



[2019] UKFTT 0116 (PC)

REF/2017/0655  
REF/2018/0869 REF/2018/0870

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

**BETWEEN**

**JOHN HAYES, JACQUELINE HAYES  
THOMAS HAYES & SARAH HAYES**

**APPLICANTS**

**and**

**DAVID LEWIS SHETLY & PAULINE JUDITH SHETLY**

**RESPONDENTS**

**Property Address: Land on the east side of Broad Reach Farm, Clay Lane,  
Chichester PO18 8DJ**

**Title Numbers: WSX 101974, WSX396277 & WSX 396648**

**Before: Judge Owen Rhys**

**Sitting at: Havant Court and Tribunal Centre**

**On: 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> December 2018**

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**ORDER**

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**IT IS ORDERED THAT** the Chief Land Registrar shall give effect to (a) the Applicants' applications made in Form AP1 dated 3<sup>rd</sup> March 2017 and Forms AP1 and FR1 dated 30<sup>th</sup> December 2017.

**Dated this 23<sup>rd</sup> day of January 2019**

*Owen Rhys*

**BY ORDER OF THE TRIBUNAL**





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**Applicant representation: Mr Shomik Datta of Counsel (Direct Access)**

**Respondent representation: Mr Derek Marshall of Counsel instructed by  
Biscoes Solicitors**

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**D E C I S I O N**

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**Introduction**

1. This dispute relates to three separate but contiguous area of land, to the south of the woodland known as Oakwood West, which is registered to the Applicants under Title number WSX384338. Oakwood West lies to the north of Clay Lane, but does not have a direct point of access onto this road. However, there is a

gateway from Oakwood West leading to and from a tarmac driveway (“the Drive”) that leads from Clay Lane to the gated entrance to Broad Reach Farm. Broad Reach Farm is registered to the Respondents under title number WSX101974, and lies to the south and west of Oakwood West. The tarmac driveway leading from Clay Lane to the gated entrances to Broad Reach Farm and Oakwood West forms part of the Respondents’ title. There is a track or accessway (“the Accessway”) on the north side of the gated entrance into Oakwood West, laid largely to wood chippings which provides a rough surface. The Accessway begins at the gate and opens out into the woodland to the north. There is a wooden post and wire fence along the west side of the Accessway which physically separates it from Broad Reach Farm. The Accessway is also included within the Respondents’ title. There is a narrow strip of woodland (“the Strip”) to the east of the Accessway, bounded on the east by a rough fence forming the boundary of the adjoining property known as Breadbares. The Strip is unregistered land but has been allocated the provisional title number WSX396277.

2. By an application in Form AP1 dated 3<sup>rd</sup> March 2017, the Applicants applied to the Land Registry to register a prescriptive easement over the Drive and the Accessway in favour of Oakwood West. The Respondents objected, and the dispute was referred to the Tribunal on 7<sup>th</sup> July 2017. On 18<sup>th</sup> October 2017, in accordance with the Tribunal’s directions, the Applicants served their Statement of Case. This pleaded a claim to a right of way over the Accessway and Drive, based both on prescription and also on an implied grant under section 62 of the Law of Property Act 1925 (“the LPA 1925”). Furthermore, the Applicants advanced a claim to have acquired title to the Accessway and Strip by virtue of adverse possession enjoyed by their predecessors in title from 1959 onwards. However, the adverse possession claim had not been the subject of a formal application to the Land Registry, and the Applicants applied to the Tribunal for a stay of the reference to enable them to make the application. The stay was granted, and on 30<sup>th</sup> December 2017 the Applicants applied in Forms AP1, FR1 and ADV1 to be registered as proprietors of the Accessway and Strip by way of adverse possession. Eventually, the Respondents objected to the adverse

possession applications, which were referred to the Tribunal on 14<sup>th</sup> September 2018. The foregoing is only the barest summary of the procedural history of this case, which has been complex. Where necessary, I shall refer in more detail to that history in the course of this Decision.

### **The background**

3. Oakwood West is a commercially managed woodland consisting of some 85 acres. Prior to 1959 it was owned by a company known as J.H and F.R Green Limited (“Greens”) which was in the timber business. In the late 1950s, commercial woodland attracted generous tax reliefs and wealthy individuals invested in it, often through syndicates. At some date believed to be in or around 1959 or 1960 Oakwood West was sold to a syndicate of the Economic Forestry Group known as “the Ringwood Syndicate”. The conveyance from Greens to the Ringwood Syndicate has been lost and there is no surviving copy. The date of this sale is not known, but Mr Roger Fitter, who has been familiar with the land since that time (and to whom I refer below) believes that the sale took place at around this time. There is in evidence a subsequent conveyance of Oakwood West, made between Franks and Hedley-Dent (1) and Sir Anthony Lloyd (2), dated 3<sup>rd</sup> April 1978 (“the 1978 Conveyance”). This recites that the vendors hold the property on the trusts of a Trust Deed dated 24<sup>th</sup> February 1961, and the conveyance is made subject to the terms of a Deed of Covenant entered into by the vendors on 10<sup>th</sup> January 1961. It is likely that Franks and Hadley-Dent held Oakwood West on trust for the individual members of the Ringwood Syndicate. I infer from the information in the 1978 Conveyance that Oakwood West must have been conveyed to the trustees of the Ringwood Syndicate on or prior to 10<sup>th</sup> January 1961.
4. At the date of this sale, Greens owned other land adjoining Oakwood West, including the land and farm buildings to the south and west then known as Noah’s Ark Cottages, and now known as Broad Reach Farm. It is for this reason that the Applicants contend that the missing conveyance of Oakwood West included the grant of an easement over the Drive (and Accessway if the adverse possession claim fails) to be implied by section 62 of the LPA 1925. I shall explain this

