Neutral Citation Number: [2024] EWHC 2886 (Ch)

Case No: PT-2022-BRS-000081

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN BRISTOL
PROPERTY TRUSTS AND PROBATE LIST (ChD)

Bristol Civil Justice Centre
2 Redcliff Street, Bristol, BS1 6GR

Date: 14 November 2024

Before :

HHJ PAUL MATTHEWS
(sitting as a Judge of the High Court)

- -

Between :

PATRICK DAVID WIGGLESWORTH	**Claimant**
- and -	
VANESSA KIM BEETSON	**Defendant**

- -
- -

John Stenhouse (instructed by **direct access**) for the **Claimant**
Michael Walsh (instructed by **direct access**) for the **Defendant**

Hearing dates: 9-13 September 2024

- -

This judgment was handed down remotely at 10:30 am on 14 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

HHJ Paul Matthews :

Introduction

1. This is my judgment on a claim made by claim form issued on 20 July 2022. The original particulars of claim dated 15 July 2022 were amended on 9 January 2024. The claim relates to a plot of land measuring 120 feet by 60 feet, situated at Cotswold Hill Quarry, Ford, Temple Guiting, Gloucestershire. The primary claim is for specific performance of a contract for the sale of the plot in 1982, said to have been made between the late Timothy Beetson as vendor and the claimant as purchaser. There are also subsidiary claims in relation to the same plot in both proprietary estoppel and adverse possession, as well as for damages and interest. In addition, there is a claim for damages for damage to goods and an injunction to restrain trespass on the plot.

2. The defendant to the proceedings is the widow and executrix of the estate of Mr Beetson. She served an amended defence and counterclaim on 26 July 2024. This denies the claim so far as concerns the whole of the land claimed, but admits the claim so far as concerns a small part of the plot. This is known as the "workshop land", measuring approximately 60 feet by 30 feet. This land is the footprint on which the claimant's workshop now stands. A reply and defence to counterclaim was served on 10 November 2022.

The land concerned

3. In order that the reader should from the outset have an understanding of how the various pieces of land fit together, I reproduce above an aerial photograph. I stress that this is for identification purposes only, and of no legal significance for the purposes of my judgment. The public highway runs diagonally across

the top left corner. At the top of the photograph is the entrance from the public highway to the site. The entrance serves two quarries, the Three Gates Quarry (in the top half of the photograph), and the Cotswold Hill Quarry (in the bottom half).

4. The boundary between the two quarries runs, at an angle from lower right to higher left, along the southern edge of the line of trees in the middle of the photograph, but projected on the same axis to the west across the two dirt tracks that can be seen, to meet the boundary with the next-door field a little to the north of the building with eight skylights (which is the claimant's workshop). So, the only access to the Cotswold Hill Quarry from the public highway at the top lies across land belonging to the owner of the Three Gates Quarry. This access is obtained via a dirt track which can be seen at the top proceeding south. This track then forks into two branches, west and east. The boundary between the two quarries runs across both branches. Both of them play an important part in this case.

5. Until his death in 2021, Timothy Beetson owned the freehold estate in fee simple in the Cotswold Hill Quarry, in the bottom half of the photograph. This land had the benefit of a legal right of way from the public highway and over the Three Gates Quarry, down the westernmost of the two tracks as far as the boundary with his land. In 1982 and 1984 Mr Beetson granted successive leases of parts of his land to a company in which he was a 50% shareholder and director, called Palmer & Beetson Ltd. However, each of the leases excluded from the demise a piece of the land on which are now situated both the claimant's workshop and the masonry shed constructed by Mr Beetson immediately to the south. Both leases granted to the tenant the use of the legal right of way over the Three Gates Quarry, and made arrangements, which I shall have to discuss in more detail, for the tenant to access the demised land.

6. Although it is difficult to see on the photograph above, the dirt track which leads down to the top of the claimant's workshop is said by the defendant to continue further south approximately on the line of the eastern side of the claimant's workshop. However, in more recent times it was overgrown, and littered with items temporarily stored there. It was cleared by the defendant in October 2021, which clearance the claimant complains of as trespass both to land and to goods. There are relevant photographs reproduced later in this judgment. The defendant says that the strip of land to the side of the claimant's workshop was not sold to the claimant, and also that the leases granted by Mr Beetson granted a right of way to the lessee of each lease over that strip to reach the demised land to the south.

How judges decide cases

7. For the benefit of the lay parties concerned in this case I will say something about how English judges decide civil cases like this one. I borrow the following words largely from other judgments of mine in which I have made similar comments. First of all, judges do not possess supernatural powers that enable them to divine when someone is mistaken, or not telling the truth. Instead, they take note of the witnesses giving live evidence before them, look

carefully at all the material presented (witness statements and all the other documents), listen to the arguments made to them, and then make up their minds. But there are a number of important procedural rules which govern their decision-making, some of which I shall briefly mention here, because non-lawyer readers of this judgment may not be aware of them.

Burden of proof

8. The first is the question of the *burden* of proof. Where there is an issue in dispute between the parties in a civil case (like this one), one party or the other will bear the burden of proving it. In general, the person who asserts something bears the burden of proving it: *Sadovska v Secretary of State for the Home Department* [2017] 1 WLR 2926, SC, [28]. Here the claimant bears the burden of proving his case, *ie* that the land agreed to be sold by Mr Beetson in 1982 is the larger plot of land he claims, and not the smaller plot admitted by the defendant, that he is otherwise entitled to the larger plot by proprietary estoppel or adverse possession, and that the defendant committed acts of trespass to his land and goods. The importance of the burden of proof is that, if the person who bears that burden satisfies the court, after considering the material that has been placed before the court, that something happened, then, for the purposes of deciding the case, it *did* happen. But if that person does *not* so satisfy the court, then for those purposes it did *not* happen. The decision is binary. Either something happened, or it did not, and there is no room for *maybe*: *Re B (Children)* [2009] 1 AC 11, [2]. That may mean that, in some cases, the result depends on who has the burden of proof.

Standard of proof

9. Secondly, the *standard* of proof in a civil case is very different from that in a criminal case. In a civil case like this, it is merely the balance of probabilities: see *eg Hornal v Neuberger Products Ltd* [1957] 1 QB 247, 256, 261, 265. This means that, if the judge considers that something in issue in the case is *more likely to have happened than not*, then for the purposes of the decision it *did* happen. If on the other hand the judge does *not* consider that that thing is more likely than not to have happened, then for the purposes of the decision it did *not* happen. It is not necessary for the court to go further than this. There is certainly no need for any *scientific* certainty, such as (say) medical or scientific experts might be used to. However, the more serious the allegation, the more cogent must be the evidence needed to persuade the court that a thing is more likely than not to have happened: see *Re H (Minors)* [1996] AC 563, 586D-H; *Home Secretary v Rehman* [2003] 1 AC 153, [55]; *Re B (Children)* [2009] 1 AC 11, [14]-[15].

The role of judges

10. Thirdly, in our system, judges are not investigators. They do not go looking for evidence. Instead, they decide cases on the basis of the material and arguments put before them *by the parties*. They are referees, not detectives. So, it is the responsibility of each party to find and put before the court the evidence and other material which each wishes to adduce, and formulate their

legal arguments, in order to convince the judge to find in that party's favour. There are a few limited exceptions to this, but I need not deal with those here.

The fallibility of memory

11. Fourthly, more is understood today than previously about the fallibility of memory. In commercial cases, at least, where there are many documents available, and witnesses give evidence as to what happened based on their memories, which may be faulty, civil judges nowadays often prefer to rely on the documents in the case, as being more objective: see *Gestmin SGPS SPA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), [22], restated recently in *Kinled Investments Ltd v Zopa Group Ltd* [2022] EWHC 1194 (Comm), [131]-[134]. As the judge said in that case,

> "a trial judge should test a witness's assertions against the contemporaneous documents and probabilities and, when weighing all the evidence, should give real weight to those documents and probabilities".

In the present case, there are a number of useful documents available. This is important in particular where, as here, the relevant facts occurred over forty years ago, one of the parties to the agreement has died, and the memories of the other witnesses available have inevitably been dimmed by the passage of time.

12. In deciding the facts of this case, I have therefore had regard to the more objective contents of the documents in the case. In addition to this, and as usual, in the present case I have heard witnesses (who made witness statements in advance) give oral evidence while they were subject to questioning. This process enables the court to reach a decision on questions such as who is telling the truth, who is trying to tell the truth but is mistaken, and (in an appropriate case) who is deliberately not telling the truth. I will therefore give appropriate weight to both the documentary evidence and the witness evidence, both oral and written, bearing in mind both the fallibility of memory and the relative objectivity of the documentary evidence available. I say "relative", because some aspects of certain documents relied on by the claimant have been challenged by the defendant, and I shall have to resolve those matters in due course.

Reasons for judgment

13. Fifthly, a court must give reasons for its decisions. That is the point of this judgment. But judges are not obliged to deal in their judgments with every single point that is argued, or every piece of evidence tendered: *English v Emery, Reimbold & Strick Ltd (Practice Note)* [2002] 1 WLR 2409, CA, [17]-[19]. Judges deal with the points which matter most. Moreover, it must be borne in mind that specific findings of fact by a judge are inherently an incomplete statement of the impression which was made upon that judge by the primary evidence. The judge's expressed findings are always surrounded by a penumbra of imprecision which may still play an important part in the judge's overall evaluation: *Biogen Inc v Medeva Plc* [1997] RPC 1, 45. Put shortly, judgments do not explain all aspects of a judge's reasoning, and are

always capable of being better expressed: *Piglowska v Piglowski* [1999] 1 WLR 1360, 1372. But they should at least express the main points, and enable the parties to see how and why the judge reached the decision given.

Witnesses

Witnesses of fact

14. In the present case I heard from the following witnesses on behalf of the claimant: the claimant himself, David Rose (former employee of the claimant), and Julian Palmer (former business partner of Mr Beetson). I heard from the following witnesses on behalf of the defendant: the defendant herself, Danny O'Driscoll (former employee of Mr Beetson's company), Daniel Alvis (former employee of Mr Beetson's company), Julia Bridge (office manager of Mr Beetson's company), Lucy Binnie (specialist planning consultant retained by Mr Beetson) and Donald Cook (former business partner of Mr Beetson). Having heard and seen these witnesses give evidence, I make these general comments.

15. The claimant was cross-examined over two half-day sessions, amounting to just under a whole day in total. He was an unsatisfactory witness. His manner was both crusty and taciturn. His early answers were monosyllabic. He parried questions with short non-answers, such as "You can say what you want", and "If you say so". In answer to a suggestion that his memory was "somewhat hazy", he insisted that it was not. But he nevertheless answered a very large number of questions "I do not remember". In fact, I noted that he remembered things that were in his favour very well. It was usually the answers to the difficult questions, where the answer appeared likely to be against him, that he could not remember. He gave evidence on a number of relevant matters which had not been in his witness statement. My conclusion overall is that I am unable to trust his evidence on critical issues where it is not corroborated by independent or objective evidence. Some of it I simply cannot believe at all. Where his evidence and that of the defendant differ, I prefer that of the defendant.

16. David Rose was a slow and quiet witness. His (very limited) evidence was not challenged in cross-examination, though, as we shall see, some parts were inconsistent with what the claimant accepted to have happened. Julian Palmer was an elderly witness, somewhat hard of hearing. His evidence (which was very short) *was* challenged, to a limited extent, by the defendant. However, his appearance in the witness box lasted only a couple of minutes, and I had no real opportunity to form a clear view of the quality of his evidence.

17. The defendant was cross-examined over one session, lasting slightly more than half a day. She was a quiet, calm, and above all a precise witness. Although her evidence was heavily challenged, I have to record that cross-examination made no impression on her. I found her to be transparently honest, and a witness of truth. I accept her evidence without reservation. As I have said, where her evidence and that of the claimant differ, I prefer that of the defendant.

18. Danny O'Driscoll was a clear and straightforward witness. He was obviously telling the truth, and cross-examination made no impact on him. I accept his evidence. Dan Alvis was a similarly straightforward and honest witness, who would not be bullied. Once again, cross-examination did not have any effect on his evidence, which I accept. Julia Bridge was a businesslike but voluble witness, who plainly took the part of the late Mr Beetson (for whom she had worked), and against the claimant. I am satisfied that she was telling the truth so far as she knew it, and I accept her evidence, even though some of it was rather emotional. Lucy Binnie was also businesslike, but more detached and objective. I found her to be palpably honest, and I accept her evidence. Don Cook was a quiet and calm witness, though a little frail. I found him to be honest and truthful, and I accept his evidence.

