and Number 4. The remnants of that wall can be seen in later photographs.

12. The declaration was made at the time of the sale of Number 6 to Mr. and Mrs. Waters. Their solicitor had asked them to check the boundaries and when the discrepancy in respect of the Disputed Land was noticed, Mrs. Slater was asked to make the declaration setting out the relevant history. At that point Mrs. Waters thought the matter had been resolved. Mrs. Slater has since died and therefore was unable to provide testimony at the hearing.

13. I did hear evidence from Diane Tabern however, who is the daughter of Mr. and Mrs. Slater, and who lived at Number 6 with her parents and brother from 1970 until 1973. Her evidence was that initially the front garden was bare apart from a path running up to the front door but that after moving in her father, who was a wholesale florist and keen gardener, set about planning and planting a garden. Rockeries were put either side of the path (subsequently replaced by brick pillars) and the rest of the area was laid by her father. In her witness statement Mrs. Tabern refers to a photograph which shows the path, rockery, and lawn at the front of Number 6 which she dates to 1973 as it was taken

at the same time as another photograph of her parents standing outside the property on the occasion of the wedding of Mrs. Slater's sister, that took place in that year. It is clear from the angle of the lawn extending from the along the southern boundary of the Disputed Land, along the line D-F on the Survey Plan.

14. Some years later some of the grassed area was removed and a deeper border of bushes and conifers were planted to act as a windbreak for the garden which was exposed to wind coming up Hadfield Road, from the edge of the then rear wall of the garage at point F to the pavement (point D). Mr. Slater planted borders to the area each side of the steps leading down to the pavement.

15. Mr. and Mrs. Slater were good friends with their neighbours Mr. and Mrs. Goodfellow at Number 4, neither of whom was particularly interested in gardening and who employed a gardener. After Mr. Goodfellow's death his wife continued living at Number 4 until her death in the late 1980s. At no point was there any animosity between the neighbours regarding the garden border which Mrs. Tabern was able to confirm had grown from its original state, as she passes regularly to visit friends and family on the same estate.

16. From 1973 to Spring 1986 Mrs. Tabern lived in Mallorca but would return home annually to see her family. During that time Mr. Slater had a small wall built at the front of the house, either side of the path, bordering the pavement, and had the lawned area at the top of the path re-paved and landscaped with decorative paving along with the steps. The wall and one of the brick pillars, along with bushes and conifers, can be seen in a photograph taken during the winter, at some point before 1986. The wall runs from points A-B and C-D on the Survey Plan. Between 1990 to 1997 the flagged area in the garden was re-laid with block paving and a curve formed to the outer edges of the steps.

17. On her return from Mallorca, Mrs. Tabern lived at Number 6 and assisted her father tending to the gardens, front and rear. She married in 1991 and with her husband helped keep the planted area of the Disputed Land in shape with conifers and bushes that needed regular trimming. They also weeded and swept the area of leaves regularly. By this time Mr. Slater had suffered a heart attack and needed assistance to keep the garden

tidy. After Mr. Slater's death in 1997 a gardener was engaged to maintain the garden as Mrs. Slater was an elderly person and in ill health and unable to do so.

18. After Mrs. Goodfellow's death Number 4 was sold to the Perrins in 1988. Mr and Mrs. Slater had good relations with them also, and no issue was raised by either of the Perrins concerning sole usage of the Disputed land by Number 6 and the incorporation of such land into the front garden of Number 6.

19. The evidence of Paul Little was that he had lived at 10 Boardman Fold Close from 1970 until 2009. His parents, who were close friends of Mr. and Mrs. Slater, also lived at that address – his father worked at the wholesale Smithfield markets where Mr. Slater also worked in wholesale flowers, and Mr. Little was aware Mr. Slater was a keen gardener. As a young boy, he would cut through the rear entrance to Number 6 (which faced onto Boardman Fold Close) taking a path at the side of the house through to the front and then take the steps at Number 6 down onto Hardfield Road, a quicker route than walking round from the close. The steps and path had always been the front entrance to Number 6 and were always in their current position. The rockeries were replaced with a front wall either side of the path constructed in about 1975. In contrast, the front garden of Number 4 was always open to the pavement until a wall was built in about 2005/2006.