point in more detail below. By a Conveyance dated 17<sup>th</sup> July 1961 (“the 1961 Conveyance”) Greens conveyed the adjoining land and buildings known as Noah’s Ark Cottages to Mr Ronald Murray. It is this parcel of land which includes both the Accessway and the Drive. Subsequently, this parcel of land, together with a much larger area also derived from Greens’ title, was sold to the Respondents by a Conveyance dated 30<sup>th</sup> May 1986 (“the 1986 Conveyance”), and was registered under title number WSX101974. They have transferred part of the land initially acquired by the 1986 Conveyance to their daughter June Shetly, and this is registered under title number WSX260336. However, this title is not in any way affected by the disputed applications, albeit that June Shetly was at one stage a party to these references, but is no longer.

5. Oakwood East remained in the ownership of Lord and Lady Lloyd until 3<sup>rd</sup> March 2017, when they sold it to the Applicants. The land had been marketed by John Clegg & Co who produced detailed particulars of sale. In the description of the property, the following passage appears: *“Works in the wood and timber extraction benefit considerably from the comprehensive system of stone tracks and rides providing easy access to all parts of the wood. These link with public roads on the eastern boundary, point A on the sale plan, and via a right of way from the southern boundary to points B. There are additional accesses at points C and D although these have been little used in recent years.”* Point A is the entrance from Mouthey’s Lane to the east. Point B is the southern end of the Drive where it meets Clay Lane. Points C and D lie along Mouthey’s Lane to the south of the main entrance.
6. On 8<sup>th</sup> February 2017 the Respondents emailed the agents as follows: *“We write as neighbours to Oakwood West and have recently come across your sale particulars. We are particularly concerned that your Plan ... shows BOTH Brown and Red lines at “Path” to “B”, indicating a boundary, which is inconsistent with your Note on Page 2A which specifically states “a right of way” only. We should be obliged for your earliest confirmation and correction - had this been the southern boundary of the Woods, it would, in fact, take away the only vehicle access to the Property.”* A response from the vendors’ solicitors was

sent on 10<sup>th</sup> February, in these terms: *“Your freehold title to Broad Reach Farm ..... includes the soil of the right of way you refer to. To that extent you are the owners of the soil of the right of way between the southern boundary of Oakwood West (“the woodland”) and the public highway. The Buyers of the woodland are aware that the soil of the right of way is not included in the sale of the woodland and is used jointly with your property. The Particulars of Sale merely confirm that there is a right of way, as you will know, to and from the woodland from the public highway. The right of way has existed since late 1959 or early 1960 at which time your property was known as Noah’s Ark. Perhaps you will confirm to us that the above information is of assistance to you and satisfies your enquiry.”* This produced the following response from the Respondents; *“Thank you for yours. It is indeed of assistance to us and is somewhat of a relief as it is inconsistent with what we have been told previously.”*

7. On 7<sup>th</sup> March 2017 the Applicants, who had been registered with title to Oakwood West on the same day, applied to the Land Registry to register a prescriptive easement. The application was supported by a Statutory Declaration by Mr Fitter. In this Declaration, Mr Fitter states that he has been the forestry manager of Oakwood West since 1960, through successive ownerships. He says that: *“The access way (“the Accessway”) shown hatched in red on the Plan has always been used as an entry point for light vehicles (by choice) into the Woodland for management and inspection purposes before, and since, Lord Lloyd purchased the Woodland from the Ringwood Syndicate..... At no time have the owners for the time being of Broad Reach Farm tried to prevent the use of the Accessway. Early in the year 2000 Lord Lloyd arranged for a gate to be erected at the point marked “X” on the Plan to replace the old broken original gate thus avoiding any obstruction to the access drive to Broad Reach Farm and no objection to this work was made by any party or the owners of Broad Reach Farm.”* The land hatched red comprises the Drive and Accessway.
8. The Respondents objected to the application by letters dated 21<sup>st</sup> and 25<sup>th</sup> March 2017 and 20<sup>th</sup> April 2017. A number of points were taken. Initially, the Respondents claimed that the application should also have been served on their

daughter June Shetly, and was therefore invalid. This was a bad point, since the Respondents alone were the owners of the site of the claimed right of way and Ms. Shetly's title was not affected (as the Land Registry pointed out). This contention ultimately resulted in the Tribunal ordering Ms Shetly to be made a party to the reference. Eventually, however, she was removed as a party. The other objections by the Respondent were of more substance, essentially alleging that they had never seen the Drive and Accessway used by owners or occupiers of Oakwood West.

