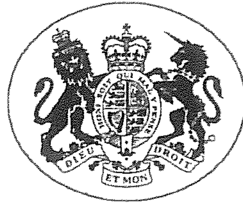

[2018] UKFTT 324 (PC)

REF/2017/0453

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Ian Robert Simpson and Jennifer Frances Simpson

APPLICANTS

and

Sandford St Martin Parish Council

RESPONDENTS

Property Address: The Village Green, Ledwell and Christmas House, Ledwell, Sandford St Martin OX7 7AN
Title Number: ON234898 and ON230158

Before Judge Elizabeth Cooke
Sitting at: 10, Alfred Place, London WC1E 7LR
On: 20 and 21 March 2018

Applicant Representation:	Mr Philip Sissons instructed by Spratt Endicott solicitors
Respondent Representation:	Mr John Leport of Leport and Co solicitors

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DECISION

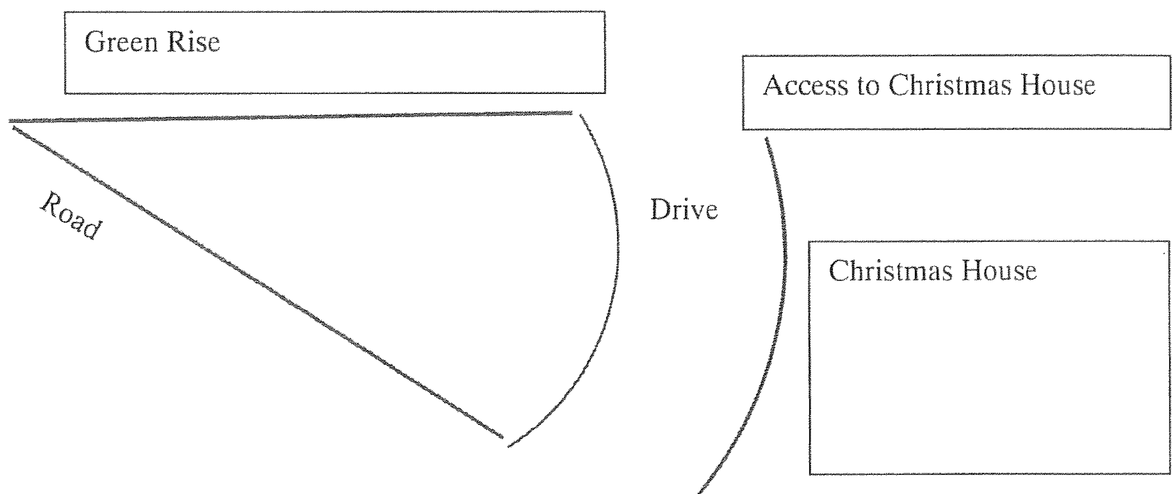
KEYWORDS
Alteration of the register – village green – possession – general boundaries – construction of a conveyance

Cases referred to:

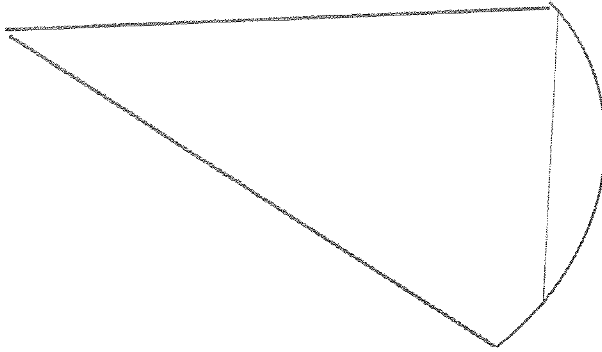
Alan Wibberley Building Ltd v Insley [1999] 1 WLR 894
Chadwick and others v Abbotswood Properties Ltd [2004 EWHC 1058 (Ch)
Paton v Todd [2012] EWHC 1248 (Ch)).
Pennock v Hodgson [2010] EWCA Civ 873

