



[2017] UKFTT 0806 (PC)

REF/2016/0609

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

BETWEEN

LOOSE (a company limited by guarantee)

APPLICANT

and

THE SPIRITUALISTS' NATIONAL UNION

RESPONDENT

**Property Address: Land at the back of 1 Lacey Street, Widnes and The Queen's Hall
Studio, Lacey Street, Widnes WA8 7RF**

Title Numbers: CH537804 and CH586314

Before: Judge Owen Rhys

Sitting at: Civil & Family Court, Vernon Street, Liverpool L2 2BX

On: Tuesday 19th September 2017

ORDER

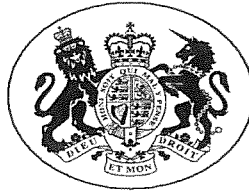
IT IS ORDERED that the Chief Land Registrar shall give effect to the Applicant's application in Form AP1 dated 29th October 2015.

Dated this 4th day of October 2017

Owen Rhys

BY ORDER OF THE TRIBUNAL





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Applicant representation:

Ms J Florek (Director)

Respondent representation:

Mr Graham Hewitt LLB (Property Co-ordinator)

DECISION

1. The Applicant is the registered proprietor of premises known as The Queens Hall Studio, Lacey Street, Widnes ("the Studio") under title number CH586314. It is a company limited by guarantee and a registered charity, working with disadvantaged

members of the community through the medium of music. The Studio, as the name suggests, is a purpose-built entertainment space, with pedestrian access from the street and doors at the rear leading into a hard-surfaced yard, indicating historic access for deliveries – a point which I shall return to. Lacey Street runs more or less due east to west, and the Studio stands on the north side. Immediately adjoining to the east are the premises known as 1 Lacey Street (“the Church”), registered to the Respondent under title number CH528423 and in use as a Spiritualist church. The Church is situated on the corner of Lacey Street to the south, and Luton Street to the east – Luton Street running more or less north to south. Immediately to the north of the Church, and separated from it by a brick wall, lies a small roughly square piece of land (“the Servient Land”), bounded to the east by Luton Street and to the west by the yard at the rear of the Studio and already referred to. A pair of substantial metal gates (“the Gates”) provides access from Luton Street. The western boundary – where the Servient Land adjoins the Studio – is marked by a concrete slab wall which was erected towards the end of 2015. This prevents any access between the Studio’s rear yard and the gates leading from Luton Street. There is a stub of an old brick wall, just to the west of the new concrete slab wall, suggesting that at some point in the past this boundary was closed.

2. On 29th October 2015 the Applicant applied to Land Registry in Form AP1 to register an easement by prescription claimed to have been acquired over the Servient Land on foot and with vehicles. It was supported by statements of truth by Ms Florek, a director of the Applicant, Mary Jean Leather, Patricia Kershaw and William Leslie Wheeler. Apart from Ms Florek, the other three statements were made by past or present employees of Halton Borough Council (“the Council”), for reasons that I shall explain in due course. In August 2015 and February 2016 the Respondent objected, relying on two statements of truth from Mr Graham Hewitt (who has represented the Respondent before me) and Mrs Carol Gallagher, a former member and then president of the Committee that managed the Church. The dispute could not be resolved by agreement, and was referred to the Tribunal on 5th August 2016. There was an oral hearing before me on 19th September 2017, preceded by a site view in the presence of the parties’ representatives. I heard oral evidence from Ms Florek and Mr Wheeler on behalf of the Applicant, and from Mrs Gallagher for the Respondent.

