



REF/2015/0709/0710

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

BETWEEN

JOHN DEWI FLOYD

APPLICANT

and

**(1) TIMOTHY RICHARD HOLT
(2) ROBERT WINSTON BECK & BARBARA BECK
RESPONDENTS**

**Property Address: Land adjoining Foel Las, Eryrys Road,
Mynydd Ddu, Mold CH7 4BR**

Title Number: CYM642736

Before: Judge Owen Rhys

Sitting at: Liverpool Tribunal Centre, Vernon Street

On: 29th and 30th June 2016

Applicant representation: Mr Trefor Lloyd of Counsel instructed by Keene & Kelly Solicitors
Respondent representation: Mr Hallows of Hallows Associates Solicitors

DECISION

THE APPLICATION

1. By an application in Form FR1 made on 23rd February 2015 (“the Application”), supported by a Statutory Declaration dated 16th January 2015, the Applicant applied for first registration as proprietor of the unregistered land edged red on the plan

“JDF1” attached to the Statutory Declaration. The land in question, which I shall describe in more detail below, was allocated the provisional title number CYM642736. Notice of the application was given to the adjoining landowners, namely the Respondents. Objections to the application were received from the First Respondent on 23rd March 2015 and from the Second Respondents on 13th April 2015. The dispute could not be resolved by agreement, and on 15th October 2015 both objections were referred to the Tribunal by the Chief Land Registrar. Statements of Case were filed, and disclosure and exchange of witness statements took place in accordance with the Tribunal’s directions. The matter came on for hearing before me on 29th and 30th June 2016, when the Applicant was represented by Mr Lloyd of Counsel, and the Respondents by Mr Hallows of Hallows Associates. I had a site view in the presence of the parties (but not their lawyers) on the day preceding the hearing, although Mr and Mrs Beck did not join us for the entire time. Although the evidence was concluded within two days, due to time constraints Mr Lloyd and Mr Hallows made their Closing Submissions in written form, and these were completed and filed by the end of July 2016. I am very grateful to them both for their detailed and comprehensive submissions on the evidence, which are far more thorough than would have been the case had they been delivered orally in the normal manner. I should also add that Mr Lloyd produced in opening a composite map, with various different colourings, to indicate the various parcels of land that are referred to in the evidence. Although Mr Hallows seemed to detect some sinister motive in this, as far as I am concerned this was very helpful. The parcel of land within Foel Las Farm that lies immediately to the east of the Lower Land (as defined below) is edged yellow.

THE LAND IN ISSUE

2. The land in question is situated to the south of Eryrys Road, which runs very approximately east to west. Approaching the site from the east, the road turns sharply north-west as far as the entrance to Foel Las Farm to the north, which in the Applicant’s occupation. At this point the road then turns south-west at 90 degrees for approximately 80 metres. The road then makes another 90 degree turn to run more or less due west. Some 80 to 90 metres west of this turn lies the entrance to the Second Respondents’ house, known as Tyn-y-Ffynnon, which is on the south side of the road. The house and two parcels of land – designated as 1863 and 2151 on the Ordnance Survey – are together registered in the Second Respondents’ name under title number

CYM533162. I shall refer to the house and land collectively as Tyn-y-Fynnon. Field 1863 is bounded to the north by the road. Field 2151 lies to the south of 1863, and is much longer (north-south) than it is wide (east-west). The Second Respondents also own a parcel of land to the west of Tyn-y-Fynnon comprising some 5 acres. This land is unregistered and is not relevant to the dispute. The First Respondent's property, Foel Las Manor, occupies the area to the south of the curve in the road formed by the change of direction described above, from north-west to south-west. This land, registered under title number WA588435, is roughly ovoid. It is bounded to the north-east and north-west by the road, and to the south and west by the land in dispute. I shall refer to WA588435 as "the Manor".

3. The land which is the subject of the Application ("the Application Land") is roughly L-shaped, with the western section forming the "leg" of the L and the eastern section the "foot". The western boundary of the "leg" is formed by the eastern boundary of Tyn-y-Fynnon, the northern boundary abuts directly onto the road, and it is bounded to the east by the Manor and to the south by land in the ownership of a Mr Jones. The "foot" of the L is bounded to the north by the Manor, to the east by land belonging to Foel Las Farm and to the south by rough grazing known as "the Mountain" which is also in the ownership of Foel Las Farm. Historically, the Application Land formed two separate enclosures – numbered 89 and 90 on various old conveyancing plans that appear in the Applicant's and the Second Respondents' disclosure. The western portion of the Application Land (the "leg") was formerly known as Field 89. I shall refer to this portion of the Application Land as "the Upper Land". The eastern portion of the Application Land was historically known as Field 90. It includes the site of a disused quarry, and several witnesses referred to as "the quarry land". I shall however refer to it as "the Lower Land" since topographically it lies at a noticeably lower ground level than the Upper Land. The two portion of the Application Land merge in the area of the former quarry. The historic boundary between Fields 89 and 90 appears to run approximately through the area of the disused quarry.

