REF/2022/0344

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Pauline Vivienne Climpson and Patricia Frances Whitehead

APPLICANTS

and

Philip Andrew Bush

RESPONDENT

Property Address: Land adjoining Gwynfryn Cottage, Llanystumdwy, Criccieth LL52 0LU
Title Number: CYM818934 (pending)

Before Judge Brown

Sitting at: Caernarfon Justice Centre
On: Tuesday 8 August & Wednesday 9 August 2023 (site visit Monday 7 August 2023)

Applicant Representation:	Rachel Coyle instructed by Fleet Law Solicitors
Respondent Representation:	Richard Granby instructed by Gill Turner & Tucker

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DECISION

KEYWORDS:

adverse possession; unregistered land; construction of conveyances; permission

Cases referred to:

Neilson v Poole (1969) 20 P&CR 909
Investors Compensation Scheme Ltd v West Bromwich Building Society (No. 1) [1998] 1 WLR 896
Alan Wibberley Building Ltd v Insley [1999] 1 WLR 894
Druce v Druce [2004] 1 P&CR 26
Batsford Estates (1983) Co Ltd v Taylor [2005] EWCA Civ 489; [2006] 2 P&CR 5
Pennock v Hodgson [2010] EWCA Civ 873
Zarb v Parry [2011] EWCA Civ 1306; [2012] 1 WLR 1240
Dunlop v Romanoff [2023] UKUT 200 (LC)

INTRODUCTION

1. This judgment concerns two applications. The first in time, brought by the present Applicants, was an application for first registration based on adverse possession of a strip of land that runs alongside their cottage garden, the cottage itself, and some other buildings adjoining their cottage. The second application, brought by the present Respondent was for first registration of the same strip, based on a paper title that he claims to hold.

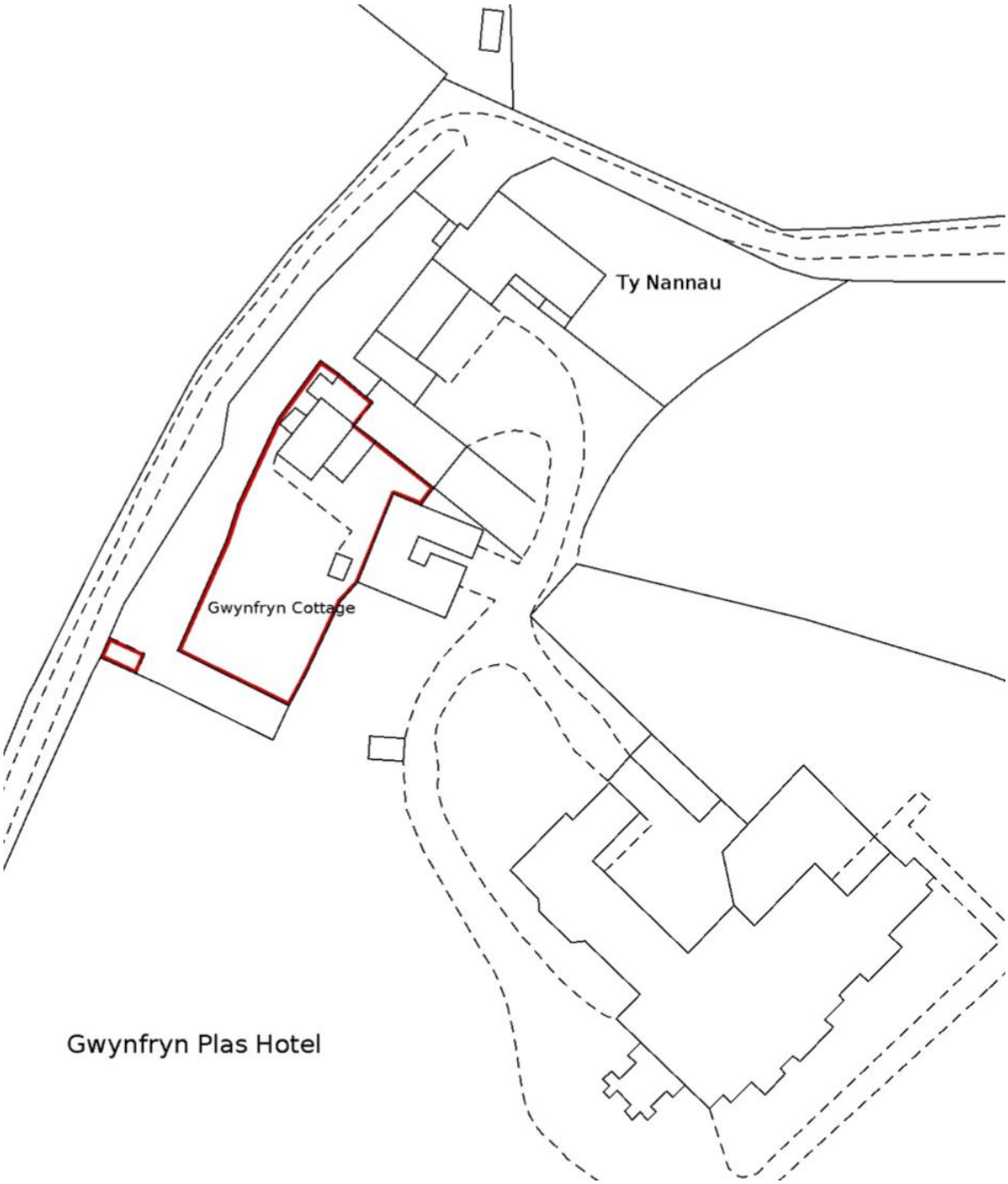
2. In very summary terms, the Respondent's position is that he is the paper title owner, that he gave the Applicants permission to use the strip of land, and that any use without permission was insufficient to amount to possession. Again, in very summary terms, the Applicants' position is that the Respondent is not the paper title owner, so anything said or done by him is irrelevant, but that he did not give permission, and that their acts demonstrate at least a twelve-year period of adverse possession.

3. I carried out a site visit on the afternoon of 7 August 2023. The parties and their legal representatives were in attendance. The hearing took place over the following two days at the Caernarfon Justice Centre. I heard evidence from the First Applicant, Miss Climpson. The Second Applicant, Miss Whitehead, was present throughout but did not give live evidence. I also heard evidence from Mr Bush. The Applicants were represented by Miss Coyle and the Respondents were represented by Mr Granby. Both had filed helpful skeleton arguments and made detailed oral submissions.

