



Case No: M10CL462 & M10CL620

IN THE COUNTY COURT AT
THE MAYOR'S & CITY OF LONDON COURT

Guildhall Buildings
EC2A 5AR

Date: 22/09/2026

Before :

HHJ PARFITT

Between :

ON TOWER UK LIMITED
- and -
AP WIRELESS II (UK) LIMITED

Claimant

Defendant

Oliver Radley-Gardner KC & Imogen Dodds (instructed by **Foot Anstey LLP**) for the
Claimant

Wayne Clark KC (instructed by **Freeths LLP**) for the **Defendant**

Hearing dates: 7 & 8 September 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 22 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ PARFITT

HHJ Parfitt:

Introduction

1. The Claimant operates and maintains sites for mobile telecommunication masts and related equipment. The Defendant acquires rights to such sites and stepped into the shoes of the Claimant's landlord on various sites. The parties have many disputes as a consequence. This judgment addresses a preliminary issue relevant to sites known as Barber's Moor and Commons Wood. The issue relates to renewal notices served by the Claimant under s. 26 of the Landlord and Tenant Act 1954 ("the 1954 Act") where there is said to be a disjunct between the land occupied and the plan attached to the relevant lease.
2. Generally, I use the plural when referring to both sites or leases and so on and the singular is sufficiently clear as a reference to whichever site is under discussion at that time. Where it might not be clear I identify the relevant site.
3. The sites consist of fenced compounds which are of different shapes but in broad terms, for a sense of scale only, are no more than about 10m x 10m. These compounds contain a tall mast, related equipment boxes and other plant. The compounds are situated on and surrounded by land owned by the original landlord and successors.
4. The leases contain plans which have red boxes drawn around the compounds represented on the plans. As confirmed by the single joint expert, Mr Brian Bevis ("the SJE"), the real world location of each compound does not substantially match the geo-located red box shown on the plans, based on the assumption that the relevant plans are matched exactly to the equivalent OS plan.
5. It is common ground that the relevant compounds have not moved since they were constructed and that they have been where they have been for well over 20 years. For Barber's Moor, which was constructed after the lease was granted, the real world and the lease plan have only about a 10% overlap. For Commons Wood, the overlap is more like 90%.
6. The gist of the preliminary issue is the validity of the s. 26 notices in circumstances where the Defendant alleges that the grant under the leases is not co-extensive with the land being used by the Claimant and, it is said, the Claimant's notices only seek to describe the land demised under the leases.
7. The parties have argued the following issues, which I list in the order I have dealt with them, and which I summarise as follows:
 - i) The Demise Issue The grants mean that the sites are situated where intended (Claimant) or are not (Defendant). The parties recognise that if the Claimant succeeds on the Demise Issue then, for that site, the other issues do not arise.
 - ii) The Estoppel Issue The Claimant says that given the obvious presence of the sites at their actual location for more than 20 years without objection or anything other than normal landlord / tenant dealings then an estoppel has arisen binding on the Defendant which means the Defendant cannot now assert that the sites are not governed by the leases. The Defendant says no estoppels are binding on

it. The arguments have included estoppels binding on the Defendant as a successor in title and estoppels said to bind the Defendant, since it acquired its rights over the sites.

- iii) The Encroachment Issue The parties agree the potential applicability of the encroachment doctrine but dispute whether it has the consequence of saving the s.26 notices. In particular, the Defendant asserts that there is nothing in that doctrine which would enable an encroaching tenant to impose on a landlord statutory rights under the 1954 Act over land which was outside the grant.
- iv) The Notice Issue The Defendant argues that, in any event, the s.26 notices reasonably understood would only assert rights under the extent of the original grant – a reasonable recipient would take them to be limited to the land identified in the lease plans.

- 8. For the reasons which I set out below the Claimant succeeds on the preliminary issues because: (a) the true construction of the Commons Wood lease means that the compound is within the red box contained in the lease plan; and (b) for Barber's Moor a proprietary estoppel arose in favour of the lessee which binds the Defendant with the reality of the demised title being that which has been occupied on the ground. In my view those conclusions are reasonably straightforward based on the material available and the arguments that have been made.
- 9. It follows that I have not considered it necessary to address issues which are not relevant to the outcome, but I have given brief views.
- 10. Following this introduction, the judgment is structured by first setting out the relevant narrative for Barber's Moor, then Commons Wood and then addressing the determinative issues. It is convenient to set out the relevant parts of the leases as part of the narrative for each site.

Barber's Moor – narrative

- 11. Barber's Moor Farm is located to the south of the B5249 between Croston and Ulnes Walson in Lancashire. At the further end and to the west of a driveway coming off the B5249 is a farmhouse and beyond the farmhouse is the disputed site. The lease is dated 25 August 1999 and was made between Roy Fisher (the landowner) and the then tenants. The start date was 8 June 1999 and the duration was 20 years with an initial rent of £3,500 per year.
- 12. The lease says it is in respect of "Telecommunications Equipment" at Barber's Moor Farm. It is drafted by solicitors. The demise was of "the Premises" and included various ancillary rights. It is obvious, but worth saying, that the lease is concerned with establishing the telecommunications compound and enabling that compound to operate: see for example, the definitions of antennae, equipment, equipment accommodation, permitted purpose, tower and works, the rights granted by the second schedule, and the works identified in the third schedule. Indeed, the tenant promised to only use the Premises for the defined permitted purpose and the landlord not to install or licence any other equipment on the landlord's property that might impact the tenant's operation. The exclusive purpose of the tenancy was for the creation and operation of the telecommunications compound.