THE HISTORY OF THE DISPUTE

4. The history of the dispute is as follows. In July 2011 the Second Respondents made an application to Land Registry for a possessory title to the Upper Land – or, at least, the greater part of it. A survey was carried out by the Land Registry surveyor in

connection with that application, and a copy of the survey of November 2011, together with photographs and relevant plan, is included in the evidence before me. At the date of the application there was a barbed wire fence dividing the Upper Land in two, and the Second Respondents' application related only to that part of the land that lies to the west of the fence. For reasons which were explored to some extent in the evidence, the application was not pursued. I should say that the basis of the application was that the Second Respondents had always believed that the Upper Land formed part of the land held with Tyn-y-Fynnon, and "... *my wife Barbara Beck and I have continuously used Field 89 as our own as an extension to our farm and have tended the grassland thereon and have kept the hedges and fences thereof in good order...*"

5. The Application made by the Applicant in 2015 was supported by a Statutory Declaration made by the Applicant in January 2015. In it, he confirms that the Application Land "*forms part of Foel Las Farm*" and has been used for grazing livestock from the 1940's "*to date*". No distinction is made between the Upper Land and the Lower Land. He states that it is his understanding that the Application Land was a former quarry. He confirms that he personally has farmed the land since the 1990's and is in actual occupation of "*the whole of the property*". In paragraphs 18 and 19 he states that: "*I would confirm that the Property is enclosed by a wall and fence on the northerly side, a fence on the easterly boundary, a fence on the southerly boundary and a fence on the westerly boundary.... I would confirm that all boundary structures have been maintained by my family and I since the 1940's.*" He goes on to state that the title to the property is unregistered, that he undertakes to produce the title deeds in the event of them being found in the future and confirms that he has not deposited the title deeds with a third party. The Application is something of a hybrid. The Statutory Declaration suggests an application for first registration where the title deeds have been lost. On the other hand, the class of title applied for is possessory, indicating a claim based on adverse possession rather than lost title deeds. For present purposes, of course, the Application has been treated as one based on adverse possession, but the nature of the original claim may be significant when I come to assess the evidence.

6. Although this is not directly relevant to the issues in the case – although it may have some bearing on the assessment of the individual witnesses – it is perhaps right to record that there is considerable bad blood between the Applicant and the First Respondent in particular. The Applicant has been fined for allowing slurry to escape into a watercourse, and the First Respondent seems to hold him responsible for other alleged misdemeanours. The Applicant’s father, who owns Foel Las Farm and is one of the farming partners, is unwell, and the burden of running the farm has fallen on the Applicant’s shoulders. All this has injected into the dispute an unfortunate level of personal animus.

THE APPEARANCE OF THE DISPUTED LAND

7. The physical characteristics of the Application Land are as follows. Starting with the Upper Land, this is largely wooded and overgrown with gorse and other vegetation. In this respect it remains very much in the same condition as it was in November 2011 when the Land Registry surveyor prepared his report. There are signs of some activity on the land close to the road. Some bales of silage have been placed on this land, which has been partially cleared at this point. At the time of the site visit, a narrow pathway had been formed by strimming or cutting through the undergrowth. There is a cleared grassed strip (perhaps 2 metres or so wide) running along the full length of the eastern side where it adjoins the Manor. The fencing and other physical boundaries are as follows. There is no physical boundary along the road – it is open along its full width. The western boundary with Tyn-y-Fynnon is continuous, formed variously of wooden and/or wire fencing, hedging and a partial stone wall. There are two separate entrances between the Upper Land and Tyn-y-Fynnon. The most northerly is a field gate (“Gate A”) a short distance south of the road, close to the Second Respondents’ house. There is a further gate (“Gate B”) a short distance to the south. I heard a great deal of evidence about this gate and the circumstances of its construction – although the Applicant and his witnesses generally refused to categorise it as a gate at all. It consists of a metal farm gate perhaps 2 metres in width, which is attached to a wooden fence post on one side. The gate itself is wider than the gap in the boundary and does not therefore fit properly within it. The gap is not sufficient for vehicles but is certainly wide enough for access on foot. The southern boundary (with Mr Jones’s land) consists of wooden fence posts with strands of wire attached with a base formed by a low stone wall. It is not in particularly good

condition. The north-eastern boundary – alongside the Manor – is formed by a mature hedge line. Within the Upper Land, and running alongside this boundary, is the cleared strip that I have referred to. There is a fairly steep downhill slope where the Upper Land abuts the Lower Land, and the plant growth here is very thick. It is possible to walk through but only with some caution. Much of the land is overgrown. There is a large farm building close to the northern boundary with the Manor. This is accessed by a track leading from the road, the entrance lying a short distance to the east of the Manor. This is used by the Applicant as part of his farming operation, but there is an issue as to when the building was erected. The eastern and southern boundaries are generally fenced, but the fences are in poor condition. There are no gates as such in the eastern boundary fences, but in places the wire has been pulled down to allow access from the land to the east, being land farmed by the Applicant.

