PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2015/0867

BETWEEN

TRACY ANN KING

Applicant

and

SUFFOLK COUNTY COUNCIL

Respondent

Property Address: Land adjoining 1 The Bungalow, Chilton Grove, Waldingfield Road, Sudbury
Title number: SK357481

ORDER

The Chief Land Registrar is ordered to give effect to the application for a restriction dated 10 December 2014.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 24th day of November 2016

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Title number: SK357481

Before: Judge McAllister
Colcherster Magistrates Court
13 October 2016

Representation: The Applicant appeared in person, assisted by Mr Cheese. The Respondent was represented by Mark Loveday of Counsel instructed by Suffolk Legal.

DECISION

Introduction

1. The issue in this case is whether the Applicant, Ms King, has obtained title by adverse possession of an area of woodland ('the Disputed Land') adjacent to her property at 1, Chilton Grove Bungalow ('No 1'). The Disputed Land forms part of a large area of land known as Chilton Grove Farm owned by and registered in the name of the Respondent ('the Council').

2. Ms King applied under section 97 and paragraph 1 of Schedule 6 to the Land Registration Act 2002 ('the Act') to be registered as owner on 10 December 2014. The Statement of Truth in support of the application was comprehensive and detailed. In essence, Ms King's claim is that the Disputed Land was fenced in or about September 2000 and that, since that date if not before, the Land has been used exclusively by Ms King and her family for a number of activities, the details of which are set out more fully below.

3. It is important, in this case, to set out in some detail the provisions relating to claims for adverse possession under Schedule 6. In the case of registered land, these provisions apply to claims where the claimant cannot show that the paper owner's title was barred by 13 October 2003 (the date on which the Act came into force). The scheme is as follows. The application form used by an applicant in such cases is known as the ADV1. Boxes 10 and 11 require the applicant to specify whether the application is being made under either paragraph 1 or paragraph 6(1) of Schedule 6, and, if the application is under paragraph 1, which of the conditions specified in paragraph 5 of Schedule 6 the applicant relies on. In this case Ms King stated that she was applying under paragraph 1, and intended to rely on paragraph 5(4).

4. Paragraph 1 provides that a person may apply to the registrar to be registered as a proprietor of a registered estate in land if he has been in adverse possession of the estate for a period of ten years ending on the date of the application. Paragraph 2 (1) (a) provides that the registrar must give notice to the proprietor of the estate to which the application relates. Paragraph 3(1) provides that the person to whom notice is given may require that the application notice be dealt with under paragraph 5. This right is exercisable by giving notice before the end of such period as the rules may provide (paragraph 3(2)).

5. Paragraph 5 in turn provides that, where an application under paragraph 1 is required to be dealt with under this paragraph, the applicant is only entitled to be registered as the new proprietor of the estate if one of three conditions is met. Paragraph 5(4) (the third condition) is that: (a) the land to which the application relates is adjacent to land belonging to the applicant; (b) the exact line of the

boundary between the two has not been determined under section 60 of the Act; (c) for at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him and (d) the estate to which the application relates was registered more than one year prior to the date of the application.

6. Paragraph 4 of Schedule 6 states that if an application under paragraph 1 is not required to be dealt with under paragraph 5, the applicant is entitled to be entered in the register as the new proprietor of the estate.

7. In short, the provisions of the Act introduce a new scheme for adverse possession claims. A key change is that, if required by the paper owner by invoking the proper mechanism, the squatter must be able to show that he or she can satisfy one of the three conditions set out in paragraph 5 of Schedule 6. In such a case, adverse possession (for ten years, rather than twelve, under previous law) is not in itself sufficient.

