

[2019] UKFTT 0253 (PC)

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

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY
LAND REGISTRATION ACT 2002**

**REF No 2018/0355
BETWEEN**

**PAUL FREDERICK KING
ALAN JAMES MIDGLEY**

Applicants

and

**ADRIAN PHILIP TOWNSEND
IAN STEPHEN TOWNSEND
VIVIAN PATRICIA BATHURST**

Respondents

Property: Land on the north side of Saltcote Lane, Playden. Rye

Title number: ESX385174

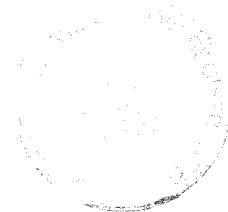
ORDER

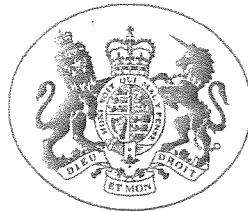
The Chief Land Registrar is ordered to cancel the application dated 4 September 2017

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 26th day of March 2019





[2019] UKFTT 0253 (PC)

PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2018/0348
BETWEEN

PAUL KING
ALAN JAMES MIDGLEY

Applicants

and

ADRIAN PHILIP TOWNSEND
IAN STEPHEN TOWNSEND
VIVIEN PATRICIA BATHURST

Respondents

Property: Land to the north side of Saltcote Lane, Playden, Rye

Title number: ESX385174

Before: Judge McAllister
Alfred Place, London
25 February 2019

Representation: The Applicants were represented by Paul Tapsell of Counsel instructed by Funnell & Perring; the Respondents were represented by Vivien Patricia Bathurst

DECISION

Introduction.

1. The Applicants, Mr King and Mr Midgley, are the owners of a property known as Saltcote Place, Rye, registered with title ESX100572. They purchased Saltcote Place on 20 October 2003. The property was once the boarding house of a girl's school, and then a nursing home. It is a large property, built in or about 1902. It was first sold by

auction in 1939. It now comprises some 4.5 acres and is used as a venue for weddings, and provides bed and breakfast accommodation.

2. The property is approached by a tarmaced drive from Mill Road, leading up from Rye, (which drive is part of the Applicants' registered title, as is an area of land to the south of the drive) lined by mature lime trees.
3. To the north of the drive, and to the west of Saltcote Place, is a detached house known as 'Cherries'. Cherries was the family home of Dr Wilfred Henry Townsend. The property was built in the early 1950s on land which had once formed part of the Saltcote Estate. Rights of way were reserved over the drive to Saltcote Place.
4. Cherries included a field to the east, then known as the Paddocks. This land, which comprises some 2 acres, has been referred to throughout the hearing as the Field and I will continue to do so in this Decision.
5. By a conveyance dated 1 July 1987 Dr Townsend conveyed the Field to the Respondents, his children. Title to the Field was not registered and remains unregistered.
6. Cherries was sold by Dr Townsend in August 1987. The current owners, Mr and Mrs Jackson, bought Cherries on 18 September 1988.
7. By an application dated 4 September 2017 Mr King and Mr Midgley applied for first registration of the Field, claiming to have acquired the title by adverse possession under the provisions of the Limitation Act 1980. The application was supported by a statement of truth dated 27 July 2017. In this statement, amongst other things, Mr King stated that he did not know the owner of the Field and had had no contact with the owner.
8. The Respondents objected to the application in January 2018 on the grounds that the Applicants had not acquired title by adverse possession. The matter was referred to the Tribunal on 20 April 2018.

9. In addition to the Respondents, Mr and Mrs Jackson also objected, and were made parties to this application. Their objection was cancelled on 16 August 2018. Mr Jackson nonetheless gave evidence on behalf of the Respondent
10. For the reasons set out below I will order the Chief Land Registrar to cancel the application. In my judgement, the Applicants have not succeeded in establishing adverse possession of the Field for the requisite period, or at all.