THE APPLICANT'S CASE

8. The Applicant's case in the Tribunal is essentially as set out in his Statutory Declaration. His Statement of Case (described as a Statement of Truth) adds nothing to it. The case is, therefore, that the Application Land has been farmed continuously as part of Foel Las Farm, first by his grandfather Alan Floyd from the 1940s to the 1960s, then by his father John Alan Floyd ("Mr Floyd Senior") from the 1960s to the 1990s, and thereafter by the Applicant himself. He contends that the land is fully enclosed on all sides, and that all boundary structures had been maintained by the Floyd family since the 1940s. He says that part of the Upper Land is used for storing silage bags and hay bales, and the remainder of is occasionally used for grazing. The bottom part of the land (by which I think he means the Lower Land) is "*constantly grazed*". He says that there used to be two sheds on the Upper Land and the concrete floors can still be seen. He denies that the Second Respondent has ever used or occupied any part of the land. He says that Gate B was installed by Mr Beck but was only ever intended as a temporary entrance and with consent from Mr Floyd Senior.

9. The Applicant also relied on a number of witness statements; from his sister Rhiannon Floyd-Williams; Christopher Michael Smith; Ralph Vaughan; his brother-in-law Mark Williams; Mair Floyd-Hughes; Mrs Menna Wynn; his mother Mrs Alethea Floyd; his cousin John Elwyn Williams; Mr and Mrs Wright; Stephen Tidswell; and Stephen Parker. These witnesses (other than Mair Floyd-Hughes, Mrs Menna Wynn,

Mrs Alethea Floyd, John Elwyn Williams and either of the Wrights) gave oral evidence and were cross-examined on their statements. The Applicant himself was cross-examined on his statement and statutory declaration.

THE RESPONDENTS' CASE

10. The First Respondent's Statement of Case denies that the Applicant has used the Application Land as he states, although accepts that he recently began to store silage on the land and also recently erected a cattle shed. He denies that the Applicant has grazed cattle on the land as he suggests at any time during the period of 15 years that he has lived at the Manor. He confirms that the Second Respondents have had cattle and ponies on the Upper Land "*and can confirm that the land is fenced as far as the quarry and they maintain the fence ...*" He claims to have cut the grass on the Upper Land. The Second Respondents relied on a Statement of Case by Mr Beck. He reiterated what he had said in their original application for possessory title – namely that he had used the Application Land since he and his wife had bought Tyn-y-Fynnon in 1966. Mr Beck says that he actually fenced in the Upper Land, but also claims to have used the Lower Land from time to time. He denies that the Applicant or his family have maintained the boundary structures, or that the Applicant had used any part of the land for any purpose until very recently. He says that the Applicant has never used any part of the land for grazing. He agrees that the First Respondent has cut the grass. He denies that the cattle shed (erected by the Applicant on the Lower Land) was in place prior to 2009. He reiterates that he and his wife intended to renew their application for possessory title of the Upper Land – or, rather, that part of the Upper Land that lies to the west of the fence X-B noted on the surveyor's plan prepared in 2011.

11. The Respondent also relied on witness statements from Steven Latham; James Leighton and Susan Cottrell. These witnesses gave evidence before me, and were cross-examined on their statements, as were Mr Holt and Mr Beck.

THE RELEVANT LAW

12. Unsurprisingly, there is little or no dispute between the parties as to the relevant legal principles to be applied. This an application made for first registration of land previously unregistered. It is therefore a claim made pursuant to section 15 of the

Limitation Act 1980, and I need not concern myself with the provisions of Schedule 6 of the Land Registration Act 2002. The burden is of course on the Applicant to establish that he has been in (a) exclusive factual possession of the Application Land with (b) the necessary intention to possess, for a period in excess of 12 years prior to the date of the application. The terms “factual possession” and “intention to possess” have received much judicial analysis over the years. However, it is difficult to improve on the explanation of these terms given in the speech of Lord Browne-Wilkinson in J.A.Pye (Oxford) Ltd v Graham [2003] 1 AC 419, which in turn borrows heavily from the judgment of Slade J (as he then was) in Powell v McFarlane (1979) 38 P & CR 352. There is, however, a somewhat technical legal issue which the parties did not raise, but which could potentially affect the Application. This arises out of the fact that the Applicant does not own any of the Foel Las land, and his alleged possession of the Application Land must therefore have been obtained by virtue of his position as a partner in the farming business. I shall consider this point further once I have made the necessary findings of fact. It is a curiosity of the Land Registration Act 2002 as it applies to applications, that a party such as the First Respondent, who makes no claim himself to any part of the Application Land, nevertheless has the right to object to the Application. Once the objection has been accepted, and the dispute referred to the Tribunal, the Applicant is obliged to prove, on the balance of probabilities, that he has been in adverse possession for the required period. The fact that the First Respondent makes no claim to the Application Land, and the Second Respondents claim only part of the land, is immaterial.