Other evidence

19. In addition to the witnesses who were tendered for cross-examination, there were witness statements from two other witnesses who were not called. One was from Richard Greasby, for the claimant, admitted by way of a hearsay notice. Mr Greasby was formerly a partner with Butler Sherborn LLP, a specialist property services business, and is now a consultant. He produced various email correspondence with Mr Stenhouse on behalf of the claimant, and also plans drawn by his firm. The other was a witness statement on behalf of the defendant from Peter Shelley, who was a partner with Julian Palmer in his business at the quarry from 1987 to 1993. But this did not advance matters significantly, and as untested hearsay is of little weight.

Mr Beetson

20. Mr Timothy Beetson was not of course a witness, having died in 2021, before these proceedings were commenced. But I heard a lot of evidence about him, and have read a lot of documents written by him. On the material before me I find that he was a straightforward, careful businessman who sought as far as possible to get on with people he dealt with and to assist them where he could. Although the claimant cast a number of aspersions on Mr Beetson's honesty, for example claiming in cross-examination to have been "diddled" by him, I reject all such aspersions. For the purposes of this judgment I proceed on the basis that he was honest and straightforward in his dealings with others.

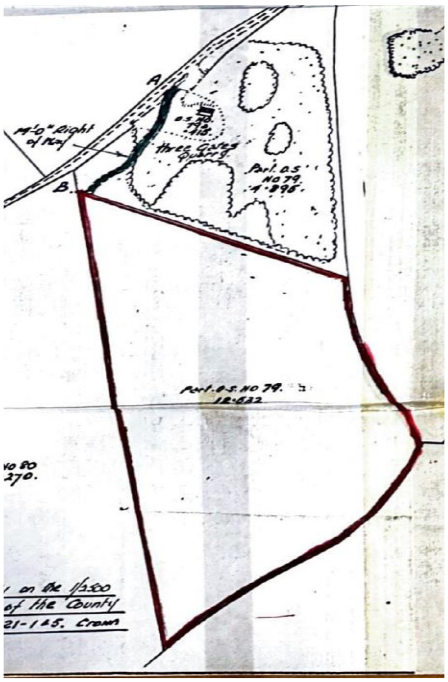
Expert evidence

21. Anthony Stockton was appointed as the single joint expert in this case, and prepared a report on handwriting and document issues for the parties. He also responded in writing to written questions submitted by the parties. He was not tendered for cross-examination, and so I have his written evidence only. I will come back to its scope and impact later in this judgment.

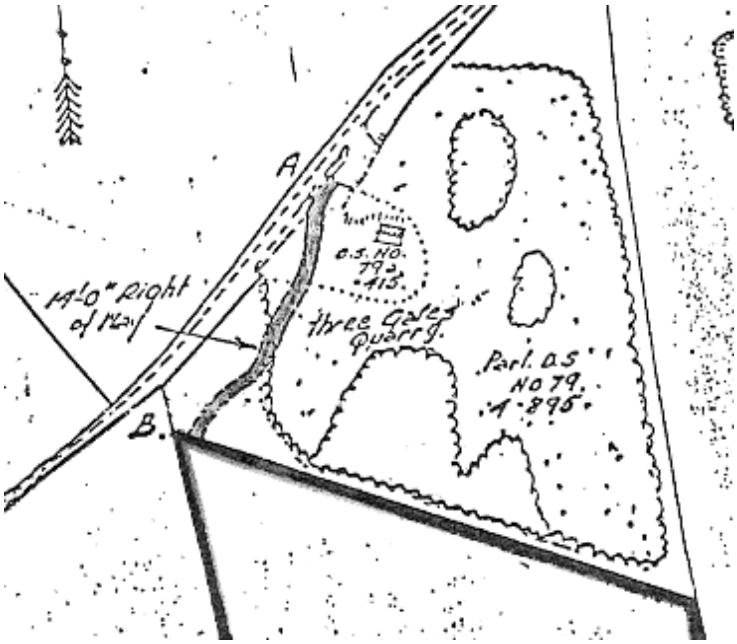
Facts found

22. On 28 July 1961, Mr Beetson's parents, Geoffrey and Elizabeth Beetson, bought the land the subject of this claim from one Philip Simms and his mortgagees Lloyds Bank Ltd. Because the land had no access of its own to the

public highway, the conveyance granted a right of way 14 feet wide over the vendor's retained land (now the Three Gates Quarry) along the route marked on the plan attached to the conveyance, which is reproduced below. I find that they never owned the Three Gates Quarry.



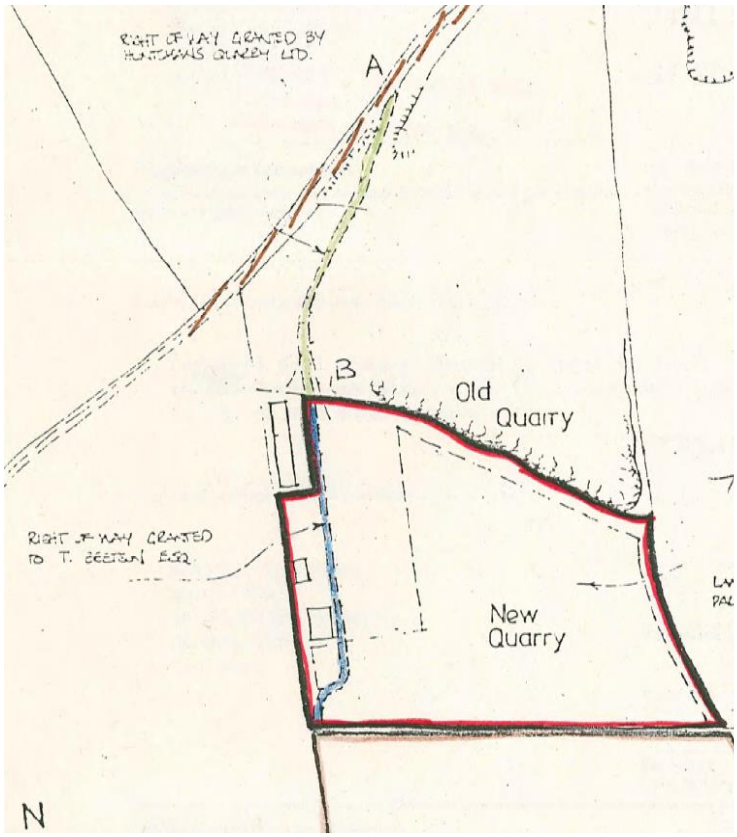
23. Tim Beetson began to use the land for pig farming in the late 1960s. A piggery was constructed in the north west corner of the land. But subsequently good quality limestone was discovered beneath the surface, and Mr Beetson decided to go into quarrying. On 24 August 1978, Geoffrey and Elizabeth Beetson sold and conveyed the fee simple estate in the land to their son together with the right of way that had been granted in 1961, "between the points 'A' and 'B' on the said Plan", not exceeding fourteen feet in width. Mr Beetson paid for the land with a legacy from his grandmother. The relevant part of the plan referred to is reproduced below. It shows the route of the right of way over the Three Gates Quarry. I find it to be the same as that granted to Mr Beetson's parents when they bought the land in 1961.



24. In early 1980 Tim Beetson met the defendant, and they began a relationship, marrying in 1983. By this time Mr Beetson had given up pig farming, and was actively pursuing the possibility of quarrying. He and the defendant discussed the project, and she visited the land frequently, usually at weekends. The piggery was now disused, but remained in situ on the land. Mr Beetson was introduced to Julian Palmer (who was said to know about quarrying) and formed a company with him, Palmer & Beetson Ltd, for the purpose of exploiting the limestone. Mr Beetson applied for and obtained planning permission for the quarry. It was for this purpose that in September 1980 a plan of the site at the scale of 1:500 was prepared by Messrs Wallace & Hoblyn, architects, of Moreton-in-Marsh, Gloucestershire. The significance of this plan will become apparent later on.

The first Palmer & Beetson lease

25. On 8 April 1982, Mr Beetson granted a lease for 21 years of most of the northernmost part of the Cotswold Hill Quarry to Palmer & Beetson Ltd, together with the use of the landlord's right of way over the Three Gates Quarry between points A and B on the plan from the lease, reproduced below. The lease was professionally drafted by solicitors. Mr Beetson retained the southernmost part of the Cotswold Hill Quarry, and reserved to himself a right of way over the demised part to access that. But he also excluded from the demise a small part of the north west corner of his land, on which the disused piggery stood. This piggery can be seen in outline on the plan below.



26. The defendant's evidence (which I accept) was that Mr Beetson thought the piggery buildings might be useful to him in the future. Although the point marked B on the plan appears to be further to the east of the point B marked on the plans attached to the conveyances of 1961 and 1978, the reality is that the route from point A to point B in the latter plans was the only lawful route over the Three Gates Quarry. On the evidence before me, I find that the lease intended to grant the use of the same right of way over the Three Gates Quarry as had been granted by those conveyances.

The sale of the plot

27. In 1982 the claimant wished to buy some land on which to establish his own blacksmith's business. A farmer he knew suggested that he speak to Mr Beetson. The claimant arranged to meet him at his office in the Cotswold Hill Quarry in May 1982. Although his written evidence says that he took his employee David Rose with him "as a witness", he also accepts that Mr Rose did not in fact attend the meeting, but waited outside. In cross-examination he backtracked from the "witness" story, and said that he took him because he was a friend and he worked for him (the claimant). But it is nevertheless common ground that Mr Rose was not in fact a witness to what passed between the claimant and Mr Beetson.

28. The claimant says that in the meeting Mr Beetson asked him how much land he wanted to buy, and the claimant told him that he wanted a plot 60' by 120'. According to the claimant, Mr Beetson then said he would be happy to sell the claimant the derelict piggery, which measured a bit more than 60' by 120'. He took him outside and showed him the derelict piggery. He also said that the

claimant would probably have to apply for planning permission, which the claimant accepted. He also said that Mr Beetson told him that he could have the

> "14 foot right of way … running from the main road"

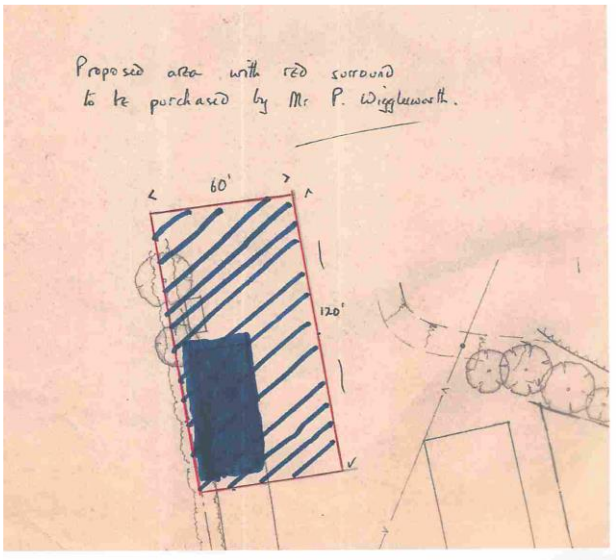
and

> "he [Mr Beetson] and his business would continue to use a different accessway over Huntsman's land … that he was able to use to get access to his land from the main road."

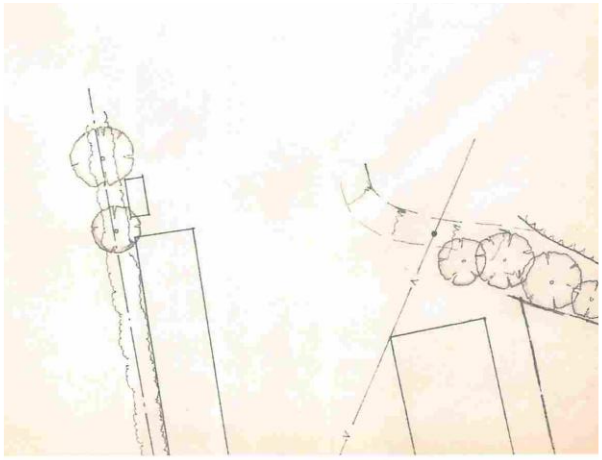
The claimant also says that at the meeting Mr Beetson said that "he had better give me a plan that would show the land I was buying from him". His evidence is that Mr Beetson produced a copy of the original quarry plan produced for him earlier by Wallace & Hoblyn, and drew

> "an area of land that he hatched and coloured in black ink and then noted above it in his own handwriting a record that the area of land he had hatched was the land that he was selling to me."