### **The legal framework**

#### **(a) The claimed easement**

9. There are three distinct separate claims made by the Applicants. First, they claim a vehicular easement over the Drive. Secondly, they claim a similar easement over the Accessway, to the extent that they do not succeed in establishing a possessory title to it. Thirdly, they claim to have acquired a title to the Accessway and the Strip by adverse possession. The claim to an easement is put in two alternative ways. Initially the claim was for a prescriptive easement, that is, an easement acquired by more than 20 years' user "as of right" – that is, without force, secrecy or permission. This application was based on the Statutory Declaration of Mr Fitter, which had been proffered to them on the sale to the Applicants by Lord and Lady Lloyd. In this case, the gate was blocked by the Respondents in March 2017, probably just after the Applicants' application to the Land Registry. In these circumstances, a claim brought under the Prescription Act 1832 is available. In any event, a claim brought under the doctrine of lost modern grant would enable a claim to a prescriptive easement even where there has been a long period of subsequent interruption. The essence of both claims is proof of 20 years' uninterrupted user. There is no real dispute between the lawyers as to the legal requirements – as they both recognise, it is entirely a question of fact.
10. The alternative way of putting the case was by reference to section 62 of the LPA 1925. A claim to an easement acquired under section 62 has different requirements. Section 62(1) reads as follows:



*“A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, water-courses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof.”*

11. The section will imply the grant of an easement into a conveyance of land by a vendor, where that vendor retains adjoining land over which any *“liberties, privileges, easements, rights, and advantages whatsoever”* are *“occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof”*. The Applicants argue that the Drive and the Accessway were at the date of the conveyance by Greens in 1959 or 1960 enjoyed as a vehicular access to Oakwood West. At that time the Drive and the Accessway remained in Greens’ ownership. Although of course no copy of the relevant conveyance has been found, Mr Datta argues that section 62 still applies.

**(b) Adverse possession**

12. The Applicants also claim title by adverse possession to the Strip and, as an alternative to the easement claim, to the Accessway. Again, there is no dispute between Counsel as to the requirements of a claim to adverse possession. The claimant must establish (a) exclusive factual possession, coupled with (b) an intention to possess. Both these phrases have been the subject of definitive explanation in the leading case of J.A Pye (Oxford) Ltd v Graham and another [2002] UKHL 30. Title to the Accessway was not registered until 1986, when the Respondents acquired Broad Reach Farm and became the first registered proprietors. Title to the Strip has not been registered. The Applicants’ case is that the period of adverse possession commenced no later than 1960, at which date the period of limitation prescribed by the Limitation Act 1939 was 12 years. If the Applicants are able to prove that their predecessors in title remained in adverse possession for 12 years from 1960, legal title would have vested in them

no later than 1972. This is the effect of the Limitation Act 1939 which was then in force.

13. As to the Accessway, if the Applicants prove their case, their predecessors in title became the legal owners in or around 1972. Accordingly, the registration of the Respondents as proprietors in 1986 would have been an error, which the Land Registry is bound to correct – see the Land Registration Act 2002 Sch.4 paras 5(a) and 6(3). Since the Respondents are not in physical possession of the Accessway they do not have the protection afforded by Sch.4 para 5(2). With regard to the Strip, this is an application for first registration. If the Applicants prove their case they are entitled to be registered.

#### **The evidence – the Applicants**

14. For the Applicants, evidence was given by Mr Roger Fitter and Mr Ronald Dudman, as well as two of the Applicants themselves, namely John and Jacqueline Hayes. For the Respondents, Mr Shetly and his daughter June Shetly gave evidence, as well as the following: - A.W Strange, Rebecca Moore, Cindy Walker, Adrian Cox, Graham Stenning, Hannah Green and Lesley Eames.
15. **Mr Roger Fitter** has been familiar with Oakwood West since 1959/60. He was employed as English Woodland’s regional forest manager for West Sussex and subsequently became a Director of the company although he has since retired. He became responsible for the management of Oakwood West from its initial purchase, through the subsequent ownership of Lord and Lady Lloyd, and remained responsible for it until the sale of the woodland to the Applicants in 2017. He has a very clear recollection of its appearance and physical layout from 1959 onwards.
16. According to him, the layout of the Drive, the Accessway and the Strip has remained unchanged since his first knowledge of the land. Thus the Accessway was enclosed on the west by the boundary fence of Noah’s Ark Cottages, and on the east by the Breadbares fencing. It was always open to the woodland to the north, but the southern entrance from the Drive was always gated. Mr Fitter recalls that a “No.3” padlock was fitted both to this gate, and to the Mouthey’s

Lane gate, being a padlock with a key that was universal to all the local woodland under the company's ownership. It is his evidence, therefore, that from 1959/60 onwards the Accessway was fenced in as part of Oakwood West and secured by a locked gate under the company's control and that remained the position as long as he can recall.

17. As to user of the Drive and Accessway, his evidence is that there was fairly intensive use between 1961 and the early 1980s, as the woodland was gradually re-afforested. The original vendors, Greens, had run down the woodland and it was in poor condition. It was put to him by Mr Marshall, for the Respondents, that Clay Lane entrance gate was never used by vehicles, and that invariably the entrance on Mouthey's Lane provided access into the woodland. Mr Fitter rejected this, stating that the Clay Lane entrance was used when it was more convenient, that is when he and his team were working on areas of the woodland closer to the southern entrance. In re-examination he was more precise. By reference to the map at [235], which had been prepared prior to 1961 to identify the timetable for the woodland re-afforestation programme, he stated that the Clay Lane entrance was used when they were working on compartments 1,4,5 and 6. He also described the pattern of re-afforestation work. They would start by clearing out the dead wood using hand tools such as axes and saws. Once the ground was sufficiently clear new trees would be planted in the Autumn or Spring. The new plantations would be regularly cleared and kept free of weeds and other growth to enable the trees to flourish. Once they had reached a certain size the regular clearing work would cease. New plantations would be surrounded by rabbit proof fencing, although in the early years this was not necessary due to the effect of myxamatoxis on the rabbit population. The last planting took place in 1969 in compartment 6. Other general woodland maintenance would include keeping the tracks (or "rides") free of undergrowth, repairing ruts and mowing grass rides when necessary. Mr Fitter himself would attend two or three times per week when his men were working at Oakwood West, and also on Fridays when he paid the men in cash. Mr Fitter accepted that the intensive work ceased after around 1982, by which time the re-afforestation and its associated work had been completed. However, more intensive work