8. On 27 January 2015, Land Registry served notice of Ms King's application on the Council. The letter (in standard form) enclosed a copy of the application notice, a form NAP, the Statement of Truth and a plan of the Disputed Land. The letter also explained that a counter notice could be given requiring that the application be dealt with under paragraph 5 of Schedule 6, and stated that if no counter notice was given (and the applicant could show that she had been in adverse possession for the relevant ten year period) she would be registered as the new proprietor. Reference was also made to Practice Guide 4 (adverse possession). Finally, the letter stated that if the Council wished to object, or give a counter notice, or both, this had to be received by Land Registry before 12 noon on 30 April 2016, and that, if a counter notice was to be given, it had to be given in form NAP. Rule 189 of the Land Registration Rules 2003 provides that the period for the purpose of paragraph 3(2) of Schedule 6 is the period ending at 12 noon on the sixty-fifth business day after the issue of the notice. There is no provision for extending this time limit (see *Fontaine v Bertolussi* (2011) REF 2010/0499)

9. The NAP form requests that an X be put in the appropriate boxes: the respondent may consent to the registration of the applicant; require the registrar to deal with the application under paragraph 5 of Shedule 6 to the Act; object to the registration on grounds stated. It is obviously possible to put a cross in boxes 2 and 3.

10. In this case the form NAP was never completed. At 11.31 on 30 April 2016 the Council sent an email to Land Registry. This email stated that the Council objected to the application made by Ms King on the grounds that she had acknowledged title to the Disputed Land by offering to purchase the land and by making complaints to the Council, and stating that there was no possession or intention to possess.

11. On 15 May 2015, the Council sent a further letter of objection to Land Registry, raising a number of points, but not referring to or relying upon the provisions of paragraph 5 of Schedule 6. This point was raised for the first time in the Statement of Case in these proceedings, dated 3 February 2016, when it was asserted that the Applicant did not meet any one of the three conditions set out in paragraph 5. The Council asked that they be allowed to rely on this provisions notwithstanding their failure to complete the form NAP.

12. In the circumstances the following issues arise:

    (1) Has Ms King established adverse possession of the Disputed Land under paragraph 1(1) of Schedule 6?
    (2) Is the Council precluded from seeking to rely on paragraph 5 of Schedule 6? If not, can Ms King bring herself within paragraph 5(4)?

Adverse possession: the evidence.

13. No 1 was constructed (along with 2 Chilton Grove Bungalow, which lies directly to the north,) as a personnel hut during WW2 within the now disused Chilton Airfield which surrounds the properties to the north and east. The bungalow to the north is derelict and has been vacant (save for a period when squatters moved in)

for a number of years. The land surrounding this bungalow is overgrown to the point that it is difficult to gain access to this property.

14. The Disputed Land is an area of woodland, planted approximately 25 years ago, measuring some 38m x 32m or 0.3 acres. It lies to the east of No 1 and to the south of land forming part of 2 Chilton Grove. The land is roughly square in shape, save that it does not include the north eastern corner of the woodland. It was first planted with Christmas trees and in about 1990 re-planted with native deciduous trees which have now reached maturity.

15. The Council sold No 1 to Mark and Coral Bryant on 10 April 1992. The property enjoyed an express easement to drain into a septic tank on the Disputed Land. The right was initially for a period of 12 months only but it is clear than an easement by prescription has arisen. The septic tank is near the southern boundary of the Disputed Land.

16. Mr Cheese and his father became tenants of the Bryants in 1993. In October 1998 Ms King bought No 1. At that time she was married and lived nearby with her husband. Ms King moved to 1 The Bungalow in 1999/2000 and has lived there since with Mr Cheese who became, and has remained, her partner.

17. The Council had made a decision before the sale of No 1 to retain the Disputed Land as a buffer area and amenity area in the event of any development on what used to be the airfield to the north and west. This area is now part of the proposed and extensive Chilton Woods development which will include housing, a new school, shops, and other amenities.

18. In 1999 Ms King approached the Council with a view to buying the Disputed Land. The Council refused. At that time the Council maintained that the Disputed Area formed part of their conservation area held in conjunction with their farms. It is now accepted that the land is not a conservation area. It was also stated by the Council that the Disputed Land would continue to be an amenity area and a buffer between No 1 and any development which might take place in the future.

19. By a letter dated 3 June 2000 Ms King informed the Council that she intended to remove a number of trees which were blocking access from the soil pipe to the septic tank and to erect a 6ft fence around the Disputed Land. Access to the Disputed Land would be from a gate from No 1. The letter stated that she would wait 3 months before erecting the fence. There was no reply to this letter. There was little contact between Ms King and Mr Cheese and the Council between 1999 and 2014 (save as set out below) although they complained, on a number of occasions, of flooding in No 1 and the land surrounding it, from another property which, it seems, was owned by the Council.

