



[2017] UKFTT 0007 (PC)

REF/ 2015/0936

**PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL**

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

**(1) CRAIG ALISTER WATERS
(2) CLAIRE LOUISE WATERS**

APPLICANTS

and

MYRON WYNNE EVANS

RESPONDENT

**Property Address: Garage lying to the South East of 48 Rhydden Road,
Craig Cefn Parc, Swansea**

Title Number: CYM647707

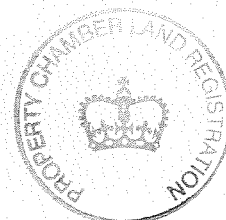
ORDER

The Tribunal orders that the Chief Land Registrar do give effect to the application of the Applicants, Craig Alister Waters and Claire Louise Waters dated 27th April 2015 to be registered as proprietors of the land edged red on the notice plan dated 4th June 2015 as if the objection thereto of the Respondent, Myron Wynne Evans had not been made.

Dated this 25th day of November 2016

Michael Michell

BY ORDER OF THE TRIBUNAL





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Parc, Swansea**

Title Number: CYM647707

Before: Judge Michell

**Sitting at: The Civil Justice Centre, Swansea
On: 6th and 7th October 2016**

**Applicants Representation: In person
Respondent Representation: Mr Robert Craven, counsel**

DECISION

APPLICATION FOR FIRST REGISTRATION -ADVERSE POSSESSION-WHETHER LAND PART OF ADJOINING REGISTERED TITLE-WHETHER APPLICANTS' PREDECESSORS OCCUPIED WITH PERMISSION-WHETHER LAND PART OF AN UNADOPTED HIGHWAY AND IF SO WHETHER APPLICANTS UNABLE TO CLAIM BY ADVERSE POSSESSION

Cases referred to

Powell v McFarlane (1977) 38 P and CR 452

Prudential Assurance Co Ltd v. Waterloo Real Estate Inc [1999] 2 EGLR 85

J A Pye (Oxford Ltd) v Graham [2003] AC 419

R (on the application of Wayne Smith) v Land Registry [2010] EWCA Civ 20

1. Mr and Mrs Waters have applied to HM Land Registry for registration of a garage (including the land on which it stands) near Mountain Road, Craig Cefn Parc. The application was made in form FR1 dated 15th April 2015. Mr Myron Evans is the registered proprietor of 50 Rhyddwen Road, Craig Cefn Parc, Swansea (“Number 50”). Mr Evans objected to the application and the matter was referred to the Tribunal for determination.

2. I inspected the land accompanied by the parties on the afternoon before the first day of the hearing. Numbers 50 and Number 48 Rhyddwen Road (“Number 48”) are semi-detached cottages, Number 48 being the northerly of the two. Number 50 is at the junction of Rhyddwen Road and Mountain Road, Mountain Road being to the south of Number 50. There is a grass verge on the north side of Mountain Road. The ground level of Number 50 is at a lower level than the grass verge. A drive slopes down from the western end of Mountain Road to provide access into the rear garden of Number 50. The garage stands to the east of this drive on what could be described as part of the verge of Mountain Road. It is a structure comprised of a wooden frame onto which are attached corrugated metal sheets. The garage has double doors at its western end. The doors were secured by a padlock at the time of my visit. Immediately to the east of the garage is land comprising the western point of the garden of the property known as 10 Mountain Road.

Background

5. The paper title to the garage site is disputed.

6. By a Lease dated 9th September 1897 Ellen Elizabeth Gwyn demised to William Newlands part of a farm called Yagwr Wen said to contain by admeasurement thirty perches “or thereabouts” and “more particularly delineated and drawn” on the Lease and “surrounded with the colour pink” “together with power for the lessee ... to erect or build thereon one cottage or a dwellinghouse with suitable offices and outbuildings”. The plan shows an area edged pink running off the east side of a road. The area is a parallelogram. There is a kink towards the eastern end with the north and south sides turning to run south to reach the eastern end. Measurements written on the area edged pink are 40’ at the west end, 204’ along the north side, 40’ at the east end and 204’ along the south side. Adjoining the pink edged area on its south side is an area marked as being 18’ in depth from the pink land and on which are written the words “Reserved for Road”. The land was demised for a term of 99 years from 25th March 1897 at a rent of £1 10s.