began again after 1998, when grants became available for improvement of the woodland. The Clay Lane gate had to be replaced in 1972, and he produced a letter dated 11<sup>th</sup> January 1972 [256] to a Miss Spicer, a neighbour who had been given permission to walk in the woodland, referring to the installation of a new gate. Mr Fitter explained that there was concern that people were taking their horses into the wood and indeed on occasions the Hunt had gone through. He was asked how this would be possible if there was a locked gate at the Clay Lane entrance. He replied that the Clay Lane gate was small and could be jumped. He said that the original gate (which had been in place when he first came to the land in 1960) had been damaged by this unauthorised use. The letter demonstrates that Mr Fitter took responsibility for replacing the gate. He also had the gate repaired and re-hung in 2000 and further repairs were carried out in 2009 (referred to in his letter dated 12<sup>th</sup> August 2009 to Lord and Lady Lloyd at [240]). Mr Fitter recalled using the Clay Lane entrance throughout the period when they worked for the owners of the wood. He would access the wood with a vehicle, which he would park on the triangle of open ground to the north of the Accessway, where he could turn if necessary. The gate always had to be unlocked to allow access.

18. Mr Fitter has produced a number of documents, which are exhibited to his various statements. These demonstrate a continuing programme from the 1960s onwards of re-forestation and general maintenance of the rides within the woodland, including those which connect into the Accessway and the Drive. He produced a plan of the woodland prepared in January 2008, identifying the proposed maintenance work. The Accessway and indeed the Drive are shown as included within the boundaries of Oakwood West. Furthermore, from the 1970s onwards the owners of Oakwood West granted sporting leases or licences to enable shooting to take place in the woodland. He personally gave a key to the Clay Lane entrance to the sporting tenants, including Mr Lesley Eames, who had been a member of a shooting syndicate before he took a lease in his own name in 1997. Mr Eames, who gave evidence for the Respondents, took another sporting lease in 2012 which terminated when the Applicants bought Oakwood West.

19. **Mr Ronald Dudman** started work as a woodsman at Oakwood West in 1962, and worked there until his retirement in 2002. He became foreman in about 1972, and throughout his working life he had responsibility for establishing new woodland and carrying out maintenance, initially for the Ringwood Syndicate and latterly for Lord and Lady Lloyd. He confirmed Mr Fitter's evidence, namely that the Accessway had always been enclosed within the boundaries of Oakwood West, and that a locked gate separated it from the Drive to the south, which was the means of access to and from Clay Lane. He attached a plan to his statement, which identifies the various features, including the gate, on the ground. When working in the southern or western compartments of the woodland, he and his workers always used the Clay Lane entrance as it was closer to the areas they were working in. In winter, or in wet conditions, these areas were inaccessible from the Mouthey's Lane entrance. The ride from that entrance ran over clay and became heavily rutted and waterlogged (this was apparent at the time of the site visit). He would enter from the Clay Lane entrance in a Bedford truck with his gang of 6 or 7 men. He would park on the northern end of the Accessway where it entered the woodland. He estimated that when work was being done to a compartment, they would be on site for at least two to three months at a time, plus time spent on other jobs such as fencing, ditching and "swiping" (or mowing) the rides. Mr Dudman described laying rabbit fencing down the eastern side of the Accessway (where it bounded the Strip) and rabbit proofing the Clay Lane gate. He recalled mowing the rides, including the Accessway, at least once per year until his retirement in 2002. He would take tractor and cutter (latterly a quad bike and cutter) south through the Clay Lane gate and turn round on the Drive, to come back through into the woodland. He kept the lock on the gate oiled. The gate was always kept locked.

20. **Roger Hoskins** made a witness statement dated 6<sup>th</sup> December 2017, but he was not called to give evidence. The statement is of course admissible as hearsay. Mr Hoskins commenced work in 1965 as a woodsman in Oakwood West, at the age of 17. His statement confirmed the evidence of Mr Fitter and Mr Dudman in all material respects.

21. **John Hayes** is an arboriculturalist, who has lived at “The Osiers” since 1990. “The Osiers” lies immediately to the north-west of Oakwood West. He and his family were given permission by Lord Lloyd to walk there in around 2005. He has known Mr Lesley Eames (the shooting tenant of Oakwood West) for approximately 20 years and in recent years has supplied wood chippings to surface some of the rides within the woodland. He confirms his wife’s evidence that Mr Eames gave her the key to the Clay Lane gate on completion of the purchase in March 2017, and also the code to the combination lock. He recalls that June Shetly replaced the fencing along the western edge of the Accessway in early March 2017. According to him, she asked for permission for her contractors to work on the fencing from the Accessway itself, which he was happy to give. He gave her the code to the combination lock.
22. **Jacqueline Hayes** states that when she and her family purchased Oakwood West, they were assured by the vendors that the property enjoyed a right of way through the Clay Lane gate. Indeed, a statutory declaration form Mr Fitter was supplied which refers to vehicular use since 1960. Prior to the sale she enquired of the vendors’ solicitors as to who had the key to the Clay Lane gate. She was informed that the keys to the locked gate were kept by Mr Fitter and also the shooting tenant of Oakwood West. On completion Mr Eames came to the house and gave her a key to the gate. She had not asked for it but understood that this was done at the vendors’ request.

