



[2019] UKFTT 0587 (PC)

REF/2017/1063

**IN THE FIRST-TIER PROPERTY TRIBUNAL  
(LAND REGISTRATION)**

**Before: Judge Clarke Q.C., 1 August 2019**

**BETWEEN**

**(1) NIGEL ANTHONY MARTIN NEADS  
(2) CAROLINE JAQUELINE NEADS  
(3) LUNA LUISA NEADS  
(AS THE EXECUTORS OF THE ESTATE OF  
JAQUELINE MABEL BARNBY NEADS (Deceased))**

**Applicants**

**and**

**(1) MICHAEL EDWARD VERNON  
(2) EDITH OLIVE VERNON**

**Respondent**

**Property Address: Land at Shepherds Cottage, Westbrook Road, Godalming, GU7 2QH  
Title Number: SY844532**

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**ORDER**

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**UPON** the Applicants' application dated 12 April 2017 being referred to the First-tier Tribunal

**AND UPON** this reference coming on for trial

**AND UPON HEARING** Mr Walder, Counsel for the Applicants, and Mr Atkinson, Counsel for the Respondents

**THE REGISTRAR IS DIRECTED** to give effect to the Applicants' application dated 12 April 2017 in full.

Dated this 1<sup>st</sup> day of August 2019

*Ian Clarke QC*



A JUDGE OF THE FIRST-TIER PROPERTY TRIBUNAL (LAND REGISTRATION)