20. A number of photographs were taken by Sarah Barron, a Council employee, in 2009. These show the paths, flowers, the gate, (to No 1) stone seat, and a child's swing. They also show a pile of vegetation and clippings which, says Ms King, were piled up to be burnt. In addition, and significantly, these photographs show the 6ft fencing at various points around the Disputed Land.

21. In September 2014 a Mr Laylor, on behalf of the Council, told Mr Cheese that the Council had decided to sell 2 Chilton Close Bungalow together with the Disputed Land. Ms King and Mr Cheese offered to buy both the bungalow (and the Disputed Land) (without prejudice to their contention that they had acquired the Disputed Land by adverse possession), but this offer was rejected. It was this which promoted Ms King to make the application to Land Registry.

22. Land Registry inspected the Disputed Land on 18 December 2014. The surveyor noted a 2m high wooden post and wire mesh fence surrounding the Disputed Land. Some of the posts had moss and ivy growth, and many were loose and were given extra supports. The surveyors concluded the age of the fence was 15 years plus. The same applied to the outer fencing squaring off the north eastern fence. Traces of a smaller fence around the inner 2 metre fence were also present, in a dilapidated state. The age of this fence was put at 20 years plus. It was not possible to gain access to the (small) area between the outer and inner fence. It seemed to the surveyor attending the site that the Disputed Land was occupied by No 1.

23. I heard from Ms King's brother, Marcus Johnson, who stated that he erected the inner 6ft fence referred to above in the summer of 2000. He provided the material. The work took one day, and the fence raised the level of, or was close to, the existing fence. A new fence was erected in the north eastern corner. The purpose was to enclose the Disputed Land and to keep people out (by ensuring that the only access is through the gate to No 1) and in due course, to keep dogs in. The fence was put up 3 years before Ms King and Mr Cheese got their first of their four husky dogs. The existence of the outer fence is most obvious on the northern side of the Disputed Land where there is a clear gap between the two. The fence he erected is as it is now: it has not been changed since 2000.

24. It is Ms King and Mr Cheese's evidence that Mr Cheese had been looking after the Disputed Land from 1993 onwards, although, in the early years, there were infrequent visits from Council foresters. Until the 6ft fence was erected in 2000, there was only a 3ft chicken wire fence around the Disputed Land (to keep the rabbits from eating the newly planted saplings) and it was easy to gain access to the Disputed Area by simply stepping over the fence.

25. From 2000 onwards, the Disputed Land was used by Ms King and her family to the exclusion of anyone else. During this time, Ms King stated that she planted hundreds of bulbs, created established paths, cut back the undergrowth (and used woodchip to keep the paths clear) put in a concrete seat and other seating, created an outdoor fire place, held annual parties, put in an electric cable for lighting and for CCTV. This work was done over time: the planting was an on going process from the early 2000s (and continues to this day); the woodchip was put down in about 2006 and the concrete seat in 2010. The Disputed Land, on her evidence, was treated as yet another part of the garden to No 1, which is itself divided into what she described as a 'series of rooms'.

26. Ms King accepts, as she must, that the Council have paper title to the Disputed Land. But she feels very strongly that, after having, as she sees it, looked after the Disputed Land for some 15 years, and having tried to purchase it, the land in some sense belongs to her.

27. On behalf of the Council, I heard first from Peter Fisk who was employed as a forester by the Council and its predecessors from August 1971 until January 2003 when he retired. At some time after 1984 he planted the Disputed Land with Norway Spruce to create a Christmas tree plantation. These trees were all cut down and sold in 1990. Mr Fisk then planted the Disputed Land as mixed woodland. Thereafter he attended the site in April/May, then June, then September to spray the trees and cut back the vegetation around the trees, albeit that his visits were less frequent in later years, prior to his retirement. The Disputed Land had been fenced with a 3 foot rabbit fence before the trees were first planted in 1984. His evidence was that, at some point, he saw that this fencing had been removed from the boundary with No 1. He reported this to the Council who wrote to Mr Cheese, requiring him to re-instate this. There is no record of any such letter. He also stated that he was able to get into the Disputed Land by climbing over the 3ft fence up to 2003.