Introduction

1. The Applicants, Mr and Mrs Simpson, are the registered proprietors of Christmas House at Ledwell in Oxfordshire. The property is reached by a drive which runs alongside the village green. The Respondent, the Parish Council of Sandford St Martin, is the registered proprietor of the village green.
2. The title plan of the village green depicts it in the shape of a classical piece of cheese: a triangle whose short side is curved outwards. The curve adjoins the drive of Christmas House, whose registered title shows the edge of the drive as correspondingly curved inwards like this:



3. On the ground the edge of the drive is a little straighter than it appears to be on the registered title plans both of Christmas House and of the village green, and the Applicants say that there is therefore a mistake on the register. They have applied to HM Land Registry for the register to be altered so as to remove from the Respondent's title, and add to their own, a slice of land which cuts across the curved edge of the Respondents' title so as to reflect the straight driveway on the ground, something like this:



I refer to that slice as "the disputed land". The parties agree that the disputed land extends at its widest across half the width of the drive.

4. The Respondent has objected to the Applicants' application and the dispute has been referred to this Tribunal pursuant to section 73 of the Land Registration Act 2002 ("the LRA 2002").
5. I visited the disputed land on 19 March 2018 and am grateful to the parties for allowing me access to their land. The hearing took place at Alfred Place on 20 and 21 March 2018; the Applicants were represented by Mr Philip Sissons of counsel and the Respondent by their solicitor Mr John Leport; I am grateful to both for their helpful arguments.
6. I have directed the Chief Land Registrar to respond to the Applicants' application as if the Respondent's objection had not been made. In the paragraphs that follow I discuss by way of background the title to the parties' properties and the dispute between them, before considering the parties' arguments in order to explain my decision.

The title to the parties' properties

Christmas House

7. The Applicants bought their property in 2001 from Mr and Mrs van Hamel Parsons, who were the registered proprietors of the house and the village green, registered under a single title number. The Parsons had bought their land in 1997 from the executors of the previous owner, Ms Dorothy Bolton (the survivor of joint owners), and title was registered when the Parsons purchased.

8. At the start of the hearing I was handed an agreed list of issues, item 1 of which was as follows:

    1. Did the Parsons own the freehold interest in the Disputed land at the date of the 2001 Transfer?
        a. Is there sufficient evidence in the historic conveyances to establish on the balance of probabilities that the Parsons owned the freehold of the Disputed Land?
        b. If not, did s.3 of the Land Registration Act 1925 operate to confer a freehold title on the Parsons in any event?
        c. What, if anything, was the effect on the Parsons' freehold title of the registration of the Green under the Commons Registration Act 1965?

9. At the start of the hearing I asked Mr Leport if the questions grouped under item 1 were still in issue. He very helpfully conceded that the Parsons did indeed own the freehold interest in the disputed land in 2001; that the answer to question 1a was "yes", that 1b did not arise, and that the answer to question 1c was – as all lawyers know - "none whatsoever". In the light of that concession, which on my view of the pre-registration deeds was rightly made, there was no need for me to hear argument about the Parsons' title.

10. What is in issue is whether the land transferred by the Parsons to the Applicants included the whole of the drive as it now stands, or whether part of the drive (the disputed land) was not included in that transfer.

The village green

11. The village green is a grassy area bounded by the road on one long side, by the house known as Green Rise on the opposite side, and by the drive on the short side. By that I mean that the grassy area is bounded by the drive; whether the Respondent's title extends beyond the grassed green and on to the drive is the issue I have to decide. The drive is gravelled, and is about 10 feet wide; beyond it is a very narrow grass verge in front of the garden wall of the Christmas House.