BACKGROUND

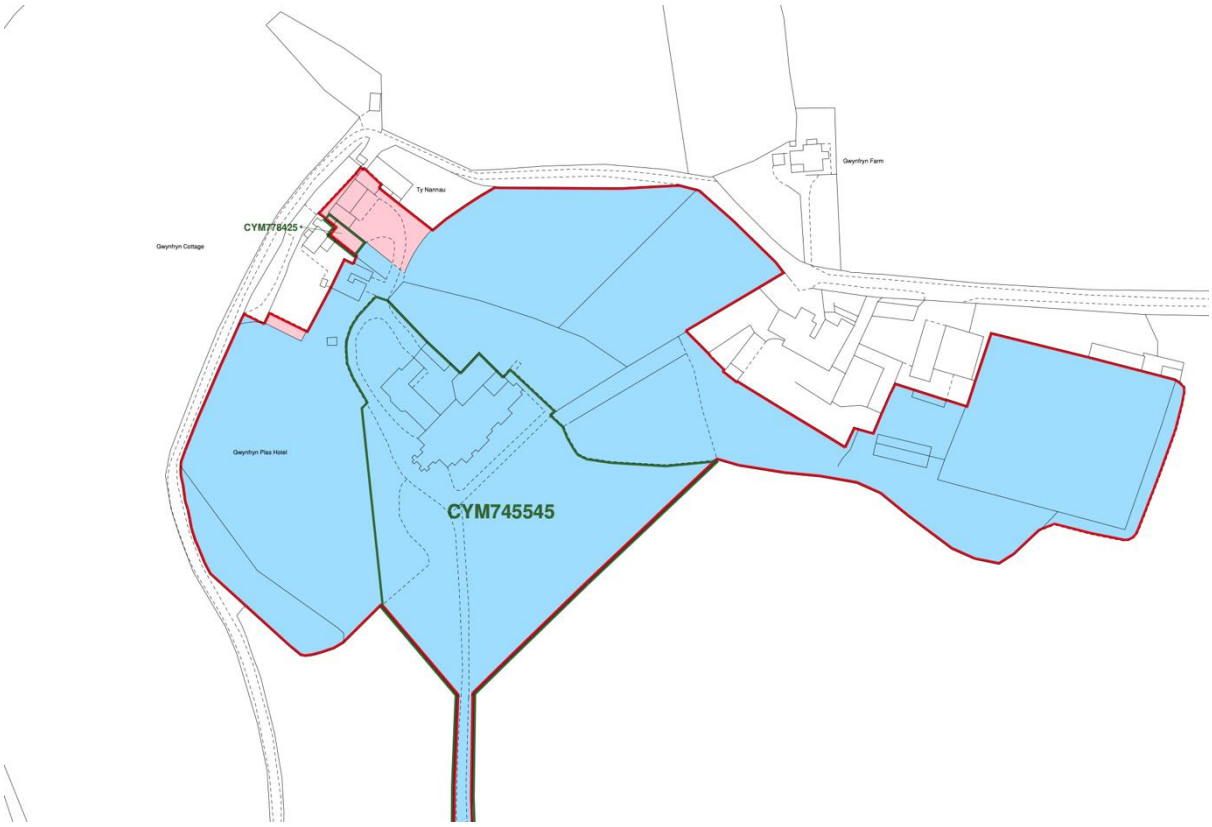
4. The land that these applications are concerned with forms a small part of what was once a large country estate, with a mansion house, a farm, and various outbuildings. While at one time the estate was all in common ownership, it has been divided up through various different conveyances since about 1949 onwards.

5. The Applicants are the registered proprietors of a property known as Gwynfryn Cottage, Llanystumdwy, Criccieth LL52 0LU. They bought the cottage in June 2002. The title is registered at HM Land Registry as title number CYM59475. This is shown on the title plan as set out below.



6. It will be noted that there is small rectangular piece of land in the south-west corner that forms part of the title but is slightly separate from the rest of the Applicants' property.

7. The Respondent is the registered proprietor of property known as land adjoining Gwynfryn Plas, Llanystumdwy, Criccieth LL52 0LU. His title is registered at HM Land Registry as title number WA761146. Part of the title plan is reproduced below.



8. The land edged in green and identified as title number CYM745545 was formerly part of Mr Bush's registered title but that was sold to a Mr Hill in 2018. CYM745545 includes the former mansion house, the Plas. That building was gutted by fire in the 1980s. I shall set out a little more of the history of the Plas and the wider estate below (it seems that "the Plas" has sometimes been used to refer to the house alone, while at other times it has been used to refer to the wider estate).

9. The land edged in green and identified as title number CYM778425 was also formerly part of Mr Bush's registered title but it was sold to the Applicants in 2019. The building on that land seems to have been called various names by different people, sometimes being called the Piggery, but it was identified on the TP1 as "The Stable adjoining Gwynfryn Cottage". The Applicants had been using this building before it was sold to them. Their predecessors-in-title had been granted a licence to use it in 2001 by the Respondent's predecessor-in-title. The benefit of the licence was assigned to the Applicants when they purchased Gwynfryn Cottage. The licence was expressed to subsist until 19 January 2016. In late-2016, a further licence was agreed between the current parties and, in due course, the Applicants purchased the property. I will return to this property further below as one curious development late on in the trial was that the Applicants called the validity of that transfer to them into question.

10. On 8 April 2021, the Applicants made an application in form FR1 (the form itself is dated 30 March 2021) for first registration of a strip of land, claiming to have acquired titled by adverse provision. The unregistered strip of land is sandwiched between the track to the west of the cottage and the cottage itself, and continues past the cottage, alongside some former estate outbuildings. It can be seen marked blue below.

11. I shall call this "the Disputed Land". There is a small spur at the southern end of the blue area, because the rectangle to the left of it is already part of the Applicants' title (see the plan at para.5, above).

12. The Respondent objected to the Applicants' application. On 17 June 2021, by a Form FR1 dated 10 June 2021, the Respondent applied for first registration of a similar strip of land (the plan that he relied on seems to include the small rectangle that is in the Applicants' title; this is probably because that plan appears to have been prepared for some other purpose). The Applicants, in turn, objected to that application. Both applications were referred to this Tribunal and dealt with together.

