

[2019] UKFTT 0625(PC)

REF/2016/0363

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

NATALIE ELSIE WACKETT

APPLICANT

and

DOCKLOCK LIMITED

RESPONDENT

Property Address: Land at Green Lanes, Haringey, London

Title Number: AGL325494

ORDER

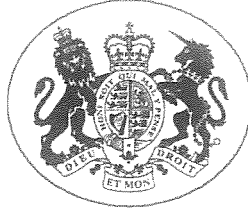
The Tribunal orders that the Chief Land Registrar do give effect to the application of Sydney Johnston dated 31st October 2014 for first registration of land at Green Lanes, Haringey, London as if the objection of Docklock Limited thereto had not been made.

Dated this 3rd September 2019

Michael Mitchell



BY ORDER OF THE TRIBUNAL



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Title Number: AGL 325494

Before: Judge Michael Michell

Sitting at: Alfred Place, London

Applicant Representation: Ms. Camilla Chorfi, counsel, instructed by LSGA Solicitors
Respondent Representation: Mr John Clargo, counsel, instructed by Boyes Turner

DECISION

*ADVERSE POSSESSION – UNREGISTERED LAND – AREA OF FORECOURT IN FRONT
OF CAR SALES LOT – WHETHER A's PREDECESSORS IN POSSESSION – LEASING OF*

FORECOURT – INTENTION TO POSSESS - WHETHER ACKNOWLEDGEMENT OF TITLE

Cases referred to

Powell v McFarlane (1977) 38 P and CR 452

Prudential Assurance Co. Ltd v. Waterloo Real Estate Inc [1999] 2 EGLR 85 at 87

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

Chapman, Gayadeen v A-G of Trinidad and Tobago [2014] UKPC 16

1. The late Mr Sidney Johnston applied to HM Land Registry for first registration of an area of land lying between an area owned by him and used for car sales (“the Car Sales Lot”) and the highway called “Green Lanes”. The area claimed was referred to in the proceedings as “the Forecourt”. The application is based on adverse possession. It is said that Mr Sidney Johnston (together for some time with his late wife, Mrs Elise Johnston) was in possession of the Forecourt for a period in excess of 12 years prior to the date of the application. The Respondent, Docklock Limited is the registered proprietor of the former public house building adjoining on its southern boundary the Car Sales Lot and the Forecourt. For most of the period the public house traded, it was known as “The Queen’s Head” and I shall refer to the public house building and surrounding land or curtilage included in the same title as “The Queens’ Head”. Docklock Ltd did not, in these proceedings, put forward a claim to title to the Forecourt. It has objected to the application for first registration on the grounds that Mr Sidney Johnston had not been in possession of the Forecourt for a sufficient period or at all. Natalie Wackett (referred to at the hearing as “Lady Wackett”) has a grant of representation to the estate of her late grandfather. Lady Wackett was substituted by the Tribunal as Applicant on 23rd March 1998.

Description of the Land

2. I inspected the Forecourt and its environs on the afternoon before the hearing in the company of the parties and their representatives. Green Lanes runs approximately north-south. The land in question is on the west side of Green Lanes and forms part of the block formed by Falkland Road to the south and Frobisher Road to the north.

- (i) On the corner formed by the south side of Frobisher Road and the west side of Green Lanes is a building which for well over a century traded as a public house under the name “The Queen’s Head”.
- (ii) The Queens Head building is set back from Green Lanes and its curtilage includes a forecourt area now enclosed by a wall along the boundary with Green Lanes and along the south side.
- (iii) The curtilage of The Queen’s Head includes a strip of open land along the side of the southern wall of the public house. I shall refer to this strip as “the Passageway”. The Passageway appears from observation to be about 3 metres wide at its eastern end and widens to about 4 metres in width towards the rear of the public house building. Measurements of the width of the eastern and western ends of the Passageway are given on plans prepared by Royce Butterfield & Wilkey, included in the hearing bundles, as 2848mm and 3900mm respectively. There is a fence across the eastern end of the Passageway, the fence being in line with the eastern frontage of The Queen’s Head building. There is a tall fence along the southern side of the Passageway.
- (iv) To the south of the Passageway is the area of land the freehold title to which is registered under Title Number NGL471912 and of which Lady Wackett is the registered proprietor. That area is the Car Sales Lot. The Car Sales Lot is bound to the north by the fence along the boundary with the Passageway; to the rear or west by the line of a former brick wall; to the south in part by the northern wall of the end of terrace building known as “6 Queen’s Parade” and in part by the northern side of an external staircase giving access to the first floor of 6 Queen’s Parade; and to the east by the line of a metal fence set above a low brick retaining wall. The level of the Car Sales Lot is a little higher than that of the land to the east.
- (vi). 6 Queen’s Parade is a three-storey Victorian building. The ground floor extends to the east to the line of the pavement along the west side of Green Lanes. The first and second floors are set further back. The ground floor is now used as a grocery shop.
- (v). The metal fence along the eastern front of the Car Sales Lot is about 4 feet high and includes sections that can be removed to allow cars to be driven on and off the Car Sales Lot. The fence adjoins at its the northern end, the fence at the eastern end of the Passageway. It then runs in a south-easterly direction to a point approximately in line with the eastern frontage of the first and second floors of 6 Queen’s Parade.
- (vi) Along the same line as the metal fence, of an equal length to it and held above it on tall posts there is a name board on which the words “Quality Used Cars” appears.

(vii) From the eastern end of the fence along the southern side of the Passageway there is a wall that runs to meet the pavement and then joins the wall along the eastern side of the forecourt of The Queen's Head. The wall runs in a north easterly direction and so at an angle to a straight line projected along the southern flank wall of the public house building. The wall is constructed of bricks and metal railings, with low brick walls running between taller brick pillars and sections of metal railings set into the low brick walls between the pillars. About one metre back from the eastern end of this wall, there is a pedestrian gateway. At the time of my site visit, there was a padlocked gate across this gateway.

(viii) The Forecourt is the land to the east of the Car Sales Lot and south of the wall dividing it from the forecourt of The Queen's Head. Haringey Council confirmed in a letter dated 21st November 2012 that the Forecourt does not form part of the adopted highway.