12. When the Commons Registration Act 1965 came into force, local councils were required to identify and register as common land any village greens within their area, showing the extent of the land and its ownership, and the Respondent did so. There was some dispute about the village green in Ledwell; the Boltons lodged an objection to the effect that the land in question was "not a Village Green but forms part of the curtilage of the freehold premises known as the delicensed Plough Inn". Christmas House was formerly the Plough Inn.
13. Eventually agreement was reached with the Boltons, and the registration of the village green as common land proceeded. The consent form signed by representatives of both parties and sent to the Commons Commissioner (the date is illegible on the copy at page 110 of the bundle) says nothing about ownership, but the ownership section of the Register of Town or Village Greens did indicate that the Respondent was the owner That of course has no legal effect and as a matter of law could not confer title upon the Respondent, as Mr Leport conceded (see paragraph 9 above).
14. Nevertheless it seems that the members of the parish council at the time and for some years after 1974 thought that that agreement meant that they owned the village green. No copy of the 1974 agreement exists and no-one now knows what it said. A copy of the plan annexed to it survives; it is poorly drawn and indistinct, but shows the curve-edged triangle of the village green, on a scale such that the green is about 1cm long on its longest side. It is far too small to indicate the precise position of the boundary.
15. Whether the 1974 agreement purported to confer a title to the village green, or merely contained a concession about commons rights, cannot now be known. If it did purport to confer ownership it is unlikely to have succeeded in doing so; it cannot have conferred a legal estate unless it was made under seal, and it has never been referred to as a deed so was probably under hand. Whether it could have conferred a beneficial interest upon the parish council cannot be known, but again it has never been referred to as a declaration of trust and so that too is unlikely. On 13 May 1980 John Bolton sold to Dorothy Bolton his one third beneficial interest in his property, and the conveyance plan includes both what

is now Christmas House and the village green. And on 2 October 1997 the Parsons bought both the green and the house from Dorothy Bolton's executors. So it appears that the Bolton family knew that they owned the green and did not think they had given anything away in 1974.

16. At the start of the hearing I understood from Mr Leport that he conceded that the Respondent did not acquire ownership of the village green by virtue of the 1974 agreement (see my paragraph 9 above) and because of that concession the witnesses called for the Respondent were not cross-examined about the 1974 agreement (of which neither had direct knowledge in any event).
17. However, in the light of the way Mr Leport developed his argument later and of the fact the Respondent's Statement of Case and the evidence of its witnesses indicate that members of the parish council seem to have continued for some years to believe that the agreement gave ownership of the green to the parish council, I find as a fact (in case there is still any doubt) for the reasons given above that the 1974 agreement did not confer upon Respondent any interest, legal or equitable, in the village green.
18. I also find as a fact that in 1997 the Respondent through its members was aware of that fact, for the following reasons.
19. In 1997 the Respondent endeavoured to place a memorial bench on the village green, but were challenged by the Parsons as owner of the land. The Parsons then gave permission for the bench to be placed on the land. Moreover, the then members of the Respondent parish council undertook some investigations. It had some correspondence with Land Registry and with the Head of Legal Services at Oxford City Council, both of whom (the latter in a letter dated 27 October 1998) pointed out that registration under the Commons Registration Act 1965 is not sufficient to establish legal title to land. Following that correspondence, the minutes of the Respondent's meeting on 2 December 1998 record the following:

> "The ownership of the green at Ledwell, which had been uncertain, had now been settled. The land is Common Land/Village Green and has been register [sic] as such but the legal owners of it are the owners of

Christmas House who are at this time are [sic] Mr and Mrs Van Hamel-Parsons. At this point the Chairman invited Mr Van Hamel-Parson to speak. Mr Van Hamel-Parsons stated that he had no objection to the placing of a bench on the green provided he was consulted as to where on the green the bench was placed ... "

20. Some time later the Parsons wanted to sell their property, and offered the village green to the Respondent free of charge subject to the imposition of a covenant to keep it grassed and maintained and subject to payment of the Parsons' conveyancing costs. The Respondent refused.

21. Instead, in 2001 the Respondent had a caution against dealings registered against the village green. The plan annexed to the caution was the plan used in the 1974 agreement, which may be why that plan survives when the agreement itself does not. On the application form the then clerk to the Respondent, Dr Edward Fiddy, wrote in the box which requires the applicant to state the nature of its interest:

    "The owner of prior title to the land shown coloured green on the attached plan by entry in the Commons Register made final on 29 March 1974."

22. I take it that Dr Fiddy had not understood that registration in the Commons Register does not confer ownership and was unaware of the Respondent's minutes of the meeting of 2 December 1998. I note that there is no mention of the Respondent being in possession of the land.