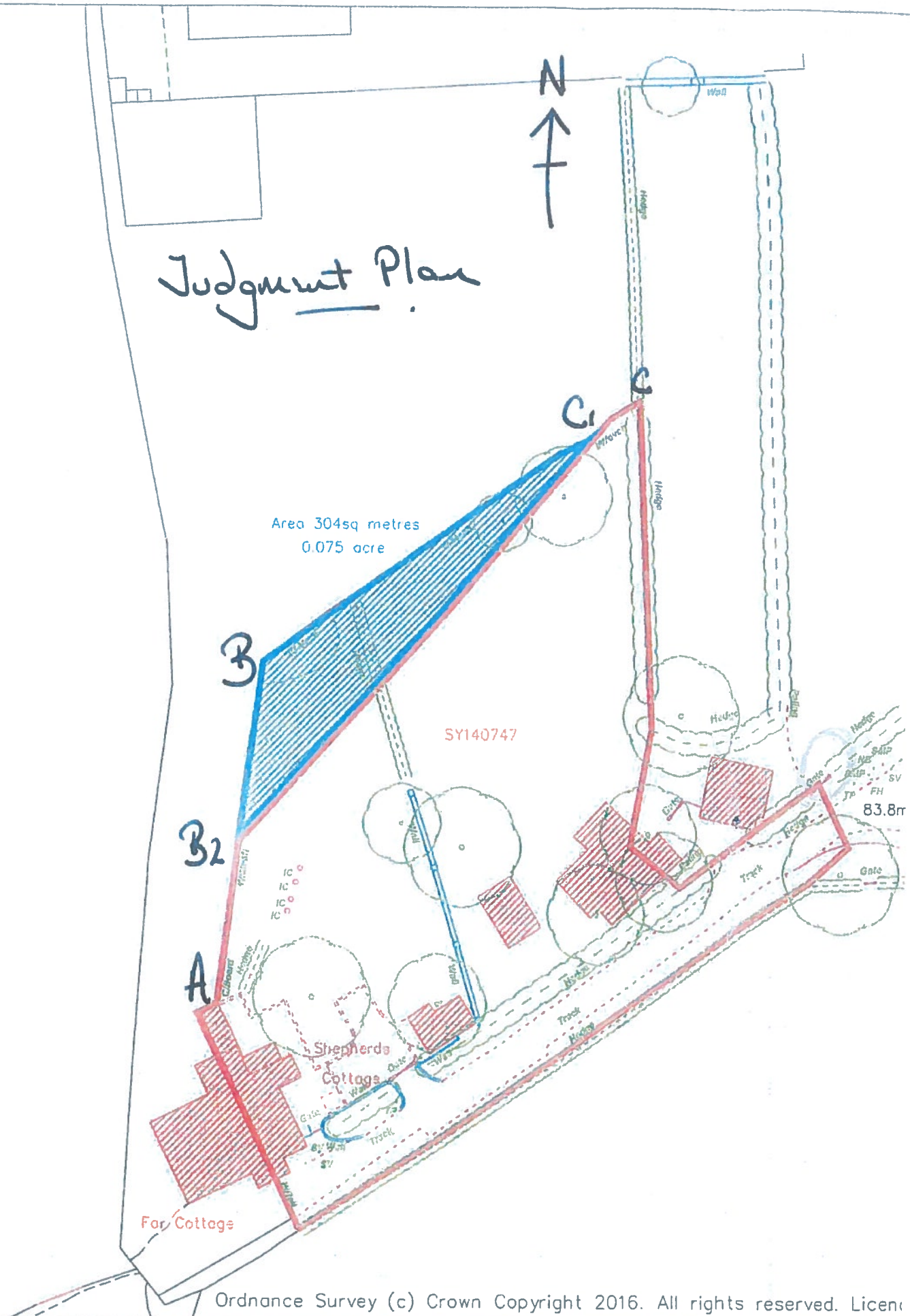
# Judgment Plan

Area 304sq metres  
0.075 acre

SY140747

83.8m

Far Cottage







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**IN THE FIRST-TIER PROPERTY TRIBUNAL  
(LAND REGISTRATION)**

**Before: Judge Clarke Q.C.  
Hearing: 23, 24 January 2019 and 26 July 2019  
Judgment: 1 August 2019**

**BETWEEN**

**(1) NIGEL ANTHONY MARTIN NEADS  
(2) CAROLINE JAQUELINE NEADS  
(3) LUNA LUISA NEADS  
(AS THE EXECUTORS OF THE ESTATE OF  
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**Applicants**

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**(1) MICHAEL EDWARD VERNON  
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**Respondent**

**Property Address: Land at Shepherds Cottage, Westbrook Road, Godalming, GU7 2QH  
Title Number: SY844532**

Applicants' representation: Mr Walder of counsel  
Respondents' representation: Mr Atkinson of counsel

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**SUBSTANTIVE DECISION**

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*ADVERSE POSSESSION – whether the Applicants had established adverse possession of the disputed land prior to 13 October 2003 and for the 10 year period prior to the extant application – disputed land consisting of garden and vegetable plot*

**Cases referred to:**

Inglewood Investments Company Limited v Baker [2002] EWCA Civ 1733

J A Pye (Oxford) Limited v Graham [2003] 1 AC 419

Powell v McFarlane (1977) 30 8P & CR 452

Zarb v Parry [2012] 1 WLR 1240

[1] By an application dated 12 April 2017, the executors of the late Jacqueline Mabel Barnaby Neads (the registered proprietors of Shepherds Cottage, Westbrook Road, Godalming, Surrey GU7 2QH under title number SY844532) (“**Shepherds Cottage**”) applied in form ADV 1 for registration as proprietors of part of the garden of Far Cottage, Westbrook Road, Godalming, Surrey GU7 2QH (registered under title number SY138868 in the names of the Respondents, Mr and Mrs Vernon) (“**Far Cottage**”). The form ADV 1 indicated, in the event of objection, that reliance would be placed upon paragraphs 5(2), (3) and (4) of Schedule 6. Objection was made in form NAP dated 28 August 2017 on the basis that there had never been any doubt in from the Vernon’s perspective that their garden boundary was anything other than the “*legally registered line*”. During the course of this dispute a further application in form AP1 (adverse possession under the transitional arrangements contained within Schedule 12 to the Land Registration Act 2002) was also filed at HM Land Registry and dated 27 March 2018. That application has not been referred to the Tribunal by HM Land Registry and I am invited by the Applicants to determine this matter by reference to Schedule 6, paragraphs 5(3) and 5(4) (albeit that reliance is placed on a case that the Applicants had acquired title to the land in question in 1976, i.e. under the transitional provisions.).

[2] I was able to undertake a site view of the gardens to both cottages in the afternoon of 22 January 2019, in the presence of all parties and their counsel. The matter came on for trial on 23 and 24 January 2019, when I heard the oral evidence of Mr Nigel Neads, Ms Caroline Neads, Mr Kostya Pereguda, Brig Swinburn and Mrs Patricia Jupe (all on behalf of the Applicants) together with the oral evidence of Mr and Mrs Vernon. At the outset of the trial, Mr Walder (counsel for the Applicants) sought to rely upon the witness statements of one of his witnesses, Mr Ian MacFadyen, as

hearsay since Mr MacFadyen was unavailable to give evidence by virtue of being overseas. Mr Atkinson (counsel for the Respondent) objected and, given the clear and direct relevance of Mr MacFadyen's evidence to the issues in dispute, the matter was adjourned part-heard on 24 January 2019 to enable Mr MacFadyen to give evidence and be cross examined. Accordingly, the matter was relisted before me on 26 July 2019, when the oral evidence was completed and Counsel made their closing submissions.