OBSERVATIONS ON THE APPLICATION

13. The original application was supported by the Statutory Declaration. After proceedings in the Tribunal had commenced, the Applicant was required to file a Statement of Case. This consisted of a short statement to the effect that he relied on the “Statement of Truth” together with a list of the documents relied upon. The Statement of Truth contains much of the material included in the Statutory Declaration – although it is signed by the Applicant’s solicitor. A number of preliminary comments may be made about both the Statutory Declaration and the Statement of Truth. First, little distinction is drawn between the component parts of the Application Land. As I have explained, the land is L-shaped, and there are clear physical and topographical differences between the Upper Land (to the west) and the

Lower Land (to the east). However, this is not referred to in the Statutory Declaration, and is barely mentioned in the Statement of Truth. It is true that, at paragraph 14, the Applicant mentions that he occasionally grazes the land shown in Photograph A – which appears to be the area of the Upper Land closest to the road - whilst “... *the bottom part of the land which does not seem to be part of the challenge is constantly grazed.*” This would seem to be a reference to the most easterly part of the Upper Land and the whole of the Lower Land. Secondly, the Applicant relies on user of the Application Land since the 1940s, referring to farming activities carried on by his grandfather and father until the 1990s when he took over “*the farming responsibilities including the farming of the subject land.*” The Applicant was born in 1964 and necessarily therefore his evidence of the activities of his grandfather and father is either hearsay, or at best derived from early childhood memories. Thirdly, it is not contended that the claimed use of the Application Land was enjoyed by the Applicant or his forebears individually, but as incidental to the operation of the farming business. From answers given by the Applicant in cross-examination, it appears that he personally does not own any of the land comprised within Foel Las Farm. The owner is his father, although it seems that the Applicant is a member of a farming partnership (with his father and mother) that operates on the land belonging to his father. Finally, it may be noted that the written statements relied on by the Applicant do not contain the level of detail that would normally be expected in a case of this nature. Indeed, they are remarkably vague. The only detail of the user relied on is as follows: (a) the land has been used for grazing livestock and storing silage; (b) the land is enclosed by a wall and fence to the north; (c) it is enclosed by fences on the east, west and south sides; (d) the Floyd family has maintained the boundary structures since the 1940s; (e) the Applicant uses a scrub cutter to clear the land at the northern end of the Upper Land. Whilst it is true that Statements of Truth or Statutory Declarations at the application stage are sometimes cursory, one would expect the witness statements served in the course of the proceedings to descend to much greater detail. Given that the claimed period of adverse possession exceeds 75 years, and extends over a considerable area of land, this is a surprisingly cursory description of the acts of adverse possession. Mr Lloyd, at paragraph 17 of his Closing Submissions, appears to criticise Mr Hallows for not cross-examining the Applicant as to his use of the land in sufficient detail. However, it is for the Applicant to make out his case on the evidence, not the other way round.



THE APPLICANT'S ORAL EVIDENCE

14. **Mr Floyd** was cross-examined at length on the Statutory Declaration and his solicitor's Statement of Truth. His evidence, in summary, was as follows. The farm known as Foel Las consists of some 300 acres. It is in the sole ownership of his father, Mr Floyd Senior, who is unwell, and he is "*representing my father's interests*". The farm business is carried on in partnership between himself and his parents. He produced an aerial photograph (dated 2009) prepared for the purposes of the Single Farm payment subsidy on which, according to him, the entire Foel Las holdings were shown. This included the Lower Land but not the Upper Land. If this map correctly identifies Foel Las farm, it includes a number of fields to the north of Eryrys Road, and much of the mountain lying to the south and east of the Application Land. It does not include any land immediately to the south of the Upper Land which, according to the Applicant, belongs to a Mr Jones. He insisted that his grandfather bought fields 89 and 90 – the Application Land – but had not been given or had not kept the deeds and may have lost them. He was asked about the appearance of the land in 2011, at the time of Mr Beck's application, when the Land Registry surveyor inspected the site. It was put to him that the surveyor noted a fence along the line X-B – separating most of the Upper Land from the remainder of the Application Land to the east. He denied that such a fence existed, stating that the surveyor could not obtain access to the land and therefore had "*got it wrong*". He denied that the Becks had ever used the Upper Land. When he was asked about the two gates that were on the boundary between Tyn-y-Fynnon and the Upper land, he denied that Gate B was a "*proper gate*". He said that when Mr Beck was constructing Gate B, he and his father went down to the land to question what he was doing. Mr Beck told them that the fence was temporary only, and his father did not challenge it because he was "*trusting*". He was asked about the statement in his Statutory Declaration that he had maintained all the fences around the Application Land. He confirmed that his family had maintained all structures since the 1940s. He said that some 3 years ago he had "*widened*" the entrance into the Upper Land from the road. This was to get the tractor onto the land. Livestock grazed the land up to about three years ago, when he started to store materials there. He also had a horse on the Upper Land. It was put to him that there was a steep slope between the Upper Land and the Quarry Land, and this was a hazard for livestock. He said that had placed a barbed wire fence along the edge of

the quarry, but this needed renewing. He was asked why the Application Land was in such a poor and overgrown state. He replied that it was an old wood, and he had allowed trees to grow up for the benefit of wildlife. He said that the whole of the Application Land was used together as one piece, and there were traces of old farm buildings on the Upper Land. He was asked about the caravan. He said that it was placed some 70-80 feet from the road in the middle of the Upper Land. They had to take down the wall at the north end of the Upper Land by the road, to get the caravan in. He said that he built the cattle shed on the Lower Land some 10 to 15 years ago. They re-roofed it in 2000. Certain aerial photographs were put to him dating from 2006 and it was suggested that no cattle shed was visible. He replied that it was “*hidden in the trees*”.