20. Although some time ago, Mr. Little was able to remember such matters, particularly the wall, as there had been an accident when a car had driven into the front wall at Number 6, killing a teacher's daughter, an event that left Mr. Slater devastated. He and his family and the Slaters attended the funeral.

21. David Waring lived at 1A Hardfield Road, more or less opposite Number 4 and 6, from 1967 until 1995. His evidence was that during the time he lived at 1A, Number 4 had no garden wall and was open to the pavement for many years. Number 6 had a wall around the garden, with an entrance and steps leading to the house. The gardens were used exclusively by Mr. and Mrs. Slater, and then Mr. and Mrs. Waters. The Disputed land has been under their control throughout.

22. After moving to 12 Beech Walk, Alkrington in 1995 Mr. Waring confirmed the boundaries remained the same as he would walk past the properties going to and from

school. He is able to confirm Mr. and Mrs. Waters' usage since he known Mr. Waters since 1984 and visited them at Number 6 after they purchased in 2001.

23. Although Mr. Waring is a good friend of Mr. Waters, and provided a statement at Mr. Water's request, I do not consider this is a sufficient reason not to accept his evidence, particularly as it is consistent with that of other witnesses. Likewise, I do not consider that the acquaintance or friendship with Mrs. and Mrs. Waters by other witnesses undermines their evidence.

24. Ann Fagan has lived at 3 Boardman Fold Close since 1972. When she moved in the front garden of Number 6 was surrounded by a rockery, subsequently replaced by a brick wall that has remained ever since. The garden was maintained by Mr. and Mrs. Slater and subsequently by Mr. and Mrs. Waters. It is a small close and Mrs. Fagan was unaware of any disputes between the owners of Number 6 or the previous owners of Number 4 concerning the layout of the garden to Number 6. She would walk past the properties nearly every day on her way to the shops or Church and the front garden to Number 4 was only maintained up to the start of the wall with Number 6 (point D on the Survey Plan). The garden to Number 4 was open to the pavement until a wall was constructed in about 2005/2006. Mrs. Fagan also confirmed that the 1973 photographs which are exhibited to Mrs. Waters' statement, and referred to in Mrs. Tabern's statement, were taken in 1973.

25. In cross-examination Mrs. Fagan was taken to a photograph from 2020 of the Disputed Land, showing points D-F, and an area that had been felled by Number 4. Her evidence was that before that had happened there had been trees on that spot that had been there a considerable time, and a little wall running from D-F. The remnants of that wall can be seen in the photograph.

26. Mrs. Waters statement concerns matters after she and her husband purchased Number 6 in 2001. It is clear from correspondence between her solicitors and the Land Registry at the time that after Mrs. Slater had made her statutory declaration there was the option to proceed with an application to register the Disputed Land. For reasons that are unclear – possibly crossed wires – that was not pursued at the time and Mrs. Waters gave no

further thought to the matter and regarded the Disputed Land as part of their property. I draw no adverse inferences from the failure to apply in 2001.

27. The entrance to the path was in place when Number 6 was purchased, with a brick wall either side, which demarcated the frontage to the property, together with rockery stones that cut from point D up to garage. The planting either side of that line was clearly different. Mrs. Waters referred to various family photographs taken between 2001 and 2003 that show features of their garden, including parts of the Disputed Land, continuing in its previous state. Due to the established trees, plants, and shrubbery, apart from planting some small plants not a great deal more was required other than annual maintenance and pruning back, clearing fallen leaves, jet washing the paving and walls, and putting bark in the borders. Mrs. Water sought to strike a balance between protecting their privacy and allowing natural light to enter the house and to this end replaced a conifer adjoining the steps with a laurel shrub in 2009.