### **The evidence – the Respondents**

23. **Mr Shetly.** He made a witness statement dated 15<sup>th</sup> July 2018 in which he accepts, at paragraph 7, that “*as I did not purchase my property until 1986, I cannot really comment upon evidence nor do I have any knowledge of the track before that time...*” He states that when he purchased Broad Reach Farm “*We walked the land several times with the vendors, Mr and Mrs Dickson, who pointed out the boundaries... The vendors confirmed that the property boundary in this area was demarked by the access-way eastern boundary to the neighbouring property, Breadbares, and to the northern edge of the access-way extension. There was no evident access into the woodlands to the north of the*

*access-way and there was no reference by the vendors to the neighbouring wood owners who advised that it was just an inactive wood.” Mr Shetly (at paragraph 21) states that he had the only key to the lock on the Clay Lane gate, having been given it by the Dicksons. He states: “Over the years until 2010, we had no cause to use the access-way and its extension and it became overgrown. Periodically, I would push through the fence and cut back the blackthorn and remove the stinging nettles to prevent them growing through the fences into the remainder of the property.” He says that he never noticed any use of the Accessway or Drive by occupants of Oakwood West prior to 2010, when Mr Eames began to use the Clay Lane entrance to Oakwood West. He says that “.....my daughter June challenged him as to what he was doing on our property. Mr Eames explained his shooting activity in the woods and it was agreed that he, his family and his shooting associates could use our access-way without commitment or charge and, that in turn, Mr Eames would keep down the vermin in the woods..”*

24. In cross-examination, Mr Shetly accepted that he spends long periods away from the property. He was asked about paragraph 15(d) of his Statement of Case dated 25<sup>th</sup> April 2018, also supported by his statement of truth. In this it is said that: *“At the end of the access way in 1986 was a gate. It is the same gate that remains in position to this day and it is denied that this was ever replaced by the Applicants’ predecessors in title or anyone acting on their behalf throughout the period of the Respondents’ ownership of the farm. It is acknowledged that there was a lock on the gate to which the Respondents did not have a key but this was not a problem for them because they never made use of the gate (nor did they need to as it was a simple thing to take down the old barbed wire fence)...”* This is not consistent with the witness statement. His answer was that when the Respondents purchased Broad Reach Farm the Dicksons gave them a bunch of keys, which “most likely” would have included a key to the Clay Lane gate, although they never tried to find out. He also said that when he wanted to go onto the Accessway he “*crawled under the barbed wire*”. He said that they were not concerned about the existence of the gate because it was locked and therefore secure. He did not notice any repairs to or replacement of the gate, said to have been carried out by Mr Fitter in around 2000 and again in 2009. However, they were interested in the Accessway

because, according to him, it led to another gate in the fence at the back of the farm buildings, to the north-east of the Accessway. This had not been mentioned either in the Statement of Case or his witness statement.

25. **June Shetly.** She is the daughter of the Respondents, and was 14 years of age when they moved to Broad Reach Farm in 1986. She lived away between 1989 and 2001 or 2002, although she kept a pony there during that time. In December 2001 the Respondents transferred to her a house and stable buildings within the boundaries of Broad Reach Farm. She carried on a livery business at the stables for some years, until 2014, and now operates as a dog groomer. Her evidence is generally to the effect that she has never seen anyone using the Clay Lane entrance into Oakwood West, other than Mr Eames and his family. In her statement she says; “... *It was not until 2010 and upon seeing Mr Eames at our gates for the first time that I went to speak with him to ask him what he was doing at our gate and hoped to open friendly communication with him.... Mr Eames told me that he wanted to enter the woods at this end of the woods, being the Clay Lane entrance, as he had moved his pheasant pen closer to our drive after he had experienced someone damaging or stealing equipment from around the pheasant pens when they were at the Mouthey’s Lane entrance. I saw that allowing Mr Eames to use our entrance way would have a mutually beneficial outcome for us if Mr Eames would control the fox population and also as a result of him being able to control any intruders into the woods..... Following our conversation and agreeing to allow Mr Eames to use our gate and access way at the Clay Lane entrance, this agreement continued until Mr Eames informed me that he would no longer be shooting in the woods or controlling the foxes. Our agreement ended in 2016/17. At this time, Mr Eames’ padlock was removed and returned to him and replaced with a padlock of our own.*” She also says that: “*As my dad also trimmed and weeded the holly bushes, strimmed and weeded the grass area under the holly directly in front of the gate and also the fence and also cut back the hawthorn leading out into the roadside as standard maintenance of our property, we would have noticed people maintaining or using the trackway but never did.*” In cross-examination she said that her father did trim weeds on the Accessway, having climbed through the barbed wire fence to get there.