13. It has been common ground before me that the compound did not exist at the date of the lease but was built soon after. This is apparent from the description of works which includes erecting the tower and so on and installing the equipment and constructing the fencing. Commonsense says that the operators, having got the lease, would have wanted to have the compound up and running as soon as possible. While I have no evidence beyond the fact of the compound about the detail of the construction process, given the likely commercial realities it is more likely than not that this is what happened. It is clear the compound was on site by November 2001 at the latest.
14. The lease included a single sheet of plans / diagrams. This says it was drawn by MPC (who was to be the tenant) for the purpose of “approval” and “planning” and is dated 29 April 1999. It is likely a planning document that has been repurposed for the lease. It is also marked “Compound Location Revised¹” (as of 27 May 1999) and titled “Proposed Telecommunications Monopole and Equipment Cabin”.
15. On this sheet are two plans which are referred to in the definitions section of the lease: one, marked “Location Plan”, which has a blue line “showing for the purposes of identification only” the “Owner’s Property”; and, the second marked “Compound Layout”, on which there is a red box around the envisaged compound. The definition of “Premises” is “...shall mean the piece or parcel of the Owner’s Property shown for the purpose of identification only on the Plan and thereon edged red”. I have copied from the Claimant’s skeleton an image of this plan below when discussing the Demise Issue.
16. There is no direct evidence provided about what the area would have looked like in 1999 beyond what can be assumed from the plans and perhaps from looking at photographs taken more recently (e.g. by Cell:cm in 2021 / 2022 and Mr Bevis when he inspected the site in February 2026). In particular, despite his instructions including the need to do this, there is no attempt in the SJE’s report to identify relevant features that would have been on the ground in 1999. The approach taken by the SJE was to geolocate the plans in the lease to the real world location via an electronic copy of the OS map.
17. Mr Clark pointed out that in the compound layout plan there was a point described as “POLE SOP” from which some “to be confirmed on site” dimensions were taken and in one of the photos at what could be a similar point there was a telegraph pole. The SJE’s report did not address these types of issues. I discuss them below.
18. As I have said I find the compound was built substantially as it appears today shortly after the lease was granted.
19. On 23 November 2001 there were various agreements entered into by which the Barber’s Moor lease was transferred from the original tenant to the Claimant (or a related company). These included a licence to assign, the subject of which was “the Lease relating to the Demised Premises” (defined as the premises demised by and described in the Lease), a deed of variation between the landlord and the new tenant which related to “the Site”, which was defined as the land shown for identification only on the lease plan in red, and a notice of assignment.

¹ No earlier versions are in evidence and so the “revision” is unknown

20. At all times the rent was paid and accepted. There was an agreed rent increase on 20 December 2004 as from June 2004. In the first half of 2017 planning permission was sought and obtained for some replacement antennas and a new equipment cabinet together with ancillary equipment. This was put forward as an upgrade to the existing base station on the site.
21. There was an exchange of correspondence between those representing the landlord and those representing the Claimant in February and May 2017. In short, but sufficient summary, the landlord looked to terminate the occupation under the Electronic Communications Code (“the Code”) and the tenant asserted that the 1954 Act would apply rather than the Code. It does not appear that went any further.
22. The Claimant’s point to me was that the exchange was premised on the site in operation being the area of land which was the subject of the lease. This must be right – the discussions would have been irrelevant if the parties had only been concerned with an area of land which was only partially used for the compound because merely being able to use that 10% slice would have been useless.
23. The Defendant acquired rights from the then landlord of the site (a different member of the Fisher family) on 28 February 2022 by way of a 25 year concurrent lease.
24. As part of the process leading to that acquisition, the Defendant obtained a report from surveyors, Cell:cm, who in a report dated 23 November 2021 said that the compound was “built outside of legal demise” and so the proposed extent of the concurrent lease was a rectangle large enough to include the actual location and the demised location. The Claimant refers to the Cell:cm report as evidence of the Defendant’s knowledge about the alleged mismatch between the demise and the location of the site. In argument Mr Radley-Gardner said the Defendant “kept it in their back pocket” to deploy when it might be most effective, which was when defences were served to the renewal application in June 2025. The Claimant says this was the first it knew about there being any issue about the location of the compound and the grant under the lease.
25. The Claimant served a s. 26 notice for Barber’s Moor on 16 August 2022. It contains a bold heading using the words from the front of the lease: “Telecommunications Equipment at Barber’s Moor...”. It was served on the relevant legal owner (Mr Stuart Fisher) at a time when the concurrent lease had yet to be registered. The notice followed the standard form and stated (as relevant): “This notice relates to the following property: Telecommunications Equipment at Barber’s Moor Farm...[address]...and more particularly described in the lease dated 25/8/99 and made between...[lease parties]...”. The proposed lease defined the premises for the new proposed lease “as per the existing lease”.
26. There are photos dated 23 September 2022. These show the pole to which I was referred by Mr Clark but it appears taking a number of photos showing the same pole that it is back from the house, nearer the compound, rather than adjacent to it. This suggests it is a different pole from that shown in the Compound Layout plan or, if it is the same pole, the plan does not accurately show the relationship between what appears to be the farmhouse building (rather than the plot on which the farmhouse sits) and that pole.
27. Following the concurrent lease, rent in the relevant sum was paid and accepted as between the parties. The latest rent revision calculation was sent by the Defendant to

the Claimant by letter dated 12 November 2025. At all times the value of the rent is consistent with the site being occupied under the lease.