29. The part of the plan so referred to is shown below. It will be noted that the hatching and colouring is in fact blue rather than black.



30. This part of the Wallace & Hoblyn plan can be compared with a copy of the same part of the same plan unannotated.



31. The claimant's evidence was that, on leaving the meeting with Mr Beetson, not only Mr Rose, but also Mr Beetson's business partner Mr Palmer, was waiting outside for him, and that the claimant showed Mr Palmer the annotated plan. The claimant's evidence was further that Mr Palmer asked about the right of way, and so the claimant went back in to discuss this with Mr Beetson, who agreed that he had sold him the right of way, saying

> "Huntsman's quarries won't be packing up for many years to come and the road we have will be all right".

Both Mr Rose and Mr Palmer made witness statements and both were tendered for cross-examination at trial. But neither witness gave any evidence about what happened outside the meeting with Mr Beetson. In particular, neither witness mentioned seeing the plan at that stage. (Mr Palmer's statement mentions seeing it subsequently.) All this is therefore the evidence of the claimant alone.

32. The defendant's evidence about what happened at the meeting was of course hearsay, because she was not present, and was relying on what her husband had told her. However, in her witness statement, she said that her husband had told the claimant that

> "he could not allow him to erect a shed within the land already leased to Palmer and Beetson, but he did offer that [the claimant] could take down half of the existing piggery buildings and replace that with a workshop".

The defendant further said in her statement that:

> "I have a clear recollection that the extent of the land sold to Pat was just the footprint of half the piggery building. Tim told me that was all he agreed to sell to Pat".

33. Mr Rose's written evidence was that "*we* went to see Tim Beetson … *we* told him roughly how much we needed … " (emphasis supplied). For the sake of clarity, I do not accept that Mr Rose was a party to the discussions with Mr Beetson. But his evidence goes on that Mr Beetson "showed us some old pig styes, etc." This is consistent with what the claimant says.

34. Because I need to take account of subsequent developments in considering what to make of the parties' evidence about this meeting, I will postpone consideration of it, and making findings of fact about what happened at the meeting, until a later stage in this judgment.

35. Mr Palmer's witness statement said that Mr Beetson (apparently subsequently) asked him to clear some land that he had sold to the claimant. He then says that "I was shown a plan drawn by Tim Beetson showing an area of 60' by 120' so I set to work with a loading shovel and cleared the land." The only question put to him in cross-examination, and therefore the only part of his evidence that was challenged, was

> "Mr. Beetson did not agree to sell Mr. Wigglesworth a plot of land 60 feet by 120 feet, did he?"

to which the answer was

> "He did."

36. Accordingly, Mr Palmer's evidence that he "was shown a plan drawn by Tim Beetson showing an area of 60' by 120'" is not challenged. However, Mr Palmer was not in the meeting with Mr Beetson, and he gives no evidence about seeing such an area on the plan before the time that he was later shown it for the purpose of clearance. In particular, he gives no evidence about seeing it just after the meeting between the claimant and Mr Beetson. Accordingly, Mr Palmer's evidence adds nothing to the claimant's evidence on the two points (i) that Mr Beetson drew the coloured annotations on the plan, and (ii) that the annotations showed an area to be sold of 60' by 120'. If I do not accept the claimant's evidence on these points, Mr Palmer's evidence takes the matter no further.

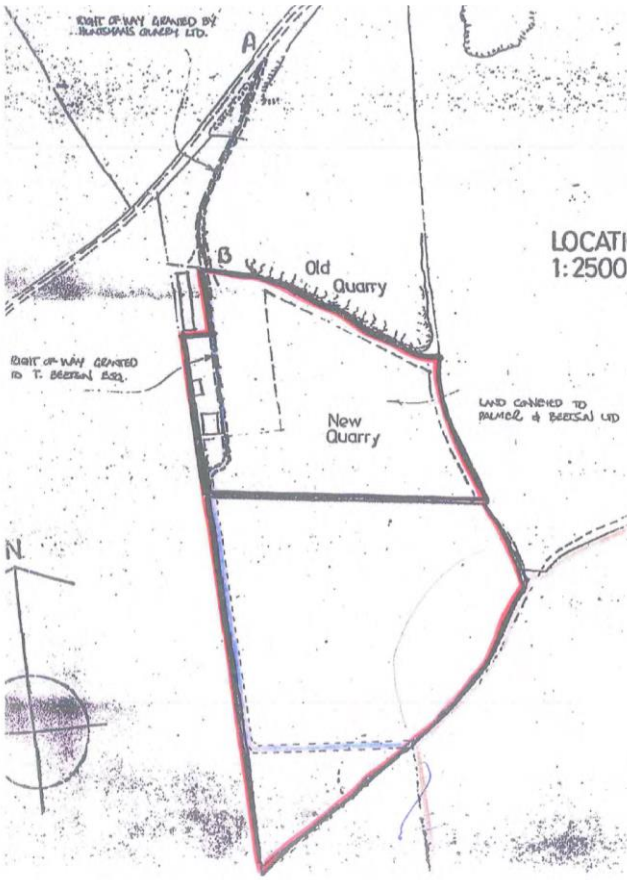
37. The claimant applied for planning permission to operate a blacksmith's business on the land he had bought, and to build a new fabricated building measuring 60' x 30' on it. Planning permission was granted by the planning authority in June 1983. One of the conditions of the permission granted was that "no vehicles, plant or machinery awaiting attention or collection shall be parked or stored outside the workshop or compound area". The fabricated building was then erected. Mr Beetson erected masonry sheds to the south of the claimant's workshop, and to the same width, on the site of the southern half of the old piggery. There was a small gap between the two buildings, perhaps two or three feet. Both buildings are shown as annotations to a Huntsman's plan drawn in 2014 which was in the bundle.

The second Palmer & Beetson lease

38. Subsequently, Mr Beetson and Mr Palmer decided to extend the scope of operations, both temporally and territorially. On 4 April 1984, Palmer & Beetson Ltd surrendered its lease, and a substitute lease was granted to it by Mr Beetson, this time for the much longer term of 99 years. Moreover, this lease was granted over the southern as well as the northern part of the Cotswold Hill Quarry. The lease once again granted to the tenant the use of

the landlord's right of way between points A and B on the plan reproduced below, and also reserved to Mr Beetson the right of way over the demised land, right down to the track, known as the Gloucester Way, at the southern boundary of the Cotswold Hill Quarry.

39. Again, the lease was professionally drafted by solicitors. The plan shows the route over the Three Gates Quarry from A to B in the same place as on the plan to the first lease. However, for the reasons given above, I find that this route was over the same route of the right of way created by the 1961 conveyance. The right of way reserved out of the demise to Palmer & Beetson Ltd ran down the western edge of the demise and then continued down through the demise itself before turning to the west and then running down the western boundary of the quarry. This is shown on the plan below. So lorry access ran along the side of the old piggery (then replaced by the claimant's workshop and the Palmer & Beetson Ltd masonry shed).



The licensed access

40. Mr Beetson regarded this access as not as good for lorries as it could be. Some vehicles were taking an illicit shortcut down the other side of the earth bank. So, in 1984, after the April lease had been granted, Mr Beetson asked Nick Hanks of Huntsman Quarries Ltd (the freeholder of the Three Gates Quarry) whether he could create a new road across their land to the Cotswold Hill Quarry. They came to a "gentleman's agreement" that Mr Beetson could do so. Mr Beetson formed the road, and it became the main access to the

Cotswold Hill Quarry thereafter. It is still there today, and can be seen on the aerial photograph after paragraph 3 of this judgment, as the eastern (and wider) fork of the access road coming down from the top of the photograph. However, the original western fork of the access road was still used, particularly for access to the quarry offices, as it was more direct. (The "gentleman's agreement" subsisted until 2013, when, as set out further below, a formal written licence agreement was entered into.)

After Palmer & Beetson

41. The business partnership between Mr Beetson and Julian Palmer did not last. In 1984 or 1985 the business was divided into two separate parts, one for Mr Beetson, and one for Mr Palmer. The company granted a sublease to Mr Palmer for him to carry on his activities, and Mr Beetson formed a new business partnership with a man called Colin Ward. That partnership was more successful, until the 1990s, when the business began to struggle, and the company went into receivership. The 1984 lease being an asset of the company was sold, first to an American called Peder Lund, and then on to Grange Hill Quarry, a company owned by Peter Cassidy, until June 2002, when it was sold again, and this time bought by Smith's (Quarry Operations) Ltd, of Gloucester.

42. During this time Mr Beetson worked at the Churches Conservation Trust and not at the quarry. But as the freeholder of the land he received royalties from the leaseholders and so kept an eye on production. After Mr Beetson retired from the Churches Conservation Trust in 2007, he formed a new business partnership with Don Cook. They incorporated a company, subsequently called Cotswold Hill Stone and Masonry Ltd, and acquired the masonry side of Smith's business, together with a ten-year sublease granted in June 2007 (by Smith's (Quarry Operations) Ltd) of that part of the quarry. In March 2019, a further ten-year sublease was granted by Smith's to Cotswold Hill. That masonry business continues today.

The metal gate across the right of way

43. In about 1992 a metal gate was installed on Huntsman land, over the original right of way, near the entrance from the public highway at the top of Three Gates Quarry. This was done to improve security after thefts from the site. The defendant says that Mr Beetson paid for the claimant to make and install an armoured gate in place of an earlier wooden gate. The claimant claims that he made and installed the new gate at *his own* cost, after securing permission from Mr Peder Lund, then the owner of the 1984 lease of the Cotswold Hill Quarry. But it is difficult to see how Mr Lund was the right person to give permission. The gate was to sit on Huntsman's land. And Mr Beetson was the freeholder of the land leased to Mr Lund (Cotswold Hill Quarry). Moreover, the claimant undoubtedly charged *Mr Beetson* for carrying out subsequent repairs to it after it was later damaged. Indeed, Mr Beetson claimed on his insurance to recover that cost. New keys were cut and Mr Beetson kept them, giving copies to Smith's and to the claimant. I prefer the defendant's evidence

to the claimant's about who originally paid for the armoured gate to be made. I find that Mr Beetson paid for it.

The access way to the east of the workshop

44. In the bundle there are photographs of the access way that ran to the east of, first, the old piggery, and, later, the claimant's workshop. One shows a lorry heading down the western fork down towards the piggery, whose hard standing is clearly visible, extending as far as the earthbank separating the two forks. It was put to the defendant in cross-examination that this dated from the late 1970s or the early 1980s. The defendant's evidence was that it was taken in 1982 or 1983, because the quarry is shown working, but it obtained planning permission only in March 1981, and the claimant's workshop (not then constructed) did not obtain planning permission until June 1983. I accept the defendant's evidence on this point.

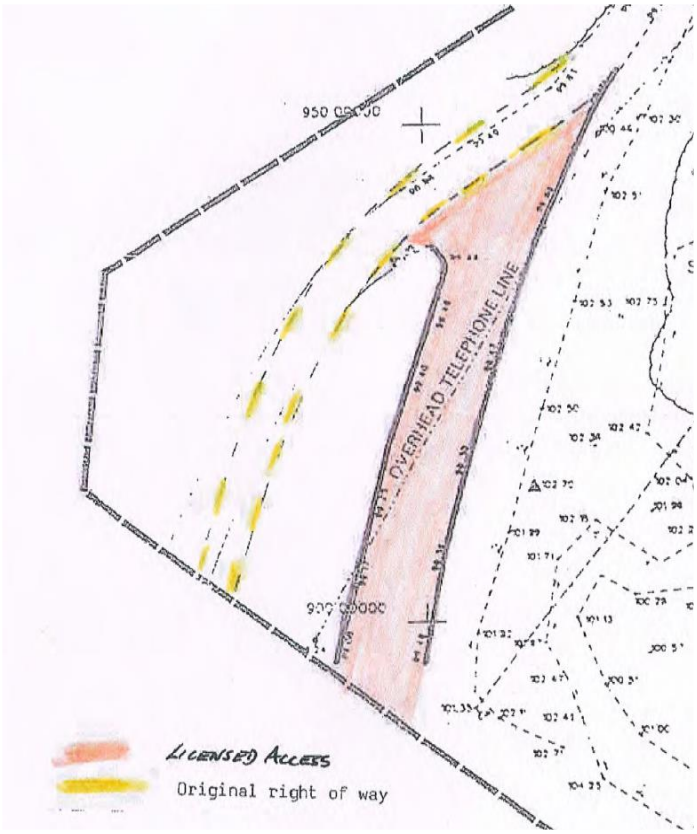
45. Another photograph, from either 1995 or 1999 (both dates are given), shows the claimant's workshop with a clear access way on the eastern side. In fact there is a car on it, adjacent to the workshop. Photographs from April and May 2003 show similarly that the accessway is clear. Photographs from 2005 appear to show cars on the access way. It is to be noted that, in about August 2013, Huntsman Quarries Ltd granted a formal licence to the claimant to "store items and park vehicles" on a designated part of its land adjacent to the original right of way (the western fork). A photograph from April 2017 shows that there is still at least a clear path down the side of the workshop.