15. He was re-examined by Mr Trefor Lloyd. He said that they obtained access to the Lower Land from the Foel Las field to the east (yellow) through a gap in the fence. He recalled erecting an electric fence along the line AE on the Land Registry survey plan – across the northern end of the Upper Land. He did this about 4-5 years ago.

16. **Mark Williams** made a short statement upon which he was cross-examined at great length. His statement simply says that “*I have known and been visiting the Floyd Family at Foel Las Farm since 1994 and I can say that the Floyd family have always had use of the land the subject of this application without challenge.*” Mr Williams married Rhiannon Floyd-Williams and is therefore the Applicant’s brother in law. He said that cattle were kept on the Lower Land, but not on the Upper Land. He said that a horse was kept on the Upper Land. He said that the Applicant put his bales on the Upper Land.

17. **Christopher Smith** made a short statement, in which he says that he has lived in Eryrys all his life, and is familiar with “*John’s Old Quarry*”, adding: “*..... at no time do I ever, from being a small child to 2013 when my father passed away, did my father ever intimate to me that John Floyd had no right to use, store and graze the area. It was always known as Floyds Quarry.*” Under cross-examination, he explained that he was 52 years of age. He himself had never actually ground any corn on the Application Land – his father did. He said that the mill was some 60 to 70 feet from the “*Top gate*”. He said that he had never seen the Second Respondents use the

land. He was not able to discuss the boundary features since he was not familiar with them.

18. **Rhiannon Floyd-Williams**, the Applicant's sister, gave evidence. Her witness statement states that she has been familiar with the land since 1970, having lived there until 2006 when she and her husband moved to a neighbouring village. She says that her father told her that the land was previously known as Hall's Quarry, and that he took over the land some time after the 1940s. She produced a colour photograph taken at her wedding in 2005. This shows her horse Charlotte which, she confirmed, was standing on the Lower Land close to the fence separating it from the yellow (Foel Las) land. She refers to an occasion in the 1990s when Mr Beck put up a fence, and her mother went home to tell her father who went to see Mr Beck. The remainder of her statement amount to rebuttal of certain points made by the Respondents and her witnesses. She was cross-examined by Mr Hallows at very considerable and unnecessary length. She was asked about her sources of information as to the history of the Application Land and her father's involvement with it. All her knowledge derived from things her father had told her, she said. She understood that her father and grandfather had bought "the mountain" (being the high ground to the south) from a man called Goldsack, and "*the Quarry came with the mountain*". She said that they kept ponies on the Upper Land. The quarry entrances were protected by barbed wire and electric fences which the Applicant erected.

19. **Mr Steven Parker**. In his statement he says that he stayed in a caravan on "*John Floyd's land adjoining Foel Las Farm from the age of 5 in 1964 to the age of 12 in 1971. The land was never used by any other persons as far as I am aware except John Floyd and his family. Those facts of ownership of this land have never been questioned until now.*" He was cross-examined, and re-examined, as to the position of the caravan on the land, and the length of time that it was there. He said that the caravan was placed near the road on the Upper Land, but also said that it was actually placed on the yellow edged land, being part of Foel Las Farm adjoining the eastern boundary of the Lower land.

20. **Mr Stephen Tidswell**. In his witness statement he said that he had the shooting rights over Foel Las Farm "*and that this has always included the old silica quarry*

that was originally worked by Mr. Bob Hall.” He said that he had witnessed “*the land at the quarry farmed and fenced by the Floyd family as part of their farm.*” He recalled that “*at one point a neighbour put a gate into the quarry without permission this was subsequently never used.*” When cross-examined he said that he believed Mr Hall owned the quarry but the Floyds might have bought it and lost the deeds. He maintained that he had walked all over the Application Land with his dogs on a regular basis, and had even installed pheasant feeders in the quarry area. He insisted that Mr Floyd Senior had told him about the gate installed by Mr Beck in the western boundary of the Upper Land “without permission”.

21. The Applicant also relied on witness statements of Ralph Vaughan, Mair Floyd-Hughes, Mrs Menna Wynn, Mrs Alethea Floyd and John Elwyn Williams. Mrs Floyd was unable to attend the hearing due to her own state of health and the fact that she was caring for her husband. The other witnesses were not called to verify their statements and no explanation was given. Although these statements are admissible, where there has been no cross-examination the evidence inevitably carries less weight. In a case where the Applicant and the other witnesses have verified their statements and have been subjected to extensive cross-examination, such unsworn and untested statements cannot provide much assistance to the Tribunal.