28. Following his retirement Mr Fisk was asked by the Council officer managing 2 Chilton Close Bungalow to do some work to tidy the grounds around the property. He did so for a few years. Mr Fisk has produced an invoice showing that he did a few hours a month between May and September 2008. He last attended in 2010. It is his evidence that he did not see any 6ft fence around the Disputed Land. Ms King, in rebuttal to this evidence, points to the fact that one of the photographs taken in 2009 by Ms Barron appear to show that no work was done to at least that part of the land immediately to the north of the Disputed Land.

29. Sarah Barron, who was employed as the County Farms Review Officer by the Council, also gave evidence about a visit by her to the Disputed Land on 3 August 2009. Her purpose for going to the area was to inspect 2 Chilton Grove Bungalow, but she had been made aware of a possible encroachment onto the Disputed Land. Ms Barron took a number of photographs, and accepted that the fence was not 3ft all the way around, but was, at least in places, higher, as is shown in some of the photographs. Ms Barron claimed to have gained access easily through the northern fence. This evidence is a little puzzling: she can only have done so if she made a hole in the fence. Having gained access, she said she saw what she believed to be

the beginning of an encroachment: a swing, gate, higher fence, and other indications.

30. Mr Cheese complained to Mr Cartmell (the Council's Corporate Landlord Manager) on 3 August 2009 about Ms Barron's visit. Mr Cartmell was not clear whether he had been told that there was the beginning of an encroachment (to use Ms Barron's term) on the Disputed Land, but accepted that in reality the Council lost sight of the Disputed Land between 2009 and 2014.

Adverse possession: my findings

31. The task before me is to apply the well known principles of the law of adverse possession to the facts as found by the Tribunal. The starting point is the leading case of *J.A.Pye (Oxford) Ltd v Graham* [2002] UKHL 30, in particular the following passages from the speech of Lord Browne-Wilkinson:

> "Possession
>
> 40. In Powell's case Slade J said, at 38 P & CR 452, 470:
>
> *"(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land as being the person with the prime facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.*
> *(2) If the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess ("animus possidendi")."*
>
> Counsel for both parties criticised this definition as being unhelpful since it used the word being defined— possession— in the definition itself. This is true: but Slade J was only adopting a definition used by Roman law and by all judges and writers in the past. To be pedantic the problem could be avoided by saying there are two elements necessary for legal possession:
>
> 1. a sufficient degree of physical custody and control ("factual possession");
> 2. an intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess"). .....
>
> Factual possession
>
> 41. In Powell Slade J, at pp 470-471, said this:
>
> *"(3) 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."

I agree with this statement of the law which is all that is necessary in the present case."

32. Counsel for the Council also referred me to a number of other authorities, in support of the propositions that the squatter must show an intention to exclude the paper owner and others (*Batt v Adams* (2001) 82 P&CR32, *Chambers v Havering* [2011] EWCA Civ 1576); that trivial acts of possession are not usually sufficient to support adverse possession (*Tecbild v Chamberlain* (1969) 20 P&CR 633) and that, in general terms, clear and affirmative evidence of both factual possession and intention to possess is required (see *Powell v Macfarlane* (1977) 38 P&CR 452.

33. A key factor to be considered, of course, is the nature of the land in relation to which the claim is made. This is woodland, used and preserved as such. Acts of possession of woodland are by their nature going to be relatively minor. In this case, I have no hesitation in finding that the Disputed Land is occupied exclusively by Ms King and her family, and that the land is used and dealt with as an occupying owner might be expected to use and deal with it. It is only accessible (other than with great difficulty) through a gate into her adjoining property. It is looked after and tended on a regular basis. Flowers and plants have been planted along marked out paths. The undergrowth is kept at bay. There are various items, such as seating and a swing, which suggest use and occupation.

34. It is common ground that in order to establish adverse possession for the purposes of Schedule 6, Ms King must show that she has been in exclusive occupation from November 2004 to November 2014. It is not disputed on the Council's behalf that at least some fencing was erected in 2000 and that this was primarily by way of addition to the existing rabbit fencing. The Council do not however accept that the fencing was 6ft in height all the way round the Disputed Land or that it has remained the same since the year 2000. Reliance is placed on the evidence of Ms Barron and Mr Fisk.