13. Gwynfryn Cottage and the Disputed Land are set in a pleasant rural location (I understand that on a sunny day, the glint of sunlight reflecting from the café on Mount Snowdon can be seen from the Disputed Land). They are accessed via a rough track, about 500m or so from the public road. There is a large gate in the south-western corner and a vehicular track continues from that gate along part of the Disputed Land, terminating with some hardstanding serving as a parking space. The western boundary of the disputed land is a stone-faced earth bank with fencing running along the top. Roughly two-fifths of the way up that boundary (from south to north) there is a small pedestrian gate in the fencing. On this side are several log stores.

14. Along the northern boundary there is a low stone wall and fencing, but in the north-eastern corner there is a small area that is fenced off by tall wooden panels (this area does not seem to form part of the Disputed Land as show in the plan above). Along the eastern side, as one comes down from north to south, there is a long building, incorporating large doors (as part of this building was a stable, it probably would have been possible to drive a coach and horses through these doors), then the cottage itself, and to the south of the cottage a well-kept garden. The first impression of the Disputed Land upon approach, as Mr Granby accepted, is that it looks to all be part of the grounds of the cottage.

THE RESPONDENT'S TITLE

Introduction

15. Although the Applicants' application was made first, the parties were agreed at the trial that the question of Mr Bush's title (subject to the adverse possession claim) should be considered by the Tribunal first.

16. As I have already said, the estate, including the mansion house, the farm, and various other buildings, was at one stage all part of the same title. From about 1949 onwards, parts of the estate were parcelled out.

History

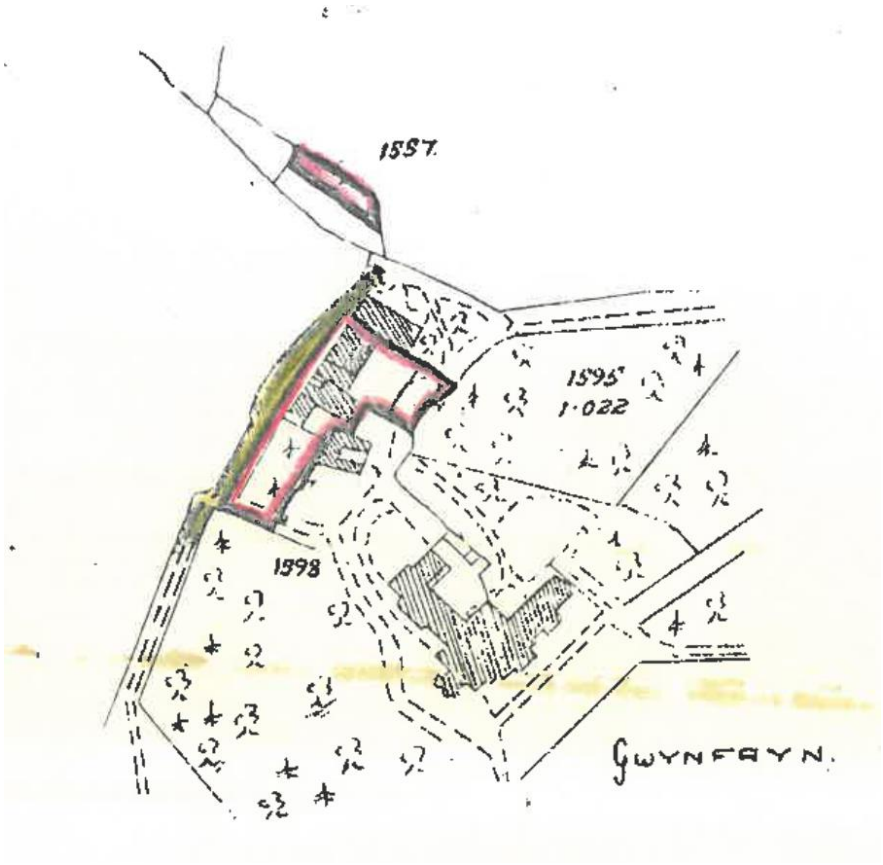
17. The relevant history is that in 1949, Phyllis Lewis and Walter Jones transferred the mansion house (then known as Gwynfryn House) and various other buildings and surrounding land to Nora Hough, Julia Sheehy, Mary Timoney and Catherine Brennan. It seems that they were at that time the trustees of the Poor Sisters of Nazareth and the mansion house was at some point renamed Nazareth House. The conveyance did not include Gwynfryn Cottage or the Disputed Land. As Mr Granby submitted, whenever there is a conveyance parcelling out some land, if any other piece of land was not conveyed then it remained part of the residuary estate.

18. The fragmentation of ownership continued with a conveyance of the farm in 1954 and a property called Ty Nannau in 1955. Although the Applicants had at one point argued that the Disputed Land was included in the 1954 conveyance, that argument was abandoned and so the details of those transfers do not matter for present purposes.

19. In 1959, Phyllis Lewis transferred land to the present trustees of the Poor Sisters of Nazereth (the conveyancing process appears from the abstract of title to have been rather more complicated than that, but nothing turns on this). The parcel of land is described as follows (taken from a 1967 abstract of title of Mr & Mrs Cotterill and Mr & Mrs Hill of what had become known as Nazareth House; I have reproduced the text as accurately as possible from the slightly unclear copy in the bundle).

> "ALL THOSE pieces or parcel of land in the Parish of Llanystumdwy being plot number 1598 and part no. 1557 on the O.S. Sheets for the County of Caerns xxxiii 12 15 and 16 containing 3½roods or thereabouts nd for the ppse of identification only edged red on the plan drawn thereon together with the messuage or cottage and buildings erected thereon or on some part thereof known as Gwynfryn cottage an outbuildings together with so far as Miss Lewis and the Company resply had power to grant the same a right of way over and along Gwynfryn back-drive"