Relevant legal principles

11. In the case of unregistered land, the law remains that set out in the Limitation Act 1980. By section 17 of that Act, at the end of the period of 12 years prescribed by the Act for any person to bring an action to recover land, the title of that person to the land is extinguished if the occupier can establish adverse possession for at least that period of time. The principles which determine whether property is acquired by adverse possession were re-stated in the well known case of *JA Pye (Oxford Ltd) v Graham* [2003] 1 AC 419, which in turn affirmed the earlier decision in *Powell v McFarlane* (1977) 38 P&CR 452. Two elements need to be established: factual possession and an intention to possess.
12. Morgan J provided the following useful list of principles in *Balevents Ltd v Sartori* [2014] EWHC 1164.
 - (1) There is a presumption that the owner of the land with paper title is in possession of the land.
 - (2) If a person who does not have the benefit of this presumption wishes to show he is in possession, the burden is on him to show that he has both factual possession of the land and the requisite intention to possess.
 - (3) To establish factual possession, he must show that he has an appropriate degree of physical control of the land, that his possession is exclusive and that he has dealt with the land as an owner occupier might have been expected to deal with the land and that no-one else has done so.
 - (4) Whether a person has taken a sufficient degree of control of the land is a matter of fact, depending on all the circumstances, and in particular on the nature of the land and the way in which such land is commonly enjoyed.

- (5) The person seeking to show that he has possession must show that he had an intention for the time being to possess the land to the exclusion of all others, including the owner with the paper title.
 - (6) The relevant intention is an intention to possess and not to own.
 - (7) The intention to possess must be manifested clearly so that it is apparent that the person claiming to have been in possession was not merely a persistent trespasser.
 - (8) If the acts relied on are equivocal then they will not demonstrate the necessary intention.
13. To the above list, it is also necessary to add that the intention to possess must be determined objectively because evidence of the squatter's subjective intention is likely to be self serving: see *Bolton Metropolitan Borough Council v Musa* (1988) 77 P&CR D36.
14. Each case is fact specific, and turns on an assessment of all the evidence, including, of course, the credibility of the witnesses.

Topography

15. The Field is roughly rectangular in shape, although there is an additional small 'spur' on the southwestern corner, effectively 'eating into' Cherries. The Field slopes northwards, towards a line of tank traps created, presumably, during World War II. Access to the Field is from the drive leading to Saltcote Place, over an area of grass, and then through a five bar gate in the south western corner. There is an issue as to whether this gate was padlocked at any stage, but it is common ground that, until very recently, it had not been padlocked since 2004/5 . I will return to this evidence below.
16. The conveyance of the Field to the Respondents contained a covenant by Dr Townsend, made on his behalf and his successors in title to Cherries, to maintain a good stockproof boundary fence along the boundary of Cherries with the Field. The fence is now a 4 foot wooden fence. There is in addition a small pedestrian gate in the boundary between Cherries and the Field.

17. The northern boundary of the Field adjoins three properties on Saltcote Street (also known as New England Lane) which are separated from the Field, as I have said, by a double row of tank traps. The Field, when transferred to the Respondents, also included a pond in the north west corner. This pond now forms part of Cranfield, the property to the north.
18. The eastern boundary of the Field is marked by a footpath leading south from Saltcote Street. It seems to me clear that the footpath does not form part of the Field. As with the southern boundary, there was an estate fence along the eastern boundary of the Field. Mr King stated that he put up this fence.
19. The southern boundary of the Field was marked by an estate fence, and inside that a wire fence. In effect, the only access from Saltcote Place to the Field was through the five bar gate.
20. Between the southern fence and the drive is a large grass verge of some 15 to 20 feet. The land to the south of the drive is part of Saltcote Place. It is clear from the photographs I have seen that this land is laid to grass and is very well maintained, in contrast with the Field to the north of the drive.
21. There is no dispute but that very little has been done on the Field. The condition of the Field in early and mid 2018 is clearly shown in the photographs taken by Adrian Townsend in January 2018 and again in May 2018. The photographs taken in January 2018 show the remains of the estate fence to the east and to the south, and overgrown vegetation in the Field. The Field appears at various points to be impenetrable. Photographs do not, of course, show the whole picture but the impression I am clearly left with is that the Field had been neglected, at least for some time.
22. The Respondents also produced a series of aerial photographs taken from 2003 to 2018. These show a marked contrast between the condition of the Field and the remainder of the land owned by the Applicants, and the land forming part of Cherries. It appears to me – but I say this simply by looking at the photographs and without any expert evidence on the photographs – that the Field became more overgrown from 2006 onwards but arguably less overgrown in 2018. Mr Tapsell urged me to conclude that the aerial photographs clearly indicate that the Field has been maintained