28. At the time of purchase in 2001, Mr. and Mrs. Perrin owned Number 4, but the property was let until it was sold to Mr. and Mrs. Stott in 2018. There were never any issues with the Perrins or their tenants concerning the Disputed Land.

29. In December 2004 a car hit the brick wall to the right of the path (looking from Hardfield Road) ("the Northern Wall"). The household insurers instructed that the wall be rebuilt, and Mr. and Mrs. Waters decided to replace the whole wall, including the section to the left of the path ("the Southern Wall") for consistency in terms of colour and age. Accordingly, the Northern Wall was replaced in its entirety, but in respect of the Southern Wall, that had not been damaged, a single layer of the new, metric bricks was used as an outer skin. As seen in photographs, a layer of the old, imperial bricks, remained behind. The dividing wall between D and F was rebuilt using part foundation brick wall and part rockery stones to form a new dry-stone divider in the same position.

30. In about 2005 Mr. and Mrs. Perrin had a wall constructed at the front of their garden adjoining the pavement where it had previously been open, either side of the path to their property. The wall was built up to the edge of the Southern Wall, at point F. In 2012 an extension was built to Number 6 where the garage had been so that the house

was extended from point F-G with a canopy extending to point G-H. The boundary to the garden was unaltered.

31. There is a photograph taken in about 2017 taken from Hardfield Road which shows a For Sale sign outside Number 4, on which the front walls, trees and shrubbery can be seen. Although Mr. and Mrs. Stott purchased the property in November 2018 renovations were carried out and they did not move in until January 2020. From about December 2018 a dispute arose concerning the Disputed Land, with Mr. and Mrs. Stott contending that land had been stolen from their garden, and Mr. and Mrs. Waters stating that the land was clearly part of their garden. I do not need to address the events that followed since it is not necessary to consider possession of the Disputed land beyond 2018.

32. During cross-examination, Mrs. Waters was taken to a plan that formed part of the planning application for the house extension, marked "As Existing" that shows the boundary of Number 6 as a straight line, reflecting the filed plan for the property. She had no recollection of that particular plan, prepared by her architect, only approving the plans for the extension. I accept that explanation.

33. It was also put to Mrs. Waters that in December 2018 she had told Mr. Stott that the Disputed Land had been given to her and her husband by Mr. Perrin in 2011, at the time the extension was constructed, which she denied having said. The allegation is also referred to in a letter of 27 February 2020 from a solicitor consulted by Mr. Stott, who summarised what he had been told. According to the letter, Mr. Stott said that he had been in contact with Mr. Perrin who said that to the best of his memory he never gave any land to Number 6 (a letter from Mr. Perrin is considered below). I do not think anything of importance turns on the alleged conversation, but it seems unlikely that Mrs. Waters would have said this, and she may have been misunderstood. By this point, exchanges between the parties had become heated.

34. Mr. Waters' statement simply confirms the contents of that of his wife and it was agreed that I should assume that he would give the same answers as she had done if cross-examined.

35. There were two statements from witnesses whom the Applicant did not call: Gordon Robertshaw of 2 Boardman Fold Close, whose account of matters is in line with the evidence mentioned above, and Michael Smith, a local tree surgeon who has pruned conners and shrubbery for Mr. and Mrs. Waters every two or three years. I have placed greater weight on the statements of witnesses whose testimony I heard.

36. Concerning the evidence relied on by Mr. Stott, a witness statement had been provided by Mrs. Stott, which his own statement confirms. Their statements largely concern viewing Number 4 and the events that occurred thereafter which, for the reasons given above, do not assist in determining the issues I must decide. They will have had no personal knowledge of matters before they viewed Number 4 although both Mr. and Mrs. Stott's statements contain speculations about events that occurred prior to their purchase in November 2018.