20. The relevant part of the plan that is referred to is set out below.

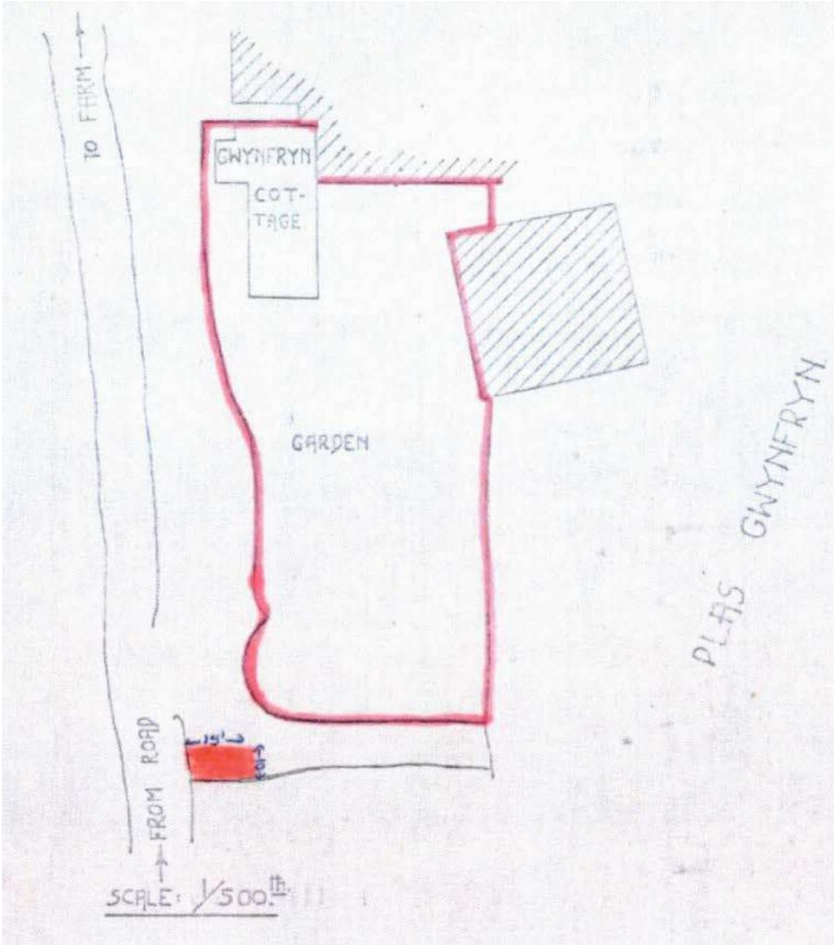


21. Both the Cottage and the Disputed Land were transferred to, effectively, the Poor Sisters of Nazareth, and therefore reunited in ownership with the land transferred in 1949.

22. In January 1967, the land owned by the Poor Sisters of Nazareth was transferred to Mr & Mrs Cotterill and Mr & Mrs Hill. In October 1967, they sold Gwynfryn Cottage to William Griffiths. The parcels clause defined the land being transferred as follows.

> "ALL THAT piece or parcel of land situate in the Parish of Llanystundwy in the County of Caernarvon together with the premises now standing thereon or on some part thereof and known as Gwynfryn Cottage aforesaid all which said land and premises is for the purpose of identification only delineated on the plan annexed hereto and thereon edged pink and secondly ALL THAT small piece or parcel of land having a frontage to a private road of ten feet and a depth therefrom of eighteen feet all which said land is shown on the said plan and coloured red together with the right with others entitled thereto with or without vehicles to use the private road and the land lying between the said private road and the property first and secondly hereinbefore described shown on the said plan for the purpose of obtaining access to and egress from the said property …"

23. Although the purpose of the second "small piece" was not expressly identified, the parties agreed that this was probably intended as a car-parking space. This is the plan:



24. The parties were agreed at trial that the effect of these conveyances was that after October 1967 Mr Griffiths owned Gwynfryn Cottage with the small extra parking space but not the Disputed Land, and that the Disputed Land was owned together with the mansion house by Mr & Mrs Cotterill and Mr & Mrs Hill. They also agreed that this remained the effective position until a transfer in 1977. It is at that point that their interpretations of the conveyances differ.

The different interpretations

25. The Respondent's position was that the estate owned by the Cotterills and the Hills was transferred to Brian and Marjorie Hooper on 22 November 1977. On 18 April 1980, Mr and Mrs Hooper then sold it to Global Leisure Ltd, a company connected with Mr Bush. The title can then be traced through various other corporate vehicles connected to him until it was transferred into his own name in 2016.

26. The Applicants' position has not been consistent. In their Statement of Case, they contended at para.63 that the Dispute Land had been conveyed with the farm in 1954 (somewhat ironically given what followed, that Statement of Case also asserted that the Respondent's position had been "muddled and inconsistent" and "confused").

27. By the time it came to preparation for trial, their position had shifted. In her skeleton argument, Miss Coyle said at para.46 that there had been no transfer of the Disputed Land at any time from 1949 onwards, which implied that the paper title owner would be the descendants of Phyllis Lewis.

28. When Miss Coyle began her closing submissions on the second day of the trial, a new position emerged. She accepted that the January 1967 transfer did include the Disputed Land. She argued, however, that the 1977 transfer had not included the Disputed Land or, if it had, the 1980 transfer failed to include it. As a consequence, the Disputed Land was still owned by either the Cotterrills and Hills (or their descendants) or the Hoopers (or their descendants).

29. Miss Coyle conceded that in those circumstances the Applicants' application for first registration would have to be dismissed and that the Respondent did not have title to sell the Stable/Piggery to the Applicants.

30. On reflection, I am not sure that the concession was necessarily correct or that the ominous consequences that were hinted at in relation to the Stable follow. Fortunately, it is not necessary to worry about it either possibility as I am quite satisfied that the Applicants' new interpretations of the 1977 and 1980 conveyances are flawed.

The 1977 conveyance

31. The relevant part of the 1977 conveyance is as follows.

> "ALL THOSE pieces of land in the Parish of Llanystundwy being Part Numbers 1598 and 1557 on the Ordnance Survey Map for Caernarvon xxxiii 12 15 and 16 containing Three and a half roods or thereabouts TOGETHER with the buildings erected thereon or on some part thereof but excluding the area of Gwynfryn Cottage which is not hereby conveyed … All which said property is for the purpose of identification only more particularly delineated on the plan annexed hereto"

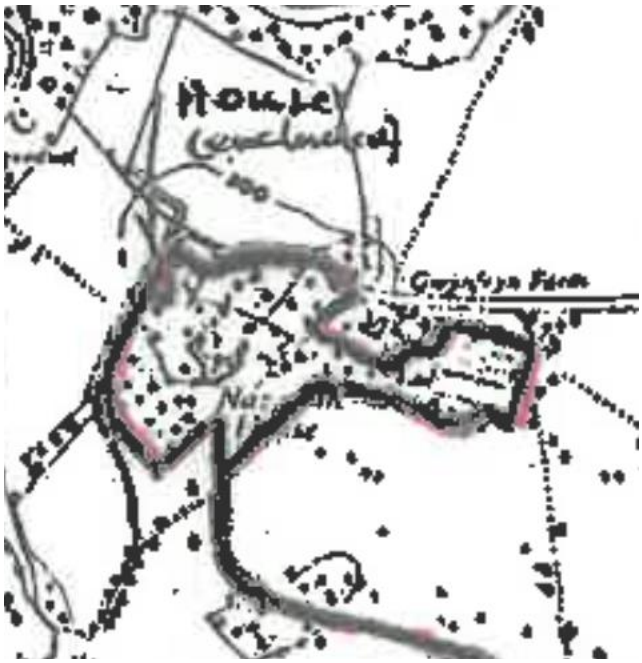
32. The copy of the plan in the trial bundle is not at all clear. I reproduce part of it below.