- [3] Incorporated within this judgment is a copy of part of a plan ("**the Plan**") drawn up by a surveyor, showing the relative positions of both cottages and the land in dispute. It is common ground (by reference to the points shown on the Plan) that the legal boundary between Far Cottage and Shepherds Cottage lies along the line A – B2 – C. The land in dispute is that which lies within points B2 – B – C1 ("**the disputed land**"), it being recognised by all parties that Point C (which lies on the eastern boundary of what is known as "the Long Garden") is a short way distant from the point at which the land in dispute meets the legal boundary; put another way, the most northern tip of the disputed triangle of land does not, in fact, quite meet the western boundary of the Long Garden but lies at point C1. Nothing, in fact, turns on this as far as the matters which I have to decide are concerned.

#### **The parties' respective positions**

- [4] The late Mrs Neads acquired Shepherds Cottage in October 1964. It is the Applicant's case that the disputed land has always formed part of the garden of Shepherds Cottage and has been physically separate from the garden of Far Cottage since, at least, that date. The primary dispute between the parties is therefore whether and to what extent this is so because the position of the legal boundary and the physical extent of the disputed land is not controversial. Mr and Mrs Vernon's case challenges the assertion that the late Mrs Neads exercised factual possession with the requisite intention over the disputed land and (as regards her claim factual possession) challenges the alleged exclusion of the registered proprietors of Far Cottage (including the Vernons) whom, it is also said, gave consent to the late Mrs Neads' use of the land. Accordingly, it is said that adverse possession is not made out. If it were made out prior to 1993, it is also submitted that Mr and Mrs Vernon interrupted the late Mrs Neads' factual possession of the disputed land, such that she cannot satisfy the requirement for

adverse possession in the 10 years ending on the date of the application, as required by paragraph 1 of Schedule 6. On that basis, it is said that the application before me fails.

### **The evidence**

[5] I have had the benefit of hearing the live evidence of the witnesses identified in paragraph [2] above and their recollections covering many years. I remind myself that evidence of memories of events even of relatively recent occurrence can be unreliable and that evidence of events 50 years ago almost certainly fallible and unreliable to an extent, even if given honestly. I have made allowance for this and have endeavoured to look for corroboration with contemporary photographs and other witnesses' accounts, wherever possible.

[6] Mr Neads was 16 years of age in 1964. Accordingly, his evidence in relation to the use and occupation of the disputed land stretches back to that year, when the family moved into Shepherds Cottage. Ms Caroline Neads was also a teenager when the family moved into Shepherds Cottage in 1964. Both siblings lived at Shepherds Cottage for a number of years and were regular visitors to their mother's home thereafter. They have each been closely involved with the disputed land for over 50 years. Mrs Jupe's residence in the locality commenced in June 1985. She was a frequent visitor to Shepherds Cottage, particularly after June 1995 because of her friendship with the late Mrs Neads and their shared interest in gardening. Mr Pereguda worked and gardened part of the disputed land from late in 2011. Mr MacFadyen is the son of the proprietor of Far Cottage between the years 1963 – 1993, from whom Mr and Mrs Vernon purchased Far Cottage on 6 September 1993. Mr MacFadyen was 13 when his family moved into Far Cottage in 1963. He lived there until he was 19 and was a regular and frequent visitor to his parents' house following his marriage and with his own children until the sale in 1993.

[7] Mr and Mrs Vernon's evidence only speaks to the period from 1993, when they first viewed the property.

[8] It is right that I record at the outset that I found the evidence of the Applicants and of the supporting witnesses to be materially consistent, plausible and probable. In



contrast, I found aspects of Mr Vernon's evidence unsatisfactory and, at times, implausible and that of Mrs Vernon hesitant and unpersuasive. Accordingly, where their respective narratives conflict, I prefer the evidence of the Applicants and their witnesses. I explore the reasons for this below.

### **The boundaries**

#### **A – B**

[9] The current physical features of the boundary along the line A – B consist of a large and mature coniferous hedge and, buried deeply within that hedge, the remnants of a post and wire mesh fence. Whilst, it is common ground that a physical boundary feature existed between points A – B prior to the late Mrs Neads purchasing Shepherds Cottage in 1964, there is divergence in the evidence as to what constituted this boundary.