23. In 2001, after the Applicants bought Christmas House, the Respondents applied for a registered title to the village green. In support of that application Dr Fiddy made a statutory declaration, which set out his belief that the Respondent had acquired title to the land in 1974 by agreement with the Bolton family. Again there is no suggestion that the Respondent was in possession of the land. No objection to the application was made by the registered proprietors, the Parsons, which is unsurprising since the Parsons had offered to give the land to the Respondent in any event. HM Land Registry took the view that insufficient evidence had been put forward for it to grant an absolute title (unsurprisingly in

view of the lack of any evidence of a transfer in 1974: see my paragraphs 13 to 17 above), but granted a possessory title. The boundary on the title plan showed the village green as bounded by the drive.

24. In January 2015 application was made to upgrade the possessory title and in the absence of objection the title was duly upgraded to absolute.

The dispute between the parties

25. The drive to Christmas House is also used by Green Rise. In 2014 the owners of Green Rise wanted to sell, and their purchaser wanted an express easement over the drive, which the Applicants agreed to grant. Mr Simpson is a surveyor and a director of Savills, and so he asked a colleague in his mapping department to draw a plan for the deed of easement. His colleague drew a plan and concluded that in fact the Respondents' title overlapped the drive.

26. Until this point everyone had taken it as obvious that the edge of the drive was the edge of the village green and that the two titles abutted along that edge. But the shape of the drive does not quite match the title plan, being rather less curved that the title plan – which shows only a general boundary – appears to indicate. It appears that the registered title plan was scaled up and compared with what is on the ground, and a conclusion drawn that there was an overlap between the two titles on the drive.

27. No expert evidence has been adduced by either party. The person who drew the plan for Mr Simpson has not been called as a witness. No-one has explained to my satisfaction how either party reached the conclusion that the Respondent's title includes a slice of land that extends at its widest across half the width of the drive. They can have reached that conclusion only by taking as precise boundaries the red lines on the title plans, which of course represent only general boundaries.

28. It is not possible for a surveyor to measure a precise boundary using a land registry title plan because that plan does not show exactly where the boundary is. The idea that one or other edge of the red line does so, or that the underlying black lines of the Ordnance Survey do so, is a fallacy.

29. Nevertheless the Applicants concluded that part of the drive fell within the Respondents' title, and the Respondents accepted what the Applicants said, and I have to proceed on the basis that that was the case. The parties have pointed out to me that Land Registry appears to have agreed that there was an overlap by producing a plan to represent the Applicants' application; but it did so only on the basis of the information provided by the parties.

30. Having reached the view that there was an overlap the Applicants asked the Respondent if the register could be amended so as straighten out the edge of the boundary between the village green and the drive and thereby confirm the Applicants' ownership of the whole drive. The Respondent refused.

31. Some time later, according to Councillor Ian Hames who gave evidence for the Respondent, the parish council commissioned a surveyor to calculate the extent of the disputed land. He used, according to Mr Hames, the registered title plans, the plan to the transfer to the Applicants, and the plan to the 1974 agreement and drew up a plan which indicated the width of the disputed land. Representatives of the Respondent then went on to the drive in the Applicants' absence and put metal pegs into it, digging into the gravel and then re-covering the pegs, in order to mark what they now believed was their own land. They informed the Applicants that they had done so.

32. Again, inexact plans were used as if they gave exact lines. I find it extraordinary that a surveyor could have used, not only registered title plans which show general boundaries only, but also the crude plans attached to the 1974 agreement and the transfer to the Applicants, and claimed to achieve an accurate result.

33. Agreement could not be reached and so the Applicants made their application to HM Land Registry, which was in due course referred to this Tribunal.

The case for the Applicants and for the Respondents

34. The Applicants say that they bought the whole of the drive from the Parsons and that therefore the register should be altered to show the full extent of their land.

35. The transfer to the Applicants in form TP1 contains a plan. It is agreed that it is based on the 1973 Ordnance Survey plan (which shows the drive with a curved edge). The red line drawn on it is over a millimetre thick and cannot be said to be carefully drawn. On the ground, that line must represent several feet. Mr Leport insists that the plan is unambiguous. His reasoning appears to be that because it is based on the Ordnance Survey plan, on which a black line shows a curved edge to the village green, the red edging must be taken to follow that line. But lines on an Ordnance Survey map do not show legal boundaries; the only relevant line is the red line, and its thickness makes it impossible to identify the boundary exactly.