THE RESPONDENTS' EVIDENCE

22. **Mr Beck** was cross-examined on his statements. It was put to him that he always knew that he did not own Field 89 (the Upper Land) and had only bought Fields 66, 85 and 86, which make up Tyn-y-Fynnon. He said that he had agreed the terms of the sale face to face with the vendor, Mr Scott, and they had actually walked the land, including the Upper Land. He that the western boundary of the Upper Land was in very poor condition, formed mainly by a few posts and strands of wire but it was perfectly possible to walk through and onto the Upper Land. The section between Gates A and B on the Survey plan was formed by a stone wall, but again it was in poor condition. He replaced the fence himself with a post and rail fence. He was concerned to make the remainder of Tyn-y-Fynnon stockproof because they were keeping cows on the land. Some years after buying Tyn-y-Fynnon he put up another fence, being the barbed wire fence noted on the Survey between points X and B on the Survey Plan. He did this so that he could keep cattle on the Upper Land, which

was otherwise enclosed. At this point in time, there was a solid boundary separating it from the road, save at the entrance to the cleared strip on the eastern boundary (being the Manor's right of way). He thought they kept some 6 cows and calves there during the 1980s and 1990s – the fence having been erected in about 1978. They could only graze cattle on the Upper Land once it had been made completely stockproof. They stopped keeping cattle on the land around 2000, but they did keep horses there afterwards until approximately 4 to 5 years ago, before the visit of the Land Registry surveyor. During all this time, they kept the land clear of trees and fenced it off from the land to the east. He was asked about his relationship with the Applicant's father, and replied that he thought highly of him, and never had any problems with him. (I should add that all the witnesses spoke very warmly of Mr Floyd Senior). He agreed that he was a "trusting" man. He was asked about his abortive application to register a possessory title to the Upper Land, in 2011, and why he did not pursue it. He said that he was distracted by his wife's illness and allowed matters to drift. He considered that the cleared strip of land along the boundary with the Manor (Mr Holt's land) did not belong to him. He had always considered this to belong to Mr Holt, or at least the three metre strip over which he has a right of way. That explains why he erected the fence along the line XB. He denied that the Floyds ever kept a pony on the Upper Land. He recalled Rhiannon's pony "Charlotte" but she was only ever kept on the Bottom Land. He said that the Applicant had removed the stone boundary wall along the line XE (beside Eryrys Road) within the last few years, prior to that the land was enclosed. The only opening was along the line AX, to give access to the right of way to the Manor and also the public footpath. He was asked about the caravan, used by the Parkers. He did recall it being parked up near the road at times, but it was moved onto Foel Las land (being the land to the east of the Bottom Land marked in yellow on the plan used by Mr Lloyd in opening the case) where it remained for 20 to 25 years in the occupation of Maldwyn Evans. He accepted that they did not use the Bottom Land, although they were able to obtain access to it through holes in the fences.

23. **Mr Holt** was also cross-examined at some length. He had bought the land on which he built the Manor some 30 years ago, but built the house from scratch and has only lived there for about 15 years. He accepted that the Floyds had been helpful and friendly at the start, and that Mr Floyd Senior had assisted him at the planning enquiry

into the Manor. The building of the Manor began in about 1998 or 1999. He had not seen any cattle on the Bottom Land [until recently] and he would have noticed them since his house adjoins it. He is not claiming the Upper Land, but he has a 3 metre wide right of way along his boundary and he has cut the grass and cleared the land to keep it open. He referred to an occasion a few years ago when slurry escaped from the Foel Las farm drive and covered the road in 3 to 4 inches of "cow muck". According to him, nothing was done to prevent it happening again, but he understood that it was suggested by the authorities that the slurry should be kept in the farmyard, rather than close to the road, and as a result the Applicant needed to move his silage bales elsewhere. In his opinion, this was the reason for the Applicant having opened up the entrance to the Upper Land and storing the bales there. He denied that he ever asked the Applicant for permission to cut the grass on the right of way. The access was open and he or his gardener would cut the grass every week. He accepted that he asked the Applicant if he had any land for sale, but never asked to buy the Upper Land. He denied that the cattle shed was built before 2009. He also confirmed that the Becks used to keep cattle on the Upper Land.

24. **Susan Cottrell.** She is a keen equestrian, and a neighbour of the Becks. In summary, she says in her witness statement that she noticed the Applicant opening an entrance into the Upper Land in the Autumn of 2014, when he created a level storage area close to the road. Prior to that he has made no use of the Upper Land. She was cross-examined on her statement. She said that she regularly rode along Eryrys Road, perhaps 3 or 4 times per week, and sometimes moved the horse onto the open area at the Upper Land to allow traffic to pass by. Until Autumn 2014 it was not possible to get a vehicle such as a tractor onto it. She never saw animals on the Upper Land. She was absolutely certain that Rhiannon's horse Charlotte was never kept on the Upper Land. The horse actually spent the last 3 years of her life on her own field. She had been accused by the Applicant of making unpleasant remarks about the Applicant's father – who was suffering from dementia. She vigorously denied this, and said that "*he is a great man. I have the utmost regard for him*". As I have said, this is the universal view of those who gave evidence. Sadly, however, he is too unwell to give evidence, and had not made a witness statement.