[10] Mr Neads told me that in 1964, the vegetation along the line A – B was a thorn hedge together with a post and 3-wire fence and that in 1966 – 67, this was replaced by the MacFadyens with the coniferous hedge and the wiremesh fence to which I have just referred. Mr Neads himself took a photograph of his father digging a vegetable plot in 1964. He explained that this was a photograph facing point B and showed what he described as a “thorn hedge” along the lines A – B and the picket fence along the line B – C1.

[11] This evidence was challenged by Mr and Mrs Vernon, who suggested that this photograph was taken from within the garden of Far Cottage, facing west, from its eastern side. This evidence is given on the basis of an analysis of the position of trees currently present and the perspective of the boundary wall to Westbrook House. Mr MacFadyen was, quite candidly, unable to orientate himself in relation to this photograph, not least because the photographer was standing in the garden to Shepherds Cottage, and thus in a location with which he was not familiar. However, he was certain that the vegetation along the line A – B was coniferous in 1963, which if that were the case, would suggest that the photograph was taken from an angle other than that which Mr Neads now recalls. Both Mr MacFadyen and Mr Neads were both adamant that there was a hedge and physical barrier along the line A – B without (as was suggested in cross examination) any “gateway” between the 2 cottages at Point A.

[12] I have no hesitation in accepting their evidence of a hedge and physical barrier along the line A – B from at least 1963 and the absence of the gateway from that date; on balance, I am inclined to the view that the photograph taken by Mr Neads was taken in 1964 from the position he alleges and that at that time the line A – B consisted of a non-coniferous hedge. I reach this conclusion because from my specific consideration of the orientation of the 1964 photograph conducted at the site view, it seems to me that the walls shown in the background strongly support it being a photograph taken facing north towards Point B and because from the aerial photographs produced in evidence, that taken in April 1964 shows (by the somewhat erratic shadows cast by the hedge along the lines A – B) a hedge consisting of something more akin to that shown in the 1964 photograph. In contrast, the aerial photograph dated August 1966 shows a much thicker, consistent shadow such as to be expected from a coniferous hedge (which leads me to the conclusion that the coniferous hedge was planted earlier than he recalls). The photograph adduced by Mr MacFadyen facing north in the garden of Far Cottage bearing the date of 1967 on its reverse shows a hedge that would be consistent with the image shown in the aerial photograph of August 1966 although I remind myself that there was no evidence before me as to when the 1967 photograph was dated by Mr MacFadyen’s late mother. I do not discount the possibility that it may show the rear garden at some later date. Accordingly, I am satisfied that the line A – B consisted of a coniferous hedge by the very late 1960s and that the oral evidence as to the nature of the hedge in 1963 must yield to the contemporary photographs. Either way, I conclude that there was a mature hedge along the lines A – B at all material times, that hedge being reinforced by a wire and post fence and, subsequently, a wire mesh fence as Mr Neads recalls. From my inspection in January 2019, it was clear that this hedge was impenetrable to people, being too thick and dense although there were gaps at a low level within it through which an animal, for example, might pass. Nothing, however, turns upon this.

[13] The area of primary contention concerns the physical boundary along the line B – C1 – C. The Applicants’ case is that the disputed land was fenced along this line as it had been since the erection of an original picket fence that was in place in 1964. The current physical boundary comprises 3 aspects: a 4 foot-high “green wire mesh fence” which is fixed to four-inch posts said by the Applicants to have been erected in 1987.

As to this feature, Mr and Mrs Vernon agree that it has been there since 1987, albeit “*irregularly supported and incomplete*”, such that they were able to and did step over it. The second aspect (chronologically speaking) comprises a post-and-panel fence erected by Mr and Mrs Vernon in 2013. This is common ground. The post-and-panel fence lies to the north of the green wire mesh fence (i.e. on Mr and Mrs Vernon’s side) and runs to Point C1. The third aspect, which lies to the south of the green wire mesh fence (i.e. on the Applicant’s side) along part of its length, is a line of beach saplings, said by the Applicants to have been planted in 2010 and 2011 and by Mr and Mrs Vernon to have been planted in 2013. Certainly, they were not substantial in diameter and were obviously not of any significant age.

[14] At the western end of the B – C1, between the hedge shown on the plan and which bisects the line B – C1 and on the Applicant’s side of that line, are some established “Christmas trees” with a diameter of approximately 6 inches or more. These trees obscured the outbuilding located adjacent to the line B – C1 – C on Mr and Mrs Vernon’s land. Some of these had been felled on behalf of Mr and Mrs Vernon without consultation with the Applicants immediately prior to my site view. Cross-examination was directed as to how this came about. I should record that I found Mr Vernon’s statement of his instructions to “a friend” to trim the trees (as opposed to felling them) decidedly less than plausible and the manner in which he initially refused to identify the identity of the friend to cause me to doubt the truthfulness of the narrative he had given. In my judgment, Mr Vernon caused or directed the felling of these trees for reasons best known to himself.