46. Photographs from 2019 onwards show that the accessway was becoming less used as an access way and more overgrown. It was still used by pedestrians to reach the masonry shed and offices, but it was being used as a place to store things, including scrap metal belonging to the claimant, before they were worked on or used. It was also sometimes used by Mr Beetson or Smith's to store stone or other goods temporarily (a point accepted by the claimant's counsel in cross-examining the defendant's witnesses). That made it more difficult for vehicles to use. Mr Beetson did not mind too much, because he sometimes used it for storage too, and also he had the wider licensed access for vehicular traffic. However, he made clear to those who used it in this way that things would have to be removed on request. And, from time to time, Mr Beetson did ask the claimant to move items from the accessway, and the claimant eventually did so, although after a while it filled up again.

The formal Huntsman licence

47. As I have said, the "gentleman's agreement" with Huntsman Quarries Ltd about the use of a wider access to the Cotswold Hill Quarry lasted until 2013. On 20 November 2013, a formal written licence agreement was entered into between Huntsman Quarries Ltd and Cotswold Hill Stone Ltd. Under the terms of this agreement, the licence could be terminated on two months' notice. Huntsman sold the Three Gates Quarry to Breedon Group in about 2017, who subsequently sold to Johnston Quarry Group in May 2021. That company in fact now belongs to SigmaRoc plc. The licence agreement has not

so far been terminated. The plan below from the formal 2013 agreement shows both the original right of way over the Three Gates Quarry (which continued) and the new, wider, licensed way.



Requests to remove materials

48. After the sale of the Three Gates Quarry to Breedon Group, Mr Beetson was more concerned about the storage by the claimant of scrap and other materials on the access way next to the claimant's workshop. He asked the claimant several times in 2017-18 to keep the access way clear in case it was needed for the quarry. Alan Smith (of Smith's (Quarry Operations) Ltd, the leaseholder of the Cotswold Hill Quarry) wrote to the claimant on 5 October 2018 and again on 13 November 2018 to repeat the request. But the claimant did not do so. Correspondence between Smith's and Mr Beetson shows that the scrap metal was still there in December 2018. Conversely, there is no evidence that the claimant ever asked Mr Beetson or Smith's to move any of their stone or other goods which were sometimes stored in the same accessway, and I find that he never did so.

49. The photograph below was taken in 2021 in connection with the claimant's application to HM Land Registry in March of that year (which I discuss below). It looks south down the western fork, that is, the original right of way across Three Gates Quarry to Mr Beetson's land. It shows the front of the claimant's workshop on the right, and, to the left of the workshop, the access way to the demised area of Cotswold Hill Quarry.

50. Below is a photograph taken on the same occasion, but looking in the other direction from the southernmost end of the claimant's workshop up the eastern side of the workshop. As I have said, the claimant in these proceedings is claiming land extending about 30 feet to the east of the side of the workshop. In cross-examination he said that his claim was to the whole of the land up to and including the earthbank (seen on the right-hand side of the photograph), and indeed a little over into the land beyond.

Possible extension of the claimant's workshop

51. In 2018 the claimant asked Mr Beetson whether he could extend his workshop out to the eastern side, Mr Beetson was concerned that such an extension

could make it impossible to access the quarry using his right of way. He annotated a plan of the land on 16 January 2018 with the words

> "I am happy with the old and the latest map (as initialled). My only concern, as already expressed, is to conserve my right of way, with adequate width, should the present right of way be withdrawn".

I take the reference to "my right of way" to refer to the access way down the eastern side of the claimant's workshop, and the reference to "the present right of way" to refer to the Huntsman licensed access.

52. He did investigate the possibility of rerouting the access way, but decided that that could not be done. Mr Beetson spoke both to Smith's (Quarry Operations) Ltd and also to his planning consultant, Lucy Binnie. He sent an email to Ms Binnie on 22 February 2018 setting out the claimant's request, and asking for her help and advice. Her view was that it would be impossible to extend the workshop eastwards without impeding or blocking the right of way.

53. On 23 March 2018, Smith's emailed Ms Binnie to say that in their view it could not be done. On 26 March Ms Binnie emailed Mr Beetson to say the same thing, attaching Smith's comments. At some time thereafter Ms Binnie spoke to the claimant by telephone at Mr Beetson's request. She told him that he could not extend his shed eastwards, because that would interfere with the right of way to the quarry. Her evidence on these points was not challenged. At no time did the claimant assert, either to Ms Binnie or to anyone else, that he did not need Mr Beetson's permission, because he had bought a plot of the size which he now claims, which would extend 30 feet eastwards of his workshop. Nor did he produce the annotated plan which he says Mr Beetson gave him in 1982 and on which he now relies.

54. On 12 September 2018 there was a meeting between the claimant, Mr Beetson, Alan Smith and Don Cook. The claimant said in cross-examination that it was to discuss a request by Mr Beetson and Mr Smith to exchange the land alongside the workshop (which according to the claimant belonged to him) for other land elsewhere on the site. I do not accept this, and find instead that the meeting was to discuss the possible extension by the claimant of his workshop. It lasted about a quarter of an hour.

55. I find that, at the meeting, Mr Beetson told the claimant that his planned extension was unacceptable because it would obstruct his access to the quarry if the licensed access were ever interrupted. In cross-examination, the claimant said that at that meeting he told them it was his land and he could extend the workshop if he wanted to. I do not accept that. I find instead that (as Mr Cook said) the claimant merely nodded in response to Mr Beetson's statement, and said nothing. In particular, I find that he did not, either then or at any other time, assert that he owned the land over which he wished to extend his workshop. Mr Beetson sent a letter to the claimant later the same day, saying they were sympathetic to the claimant's request, but requiring clarity on boundaries, and asking for "paper work" before considering the matter any

further. This letter is not consistent with the claimant's story. Yet the claimant did not respond to it.

56. On 5 October 2018 Alan Smith wrote to the claimant, referring to "the recent meeting between myself, yourself and Tim Beetson in relation to the assessment of available space needed to bring lorries into our quarry". I have already referred to this letter in a different context, because the letter went on to ask the claimant "to remove the metal that has been placed in the right of way to our quarry". That was further explained as "the material that has been placed alongside the building and through to the quarry". The letter said that the removal of material would enable Smith's to assess how much space they needed for sufficient access to the quarry. The claimant did not reply. Nor did he move the metal referred to. As I have also said earlier, on 13 November 2018 Mr Smith wrote a further letter, repeating his request for the claimant to remove the metal from the side of the workshop. The claimant once again neither responded to the letter, nor removed the metal.

The non-completion of the sale of the land to the claimant

57. One of the recurring themes in the history of the sale of the plot of land by Mr Beetson to the claimant is the failure to complete the sale by conveyance. In the present proceedings, the claimant blames Mr Beetson for dragging his heels and stalling any progress towards completion. The defendant, on the other hand, says that it was not Mr Beetson's fault, and that the claimant is to blame. Where the blame lies is not a central issue in the present proceedings, at any rate, at this stage, but it is relevant to note that each side did instruct solicitors from time to time.

58. Thus, the claimant instructed Thompson and Badham in July 1982 to deal with completion of the purchase. They wrote to him on 26 July 1982 to say that they had received copies of the deeds evidencing Mr Beetson's ownership of the land. By 26 August 1982 they had prepared a draft conveyance. Their letter of that date says that they were "now satisfied that the land you wish to buy falls within that owned by Mr Beetson". At the same time, they were concerned about the claimant's access to the workshop and Mr Beetson's access to his retained land. However it was also clear that the property was subject to a bank mortgage, and there would need to be a release by the mortgagee before a sale could be completed. So the matter could not be completed at that stage.

59. The matter appears to have gone to sleep until February 2002, when the claimant instructed new solicitors, Robert Lunn & Lowth, in order "to finalise the matters relating to the sale of" the land. For his part, Mr Beetson instructed Davies Murray-White and Co. However the matter was still not concluded. In January 2012 Robert Lunn & Lowth wrote again, this time directly to Mr Beetson. By this time Mr Beetson had instructed Charles Russell in Cheltenham. In October 2016 Robert Lunn & Lowth wrote once more to Mr Beetson. On this occasion Mr Beetson suggested that Robert Lunn & Lowth act for both sides and complete the matter. That letter is also notable for Mr Beetson's reminding the solicitors of the importance to him of the accessway

down the side of the workshop, in case the licensed access was ever terminated. By June 2017 Mr Beetson had instructed Saunders Roberts, who wrote to Robert Lunn & Lowth on 26 June 2017.

Mr Beetson's death

60. In the late 2010s, Mr Beetson's health was declining. He began limping, apparently as a result of thrombosis. By 2019 he knew that he was terminally ill. In March 2021, he had a bad fall. He died on 26 July 2021.

Application to the Land Registry

61. In the meantime, on 3 March 2021, the claimant had applied to register in his own name at the Land Registry the land now in dispute in this case. His application covered most of the land which he now claims in these proceedings, and not merely that part which the defendant accepts was sold to him. The application was based on a claim of adverse possession of the land by him for the requisite period. I return to this application below.

Removal of the scrap metal in 2021

62. The scrap which Mr Beetson and Mr Smith had asked the claimant to move was not removed until after Mr Beetson's death in 2021. Even then it was removed by the defendant and her stepson, rather than by the claimant. In October 2021 it was moved to join other scrap belonging to the claimant stored – by licence – on land forming part of Three Gates Quarry. Below is a photograph showing the access way after it had been cleared by the defendant and her stepson. It may be compared with the photograph reproduced above, following [50].

63. The claimant complains in these proceedings that damage was caused to his materials and equipment. The defendant accepts that she and others at her direction moved the claimant's goods, but denies that it amounted to a trespass, or that any damage was caused. On the evidence before me I am not

satisfied as a matter of fact that any damage was thereby caused to any of the claimant's property. I will deal later with the question whether it amounted to a trespass in law, whether to land or goods.