36. I find as a fact that it is not possible to discover from that plan the precise line of the boundary, and there is no other indication in the TP1 form that might assist.

What was transferred to the Applicants in 2001?

37. The law as to the construction of an ambiguous conveyance or transfer is well-known. In *Pennock v Hodgson* [2010] EWCA Civ 873 the Court of Appeal referred to the opinion of Lord Hoffmann in *Alan Wibberley Building Ltd v Insley* [1999] 1 WLR 894 and put it like this:

> "9. The following points can be distilled as pronouncements at the highest judicial level :-
>
> (1) The construction process starts with the conveyance which contains the parcels clause describing the relevant land, in this case the conveyance to the defendant being first in time.
>
> (2) An attached plan stated to be "for the purposes of identification" does not define precise or exact boundaries. An attached plan based upon the Ordnance Survey, though usually very accurate, will not fix precise private boundaries nor will it always show every physical feature of the land.
>
> (3) Precise boundaries must be established by other evidence. That includes inferences from evidence of relevant physical features of the land existing and known at the time of the conveyance.

(4) In principle there is no reason for preferring a line drawn on a plan based on the Ordnance Survey as evidence of the boundary to other relevant evidence that may lead the court to reject the plan as evidence of the boundary.

...

Looking at evidence of the actual and known physical condition of the relevant land at the date of the conveyance and having the attached plan in your hand on the spot when you do this are permitted as an exercise in construing the conveyance against the background of its surrounding circumstances. They include knowledge of the objective facts reasonably available to the parties at the relevant date. Although, in a sense, that approach takes the court outside the terms of the conveyance, it is part and parcel of the process of contextual construction."

38. In *Chadwick and others v Abbotswood Properties Ltd* [2004 EWHC 1058 (Ch) at paragraph 44 Lewison J, as he then was, said that the court is to ask what the reasonable layman, with the plan in his hand at the date of the conveyance, would think he was buying.

39. Mr Leport declined to address me on the law relating to ambiguous conveyances because he said that the conveyance, or rather the Form TP1, that transferred Christmas House to the Applicants was unambiguous. But it was not, as I have explained above. Accordingly, in the absence of assistance from the transfer itself, I have to ask myself what the reasonable person standing on the land with the plan in their hand would have thought that they were buying in 2001.

40. Here I must digress to make one further finding of fact. Two things have been said about the position of the drive. One is that the Parsons moved its edge and encroached upon the village green (which of course they owned). There is anecdotal evidence from a neighbour -who was not called as a witness – that they did. There is anecdotal evidence from Mr Simpson that Mr Parsons – who was not called as a witness – told him he did not. In the absence of tested

evidence I can make no finding about that and in any event it is irrelevant to what I have to decide.

41. Second, it has also been said that the Applicant has moved the drive. No evidence has been adduced to that effect, there is only argument, and on that basis it would be impossible for me to make any finding of fact that the Applicants have moved the drive. In any event it is highly unlikely that they have done so; it is narrow enough as it stands, and it is highly unlikely that it was narrower still when they bought it – it must have been wide enough for the Parsons to use and for their purchaser to be content with. I find as a fact that the drive was the same size and in the same position in 2001 as it is now.
42. I revert to the legal question: what would the reasonable person have thought, inspecting the land with the crude plan of the TP1 in their hand? It is simply inconceivable that that person would have reached the conclusion that a slice of the drive, extending across half its width, was not included in the transfer.
43. It is unlikely even that such a person would have noticed that the shape of the black line on the underlying Ordnance Survey map did not quite match the shape of the drive, which is straighter than that line. As Mr Simpson pointed out in evidence, at the scale of the TP1 plan a line representing half the width of the drive would be 0.7mm thick, well within the thickness of the red line denoting the boundary. Mr Simpson also observed that the line on the Ordnance Survey plan, which lies beneath the red line on the TP1 plan and on the registered title pans is not an even curve; it is straight, or almost so, at the Green Rise end, so the discrepancy is by no means obvious. It certainly was not obvious to the members of the parish council when they saw their caution title plan in 2001 or their possessory title plan in 2002; they had no inkling until 2014 that they might own part of the drive.
44. Moreover, in terms of the objective intentions of the parties as they can be deduced from the transaction, it is inconceivable that the Parsons would have sold, or that any purchaser would have accepted, in a village where there is almost nowhere to park by the roadside, a property without vehicular access – as this would have been had the whole drive not been conveyed.