(ix) The pavement that runs in front of 6 Queens Parade continues in a straight line for about 4 metres to the north of the side of 6 Queens Parade. Kerb stones of the same type as edge the pavement in front of 6 Queens Parade run in a curve along the northern end of the pavement and then continue in a concave (when viewed from the highway) curve across the Forecourt and run up to the wall on the boundary with The Queen's Head. The southern end of the pavement in front of The Queen's Head is semi-circular in shape. The pavement on the Forecourt runs beside an area that was plainly laid out at some time to provide vehicular access to and from the forecourt of The Queen's Head.

(x) The surface of the Forecourt is not uniform. As well as there being parts surfaced with the kerb stones, there are parts which are tarmaced, other parts which appear to be surfaced with concrete and other parts in which stone setts are visible.

(xi) There is a commercial advertising hoarding supported on a large steel framework standing beside the flank wall of 6 Queen's Parade.

(xii) At the front of the Forecourt there is a row of metal posts. The metal posts are about 2 feet high. They fit into sockets set into the ground and can be removed. A chain can be run through these posts to provide some form of barrier between the Forecourt and the highway. The chain can be padlocked to the posts to prevent it being removed. There are five posts in total. The posts are not in a line parallel with the road but are at an angle to it running away from the line of the road as they approach The Queen's Head. The northernmost post is approximately in line with the southern end of the pavement in front of The Queen's Head. The nearest post to the south is set in an area of stone setts. There is a gap at each end of the row of posts so it is possible to walk around the posts when the chain is up. It would also be easy for most able-bodied people to step over the chain.

(xiii) There is a wooden hut on the Car Sales Lot, which is used as an office for the car sales business.

(xiii) At the time of my inspection, there were a number of cars displayed for sale both on the Car Sales Land and on the Forecourt. There were 7 cars on the Forecourt. They were parked facing the road with prices displayed in their windscreens. There was only a narrow space to walk between the cars. At the northern end of the Forecourt, one car had been parked behind the other. There was very little room between these cars and the wall on the boundary with the forecourt of The Queen's Head.

Background

3. The following background facts are not controversial.

4. The Car Sales Land once belonged to the owners of The Queen's Head. It has been used for the sale of motor cars for many decades. On 3rd October 1949 Julia Pollack of 677 Green Lanes agreed to let "land adjoining Queen's Head Public House" to Atomicars for a term of "not less than one year" to commence on 12th December 1949 for the purpose of selling motor vehicles. Atomicars was a name under which Sidney Johnston traded with others. On 6th November 1953 Cannon Brewery Ltd., the then freehold owner of The Queen's Head, leased the Car Sales Land to Sidney Albert Johnston, LH Johnston and a Mr Horner trading as "Atomicars" for the purposes of selling motor vehicles.

5. In the 1950s Sidney Albert Johnston and Elise Wilfred Johnston traded as "Johnston & Sons", selling cars from the Car Sales Land.

6. From 25th January 1960 Johnston & Sons Ltd. ("JSL"), a company owned by Sidney Johnston, traded under a lease or licence of the Car Sales Land and the Forecourt. On 24th July 1961 Inde Coope (London) Ltd. granted JSL a lease of the Car Sales Land. On 10th September 1962 JSL purchased the residue of a sublease granted in 1960 of 6 Queen's Parade and then used it as a car showroom. In 1968 JSL acquired the freehold of 6 Queen's Parade.

7. On 31st August 1982 JSL agreed to purchase the Car Sales Land from Allied Breweries (UK) Ltd.. The land agreed to be sold was described as "the display area adjoining the "Queen's Head" ..." and was to be conveyed

“Together with a right of way (with or without vehicles) for the Purchaser and their successors in title (in common with the vendor and their successors in title) over and along that part of the forecourt of The Queens Head ... as the same is edged and hatched orange on the plan annexed hereto ... to the extent only that the Vendor is able legally to grant the same”.

The land edged and hatched orange was substantially the whole of the Forecourt, save for a wedge-shaped piece adjoining the boundary with 6 Queen’s Parade. The Car Sales Land was then on 17th November 1982 conveyed by Inde Coope (London) Ltd. (as trustee for Allied Breweries (UK) Ltd.) not to JSL but to Mr and Mrs Sidney Johnston. It was conveyed together with the right of way over the land edged and hatched orange described in the contract of sale. Mr and Mrs Sidney Johnston were registered as joint proprietors of the Car Sales Land on 4th November 1983. JSL remained the tenant of the Car Sales Lot. In May 1987 a new sublease of 6 Queen’s Parade was granted to JSL for the residue of the term of the head lease i.e. until 1997.

8. Mr and Mrs Sidney Johnston’s son, Gary Johnston took over the management of JSL in the early 1990s.

9. On the 21 March 1997 Mr and Mrs Sidney Johnston entered into a lease to Mr Stephen Stylianou, trading as “Quality Cars”. The land demised is described in the lease as “all that piece or parcel of land at 677 Green Lanes Haringey London N8 hereinafter referred to as the “open site” and “forecourt””.

10. JSL ceased to trade from the showroom adjoining the Car Sales Land in 2006 and the showroom was let to Feridoon Rayegani.

11. The Queen’s Head was let to Daintyrose Ltd. in the late 1970s. Daintyrose Ltd was a company owned by members of the Fagan family. Mr Michael Fagan, a director of Daintyrose Ltd. lived at The Queen’s Head from 1985 to 1988.

12. In 1994 Daintyrose Ltd proposed to erect a wall around the forecourt of The Queen’s Head. Where exactly the wall was intended to stand does not appear from the evidence. On 27th of May 1994 solicitors instructed on behalf of Mr’s and Mrs Sidney Johnston and JSL wrote to Mr Fagan at The Queens Head stating that they were instructed that he intended to

build a brick wall which would obstruct “our clients right to utilise the forecourt for the purposes of their business which they have been doing for a very substantial number of years”. They stated that if he proceeded to build the wall that clients would apply for an injunction. In June 1994 a director of Daintyrose Ltd., Mr William Fagan wrote to solicitors acting for Mr Johnston. The letter stated

“as you are aware, access to my beer garden and car parking facilities have been denied due to your clients parking of his motor vehicles on my property. He has at times sold, or offered for sale, vehicles which have been parked on my premises. This has resulted in my clients being unable to park in my car parking facility. As a result of your clients’ wanton obstruction, I have lost trade due to the poor car parking facility in the neighbourhood.