The tribunal proceedings

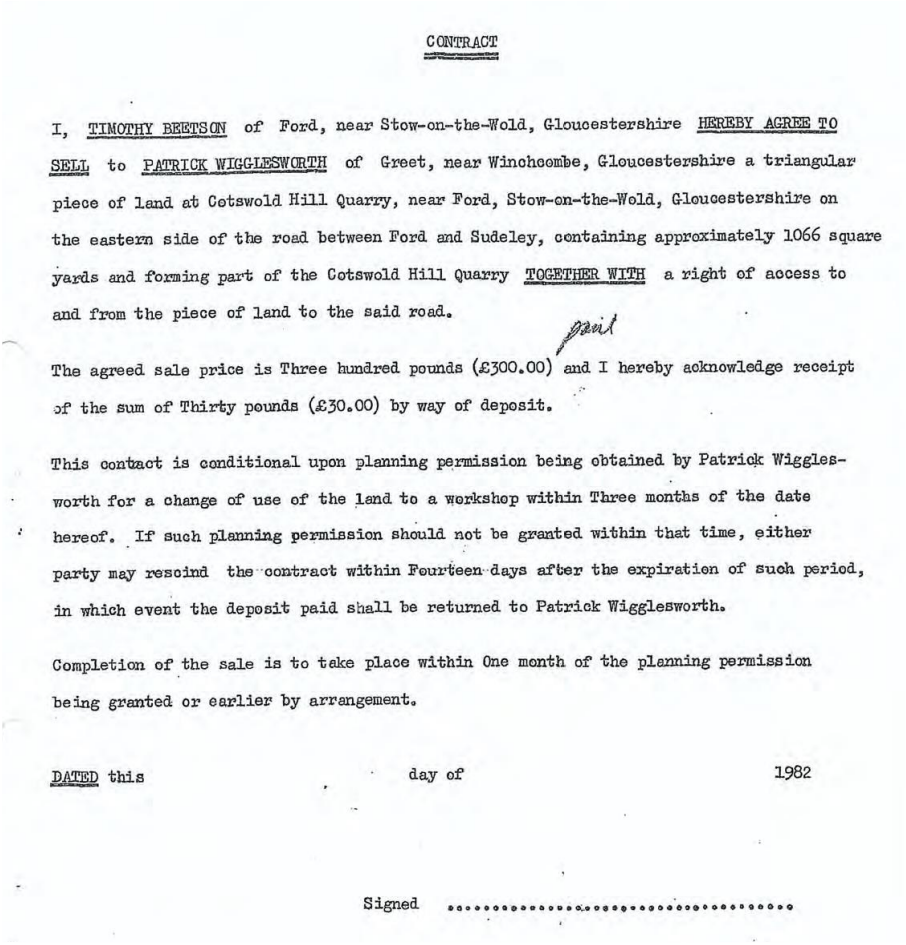
64. As I have said, the claimant applied to the Land Registry to be registered as proprietor of the land claimed in these proceedings. The application was drafted by the claimant's then solicitors. The defendant found out about the application after the death of her husband, from a search of the Land Registry website. She wrote to the claimant's then solicitors in October 2021 to ask for a copy (which was supplied). The defendant noted that the application extended to land which she considered had not been sold by her husband to the claimant. She objected to it by filing a Notice of Objection on 12 February 2022, supported by written particulars dated 24 January 2022. Consequently, on 9 April 2022 that application was referred by the Land Registry to the First Tier Tribunal (Land Registration) for determination.

65. On 21 April 2022 the tribunal directed the claimant to file and serve his statement of case. This was settled by counsel (not Mr Stenhouse), instructed by solicitors on the claimant's behalf, and was dated 16 May 2022. On 8 June 2022, the tribunal declined jurisdiction, on the basis that the application sought relief not available in the tribunal, and the claimant was accordingly invited to begin court proceedings. As already mentioned, this High Court claim was issued on 20 July 2022. At that stage the claimant was still represented by solicitors and counsel. The claimant's application to the tribunal was formally dismissed on 29 August 2024.

66. Two features of the claimant's application to the Land Registry are worthy of note. The first is a statement in paragraph 5.1 of the application form as follows:

> "5.1 I acquired the Property on a date prior to June 1982 pursuant to the terms of a contract ('the Contract') under which I paid to the Seller the agreed price of £300 and after which I took possession. An undated copy of the form of contract under which I acquired the property is now produced to me marked 'PW1'. I do not have a dated copy in my possession but I believe it to have been dated prior to June 1982."

67. The document marked 'PW1' is set out below.



CONTRACT

I, TIMOTHY BEETSON of Ford, near Stow-on-the-Wold, Gloucestershire HEREBY AGREE TO SELL to PATRICK WIGGLESWORTH of Greet, near Winchcombe, Gloucestershire a triangular piece of land at Cotswold Hill Quarry, near Ford, Stow-on-the-Wold, Gloucestershire on the eastern side of the road between Ford and Sudeley, containing approximately 1066 square yards and forming part of the Cotswold Hill Quarry TOGETHER WITH a right of access to and from the piece of land to the said road.

The agreed sale price is Three hundred pounds (£300.00) paid and I hereby acknowledge receipt of the sum of Thirty pounds (£30.00) by way of deposit.

This contact is conditional upon planning permission being obtained by Patrick Wigglesworth for a change of use of the land to a workshop within Three months of the date hereof. If such planning permission should not be granted within that time, either party may rescind the contract within Fourteen days after the expiration of such period, in which event the deposit paid shall be returned to Patrick Wigglesworth.

Completion of the sale is to take place within One month of the planning permission being granted or earlier by arrangement.

DATED this day of 1982

Signed .....

68. The defendant's evidence at trial (which I accept) was that, until this document was disclosed to her in November 2021 as part of the documents lodged with the Land Registry, she had not been aware of its existence. Mr Beetson had never mentioned to her that there was any such document in existence. Instead, she had always understood that the agreement between Mr Beetson and the claimant was purely oral. As she put it, it had been a "shake hands" agreement.

69. The second point of note is this. The application to the Land Registry exhibited a number of documents. These were (i) the purported contract set out above, (ii) a copy of the conveyance dated 24 August 1978 by which Mr Beetson acquired his land, (iii) a copy of the planning permission to the claimant dated 6 June 1983, (iv) a copy of a recent rates bill, (v) a copy of the claimant's licence agreement with Huntsman Quarries Ltd of August 2013, and (vi) a further plan showing the right of way claimed by the claimant. However, the claimant did *not* submit to the Land Registry the copy of the Wallace & Hoblyn plan, said to have been annotated by Mr Beetson at the time of the sale, and on which he now relies to show that the extent of what he bought is greater than that which the defendant accepts.

70. The claimant's statement of case for the purpose of the application to the first-tier tribunal, settled by counsel (not Mr Stenhouse), exhibits the same two features. It states (at [8]) that the claimant will rely on the "written contract … dated 1982" which was however "not signed", and which has already been

referred to in the context of the application to the Land Registry. But, although it refers (at [9]) to numerous other documents on which the claimant intended to rely, there is no mention of the copy of the Wallace & Hoblyn plan, said to have been annotated by Mr Beetson. Yet that document was clearly important in considering the extent of the land that had been sold, which was the reason for the objection by the defendant to the Land Registry application.

71. In the present proceedings, the original particulars of claim were settled by the same counsel (not Mr Stenhouse) who had settled the statement of case for the tribunal application. As might be expected, they draw heavily on that statement of case. Those particulars refer to and rely on the written form of contract set out above, a copy of which is indeed annexed to the particulars. But, although they refer to a number of other documents, including conveyancing documents, the particulars of claim once more do not refer to the copy of the Wallace & Hoblyn plan, said to have been annotated by Mr Beetson.

72. The particulars of claim were amended pursuant to an order of DJ Wales on 12 July 2024, the amendments having been settled by Mr Stenhouse on 8 January 2024. Those amendments do not touch either of these two points. The written contract is referred to (and annexed) in exactly the same way, and the Wallace & Hoblyn plan is still not mentioned. (It is however referred to, though not by name, in the reply and defence to counterclaim settled by counsel – not Mr Stenhouse – on 10 November 2022. The plan was not attached.)

73. The provenance of the written form of contract relied on by the claimant is unclear. There is no contemporary or subsequent documentary support for when or how it came into existence. In his witness statement evidence in these proceedings the claimant said that this document was not drawn up at the meeting between himself and Mr Beetson, but afterwards. What he said about it all was this:

> "A little while later he also provided to me a typed document recording the sale of the land and right of way to me. I believe that his secretary typed up the document for him although he made a small alteration in pencil by adding the word 'paid'."

74. In cross-examination, however, the story told was rather different. The claimant first of all said that he did not see this document *at all* until 2016, when his solicitor first showed it to him. He said that Mr Beetson "did not give me the contract at all." Instead "Mr. Beetson must have sent this to my solicitors." Then he said "I just discovered it in my, I suppose paperwork." The inconsistency between the two stories was put to the claimant. The claimant replied:

> "He gave me the Wallace & Hoblyn Plan, he gave me a receipt, which I have now lost, and he gave me some other bits of paper which referred to his father's [sic], he gave me a handful of papers then. I did not take that much notice of the contract, really. I just give everything to my solicitor."

75. The claimant was further pressed on this point, and he said:

> "I am pretty sure he must have given me that thing then, but I can only recollect seeing it in '16 though, but he probably give it me then."

Counsel asked again:

> "I am going to press you one more time, yes or no, do you remember him handing you that document, the contract?

The claimant's answer was: "I am not sure." But, if any of this was true, the claimant could have supported it by obtaining evidence from the solicitor concerned. None was tendered.

76. Counsel then moved on to ask questions about the text of the written contract. He pointed out that it referred to the sale of "a triangular piece of land at Cotswold Hill Quarry … containing approximately 1066 square yards." The claimant accepted that that was inconsistent with the plot of land shown in the Wallace & Hoblyn plan, which is not triangular, but rectangular (as indeed is the land claimed in these proceedings). The claimant also accepted that the contract referred to 1066 square yards, rather than the 800 square yards arrived at by multiplying 60 feet by 120 feet (*ie* 7200 square feet).

77. In addition to the points put to the claimant, a number of further points occur to me on looking at the form of the written contract. The first is that, although it is in what might be described as legal, certainly formal, language, it is not in the form of a bilateral contract, that is, where the vendor agrees to sell and the purchaser agrees to buy. It is in the form of a unilateral contract, whereby one party (here, the vendor) binds himself to perform an obligation (here, sell the land) but the other party (here, the purchaser) does not bind himself to do anything at all. He can choose to buy or not, as he pleases. That is not what I would regard as the obvious choice for an intelligent and well-educated businessman to choose. On the material I have seen, Mr Beetson was just that. Despite cross-examination of the defendant, suggesting that Mr Beetson drafted his own legal documents, on the material before me I find that he did not. He regularly used professional lawyers to draw them up, although he would then comment on the drafts. No competent professional lawyer would have drawn up this contract of sale in the form of a unilateral contract, unless there was a very good reason. None has been suggested.

78. A further point is the reference to selling also "the right of access to and from the said piece of land and the said road". This is certainly not how a professional lawyer would deal with the question of the use of the right of way between Mr Beetson's land and the public highway. Mr Beetson would not be selling outright the right of way conveyed with the quarry to the purchaser of this plot. That would leave the quarry landlocked. (Indeed he would not even be able to use the Huntsman's licensed access – the "eastern fork" – because that came off the original right of way at a point closer to the highway.) Instead, he would be granting *the use of that original right of way* to the purchaser. Mr Beetson was well aware of the importance of getting legal language right, and I cannot believe that he would have drafted these words. They read like someone who is not a lawyer but is trying to write like one.

79. Then, there is the question whether Mr Beetson's then secretary would have been capable of typing this document. The defendant's evidence (which I accept) was that she was a young girl in her first job, and not experienced. Lastly, there is the fact that the document is not signed by Mr Beetson. Even if, contrary to my view, Mr Beetson had gone to the trouble of drafting this document himself and having it typed up by his secretary, and then either handing it over to the claimant or sending it to the claimant's solicitor, there would have been no good reason not to sign it. The claimant had paid him the agreed price for the plot purchased, and there was nothing more to do but execute a conveyance. But the document is not signed.

80. I look at the circumstances of this whole transaction, and I note the poverty of the evidence in support of the authenticity of this written contract. It is really just the claimant's own uncorroborated evidence, which was inconsistent, and which I do not accept. The terms of the document are both inaccurate and implausible. I take into account also the fact that, even if (which I do not accept) he first knew about this document in 2016, the claimant did not tell anyone else about it until his application was made to the Land Registry in 2021, when Mr Beetson was already dying. Overall, I do not accept that this written contract has anything to do with Mr Beetson, much less that he actually agreed to its terms. Nor do I accept that the claimant ever gave this document to his solicitor, or that his solicitor ever had it from anyone else. In fact, I find that the claimant never showed it to anyone else before 2021, when it was used for the purposes of his Land Registry application. It is not my function to explain where it has come from. The burden lies on the claimant to show that it is genuine. In my judgment, he has failed to do this.

Disclosure of the Wallace & Hoblyn plan

81. Disclosure took place in the present proceedings pursuant to the order of District Judge Wales made on 1 June 2023, as modified by the order of the same judge made on 17 November 2023 (but sealed only on 17 January 2024). This required the service by the parties of their disclosure certificates and lists of documents by 22 December 2023. Coincidentally, this was also the day on which the court and the defendant were notified by the claimant that his solicitors were no longer acting for him and that he would be acting in person. In fact, several amended lists of documents were served by the parties, the fifth such list from the claimant on 16 August 2024 and the third such list from the defendant on 3 May 2024.

82. However, for present purposes the important point is that it was only in the list of documents served on 22 December 2023 that the existence of the copy of the Wallace & Hoblyn plan referred to above was first disclosed under that name to the defendant (though it had been referred to as a "plan" in the reply and defence to counterclaim in November 2022). It appears that there were difficulties in providing inspection of that plan to the defendant, because the issue came before District Judge Wales at the hearing on 12 July 2024, at which he ordered that the claimant should give "real-time inspection" of the plan to the defendant "no later than 19 July 2024".