The 1980 conveyance

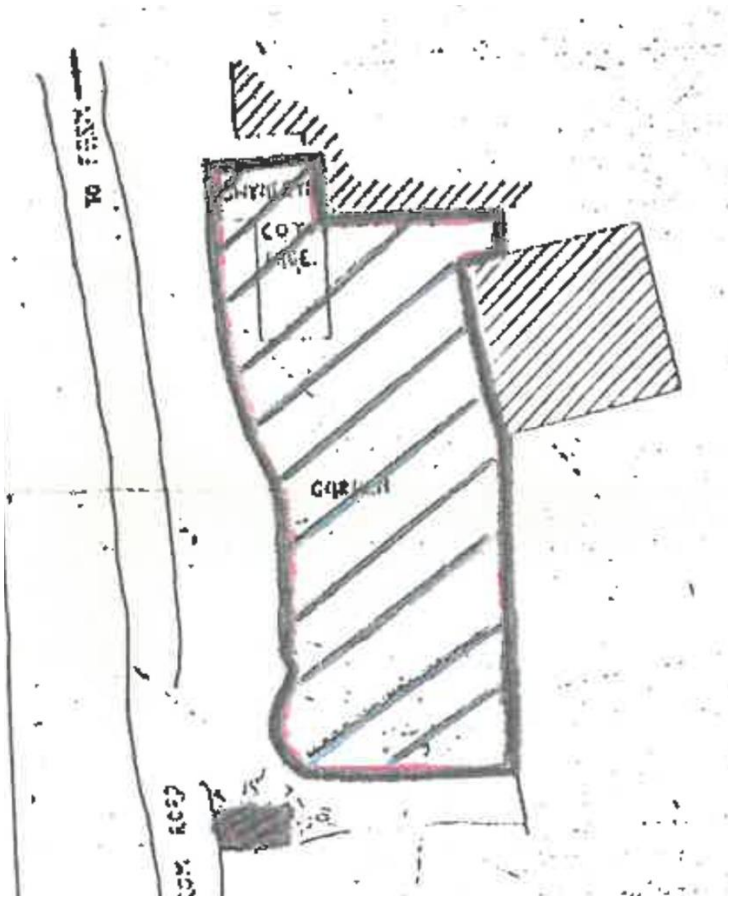
33. The relevant part of the 1980 conveyance is as follows.

> "AND SECONDLY ALL THOSE pieces of land in the Parish of Llanystumdwy being part number 1557 on the Ordnance Survey map Caernarvon xxxiii 12 15 and 16 containing three and a half roods or thereabouts TOGETHER WITH the buildings erected thereon or on some part thereof more particularly described in a Conveyance … dated the Eleventh day of November 1959 … (but excluding all those pieces of land together with the premises known as Gwynfryn Cottage comprised in a conveyance … dated the Fourth day of October 1967 … ALL WHICH said Cottage and piece of land referred to is shown on plan 'B' and edged red and hatched blue thereon TOGETHER WITH so far as the Vendors have the right to grant the same a right of way over and along Gwynfryn Back Drive ALL WHICH property first and secondly hereinbefore described is for the purpose of identification only delineated on plan 'A' annexed hereto and thereon edged red"

34. There is a closing bracket missing, probably after the words "edged red and hatched blue thereon". Parts of Plans A and B are set out below.



(Plan A)



(Plan B)

The effect of the conveyances

35. Whether or not a particular parcel of land is included in a conveyance is a mixed question of fact and law: Sir K Lewison, *The Interpretation of Contracts*, 7th edition, ch.11. The main principles on construing a conveyance are helpfully set out at [9] of Mummery LJ's judgment in *Pennock v Hodgson* [2010] EWCA Civ 873, based on *Alan Wibberley Building Ltd v Insley* [1999] 1 WLR 894:

> "(1) The construction process starts with the conveyance which contains the parcels clause describing the relevant land ...
> (2) An attached plan stated to be 'for the purposes of identification' does not define precise or exact boundaries. An attached plan based upon the Ordnance Survey, though usually very accurate, will not fix precise private boundaries nor will it always show every physical feature of the land.
> (3) Precise boundaries must be established by other evidence. That includes inferences from evidence of relevant physical features of the land existing and known at the time of the conveyance.
> (4) In principle there is no reason for preferring a line drawn on a plan based on the Ordnance Survey as evidence of the boundary to other relevant evidence that may lead the court to reject the plan as evidence of the boundary."

36. Miss Coyle submitted that the Disputed Land (and other land) had not been included in the 1977 conveyance and/or the 1980 conveyance.

37. So far as the 1977 conveyance is concerned, she relied on the words "Part Numbers 1598 and 1557". While she accepted that the Disputed Land fell within parcel number 1598, she emphasised that this was a transfer of only part of that parcel and that it was not possible to know whether that was a part that included the Disputed Land or not.

38. The difficulty with that submission is that at this point the vendor only owned a part of parcel number 1598. In order for Miss Coyle's submission to work, this must have been intended to be a transfer of part of that part. But that is not what the deed of transfer itself says. No good reason was identified as to why the vendor would have retained some small part of 1598, nor why (if they had) the deed should be construed so that the retained part was the Disputed Land rather than some other part (nor was Miss Coyle able to identify what part was transferred on her analysis). To the contrary, it is noticeable that the area was identified as being 3½ roods, which is the same as the transfer of parts of 1598 and 1557 in 1959, which the Applicants accepted at trial *did* include the Disputed Land.

39. In my judgment, the meaning of the parcels clause is clear and what was being conveyed was the same land as in the 1959 conveyance except that it did not include Gwynfryn Cottage. The exclusion of Gwynfryn Cottage (which had been conveyed to Mr Griffiths in 1967 and so could not form part of this transfer) makes sense of the reference to part of parcel number 1598, as Gwynfryn Cottage had been within that parcel, so only part of it was being transferred.