3. The Respondent became the first registered proprietor of the Church on 10th November 2004. Its root of title was a Conveyance dated 21st October 1937 and made between the Trustees of the Welsh Wesleyan Methodist Chapel (1) and Robert Frederick Brewer and others (2) (“the 1937 Conveyance”). The Respondent is the successor in title to the original purchasers under the 1937 Conveyance, holding the Church on trust pursuant to a trust deed made shortly after the date of the 1937 Conveyance. The 1937 Conveyance contained a verbal description of the land conveyed, but no plan. However, the parcels clause also described the land by reference to a plan on an earlier conveyance, that made on 10th December 1886 between William Hartland and others (1) and the Reverend Robert Burdon and others (2) (“the 1886 Conveyance”). It is now common ground between the parties to this reference that the 1937 Conveyance was effective to convey to the purchasers both the Church and the Servient Land. The verbal description in the 1937 Conveyance, and the plan to the 1886 Conveyance, which has recently come to light, leave no room for doubt. However, when the Church was first registered, the land at the rear, namely the Servient Land, was not included. In the event, a separate title was subsequently created, and the Servient Land became registered on 26th July 2005. Accordingly, the Respondent has been the legal and beneficial owner of the Servient Land since approximately 1937.

4. However, by a Conveyance dated 16th November 1953 and made between Charles Poole and others (1) and The Mayor Aldermen and Burgesses of the Borough of Widnes (“Widnes”) (2) (“the 1953 Conveyance”), the vendors purported to convey to Widnes a parcel of land which comprised the Studio, The Queens Hall (lying to the west of the Studio) and also the Servient Land. The conveyance was effective to pass title to the Studio and The Queens Hall, but of course the vendors had no title to the Servient Land, which had already been validly conveyed to the Respondent’s predecessor in title by virtue of the 1937 Conveyance. As expressed by the old Latin tag, *nemo dat quod non habet*, or “no-one can grant that which he does not have”, the 1953 Conveyance did not effectively convey title to the Servient Land to Widnes. The title has at all times remained with the Respondent. The Council is the successor in title to Widnes. The Applicant became the registered proprietor of the Studio on 11th May 2009.

5. There is no dispute between the parties as to what is required in order to establish a prescriptive easement. The basic ingredients are (a) more than 20 years' user (b) without force, (c) without secrecy and (d) without permission. The dominant and servient tenements must be in different ownership during the period of long user. Although there are three methods at law of acquiring a prescriptive easement, the material one in this case is through the doctrine of lost modern grant. As I have stated, the access to the Studio from the Servient Land was blocked in 2015 which precludes reliance on the Prescription Act 1832 and prescription at common law, even if otherwise available.

6. In the present case, the Applicant acquired its interest in the Studio in 2009. Ms Florek's use of the Studio predates the purchase, but clearly it is necessary for the Applicant to establish at least a 20-year period prior to 2015. The user must be demonstrated from 1995 at the latest. The Applicant has therefore adduced evidence from employees of the Council, the previous owner of the Studio. I shall now describe the evidence relied on.

7. Mary Jean Leather made a statement, supported by a statement of truth, on 11th December 2015. From 1973 until her retirement in 1989 she was employed in various capacities at the Queens Hall, a theatre building owned by the Council, eventually as the Assistant Manager. The Studio formed an integral part of the Queens Hall complex and was internally connected to it. Her evidence, in essence, was as follows. Access to the rear of the Queens Hall was obtained across the Servient Land, through the Gates which led from Luton Street to the east. The Gates were under the control of the Council staff working at the Queens Hall complex. They had the key to the Gates, which she believed had been erected by the Council, and these were locked and unlocked on a daily basis to allow access to and egress from the buildings by Council staff and vehicles belonging to the Council, including weekly refuse collections. The Servient Land was also used to obtain access to the theatre loading doors at the rear, for vehicles delivering theatre sets and equipment for events taking place at the premises. As far as she was aware, the Council actually owned the Servient Land and this was the general view of those who worked at the Queens Hall.

8. Mary Jean Leather's successor as the Assistant Manager of the Queens Hall was Patricia Kershaw, who made a statement on 15th December 2015, supported by a statement of truth. Her evidence was very much along the same lines as that of her predecessor. She added that deliveries of food and drink were also made to the rear of the Queens Hall through the gates and over the Servient Land. She states that the Council closed the Queens Hall in 2004 "*whereupon the Gates were welded shut by the Council to prevent access by trespassers and fly tipping;*".