[15] Before I consider more recent events in relation to the barrier along the line B – C1, in my judgment and having regard to the evidence of Mr Neads and Ms Neads, the aerial photographs from 1961, the 1964 photograph and the evidence of Mr MacFadyen, I am satisfied that there was from 1963 (at least)

- a. no physical boundary along the line B2 – C1 – C, the disputed land being open at all times and forming part of the garden of Shepherds Cottage; and
- b. an oak rail and picket fence along the line B – C1 – C until its replacement as I described below in 1987, which formed a substantial and effective barrier between the cottages’ respective gardens;

- c. that none of the MacFadyens crossed into the garden of Shepherds Cottage or the disputed land or considered the disputed land to be part of the land belonging to Far Cottage; and
- d. the physical boundaries between Far Cottage and Shepherds Cottage have remained along their current lines since 1963.

[16] Mr Vernon rightly gives no evidence as to the circumstances surrounding the erection of the green wire mesh fence in 1987 – in evidence, he told me that he had no knowledge of the cottages before his viewing and acquisition in 1993. Mr Neads told me that the green wire mesh fence was erected during a period of his absence from Shepherds Cottage and overseen by his sister, to replace the decayed wooden picket fence. (The escape of the Neads' livestock and dogs was proving problematic). Ms Neads told me that she and a friend erected the green wire mesh fence in the winter of 1987 – 88 along the line B – C, stapling it to posts at 3.3 m intervals. This clearly explains Mr and Mrs Vernon's perception that the green wire mesh fence was irregularly supported and I accept that it would have been easier to cross in the middle of a 3.3 m span if one were to push the mesh down and flex it to the necessary degree. Nevertheless, and for present purposes, it is my conclusion that the boundary B – C was fenced along its entire length in this fashion.

[17] The erection of the close-boarded fence in 2013 is, as a matter of chronology, common ground. It was constructed without gateways onto the disputed land, save that some of the panels had “turnbuckles” to enable their removal for purposes of access. This fence was erected by Mr and Mrs Vernon partly because of the burglary and partly because they considered that the garden at Shepherds Cottage was unsightly. It is a substantial fence and in erecting it, they chose to do so along the line B – C and not along the line of the claimed legal boundary, thereby enclosing the disputed land from the curtilage of the garden of Far Cottage.

[18] Mr Vernon was asked why (particularly given the matters he asserted and which are considered in paragraph [26] below), he chose to erect this fence along the line B – C1 as opposed to be B2 – C1. Certainly, at the time Mr Vernon and the Applicants were engaged in litigation in the County Court at Northampton in relation to the costs of repairing and maintaining a cesspool. He agreed that the fence was erected right in the

middle of litigation because his relationship with the Applicants had broken down. Nevertheless, Mr Vernon explained that he did not consider it to be an ideal time to assert ownership of the disputed land, which, he told me, he was not aware was in dispute (although he himself and never advanced a claim to it). I do not accept this explanation; in my judgment this fence was erected along the line B – C1 because, at the time, Mr and Mrs Vernon considered this to be the boundary of Far Cottage.

[19] Accordingly, in my judgment the boundary B – C1 – C has, since 1964 at least, had a physical boundary feature in the form of fencing along its full length.

#### **Access to and use of the disputed land**

[20] Having regard to their evidence in chief, Mr and Mrs Vernon’s case is that “*shortly put, we considered and used the disputed land as part of our garden*”. To that end, Mr Vernon asserts that they entered the disputed land (described by him as a thicket on their purchase in 1993), cutting trees and picking fruit, stepping over the fence along the line B – C “*without a second thought*”. Whilst that fence consisted of the green wire mesh fence, it is said that they did so for a variety of reasons, including the retrieval of roaming chickens and to transport garden tools and ladders as well as moving logs and bonfire cuttings. On one occasion, it is common ground that Mr and Mrs Vernon accessed the disputed land to cut down a *rhus* tree and some surrounding thorns, although Mrs Vernon told me (and I accept) that this was at the late Mrs Neads’ request (and therefore with her permission). All of these matters were said to have been done in sight and with the knowledge of Mrs Neads and without complaint. Mrs Vernon also described crossing the line B – C close to point B, ducking under the high hedge to retrieve chickens but having no need to step over the green wire mesh fence (because, she says, it was not erected until 2012). Such activities were, Mrs Vernon recalls, probably greeted by a wave from the late Mrs Neads acknowledging her and, so she told me, thereby giving permission.