7. By a conveyance dated 20th October 1926 Joseph Gwyn conveyed to William Newlands

“Firstly All That piece or parcel of land containing by estimation Thirty perches or thereabouts being part of a certain farm called Yagwr Wen ... which said piece or parcel of land is more particularly delineated or described in the plan drawn on these presents and thereon coloured blue Together with the messuage and premises erected thereon”

This is the land the subject of the 1897 Lease. It is shown on the conveyance plan as having a frontage to Rhyddwen Road of 40 feet and a depth of 204 feet. The conveyance then conveyed

“Secondly All That strip of land containing by admeasurement Thirteen and a half perches or thereabouts adjoining the premises firstly hereinbefore described and more particularly delineated and described in the said plan and therein coloured pink”.

The strip is shown on the plan as lying immediately to the south of the other parcel of land conveyed and as having a frontage to Rhyddwen Road of 18’. It appears to be the same strip of land as is shown on the plan to the 1897 Lease marked “Reserved for Road”.

8. William Newlands died intestate on 1st February 1933, letters of administration being granted on 27th May 1933 to his daughter Martha Jane Jones. The Respondent, Mr Evans referred to Martha Jones in parts of his evidence by her maiden name “Martha Newlands”.

9. Martha Jones executed a conveyance dated 9th September 1933 of certain land to Benjamin Hopkin. The conveyance includes a recital, setting out the effect of the conveyance of 20th October 1926 and stating “the said William Newlands erected another house on the land conveyed by the said Conveyance”. The land conveyed was

“All that piece or parcel of land containing by admeasurement Twenty one point seven five perches or thereaboutsand more particularly delineated and described in the map or plan thereof endorsed hereon and therein coloured pink and yellow Together with the messuage or dwellinghouse now erected thereon and known as number 2 Brynawel Cottages...”.

On the conveyance plan, the 21.75 perches measurement is shown written on the pink shaded area. There is no indication at all on the plan that the area measuring 21.75 perches extends beyond the pink and yellow shaded areas. The conveyance was subject to a right of way over a thin strip at the rear of the house for the benefit of “the property adjoining the premises hereby conveyed on the north side thereof and known as No 1 Brynawel Cottages”. Number 2 is what is now Number 50 and Number 1 is what is now Number 48. On the conveyance plan, the southern boundary of what became Number 50 is shown as running along the southern wall of two buildings shown in the rear garden of Number 50. The southern wall of those buildings appear to be in the same approximate line as the southern wall of the garage building now in the rear garden of Mr Evans.

10. It would appear that on the same day Martha Jane Jones conveyed to Sara Maud Hopkins

“All that piece or parcel of land containing by admeasurement 21.75 perches or thereabouts ... Together with the messuage or dwellinghouse now erected thereon and known as No. 1 Brynawel Cottages”.

The conveyance was not in evidence but it is referred to in an Assent dated 13th July 1962 whereby Elizabeth Williams, as the personal representative of Sara Maud Hopkins assented to the vesting of Number 48 in herself.

11. By a conveyance dated 4th October 1933 Benjamin Hopkin conveyed Number 2 Brynawel Cottages back to Martha Jones.

12. It would appear that the area conveyed by the 1926 conveyance, being a total area of 43.5 perches was divided equally to provide the sites for Number 48 and Number 50. The total road frontage of the land conveyed by the 1926 conveyance is 58 feet. Counsel for Mr Evans informed me that scaling up from the Ordnance Survey plan attached to the Land Registry survey report, being a plan at a scale of 1:500, gave a total frontage measurement for Numbers 48 and 50 of 56 feet. The plan on the 1933 conveyance is at a scale of 40 ft to 1 inch or 480:1.