45. I find that the Parsons in 2001 transferred to the Applicants the whole of the drive and that the drive occupied the same space as it does today.

46. Accordingly, if the registered title plans fail to reflect that, there is a mistake on the register.

Is the register to be altered?

47. The parties have reached the conclusion that the registered title plans of their respective properties do indeed show that part of the land belongs to the Respondent; no evidence has been adduced to show me why that is the case but as I have said I proceed on that basis, and accordingly there is a mistake on the register.

48. That takes me to the well-known provisions of Schedule 4 to the Land Registration Act 2002, of which the relevant paragraphs read as follows:

> 2 (1) The court may make an order for alteration of the register for the purpose of—
>
> > (a) correcting a mistake,...
>
> ...
>
> 3(1) This paragraph applies to the power under paragraph 2, so far as relating to rectification.
>
> (2) If alteration affects the title of the proprietor of a registered estate in land, no order may be made under paragraph 2 without the proprietor's consent in relation to land in his possession unless—
>
> > (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or
> >
> > (b) it would for any other reason be unjust for the alteration not to be made.
>
> (3) If in any proceedings the court has power to make an order under paragraph 2, it must do so, unless there are exceptional circumstances which justify its not doing so.

49. Is the Respondent a registered proprietor in possession of the disputed land, so as to be entitled to the protection of the provisions of paragraph 3(2)?

50. Mr Leport argued that the Respondent is in possession of the entire registered title by virtue of its being registered as a village green. He sought to persuade me that the registration of a village green vests a title in the parish council upon trust for the local inhabitants, and that because the members of the council cannot themselves take physical possession, it must as a matter of common sense be the law that they are in possession of it. I gave Mr Leport the opportunity following the hearing to make a written submission setting out the authority for that proposition and he has been unable to do so; I comment further on his written submission at paragraphs 65 and following below.
51. It is clear law that the registered proprietor in possession referred to in paragraph 3(2) must be in physical possession of the land (*Paton v Todd* [2012] EWHC 1248 (Ch)). The parish council is not in possession of the drive and never has been; it is not even apparent that it is in possession of the grassed area although it may have arranged for some mowing since 2001. Mr Leport sought to persuade me that by virtue of purporting – in an email dated 4 November 2015 – to permit the Applicants to use the drive for access to their property the parish council was in control of the disputed land. There is no substance in that submission because physical possession is required.
52. Accordingly there is no basis for any finding that the parish council is the registered proprietor in possession of the disputed land.
53. The parties have proceeded on the basis that there is a mistake on the register; it can be corrected and therefore it must be, in the absence of a registered proprietor in possession who might be protected under paragraph 3(2) or of exceptional circumstances (paragraph 3(3)). I have therefore directed the registrar to respond to the Applicants' application as if the objection had not been made.
54. It is difficult to say what order I would have made had the Respondent been in possession of the disputed land, as that would depend to some extent upon the nature of the possession and the extent of the use being made of the land by the Respondent. So it is not really appropriate for me to go into an hypothetical exercise in case I am wrong about possession, in view of the fact that there is no

evidence whatsoever of possession by the Respondent the matter cannot arise. I would point out, however, that the Respondent's conduct in this case has not been edifying. In 2002 it obtained a possessory title to a village green of which it did not claim to be in possession and was not in possession, having registered a caution on the basis of a title which it did not hold, apparently in order to avoid paying the Parsons' conveyancing costs. In the present dispute it has claimed to own half the drive to Christmas House, even though its members had never before 2014 had any inkling that they might own it and who could have had no possible use for it. If an issue of justice were to arise under paragraph 3(2)(b), it would seem to me unjust not to alter the register in the Applicants' favour

Some further matters

55. In reaching my conclusion I have omitted a number of matters that occupied time at the hearing and which I should mention briefly, namely the witness evidence and two points made by Mr Leport. I also comment on the written submissions made by Mr Leport after the hearing in accordance with my invitation.