28. Unopposed 1954 Act proceedings were issued on 30 December 2024. The parties had agreed an extension of time which was due to expire on 31 January 2025.
29. At paragraph 3.1.1. of the defence dated 18 June 2025, for which an extension was also agreed, the Defendant summarised its position which was to deny the validity of the s.26 notice because the compound was constructed partly on the land edged red and partly not on that land and so was both within the demise (so covered by the notice) and without the demise (and so not covered). No admissions were made about any rights arising under encroachment.
30. The Claimant replied as part of a consolidated reply dated 20 October 2025. Those statements of case led to the issues now argued before me.

Commons Wood – Narrative

31. Commons Wood is part of Benedict Farm at Northiam, East Sussex. The compound is located in woodland at the end of a track heading roughly north off the B2165. The lease is dated 29 November 2004 and is between the Claimant and Mr John Lister. The term was 25 years from the lease date with an initial rent of £7,599 per year. The lease was a surrender and regrant of an earlier lease dated 11 December 1996.
32. The lease says it is in respect of “Telecommunications Equipment” at Commons Wood. It is drafted by solicitors. The demise was of “the Premises” and included various ancillary rights. Just as at Barber’s Moor, the only purpose of the lease was the operation of the telecommunications compound. Unlike at Barber’s Moor, a compound was already built and the purpose of the new lease included using and expanding that compound as shown in the lease.
33. The lease included three plans marked A to C which are defined as follows: plan A marked in blue the owner’s property; plan B marked in red the “Premises” and provided information for the definition of Works Plans; and, plan C was a tower drawing which was also part of the Works Plans definition. As relevant plans A and B were “for identification purposes only”. I have copied from the Claimant’s skeleton an image of plan B below when discussing the Demise Issue.
34. Plan B shows the existing compound in black. This concerned the SJE, who in carrying out his instructed task which included “plot on your survey the boundary features indicated by the lease plans...” considered that since he wanted to geo-locate the red square, it would be destructive of the accuracy of that exercise to consider features within the red square as a good starting point. This is good logic if all you are trying to do is geo-locate the red square relative to an OS map. I comment on its usefulness for construction purposes below. Plan B shows the proposed works in red and blue.
35. The proposed works were completed. This was presumably soon after the lease was granted and the site has operated in its present position without complaint or issue since. A rent review was agreed with the then landlord on 29 November 2004. A planning application was made and confirmed for replacement aerials on 20 April 2015 and rent

has been demanded and paid throughout on the natural assumption that the lease occupation is for the compound as is.

36. On 2 February 2017 there was a wayleave agreement relating to the installation of some BT equipment on the site (this may be wrongly dated 10 January 2003 in the bundle index). The 10 January 2003 wayleave agreement is indexed as the 2017 one. There was discussion before me as to whether the plan apparently attached to this 2003 wayleave agreement as per the bundle was an accurate recreation of the 2003 document. I express no view and consider it irrelevant to the outcome of this judgment either way.
37. A site plan from 26 February 2021 confirms what the parties have agreed before me, which was that in material substance the layout of the site and compound has not substantively changed since the post 2004 variations.
38. The Defendant acquired rights from the then landlord (different members of the Lister family) on 30 September 2022 by way of a transfer of such of the existing freehold title as was identified in the TP1. For present purposes this can be thought of as the geo-located demise plus the land occupied.
39. As with Barber's Moor, the Defendant obtained a Cell:cm report. This one is dated 3 August 2022, and also said the compound was "built outside of legal demise" and the proposed extent of the concurrent lease was a rectangle large enough to include the actual location and the demised location (operator demise area said to be 225sqm / advised Defendant demise 332.5 sqm). I repeat what I said above noting the Claimant's submission re the Defendant's "back pocket" knowledge of the discrepancy.
40. The Claimant served a s. 26 notice for Commons Wood on 6 April 2022 on the Listers as legal owners. The covering letter contained a bold heading using the words from the front of the lease: "Premises known as Telecommunications Equipment at Commons Wood...". The notice followed the standard form and stated (as relevant): "This notice relates to the following property: Telecommunications Equipment at Commons Wood...[address]...and more particularly described in a lease dated 29 November 2004 and made between...[lease parties]...". The proposed lease defined the premises for the new proposed lease "The whole of the Premises let under the existing Lease".
41. The procedural history and statements of case is the same as with Barber's Wood and I do not repeat it.