83. As has already been seen from the extracts set out earlier from the annotated and unannotated plans, the claimant's case is that Mr Beetson not only wrote the words in handwriting on the plan, but also drew the hatching and colouring beneath it. At the hearing on 12 July 2024, District Judge Wales gave the parties permission to rely at trial on the report of a single joint expert in the field of forensic document analysis, to give an opinion on two issues:

> "(i) Whether the handwritten annotations on the Wallace & Hoblyn Plan dated September 1980 are those of Mr Timothy Beetson and the date such handwritten annotations were made;
>
> (ii) Whether the hatching and colouring below the handwritten annotations were drawn on the plan contemporaneously with the handwritten annotations or whether they were drawn on the plan at a later date to the annotations and if so the approximate date".

The expert evidence

84. There was some difficulty in agreeing the joint letter of instructions to the forensic document analyst, as it appeared that, despite the order of 17 July 2024, the claimant wished to instruct his own expert unilaterally. On 2 August 2024, District Judge Wales, on the application of the defendant by notice dated 30 July 2024, ordered that the parties should jointly instruct Mr Anthony Stockton and that the draft letter of instructions to him annexed to the defendant's evidence in support of the application was approved. The claimant was ordered to pay the defendant's costs of the application. The district judge refused permission to appeal. The application for permission was renewed to the High Court judge, but on 27 August 2024 Mr Justice Mellor on paper refused permission to appeal, certifying the application as wholly without merit, and one which could not be renewed at an oral hearing.

85. In the meantime, Mr Stockton had produced his expert report, and it is dated 15 August 2024. I will not set out the whole of Mr Stockton's reasoning, but I will set out his conclusions as follows:

> "34. In my opinion,
>
> a) there is strong evidence to show that the handwritten entry 'Proposed area….Wigglesworth' on the Claimants plan was written by Timothy Beetson. It has not been possible to address the date on which this entry was written on the document or whether Mr Beetson also wrote the numerals comprising the measurement entries associated with the annotations.
>
> b) excluding the handwritten annotations, there is evidence to show that the Claimant's plan and the Defendants plan are either copies of one another or copies from the same source. There is no evidence to suggest that either plan has been produced at a significantly different time to the other.

> c) it has not been possible to address the date on which the handwritten annotations were made to the Claimant's plan. However, from the findings, there is a probable sequence of events that has occurred in the production of these entries relative to one another. This is detailed in the main body of this report."

86. The reference to "a probable sequence of events" that is "detailed in the main body of this report" appears to be a reference to paragraphs 21 and 22 of the report, which read as follows:

> "21. Whilst it is not possible to date the entries or reliably sequence them, it would seem logical from the findings that a pencil outline of the box was written, followed by the red outline, with the blue oblique strokes then added to the box. It is not possible to say when the solid dark blue entry was produced in relation to the other entries.
>
> 22. The relative position of the entry 'Proposed area … Wigglesworth' and the measurement entries, including reference within the comment to a 'red surround' suggests this entry and the measurement entries were written after the red box was drawn."

87. On 5 September 2024 Mr Stockton produced answers to questions which had been formulated by the parties in relation to his report. Amongst the answers he produced were the following:

> "Reply to Question 5 [from the claimant]
>
> A handwriting examination involves making like with like comparison. As such it is not possible to scientifically compare the handwritten caption entry with the measurement entries written in numerals or the handwritten lines. Therefore, no opinion can be expressed as to whether the person who wrote the caption entry also produced the numerals and lines on the plan.
>
> […]
>
> In summary :
>
> - there is strong evidence to show that Mr Beetson produced the handwritten caption 'Proposed area....' on the Claimants Wallace & Hoblyn plan.
>
> - the evidence as to whether or not Mr Beeston produced the measurement entries or any other writing on the plan is inconclusive for the reasons previously outlined.
>
> - It is not possible to determine if the measurement entries or the lines on the plan were made by the same person as they are not effectively comparable with one another.
>
> […]

> Reply to Question 1 [from the defendant]
>
> I have re-examined the Claimants Wallace & Hoblyn plan in the area bearing the box and have re-examined the coloured-in area.
>
> Using microscopy and specialised lighting I did not find any evidence of biro lines within the coloured in box. The lines present in this area correspond to the printed lines on the map. Using specialised lighting, the image below shows the blue coloured in area as white and the printed lines as black."

88. Mr Stockton did not attend for cross examination at the trial, and therefore I have only his written evidence to go on. In substance this was that there was "strong evidence to show that Mr Beetson produced the handwritten caption", but that it was "not possible to determine if the measurement entries or the lines on the plan were made by the same person", and that "no opinion can be expressed" as to this latter point.

89. At the trial, the claimant's case was that Mr Beetson not only wrote the words

> "Proposed area with red surround to be purchased by Mr P Wigglesworth",

but also drew the red box, the hatching and the blue coloured rectangle beneath that wording. The defendant's case was that she accepted that her late husband had written the words, but not that he had written or drawn the rest. Strictly speaking, therefore, it is not necessary for me to make a finding in relation to who wrote the words "Proposed area …" But on the evidence before me I do indeed find that Mr Beetson wrote those words. However, Mr Stockton's evidence is of no real assistance to me deciding whether Mr Beetson also drew the red box and the hatching and blue coloured rectangle beneath that wording. As he says,

> "the evidence as to whether or not Mr Beeston [sic] produced the measurement entries or any other writing on the plan is inconclusive",

and

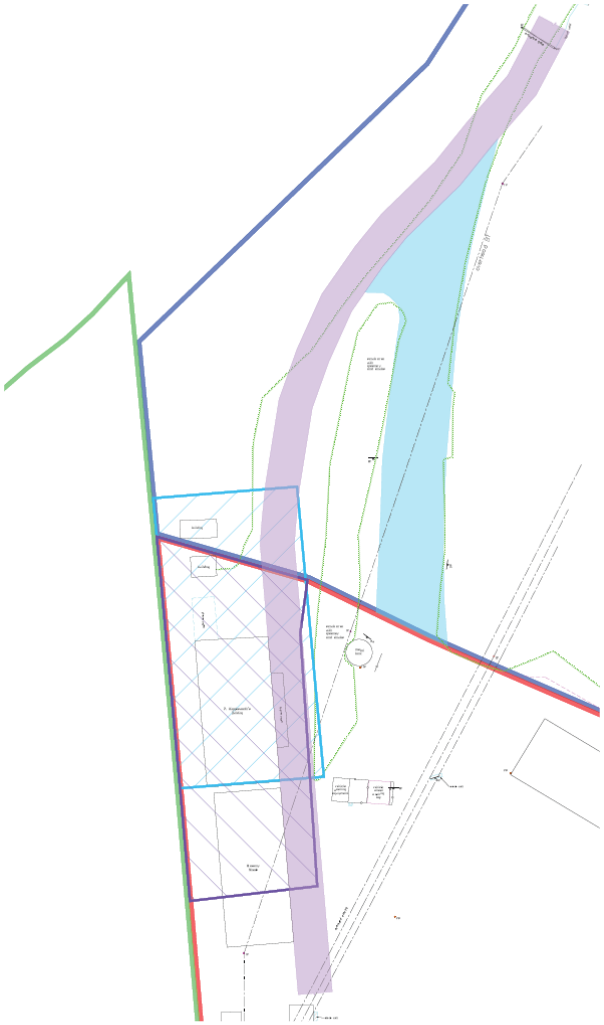
> "no opinion can be expressed".

What happened at the 1982 meeting?

90. In the light of the facts which I have found and set out above, I now turn back to consider what actually happened at the meeting between the claimant and Mr Beetson in 1982, when they agreed on the sale and purchase of a plot of land in the Cotswold Hill Quarry. In considering what happened, I am struck by a number of matters. One is that, if the claimant's evidence were right, and Mr Beetson *had* indeed told him in the meeting that he would sell "the derelict piggery, which measured a bit more than 60' by 120'," Mr Beetson would have got the measurements wrong. The piggery was about 20'-25' wide, with a hard standing to the east, extending (according to a photograph in the

bundle) to the earthbank separating the two forks of the access to the quarry. So, 30', not 60', would cover the piggery comfortably, and leave clear the access way of the western fork. A width of 60' would take you over the earthbank (as the claimant said in cross-examination). The piggery was also about 120' long. But that 120' would have included the land to the south of the claimant's workshop where Mr Beetson's masonry shed was constructed. Yet the claimant never complained to Mr Beetson during his lifetime about this.

91. The competing claims of the parties can be illustrated by the plan below, which comes from a professional topographic survey commissioned by the defendant for the purposes of this litigation.



92. The dark blue-edged land to the north is the Three Gates Quarry, in 1982 belonging to Huntsman. The red-edged land to the south was the land in which Mr Beetson owned the fee simple estate, having just granted a 21 year-lease of *part* of his land (not here separately indicated) to Palmer & Beetson Ltd. The purple track (to the west), from the public highway down to the boundary between Huntsman's land and Mr Beetson's land, was the original right of way to Mr Beetson's land. The continuation of that purple track to the south over Mr Beetson's land is what the defendant claims to be the route of the right of way reserved by Mr Beetson to himself out of the leases granted to

Palmer & Beetson Ltd. The light blue track (to the east) is the Huntsman licensed access to the quarry. The claimant's workshop footprint of 30' by 60' is shown marked "P Wigglesworth's Building". To the south of that is shown Mr Beetson's building, marked "Masonry sheds".

93. The light blue edged rectangle running north from the southern edge of the claimant's workshop and over into the Three Gates Quarry is the plot of 60' by 120' claimed by the claimant in these proceedings. The distorted trapezium shape, edged and hatched in purple running south from the boundary between the two quarries, is the land that was claimed by the claimant in the application to the Land Registry in 2021. The trapezium splays to the right at the top, for no apparent reason. It can be seen that that trapezium covers not only the claimant's workshop but also most of Mr Beetson's masonry shed. But the claimant stated in cross-examination that he was not claiming any part of the masonry shed, and this was subsequently confirmed by his counsel. The claimant could not explain why the land he claimed in the 2021 application was different from the land he was claiming in the present proceedings. At all events, the present claim focuses on 60' by 120' to the north of the southern edge of the claimant's workshop.

94. Thus, if Mr Beetson *had* agreed to sell land 60' by 120' to the north of the point where the southern edge of the workshop is, then he would have (i) sold the land which he claimed as his own accessway to his quarry (descending from his legal right of way down the western fork), thus landlocking himself, and (ii) purported to sell some land in fact belonging to Huntsman. It is clear from the material before me that Mr Beetson was well aware of both where his accessway ran and where his boundary with Huntsman was. He had after all just granted a professionally drafted 21-year lease, with plan attached, of part of his land to Palmer & Beetson Ltd, from which land the former piggery had been excluded. I have also found that Mr Beetson was (a) concerned not to give up his own accessway in case the Huntsman licensed way was ever revoked, and (b) completely straight in his business dealings, so that it is very unlikely that he would have purported to sell land which would landlock himself, or which he knew belonged to someone else.

95. These points make it to my mind highly unlikely that Mr Beetson would have sold a plot 60' by 120' running north from the southern edge of the claimant's workshop footprint to the claimant. The only evidence that Mr Beetson did in fact agree to sell a plot 60' by 120' to the claimant is (i) the annotated Wallace & Hoblyn plan and (ii) the claimant's, Mr Rose's and Mr Palmer's own evidence. The written contract, not shown to anyone before 2021, does not assist, because it refers to land of a different shape and size, and there is no plan attached. But in any event it is unsigned, and I have found it to be not from Mr Beetson or agreed by him.

96. As to the annotated Wallace & Hoblyn plan, I accept that it was given to the claimant by Mr Beetson in 1982. However, I have found that it was not shown to or seen by anyone else from that point until December 2023, by which time Mr Beetson had been dead for more than two years and could no longer confirm or deny the provenance of the coloured markings on that plan. And I

note that, during the preceding forty years and more, a number of different solicitors had been instructed to act for the claimant in the completion of the purchase. In cross-examination the claimant said he "probably" showed the plan to Tomson & Badham in 1982. But on 26 August 1982 they wrote to him to say that they were satisfied that the land to be conveyed fell within Mr Beetson's land, which is inconsistent with the claim to land extending over Mr Beetson's boundary. So, the claimant could not have showed the plan to them. Indeed, none of the claimant's solicitors ever referred to the plan in any of their dealings with Mr Beetson or his solicitors from time to time. I infer that none of them ever saw it.