9. The final Council witness was Mr William Wheeler, who attended the hearing and was cross-examined on his statement dated 15th January 2016. He has been employed by the Council since 1974, at various levels, latterly as Principal Conveyancing Assistant. He was professionally involved in the disposal of the Studio to the Applicant, as a result of its approach to the Council in or about 2007. He actually went to inspect the premises – sadly, all too rare an occurrence in the modern conveyancing world. He was unable to inspect the rear of the Studio from Lacey Street, so went around to the Gates into the Servient Land to see if they were open. They were in fact welded shut when he saw them. He then made enquiries with the Property Services of the Council, who informed him that the Gates had been welded shut in August or September 2007, to prevent access by fly tippers and squatters. He produced a copy of the actual Council purchase order which related to this. He was informed that prior to the welding of the Gates, they had been locked with a padlock and chain, the key to which was held by the Council. The only access to the Servient Land was via the Gates in Luton Street. There was no access directly from the Church to the Servient Land. By contrast, the boundary between the Servient Land and the Studio was open. At this point in time, the Council, and Mr Wheeler, considered that the Council owned the Servient Land. However, when he investigated the title, it became apparent that it was actually registered in the name of the Respondent. This led to contact between Mr Wheeler and Mr Hewitt for the Respondent, in which Mr Wheeler sought to clarify the ownership of the site. It seems that Mr Wheeler accepted that the Servient Land belonged to the Respondent. However, there was considerable confusion because Mr Hewitt stated that the Respondent had acquired the Servient Land under a Conveyance dated 11th March 2004, which was of course not accurate, it having been included in the 1937 Conveyance.

10. As I have said, Ms Florek came on the scene well within the necessary 20-year period, and cannot therefore shed any light on the full period of 20 years. However, she does deal with some pertinent matters. She produced some photographs, one of which was taken by her in 2008 and shows the Servient Land in a completely overgrown and unused state. She said that, contrary to the Respondent's case, the Servient Land was not and could not have been used as a car park by the Church from 2004 (when the Council ceased to use the Queens Hall and Studio) and 2009, when the gates were re-opened at her request. She confirmed that after the Applicant bought the Studio in 2009, the gates were unsealed by the Council at her request. The Applicant padlocked the gates. Subsequently, Mrs Gallagher, who was on the Committee of the Church, asked for a key to open the padlock, which Ms Florek gave her. When the Studio was acquired, the Applicant cleared the Servient Land, which was overgrown with weeds and bushes, as the photograph suggests. The Applicant continued to use the rear access, via the Servient Land, on a continuous basis from May 2009 until April 2015, when the Church, without warning, removed the padlock on the gate and installed a new padlock, but refused to give her a key. In the same year the Church built the concrete slab wall which now closes the boundary between the Servient Land and the Studio.
11. Mrs Gallagher made a statement on 26th August 2015, supported by a statement of truth, comprising her objection to the Applicant's application. At this time she was the President of the Church, having been appointed in 2006. Since that time she has ceased to hold that office. She verified her statement before me, and was cross-examined on it. She was not able to say very much about the past use of the Servient Land. She confirmed that it was not until Ms Florek gave her a key to the padlocked gates on Luton Street after 2009, that the Church was able to obtain access to the Servient Land. It follows that prior to that time the Church made no use of the land. It seems that there were various issues concerning the use of the Servient Land, and gates, by the contractors who built a block of flats on the site of the Queens Hall (excluding the Studio), the building having been demolished by the Council after 2004. Indeed, the Applicant also experienced some considerable nuisance. However, as Mrs Gallagher accepted, none of these problems was the responsibility of the Applicant.