The Demise Issue (1) Law

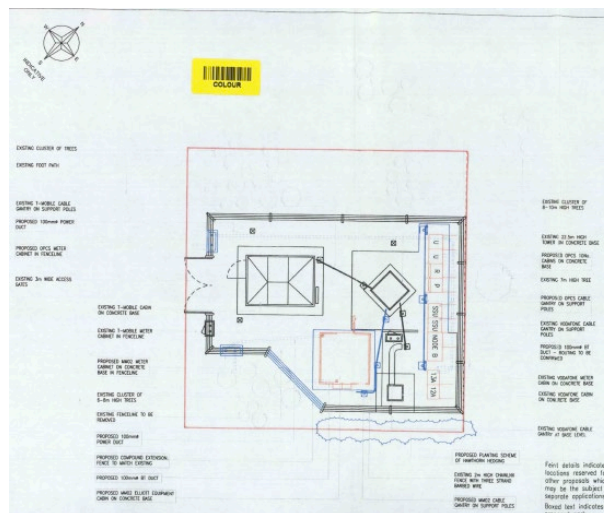
42. I was referred to a number of cases which reflected the facts relevant to the cases before the court but the overarching approach to construing the subject matter of a conveyance was common ground and was summarised by Mummery LJ in *Pennock v Hodgson* [2010] EWCA Civ 873 [7] – [13]. For present purposes the gist of this is that a plan is only part of the evidence that might potentially be relevant to the necessary process of construction to determine a boundary. As a generality, and with one exception, the process of construction is substantially similar to that when looking at any contract: "we must look at the conveyance in the light of the circumstances which surrounded it in order to ascertain what was therein expressed as the intention of the parties" (Earl Loreburn in *Eastwood v Ashton* [1915] AC 900, 906 cited by Mummery LJ at [10]). The often cited summary at [12] is "having the attached plan in your hand on the spot"

and keeping in mind “knowledge of the objective facts reasonably available to the parties at the relevant date”.

43. For my part, and bearing in mind the authorities cited to me, but without needing to go through them in detail, the gist is to approach the exercise with a tight focus on the requirement for “relevant evidence”. This is reflected in what Mummery LJ continued to say at [12] about the various other cases cited therein. It is also reflected in the approach taken by counsel before the Court of Appeal in *Ali v Lane* [2006] EWCA Civ 1532, Carnwath LJ at [23], “...the question was not so much one of principle, but as to the probative value of any material relied on”.
44. *Ali v Lane* also confirmed the exception that I referred to above. This is evidence of subsequent conduct which, where there is uncertainty about what was conveyed and the proposed evidence is of probative value, can be admitted (*Ali v Lane* [36] – [38] – which also contains helpful discussion about what would be probative and what not, focused on the question about what the parties to the conveyance intend objectively by the words etc. that they used at the time).
45. The law as I have summarised it above can also be found in *Norman v Sparling* [2014] EWCA Civ 1152, Elias LJ [10] – [12].
46. I should comment briefly on a legal proposition which Mr Clark made about plans for “identification only”. Mr Clark said, rightly, that such a plan cannot control or contradict an express description in the parcels clause, and then, in my view, wrongly, also flipped this around and said but if there is no express description in the parcels clause then the plan does control and prevail. This is not the law but rather such a plan might control and prevail but it will depend on all relevant evidence bearing on the question. The law is that the plan is part of that evidence. There is nothing in the authorities to support Mr Clark’s logical fallacy. This is not to say that a clear plan might not prevail, it may well be the best and determinative evidence, but rather that it would be wrong to apply a purported rule that will fit all cases. The arguments should focus on what the relevant evidence says about the intended boundary not about whether or not any particular plan is clear. Which, in any event, rather begs the question – clear about what. In the present case the plans do not become clear because they can be geo-located using the techniques employed by the SJE but rather require specific consideration in light of the relevant evidence at which point, as will be seen below, one of them is clear and the other one (at least on the evidence before the court) is not.
47. Indeed, by way of one example of the law, Mr Clark quoted from *Wigginton v Winster* [1978] 1 WLR 1462, Buckley LJ at 1473G-H who addressing the submission that you cannot even look at a plan “for identification only” when considering the boundary said: “...I can see no reason why it should not be looked at to assist in understanding the description of the parcels...” [my emphasis]. Buckley LJ continued to explain that the plan could be used to solve “problems which are left undecided...” and that in the case before the Court of Appeal, the plan “does help in that respect to solve an aspect of the problem”. Indeed on that case, the plan appears to have been the best evidence available. All of which demonstrates the court not resolving disputed construction issues arising on conveyances by rules so much as identifying the relevant material and then balancing all that material so as to arrive at the correct construction.

The Demise Issue (2) Commons Wood

48. I start with Commons Wood because the answer is a straightforward following of the relevant principles summarised above and indeed the plan, properly construed, is the magnetic factor (as family lawyers might call it).
49. The Claimant's case, presented by Ms Dodds on its behalf, was that the person with the plan in their hand at the date of the conveyance would see on site the existing compound features marked black on Plan B and from those would easily understand the nature and extent of the conveyance – the red box becomes clear when you are on site with the plan at the date of the demise. I attach a copy of Plan B lifted from the Claimant's skeleton:



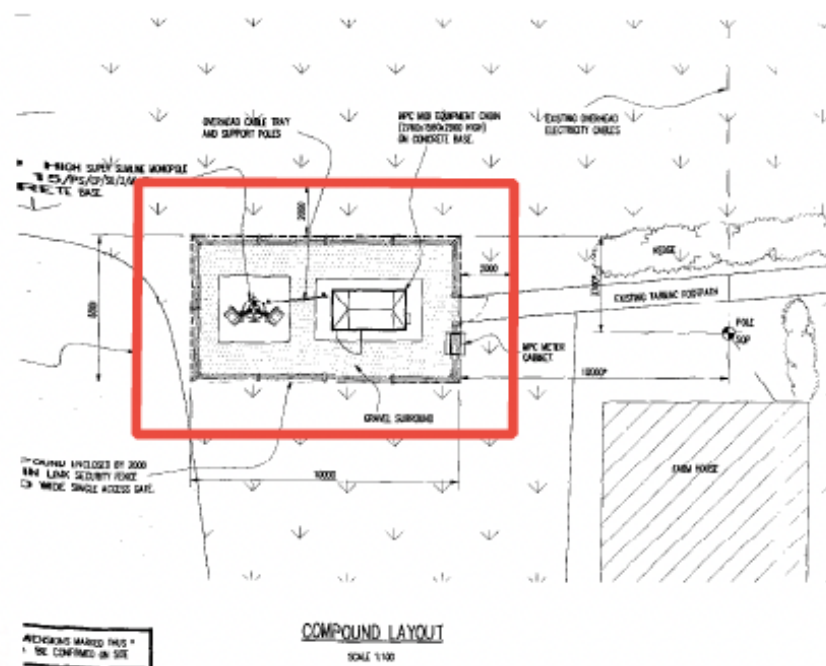
50. The Defendant's case, if I can summarise Mr Clark's submissions, was that it was clear from the exercise carried out by the SJE that plan B gave a clear redline boundary which showed that the actual compound was outside the redline boundary in two respects (in my formulation): (i) taking a central pivot point, it was misaligned by a few degrees anti-clockwise from the straight edges provided by that square; and, (ii) the compound had been translated a short distance too far north and a short distance too far east from the red box square. In summary it was about 10% outside the geolocated demise. Since that was clear from an extrapolation from the plan, the compound was outside the extent of the grant.
51. Ms Dodds is right for the reasons that she gives. The lease states that the premises the subject of the grant is shown for identification purposes only on plan B. Plan B helpfully identifies the existing features of the compound. A person at the date of the conveyance holding plan B and standing in the woodland space would easily be able to orientate the plan to the features on the ground and the extent of the grant would be clear. For present purposes, where I am concerned to establish only that the compound is within the grant under the lease that is sufficient.
52. The SJE exercise is useless as an exercise in determining the extent of the grant in the Commons Wood case. The SJE could not geolocate the demised land from plan B and so used plan A instead. This ignored the wording of the lease by which the parties agreed that plan B would identify the extent of the grant. The SJE then carried out his geo-location exercise which presumably assumed it was the intention of the parties that

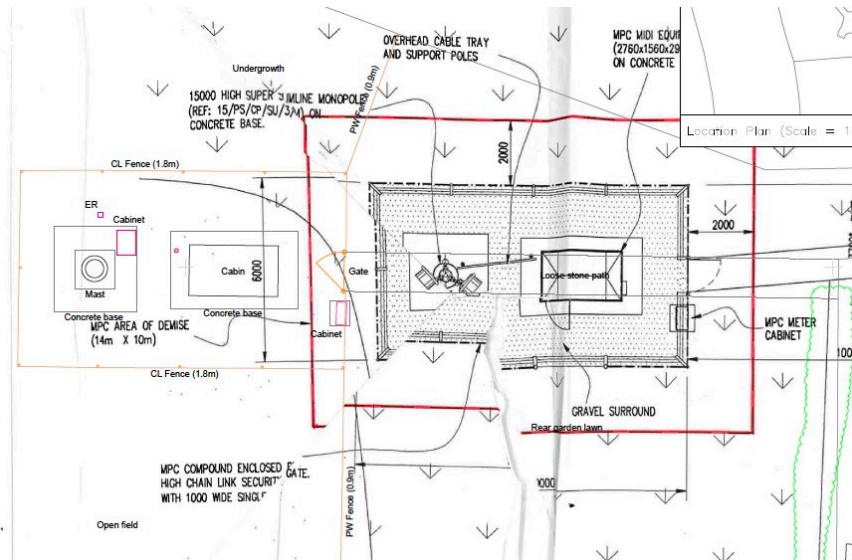
the exact extent of the demise would be determined by extrapolation from OS maps. This was contrary to the parties' intentions expressed by the "identification only" idiom (as explained by Lord Hoffmann in *Alan Wibberley*). But above all, it ignored the most helpful marked features which were both on the ground and on plan B, in favour of extrapolation from an on-line OS resource not available to the parties and which is not referred to in the lease.

53. Mr Clark referred me to *Cameron v Boggiano* [2012] EWCA Civ 157 as an example where the clarity of a plan was at the centre of the discussion about the extent to which external evidence would be admitted. At [66] Mummery LJ said "In this case the plan on its own is, in my view, an insufficiently clear guide to the position of such features as the boundary...". In the present case, positing the person on the ground with the plan in their hand, the plan is a clear guide to the boundaries because of the existing compound features on the ground marked on the plan. The *Pennock* person has the plan and eyes not a geo-location app.
54. So far as Commons Wood is concerned the Claimant succeeds at the demise hurdle and needs go no further.

The Demise Issue (3) Barber's Moor

55. The ease of the analysis for Commons Wood contrasts with the different evidential picture at Barber's Moor. Here the compound as built appears substantially the same shape and orientation as that provided for in the demise plan but the SJE identifies that the compound is just over 10 metres to the east of where it can be geolocated.
56. As above, I copy the relevant plan from the lease and in this case the overlay diagram from the SJE also.