throughout this period and that, since it is not the Respondents' case that they have maintained it, it must have been maintained by the Applicants. I cannot accept that submission. It is notoriously difficult to analyse aerial photographs, and it is certainly very difficult to gauge the height of any undergrowth, shrubbery or vegetation from any height. In so far as it is possible to tell, there is no sign of any bonfires, and certainly no sign of any maintenance of the Field.

23. The Field was cleared of all or most of its vegetation in November 2018 with the use of diggers by the Applicants. The historic fencing on the southern side was removed. The explanation given by Mr King for this is that he had become annoyed with Mr Jackson and the Respondents, and had taken the decision simply to clear the land.

Evidence

24. The Applicants' evidence was as follows. Mr King stated that it was their intention to take possession of the Field from the outset. In his written statement he said that he and Mr Midgely were aware that the Field was not part of their title, but they occupied it as part of their extended garden. In his Statement of Truth in support of the application, Mr King stated that he believed the Field should have been registered with their title at first registration.
25. The Field was described in Mr King's statement as being at the far end of the garden, where waste is deposited, and where regular (quarterly) bonfires are held to dispose of the waste. The Field was maintained, he continued, as if it were part of Saltcote.
26. Mr King stated that he agreed with the prospective owners of Cranfield to the north that the pond in the northwest corner of the Field could form part of their title. There is no evidence of this, and this account is contradicted by Adrian Townsend's evidence.
27. So far as the gate in the south west corner is concerned Mr King stated in his statement of truth that the gate had never been padlocked, which meant that the owners of Cherries could dispose of all their garden waste on the Field. In his witness statement he stated that he secured the gate with a padlock and that he was the only person with a key. He also stated that at no time during their occupation of the Field

did anyone ask them to remove the padlock or give them the key, giving the clear impression that the gate remained locked. In evidence he stated that the gate was initially locked, but that the padlock was removed in 2004/2005 to allow Ted Jackson to deposit his grass cuttings on the Field. The padlock was reinstated towards the end of 2018.

28. The Field was in a very poor condition when he and Mr Midgley bought Saltcote Place. It was he said, full of asbestos, engine body parts, and glass. Once cleared, the use was as stated above, and additionally, it was used as a place to store insulating material whilst the house was being renovated. Other activities on the Field involved controlling vermin and maintaining the tree boundary so as to preserve the view from Saltcote, storing logs, maintaining and, as I understand it, replacing, some of the estate fencing. Strimming has taken place into the Field near the lime trees. Foxes were shot in 2012/13 after an episode when some of the 50 peacocks kept by the Applicants escaped into the Field and were killed by the foxes. The Field was kept, in short, to a standard that the Applicants were satisfied with.
29. Mr King's evidence, not supported in any way, is that the Applicants probably spent a £1,000 a year on gardeners and on maintaining the Field.
30. In about 2003/2004 Mr King stated that met Adrian Townsend and his wife on the Field. There is a dispute as to what happened. In his written statement Mr King said that he simply asked Mr Townsend to leave which he did. Dr and Mrs Townsend recall that the meeting was much later, in 2011. They parked on the drive and became aware of a man approaching them from Saltcote Place. He was rude and unfriendly until he was told that Dr Townsend was one of the owners. At that point he asked them whether they wanted to sell, and if so, he would be interested in buying the Field. Nothing further came from this discussion. Asked about this, Mr King denied that there was any discussion about buying or selling the Field. So far as he was concerned, Dr Townsend and his wife were simply reminiscing about Dr Townsend's childhood and memories of the area.
31. Mr King also denied meeting Mr Matthews on or near the Field. Mr Matthews (Mrs Bathurst's ex husband) has made a statement, but did not attend the hearing. He refers to one meeting in particular when he had been contacted by Mrs Bathurst who had in

turn been contacted by Mr King about a tree which had fallen from the Field onto his fence or land across the footpath. He explained that he had come to check the tree, and in fact discovered that the tree in question was outside the boundary of the Field.