25. The final witness for the Respondents was **Stephen Latham**, another neighbour. Again, his statement was to the effect that the Applicant has only recently begun to use the Application Land. He was cross-examined. He said that he had lived in the area for about 4 years, and regularly walked the footpaths in the area. He was adamant that the silage bales only appeared on the Upper Land within the last 18 months or so. He was unable to shed any light on the use of the Lower Land.

FINDINGS

26. In the light of the evidence, I have concluded that the Applicant is not currently and never has been in exclusive factual possession of the Application Land. I find that he has, within the last three or four years created a vehicular entrance from the road into the Upper Land, which he has used to clear the area close to the road, and to store silage bales and other items there. He has occasionally parked a tractor there. However these recent activities do not amount to “exclusive factual possession” of the Upper Land. Furthermore, although he is currently in possession of that part of the Lower Land as lies within the area of the new cattle shed, he is not in exclusive factual possession of the Lower Land taken as a whole. I find that the cattle shed was constructed relatively recently, between 2006 and 2009 but within 12 years of the date of the Application.

27. In reaching these conclusions, I have considered the following factors in particular, although of course my findings are based on the totality of the evidence which I heard:

- a. The present appearance of the land does not suggest any regular current use, nor any recent grazing or other agricultural activity. It is overgrown and unkempt, except for (a) a narrow pathway cut through the bracken (done shortly prior to the site visit); (b) the presence of the silage bales towards the road; and (c) the cleared strip of land along the Manor boundary where the First Respondent has a right of way.
- b. None of the various photographs relied on, including the aerial photographs, indicates any grazing or other agricultural use. The land is invariably overgrown and wooded.
- c. The Land Registry survey, carried out in November 2011, records the existence of a barbed wire fence along the line XB. At this time, the greater

part of the Upper Land was enclosed, and accessible only from Tyn-y-Fynnon through either Gate A or Gate B. The survey also records that the land is wooded and unkempt.

- d. I am satisfied that the Second Respondents were in possession of the Upper Land – at least as far east as the barbed wire fence which they erected (X-B) – for a period from the 1980s until the early 2000s. They used the Upper Land for the grazing of cattle and horses.
- e. Access to the Upper Land was freely obtained from Tyn-y-Fynnon through the two gates. I do not accept the Applicant's evidence as regards the circumstances surrounding the construction of Gate B. The Second Respondents had no need to ask permission to erect this gate, and they already had free access to the Upper Land via Gate A. There was no discussion between Mr Beck and Mr Floyd Senior to the effect that the gate was temporary only.
- f. There is no sign of the cattle shed in any of the aerial photographs prior to 2009. It is highly improbable that the roof of the cattle shed would not have been visible in the photograph produced by Mr Beck (at page 39 of the Bundle) if it had existed at the time. The photograph was probably taken in 2006 although this is not certain. On the photograph there is an unbroken canopy of trees throughout this part of the Lower Land, whereas currently the trees have been partially cleared around the cattle shed. I consider that the cattle shed is visible on the Single Application photograph produced by the Applicant, which is dated 2009.
- g. The area subject to the Right of Way to the Manor is physically different from the remainder of the Upper Land. This is consistent with the Respondents' evidence that it has been regularly mowed and cleared. Until the Becks' erection of the barbed wire fence (X-B) this would have afforded public access into the Upper Land.
- h. The storage of silage bales on the Upper Land has only occurred within the last three to four years. It coincides with the Applicant's removal of the wall along the northern boundary. There was no gate in this wall, which he removed in its entirety in order to create an access.
- i. The photograph of the horse Charlotte – taken on Rhiannon Floyd's wedding day - indicates that she is standing on the Lower Land close to the boundary

with Foel Las Farm. It does not support the Applicant's evidence that horses were regularly kept on the Upper Land.

- j. The absence of any proper fences onto the Lower Land from the adjoining areas of Foel Las Farm – to the east and south – contradicts the claim that the Bottom Land has always been treated as part of Foel Las Farm. It seems to me quite improbable that the Floyd family, if they had really believed that the Application Land formed part of their holding, would not have incorporated these fields into their farm. Creating proper gated entrances would have been the obvious and natural course to take. Instead, the only access into the Upper Land was from the Becks' property Tyn-y-Fynnon, and into the Lower Land the only entrances are through gaps created in the existing boundary structures.
- k. The evidence regarding the parking of the Parker family caravan was vague and conflicting. Neither the Applicant nor Mr Parker could agree where it had been parked. Indeed, Mr Parker actually placed the caravan on Foel Las Farm itself – the yellow land. Mr Beck recalled a caravan being parked for a short time towards the road, but said that it had been moved onto Foel Las land and remained there for many years. In any event, the temporary parking of a caravan for holiday use would not amount to "factual possession".
- l. Contrary to the Applicant's evidence, there has been no regular maintenance of the fences and walls surrounding the land.