37. The purchase proceeded quite quickly by way of a repossession sale from Barclays Bank. Mr. Stott visited the property before the purchase and saw no deeds or other documents until after the sale, only what was in the sales particulars. He did not pay any attention to the walls at the front of Numbers 4 and 6. During cross-examination he said that the estate agent had told them that the boundary between Numbers 4 and 6 was a straight line. This is not mentioned in the Respondents' Statement of Case or either witness statement, and it is inherently improbable that an estate agent would make such a statement concerning an issue that would normally be the preserve of a solicitor. Indeed, Mr. Stott's statement refers to his having asked his solicitor about the path at the bottom end of the garden and being assured that all the land in the deeds were theirs. For this reason, I do not consider that Mr. Stott was a particularly reliable witness and have treated his evidence – where relevant – with caution, even though I have had regard to the fact that at the time of the hearing he had been under considerable strain due to his wife's recent passing after a long battle with cancer.

38. The only other witness to appear on Mr. Stott's behalf was Martin Ryan, a local builder who built an extension to Number 4 in 2019. It is his view that the garden wall at the front of Number 4 is much older than the wall at the front of Number 6. Mr. Ryan had also worked at Number 4 in 2001, though in cross-examination he accepted it was 2007. The Google Maps street view screenshots of the properties in the hearing bundle show

the wall at Number 4 as darker in colour with weeds and moss, and the evidence of Mrs. Waters was that the Number 6 wall was jet washed annually, which might account for the Number 4 wall appearing to have been built earlier. I accept Mrs. Waters evidence however, that the Number 4 wall was constructed after the Number 6 wall, albeit only a year or so after the latter was rebuilt due to the car collision.

39. There are further statements in respect of witnesses that Mr. Stott did not call: Jane Taylor, a local resident; Chris Hall, who lived at 9 Boardman Fold Close from 1978 until 1990; Cheryl Snape, and Julie Colasurdo, two further local residents; and Paul Keogh, who lived 4 Boardman Fold Close between 2016 and 2018. These statements are relatively brief, and I am mindful that there are a number of significant points that require clarification. There was no cross-examination of such persons, during which they could be referred to photographs and other matters put to them which could have a significant bearing on their evidence. For this reason, I do not consider that I can place any weight on these statements.

40. There is also a letter from Mr. Perrin dated 19 February 2021, in which he states that the plot purchased at auction in late 1988 showed the front garden running from each corner of the house in a straight line. He continues:

> *"During our ownership we understood that we had ownership of the whole plot and we did not contemplate nor were we asked to dispose of any part of the land to any of our neighbours at 6 Boardman Fold Close."*

The letter is signed by Mr. Perrin, "B.Sc. FRICS (RTD)".

41. I was unable to hear any testimony from Mrs. Slater, and only have her statutory declaration from 2001, but I am prepared to give rather more weight to her declaration as its contents were confirmed by her daughter, Mrs. Tabern. Although cross-examined in some detail I accept Mrs. Tabern's account. Having seen the properties on the site view it is clear that if the boundary of Number 6 were to follow a straight line as shown on the lease and filed plans, due to the layout of the surrounding properties and the bend in the road the frontage of Number 6 would be very narrow indeed, producing a tapered front garden down to the pavement, in marked contrast to the front boundary of Number 4. Given that the front path had already been laid out when Mr. and Mrs. Slater

purchased the property in 1970, the front part of which falls within the Disputed Land and whose position has not changed, I consider it likely that when the path and boundaries of Number 6 were laid out on the ground at the time of construction, the Disputed Land was incorporated at the front of Number 6 to give that property a roughly equivalent frontage to Number 4. For whatever reason, this change in dimensions on the ground was never reflected in the developers' standard plan used in the leases on the sale of Numbers 4 and 6. Such discrepancies are not uncommon. Alternatively, Mr. Slater, a keen gardener, took it on himself to incorporate the Disputed Land within the front garden so as to provide a more extensive frontage and garden area to Number 6. Whichever explanation is correct, that remained the position thereafter.