32. Asked about the photographs taken in 2018, Mr King maintained that the Field looks neat and tidy from the drive, and that the vegetation in the Field is not so high as to block the view.
33. Mr Midgley confirmed the evidence given by Mr King. Asked specifically about the number of times bonfires had been lit on the Field, he said this happened every year or every other year; eight times at a minimum.
34. In April 2018 Mr King attempted to gather support from the residents of Playden to support his application to Land Registry, emailing people with sample support letters which state in terms that the writers were unaware of anyone owning the Field, last used, it was said, as a playing field for the girl's school. He also wrote a longer history of the Field which, based on the knowledge we now have, was plainly inaccurate.
35. I also heard evidence from Jason Sharratt, Lee Stillwell and James Crosbie-Barcroft. I mean no disrespect to them when I say that I did not find their evidence particularly helpful. Mr Sharratt is a carpenter who has known Saltcote Place when it was owned by the Applicants' predecessors. He stated that he had seen the Applicants using the Field for garden waste and generally maintaining it. When pressed he said that he had seen someone on the Field twice, using wheelbarrows. Diggers were used in 2018. He never asked who owned the Field but simply assumed it was part of Saltcote Place.
36. Mr Stillwell lived at Saltcote Place from 2003 to 2006. He carried out a number of roles, including security, maintenance, and groundsman. He stated that in 2005/6 he worked in the Field with a dumper truck to clear old fencing, removing engine parts, glass and building materials left by the previous owners. Ted Jackson rode on the dumper. He also helped build the aviary. The property was in a terrible state when the Applicants bought it, and was gradually improved. Mr Stillwell accepted that the Field was never mowed or mowable: when he went there he did so to strim by the edge near the drive, to remove trees from the footpath, and to make bonfires from the leaves on

the drive. There is no fencing now, except along the eastern edge. There is a great deal of wildlife in the Field.

37. Mr Crosbie Barcroft is a gardener, and has worked at Saltcote Place since 2014. He said that he has carried out winter work on the Field which he says was not a maintained field: the work done was simply to keep it from being too overgrown, and to make sure the strip where the fence used to be is kept clear, and to allow the view to be seen. The rubbish is piled up and burnt once a year.
38. The Respondents' evidence is as follows. Mrs Bathurst is the eldest of the three siblings. In her evidence she describes growing up at Cherries, and keeping ponies in the Field. A shelter was built for them, which was there until 2018. The Field was never used as part of Saltcote Place. When her father retired and her parents moved to Wiltshire, Mrs Bathurst suggested that the Field should be retained in the family. There is a covenant preventing the construction of more than two dwellings on the Field, but it was thought that at some point in the future planning consent might be obtained for this purpose. Permission was applied for in 1989 and refused.
39. Mrs Bathurst's son suffered a very severe head injury in 2001. It became their practice to drive to his father's farm in Iden every 8 weeks or so to collect 50 bales of hay for his horse. They would often stay overnight and visit the cemetery in Playden churchyard and walk to the Field. Access was either by climbing over the eastern fence or through the five bar gate. The gate, Mrs Bathurst said, was never locked until September 2018, at the time when the Field was cleared by Mr King. The Field became increasingly overgrown over the years, but it was still possible to take the dogs for a walk there. Mrs Bathurst's ex husband also visited the Field regularly, possibly one every two or three months.
40. In the period 2003/4 Mrs Bathurst received three phone calls from Mr King asking if the Respondents wanted to sell the Field. Some 5 or 6 years ago Mr King rang to say that a tree had fallen from the Field onto the fence or his land. Mr Matthews went to the Field and found that the tree was on the footpath, and not therefor the family's responsibility. The Respondents first became aware of the Applicants' intention to claim the Field as theirs in 2017 through her brother Adrian. She also received a

number of phone calls from people in the village informing her that Mr King had approached the local parish council for support.