57. Although not definitive, the geo-location approach to Barber's Moor is at least based on material available on the relevant "plan" as defined in the lease because the "plan" contains maps which include OS lines and it is a reasonable evidential assumption to proceed on the basis that the intention in general terms for this lease might well be that the area marked on each map would be broadly consistent, although the boundaries of the demise were those marked in red only on the "location plan".
58. The red-marked plan shows a compound which was not there at the time and so cannot assist with locating the imaginary red lines in real life as at 1999. There are 1999 features referred to: "existing tarmac footpath", "pole" / "SOP²"; overhead electric cables; Farmhouse; and, a field boundary (which also appears in the OS derived map on the "plan"). There are also measurements but those which might have been most useful (i.e. those which start from existing features) are all stated to require "confirmation on site". The best that can be done, taking the plan alone, would be to conclude that the intention was that a 10m x 6m compound would be built approximately 10m to the west of the SOP and so that the upper east / west line of that rectangle would be approximately 3.7m north of an east west line drawn from the SOP.
59. However, on the material before the court, this approach, which in my view is the approach which the location plan wants its reader to take, is of no assistance because I have no evidence about where the pole might have been.
60. I have commented above on Mr Clark's suggestion about the location of the pole being that shown in a much later photograph but looking at other photographs, that pole does not appear to be adjacent to the farmhouse building and, in any event, nobody has measured from it to the compound. It concerns me to speculate further when the type of evidence I would normally expect boundary experts to have provided regarding the disputed area at the date of the conveyance is absent. There is an obvious possibility that the pole that appears to be located beyond the now back-garden of the farmhouse might be the "SOP" in the plan albeit wrongly placed on the plan (but such a pole would still be obvious once a person was on site). Nevertheless if it could be shown that the photographed pole was more likely than not the pole shown in the plan, then the answer

² Possible meaning "setting out point"

to the demise issue might be clearer (the position of this pole can be seen from the photos at pp 290, 303 and 304).

61. But I cannot, on the evidence, make an assumption that the pole in the photographs of 2022 is the pole in the plan relevant to 1999 and it would be unfair to hold Mr Clark to the suggestion that it might be the same. Moreover, even if I could, I have no evidence about the distances between that pole and the compound and so cannot gain any assurance about whether the plan as built approximates to the “confirm on site” dimensions.
62. Ms Dodds referred to the “existing path” and said nicely: “I don’t want to labour the point about the path but the options really are: the contractors who were building the site walked up to the end of the path and built it where it is; or that they walked up the path extended it a bit and then built it a bit further on...the first is more likely”.
63. I agree with Ms Dodds that it is relevant evidence that the compound was built where it was. I do not agree that it is likely that the process for building the compound involved walking all the relevant building plant and telecommunications equipment up the path (the path was more likely to be used after construction rather than for construction and years later Cell:cm do refer to a potential alternative route for vehicles).
64. Nevertheless, the gist of Ms Dodds’ point has some weight: the plan does show the compound being built at the end of an existing path and that should be relevant information.
65. However, so much is speculation – including that the “existing path” stopped where the compound begins (it is an assumption that the path did not continue towards the westerly field prior to it being built on or being intended to be built on). There is no evidence about the tarmac path on the ground either in 1999 (although the plan allows an assumption it was there then) or over the intervening 27 years.
66. The evidence about the as built location of the compound is relevant to considering what the parties’ intentions were to the 1999 lease. This was the purpose for which the lease was granted and so that use of the demised land was already in the parties’ contemplation prior to the grant. It also happens to be a use which could not be more definitive as a means of taking possession – it involved concrete bases and a fenced in area. Nothing more clearly marks territory.
67. At the date of grant, the parties agreed that the land conveyed would be a 2m rectangle out from the intended compound fence line. That much is clear from the plan. The problem is to locate where that compound was intended to be. There is also no evidence of the relevant parties (i.e. between 1999 and 2004 but not subsequently either) having occupied that part of the landlord’s title which the Defendant says was the subject of the grant (save to the extent of the small overlap, but for present purposes that is more coincidental than substantive). Likewise those original parties also entered into the assignment transaction with no suggestion that the compound was in anything other than the place it should have been for lease purposes. All of that can raise an inference that the location of the compound on the ground is reasonable evidence of what was intended under the lease.