To resolve this problem, I now require a written undertaking on the lines agreed between myself and your client. Your client has agreed to keep to his side of the boundary between our properties. He has further agreed not to obstruct access to my property, ...”

13. By 2000 The Queens Head was held by Grandred Ltd., another company in which members of the Fagan family were interested, under a lease from Allied Breweries Ltd. On 28th June 2000 the freehold of The Queen’s Head was transferred to Punch Pub Company (VPR) Ltd..

14. Grandred Ltd. sought planning permission for the laying out of new paving and the erection of walls fences and railings at the front of The Queen’s Head. Permission was granted on 27th December 2000. The work was done in about 2001.

15. On 4th October 2001 Mr and Mrs Sidney Johnston brought proceedings in the Barnet County Court against Punch Pub Company (VPR) Ltd and Grandred Ltd.. Mr and Mrs Sidney Johnston pleaded in the Particulars of Claim that they were the owners of the Car Sales Lot, that in 1948 they installed floodlighting comprising a power box in a brick building in the Passageway, cabling buried in the ground of the Passageway and floodlights attached to the wall of the public house, overlooking the Passageway. They pleaded that they had acquired by prescription a right to maintain and use the floodlighting and to enter the Passageway to check repair and replace parts of the floodlighting as required. They claimed a declaration that they had an easement to maintain and use the floodlighting and to enter the

Passageway to check, repair and replace parts of the floodlighting. They also claimed against Grandred Ltd. damages for interference with the floodlighting. On 22nd January 2003 HH Judge Cooke made a declaration that Mr and Mrs Sidney Johnston were entitled to the easement to maintain and repair the floodlighting and to enter the Passageway to check repair and replace parts of the floodlighting as required.

16. In about 2002 The Queen's Head was refurbished and re-branded. It started to trade as a "Sportszone Bar".

17. In June 2004 there was correspondence between Selwyn and Company, solicitors for JSL and TLT Solicitors, acting for Punch Taverns Ltd. concerning access. TLT wrote a letter to Mr and Mrs Johnston dated 18th June 2004. No copy of that letter or other evidence of its contents was before the Tribunal. Selwyn & Co. wrote as follows

"Our clients have asked us to express their dismay that you have written to them in the terms that you have considering the Proceedings to which you referred and our clients would therefore have expected that if your clients had a legitimate right they would have raised it in respect of those Proceedings.

However, our clients have been exercising a right over the forecourt to their premises for in excess of the last 50 years and on that basis they would assert that they have an easement over that part of the land in addition to the passageway.

Under the circumstances our clients reject your assertion that they are causing either a nuisance and/or trespass and if your clients choose to instruct you to take the matter further please be informed that our clients will do whatever is necessary to maintain the easement".

There was no evidence that the TLT's clients did take "the matter further", whatever exactly was the matter.

18. The Respondent, Docklock Ltd was registered as proprietor of The Queen's Head on 27th January 2010. Docklock Ltd then leased The Queen's Head to "Doctas", which used the building for the sale of furniture.

19. Mr Sidney Johnston made an application to HMLR for registration of the Forecourt on 31st October 2014. Mrs Elsie Johnston had died in October 2013. Docklock Ltd gave notice of objection to the application on 23rd December 2014. The matter was referred to the

Tribunal on 19th May 2016. Mr Gary Johnston died on 31st October 2016. Mr Sidney Johnston died on 27th March 2017. Lady Wackett obtained a grant of probate to the estate of Mr Johnston and was substituted as Applicant in these proceedings on 23rd March 1998.

Photographs

20. A number of photographs were produced in evidence. These included the following>

(i) There was a photograph that would appear from the cars shown in the photograph and from the style of billboards visible in it to have been taken in about the 1940s. That photograph shows the Car Sales Lot divided from the Forecourt by tall metal railings and several cars parked behind the railings. There is only one car parked on the Forecourt and it is parked in such a way as to leave the roadway on the Forecourt (i.e. the piece to the east of the line of kerbstones) free to provide access to and from The Queen's Head.

(ii) There were some Polaroid photographs probably taken in the 1970s showing the words "Johnston & Sons Ltd." and "Service Dept." on a fascia board above the railings at the front of the Car Sales Lot. The period when the photographs were taken is an approximation based on the models of cars visible in the photographs. In one of the photographs, part of one car appears to be parked on the Forecourt but there does not appear to be anything blocking access to the forecourt of The Queen's Head and cars can be seen parked on the forecourt of The Queen's Head in two rows, one beside the wall of the public house and the other along the inside edge of the pavement that separated the forecourt from the carriageway. Most of the cars are parked facing towards Frobisher Road, suggesting that they had been driven in over the Forecourt.

(iii) There were some photographs taken in 1989 when The Queens Head was still trading as a public house. The photographs show the metal fence that still exists dividing the Car Sales Lot from the Forecourt. It shows a fascia above the metal fence supported on tall posts. On the fascia appear the words "Johnston and Sons Ltd." and a telephone number. One of the photographs show seven cars in a line facing the road and displayed for sale, with the sale price and other information shown in the windscreen. Six of those cars are on the Forecourt and one is in front of the Passageway. In the photographs, it is clear to see that the Forecourt included an area of pavement slightly raised above the rest of the surface of the Forecourt. The photographs show that at the time the photograph was taken, it was possible to drive from the highway across the Forecourt to gain access to the Forecourt of The Queen's Head. The cars on the Forecourt displayed for sale are parked in such a way as to enable cars to pass

between the highway and the forecourt of The Queen's Head. In one photograph a car is shown parked on the forecourt of The Queen's Head parallel to the road and facing north, which suggests it was driven over the Forecourt to get to the forecourt of The Queen's Head. The raised pavement area of the Forecourt is curved, appearing to follow the line of an area intended to provide vehicular access in and out of the forecourt of The Queen's Head. Four of the displayed for sale are parked partly on the higher pavement area behind the kerb stones and partly on the area to the east. It is not possible to see in these photographs any sign of the collapsible post and chain fence that now exists. The site of the current post closest to The Queen's Head is not in the 1989 photographs covered by any parked car but neither a post nor any signs of a socket for a post is visible in this position in the photographs.