42. I also accept that no issue was taken with this by either Mr. and Mrs. Goodfellow or Mr. and Mrs. Perrin. The most likely explanation is that unlike Mr. and Mrs. Stott, they did not compare the position on the ground with any of the plans, or if they were aware there was a discrepancy it did not trouble them. Given that the Goodfellows had no real interest in gardening this is perhaps unsurprising.

43. Likewise, I accept the versions of events provided by Mr. Little, Mr. Waring, Mrs. Fagan, and Mrs Waters, which present a coherent and consistent account of matters, supported by the various photographs. Mr. Moss placed particular reliance on an aerial photograph from 1980 which shows the properties and the tops of trees and shrubs. The photograph has been taken from a great height and obscures significant features. If this was the only photograph available there would be some uncertainty about the features on the ground, but there are several other photographs, taken from ground level, which show relevant features more clearly and on which I place greater reliance.

44. I do not consider that Mr. Stott's evidence undermined the account that was provided by the Applicants' witnesses. Inevitably, he had no knowledge of matters before late 2018 and I found his alternative interpretations of various photographs speculative and unconvincing.

45. His case was not limited to contesting whether there had been adverse possession of the Disputed Land. At paragraphs 11 and following of Mrs. Stott's statement (adopted by Mr. Stott as part of his evidence) it is claimed that in late summer 2008, after the Perrins

had been absent from Number 4 for several months, the Waters built the steps and wall and used 17 bricks to demarcate some kind of boundary, presumably along points F-G. It is also stated that the Waters demolished part of Mr. Perrin's wall in order to construct their own. In so far as this positive case was still being advanced at the hearing, it has not been made out and it is contrary to my findings concerning the relevant history and events.

46. One matter on which great reliance was placed is set out in the following terms in Mr. Moss' skeleton argument:

> *"It is further averred the topography is also relevant as any adverse possession would have been immediately obvious to the occupants of the Respondents' land as it would have taken place directly outside their large front window and it is submitted is in all the circumstances unlikely as any attempt to possess or maintain the land in front of the window would be immediately obvious to the occupier of the property and would inevitably have been objected to or stopped."*

47. At the site view I had the opportunity of viewing the Disputed Land from the front room of Number 4, and an upstairs bedroom. It is correct that there is a clear view of the land, though trees and bushes tend to obscure the path and steps down to the pavement. I accept that the various activities described by the Applicants' witnesses would have been obvious to the occupants of Number 4. There is however, a preferable explanation as to why no objection was made, which is that mentioned above: that the Slaters and the Perrins were either unaware that the Disputed Land formed part of Number 4, or that they were not concerned about such matters, both of which are consistent with the evidence that the Disputed Land was incorporated into the garden of Number 6 and there was never any dispute concerning this before Mr. and Mrs. Stott's purchase in 2018. Therefore, the visibility point is not one that would lead me to reject the testimony of the Applicants' witnesses and the photographic evidence.

48. So far as Mr. Perrin's letter of 19 February 2021 is concerned, again I must have regard to the fact that he did not provide testimony and could not be asked questions concerning its contents. It is also significant that in the passage quoted at paragraph 40 above reference is made to "ownership" rather than possession of land, an important distinction of which Mr. Perrin, as a Fellow of the Royal Institution of Chartered Surveyors, is likely to have been aware. Nor does the letter address the Disputed Land

or whether it was incorporated into the garden of Number 6 or maintained by the Slaters or Waters. In the light of such concerns, I do not consider that I can rely on Mr. Perrin's letter as undermining the Applicants' evidence.

Adverse Possession

49. Unsurprisingly, there was no dispute concerning the relevant law regarding adverse possession, As a matter of law, a squatter must establish, for throughout the period in question, that (1) he was in possession of the land in issue, that is: that he had a sufficient degree of single and exclusive physical custody and control of the land, and (2) that he had an intention to exercise such custody and control on his own behalf and for his own benefit, see: *Pye v. Graham* [1].

50. What acts constitute a sufficient degree of exclusive physical control will depend on the circumstances of the case, the nature of the land and the manner in which land of that kind is commonly used or enjoyed.