68. However, the building of the compound where it was (and not where it was not), must be weighed taking into account the inherent probabilities around why that might have occurred. This is a case where there is no more evidence than (a) a lease which envisages the building of the compound and contains a red rectangle within which that compound was intended to be put; (b) a compound which appears to be some 10 metres further to the east than might have been expected if the location was to be based on the plan in the lease albeit that is not based on the evidential material that would be most telling (locating the post and then measuring) but rather a different and less relevant geo-location evidence.
69. In material substance there is no evidence about how the compound came to be built where it was. The obvious possibilities must include: (a) as the Claimant says, this was what the parties always intended; (b) as the Defendant says, this was a unilateral act of the tenant / the tenant's builders; and (c) the builders and/or the tenant and Roy Fisher agreed to build where they did (neither party mentioned this but given the potential shift further away from the farmhouse, it is an obvious possibility) and not being land lawyers and the plan plus compound as built being obvious did not bother altering the lease.
70. A grant where the lease would be for whatever patch of land the compound happened to be built on would not be permissible. The subject matter of the lease must be clear as to the nature and extent of the land granted.
71. The question for me is whether I can be clear on the evidence available that the land as occupied by the Defendant was the subject matter of the grant in the Barber's Moor lease. I cannot be satisfied of that on the evidence available. The real possibilities that the installation was done as it was because that better suited the installers, the tenant and/or the landlord, but after the lease was granted precludes me being sufficiently confident about the extent of the grant to make such a finding.
72. Finally, this is not a case where it is necessary for the court to determine the boundary. The issue is about the validity or extent of the s.26 notices under the 1954 Act. Given the nature of the evidence before the court, it would be inappropriate to determine the boundary issue based on the lease in this judgment. Not least because of my clear findings on the next issue, which are determinative of the relevant issues between the parties.
73. I turn therefore to consider proprietary estoppel and Barber's Moor.
- The Estoppel Issue (1) Barber's Moor and Proprietary Estoppel*
74. I was referred to both **Chitty** 36th ed and **Megarry & Wade** 10th ed. Like Mr Radley-Gardner, it struck me that a doctrine whose origins can be found in the building of railways infrastructure outside of grants might be of assistance in circumstances where the Defendant's case was that the Barber's Moor telecommunications infrastructure was built on land that was subsequently said not to be the subject of a grant. The Claimant's case being that until getting the Defendant's defence it had always understood since prior to acquiring the site in 2004 that the lease parties from time to time considered that the compound as is (plus 2m) and the demise were coterminous.
75. **McGarry & Wade** says at 15-001

The flexibility of the jurisdiction is such that the criteria for relief can be stated only in broad terms. Indeed, such is its nature that “it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments” and that “the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine”.

With that in mind, and bearing in mind that it is unwise to provide an exclusive definition of such a flexible equitable doctrine, it is possible to summarise the essential elements of proprietary estoppel as follows.

- (i) An equity by estoppel arises where:
 - (a) the owner of land (O) induces, encourages or allows the claimant (C) to believe that C has or will enjoy some right or benefit over O’s property, provided that inducement etc is not specifically limited to a mere personal use of the land;
 - (b) in reliance upon this belief, C acts to his or her detriment to the reason-ably determined knowledge of O; and
 - (c) O then seeks to take unconscionable advantage of C by denying C the right or benefit which C expected to receive.
- (ii) This equity gives C the right to go to court to seek relief. C’s claim is an equitable one and subject to the normal principles governing equitable remedies.
- (iii) The court has a wide discretion as to the manner in which it will give satisfy the equity in order to avoid an unconscionable result, having regard to all the circumstances of the case, including, but not limited to, the expectations and conduct of the parties.

76. Mr Radley-Gardner explained that the starting point was how obvious it was that the compound was constructed where it was and (I add) not where it was not. I agree with this. It is equally obvious from those facts that the only objective conclusion that might have been reached by an observer of this fact was that the compound was put where it was as an exercise of the rights granted by the 1999 lease. Those rights and nothing else were the very things which led to the compound. I stress that the only occupation being made of land in the freehold title of the landlord was the compound and so equally obvious that the intention of the tenant was to occupy the fenced compound in addition to the 2m extended notional rectangle provided for by the lease plan. It must have been obvious to the landlord that in building and operating the compound the tenant was intending to exercise the rights granted under the lease.

77. Mr Clark referred me to the summary in **Chitty**, 36th ed, at 7-063:

“Proprietary estoppel is said to arise in certain situations in which a person has done acts in reliance on the belief that they have, or that they will acquire, rights in or over another’s property...There are “three main elements” of proprietary estoppel: a representation made or assurance given to the claimant; reliance by the claimant on that representation or assurance; and detriment suffered by the claimant in consequence of that reliance.”

78. Mr Clark’s overarching point was that there was no evidence from the Claimant to satisfy any of these criteria. The witness statement of Mr Holloway failed to do this

because he had no direct knowledge of the circumstances in which the compound came to be built.