(iv) There were some photographs taken of the front of The Queen's Head before the wall constructed in 2000 had been built and showing wooden tables with attached benches occupying most of the area of the forecourt of The Queen's Head. In one of those photographs a car can be seen parked on that forecourt but at the end closest to Frobisher Road and facing south.

Witness Evidence

21. Mr Jeremy Poyser gave evidence. He was employed by Grandred Ltd and project managed the construction of the wall and railings around The Queen's Head, including the wall and railings between the Forecourt and The Queen's Head. He said that Grandred Ltd. wanted a gap left in the wall and a gap was left. He met Mr Gary Johnston on site and discussed with him where the line of the wall should be. His meeting with Mr Gary Johnston was on The Queen's Head side of the boundary and not on the Forecourt. He said that Mr Gary Johnston appeared to be the owner of the car sales business. He said that Mr Gary Johnston presented himself to him as owner of the site on which the business was the car sales business was operated. On the day that he met Mr Gary Johnston on the site to discuss the wall there were cars parked on the forecourt. Mr Poyser took photographs. He said that the cars were parked up to the line where the wall was built both before and after construction of the wall. He said that he was on the site every week over the four-month construction period. During the period he was involved with the project of constructing the wall the only use he saw made of the Forecourt was for parking cars. About six months after the wall had been built, he made a maintenance inspection. He said that there were cars parked on the Forecourt then. He thought that there were four or five cars parked in a line facing the road.

22. Mr Huseyin Zuhta was a neighbour of the late Gary Johnston. In 1987 or 1988 he had bought a car from Mr Johnston. Every working day he would drive past the Forecourt. He had always seen cars parked there. He could recall from 1986 seeing posts and chains on the front of the Forecourt. There had been 4, 5 or maybe six cars on the Forecourt. They had been parked looking towards the road in a single row.

23. Mr George Jacavou lives two doors away from where the late Mr Gary Johnston lived. His evidence was that ever since 1975 there had been cars on the Forecourt. From 1981 until 2000 he worked in the local area. He owned a factory at 93A Falkland Road (being the road that runs parallel to Frobisher Road and at the southern end of Queen's Parade) and ran a clothing manufacturing business from there. The cars were parked in a straight line up to where the chain was. They were behind the chain. He could say that the chain had been in front of the cars from 1981 when he bought his building in Falkland Road He did not see the wall along the boundary of The Queen's Head built because his business moved in 2000 and he sold the building where he operated his business, in 2001.

24. The Applicant, Natalie Wackett gave evidence. She is now the sole shareholder in Johnston & Sons Limited and owns 5 and 6 Queens Parade and the Car Sales Lot, having inherited them following the death of her grandfather. She was born in 1981. She said she could recall from the age of three the land. She could recall her grandfather parking and going into the premises. Her grandfather used to collect paper work from the premises and then take her to National Westminster Bank on a weekly basis where he would carry out business banking and then pay her her "wages", being her pocket money. Additionally, at least once a week she would visit the premises to visit her father at work. She recalled her father had a swivel chair in his office and she liked to swing on it. She accepted that there had always been a demarcation between the Forecourt and the Car Sales Lot. When trading finished the gate in the fence between the Forecourt and the Car Sales Lot was closed. From her earliest memory that had been the post and chain fence along the front of the Forecourt. If she visited during the working day the posts were not up. The reason why the fence was erected was not to keep people out but to stop people from taking cars. The post and chain fence was not to stop anyone walking onto the Forecourt. The chain did not extend to the walls at each end. She agreed that anyone could walk through the cars over the Forecourt. She accepted that up to the late 1980s or early 90s access was available to drive onto the forecourt of The Queen's Head. However, it was not possible to get vehicle access to that forecourt in 1995 because of where

the cars were parked. Her father was not involved in putting up the gate in the gap in the wall. She did not recall any change in parking arrangements on the Forecourt. There had been a number of brawls at the pub but she did not remember one particular incident.

25. Her father, Mr Gary Johnston took over the business in the early 1990s. Not long after, Mr Gary Johnson entered into a joint venture with a Mr Peter Vyse, for JSL to fund some of the vehicles for sale and take a share of the profit when it was sold. JSL operated a separate business from the showroom at six Queens Parade. In about 1991 JS L rented out the car sales land and forecourt to Peter Vyse. The arrangement with Mr Vyse came to an end in around the mid-1990s. Lady Wackett produced a draft lease she found amongst her grandfather's papers. It was a draft of the lease by Mr and Mrs Johnston to Mr Peter Vyse of what was described as "all that piece or parcel of land at 677 Green Lanes Haringey London N8 hereinafter defined as the "open site" shown for identification only edged red on the annexed plan". There was no plan annexed to the draft lease. Some indication of what was intended by the phrase "the open site" can be found in the covenant in clause B (6), which includes a reference to "the neon fascia sign at the front of the open site". The only neon fascia sign was that above the fence between the Car Sales Lot and the Forecourt.

26. In February 1995 Mr Gary Johnston instructed Tolbert's estate agents to seek a tenant for what was described as the "commercial car lot site" at 677 Green Lanes. In April 1995 Mr Gary Johnston had correspondence with Selwyn and Company, Solicitors, concerning the proposed lease of the Car Sales Lot and the Forecourt to a Mr Ouloupis. On 11 April 1995 Mr Selwyn wrote to Watts and Leeding, solicitors acting for the proposed lessee, advising that all of the Car Sales Lot and the Forecourt up to the locking posts fixed in the ground were being demised. Mr Selwyn stated that JSL had been "occupying the site for car sales since 1948". On 20 April 1995 Mr Selwyn faxed a plan showing the area intended to be demised as including the Forecourt. Six locking chain posts were shown on the plan across the front of and marking the front edge of the Forecourt.