> *"…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."*[2]

51. The intention that must be shown is:

> *"the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."*[3]

As to the evidence required to establish the intention, as Lord Hope put it in *Pye* at paragraph 71:

> *"The important point for present purposes is that it is not necessary to show that there was a deliberate intention to exclude the paper owner or the registered proprietor…The only intention which has to be demonstrated is an intention to occupy and use the land as one's own… So I would hold that, if the evidence shows that the person was using the*

[1] [2002] UKHL 30
[2] per Slade J in *Powell v. McFarlane* (1977) 38 P & C R 452, at p. 471, cited with approval in *Pye* at paragraph 42
[3] *Powell* at pp. 471-472, approved in *Pye* at paragraph 43

land in the way one would expect him to use it if he were the true owner, that is enough."

52. On the basis of my findings, I am satisfied that Mr. and Mrs. Slater had adverse possession of the Disputed Land from 1970, and after Mr. Slater's death Mrs. Slater alone, until the sale of Number 6 to Mr. and Mrs. Waters in 2001. Such land was incorporated into the front garden of Number 6 in the manner described forming a clear and distinct boundary with the front garden of Number 4. The rockery at the front and subsequent brick wall demarcated the frontage of the Disputed Land as forming part of Number 6 as did the items marking a division from the adjoining garden. The trees and shrubbery planted and maintained on part of that land were indicia of ownership, the kinds of thing one would expect in respect of such a piece of land. The amount of planting and maintenance will have varied over time, but I am satisfied that this amounted to the control required given the nature of the land. Indeed, the continued existence of the various features that demarcated the Disputed Land as forming part of the front garden to Number 6, being of an enduring nature, will have amounted to continuing possession, and there is no evidence of anything that would have amounted to dispossession.

53. For the avoidance of doubt, knowledge of use and making no objection will not have amounted to consent, which would prevent possession for being adverse, because such consent requires, *"… some overt act (which may be a non-verbal communication) which is intended to be understood, and is understood, as permission to do something which would otherwise be an act of trespass*"[4] There is no evidence of any such overt act here.

54. In addition, I find that adverse possession of the Disputed Land continued after the purchase by Mr. and Mrs. Waters in 2001, and that they remained in adverse possession up to the time Mr. and Mrs. Stott purchased Number 4 in late 2018.

Statutory provisions

55. In the light of such findings, I now turn to consider the application of the relevant statutory provisions.

[4] *Chambers v Havering LBC* [2011] EWCA Civ 1576 at [70] per Lewison LJ.

56. The possession of Mr. and Mrs. Slater, and then Mrs. Slater, and then Mr. and Mrs. Waters, was in each case possession by persons in whose favour the period of limitation could run and therefore "adverse possession" as defined in Schedule 1 paragraph 8 to the Limitation Act 1980.

57. Before the Land Registration Act 2002 came into force on 13 October 2003, if a person who was not the registered proprietor of registered land was in adverse possession of the land for 12 years, then at the expiry of the 12 year period, the land (in this case a registered lease) was deemed to be held on trust for the person in possession, who was entitled to be registered as proprietor: see s.75 of the Land Registration Act 1925. Accordingly, since I have found that adverse possession of the Disputed Land began in 1970, by 1983 it was held on a bare trust by Mr. Goodfellow for Mr. and Mrs. Slater.

58. When Mr. and Mrs. Perrin purchased Number 4 in 1988 they will have continued to hold the Disputed Land on trust for Mr. and Mrs. Slater as the latter's beneficial interest under the bare trust will have had overriding status and have bound Mr. and Mrs. Perrin under either s. 70(1)(f) of the 1925 Act – as a right acquired under the Limitation Acts – or s. 70(1)(g) as the right of a person in actual occupation of the Disputed Land save where enquiry is made of such person and the rights are not disclosed. There is no evidence that enquiry was made of Mr. and Mrs. Slater at the time Mr. and Mrs. Perrin purchased Number 4 in 1988.