26. She also gave more details of her conversation with Mr Eames at the Clay Lane gate. She said that Mr Eames had parked his car on the Drive and had opened the gate when she arrived. *“He carried on – I said he could carry on”*. There had previously been an occasion when her dogs had got into the wood and terrorised the pheasants. Mr Eames had told her that the dogs would be shot if it happened again. However, she had concerns about foxes in the wood and wanted to talk to him about it. *“I wanted him to keep the foxes down. I didn’t feel I could approach him – I saw this as an opening to talk to him.”* She recalls that they did talk about the foxes. It was an amicable conversation.
27. **Mr A.W.Strange** is a friend of June Shetly, and has done odd jobs for her over a period of many years. These were mainly done in the summer months, for a few hours after 4 pm. He has also taken timber out of Oakwood West on occasions, but was told to use the Mouthey’s Lane entrance. He had only seen Mr Eames and his associates using the Clay Lane entrance to the woods. He has seen Mr Shetly trimming undergrowth on the farm side of the Accessway – i.e not on the Accessway itself.
28. **Rebecca Moore** is also *“firm friends”* with June Shetly. She kept her horse at her stables between 2010 and 2015. She used to visit the farm before and after work. She never noticed anyone, other than Mr Eames and his associates, using the Clay Lane gate and Accessway.
29. **Cindy Walker**. She kept a horse at Broad Reach Farm for about 12 year from 1988. She never saw anyone use the Accessway or the Clay Lane entrance.
30. **Adrian Cox**. He is a farrier, and a friend of Ms Shetly. He would visit for te purposes of work. He never saw anyone using the Accesway. He once saw Mr Eames using the Clay Lane gate, when he was driving past the entrance on a school run. He accepted that his work was carried out in the Yard on the opposite side of the Stables from the gate and Accessway.
31. **Graham Stenning**. He used to buy supplies from a shop that operated at Noah’s Ark Farm during the 1970s and early 1980s. He recalled that there was a gate

leading into the woodland from Clay Lane. He paid no real attention to it, and never saw it in use. He did not notice if it was padlocked.

32. **Hannah Green.** She kept a horse at Broad Reach Farm in the summers of 2006, 2007 and 2008. During this period she visited June Shetly frequently. She never noticed anyone using the Clay Lane entrance into Oakwood West. She did not notice if the gate was locked. She knew that she could not use it.
33. **Mr Lesley Eames.** In his statement, he confirmed that he had been the sporting tenant of Oakwood West between 1997 and 2017. He says that a tarmac track was laid about “8 to 9 years ago” making use of the Clay Lane access possible. He then began to use this entrance. *“The Shetly family of Broad Reach Farm on seeing me use this entrance, approached me to find out who I was and the purpose for which I intended to use the entrance. They agreed to the shoot members using this access for walking and for light vehicles and no other right was implied or granted.”* He expanded on this evidence under cross-examination. He agreed that he had started shooting with a syndicate in 1981 or 1982. At that time the rides were not mowed, but his started up in the mid to late 1980s. *“It made the southern part accessible. Just brambles. Grass ride. Couldn’t get there from Mouthey’s Lane”.* He never actually tried to access the shoot by the Clay Lane gate until 2010. He accepted that the Accessway could have been used by a 4-wheel drive vehicle in the summer before the tarmac was laid. He recalls being approached by June Shetly soon after he began to use the Clay Lane entrance regularly. *“She asked me why I was using the track. I told her I ran a shoot and this was an easy way out. She said they were happy for us to go out that way.”* He added more. He said it was really nothing to do with the Shetlys, although he did have to cross their drive. *“when you run a shoot you don’t argue. You just go along with it. Don’t rock the boat.”* He informed Mr Fitter that he had changed the lock on the gate – the old lock was “ropey”. If Mr Fitter had wanted a key he would have given it to him. When he found out that the Applicants had bought Oakwood West, he gave a key to Jacqueline Hayes, and he also gave the combination lock code to June Shetly and John Hayes.

### **The evidence - conclusions**

34. The Shetlys did not arrive at Broad Reach Farm until 1986, when June was 14 years of age. They were therefore unable to challenge the evidence of Mr Fitter and Mr Dudman in any respect. The only one of the Respondents' witnesses who could recall the appearance of the Clay Lane entrance prior to 1986 was Mr Stenning [328], who had been a customer of a shop operating at Broad Reach Farm in the late 1970s and early 1980s. He said that he could recall the gate leading into the woodland, at the top of the entrance from Clay Lane itself, but could not say whether or not it was locked. He paid little attention to it. There was also a gate leading into Broad Reach Farm itself, which was generally open.
35. Mr Marshall submits that the evidence of Mr Fitter and Mr Dudman cannot be relied upon. Mr Fitter was managing a number of areas of woodland – by his own calculations perhaps 20 or 30, of which 4 or 5 were in the area of Oakwood West. He submits that Mr Fitter would not be able to recall the details of the Clay Lane entrance and the Accessway, after this lapse of time, and in view of his responsibility for so many other parcels of woodland. I disagree. I found Mr Fitter to be a very impressive witness. It is not often that the tribunal has the benefit of such detailed, accurate, and objective evidence as to the historic use and appearance of disputed land. Mr Fitter has of course been responsible for a number of areas of woodland in West Sussex and beyond, of which Oakwood West is merely one. However, he demonstrated a very precise and accurate recollection of the details of the wood and its physical characteristics and boundaries, of the work carried out there and of the access from Clay Lane. Mr Marshall's very thorough cross-examination yielded very little. Mr Fitter's oral evidence was entirely consistent with his various statements, indeed he was able to give further details orally which did not appear in the statement. Although Mr Dudman accepted that his memory was not so good, nevertheless he manifestly had a good recollection of the work he did in Oakwood West and the use he made of the access from Clay Lane. Neither of these witnesses had any axe to grind and I accept their evidence without hesitation.
36. Leaving aside the Shetlys' own evidence for the moment, the Respondents' other witnesses were only able to say that they had never seen anyone using the Clay