27. Mr Anthony Williams gave evidence. He moved to 77A Frobisher Road on 28 August 1998. Before moving there, he lived in Tottenham and used to come to Green Lanes for shopping. He knew Mr Gary Johnston before he moved to Frobisher Road. He recalled that cars had always been parked on the Forecourt backed up to the metal fence and facing out onto the road. He accepted that before the wall was built you could drive onto the front

forecourt of The Queen's Head. When the wall was built there was a gap. The access was only blocked when Doctas started trading from The Queen's Head. He did not recall a time when cars were not parked on the Forecourt in the evenings. As far as he was aware at night there will always cars there. There was never a time when cars were not parked on the Forecourt. The cars were always behind the posts. In the evening, you would have to step over the chain to go in to look at the cars. He thought that there were between seven and eight cars parked on the Forecourt.

28. Mr Stylianou gave evidence. He started trading from the Car Sales Lot and the Forecourt in March 1997 after he signed a lease of the Car Sales Lot and the Forecourt from Mr and Mrs Sidney Johnston. He moved in straight after the previous company trading on the site moved out. The previous company traded as "Commercial Autos". When he obtained the lease, he laid tarmac over the Car Sales Lot and the Forecourt. He parked cars on the Forecourt facing the road. It was possible to gain access over the Forecourt in a car to the forecourt of The Queen's Head. He did not recall the wall being built. He did not know who put up the gate in the gap in the wall whether the operators of "Sportzone" or Doctas. Cars were parked back as far as possible. He had not tried to park so as to block the gap in the wall. There had been no occasions when people had asked him to move cars on the Forecourt. The gap in the wall was used by pedestrians. He had never seen people drive onto the Forecourt of The Queen's Head before the wall was built. In his time, it had never been possible to drive a car onto The Queen's Head's forecourt. He did not recall any occasion in the 1990s when cars stopped being parked at night on the Forecourt. When he ran the site, there were routinely about seven cars parked on the Forecourt. He operated the posts and chain fencing, putting it up when the business closed for the night and then putting it down when it opened for business. There were padlocks on the posts and chain to stop them being removed when in the closed position. Mr Stylianou had replaced those locks. His staff swept down the Car Sales Land and the Forecourt daily and ensured it was kept clean. He maintained the floodlights which illuminated both the Car Sales Lot and the Forecourt.

29. Mr Fagan formerly ran The Queen's Head. He said that he and his family together ran a total of 17 pubs. He was a director of the family company, Daintyrose Ltd., that held the lease of the pub. Mr Fagan was licensee of the pub for a long period of time but he could not recall the dates. He ran The Queen's Head full time for about 18 months before 1985. In 1985 he moved to live at The Queens Head where he lived until 1988. He was involved in the

running of The Queen's Head for about 8 to 10 years and then put in a manager. He would say his period of running The Queen's Head was from 1983 until the late 1990s. He said that vehicles were at times parked on the Forecourt but this was usually in such a way as not to block access to the forecourt of The Queen's Head. He could not recall any chain along the front of the Forecourt. He said that occasionally the Johnstons parked two rows of cars on the Forecourt. There were times when more vehicles were parked on the Forecourt and obstructed access to the forecourt of The Queen's Head. Mr Fagan would then complain and ensure access to The Queen's Head forecourt was kept clear. He said that whilst at some time ago it had been possible to drive cars from the highway onto the forecourt of the public house, this had not been used for some years before the wall was built because tables had been placed on that forecourt. He recalled one occasion when there was a particularly large brawl at the pub. The brawl spilled out of the pub onto the Forecourt and some windows were smashed. The size of the brawl made it exceptional. After this brawl at night time all cars were moved from the Forecourt either into the fenced off Car sales Lot or to a garage on West Green Road. The practice of moving the cars in the evening went on pretty much until the time when he stopped being involved in running the Queen's Head.

30. Mr Fagan's attention was drawn in cross-examination to a transcript of the judgment of HH Judge Raynor Q.C. (sitting as a Judge of the High Court) dated 20th November 1988 and given in proceedings brought by Mr Fagan's trustee in bankruptcy against Mr Fagan's wife, Pamela Fagan. The judgment was given after the learned judge had heard evidence from both Mr and Mrs Fagan, which he found to be entirely reliable. It appears from the judgment that Mr and Mrs Johnston provided the financial backing for the trustee in bankruptcy to bring the proceedings. The proceedings were to set aside a declaration of trust dated 20th May 1998 whereby Mr Fagan declared that he and his wife held the matrimonial home on trust for Mrs Fagan. The following facts appear from the judgment:

- (i) property had been purchased in July 1988;
- (ii) Mr Fagan's principal responsibility from September 1994 was the operation of The Manor Public House in Finsbury Park;
- (iii) from the early 1993 Mr Fagan had a substantial alcohol problem which gave rise to associated mental health problems; and
- (iv) Mr Fagan was made bankrupt in January 2003.

Mr Fagan did not dispute in cross-examination that these findings were correct.

31. Mr Fagan said that the wall was built in 2001 when The Queen's Head was being refurbished into a sports bar. The wall prevented encroachment onto the forecourt of The Queen's Head and also ensured that it protected the pedestrian access because a gap was left on the wall specifically for pedestrian access across the Forecourt. There was no chain or gate erected and a large entrance was simply left in the wall. He said that on occasions, after the wall was built, cars were parked in such a way that the pedestrian access through the entrance in the wall was blocked and that he would complain about this to get the car moved. He recalled that he was constantly making requests for cars to be moved to enable access through the gap in the wall.

32. Mr Christoforou gave evidence on behalf of the Respondent. He was appointed a director of Docklock Ltd. in 2009 or 2010. He agreed that the wall between the forecourt of The Queen's Head and the Forecourt was built in 2000 and that he had no first-hand knowledge about any access before the wall was constructed. He accepted that there were occasions when there was a car parked on the Forecourt behind the front row of cars. It was his case that the applicants had continued to block the pedestrian access by parking cars further forward.

33. There were several witness statements from witnesses who could not or did not attend the hearing.

34. Mr Sidney Johnston made a witness statement dated 24 September 2014 in which he said that he had used the Forecourt since 1948. He had constantly maintained the Forecourt and had tarmaced it. He installed the chain fencing along the front of the Forecourt in about 1948. He described the security chain as comprising four steel posts with holes drilled through the middle to allow the chain to go through the chain being padlocked at either end the poles to the left and right were embedded into concrete. The two in the middle were of a longer length and although capable of being extracted, it was impossible to pull out when the security chain was in place. The security chain was removed with the two retractable steel posts every morning and replaced every evening during the days of business. He said that in or about the 1970s he modernised the security by fitting locking points which were far easier to remove and allow cars on and off the Forecourt.