41. In 2010 the owner of Cranfield (one of the properties to the north of the Field) wrote to Mrs Bathurst asking if the Respondents were prepared to sell the Field. Mrs Bathurst did not recall how, if at all, she replied to this query. In any event the Respondents were not willing to sell.
42. Ian Townsend is the youngest of the Respondents. He is wheelchair bound most of the time, and has been for some time. His evidence is that he visited the Field probably some 6 times since 2003, when he goes to a nearby lake to fish. The only change he noticed was a line of evergreen shrubs, but as these are planted outside the boundary of the Field he was not concerned. Mr Jackson has kept the family informed of any changes to the Field itself.
43. Dr Adrian Townsend was born in Cherries, and also described the use made by the family of the Field when they were growing up there. In 1999 he became aware of the fact that Alan Webb, the owner of Cranfield, had moved his boundary southwards to include the pond in the north eastern corner of the Field. He wrote to him about this, but there is no copy of the letter, and the matter was, as I understand it, just left. Dr Townsend remained in contact with Ted Jackson, to whom he gave permission to use the gate into the Field for cutting back any overhanging growth or depositing his grass cuttings. In 2001 Mr Jackson wrote to him stating that he was interested in buying the Field.
44. Dr Townsend recalls visiting in 2005 for his mother's funeral. On this occasion it was decided that his youngest son, Henry, who was born in 1999 should not attend the funeral, so a teddy bear was placed in the bushes in or near the Field, and his father in law took him for a walk to find the bear.
45. In 2011, around 17th August, Dr Townsend drove to the Field with his family and parked on the drive. Mr King approached from Saltcote Place, telling them that this was private property and asking them to leave. His tone changed when Dr Townsend told him he was one of the owners. Mr King told him he had spoken to Mrs Bathurst on the phone several times about a possible sale of the Field and repeated his offer to

him. They parted on a handshake, and Dr Townsend confirmed that if they did ever want to sell he would be in touch with him.

46. Apart from a visit in 2015.2016, Dr Townsend visited again in January and May 2018 when he took a number of photographs, referred to above. Mr King told him that he had put aside a considerable sum of money to fight the case because he was concerned to ensure that no building took place on the Field. Mr King claimed that he did not know that Dr Townsend was one of the owners, and was reminded of the meeting in 2011 and indeed of the various conversations with Mrs Bathurst. Mr King continued to assert that he did not know who the owners were. Dr Townsend made a contemporaneous note of the meeting.

47. In mid September 2018 Dr Townsend was told by Mr Jackson that a padlocked had been placed on the 5 bar gate. Up to this time the fencing around the Field was a traditional estate fencing, in some places bent and broken (as it clear from the photographs) with a single strand of barbed wire on the inside. On this occasion Dr Townsend was, as he put it, horrified at how badly neglected the Field had become. Mr King then cleared the Field completely in November 2018.

48. I heard evidence from Emily Parkes, whose mother was Mrs Bathurst's closest friend in the 70's and 80's. She remembers a small gate leading from Cherries to the Field and playing there regularly. Ms Parkes moved away in 1999 and returned to the area in 2012. In 2017 Mrs Bathurst said she could rent the Field for her ponies. When she went to the Field she could not, she said, believe her eyes. The Field had become a young wood. She was shocked at the state of neglect, and said that it was not even possible to walk through it, and she did not even bother to go through the five bar gate. The drive was cleared back some 10 feet, then there was the estate fencing.

49. Finally, I heard from Mr Jackson. He is a retired bank manager. He was aware that the Respondents owned the Field. Over the last 30 years he has used the Field with their permission for a number of activities, such as cutting back the overgrowth, picking blackberries, and depositing grass cuttings. The Field has become progressively overgrown in the last 15 years. He has never seen Mr King or anyone else in the Field which is clearly visible from his conservatory. The five bar gate was first padlocked in 2018, before the clearing which took place in the autumn. In the last ten years, Mr

Jackson believes he went into the Field about once a year. Had any work been done in the Field by Mr King or anyone else he would have noticed.