40. Moving forward to the 1980 conveyance, Miss Coyle relied on the lack of any reference to parcel number 1598. On the face of it, this appears to be more fertile ground for an argument that the Disputed Land is not included.

41. I consider, however, that properly construed, the 1980 transfer did include the Disputed Land. The area is again given as 3½ roods. That would not be correct if nothing from 1598 was included. The transfer also included buildings but Miss Coyle accepted that there were no buildings at that time on parcel number 1557. So far as the buildings were concerned, the 1980 transfer referred back to the 1959 conveyance, which as already set out, had included Gwynfryn Cottage and the outbuildings, which were on parcel 1598. The 1980 transfer also specifically excluded Gwynfryn Cottage, which would not be necessary if none of parcel 1598 was being transferred.

42. While it is possible that the relevant parcels clause in each of the 1977 and 1980 conveyances could have been better phrased, in my judgment when they are read and construed as part of the whole of each contract, it is clear that the Disputed Land was included at both stages.

43. Mr Granby made a further point, which was although the plans were not entirely clear, the Disputed Land falls within the area marked on the plan to the 1977 conveyance and plan A to the 1980 conveyance. In 1977, the plan was said to be "for the purpose of identification only", but it was also said that the property was "more particularly delineated on the plan". The colocation of the two phrases was described with masterful understatement as "unfortunate" by Megarry J in *Neilson v Poole* (1969) 20 P&CR 909. Some care therefore has to be taken with that plan, as is explained in *Neilson* and in *Druce v Druce* [2004] 1 P&CR 26 (and see the cases discussed in *The Interpretation of Contracts* at paras 11.42 to 11.46). Even more caution is required with any recourse to Plan A of the 1980 conveyance because the wording used is "for the purpose of identification only delineated".

44. We are, however, not here concerned with the boundary features but whether a plot of land was included. A plan identifying the included land can therefore be of some assistance. Were it necessary to gain such assistance from either plan, I consider that both identify the Disputed Land as part of the land being conveyed at the relevant time. As it is, it is my view that the verbal description in each conveyance is enough to determine this particular point and that there is no inconsistency with either plan (and see *Dunlop v Romanoff* [2023] UKUT 200 (LC)).

45. In my judgment, that conclusion flows from a proper reading and understanding of the relevant conveyances. The parties did give some limited evidence on this point but I do not consider that it was of any assistance in determining the meaning of the conveyances. Miss Coyle did specifically refer to a witness statement made by Mr Bush in ongoing court proceedings (although I did express some concern about venturing into matters that would be before the court), in which he had described a visit to the area in around 1979 and discussions with Mr Hooper in terms that were inconsistent with para.9 of his witness statement in these proceedings. In my view, this highlights the danger of considering evidence of negotiations between the parties, which is not admissible: see *Investors Compensation Scheme Ltd v West Bromwich Building Society (No. 1)* [1998] 1 WLR 896. Bearing in mind that this visit would have been over 40 years ago, that Mr Bush does not purport to give an exhaustive account of his discussions at that time, that (as I will explain later) Mr Bush's recollection of more recent events is not always entirely reliable, and that no contemporaneous documents other than the actual conveyance have been produced, I do not consider that any inconsistency in Mr Bush's written evidence casts any doubt on the construction that I have set out above.

Conclusion

46. I therefore conclude that Mr Bush would be entitled to be registered as proprietor of the strip, subject to the Applicants' application. For those purposes, I consider that he is not entitled to be registered as proprietor of the full strip tinted pink on the plan accompanying his Form FR1 because, as I have already explained, that includes a small rectangle of the Applicants' land. He would, instead, be entitled to be registered as proprietor of the blue strip identified at para.10, above. In order to see whether that is the end result, it is necessary to turn to the adverse possession claim.

ADVERSE POSSESSION

Introduction

47. The basic principles were not in dispute. As the Disputed Land is unregistered, the Applicants need to show that they have been in adverse possession for at least 12 years. There needs to be absence of the paper owner's consent, as possession cannot be adverse if permission has been given. Consent or permission may be actual or implied and need not take the form of a written tenancy or licence. The Applicants need to establish physical control shown by such acts that demonstrate in the circumstances, in particular the nature of the land and the way that it is commonly used, that they had dealt with the land as an occupying owner might normally be expected to do and no other person had done so. They also need to demonstrate the intention to possess on their own behalf and in their own name

to exclude the world at large, including the paper title owner, so far as was reasonably possible.

48. The Applicants' case is that they have been in adverse possession of the Disputed Land since they bought the cottage in June 2002. They rely on the following acts as demonstrating possession.

    i. Hanging a 12ft gate (2007), subsequently turned to open outwards and gatepost replaced (2013-2014).
    ii. Erecting a temporary fence and then a permanent one (2005-2008).
    iii. Repairing a fence (2013-2014).
    iv. Installing a fence along the top of a boundary wall (2009).
    v. Installing a pedestrian gate (2009).
    vi. Removal of overgrown leylandii (2002/2003).
    vii. Removal of two sycamore trees (2002/2003).
    viii. Planting shrubs (2003).
    ix. Removal of ivy from a building along the side of the Disputed Land (2005-2008).
    x. Removal of branches from trees in the boundary wall (2013-2014).
    xi. Re-building a boundary wall (2013-2014).
    xii. Moving a post-box (2009).
    xiii. Parking vehicles (from 2002 onwards).
    xiv. Installing a permeable hardstanding parking area (2013-2014).
    xv. Laying gravel (since 2002).
    xvi. Installing guttering and ridge tiles to an adjoining building (2005-2008).
    xvii. Erecting log stores, storing wood and building supplies (the Applicants say this was 2009 in their skeleton argument; I took that to mean that this was when they assert that the building work was done and that wood has been stored since then rather than suggesting that the storage of wood was limited to 2009).

49. The Respondent does not dispute that the Applicants have acted this way in relation to the Disputed Land nor, for the most part, does he take issue with the dates claimed by the Applicants. He contends, instead, that the Applicants have not been in possession of the Disputed Land, and that they have permission for at least some of the acts (and any that they do not have permission for do not amount to possession).

50. The Applicants also placed some reliance on acts carried out by their predecessors-in-title prior to June 2002. The Respondent submitted that little or no weight can be given to any claims by the predecessors-in-title.

The evidence

51. As the witness evidence was of far greater significance in relation to this aspect of the case than in relation to the issue of the paper title to the Disputed Land, it is helpful at this stage to say a little about my general impressions of the witnesses.