13. Martha Jane Jones died on 7th July 1969. Her personal representative, her son William Mendelssohn Jones conveyed Number 50 to Mary Evans by a conveyance dated 12th December 1969. Mary Evans conveyed Number 50 to Mr and Mrs John Ferguson on 2nd November 1970. Mr and Mrs John Ferguson conveyed Number 50 to Jennifer Murray on [3rd] February 1975. Jennifer Murray conveyed Number 50 to Dr and Mrs Findlay on 29th July 1976. Title to Number 50 was first registered on 22nd September 1976. On 20th May 1982 Mr and Mrs Meurig Harris transferred 50 to Mr and Mrs Sean O'Sullivan. Mr and Mrs O'Sullivan transferred to Mr Evans, who was registered as proprietor of Number 50 on 25th January 1993.

14. It is common ground that the garage was constructed by Cenfyn Williams in about 1960 and used by him. Cenfyn Williams did not then live at Number 48. He purchased Number 48 in 1976. Cenfyn Williams died on 22nd August 2010 and Number 48 came into the ownership of his son, Ellis Williams. On 28th August 2013 Mr Ellis Williams made an application to HM Land Registry for first registration of the garage site and a small area of land around it, including a wedge-shaped area in front of the garage over which it would be necessary to pass in order to get in and out of the garage on the basis that the title deeds to the land had been lost or destroyed. In a Statement of Truth made in support of the application, Ellis Williams gave details of the construction of the garage, his late father's use of the garage to garage specified vehicles and to store a ladder and his own use of the garage for storage since 2010. He went on to say that the garage was given to his late father by a neighbour, Mr Thomas but that he had been unable to find the title deeds. The application did not proceed. It is not clear from the evidence why.

15. Ellis Williams put the property on the market for sale through estate agents, Astleys. The agents' particulars included the words "This lovely home also benefits from ... two

parking spaces and garage”. They also included a photograph of the garage in dispute in these proceedings. There can be no doubt but that the estate agents were advertising Number 48 for sale together with the garage.

16. Ellis Williams sold Number 48 to Mr and Mrs Waters with completion taking place on 13th September 2014 and the transfer being registered on 19th September 2014. At the time of exchange of contracts, Ellis Williams made an application to HM Land Registry for first registration of the garage site and a small area of land around it, including a wedge-shaped area in front of the garage over which it would be necessary to pass in order to get in and out of the garage on the basis of adverse possession. In the Statement of Truth made in support of his application, Ellis Williams ticked the box to say that he was the person then in adverse possession and described the acts of adverse possession as follows,

“My father erected a garage on the property in 1960 and thereafter used it continually for all purposes including parking his own vehicle. Up until my father’s death in 2010 he continually used the garage for parking vehicles with access being obtained off Mountain Road, Craig Cefn Parc over the area of land shaded green on the attached plan.

Since my father’s death I have continued to use the garage for storage, accessing the same over the area of Land shaded green on the Plan attached”.

He said that the land had been enclosed by the erection of the garage and that the garage had been locked with a padlock at all times.

17. Land Registry requisitioned a survey on 21st January 2015. The requisition describes Mr Waters of Number 48 as the keyholder of the garage and the survey report states that the garage door was secured by a padlock which was unlocked and opened by Mr Waters.

The Application

18. Mr and Mrs Waters made their application to HM Land Registry for first registration based on adverse possession by form FR1 dated 15th April 2015. The application was for registration not only of the site of the garage but also of the grass verge area around the garage and extending to the junction of Mountain Road and Rhyddwen Road. HM Land Registry accepted the application as an application for registration of the site of the garage only. HM Land Registry gave notice of the application to Mr Evans by letter dated 4th June

2015. The plan accompanying the notice shows the land the subject of the application as being the garage site only.

The Law

19. Section 15 of the Limitation Act 1980 provides as follows:

“15(1) No action shall be brought by any person to recover any land after the expiration of 12 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.”

(6) Part I of Schedule 1 to this Act contains provisions for determining the date of accrual of rights of action to recover land in the cases there mentioned.”

20. Section 17 of that Act provides

“Subject to—

(a) section 18 of this Act; .

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 deals with settled land and land held on trust and is not relevant.

21. Schedule 1, paragraph 1 to the Limitation Act 1980 provides as follows:

“Where the person bringing an action to recover land, or some person through whom he claims, has been in possession in the land, and has while entitled to the land been dispossessed or discontinued his possession, the right of action, shall be treated as having accrued on the date of the dispossession or discontinuance.”