50. He knows Mr King, and Mr King told him, in about 2011, of the meeting with Dr Townsend when he had offered to buy the Field. When he became aware of the Applicants' application, and read the Statement of Truth made by Mr King, he was, he said, so incensed that he felt he had to object. There was no doubt in his mind that Mr King knew who the owners of the Field were. In addition, it is not true that Mr King cut back the trees in the Field: he, Mr Jackson, cut the trees in his sight line. The trees cut back by Mr King were the lime trees along the drive.

Conclusion

51. In my judgment, the Field was never part of the garden of Saltcote Place, nor was it ever maintained as such. It was at all times (at least until November 2018) a distinct and separate parcel of land, bounded by historic fences, a wooden fence separating it from Cherries, and tank traps to the north. The only access was through the fivebar gate from the drive, over which, of course, the Respondents have a right of way, and through a small pedestrian gate from Cherries. The Field remained at all times accessible to the Respondents and to Mr Jackson. I do not accept the evidence that the gate was ever padlocked by the Applicants (until very recently). The Applicants took no steps to incorporate the Field into their land, or to change the boundaries in any way. There was nothing to indicate that the Field belonged to Saltcote Place or to the Applicants.

52. The Field was not maintained or looked after in any way by the Applicants, but was clearly allowed to grow wilder over time. Mr Jackson clearly used the Field on occasion. I have no doubt that if the Field was being used regularly by the Applicants, as they claim, Mr Jackson would have contacted the Respondents. It may be that, once a year or so, a bonfire was lit on the Field by the Applicants, but these acts, even if coupled with the use of the Field for garden waste occasionally, or controlling vermin, are simply too trivial and too insignificant to amount to the taking of exclusive possession. To be in possession, the Applicants need to show that they had effective

control of the Field. This is to be distinguished from use for a limited time and for limited purposes. Thus, even if the Field was cleared of some rubbish and materials when the Applicants bought Saltcote Place, this activity would not, again, give rise to a claim for adverse possession. Such activity is entirely consistent with the Applicants' desire to make their property, and the immediate views from the property, as attractive as possible.

53. It is also clear to me, and follows from the above, that none of these activities, sporadic and occasional as they were, would have put the true owners on notice that the Field was being occupied with the necessary intention to possess, as opposed to merely being acts of trespass. The subjective intention or belief of the Applicants is not sufficient to establish an intention to possess: this must be manifested objectively. There was no activity to put the Respondents on notice. The Field has at all times been markedly different from any other part of the land owned by the Applicants.
54. Although this point is not directly relevant to the claim for adverse possession, I also do not accept that the Applicants did not know that the Respondents were the paper title owners of the Field. The statements in the Statement of Truth dated 27 March 2017 that the Applicants had no details of the person thought to be the freehold owner and had had no contact with the owner are, in my judgment, simply untrue.
55. I fully accept the evidence given by and on behalf of the Respondents, and, where there is any inconsistency between this evidence and the evidence of the Applicants and their witnesses, I have no hesitation in preferring the evidence of the Respondents and their witnesses.
56. The Field was and is clearly important to the Respondents. It is not merely a place of memories, but represents, for them, a possible commercial investment. Each of the Respondents has, at times, visited the Field over the years. On no occasion were they put on notice that the Applicants had, as they claim, taken possession of the Field. The first and only time that any real activity took place on the Field was in November 2018.

57. In short, the Applicants have not established exclusive possession of the Field for 10 years or at all, and nor have they demonstrated that they intended to possess the Field to the exclusion of all others. For these reasons, the claim fails.

Costs

58. In principle, as the successful parties, the Respondents are entitled to their costs from the date of the reference to the Tribunal (20 April 2018). These costs will be their solicitors' costs, and, from the time they acted as litigants in person, their disbursements (photocopying, train fares and the like) and reasonable time costs assessed at £19 per hour. A schedule is to be filed and served within 14 days, and the Applicants may respond within a further 14 days.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 26th day of March 2019