The witness evidence

56. First, I have said very little about the witness evidence before me.

57. Mr Simpson gave evidence. His witness statement was largely concerned with the recent conduct of the dispute and his correspondence with the Respondent, and so was largely irrelevant to the legal issues I have had to decide. In particular the construction of the TP1 has to be undertaken without reference to the parties' subjective intentions.

58. For the Respondent, evidence was given by Dr Edward Fiddy and by Councillor Ian Hames. Dr Fiddy was clerk to the parish council from 2000 to 2003. Until 2000 he had no knowledge of the village green or of the council's dealings with it. His witness statement dealt only with the registration of the caution title and the possessory title and was not relevant to the matter I had to decide. I have noted in passing that in his application for a caution, and his statement in support of the application for a registered title, he made no

suggestion that the parish council had been in possession of the land and he confirmed in cross-examination that he was not aware that the parish council had done anything with or on the green until its title was registered, after which it seems to have made arrangements for maintenance. Even then, Dr Fiddy notes that very often the grass would have been cut by the villagers themselves.

59. Councillor Ian Hames gave evidence; his witness statement simply states that he confirmed the truth of the Respondents' Statement of Case. He has no knowledge of the land prior to his appointment as councillor in 2015. In cross-examination he gave evidence of the parish council's having commissioned a surveyor to produce a plan and of the visit made to put pegs under the drive, as I mentioned above above. Otherwise his evidence was of no assistance.

60. Indeed, since the issue before me was a matter of law, it is unsurprising that the evidence of witnesses of fact was largely irrelevant.

Two points made by Mr Leport

61. Two other points are worthy of note. One is that Mr Leport insisted that this was not a boundary dispute since the parties were agreed as to where the boundary of the disputed land lies, on the drive. That is to mischaracterise the Applicants' application. Their case is that the whole of the drive was conveyed to them, that the plan to their title is wrong in that it does not indicate that they own the whole drive, and that there is therefore a mistake on the register. Their case therefore rests on the question what was conveyed to them in 2001.

62. The other point is that Mr Leport put it to Mr Simpson that since he was aware that the Respondent had a caution entered on the village green, he should have been aware that there was a problem, and should somehow have worked out that half the drive fell within the caution title and was not being conveyed to him.

63. It was difficult to understand what Mr Leport was trying to establish. It must have been clear to everyone that the Applicants were buying the house and drive. It did not occur to the Applicants or to the Respondent at the time that they were not doing so. Why it should have occurred to the Applicants that they might not be buying the whole drive is a mystery, and I have made it clear that

the TP1 plan did not, in my judgment, depict the land in such a way as to have sounded any alarm bells for the purchaser. They knew that the caution related to the green and that they were not buying the green and so they had no reason to investigate the caution. Moreover, the caution was not triggered by the disposition – the cautioner was not "warned off" as would have been done under the 1925 Act – and so it was clear to everyone that the caution did not affect the land being bought. To suggest that it did is to beg the very question that I have had to decide. I reject any suggestion that the Applicants were in any way careless in 2001.

Mr Leport's written submissions

64. Mr Leport developed an argument in the course of the hearing that the Respondent was in possession of the village green by virtue of its registration as a village green. He did so in the context of paragraph 4 of Schedule 6 to the LRA 2002 (see paragraph 51 above); and he developed the argument further towards the close of the hearing with a view, if I understood him correctly, to persuading me that his clients had a possessory title prior to the registration of the caution and the possessory title - despite his concession at the start of the hearing that the Parsons owned the disputed land in 2001, and despite the Respondent's own minuted knowledge that they did not own the green in 1997 (see paragraph 19 above).

65. If I understood him correctly, Mr Leport's position by the end of the hearing was that the Parsons owned a paper title to the disputed land in 2001 but that his clients had a possessory title. There was no evidence of factual possession of the village green but, as I noted above, Mr Leport argued that the registration of the village green pursuant to the Commons Registration Act 1965 placed the Respondent in possession of the green and gave it a title that it held on trust for the residents of the village. I gave Mr Leport time after the hearing to make a written submission as to the authority for that proposition.