97. In cross-examination the claimant said that he did not want to disclose the plan to Mr Beetson earlier, because he feared that Mr Beetson would destroy it. This explanation is feeble, and I reject it. He could have sent a copy, even of part of the plan, if not the whole, or allowed Mr Beetson to examine it in his own or his solicitor's presence. And none of this would explain why he did not show it to *his own* solicitors, some of whom were asking for a plan to show more precisely the land which had been sold to their client.

98. On the other hand, I have found (although it was not challenged) that Mr Beetson wrote the words "Proposed area with red surround to be purchased by Mr P Wigglesworth" on the plan. So, it seems clear enough that Mr Beetson did draw *something* on the plan. The question is, what? It is first of all interesting to note that the words he wrote do not include reference to anything except "red surround". There is no reference to hatching, or to solid blue colouring. Yet those are also present on the plan. So, I ask myself, what would the plan have looked like if the defendant's case were correct, and Mr Beetson had agreed to sell just the footprint of the workshop, a plot of 30' by 60'?

99. Suppose Mr Beetson had taken a red pen (not a biro, because the expert found no trace of that on examination of the plan, but an ink or felt tip pen) and had drawn a rectangular plot of that smaller size over the top of the representation of the old piggery, without hatching or colouring in. Of course, one cannot see any such rectangle now. But that is because a solid blue coloured rectangle has been placed where that red line rectangle would have been. The only person who gives evidence about the state of the plan at the time of leaving the meeting with Mr Beetson is the claimant himself. Neither Mr Rose nor Mr Palmer does so. The consequence is that the plan itself is of no assistance at all as independent corroborative evidence. If I believe the claimant's evidence, there is no need for corroboration, and, if I disbelieve it, the plan is of no value.

100. At this point, I need to deal with a specific problem arising from the law relating to challenges to evidence. Mr Stenhouse says that it was not put to the claimant in cross examination that his evidence (that Mr Beetson gave him the plan having drawn the coloured annotations now visible) was wrong. Mr Stenhouse accepted that the judge might dismiss the evidence of a witness, but said that the judge could not dismiss the evidence of a photograph or plan unless there was evidence of interference with it. However, he said there was

no evidence of any interference with the plan, and it was not challenged on that basis. There was no expert evidence on the point.

101. In cross-examination, Mr Walsh for the defendant did put it to the claimant that the annotated plan was not consistent with the plan attached to the particulars of claim, and also that it was not consistent with the contract which the claimant was putting forward. Those are, strictly speaking, challenges to the accuracy of the annotated plan, and not to the claimant's evidence that it was Mr Beetson who put those annotations there. Similarly, the amended defence and counterclaim, although it does not refer to the plan (because it is not referred to in the amended particulars of claim), does deny the claim to the area of land shown by the red rectangle visible on the plan, on the basis that there never was a valid agreement for the sale of the larger plot. The claimant clearly knew what the defendant's case was.

102. Moreover, the defendant's skeleton argument for trial said that the important question was whether the plan was an accurate representation of the parties' mutual intention of the extent of the land to be sold, and that that was contradicted by an abundance of other documentation. The defendant herself said in cross-examination that, whilst accepting that her late husband had written the words, she could not believe that he had drawn the annotations below them. That, of course, was after the claimant had given his evidence and his case closed.

103. The relevant rule is sometimes known as the rule in *Browne v Dunn* (1894) 6 R 67, from an old decision of the House of Lords, reported only in an obscure set of law reports. In that case Lord Herschell LC said that

> "it will not do to impeach the credibility of a witness upon a matter on which he has not had any opportunity of giving an explanation by reason of there having been *no suggestion whatever in the course of the case that his story is not accepted*" (emphasis supplied).

This extends backwards the temporal reach of the challenge that may be made to the credibility of a witness. In today's litigation world, where evidence in chief is normally given in written form in advance of the trial, and skeleton arguments disclose lines of attack, this is significant.

104. In *Chen v Ng* [2017] UKPC 27, Lord Neuberger and Lord Mance, giving the advice of the Board of the Judicial Committee of the Privy Council, said:

> "53. … In other words, where it is not made clear during (or before) a trial that the evidence, or a significant aspect of the evidence, of a witness (especially if he is a party in the proceedings) is challenged as inaccurate, it is not appropriate, at least in the absence of further relevant facts, for the evidence then to be challenged in closing speeches or in the subsequent judgment …
>
> 54. The Judge's rejection of Mr Ng's evidence, and his reasons for rejecting that evidence, do not infringe this general rule, because it was clear from the inception of the instant proceedings, and throughout the

> trial that Mr Ng's evidence as to the basis on which the Shares were transferred in October 2011 was rejected by Madam Chen."

105. There is now also the decision of the Supreme Court in *Griffiths v TUI UK Ltd* [2023] 3 WLR 1204, supplied to the court after the trial was concluded. This case concerned the evidence of an expert witness, rather than a witness of fact. The court extended the scope of the rule in *Browne v Dunn* to expert evidence. Lord Hodge DPSC (with whom the other judges agreed) said:

> "61. From this review of the case law it is clear that there is a long-established rule as stated in *Phipson* at para 12.12 with which practising barristers would be familiar … There are also circumstances in which the rule may not apply. Several come to mind. First, the matter to which the challenge is directed is collateral or insignificant and fairness to the witness does not require there to be an opportunity to answer or explain. …
>
> 62. Secondly, the evidence of fact may be manifestly incredible, and an opportunity to explain on cross-examination would make no difference. …
>
> 63. Thirdly, there may be a bold assertion of opinion in an expert's report without any reasoning to support it, … a bare ipse dixit. But reasoning which appears inadequate and is open to criticism for that reason is not the same as a bare ipse dixit.
>
> 64. Fourthly, there may be an obvious mistake on the face of an expert report. …
>
> […]
>
> 66. Fifthly, the witnesses' evidence of the facts may be contrary to the basis on which the expert expressed his or her view in the expert report. …
>
> 67. Sixthly, … an expert has been given a sufficient opportunity to respond to criticism of, or otherwise clarify his or her report. …
>
> 68. Seventhly, a failure to comply with the requirements of CPR PD 35 may be a further exception …
>
> 69. Because the rule is a flexible one, there will also be circumstances where in the course of a cross-examination counsel omits to put a relevant matter to a witness and that does not prevent him or her from leading evidence on that matter from a witness thereafter. In some cases, the only fair response by the court faced with such a circumstance would be to allow the recall of the witness to address the matter. In other cases, it may be sufficient for the judge when considering what weight to attach to the evidence of the latter witness to bear in mind that the former witness had not been given the opportunity to comment on that evidence. The failure to cross-examine on a matter in such circumstances does not put the trial

> judge 'into a straitjacket, dictating what evidence must be accepted and what must be rejected' … This is not because the rule does not apply to a trial judge when making findings of fact, but because, as a rule of fairness, it is not an inflexible one and a more nuanced judgment is called for. In any event, those circumstances, involving the substantive cross-examination of the witness, are far removed from the circumstances of a case such as this in which the opposing party did not require the witness to attend for cross-examination."

106. So, the position is not that, where the witness's evidence is not challenged *in cross-examination*, the evidence must stand. This is a rule about impeaching the credibility of a witness. The rule is that the court cannot normally reject the unchallenged evidence either as a deliberate lie or for other substantial reason, *unless* it was clear that the evidence in question *was* challenged. However, the challenge does not necessarily have to come in cross-examination. It could have come at an earlier stage. And, even where there has been no challenge at all, in an appropriate case the judge can still reject the evidence, either on the basis that it was mistaken, in whole or in part, for example as an honest confusion of thought, or confabulation, or where the evidence is so incredible that an opportunity to explain would make no difference. In such circumstances as these, the judge is not bound to accept the evidence as true.

107. In the present case, the evidence of the claimant that he saw Mr Beetson draw the red rectangle now visible on the plan hatch and colour in the area contained by it was not expressly challenged. There was no such challenge in either the defendant's statement of case or skeleton argument for trial, nor in the defendant's witness statement. The only express challenge was in the evidence of the defendant herself, which came after the claimant's own evidence was finished and his case had already closed. It may be said that there was an implied challenge, because of the nature of the case put forward by the defendant. But I think it is more accurate to say that the defendant's case, at least as expressed in the skeleton argument for trial, was that, even if the claimant was right to say that he saw Mr Beetson annotating the plan in this way, that was only *part* of the evidence, and that the preponderance of the evidence in this case showed that he had no such intention to sell to the claimant the land within the red rectangle now visible.

108. In my judgment the evidence of the plan was so incredible that an opportunity given to the claimant to explain would have made no difference. It is not unfair to the claimant because there was so much other evidence tending to the view that Mr Beetson did not agree to the sale of the larger plot. As I have said, Mr Beetson had just granted a long lease of the Cotswold Hill Quarry. He knew where his boundaries were. He was a careful and honest businessman, and would not have knowingly sold land he did not own. Nor could he have sold land upon which he then built a masonry shed without any complaint from the claimant for more than forty years. Moreover, the claimant, on his case, had a plan apparently annotated by Mr Beetson to show the land which he now claims, but (as I have found) did not share this plan with *anyone* for the same period, despite instructing solicitors to pursue the completion of the

sale, and despite making an application to the Land Registry and then to the First Tier Tribunal, until he disclosed it in the present proceedings in December 2023. Notwithstanding all this, it is not credible that, if asked about his evidence that he saw Mr Beetson drawn these annotations, the claimant would have said anything other than that it was true. Accordingly, I am not bound to accept the evidence of the claimant concerning the annotations drawn on the plan. And, on the material before me, I do not.

109. As to the claimed sale of the original right of way, the claimant's evidence was that Mr Beetson sold him the "14 foot right of way … running from the main road" and that Mr Beetson would use the Huntsman's licensed accessway instead. I do not accept this. There was no need for Mr Beetson to sell the right of way. He could simply grant the use of it (retaining his own rights) to the claimant. Moreover, the Huntsman's licensed accessway did not go as far as the main road. It only went to a point further up the original right of way. So, Mr Beetson could not sensibly have said what the claimant says he did. I find that he did not.

110. Taking all of this into account, I find that Mr Beetson agreed to sell the claimant a plot covering the northern half of the then existing piggery building (which he showed to the claimant), on the footprint of which the claimant subsequently erected his workshop, being a plot of approximately 30' by 60'. It is that footprint alone that was sold. I find that Mr Beetson agreed to grant the claimant the shared use of his own right of way down the western fork of the access way from the public highway to the boundary with his land, but not to sell and convey that right away from himself. I further find that Mr Beetson drew on a copy of the Wallace & Hoblyn plan a single rectangle in red ink around the top half of the piggery building, which rectangle has subsequently been obliterated by a heavy blue solid colour rectangle over it.

111. I find that the visible larger red rectangle, the blue hatching and the solid blue rectangle were not put on the plan by Mr Beetson, or by anyone else at his direction, and that he never agreed to sell to the claimant the land bounded by the red rectangle now visible. This was partly because it would obstruct his own original access down to his quarry, and partly because some of that land was not his to sell. It is not necessary that I find who did place those markings there. That is not my function. The burden lies on the claimant to show that Mr Beetson or someone at his direction did this, and the claimant has not proved this. Indeed, it is the reverse: I am in fact quite satisfied that Mr Beetson did not do this.

112. For the sake of clarity, I make clear that Mr Beetson never (either at the 1982 meeting with the claimant or subsequently) promised or represented to the claimant that he would have the larger plot. On the contrary, Mr Beetson was always careful to impress upon the claimant that the accessway was needed for access to the quarry, and could not be encroached upon.

The law

Contract law

113. An interesting feature of the present case is that it concerns a contract for the sale of land entered into as long ago as 1982. This means that the relevant formalities for such a contract are governed by section 40 of the Law of Property Act 1925, rather than by section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. This means, first of all, that the contract is required only to be *evidenced* in writing, rather than (as now) actually to be *made* in writing: see section 40(1). Secondly, section 40(2) expressly preserves the old equitable doctrine of "part performance" by way of exception to section 40(1).