35. Mr Gary Johnston said there had been cars on the Forecourt in front of the Car Sales Lot marked up for sale for as long as he could remember. He used to wash and polish them and mark the cars for sale. One of his jobs was to remove the security chain which was in front of all the cars on the Forecourt. He maintained the Forecourt in front of the Car Sales Lot. He tarmaced it, kept it clean and in good order.

36. There were also witness statements from the following:

(i) Mr Gary Bergman, who said he carried out works for the Johnston family at the car sales site, had purchased cars from there and had drunk in The Queen's Head;

(ii) Harish Gudkha who said she had lived at 27 Falkland Road since 1975;

(iii) Raz Azar who is a former employee of Johnston & Sons and had worked in the car sales business;

(iv) Mr Steve Whatnell who said he had worked with Mr Gary Johnston in selling advertising space on the flank wall of 6 Queen's Parade and then on the freestanding sign beside the Car Sales Lot; and

(v) Mr Selwyn, the former solicitor of Mr and Mrs Sidney Johnston.

There was no evidence that these witnesses could not have been called to give evidence. As these witnesses were not called to give oral evidence and their evidence could not be tested by cross-examination, I shall not place any reliance on it.

Adverse Possession: Law

37. The question to be answered when considering whether a person occupying land is "in adverse possession" for the purpose of Schedule 1 paragraph 8 to the Limitation Act 1980 is

"...whether the Defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner... Beyond that... the words possess and dispossess are to be given their ordinary meaning."

(per Lord Browne-Wilkinson in *J A Pye (Oxford Ltd) v Graham* [2003] AC 419 at paragraphs 36, 37).

38. Legal possession is comprised of two elements:

- (1) A sufficient degree of physical custody and control ("factual possession"); and
- (2) An intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess"). "What is crucial is to understand

that, without the requisite intention in law there can be no possession. Such intention may be, and frequently is, deduced from the physical acts themselves.” (*ibid* paragraph 40).

39. Factual possession has been described as follows:

“It signifies an appropriate degree of physical control. It must be a single and [exclusive] possession... Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so.”

(per Slade J in *Powell v McFarlane* (1977) 38 P and CR 452 at pp. 470-471, cited at paragraph 41 in *J A Pye (Oxford) v Graham*).

40. What is required for the intention to possess is the intention to exclude the whole world, including the true owner of the paper title, from the land so far as is reasonably practicable and so far as the processes of the law will allow – see per Slade J. in *Powell v McFarlane* above. The intention must not only be the subjective intention of the squatter but the squatter must also show by his outward conduct that he has such an intention. The intention must be manifested by unequivocal action – see *Prudential Assurance Co Ltd v Waterloo Real Estate Inc* [1999] 2 EGLR 85 at 87. The use of the land must be such that the true owner, if he took the trouble to be aware of what was happening on his land, would know that the squatter was in possession.

41. An acknowledgement by the squatter of the title of a person entitled to possession will stop time running against. The right of the person to recover possession is treated as accruing at the date of the acknowledgement and not before – Limitation Act 1980 s. 29. However, an acknowledgement will only have this effect if it is in writing – Limitation Act 1980 s. 30.

Submissions

42. Mr Clargo, counsel for Docklock Ltd., submitted that Lady Wackett had not established factual possession of the Forecourt. He submitted that there had not been a sufficient degree of exclusive physical control.

(i) The posts and chain fence did not keep people off the Forecourt as it was possible to walk around it at each end. The purpose of the fence was not to keep people out but to secure the cars.

(ii) The tarmacing of the Forecourt by Mr Stylianos should be regarded as maintenance not amounting to evidence of possession.

(iii) The actions of Lady Wackett's predecessors on the Forecourt were equivocal. They were equally consistent with the exercise of an easement or a persistent trespass than with possession and an intention to possess the Forecourt.

43. Mr Clargo also submitted that the letter dated 18th June 2004 from Selwyn & Co. contained an acknowledgement of the title of Punch Pub Company (VPR) Ltd. to the Forecourt, with the consequence that if time was running in favour of Mr and Mrs Johnston up to that point, it stopped and started a new at the date of that letter. He submitted that, as a consequence, Mr Sidney Johnston had not been in possession of the Forecourt for 12 years as at the date of his application for first registration.

44. Miss Chorfi, counsel for Lady Wackett, submitted that there had been factual possession by Lady Wackett's predecessors. Anyone attending the site could be under no doubt that the Forecourt was under the control of the tenant of the site, Quality Cars. As acts of possession she relied upon lettings, lighting, maintenance, the posts and chain fencing and the parking. The land here had historically been used for the display of cars and that was the use of the landowner would have made of this land. The cars here were displayed on the site for sale. When the opening was left on the wall constructed in 2000 this did not detract from possession of the whole of the Forecourt. It simply provided for crossing over a small corner to get between the pavement and the front of The Queen's Head. Any use had been made with the licence of Mr Johnston. The tarmacing of the Forecourt by Mr Stylianos was an important act of possession. She submitted that adverse possession was established.

Findings

45. There has been a removable posts and chain barrier across the front of the Forecourt since at least 1995. The posts and chain were referred to in Mr Selwyn's letter written in

April 1995 and shown on a plan he sent to solicitors for the potential tenant in 1995. They would not have been so referred to and shown on the plan if they were not then *in situ*. All the posts shown on the plan sent by Mr Selwyn were not in 1989 in the positions shown on the plan. The post at the northern end (the right-hand end when viewed from the road) would have been visible in one of the photographs taken in 1989 and produced in evidence if it had then been in the position shown on Mr Selwyn's plan. I consider on the balance of probabilities that at least the northern post was installed after 1989. That might have been on the occasion when Mr Sidney Johnston said he installed new posts. Although he said in his witness statement that he installed the new posts in the 1970s, he might well have been mistaken as to the dates. There had been posts and a chain across at least part of the Forecourt since at least 1981 when Mr Jacavou saw them but it is not possible to say where exactly they were.