22. Schedule 1, paragraph 8, provides:

“(1) No right of action to recover land shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as ‘adverse possession’) and where under the proceeding provisions of this Schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on

that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.

(2)

(3)

(4) For the purpose of determining whether a person occupying any land is in adverse possession of land it shall be not assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter's present or future enjoyment of the land.

This provision shall not be taken as prejudicing a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case."

23. Thus, the right of action to recover the land is barred under the Limitation Act 1980 whenever 12 years have elapsed from the time when any right of action accrued. It does not have to be a period immediately before an action is brought. When the right of action to recover the land is barred, the title of the person formerly having the right to bring the action is extinguished.

24. The question to be answered when considering whether a person occupying land is "in adverse possession" for the purpose of Schedule 1 paragraph 8 to the Limitation Act 1980 is

"...whether the Defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner...Beyond that...the words possess and dispossess are to be given their ordinary meaning."

(per Lord Browne-Wilkinson in *J A Pye (Oxford Ltd) v Graham* [2003] AC 419 at paragraphs 36, 37).

25. Legal possession is comprised of two elements:

- (1) A sufficient degree of physical custody and control (“factual possession”);
and
- (2) An intention to exercise such custody and control on one’s own behalf and for one’s own benefit (“intention to possess”). “What is crucial is to understand that, without the requisite intention in law there can be no possession. Such intention may be, and frequently is, deduced from the physical acts themselves.” (*ibid* paragraph 40).

26. Factual possession has been described as follows:

“It signifies an appropriate degree of physical control. It must be a single and [exclusive] possession...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.”

per Slade J in *Powell v McFarlane* (1977) 38 P and CR 452 at pp. 470-471, cited at paragraph 41 in *J A Pye (Oxford) v Graham*.

27. What is required for the intention to possess is the intention to exclude the whole world, including the true owner of the paper title, from the land so far as is reasonably practicable and so far as the processes of the law will allow – see per Slade J. in *Powell v McFarlane* above. The intention must not only be the subjective intention of the squatter but the squatter must also show by his outward conduct that he has such an intention. The intention must be manifested by unequivocal action – see *Prudential Assurance Co Ltd v Waterloo Real Estate Inc* [1999] 2 EGLR 85 at 87. The use of the land must be such that the true owner, if he took the trouble to be aware of what was happening on his land, would know that the squatter was in possession

“It would plainly be unjust for the paper owner to be deprived of his land where the claimant had not by his conduct made clear to the worlds including the paper owner, if

present at the land, for the requisite period that he was intending to possess the land” – per Peter Gibson LJ in *Prudential Assurance Co Ltd v. Waterloo Real Estate Inc* [1999] 2 EGLR 85 at 87

Mr and Mrs Waters’s Case

28. Mr and Mrs Water’s case is that the garage has been used by Cenfyn Williams, Ellis Williams and themselves sequentially since the garage was erected, in about 1960, being a continuous period of more than 12 years. They say that the use has amounted to possession and has been without consent.

Mr Evans’s Case

29. Mr Evans’s case is that Cenfyn Williams erected the garage and thereafter used it with the consent of the then owner of Number 50, Martha Jones (ne Newlands) and that from January 1993 when he acquired Number 50, Cenfyn Williams and subsequently, Ellis Williams used the garage with his consent. He says that there has not been 12 years adverse possession. He also says that the garage site forms part of the land included in the registered title of Number 50 and that there was not 12 years adverse possession of the garage site prior to September 2003 so any application for adverse possession of the garage site must be made under Schedule 6 to the Land Registration Act 2003. Further, he says that the garage site forms part of a highway and cannot be the subject of a claim by adverse possession.

The Evidence

30. Both Mr and Mrs Waters gave evidence. They went to look at Number 48 in about June 2014. The sales particulars described the property as benefiting from “two parking spaces and a garage” and included a photograph of the disputed garage. They made an offer to purchase in July 2014. They say that the offer was an offer to purchase Number 48 with the garage. Only once the offer had been accepted subject to contract did Mr and Mrs Waters discover that Ellis Williams did not have a documentary title to the garage. Mr and Mrs Waters completed the purchase of Number 48 on 12th September 2016. They did not move in straight away but started some renovation works. On completion of the purchase of Number 48 they found the key to the padlock on the garage doors inside Number 48. They then moved some possessions into the garage, using the garage for storage while they were

renovating the house. Mrs Waters said that it was a condition of the sale to them that Mr Ellis Williams make an application for first registration of the garage based on adverse possession.