[21] Save for the cutting of a tree and the deposit of some cut hedging material on the disputed land, the Applicants dispute the claimed access by Mr and Mrs Vernon. The evidence of Mr Neads and Ms Neads was that the disputed land formed an integral part of the garden to Shepherds Cottage since 1964, to which no one else had access.

Mr Neads told me of the planting of fruit trees along the line B – C and of the “Christmas trees”; Ms Neads described the digging of a vegetable garden along the fence B – C as a teenager, and later the planting of raspberry canes, gooseberry bushes and artichokes. I accept this evidence. In my judgment, it is quite clear from the evidence that in relation to the disputed land, the late Mrs Neads (with the close involvement of her children) landscaped, cultivated and grew vegetables on the disputed land, maintained it and the hedges surrounding it and (occasionally) parked cars on it and allowed guests to camp on it in connection with teenage parties during the 1970s.

- [22] I am satisfied on the evidence that at all times between 1964 and 1993, the disputed land formed an integral part of Shepherds Cottage’s garden. In much later years, this state of affairs was described and corroborated by Mrs Jupe (from the mid – late 1980s). I am also quite satisfied that the disputed land was used exclusively by the late Mrs Neads obviously and exclusively in the manner to be expected of land comprising garden and as a continuation of part of her garden.
- [23] For the reasons which I give below, I consider that this state of affairs continued after 1993 as described by Mr Neads and Ms Neads, Mrs Jupe and Mr Peregudia (from 2011), whom the late Mrs Neads befriended and permitted to grow vegetables on part of the disputed land.
- [24] One further issue which has arisen is whether a land drain was laid by the late Mrs Neads under the disputed land. I have seen photographs of the works in progress and, on my site view, the location of the inspection chambers. On balance, I am persuaded (having heard the evidence of Mr Neads) that the outlying drainage channels lie under the disputed land and that this exercise was undertaken without any comment one way or the other by Mr or Mrs Vernon as to where and under which land the land drain might be laid.
- [25] Having regard to both Mr Neads and Mrs Jupe’s evidence, I reject the suggestion that in 1993, when Mr and Mrs Vernon purchased the property, the disputed land could be described as a “thicket”. It was mown weekly by Mr Neads and contained plum trees, a red fire Bush, 3 lilacs and some cultivated blackberries. It was not left to grow wild but was part of the late Mrs Neads’ garden and tended as such. Accordingly (bearing

in mind that the disputed land was entirely “open” in terms of aspect and accessibility from the remainder of the garden of Shepherds Cottage, itself was hedged, gated and fenced from the adjacent track lying to the south from 1966) I reach the conclusion that the disputed land was utilised as part of the garden of Shepherds Cottage in the same manner and to the same extent as that falling within its legal title not only from 1964 to 1993 but at all times thereafter and, moreover, would have so appeared, even to the most casual observer.

[26] In cross-examination, Mr Vernon told me that he had appreciated from before he bought the property that the legal boundary between the cottages diverged from the line A – B at point B2 because he was asked by his solicitor to check the boundaries and in doing so identified that the legal boundary ran B2 – C1 – C. Further, his clear evidence was that he did not raise this with his solicitor because the legal plans “*fitted*” together notwithstanding that it would have been – even on his case – abundantly clear that the disputed land fell within the obvious extent of the garden at Shepherds Cottage (there being no physical feature along the line B2 – C1 – C), with the entire area being bounded along the line A – B by the coniferous hedge and along the line B – C1 – C by the 4 foot high green wire mesh fencing. I found Mr Vernon’s evidence with respect to this line of questioning to be implausible and evasive, with him (on the first occasion at least) giving the appearance of deliberately avoiding a direct answer to certain questions. More pertinently, the evidence is, in my judgment, wholly implausible. I do not accept that Mr Vernon, when buying a property and being told to check the boundaries by his solicitor would, having identified that a substantial part of its legal title lay obviously beyond established physical boundaries from the garden of Far Cottage and within the garden area of the neighbouring property, fail to raise the matter either with his solicitor or even the vendor, if only to secure a reduction in price. Moreover, it is worthy of note and, I consider, supportive of this conclusion, that it is common ground that prior to the current application, neither Mr nor Mrs Vernon made any express suggestion to anyone that they had any rights over the disputed land. This absence of belief is borne out by the fencing of the line B – C1 which I described above.