46. Cars have been parked on the Forecourt for sale for many years. Mr Jacavou could remember seeing them there since 1975. The photographs taken in 1989 show the cars parked so as not to prevent cars being driven across part of the Forecourt onto the forecourt of The Queen's Head. However, from at least 1997 cars have been parked across the whole width of the Forecourt in a way which did obstruct access to the forecourt of The Queen's Head. Mr Stylianou's evidence was that there had routinely been seven cars parked across the Forecourt. The size and shape of the Forecourt is such that seven cars could not be parked on it without blocking vehicular access to the forecourt of The Queen's Head. Mr Fagan himself recalled there having been two rows of cars parked on the Forecourt. The Forecourt is only deep enough to park one car behind another at its northern end and if two cars were parked, one in front of the other, at this end, it would necessarily have prevented vehicular access to the forecourt of The Queen's Head. I do not consider that Mr Fagan would have complained about vehicular access to the forecourt of The Queen's Head being obstructed from 1997 onwards because on his own evidence from some years prior to the construction of the wall in 2000, there were tables on the forecourt of The Queen's Head. The photograph showing the tables and benches at the front of The Queen's Head and taken before the wall was constructed shows that while the tables and benches were on the forecourt of The Queen's Head, it would not have been practical to have driven onto that forecourt from the Forecourt.

47. I accept Mr Stylianou's evidence that while he was trading from the Car Sales Lot and the Forecourt, cars were not moved from the Forecourt at night. I do not doubt Mr Fagan's

evidence that there was some period when, following a violent incident at The Queen's Head, cars were not left on the Forecourt at night. However, Mr Fagan did not say in terms that the practice of removing the cars at night continued until the end of the period when he was involved in the running of The Queen's Head. He said that it went on until "pretty much" the time when he stopped being involved and that his involvement stopped in the "late 1990s". 1997 can be regarded as "the late 1990s". There is therefore no clear conflict between his evidence and the evidence of Mr Stylianou and his evidence does not give me reason to reject Mr Stylianou's evidence. If there were a conflict then I would prefer the evidence of Mr Stylianou since Mr Fagan was from 1994 mainly occupied by the running of The Manor House and had the problems referred to in the judgment of HH Judge Raynor Q.C., that are likely to have had a detrimental effect on the accuracy of his memory.

48. The posts and chain fence has been put up at night on a regular basis for as long as it has existed and there have been cars for sale on the Forecourt. Mr Stylianou's evidence was that he and his employees put up the posts and chain at night. He would have done so, in my judgment, to provide an additional measure of security for the cars from theft and damage.

49. I accept that Mr Stylianou did some resurfacing work in that he laid tarmac on the Forecourt. He did not tarmac the whole surface of the Forecourt. That is apparent from the present state of the Forecourt and the existence of a patch of setts uncovered by tarmac and the existence of patches of concrete. I do not consider that if the whole of the Forecourt had been tarmacked in or about 1997, setts and patches of concrete would now be visible.

50. I accept that Mr Stylianou's staff swept the Forecourt on a regular basis. He would have wanted this to be done to give a good visual impression to potential customers. I also accept that Mr Stylianou maintained the lighting at the Car Sales Lot. However, there is no evidence that lights were installed for the specific purpose of illuminating the Forecourt.

51. I am satisfied that the Forecourt was let by Mr and Mrs Sidney Johnston to Mr Stylianou by the lease dated 21st March 1997. The lease contains no plan showing the demised premises and there is no definition of what is meant by "the Forecourt". The meaning in the lease of the phrases "the Car Sales Lot" and "the Forecourt" has to be deduced from a construction of the lease in the context of the physical features on the ground at the time and the use then made of the land. There was at the time of the lease as there is now a

fence dividing the Car Sales Lot from the Forecourt. That fence is visible in the photographs taken in 1989. There is no evidence that the Car Sales Lot was physically divided into more than one area at that time (or ever). There was no area of land to which the phrase “the Forecourt” could have been used as a term describing a piece of land separate from the Car Sales Lot other than the Forecourt. I am satisfied as a matter of construction that what was referred to in the lease as “the Forecourt” is the area of land referred to in this Decision as “the Forecourt”.

52. The leasing of the Forecourt by Mr and Mrs Sidney Johnston to Mr Stylianou is clear evidence that they intended to possess the Forecourt. It was an unequivocal manifestation of their intention to possess the Forecourt.

53. If Mr Stylianou then took possession of the Forecourt, the factual possession of the Forecourt by Mr Stylianou is possession that Mr and Mrs Sidney Johnston were entitled to rely on.

54. I am satisfied that Mr Stylianou has been in factual possession of the Forecourt since he entered under the Lease in 1997. He has been dealing with the land in a way that an occupying owner could be expected to deal with it and no-one else has. He has used it for the display of cars for sale. He has put as many cars as can be fitted onto the Forecourt. He has raised the posts and chain fence every night and padlocked the chain. Anyone looking at the Forecourt would see that the Forecourt was being used together with the Car Sales Lot for the purposes of operating a car sales business.

55. In my judgment, displaying cars for sale, involving as it does arranging them in a line, facing the direction from which they will be seen by potential customers and displaying in them signs that they are for sale and their prices is different from merely parking cars on land. However, parking itself may be evidence of possession. In *Williams v. Usherwood* (1983) 45 P&CR 235 Cumming-Bruce LJ said (at p, 252)

“In our view, the significance of parking varies greatly according to the exact circumstances of the relevant ground. Parking cars on a strip of waste land may have no evidential value whatever in relation to possession of the land. In the enclosed curtilage of a private dwelling-house, however, it may be regarded as evidence of possession”.

Here the Forecourt has been enclosed since 2000 by the wall along the boundary with The Queen's Head and by the chain and post at the front. It has been used in almost its entirety for the displaying of cars parked in a neat line. This is use which is evidence of possession.

56. In deciding that Mr Stylianou has been in possession of the Forecourt, I have regard to the following passage from *JA Pye v. Graham* at paragraph [41])

“The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed”.

The Forecourt is a piece of paved land adjoining a busy road in London. One use to which such land is commonly put is the display of items for sale. In that context, the display for sale of cars positioned on practically the whole of the Forecourt, involving as it does the manoeuvring of cars on and off it, the parking of the cars, the maintenance of the area and the showing of cars to potential customers and the erection of the posts and chain fence at night does amount to a sufficient degree of exclusive physical control.