114. This doctrine has been considered by some to have been abolished by the 1989 Act (see *eg Guest v Guest* [2024] AC 833, [19]). Whether that was actually so, or whether the doctrine of part performance was simply an aspect of the wider doctrine which later became known as proprietary estoppel (and which has *not* been abolished) is a matter into which I need not enter on this occasion. (Those interested in this somewhat *recherché* topic will find at least some of the relevant authorities discussed in a paper which I contributed to a volume of essays called *Constructive and Resulting Trusts*, edited by Prof Charles Mitchell in 2010, at 25-45.)

115. In the present case, there is no dispute between the parties as to the relevant law, and no dispute that there was a contract between them for the sale of a plot of land in the quarry, for which the agreed consideration was paid, and in respect of which the doctrine of part performance was indeed satisfied, the claimant having gone into possession and erected his workshop. So, it is common ground that the claimant is entitled to specific performance of the contract, and thus the conveyance of *something*. The dispute is simply about the extent of the plot of land sold, the fee simple estate in which it is now claimed should be conveyed to the claimant.

116. The parties' submissions included reference to the constructive trust that arises in relation to a specifically enforceable contract for the sale of land, because of the operation of the maxim that equity regards as done that which ought to be done. This is of course elementary law of long standing: see *eg Shaw v Foster* (1872) LR 5 HL 321, and the cases cited therein. But the trusteeship involved in such a case is of a rather special character, involving regard being had (*inter alia*) to the vendor's own financial interests: see *eg Jerome v Kelly* [2004] 1 WLR 1409, [32].

117. It must not be forgotten that the constructive trust arises from what equity considers ought to be done, and not the other way round. So, on the one hand, as Lord Hatherley LC said in *Shaw v Foster* itself (at 357), "you must not use that doctrine as a means of impeding the completion of the purchase". And, on the other, as Patten LJ (with whom Henderson and Rose LJJ agreed) said in *Ezair v Conn* [2020] EWCA Civ 687:

> "The relationship is described in some of the judgments as a bare trust but it is clear that it exists as an incident of the contractual relationship and is no more than a consequence of the principle that equity treats as done that

> which ought to be done. It is therefore dependent upon the contract remaining specifically enforceable … "

Proprietary estoppel

118. The doctrine of proprietary estoppel arises when the defendant landowner by his words or conduct makes a promise or assurance to or creates an expectation in the claimant. It need not be the promise of a specific right or interest, as long as it is clear enough in all the circumstances: see *Thorner v Major* [2009] 1 WLR 776, [29]. At this stage this is not an enforceable obligation. It does not comply with the relevant formalities rules. But, if it is intended to be relied upon by the claimant, and it is relied upon, to his detriment, such that it becomes unconscionable for the defendant to resile from it, an equity is thereby raised against the defendant. The equity thus created is an interest in the property which does not need to comply with any relevant formalities rules, because it operates by way of imposing a trust on the defendant to satisfy it, and constructive trusts are outside the scope of those rules. The court is then able to fashion an appropriate remedy to satisfy the equity.

Limitation and adverse possession

119. Title to the land the subject of this claim was unregistered at the material times. Accordingly, the relevant law of possessory title is that contained in the Limitation Act 1980. Section 15 of that Act relevantly provides:

> "(1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person."

And section 17 of that Act relevantly provides:

> "Subject to—
>
> (a) section 18 of this Act; […]
>
> (b) […]
>
> at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished."
>
> (Section 18 of the Act concerns settled land and land held on trust, and is not relevant to the facts of this case.)

120. The right of action of the landowner to recover possession of land accrues when another person goes into adverse possession of the land. The concept of *possession* of land was judicially defined by Slade J in *Powell v McFarlane* (1977) 38 P & CR 452, 469, as

> "that degree of occupation or physical control, coupled with the requisite intention commonly referred to as animus possidendi that would entitle a person to maintain an action of trespass in relation to the relevant land".

121. The twin elements of *possession* are therefore factual control and intention to possess. In *Powell v McFarlane* (1977) 38 P & CR 452, 470-71, Slade J said:

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

This statement was approved by the House of Lords in *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419.

122. The intention to possess was judicially defined by Slade J in *Powell* (at 471) as an

> "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."

This statement too was approved by the House of Lords in *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419.

123. The concept of *adverse* possession was summarised recently by Nugee LJ (with whom Males and Popplewell LJJ agreed) sitting in the Court of Appeal in *Healey v Fraine* [2024] Ch 133, as follows:

> "53. The effect of the decided cases is summarised in Megarry & Wade, para 7-029 as follows:
>
> > 'Before 1833, "adverse possession" bore a highly technical meaning. Today it merely means possession inconsistent with and in denial of the title of the owner of land, and not, *eg* possession under a licence or under some contract or trust … To establish adverse possession, a squatter must prove both factual possession of the land and the requisite intention to possess (animus possidendi). If a person is in possession of land with the permission of its owner, his possession cannot be adverse'."

Trespass to land, and trespass to goods

124. **Trespass to land** consists of any unjustifiable intrusion by one person upon land in the possession of another, including placing anything on or in that land: *Clerk & Lindsell on Torts*, [18-01], [18-02]. To support an action of trespass it is not necessary that there should have been any actual damage to the land: *Anchor Brewhouse Developments v Berkley House (Docklands Developments) Ltd* [1987] 2 EGLR 173. In an appropriate case an injunction can be granted to restrain repeated or even threatened trespass. But, if no actual damage to the land is proved, any damages awarded will be nominal only: *Hanina v Morland* (2000) 97 (47) LSGaz 41, CA. If the claimant wrongfully deposits goods on the defendant's land, the defendant may lawfully go upon the claimant's land for the purpose of replacing them there: *Rea v Sheward* (1837) 2 M &W 424.

125. The action of **trespass to goods** has always been concerned with the direct, immediate interference with the claimant's possession of a chattel: *Clerk & Lindsell on Torts*, [16-133]. It is actionable without proof of actual damage to the goods: *Transco Plc v United Utilities Water Plc* [2005] EWHC 2784 (QB). But, once again, if no actual damage is proved, any damages awarded will be nominal only: *Hogarth v Jennings* [1892] 1 QB 907, CA. But not all intentional touching of another's goods amounts to trespass. The examples given of such non-trespass by *Clerk & Lindsell on Torts*, [16-134], include the theatregoer who moves someone else's coat in the cloakroom in order to retrieve his own, and the pedestrian who picks up a dropped parcel on the pavement to return it to the owner.

126. Although *Rea v Sheward* was concerned with trespass to land, it also involved removing the claimant's goods from the defendant's land (where they had been wrongfully left) back to his own. It would be remarkable if there was no trespass in going onto the claimant's land to replace his goods there, but still a trespass to the goods themselves in moving them. In my judgment, it is a form of self-help. If done reasonably, with no more interference than necessary, there is no trespass to the goods concerned.

Easement of necessity

127. A right of way over one piece of land (called the *servient* tenement) for the benefit of another piece of land (called the *dominant* tenement) is an easement. Usually, an easement is granted expressly, but sometimes impliedly. One kind of implied easement is an easement of necessity. In *Manjang v Drammeh* (1990) 61 P & CR 194, in the Privy Council, Lord Oliver said (at 196-97):

> "It seems hardly necessary to state the essentials for the implication of such an easement. There has to be found, first, a common owner of a legal estate in two plots of land. It has, secondly, to be established that access between one of those plots and the public highway can be obtained only over the other plot. Thirdly, there has to be found a disposition of one of the plots without any specific grant or reservation of a right of access. Given these conditions, it may be possible as a matter of construction of

> the relevant grant (see *Nickerson v Barraclough* [1981] Ch 426) to imply the reservation of an easement of necessity."

128. The editors of Megarry & Wade, *The Law of Real Property*, 10th ed 2024, say, at [27-013]:

> "This rule is one of construction of the relevant grant, depending upon the intention of the parties as implied from the circumstances, and not upon public policy."

And, at [27-014],

> "If some other way exists, even if it is by water rather than over land, no way of necessity will be implied unless that other way is merely precarious and not as of right, or unless, perhaps, it would be a breach of the law to use that other way for the purpose in question. Nor will there be a way of necessity if the other way is merely inconvenient, and so where there is pedestrian but not vehicular access to a house, no vehicular right of way is to be implied; for the principle is that an easement of necessity is one 'without which the property retained cannot be used at all, and not one merely necessary to the reasonable enjoyment of that property'."

Application of law to facts

Sale of land

129. On the basis of the facts that I have found, the claimant and Mr Beetson agreed to buy and to sell the plot of 30' by 60' on which the claimant's workshop now stands, together with the grant of the use of the right of way belonging to Mr Beetson down to the workshop along the western fork. Accordingly, the claim succeeds as to this. But this was already admitted by the defendant. On the other hand, the claim fails as to the larger plot claimed and the purported sale of the whole right of way (which was contested by the defendant). That is because I have found as a fact that the parties did not so agree.

Proprietary estoppel

130. Again, on the basis of the facts found, there was no promise or assurance by Mr Beetson to the claimant that the claimant would have the larger plot, nor any common intention that he should do so. Even if there had been, there were no acts by the claimant in reliance thereon, making it unconscionable for Mr Beetson not to fulfil it, and which could thereby raise an equity in the claimant's favour. The claim in proprietary estoppel must fail.

Adverse possession

131. The claim to the larger plot by way of adverse possession also fails. The claimant was not in adverse possession of the plot of 30' by 60' on which the claimant's workshop stands, because that is what he bought, and he has been in possession in right of the constructive trust which arose by reason of the

specifically enforceable contract of sale. As to the excess, I need say nothing about that part which lies over the boundary with the Three Gates Quarry, because the owner of that land is not a party to these proceedings, and nothing I say can bind it. As to that part outside the workshop footprint, but within the paper title of the defendant, for the reasons given below, the claimant was not in factual control of that land, and, to the extent that he was in possession of it, such possession was with the owner's consent. So, the test for adverse possession is not satisfied.

132. My reasons are these. First of all, the evidence made clear that Mr Beetson and others also used that land, as indeed was accepted by the claimant's counsel in cross-examining both Lucy Binnie and Don Cook. It was not therefore in the sole and exclusive possession of the claimant. Secondly, the evidence showed that the claimant did sometimes (though not always or immediately) move his goods stored on the disputed land when asked to do so. Thirdly, the claimant asked Mr Beetson for permission to extend his workshop out on the eastern side, which permission was refused, and the claimant did not attempt to do so unilaterally. Fourthly, the claimant used the area outside the workshop and within the larger area claimed with the permission of Mr Beetson, the paper owner. Mr Beetson permitted the claimant to store goods on this land, but sometimes required their removal, which (in most cases, at least) the claimant eventually effected.

Easement of necessity

133. If I were wrong about the claim that the larger plot was sold to the claimant by Mr Beetson, the claim by the defendant to an easement of necessity would succeed. This is because, by selling off his right of way and the land over which his original access by right ran, Mr Beetson would have rendered his quarry useless. An easement of necessity is not a matter of policy, but instead of implication in the transaction voluntarily carried out by the owner. Mr Beetson was intending to exploit his land by letting it as a quarry. He obtained planning permission for that purpose. This requires a substantial access for lorries. In April he granted a lease of the land to a company in which he was interested for this purpose.

134. The claimant points to the existence of a public footpath, the Gloucester Way, at the southern end of Mr Beetson's land, to show that he would not be landlocked. He relies on the rule that an easement of necessity is to be implied only where without such easement "the property retained cannot be used at all". He says it can still be used. It is just less convenient. I do not agree. There is a difference, for example, between a residential dwelling, which can still be enjoyed by pedestrian access, and a mining quarry, which cannot. A quarry must have vehicular access in order to be enjoyed as such. Therefore the existence of the public footpath at the southern end of the property does not prevent the implication of an easement of necessity over the land sold to the claimant.

Trespass to land and goods

135. Finally, there is the question of the alleged trespasses to the claimant's land and goods in October 2021. I do not accept that any of the defendant's acts then amounted to an actionable trespass. In my judgment the land on which the claimant had stored his goods was Mr Beetson's land, and after his death the defendant's, rather than the claimant's, and the claimant had been asked on several occasions since 2018 to remove his goods from that land, but had not done so. Therefore, in my judgment, the defendant was entitled to take the step of removing those goods to other land where they would not be in the way. Even if, contrary to my view, those acts of removal were to constitute a trespass, no actual damage has been proved as a result, and so the claimant would (in that case) be entitled merely to nominal damages of £1.

Conclusion

136. The claim is allowed so far as relates to the workshop footprint of 30' by 60', and the shared use of the right of way down the western fork, but otherwise is dismissed in its entirety.