[27] What then of Mr and Mrs Vernon’s case to have used the disputed land as part of their garden? Put simply, their oral evidence failed to justify the expansive and exaggerated

assertions made in the written evidence. Save for that which is strictly common ground (see paragraph [20] above) and the occasional collection of an errant chicken, I reject the case presented by the Respondents. Mr Vernon is clearly a man who acts without thinking about the actual or potential legal niceties: the felling of the “Christmas tree” is a clear example; his entry into the Long Garden to trim the Long Garden side of the hedge without seeking permission from anyone (in the belief that he was performing a neighbourly task) is another. Accordingly and in doing what he did, I am not persuaded that Mr Vernon believed he had any title to all was asserting ownership in relation to the disputed land. Such entries as there were, were minimal in character and spasmodic, requiring either Mr or Mrs Vernon to force a way through the hedge or to straddle the green wire mesh fencing erected by Ms Neads.

[28] Mr Vernon, in his witness statement, asserts that the “Christmas trees” were planted with his “*consent*”. This aspect was explored in cross examination. The reality of the situation is very different. Mr Vernon told me that the late Mrs Neads was grumbling about the outbuilding erected within the acknowledged garden of Far Cottage immediately to the north of the line B – C. As a result, Mr and Mrs Vernon gave her the “Christmas trees” to plant, asking that they be kept to a manageable size because “*they grew like weeds*”. The late Mrs Neads agreed and planted them. They were occasionally watered by Mr and Mrs Vernon. I accept this version of events but cannot see how it could be viewed as Mr and Mrs Vernon giving the late Mrs Neads “consent” to plant trees; Mr Vernon was unable to explain this aspect further and to my mind the evidence provided in paragraph 37 of his witness statement and verified by him in the witness box cannot, on its ordinary reading, be or thought to have been justified. At best, it represents wishful thinking on a considerable scale.

[29] Some of the evidence was directed to the nature of the relationship between Mr and Mrs Vernon and the late Mrs Neads. I intend to state my conclusions briefly. Mr Vernon describes their relationship with the late Mrs Neads as one of “*20 years of neighbourliness*”, albeit one that was strained during the planning application they made in 2001. Mr Vernon told me that he had no recollection of an incident recounted by Mrs Jupe of him being challenged by the late Mrs Neads in or around 1997 when she saw him leaving her garden and certainly, his evidence and perception of their relationship was, so he told me, one of cordiality and cooperation, whether it be by



hedge cutting or clearing snow. There is no doubt that on one occasion, at least during a period in which the late Mrs Neads was on crutches, he was the recipient of a “thank you” letter from her. However, I think Mr and Mrs Vernon’s description of their relationship with her is not accurate and whilst I reject the description of the relationship as being one of “*relentless aggression*” as described by Mr Neads, the relationship was much closer to one of co-existence rather than something which could be described fairly as neighbourliness.

[30] In reaching this conclusion, I accept Mrs Jupe’s description of events in 1997 and that Mr Vernon was challenged by the late Mrs Neads as to why he was in her garden; that there were issues concerning access to the front of Far Cottage and tension concerning a planning application in 2001. Further, there were issues with the cesspool, culminating in litigation after the late Mrs Neads’ death. I also note the allegations of bullying and harassment in the late Mrs Neads’ letters to Waverley Borough Council on 27 March 2003 (in which she describes herself as having been harassed) and 1 June 2006 (in which she describes herself as feeling “*battered at times*”) and accept Brig Swinburn’s evidence as to how the late Mrs Neads herself felt about their relationship.

### **Legal discussion**

[31] For the reasons stated in the next two paragraphs, I am satisfied that by the time Mr and Mrs Vernon acquired Far cottage in 1993, the late Mrs Neads had acquired title to the disputed land by adverse possession.

[32] First, since 1964 the late Mrs Neads had satisfied the requirement of her to exercise sufficient physical custody and control over the disputed land: see J A Pye (Oxford) Limited v Graham [2003] 1 AC 419, [40]. During this period, the late Mrs Neads had been dealing with the land in question as an occupying owner might have been expected to deal with it and no one else had done so: this is what was required of her to establish factual possession –see Powell v McFarlane (1977) 30 8P & CR 452, 470 – 471.