59. A first squatter can pass their possessory title to another squatter by the first relinquishing possession to the second without the need for formal transfer of their possessory legal estate or of the beneficial interest under the s.75 trust[5]. Therefore, since I have found that possession of the Disputed Land was continued after the purchase of Number 6 in 2001 by Mr. and Mrs. Waters, the trust also continued in their favour.

60. When the Land Registration Act 2002 came into force, on 13 October 2003, the 1925 Act was repealed. Schedule 12 paragraph 18 of the 2002 Act provided for what was to happen in cases where, immediately before that date, a registered estate was held in trust for a person by virtue of s.75 of the 1925 Act. paragraph 18 did not continue the deemed

[5] *Haandrikman v Heslam* [2021] UKUT 56 (LC)

trust imposed by s.75, which was abolished by the repeal of s.75. Instead, it provided that the person was entitled to be registered as proprietor of the estate.

61. When a person has the right to be registered as proprietor of registered land under Schedule 12 paragraph 18 of the 2002 Act, and the registered proprietor transfers the registered title to the land to someone else, the transferee will take subject to the paragraph 18 right, provided that the person with that right was in actual occupation of the land at the date of the transfer (unless they were asked about whether they had a right and failed to disclose it, or their occupation was not obvious on a reasonably careful inspection of the land): see: s.29(2) and Schedule 3 paragraph 2 of the 2002 Act.

62. Were Mr. and Mrs. Waters in actual occupation of the Disputed Land on 19 November 2018, the date of the transfer to Mr. and Mrs. Stott? I consider that they were by virtue of the finding of possession that I have made; the Disputed Land formed part of the front garden to Number 6 and they occupied the entire property. There is no suggestion that Mr. and Mrs. Waters were ever asked about the Disputed Land prior to the transfer of Number 4, and in my view their occupation of that land would have been obvious on a reasonably careful inspection. This is apparent from a screenshot from Google Maps street view dated April 2017 of the frontage to both properties taken from the road, almost parallel with the steps up to the footpath at Number 6. There is no reason to think that in late 2018 the appearance of the properties would have been substantially different. Of particular significance is the very clear division in the front walls to each property. Although Mr. Stott said that he paid no close attention to such matters when he viewed Number 4, closer inspection would also have revealed the clear division between the gardens and the other features mentioned above.

63. Therefore, I find that Mr. and Mrs. Stott purchased Number 4 subject to Mr. and Mrs. Waters' right to be registered as proprietors of the Disputed Land.

Conclusion

64. In the light of the above, I will direct the Chief Land Registrar to give effect to the Applicants' application as if Mr. and Mrs. Stott's objection had not been made.

Costs

65. The usual order as to costs in a land registration case is that the unsuccessful party pay the costs of the successful party, but the Tribunal may make a different order. My provisional assessment, subject to any submissions that may be made, is that the Applicants are the successful party and therefore an order for costs ought to be made in their favour.

66. The normal basis for assessment of costs is the standard basis, but in an appropriate case the Tribunal will order costs to be assessed on the indemnity basis. In either case, the Tribunal will not allow costs which have been unreasonably incurred or are unreasonable in amount. The difference is that, on the standard basis, the Tribunal will only allow costs which are proportionate to the matters in issue, and will resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party. If costs are assessed on the indemnity basis, proportionality is not taken into account, and doubts as to reasonableness are resolved in favour of the receiving party.

67. My provisional view is that I should order that the Respondent pay the costs of the Applicants to be assessed on the standard basis. Any party who wishes to submit that some different order should be made as to costs should serve by email written submissions on the Tribunal and on the other party by 5.00 pm on 10 April 2023, to which the other party will be entitled to reply with written submissions served by email on the Tribunal and other party by 5.00 pm on 24 April. I will then make an order for costs and if necessary give directions for their assessment.

Dated this 23rd day of March 2023

Colin Green

By Order of the Tribunal