31. The full conveyancing file of Noble Harbour Solicitors, the firm who acted for Mr and Mrs Waters on the purchase of Number 48 was only disclosed on the morning of the second day of the hearing. Counsel for the Respondent was given an opportunity to read through the file before the hearing began. The file includes a copy of an email from Mr Keith Norris of Noble Harbour Solicitors to Mrs Waters. In the email, Mr Norris wrote

“I have spoken today with the solicitor who has taken over the conduct of the seller’s file, his previous solicitor having left the firm. The agreement that they will simultaneously exchange contracts with us and submit their application for possessory title is confirmed although there is of course no guarantee that their application will be successful”.

32. Mrs Nicola Carter has lived at 65 Rhyddwen Road for the past 20 years. Her house is directly opposite Numbers 48 and 50. She gave evidence that she has a direct line of sight to the garage from her front room. She said that Mr Evans has not over the last 20 years used the garage or parked outside it. He had not parked on any part of the disputed land except for during the past two months when he has taken to parking his car on part of the grass verge. She said that she parked her car in front of the garage with the permission of Ellis Williams and that Mr and Mrs Waters gave her permission to continue doing so. She said that Ellis Williams had used the garage for storage and his father, Cenfyn Williams before him, had used the garage for parking and for storage.

33. Mr Cynlais Evans lives at 61 Rhyddwen Road. He has lived there since 1969. Before that, he lived at 69 Ryddwen Road, where he was born in 1946 and which is next door to where Cenfyn Williams lived. He remembered Cenfyn Williams building the garage. There was an inspection pit in the garage and Cenfyn Williams had allowed him to use the garage to work on his own car. Cenfyn Williams parked in the garage and subsequently Ellis Williams parked in front of the garage. Ellis Williams stored things in the garage. Mr Cynlais Evans had helped Ellis Williams to put things in the garage. He held a key for Number 48 for Ellis Williams and said that the key to the garage was kept in Number 48. In cross-examination, he said that Cenfyn Williams told him that Cenfyn Williams had been given the site of the

garage by a Mr Thomas, the father of Dai Thomas. He knew Martha Jones but had never seen her do anything on the verge or the garage.

34. Mr Ioan Richards is the County Councillor for Craig Cefn Parc. He lives at 23 Mountain Road, Craig Cefn Parc and has done so since 1960. He had taken an interest in Mountain Road, the road beside the garage, because people in the village asked him from time to time about the maintenance of the road. He said that the Council do not maintain the road and do not maintain the street lights in the road. He passes the garage on a daily basis. He had seen it being used by Cenfyn Williams and knew that after Cenfyn Williams died, Ellis Williams used it to store things. He had never seen any of the owners of Number 50 using the garage.

35. Mr Evans in his Statement of Case dated 31st May 2016 said "I clearly remember my grandmother Martha Jane Newlands giving permission to Cenfyn Williams to use the garage being constructed on her part of the Estate in about 1960". He said that his grandfather, Thomas Elim Jones helped Cenfyn Williams to build the garage and that Cenfyn Williams clearly understood that he was being given only a form of licence. He said that after he purchased the disputed land in 1993, he allowed Cenfyn Williams to continue to use the garage and that Cenfyn Williams agreed to maintain Mr Evans's hedge. In cross-examination, Mr Evans said that he vividly recalled all the details of the conversation in which his grandmother gave Cenfyn Williams permission to build the garage. He said that he was between 10 and 12 years old at the time. All the family were housed in Numbers 48 to 50 at that time. He said that Numbers 48 and 50 were effectively one house at that time. He said he could recall his grandmother, Martha Jones saying to Cenfyn Williams, "You can have the piece of land to build a garage for your car". He thought the conversation had taken place in the morning but wasn't sure of the time of day. He couldn't remember exactly when the conversation had taken place. Martha, his grandfather and Cenfyn Williams were present and one of his parents' may have been present. He said that his grandmother had told Cenfyn Williams that he could use the garage site for as long as he wanted.