66. Mr Leport provided me with five pages of "Further submissions" dated 3 April 2018, and with three pages entitled "Key Events relating to the ownership of the Ledwell Village Green". I am not told the authorship of the latter document; it

appears to be an attempt to adduce further evidence after the close of the hearing and I pay no regard to it.

67. The Further Submissions are in three sections: section 1 is said to provide the authority for which I had asked, section 2 being "confirmation of submissions already made" and section 3 being "the Respondent's general overview" – despite my making it clear at the hearing that written closings were not to be made. On reading the Further Submissions I informed those representing the Applicants that I did not need to trouble them to reply.

68. Sections 2 and 3 of the Further Submissions add nothing to what was said at the hearing or seen in the bundle. The assertion by the solicitor for the Respondents, at paragraph 28, that the registration of the ownership of the green under the Commons Registration Act 1965, in 1980, was "conclusive evidence" of the Respondent's ownership is without legal foundation as well as flying in the face of the concession he very properly made at the hearing.

69. Section 1 purports to give the authority for which I had asked. It does not. It refers to section 10(a) of the Open Spaces Act 1906 which, the Submissions say in paragraph 5

> "provides that the (Local Authority) **must hold** and administer the open space ... **In trust** (emphasis added) with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act under proper control and regulation and for no other purpose."

70. That is not what section 10(a) of the Open Spaces Act 1906 says. That section reads as follows:

> "A local authority who have acquired any estate or interest in or control over any open space or burial ground under this Act shall, subject to any conditions under which the estate, interest, or control was so acquired—
>
> (a) hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation ..."

71. There is surely no need to labour the point: the section does not confer ownership, nor does it put the local authority in possession of land registered as a village green. It imposes duties upon a local authority that has acquired ownership etc of an open space.

72. I can deal briefly with the submissions that follow. Paragraph 7 states that the disputed land consists of the village green. That is not the point; the dispute is not whether any of the land is registered under the Commons Registration Act 1965 but whether it was transferred to the Applicants in 2001, and I have found that it was. Paragraph 8 argues that the Tribunal does not have jurisdiction to remove the Village Green from the Respondent's title as that can only be the subject of a release from registration as a village green on an application made to the Secretary of State. That is to conflate the registration of ownership with the registration of title.

73. I take the view that no part of the drive is registered as a village green under the Commons Registration Act 1965. That is not what I have to decide in this reference; I merely remark that it seems obvious that what was intended to be registered in 1965 would have been the green, not the gravelled drive. But in any event there is no question of de-registering the village green; the issue is one of ownership.

74. The Further Submissions go on in paragraphs 10 and following to argue that the Applicants cannot gain title to part of the village green by adverse possession. They have made an alternative claim in adverse possession in the Statement of Case, but I have found that the whole of the drive was transferred to them in 2001 and therefore no claim by adverse possession arises. The Applicants' case for adverse possession was not developed and there is no need, in the light of what I have found, for me to make any determination about it.

75. I agree that what the Respondent does own is held in trust for the public. However, insofar as it has acquired title by registration to any part of the gravelled drive, to that extent there is a mistake on the register and I have directed that the register be altered to correct the mistake.

Costs

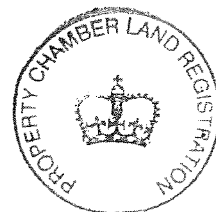
76. In this Tribunal costs follow the event.

77. This is a dispute that should never have been litigated. Both parties have fallen into the error of relying upon the registered title plans to deduce precise boundaries, without the benefit of legal advice to the contrary. But I have highlighted above some unmeritorious aspects of the Respondent's conduct, and I make it clear that I see no merit in the Respondent's case.

78. I expect that the question of costs will be resolved by agreement but if it is not the Applicants are at liberty to make an application for an order for costs within 28 days of the date of this decision, accompanied by a detailed schedule of costs. The Respondents may make any submissions as to liability or quantum within 28 days of service of that application, and the Respondents will then have a further 21 days to respond. I would expect the Applicants, in negotiating or applying for costs, to make allowance for the fact that the bundle contained a great many duplicated documents and a great deal of illegible material.

Dated this 20 April 2018

By order of the Tribunal



Elizabeth Cooke