57. I do not consider that the degree of exclusive physical control has not been sufficient because pedestrians may from time to time have walked over the Forecourt to pass through the gateway onto the forecourt of The Queen's Head. That transitory and occasional use is not such as to mean that Mr Stylianou did not have a sufficient degree of exclusive physical control. No-one other than Mr Stylianou exercised control of the Forecourt. Mr Stylianou dealt with the Forecourt as an occupying owner would have dealt with it. Mr Stylianou would not have wanted to exclude all pedestrians from the Forecourt because he would have wanted people to be able to walk onto the Forecourt to look at the cars displayed for sale.

58. The position is similar to that in *Chapman, Gayadeen v A-G of Trinidad and Tobago* [2014] UKPC 16 in which the applicants claimed to have been in adverse possession of a car park created by them and intended by them to be used by customers of their business. They displayed a sign saying that parking was for customers only and asked non-customers to move their cars. They won their adverse possession claim in the Privy Council. Lord Hodge said:

“The other requirement is factual possession which connotes a sufficient degree of physical control ... What constitutes an appropriate degree of physical control must depend on the circumstances. In this case the Rambarans and the appellants would have wished members of the public to have access to their car park ... in order to

provide custom to their business. There could have been no question of fencing off the car park if they were to attract such custom. They dealt with the car park as an occupying owner might have been expected to deal with it. No one who parked there temporarily without their consent dealt with the car park in that way. Such ephemeral use of part of the car park by a driver of a vehicle did not amount to factual possession and did not manifest any intention to possess.

In this case, Mr Stylianou would have wished members of the public to have access to the Forecourt in order to provide custom for his car sales business. He could not have fenced off the Forecourt if he was to attract such custom. No-one who walked over the Forecourt to get to or from The Queen's Head dealt with the Forecourt as an occupying owner might have been expected to deal with it and their passing over it did not amount to factual possession or manifest an intention to possess.

59. Mr Stylianou has been in actual possession of the Forecourt but was in possession under the lease granted to him by Mr and Mrs Sidney Johnson. Mr and Mrs Sidney Johnson were to be treated as being in possession through their tenant, Mr Stylianou.

60. I do not accept Mr Clargo's submission that Mr and Mrs Sidney Johnston acknowledged the title of Punch Pub Company (VPR) Ltd. to the Forecourt by the letter of 18th June 2004 for two reasons. Firstly, the letter does not state clearly that Punch Pub Company (VPR) Ltd. has title to the land the subject of the application for first registration and therefore does not acknowledge the title of Punch Pub Company (VPR) Ltd. to the Forecourt. Secondly, it does not state either expressly or by implication that Mr and Mrs Johnston have a right of way over the Forecourt, by which is meant the land the subject of the application for first registration. It can be read as asserting that Mr and Mrs Johnston have a right of way over the forecourt of The Queen's Head for the purposes of accessing their premises. i.e. the Car Sales Lot and the Forecourt and to access the Passageway for the purposes of exercising their easements over the Passageway. The letter has to be construed in the context of the background facts, including the following

- (i) Mr and Mrs Johnston had an express right of way over most of the Forecourt granted by the conveyance dated 17th November 1982;
- (ii) Mr and Mrs Johnston had granted a lease of the Forecourt to Mr Stylianou;

(iii) Mr Fagan does not appear ever to have considered the Forecourt to have been part of the land let to Grandred Ltd. since he gave evidence of complaining of obstruction of access to the forecourt of The Queen's Head and not of the use of the Forecourt itself;

(iv) there is no evidence Mr Fagan complained to Grandred Ltd.'s landlord about the obstruction of access to The Queen's Head by cars parked on the Forecourt, which would have been his course of action if he considered that the Forecourt was owned by the landlord; and

(v) some three years before the date of this letter a wall had been erected along a line agreed as a boundary line between Mr Poyser as the representative of Grandred Ltd. and Mr Gary Johnston, who was representing Mr and Mrs Sidney Johnston.

Given those facts, it is more probable that the letter should be construed as containing a claim by Mr and Mrs Johnston to a right over the forecourt of The Queen's Head than as being a statement that their right in the Forecourt was limited to a right of way. If the writer of the letter had intended to refer to a right of way over the Forecourt, he would have referred to the grant of the right of way in 1982; user for fifty years would not have been relevant. What TLT may have been asserting in their letter, to which the letter of 18th June 2004 was a reply, was that though Mr and Mrs Johnston had a right to enter the Passageway, they did not have a right of way over the forecourt of The Queen's Head to get to the Passageway or for another purpose. The letter of 18th June 2004 would then make sense as containing an assertion that a right of way had been exercised over the forecourt of The Queen's Head for over fifty years. In the absence of the letter from TLT it is not correct to read the letter from Selwyn & Co., as an acknowledgement of title to the Forecourt.

61. Mr and Mrs Sidney Johnston had been in possession of the Forecourt for a period in excess of 12 years prior to Mrs Elsie Johnston's death. That period of possession had commenced at latest in March 1997 when Mr Stylianos went into possession under the lease dated 21st March 1997. At the time of the application for first registration, the title of the paper owner had been barred by limitation. Mr Sidney Johnston was therefore entitled to be registered as proprietor.

Conclusions

62. Mr Sidney Johnston was at the date of the application for first registration entitled to be registered as proprietor of the Forecourt. Lady Wackett as his successor, is now entitled to

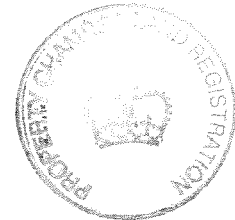
succeed. Accordingly, I shall direct the Chief Land Registrar to give effect to the application of Mr Sidney Johnston as if the objection thereto of Docklock Ltd. had not been made.

Costs

63. My preliminary view is that Docklock Ltd should pay the applicants' costs to be assessed. Those are the costs incurred since the date of the reference of the matter to the Tribunal by both Mr Sidney Johnston and subsequently by Lady Wackett. Any party who wishes to submit that some different order should be made as to costs should serve written submissions on the Tribunal and on the other party by 5pm on 17th September 2019.

BY ORDER OF THE TRIBUNAL

Michael Michell



DATED this 3rd September 2019