52. I was satisfied that both were attempting to assist the Tribunal and to do their best to give their honest recollection. I bear in mind though that Miss Climpson was being asked about events going as far back as 2001, while some of the questions to Mr Bush required him to cast his mind back to 1979. In those circumstances it is entirely understandable if, despite

the best of intentions, either witness may have misremembered some aspect or not been entirely accurate about some of the details.

53. Mr Granby submitted that Miss Climpson was not a satisfactory witness. He relied on a number of points that emerged during cross-examination.

54. First, she was asked about when she first had some involvement with the property. She gave a couple of different dates prior to the purchase in 2002. Mr Granby suggested that, upon realising that an earlier date might be advantageous, Miss Climpson had changed her evidence. In my judgment, this criticism was a little unfair. Miss Climpson was being asked to cast her mind back around 22 years to address a point that had not featured in her witness statement. It is not surprising that she might wish to refine the initial answer that she gave in that situation.

55. Secondly, she was asked about para.13 of her witness statement, in which she had said that.

> "At no time has anyone approached us claiming ownership until June 2021. In fact, until June 2021 Mr Bush, now claiming ownership of the land, has on several occasions declared that he had no title or rights over the land. I refer to … an email from Mr Bush dated 11 July 2018."

56. The reliance in that passage on Mr Bush's email was misplaced as all that he did in that email, so far as relevant was, acknowledge (rightly) that the Disputed Land was not part of his registered title. In fact, he had asserted, in one way or another, that he was the owner of the Disputed Land on several occasions prior to June 2021. Mr Granby asked Miss Climpson about some of those and she sought to explain them away by saying that what she had meant was claiming ownership by providing some sort of proof. It took a little while before she would accept that para.13 was incorrect. I was not persuaded by her explanation that "claiming ownership" meant "claiming ownership and providing proof of ownership" or words to that effect.

57. A further point is that Miss Climpson had produced a photograph, marked as September 2004 (at p.337 in the trial bundle), which shows some fence posts running alongside the track but with the fence panels having been removed. She was asked when the fence posts were removed. She said that it was probably the following year, *i.e.* 2005. Mr Granby then took her to another of her photographs, marked as June 2008 (at p.341 in the trial bundle) which shows that at least some of the fence posts were still in place at that point and she was asked when they had been taken out as that clearly could not have been in 2005. She was unable to give any firm answer, saying that she could not remember and could only suggest that it was at some point between 2008 and 2012.

58. Based on these points, Mr Granby submitted that other evidence from Miss Climpson, such as the dates when various other acts were done, was based on self-serving statements.

59. I bear that in mind when considering her evidence. To my mind, Miss Climpson's stance on her para.13 was typical of a tendency among some witnesses to seek to argue the case as part of their evidence. While this is not helpful and does mean that some care has to be taken with evidence, this did not call into doubt her accuracy on matters of chronology. I should also say that at times Miss Climpson volunteered evidence that was against her interests. For instance, the Applicants relied upon a statutory declaration from their predecessor-in-

title, Mr John Boomer, to demonstrate a period of adverse possession prior to their ownership of Gwynfryn Cottage. At one point, Miss Climpson candidly said that Mr Boomer was in a rush to sell and could have said anything.

60. On the other hand, her oral evidence about removal of the fence posts does demonstrate that she may not always be entirely reliable about dates. As I have already indicated, that is not particularly surprising: we are talking about a period of in excess of two decades and it is only natural that the placement of events on a timeline of that scale may sometimes be incorrect.

61. On the whole, however, Miss Climpson impressed me as an honest witness with a relatively good, albeit not perfect, recollection of events at her home, having documented some of those over the years by taking photographs.

62. Mr Bush struck me as somewhat of a poor historian. I did not consider that his evidence demonstrated that he was particularly focused on details, but that he instead has a tendency to concentrate only on the "big picture", with some rather vague and generalised assertions about what was said and done and when.

63. In my judgment, Mr Bush's evidence, while honestly given, was inaccurate and unreliable in several respects. I shall give some examples.

64. Mr Bush began his evidence by correcting a mistake at para.17 of his witness statement. As drafted, that said that "After 2008 I had regular meetings with the Applicants to explain my plans for the Plas". He said that the year 2008 should be 2013. He also said that he had spotted another mistake in one of his documents but he could not remember where it was or what the mistake was, other than thinking that it might have been something to do with ownership. While he was obviously right to correct the mistake at para.17, the unidentified other error and Mr Bush's attitude about it did not inspire great confidence.

65. Mr Bush said that he had been to the locale around 40 times in the last 22 years. He explained that from the "early days" to 2008, there were a few visits, then from 2008 to 2013 he had visited maybe once. He said that from 2013 he had visited regularly, particularly from 2014/15 when he was clearing the main drive. At para.17 of his witness statement he said that after 2013 (once his correction is taken into account), his "visits to the Plas were not frequent, but once or twice a year". That did not accord with his oral evidence. His explanation to me was that in para.17 he was only talking about the time between 2013 and 2015 but "once or twice a year" is a slightly unusual way to refer to that period. In my judgment, Mr Bush has tended to exaggerate the number and frequency of his visits.

66. Mr Bush also repeatedly referred to the owners of Ty Nannau as the Barniers. Miss Climpson called them the Barbiers. The title for that property (p.169) records that the registered proprietors are Michael Francis Barbier and Margaret Lesley Davies.

67. At para.22 of his statement, when discussing the so-called "stock" fencing, Mr Bush said that he had stepped over it "many times". When challenged on the improbability of doing that when there were two gates, both of which were unlocked for most of the relevant time, he said that he had only done this a "few times" and that he had done it to see if he could.

The terms "many" and "few" are necessarily imprecise but this is another instance of a degree of exaggeration and lack of accuracy in Mr Bush's evidence.

68. With a degree of reluctance on my part, but without any objection from Mr Granby, Mr Bush was asked about a statement that he had given in 1996 in relation to a dispute with the previous owners of the cottage. He had said that he was "an executive and part beneficial owner of Casablanca Investments Incorporated". Mr Bush explained that this was a mistake and that he had been the full beneficial owner through a family trust, so that he could control what could be done. As I will explain later, I accept his evidence and explanation in this regard, but there is a pattern of a slightly casual approach to accuracy in Mr Bush's statements.

69. For the most part, there was little dispute over what the Applicants had or had not done with the strip of land. Mr Granby submitted that there were two principal factual disputes to resolve. First, when the parking hardstanding was installed by the Applicants. Secondly, whether or not the Respondent gave the Applicants permission to use the disputed land in 2013. I will deal with each in turn.