12. In the light of the evidence that I have heard, both written and oral, my primary findings are as follows:

- (a) The Council, from the date of its purchase of the Queens Hall in 1953, considered that it owned the Servient Land and treated it as its own.
- (b) The Council used the Servient Land from at the latest 1973 onwards as its main vehicular access to the rear of the Queens Hall. Although there is no direct evidence of the position prior to 1973, I think that it is fair to infer that the use prior to 1973 was exactly as it was subsequently. The Queens Hall had no other rear vehicular access and there was no change of use in 1973, simply a continuation of the same use.
- (c) The property acquired by the Council in 1953 and known as the Queens Hall included the area now known as the Studio. Both parts of the building had a rear entrance to which access was obtained via the Servient Land.
- (d) From no later than 1973, there was no physical barrier between the Servient Land and the rear of the Studio. There had at one time been a wall but this had been largely removed.
- (e) There has at all material times been a wall between the Church and the Servient Land (and that remains the position) and therefore direct access between the two has always been impossible.
- (f) At some unknown time, but not later than 1973, the Council erected gates onto Lacey Street and from that time had sole control of access to the rear of the Queens Hall through those gates. It is also fair to infer that the Gates were erected when the Council acquired the land in 1953.
- (g) From 1973 to at the latest 2007 the Council maintained a padlock on those gates and only its employees had keys. The gates were unlocked during the working day to allow access to the Queens Hall, and locked at night.
- (h) In August or September 2007 the gates were welded shut by the Council. At that time the site was inspected by Mr Wheeler.
- (i) When the Applicant acquired the Studio in 2009, the Council unsealed the gates. From that time until 2015, the Applicant had control of those gates, but gave Mrs Gallagher a key.
- (j) At all material times, the Servient Land was in the ownership of the Respondent. However, it is entirely possible that the Respondent was unaware of this fact until much later, at the time the titles were registered in 2004 and

2005. I base this supposition on a number of factors, not least the confusion in the Respondent's mind as to the legal ownership. Thus Mrs Gallagher referred to the property as having been purchased in 1943, which is incorrect. In Mr Hewitt's original objection to the application, sent to the Land Registry on 25th August 2015, he says this: "6. *It was drawn to my attention that a further piece of land had been acquired by the Church to the North of the church site. Title deeds were with our firm of solicitors and when we requested them to be sent to us, I discovered the purchase had not been registered. The conveyance was dated 11th March 2004.*" This demonstrates that the Servient Land was not included with the first registration of the Church (albeit that it has the same title), and that Mr Hewitt himself believed that the Servient Land was acquired in 2004, not 1937. The absence of a plan on the 1937 Conveyance might provide the reason for this confusion. This may also explain why the exclusive use and control of the Servient Land, initially by the Council and then the Applicant, was not objected to by the Respondent at any time until recently.

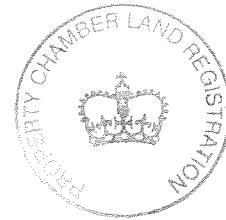
- (k) The Council – and subsequently the Applicant – has always used the Servient Land as an access to the Queens Hall and Studio without asking or obtaining permission, openly and without any force.
- (l) The Respondent did not use the Servient Land prior to 2009, and it became overgrown in the period 2004 to 2009 when the Studio was sold to the Applicant.

13. It follows from the facts set out above that the Applicant can prove a period of at least 20 years' uninterrupted user of the Servient Land "*as of right*". There has been user since 1973 at the latest, and an easement will have been acquired by 1993. The period of non-use between 2004 and 2009 is not material, nor the obstruction since 2015, since the easement was established under the doctrine of lost modern grant prior to these dates. Although the evidence of Mary Jean Leather and Patricia Kershaw was given in the form of witness statements, their evidence was not challenged as I understand it, and is also consistent with the evidence of Mr Wheeler, who has been employed by the Council from 1974 onwards. All the known facts – not least the Council's control of the gates on Luton Street – point to their evidence being reliable.

14. I shall therefore direct the Chief Land Registrar to give effect to the Applicants' application in Form AP1 dated 29th October 2015. I am not sure whether the Applicant has incurred any costs. If it wishes to claim its costs it should do so in writing within 14 days of the date of this Decision, and serve a copy on the Respondent. The Respondent may reply within 7 days thereafter.

Dated this 4th day of October 2017

Owen Rhys



BY ORDER OF THE TRIBUNAL