Lane access to Oakwood West other than, in some cases, Mr Eames, and members of his family. Mr Eames was of course the shooting tenant of Oakwood West, authorised by the Applicants' predecessors in title to enter the woodland. The fact that they never saw Mr Fitter or Mr Dudman or any other forestry worker entering the wood is neither here nor there. None of them was monitoring the entrance hour by hour; they were generally occupied with other matters in the stable or yard; and the view of the access was partially screened by trees. Their evidence is not in any way inconsistent with intensive use of the access by forestry workers, use which, on Mr Fitter's evidence, tailed off substantially after 1982.

37. I have to say that I found aspects of Mr Shetly's evidence wholly improbable. It must be borne in mind that when the Shetlys came on the scene in 1986, there was a locked gate at the Clay Lane entrance to Oakwood West. The Accessway was fenced off from Broad Reach Farm and was obviously enclosed within the physical boundaries of Oakwood West. In his evidence he said that prior to the purchase he walked with the Dicksons (the vendors) along the Accessway and into the woodland. I am unable to accept this evidence. Mr Fitter (whose evidence I accept) was clear that the only people with keys to the padlock on the gate were himself and his workmen, and others specifically authorised by him such as the shooting tenants. The Dicksons would not have had a key to the gate and could not have entered the Accessway. Indeed, it would be extraordinary if they did have a key to the woodland on the north side of the gate. It may be noted that the plan used on the conveyance from the Dicksons to the Respondents (the clearest copy being at p.421 of the bundle) – and signed by Mr Shetly – clearly excludes the Accessway, as well as the Strip. It is certainly arguable that the Land Registry filed plan, which includes the Accessway within the Respondent's title, does not properly reflect the conveyance plan which seems to acknowledge the reality on the ground.

38. In relation to the question of keys, the Respondents' Statement of Case at paragraph 15(d) is unequivocal: "*It is acknowledged that there was a lock on the gate to which the Respondents did not have a key but this was not a problem for*

*them because they never made use of the gate...".* However, in his witness statement Mr Shetly states that he had been given a key but never used it. When challenged in cross-examination, he said that the Dicksons had given the Respondents a bunch of keys and "*most likely*" these included the key to the gate, although he had never checked and could not say for certain. Since the Dicksons did not have a key, they cannot have given him one. They may well have given him a bunch of keys, but if he genuinely believed that the Accessway was included in the land which he had bought (despite the fact that it was fenced off from Broad Reach Farm) it is wholly improbable that he would never have tried to find the key and use it. It also makes no sense that he would have taken the trouble to climb through or under a barbed wire fence in order to clear the Accessway of weeds, an Accessway which served no useful purpose from his point of view (and could not be reached through the gate to which he had no key). In order to explain this evidence, in cross-examination he referred to another gate, said to have been between Broad Reach Farm and Oakwood West, to the north of the Accessway. This had never previously been mentioned, in any of the original objections, the statement of case or in his witness statement. He placed this gate – which he accepts no longer exists – behind an established line of hedging, but very close to an existing gate which lies within Broad Reach Farm itself. I do not accept that such a gate ever existed. Mr Shetly's evidence was that he always believed that the Accessway belonged to the Respondent, but they chose never to use it. He also denies that the owners and occupiers of Oakwood West have ever enjoyed a right of way to and from the Clay Lane gate. However, the exchange of correspondence with the vendors' agents at the time of the sale to the Applicants tells a very different story. Mr Shetly's email and response referred to at paragraph 6 of this Decision tell a very different story. That correspondence can only be read as acknowledging that the owners of Oakwood West did have an easement over the Respondents' drive to and from the Clay Lane gate. It is only after the Applicants' purchase that the Respondents' position changed.

39. **June Shetly.** She has found herself in an awkward position, caught between the demands of her father and her friendship with the Applicants. Her evidence does not, however, greatly assist in resolving the issues. Like her parents, she had no

knowledge of the disputed land before 1986, when she was 14 years of age, and then spent many years living away from the farm, albeit that she regularly visited to ride her horse. Her evidence is essentially to the effect that she never noticed any use of the Clay Lane gate until Mr Eames began to use it in around 2010. When she was running the livery stable at Broad Reach Farm her attention would not have been focused on the Accessway or the gate, which was screened by trees and bushes in any event. Her evidence to the effect that her horses would have been spooked by any activity on the Accessway is simply not credible, bearing in mind the proximity of the busy B road that is Clay Lane. Under cross-examination her account of her conversation with Mr Eames was far less positive than her statement suggested – she undoubtedly questioned his presence there, but did not give him “permission” to use the gate, but rather she did not object.