35. I am not persuaded that the evidence of Ms Barron and Mr Fisk goes anywhere near to rebutting the evidence from Ms King and Mr Johnson (which I accept) that

the Disputed Land was not fenced, in its entirety, and at a height of some 6ft, from 2000 onwards. Ms King wrote to the Council in June 2000 that she intended to erect the fencing within 3 months. The surveyor who attended on behalf of Land Registry in 2014 assessed the fencing as being at least 15 years old. The photographs taken in 2009 by Ms Barron show large sections of the fencing. I suspect that Ms Barron entered the Disputed Land with some difficulty by either cutting or lifting sections of the fence. Indeed, this seems to be admitted in the Council's Statement of Case which states that Ms Barron '*gained access to the disputed land through or over the outer and inner* fencing'. It is also to be noted, as mentioned above, that she was sufficiently concerned by what she saw on the Disputed Land to report back that an encroachment was taking place on the land.

36. Mr Fisk stopped working on the Disputed Land, on his own evidence, at the latest in 2003. There is no documentary evidence to indicate when he last attended the Disputed Land. It is possible that, by 2000, he had stopped going to the Disputed Land. I have no doubt that Mr Fisk was doing his best to recall events which occurred some years ago, but this is small piece of land, and it is very possible, in my judgment, that he is simply mis-remembering dates. There is some force in Mr Cheese's point that the photographs taken in 2009 raise a doubt as to whether the land around the northern bungalow was being looked after by Mr Fisk up to 2010.

37. As stated above, I accept the evidence given by Ms King and Mr Johnson in relation to the erection of the fence and the use made by the family of the Disputed Land. I accept, too, that the Disputed Land was used to exercise 4 huskies for many years (although they were not there in 2000) and that it was necessary to make sure the Disputed Land was properly fenced to prevent them escaping. The fencing also ensured, of course, that the Disputed Land was used exclusively by Ms King and her family. In simple terms, Ms King made the Disputed Land part of her garden, and treated it, in every way, as an occupying owner of woodland would treat woodland. No-one else had access to this land.

38. The Council, it seems to me, took no interest in the Disputed Land between 2000 and 2014. Ms Barron's visit in 2009 was incidental to her visit to the other bungalow, but even this visit did not prompt the Council into taking any action.

The paragraph 5 Schedule 6 point.

39. The Tribunal, and its predecessor, (the Adjudicator to HM Land Registry) have considered the provisions of Schedule 6 on a number of occasions, both before and after the High Court decision in *Hopkins v Beacon & Beacon* [2011] EWHC 2899 (Ch), a decision of Mr Justice Vos. This was an appeal from the Adjudicator in relation to a NAP Form, whereby the title owner failed to tick the paragraph 5 box. Mr Hopkins had placed a cross only in the box marked 'I object to the registration on the grounds stated in panel 6'. He attached a document to the form in which he rebutted the points made by the applicant, but made no reference to paragraph 5.

40. Vos J held that the failure to tick the paragraph 5 box did not necessarily deprive the objector of the right to rely on the paragraph 5 conditions. In the course of a careful consideration of the authorities on notice, in particular the well-known decision in *Mannai Investment Co v Eagle Star Life Insurance Co Ltd* [1997] AC 749, Vos J formulated the test in this way: *"....the form NAP in this case must be such that a reasonable registrar would have been left in no reasonable doubt that it was a notice invoking paragraph 5."* He held that the procedure set out in the Act and the rules is supportive or ancillary to the statutory regime. The substantive requirement is that the registrar is informed that the person served with a notice under paragraph 2 wishes the matter to be dealt with under paragraph 5. How this is done is procedural. But the key point is the registrar, looked at the matter objectively, in looking at the form and accompanying material, can be left in no doubt that the applicant was requiring the registrar to invoke paragraph 5.

41. On the facts of the case, Vos J upheld the Deputy Adjudicator's finding that the form and accompanying statement was not clear to a reasonable recipient and could easily have been construed as deliberately refraining from invoking paragraph 5.