79. Ms Dodds noticed that the **Chitty** reference read out to the court by Mr Clark continued: “The “classic example” of proprietary estoppel involves one party building on another’s land, believing it to be their property”. The “classic example”, is a reference to Lord Neuberger in *Fisher v Brooker*[2009] UKHL 41 at [62] (7-064 footnote 371) and his lordship’s reference to *Taylor Fashions Ltd v Liverpool Victoria Trustees Ltd* (Note) [1982] QB 133, where a landlord did nothing while knowing that development works were being carried on by the tenant on the assumption the tenant had been granted a relevant option. Such standing by fulfilled the representation or assurance element of the estoppel and the works the reliance aspect.
80. This fits the facts of the present case: the lease was granted; it envisaged and permitted works to create the compound; the extent of the demise was 2m around that compound; the Claimant’s predecessor in title had the compound built where it is and operated it thereafter; it was obvious this was deliberate; it was obvious to the landlord, on whose farm the works were carried out, that this was done; any reasonable person would understand that this was done pursuant to the lease; all involved acted thereafter on the basis that the demised premises under the lease were one and the same with the compound as built (i.e. that the demised premises were 2m around the compound on the ground).
81. All of this would have amounted to (a) a landlord representation that there was no issue with the compound as built being the subject matter of the lease (b) the then leaseholder relied on this, not least in continuing to build in that location and in paying rent and exercising other rights over the compound between 1999 and 2004 and (c) it would have been unconscionable for the landlord to have changed their position as at the date of the 2004 assignment. In any event, the landlord, the then tenant and the Claimant entered into the assignment documents all of which are premised on the compound plus 2m being the land the subject matter of the lease.
82. I agree with Mr Radley-Gardner and Ms Dodds that the consensual process by which the Claimant acquired its rights in 2004 well illustrates all aspects of the proprietary estoppel: the Claimant’s predecessor and the Claimant relied on the compound being the demised premises during that transaction because the landlord had stood by without saying otherwise for some 5 years; this was to their detriment because the transaction would not have occurred without that assumption (and it was a reasonable assumption to make given the landlord’s acquiescence); moreover, the landlord participated in that transaction, not least by being party to a deed (p201 of the bundle) in which the landlord gave consent to the Claimant to continue to permit One 2 One to occupy the Demised Premises (as defined, which was a reference to the lease). The only land being occupied and so which could “continue” to be occupied was the compound as built. It might be said this was a form of estoppel by deed, but that has not been argued.
83. Furthermore, since the Claimant took over the lease, the rent has been paid, rent reviews have taken place and a planning application has been made and confirmed (on 3 March 2017) and none of the Claimant, its predecessor in title or anyone else permitted to access the land, on the evidence before this court, have purported to exercise any dominion over any other part of the landlord’s property than the as-built compound plus 2m. In this way all the tenants or tenant’s licensees from time to time have acted to their

detriment in giving up any other intended demise other than the one assumed under the as built compound.

84. Mr Clark argues that none of these things evidence a shared assumption that was detrimentally acted upon. I disagree. At all material times, until the service of the defence in this case, all concerned in this lease (i.e. tenant parties and landlord parties) have acted on the basis that the compound as built plus 2 m around it was the demised premises under the lease and no other part of the landlord's land except that. This is not something in the particular circumstances of this case that needs witness evidence beyond what there is together with the documents in the bundle, because it is an assumption of regularity which is obvious given the two core facts (1) that the compound was where it was and was not anywhere else, and (2) there is no evidence that anybody involved in the relevant legal relationship has said or acted other than on the basis that the lease governed the tenant's building and occupation of the compound (at least until the Defendant's defence in these proceedings).
85. This is a clear case of proprietary estoppel. I am prepared to be addressed further in terms of the precise relief that might be appropriate but, as a starting point, I suggest a declaration along the lines that "the extent of the demise under the lease dated 25 August 1999 has at all material times been a rectangle whose sides are 2 metres distant from the corresponding sides of the fenced compound shown on drawing number 26043-1—101 attached hereto".

Other Matters

86. *Other Estoppel Issues* – these are necessarily irrelevant to Commons Wood and given my findings on proprietary estoppel it is unnecessary to go through a similar exercise for what, in the circumstances, might potentially be less obviously suitable forms of estoppel.
87. *Encroachment*. The encroachment issue is interesting but given the findings above, I do not consider encroachment has ever been in play in this case. It is curious that it appears to have been first mentioned pre-emptively in the Defendant's defence and it is perhaps overthinking to wonder if that was done so as to draw the Claimant into a scenario premised on the occupation of the compound necessarily involving an accretion of occupation over and above that granted. If it had been relevant, I would have considered the analysis of Lord Scott in the Hong Kong case of *Sec for Justice v Chau Ka Chik Tso & Ors* [2011] HKCFA 86 persuasive and correct. It would have led to the Claimant having substantive 1954 Act rights in the present case because of the amount of time that had gone by with it being in occupation. This would have been a consequence of the lease having come to include that land. This would not be an extension to the scope of the 1954 Act but the landlord not enforcing its rights as landowner over adversely occupied land and so it becoming common as between landlord and tenant that the tenant's actual occupation was governed by the lease, which itself gave rise to 1954 Act rights in the normal way.
88. *Construction of the s.26 notices*. In respect of both notices the findings above mean that there is nothing troublesome in the construction, even as suggested by Mr Clark's arguments. In short, because of my findings the leases do govern the relevant occupation and are rightly referred to by the notices. However, I can add that since any reasonable recipient of the notices can be taken to know the present state of the land

(i.e. that the tenant occupies the compound plus the relevant red boundary and has always treated itself as having done so under the lease and does not occupy any other part of the landlord's property) then such recipient would understand the intention of the notice was to exercise 1954 Act rights in respect of that occupation ("the telecommunications equipment...more particularly described in the lease"). It follows that construction would never have made these notices invalid. This would remain the case even if, contrary to my findings above, and, perhaps on different facts, there might be a problem with the title vs the occupation. As a matter of observation only, I suspect that in such a case then any such problems may need to be determined as part of the substantive hearing rather than as a matter of a construction of the notice. I do not see this being about the proper construction of the notice but rather the substantive rights of the parties regardless of the proper construction of the notice. The notice might give up rights already held but it is an exercise of rights conditional on service of the notice rather than even purportedly a notice creative of new rights which would not otherwise be available under the 1954 Act.

Conclusion

89. The Claimant succeeds for the reasons given.