[33] Secondly, and in my judgment, there is clear and affirmative evidence that the late Mrs Neads thought of and treated the disputed land as part of her garden and made that intention clear to the world. As Lord Hutton observed in J A Pye at [75] – [76],

the late Mrs Neads had done everything on the land that an owner would have done (bearing in mind the nature of the land, which was open, cultivated garden) and in so doing manifested her intention to possess it. I reject the submission that her conduct was equivocal or insufficient or that the Applicants have failed to discharge the “heavy burden” on them. The Applicants’ case does not rest solely or predominantly upon the fact of fencing; the replacement and erection of the fences must be seen in the broader context, and accordingly I get little assistance from the decision in Inglewood Investments Company Limited v Baker [2002] EWCA Civ 1733, cited by Mr Atkinson. In my judgment, the fact that the disputed land was fenced and kept fenced and that it was planted and tended consistently and used (and permitted to be used) for recreational purposes as an integral part of the garden to Shepherds Cottage means that when these matters are viewed as a whole, they are unequivocal and clearly sufficient to show that the late Mrs Neads had the requisite intention to adversely possess the disputed land. Indeed, such was her conduct that it never occurred to Mr McFadyen that the land was anything other than part of her garden.

[34] Having reached that conclusion, I must consider whether adverse possession continued for the period running 10 years prior to the application in 2017 in order to satisfy the gateway provided for in paragraph 1 to Schedule 6. Mr Atkinson submitted that Mr and Mrs Vernon had interrupted the late Mrs Neads’ possession by virtue of their entry into the disputed land since 1993. In light of my findings above and having regard to the requirements for Mr and Mrs Vernon successfully to have interrupted the possession of the late Mrs Neads and the Applicants (see Zarb v Parry [2012] 1 WLR 1240 at [43]), I reject the submission of sufficient interruption. In my judgment, the disputed land remained in the factual possession of the late Mrs Neads and the Applicants for the totality of the required period. Certainly, nothing undertaken by either Mr or Mrs Vernon in relation to the disputed land can be described as an interruption to the possession of it by the late Mrs Neads.

[35] It was not in dispute before me that, if I were to conclude (a) that adverse possession was established prior to the coming into force of the Land Registration Act 2002 on 13 October 2003 and (b) the paragraph 1 gateway condition was satisfied, the Applicants would be able to satisfy the second condition contained in paragraph 5(3) of Schedule 6 (namely that the Applicants are, for some other reason, entitled to be registered as

proprietor of the disputed land). Accordingly, I will direct the Chief Land Registrar to give effect to the Applicants' application in full. Accordingly, it is not necessary for the Applicants to rely on paragraph 5(4) of Schedule 6. I should, however, record that had it been necessary, I would have been satisfied that the conditions in paragraph 5(4) were met. There is no dispute that the disputed land is adjacent to land belonging to the Applicants, that the exact line of the boundary has not been determined and that title to Far Cottage has been registered for more than one year prior to the date of the application. The remaining condition is that for at least 10 years of the period of adverse possession ending on the date of the application, there was a reasonable belief that the disputed land belonged to the late Mrs Neads and thus the Applicants.

[36] In light of my findings above as to the use to which the disputed land was put and bearing in mind not only the evidence of Mr McFadyen as to his understanding as to which garden the disputed land belonged but also the accepted position that neither Mr or Mrs Vernon made any claim to the disputed land until their opposition to this application, I have no hesitation in concluding that the requisite belief was reasonably held and held from 1964 until Mr and Mrs Vernon's opposition to this application was made manifest.

[37] I anticipate that the Applicants will seek their costs and I am currently minded to award them. At the conclusion of the hearing, there was some discussion as to the question of costs and whether a summary schedule in CPR form N260 would be appropriate or whether a fully drawn Bill of Costs should be prepared instead. At this juncture, I have no indication as to the broad quantum of the costs that might be involved (although I recognise that the hearing itself lasted 3 days) and accordingly unless the parties agree otherwise, I direct as follows: – if the Applicants are to seek their costs, they should file and serve any submissions in support of their entitlement together with a costs schedule in the format of their choosing by no later than 5 PM on 30 August 2019. The Respondent's shall file and serve any submissions in response thereto as to liability and whether and how any costs order should be assessed – by no later than 5 PM on 14 September 2019. The Applicants may file and serve any submissions in reply by no later than 5 PM on 27 September 2019. At this stage and within that timetable, I do not want any detailed consideration of the appropriate

quantum of costs; I propose to deal with liability and methodology of assessment first, giving such further directions as may be necessary in order to determine quantum.

Dated this 1st day of August 2019

*Ian Clarke QC*



A JUDGE OF THE FIRST-TIER PROPERTY TRIBUNAL (LAND REGISTRATION)