**Findings of fact.**

40. My findings of fact are as follows:

- a. Oakwood West was sold to the Ringwood Syndicate in 1959 or 1960, the Accessway was gated and fenced off from Noah’s Ark Farm (as it then was) on the west and Breadbares on the east. It was open to the woodland to the north and was therefore obviously fenced within the area of Oakwood West.
- b. There was no gate access from Noah’s Ark Farm to the north east along the fenced boundary. I reject the Respondents’ evidence on this point.
- c. At least from 1959/60 onwards, the Clay Lane gated entrance into the Accessway was kept locked, and the keys were in the exclusive possession of the owners of the woodland, in the person of their manager Mr Fitter and those (like Mr Dudman) who worked for him.
- d. Apart from Mr Fitter and his forestry workmen or contractors, no other persons entered the woodland, apart from occasional equestrian trespassers and the Hunt. Mr Fitter gave various neighbours (such as Mrs Spicer) express permission to enter the wood for recreational purposes.

- e. Between 1959/60 and approximately 1982, a programme of re-forestation and consequential work took place, which resulted in fairly intense seasonal activity. At these times, workers such as Mr Dudman would be present on the land for some three months in the year, and for 6 weeks at a stretch.
- f. They did not always use the Clay Lane entrance. This was only used if they were working in one of the compartments to the south and west of the Land.
- g. Although Mouthey's Lane was the main entrance, the poor state of the rides joining Mouthey's Lane to the southern and western compartments made access from Clay Lane more convenient.
- h. Access through the Clay Lane entrance was generally by means of vehicle. The vehicle would pull up on the Drive whilst the gate was unlocked, and be parked on the triangle to the north of the Accessway. Mr Dudman used a quad bike to pull a mower until his retirement in 2002, and he would drive through the Clay Lane gate and turn round and go back into the Land.
- i. Apart from Mr Fitter and those engaged on working on the Land, the only other occupants of Oakwood West were sporting tenants. Mr Eames did not begin to use the Clay Lane gate and Accessway until 2010. He had been given a key by Mr Fitter in 1997 but did not use it until later. It did not work due to the "ropey" nature of the lock.
- j. I do not accept Mr Shetly's evidence that he crawled under or climbed over the barbed wire fence to clear the Accessway. If he did these were no more than the act of a not so persistent trespasser. I do not accept his evidence that he or the Respondents ever believed that they had bought the Accessway, to the extent that this is in any way relevant.
- k. Successive owners of Oakwood West have since 1959/1960 acted in relation to the Accessway and Strip as any occupying owner would act. This includes controlling the use and access through the Clay Lane gate

by means of the lock, repairing, renewing and re-hanging the Clay Lane gate on various occasions from 1972 onwards, using the Accessway for the purposes of access with and without vehicles to and from the woodland and the other specific instances referred to in the evidence of Mr Fitter and Mr Dudman.

- l. The owners of Oakwood West have therefore been and continue to be in exclusive factual possession of the Accessway and Strip from 1959/60 onwards.
- m. Their intention to possess can be inferred from the acts of user and enclosure referred to above.
- n. The owners and occupiers of Oakwood West enjoyed access to and egress from Oakwood West over the Drive from 1959/60 for a continuous period of at least 20 years as of right, namely openly, without the use of force and without permission from the owners for the time being. This access was used by vehicles when required and in connection with the use of Oakwood West as commercial woodland.

#### **Conclusions - adverse possession**

41. In the light of my findings, I have concluded that the Applicants' predecessors in title had no later than 1972 barred the title of the true owners of the Accessway and Strip under the Limitation Acts, and legal title had vested in them. It follows that the registration of the Respondents with title to the Accessway was an error, which should be corrected by removal of the Accessway from the Respondents' title. Since they are not themselves in possession of the land, the Land Registry is under a duty to alter the register. As successors in title as owners of Oakwood West, to which the Accessway and Strip are adjuncts, the Applicants are also entitled to be registered with title to the Accessway in accordance with their applications to the Land Registry.

#### **Conclusions – the claimed easement**

42. I conclude that the Applicants' predecessors in title have acquired an easement over the Drive by prescription for the purposes for which the Drive has been used



over the years, namely as a vehicular access to and from Oakwood West in connection with its use and enjoyment as commercial woodland.

43. Due to the absence of any copy of the conveyance whereby Greens sold to the Ringwood Syndicate, I do not think that I am able to hold that an easement was implied under section 62 of the LPA 1925. I have been referred to the decision of HHJ Matthews in Leven Holdings v Johnson [2018] EWHC 336. In this case the court was prepared to consider whether section 62 might apply even where the relevant conveyance had been lost and no copy existed. However, the claim was rejected and on the facts of that case the Judge was not prepared to infer the existence of a conveyance, by a common vendor, and without any contrary intention being expressed. In my judgment, there is insufficient material before me which permits me to apply section 62 and I therefore must reject that way of putting the Applicants' case.

44. I shall therefore direct the Chief Land Registrar to give effect to (a) the Applicants' Form AP1 dated 3<sup>rd</sup> March 2017 and (b) the applications in Forms AP1 and FR1 dated 30<sup>th</sup> December 2017. An application was also made in form ADV1 under Schedule 6 of the Land Registration Act 2002 but that is inapplicable since the Respondents' never obtained title to

45. I am minded to award the Applicants their costs on the standard basis. I direct them to file with the Tribunal and serve on the Applicant a statement of costs within 7 days of the date of service of this Decision and Order. If the Respondents object to the principle that they should pay the costs, and/or the amount of costs claimed, they should file and serve their submissions within 14 days of receiving the costs statement, and the Applicants may respond in writing within 7 days thereafter.

**Dated this 23<sup>rd</sup> day of January 2019**

*Wen Rhys*

**BY ORDER OF THE TRIBUNAL**