28. In reaching these conclusions, it is evident that where there is a conflict of evidence I have generally preferred the evidence of the Respondents and their witnesses to that of the Applicant and his witnesses. My reasons are as follows:

- a. The Applicant himself was not, I regret to say, an impressive witness. I shall give some examples. In his Statutory Declaration, and Statement of Truth, he stated that the Application Land was "*enclosed by a wall and fence on the Northerly side*". He was asked whether this was correct as at December 2015 when he made the statement, and confirmed this although currently, the Upper Land is open to the road along the entire northern boundary. He also said that there was a gate into the Upper Land from the road, and he that he had "widened" the entrance to it some three years ago to allow access by a tractor, but denied that he had knocked down the wall to obtain access. He had not



previously mentioned any gate. If the Upper Land was indeed enclosed by an ungated wall on the northern side, it would of course have been accessible only from Mr Beck's land, which would inevitably undermine his claim. His inconsistent answers on this point give every indication of having been designed to improve his case, rather than representing genuinely truthful answers. Further, in cross-examination, he was challenged as to how he could possibly have allowed livestock to graze the Upper Land, given the steep slope and the dangers posed by the quarry on the Lower Land. He then said that he had erected a barbed wire fence to protect the horses, but could not explain why this had never previously been mentioned, saying that this would not have been "relevant" evidence. Indeed, he had said that the Land Registry surveyor was wrong to note a fence along the line X-B. He also added that he had erected a moveable electric fence at the top, to allow the public to access the footpath. Again, none of this had been mentioned in his statements, nor in earlier questioning when he had been asked about his claimed maintenance of boundary features. Equally, his stubborn refusal to accept that the opening created by Mr Beck (Gate B) could be described as a "gate" – which it clearly is – is symptomatic of his reluctance to give an answer which he considers does not assist his own case. Generally, I did not feel confidence in the accuracy of his evidence.

- b. I appreciate that Rhiannon and Mark Williams were in the unenviable position of being called to support a close family member. I think that Rhiannon's evidence showed signs of having been tailored to fit in with that of her brother. Her evidence of the barbed wire and electric fence suggests this. Her statement contains personal attacks on some of the other witnesses, displaying a degree of animus which does not give confidence. When she was asked if she had actually read the statements that she was criticising, for some reasons she denied this, and said that they had been read to her. I found this incredible, particularly since she accepts that she did read Mr Holt's statement. Generally, she identified far too closely to her brother's case to be regarded as an independent witness. Mr Williams likewise.
- c. Mr Tidswell's evidence was incredible in some respects. The nature of the land makes it highly improbable that he would have shot over it, given that he has rights over a 300-acre farm including the substantial areas of cleared

moorland surrounding the Application Land. Given the nature of the land, which is heavily overgrown, has broken down barbed wire fences within it, and contains the remnant of a silica quarry, it seems improbable that he would have “regularly” walked his dogs over it. There are no signs of the pheasant feeders he talked about. Equally, it seems highly improbable that he would have recollected a conversation with Mr Floyd Senior (regarding Gate B) some 20 years after the event.

- d. Mr Parker’s evidence was too vague and contradictory to be of any use. Mr Smith’s evidence of his childhood memories was also of little help.
- e. By contrast, I found Mr Beck, and Mrs Cottrall, to be impressive witnesses. Although Mr Beck had over-egged the pudding in his original statutory declaration – claiming that he and his wife had been in possession of the Lower Land as well as the Upper Land – he was prepared to concede that this was wrong, and had in these proceedings limited his claim to the land west of the line X-B. Generally, I consider myself able to rely on his evidence. Mrs Cottrall – although she may possibly have some issues with Rhiannon Floyd-Williams (or perhaps vice versa) – struck me as the nearest thing to a completely independent witness in this case.
- f. Mr Holt clearly has a substantial animus against the Applicant, which means that the Tribunal should approach his evidence with some caution. Nevertheless, I found his evidence to be generally reliable. Mr Latham did his best, but his evidence was of marginal value.

CONCLUSIONS.

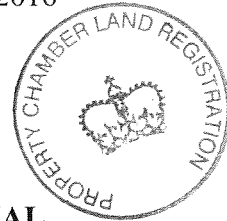
29. It follows from the above findings that the Application must fail. The Applicant has not proved, on the balance of probabilities, that he has been in exclusive factual possession of any part of the Application Land for a continuous period of 12 years ending on or prior to the date of the Application. The Application fails on the facts. However, even if he had been able to make out 12 years’ possession, that would not necessarily have been the end of the matter. The reason is that the factual possession must be “exclusive”. It has been held that where possession is by a family, as opposed to one individual, the necessary exclusivity of possession is absent. This topic is dealt with at 7-46 and 7-47 of Jourdan & Radley-Gardner on Adverse Possession (2nd ed.). In view of my findings, I do not need to consider this point

further, but it might well have operated to prevent the Applicant from satisfying the legal requirement of “exclusive factual possession”.

30. I therefore shall direct the Chief Land Registrar to cancel the application in Form FR1 dated 23rd February 2015. As to costs, I do not see why they should not follow the event. I assume that this will require a detailed assessment, although I am open to persuasion on that point. The Applicant may file and serve any submissions on costs on or before 30th September 2016, and the Respondents may respond within 7 days thereafter.

Dated this 21st day of September 2016

Owen Rhys



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