36. Mr Evans has an online blog. On 21st April 2014 he posted an entry on his blog entitled "Ownership of Unregistered Land", in which he discussed and claimed to be the owner of the 18 feet wide strip marked as being for road on the 1897 Lease plan and which he

considered to be the same as the site of the present Mountain Road. In the blog entry he wrote as follows

“There is no way in which Ellis Williams owns this land, he has no deed to prove anything. My grandmother in all probability allowed his father to build a garage on her land. I had the greatest of respect for Ellis’ father, the Head Deacon, and allowed him to use the garage. There was never any problem”.

In cross-examination, Mr Evans was asked about his use of the words “in all probability” in this entry. He said that he knew at the time he posted this entry that his grandmother had allowed Cenfyn Williams to build the garage. He did not agree that there was any inconsistency between his statement that he knew that his grandmother had given permission because he had been present at a meeting when she gave permission and his statement in the blog that “in all probability” his grandmother had allowed. He said that Cenfyn Williams was given permission. He said that the phrase “in all probability” added nothing.

37. On 22nd April 2014 Mr Evans posted another entry on his blog. In this entry, he said “Last year I discovered to my great surprise that the land was unregistered, not registered in the name of Ellis Williams”.

When asked in cross-examination why he was “surprised” that the land was not registered in the name of Ellis Williams, Mr Evans said it was because the land was used by Cenfyn Williams for his car and so he assumed Cenfyn Williams had put in a claim for ownership of the land. When it was pointed out to Mr Evans that he had said he gave permission for Cenfyn Williams and Ellis Williams to use the garage, Mr Evans said that permission was given to use the garage and “so” he was surprised that the land was not registered in the name of Ellis Williams.

Findings

38. Mr Craven submitted that the land on which the garage stands was part of the land conveyed to Mr Newlands by the 1926 conveyance. That argument proceeds on the hypothesis that Mountain Road was constructed on or occupies the area shown on the 1897 plan as the strip “reserved for road” and that this strip was conveyed by the 1926 conveyance. I do not accept that hypothesis. Ownership of the total area acquired by Mr Newlands in 1926 was divided in 1933 into two equal plots, each having an area of 21.75 perches. Mr Evans did some calculations which he says shows that the area of Number 50 if the road is excluded is significantly less than 21.75 perches. These calculations were made by measuring and scaling

up from an Ordnance Survey plan at a scale of 1:1250 on which Mr Evans had attempted to draw the current hedge boundaries of Number 50. Mr Evans did not give evidence of a similar calculation in respect of Number 48. There are inherent inaccuracies in this method of calculation of the area of Number 50 and I am not prepared to accept that Mr Evans's calculation is correct. Even if the area of Number 50 is significantly less than 21.75 acres, it does not follow that the area shown as "reserved for road" was conveyed as part of Number 50. The area shown in the 1933 conveyance plan as the subject matter of the conveyance is not shown as including the road. Further, if the area of the road was included in the plot of Number 50 to make it up to 21.75 acres then it is obvious from looking at the 1933 conveyance plan that the area of Number 48 would be significantly less than the 21.75 acres it was described as being when it was sold to Ms Hopkins. The 1933 conveyance plan indicates that the area excluding the area shown in the 1926 conveyance as "reserved for road" was divided into two equal plots, with neither including any part of the area shown in 1926 as "reserved for road". Further, it is difficult to see any reason why Mr Newlands should have wanted to acquire the road.

39. I find that the verge on which the garage stands was not conveyed to Mr Newlands in 1926 and then conveyed on to Mr Evans's predecessor in title as part of Number 50 in 1933. It follows that the verge was not part of the land registered as number 50 in September 1976 and is not within Mr Evans's registered title.