42. The decisions in this jurisdiction, both before and after *Hopkins,* have also taken a narrow interpretation of the provisions (I will consider the cases relied on by Counsel for the Council below). It is immaterial that if paragraph 5 had been invoked, the applicant's claim would have failed (see for example *Dickenson v Longhurst Homes* (2008) REF 2007/1276)

43. Whilst it is true that the registered proprietor might reasonably be expected to invoke paragraph 5, the NAP form only gives him the option of doing so. It is his choice whether to tick the box, and he may have good reason not to do so.

44. In this case, it is striking that the Council never completed the NAP form, but relied solely on a brief email sent some 30 minutes before the time expired for objections or counter notices, and a longer letter sent later. But even leaving aside the failure to comply with Rule 190 of the Land Registration Rules 2003 (which require a notice to the registrar under paragraph 3(2) of Schedule 6 to the Act to be given in Form NAP) there is nothing in either the first email or the second letter dated 15 May 2015 to lead the registrar to conclude that the conditions in paragraph 5 were being invoked. The only conclusion which I believe can be drawn is that the reasonable land registrar, faced with the email and the subsequent letter, would reasonably conclude that the Applicant's objection consisted only of a challenge to the allegations of exclusive possession The person to whom the NAP (and any other material) is to be addressed is the registrar, not the Applicant. It is too late to raise the point once the matter has been referred to the Tribunal.

45. Counsel for the Council referred to me to a decision of mine in *Griffin v Crown Mill (1993) Management Limited* [2016] UKFTT 0071 (PC). In that case the Applicant in an adverse possession case applied under a general form to change the register, and did not follow the procedure set out in Schedule 6. Land Registry nonetheless accepted his application, and did not require the Respondent to complete a NAP form. As a result, not surprisingly, the Respondent in turn did not in terms require the Applicant to comply with paragraph 5. The Respondent was not notified that it should have done so. At trial, applications were made on behalf of each party to strike out the other's case. In the somewhat unusual circumstances

of that case, and with the consent of Counsel, I decided to continue with the case as if each party had, from the outset, complied with the relevant procedure.

46. This is a very different case. Ms King complied with the requirements of the Act. The Council did not, and more importantly, they did not give any indication to the registrar, before the matter was referred to the Tribunal, that they wished the dispute to be dealt with under paragraph 5, even though it was made clear to them by Land Registry that this was an option open to them.

47. In my judgment, too, *Baxter v Mannion* [2011] EWCA Civ 120, does not assist the Council. In that case, Mr Baxter invoked the procedure under Schedule 6 to be registered under the Act and was so registered. Mr Mannion failed to respond in any way to the notice of the application (for reasons set out in the decision). In due course, having discovered what happened, he applied to rectify the register under Schedule 4, on the grounds that Mr Baxter had been registered as a result of a mistake. At first instance I found that Mr Mannion had not been in adverse possession for the requisite period and accordingly gave effect to the application to rectify the register. The decision was upheld in the Chancery Division and the Court of Appeal. This is a case which turns, essentially, on the ambit of 'correcting a mistake'.

48. In this case, the Council cannot seek to rely on paragraph 5 of Schedule 6. If paragraph 5 had been invoked, it is clear to me that Ms King's application would have failed. Whilst there is no doubt (and it is not disputed) that the Disputed Land is adjacent to land belonging to her, that the boundary between the two properties has not been determined, and that the Disputed Land was registered in the Council's name more than a year before her application, Ms King would fall at the further requirement, namely that she reasonably believed that the Disputed Land belonged to her.

49. Ms King was well aware that the Council had paper title to the land. It is not enough to contend that she believed that the Disputed Land had become hers by adverse possession. If this were so, the provision in paragraph 5(4) (c) would be otiose. Ms King knew at all times that the Disputed Land belonged to the Council.

Conclusion

50. For all the reasons given above, the Applicant succeeds in her application. I will accordingly order the Chief Land Registrar to give effect to her application dated 10 December 2014.

51. As the successful party the Applicant is in principle entitled to her costs, assessed on the standard basis, and at the rate applicable to litigants in person, in addition to reasonable disbursements. If she wishes to pursue a costs application, she is to file and serve a schedule of costs (together with supporting receipts, if applicable) by 9 December 2016. The Council may respond, by raising such objections as it deems appropriate, by 6 January 2017.

Dated this 24th day of November 2016

Ann McAllister

BY ORDER OF THE TRIBUNAL