40. I do not accept Mr Evans's evidence that Cenfyn Williams and Ellis Williams occupied with the consent of Martha Evans and from 1993 with the consent of Mr Evans. Mr Evans's evidence that he could recall a conversation in 1960 between his grandmother and Cenfyn Williams and that his grandmother gave Cenfyn Williams in that conversation permission to erect and use a garage on the verge is inherently improbable. Such a conversation would have taken place well over 50 years ago at a time when Mr Evans was a young boy. It would not have been a conversation at the time of any particular importance to a young boy. I do not accept Mr Evans would have remembered that conversation had it taken place. The entry that Mr Evans made in his online blog on 21st April 2014 shows clearly that he did not then recall a conversation between Martha Evans and Mr Cenfyn Williams in which she gave him permission to construct the garage. Mr Evans would not have used the phrase "My grandmother in all probability allowed his father to build a garage" if he could then have recollected a conversation in which his grandmother expressly gave

permission for the erection of the garage. Further had there been a conversation such as Mr Evans's claims to be able to recall then I do not consider that Mr Cynlais Evans would have given evidence that he was told by Cenfyn Williams that a Mr Thomas had given Cenfyn Williams the site of the garage. Mr Cynlais Evans appeared to give honest evidence. There was no obvious reason for him not to tell the truth. I consider that he gave the evidence of what Cenfyn Williams had told him because he had a genuine recollection of being told by Cenfyn Williams that he had been given the site of the garage by a Mr Thomas. It is most unlikely that Cenfyn Williams would have said that if he was using the garage by the permission of Martha Evans.

41. I do not accept Mr Evans's evidence that he gave Cenfyn Williams and then Ellis Williams permission to use the garage. Mr Evans showed himself to be an unreliable witness in the manner in which he gave evidence about the alleged conversation between Martha Evans and Cenfyn Williams in 1960. It would be unsafe to rely on his uncorroborated evidence of having given permission to Cenfyn Williams and Ellis Williams. There is no evidence to support his assertion that Cenfyn Williams and Ellis Williams occupied the garage with his consent. I consider that it is improbable that Cenfyn Williams and Ellis Williams occupied by the permission of Mr Evans. Mr Evans did not have a key to the garage. It is unlikely that he would not have had a key if he considered that it was his garage and had given permission for others to use it. Mr Cynlais Evans's evidence of what Cenfyn Williams supports a finding that Cenfyn Williams was occupying otherwise than with the consent of Mr Evans. The fact that Ellis Williams made two applications to be registered with title to the garage suggests that he did not consider he was occupying with the consent of Mr Evans.

42. Counsel for Mr Evans submitted that Mr and Mrs Waters could not rely on possession by Cenfyn Williams or by Ellis Williams. He submitted that there was no adequate evidence of possession by Cenfyn Williams or Ellis Williams. If Cenfyn Williams had been in possession, there may have been a gap between his death and any subsequent going into possession by Ellis Williams. There had been no express transfer to Mr and Mrs Waters of Ellis Williams's possessory title. After Mr and Mrs Waters had completed their purchase of Number 48, Mr Ellis Williams continued with an application to HM Land Registry. Counsel submitted that by doing so, Ellis Williams was continuing to assert that he (and not Mr and

Mrs Waters) was in possession of the garage. Ellis Williams had not been called by Mr and Mrs Waters to give evidence and there was no explanation for this.

43. I am satisfied that there is sufficient evidence to establish that Cenfyn Williams and then Ellis Williams were in possession from 1960 until the transfer of title to Number 48 to Mr and Mrs Waters. It is not in dispute that Cenfyn Williams had possession of the garage. Cynlais Evans, Ioan Richards and Nicola Carter all gave evidence that Cenfyn Williams used the garage. Cynlais Evans gave evidence that the garage was locked and that the key to the garage was kept in Number 48. All three witnesses also gave evidence that Ellis Williams had used the garage after the death of his father. Cynlais Evans gave evidence that he had helped Ellis Williams to put things in the garage. As Ellis Williams was the son of Cenfyn Williams, acquired ownership of Number 48 on the death of Cenfyn Williams and the key to the garage was kept in Number 48, I can see no reason not to conclude that there was no significant gap between Cenfyn Williams dying and Ellis Williams going into possession of the garage.

44. Possession of the garage passed from Ellis Williams to Mr and Mrs Waters when they acquired Number 48. The key to the garage was left in Number 48 and Mr and Mrs Waters used the garage to store things from the time of the transfer of Number 48 to them. The fact that Ellis Williams made an application to HM Land Registry to be registered with possessory title to the garage does not mean that he did not go out of possession of the garage on completion of the sale of Number 48 to Mr and Mrs Waters and that Mr and Mrs Waters did not then go into possession. Ellis Williams made his application for possessory title at the time he exchanged contracts with Mr and Mrs Waters. At that time, he was in possession of the garage and he was able properly to make a statement saying that he was then in possession. For the purposes of the application, whether or not he was in possession at the date of the application was the crucial point. If his application had been pursued, his title would have been registered from the date of the application. There is no evidence that Ellis Williams told HM Land Registry after the transfer of Number 48 that he remained in possession.

45. It is not fatal to Mr and Mrs Water's application that there was no formal conveyance to them of Ellis Williams's possessory title. As Ellis Williams allowed Mr and Mrs Waters into possession by going out of possession and giving the key to the garage to them, there is a

single continuous period of possession. In *Tower Hamlets London Borough Council v. Barrett* [2006] 1 P&CR 9 at para 36, Neuberger L.J. said

“The central point in this connection is what bars the paper owner from claiming possession is a continuous period of 12 years dispossession – see s.15(1) of and para 1 of Sch1 to, the 1980 Act. Accordingly, unless there is a hiatus between the periods of possession of successive squatters (in which case paragraph 8(2) of the Schedule would prevent the second squatter from being able to rely on the period of adverse possession by the first) the second squatter whether he has purchased from the first squatter or dispossessed him in some other way, can rely on the first squatter’s period of adverse possession”.

46. The garage stands on what appears to be the verge of Mountain Road. It is not disputed that Mountain Road is not an adopted public highway but that it is an unadopted public highway. Where there is a highway running over land bounded on both sides by a hedge, there is a presumption that the highway extends over the whole width between the hedges. As there is nothing to rebut the presumption, I find that the garage stands on part of the highway. There is an issue to be considered as to whether the garage site being part of the highway can be the subject of a claim by adverse possession. Mr Craven did not refer me to any authority as to whether land, over which a highway not maintainable at the public expense runs, can be acquired by adverse possession. This point did not arise for consideration in *R (on the application of Wayne Smith) v Land Registry* [2010] EWCA Civ 200 which was concerned with a highway maintainable at the public expense. Title to such a highway is vested by statute on the highway authority – see Highways Act 1980 s. 263. However, in *R (on the application of Wayne Smith) v Land Registry* both Elias LJ and Mummery LJ expressed the view that it would in principle be possible for title to land to be acquired by adverse possession notwithstanding that it is a public highway not maintainable at the public expense. In *J.A. Pye (Oxford) Ltd v. Graham* [2013] 1 AC 419 part of the large area of land title to the whole of which was extinguished by adverse possession, was subject to a public footpath. In the absence of detailed argument or authority, I am not prepared to hold that Mr and Mrs Waters’ claim fails on the grounds that the garage stands on land which is part of a highway not maintainable at the public expense. The case of *J.A. Pye (Oxford) Ltd v. Graham* indicates that land that is a highway can be adversely possessed.

Conclusion

47. I am satisfied that Mr and Mrs Waters have established a continuous period of 12 years possession of the garage made up of possession by successively Cenfyn Williams, Ellis Williams and themselves. I do not accept that the possession of Cenfyn Williams and Ellis Williams was possession with the consent of Martha Newland and the Respondent, Mr Evans. The possession was possession which would in the normal case, bar the title of the paper title owner under the Limitation Act 1980. The garage site is not part of the land included in the registered title to Number 50. It is unregistered land. As there has been a period of more than 12 years' adverse possession of the garage site, I shall direct the Chief Land Registrar to give effect to the application of Mr and Mrs Waters for first registration of the garage.

Costs

48. Mr and Mrs Waters have succeeded on their application against the objection of Mr Evans. My preliminary view is that it is just that Mr Evans pay the costs of Mr and Mrs Waters. Any party who wishes to submit that some different order should be made as to costs, should serve written submissions on the Tribunal and on the other party by 5pm on 14th December 2016.

BY ORDER OF THE TRIBUNAL

Michael Michell

DATED THIS 25th day of November 2016