Date of the parking space works

70. Try as I might, I struggled to identify any actual dispute over the date of the parking hardstanding in the pleadings or the evidence. At para.23.c.ii of their Statement of Case, the Applicants relied on "Hardstanding, permeable parking area (2013-2014)". The way that this was pleaded was that they had erected or re-built the parking area. Neither verb is quite apposite but it is apparent that what was being said was that this area had been installed in 2013 or 2014. The Applicants went on to plead the legal relevance of this work at paras 39-41. Various photographs were attached to the Applicants' Statement of Case, including three at pp.83-84, showing the work to the parking area while in progress and when finished. Each photograph is marked as June 2014.

71. The response in the Respondent's Statement of Case was simply that this (and other) work was not adverse to his interests. He responded to paras 39-41 by saying that the work benefitted both parties' properties and that it "was carried out with the retrospective approval of the Respondent".

72. At paragraph 22 of his witness statement, Mr Bush set out, one by one, the various acts relied upon by the Applicants in their Statement of Case. Under the heading "Hardstanding, permeable parking area (2013-2014)", he said that "I was aware of this work being carried out in consequence of the permission I had given the Applicants to use this area".

73. Two points can be made about these statements. First, it is hard to reconcile the assertion in the Statement of Case that retrospective approval was given with the assertion in the witness statement that the works were in consequence of a permission that had, presumably, already been given.

74. Secondly, and more importantly for the present issue, at no point does the Respondent take any issue with the Applicants' claimed date for the works. No positive case was ever put forward by Mr Bush for any other date than 2013 and/or 2014. Against that background, it is very difficult to see what factual dispute there actually is.

75. I should note though that in his Statement of Case, the Respondent said that the "dates on the various photographs referred to by the Applicants are not admitted". That appears to be the highest that any dispute was put in anything that he said.

76. Mr Bush had himself submitted some photographs accompanied by hand-written dates. Mr Granby cross-examined Miss Climpson on this point on one of the photographs, which Mr Bush had annotated as having been taken on 16 March 2021 (p.423). No explanation was given by Mr Bush about how he had dated his photographs but Miss Climpson fairly accepted that this particular photograph was an accurate depiction of the site at that time.

77. It was put to Miss Climpson that the photographs that she had provided of the work had been taken much later than 2014 and that the works were actually undertaken in 2021, after Mr Bush's photograph. Miss Climpson's answer was a firm "You must be joking" and she explained that she knew that it was in 2014 because she was on jury service at the time and remembered it vividly. She said that the metadata on the digital photographs had been checked.

78. Mr Granby asked no more than a handful of questions on this topic before moving on. Mr Bush gave no evidence about the point at all. It was therefore something of a surprise to me to find that the Respondent considered this to be one of the two most significant factual disputes in this case.

79. The suggestion that the work was carried out at some point after March 2021 was a serious allegation. It is one thing to suggest that a witness may be wrong about whether something happened in, say, 2008 or 2010, as I can readily accept that dates may become muddled over that distance in time. But the allegation here was that Miss Climpson was seven (or more) years out. Although not framed in these terms when questions were put to Miss Climpson, the only possible explanation could be that she was being dishonest. Mr Granby agreed in his oral submissions that this was the Respondent's position: it was not an argument of mistake, carelessness, or confusion, but that there had been a deliberate attempt to deceive the Tribunal.

80. I am quite satisfied, and find as a fact, that Miss Climpson's photographs were taken in June 2014 (albeit on different dates during that month as the photographs show different stages of work having been completed). I am also satisfied, and find as a fact, that these works were completed in that same month. There are several interlinking reasons.

    a. First, Miss Climpson gave evidence that the photographs said to be from June 2014 had been taken with a digital camera and that the metadata had been checked. At no point has Mr Bush requested the files with metadata. While in some other areas Miss Climpson's evidence might be open to question, on this topic she impressed me as being clear and accurate. Her evidence about both the camera and remembering being on jury service had the ring of truth about it.

    b. Secondly, Mr Bush's March 2021 photograph offers no foundation whatsoever for the suggestion that the parking space works had not been carried out by that time. In my judgment, this challenge to Miss Climpson's honesty is a thoroughly bad point based on a misreading of what it is that the 2021 photograph actually shows. Mr Bush's point, so far as I could understand it from his counsel's submissions (given that Mr Bush gave no evidence on this) seems to be that the

2021 photograph does not show a fresh, unworn, hardstanding surface. But that is readily understandable if the works were carried out in 2014. Indeed, I would go further: in my judgment, the 2021 photograph obviously shows the result of the 2014 works. It is not a good quality photograph, but it clearly shows two different areas of hard surface, separated by a slightly raised feature. That is wholly consistent with Miss Climpson's photographs from June 2014.

c. Thirdly, a further point against Mr Bush's argument is that if the works were carried out after March 2021, there is no reasonable candidate for a point in time after that at which retrospective permission could have been given as Mr Bush had pleaded that he had done.

d. Fourthly, one of the "June 2014" photographs was included by the Applicants amongst the photographs referred to as Exhibit 4 accompanying their statement of truth that was submitted with their original application (on p.56). That statement of truth (at p.47) is dated 30 March 2021. If Mr Bush is correct, that work would have needed to have been carried out in the fortnight between 16 March and 30 March and the site would then need to have returned by November to looking the same as it did on 16 March (see sub-para (g), below). That is simply absurd.

e. Fifthly, in their third statement for HM Land Registry, dated 13 October 2021, the Applicants said at para.8, under a subheading "2013/2014" that they had "created a permeable parking area at the side of our cottage". Although Mr Bush responds to this paragraph in his objection he does not take issue with that part of it, even though his current position must be that this work had either taken place just a few months before or had not yet even been carried out. That is a surprising omission if he believed that the work had not been carried out.

f. Sixthly, when asked about permission for the parking area in cross-examination, Mr Bush said that he did not believe that he had given specific permission, but it was all part of a general discussion. He explained that he believed that the Applicants did not have the right to park there and he was not looking for aggravation. While that account is, again, hard to square with his Statement of Case and his written evidence, it makes no sense at all if the hardstanding parking area was not installed until after March 2021.

g. Finally, there was a survey requisition and a ground survey was caried out on 25 November 2021. The condition in the photograph at 15 is markedly similar to that in Mr Bush's March 2021 photograph. That means that for Mr Bush's argument to be correct, the Applicants must have carried out the works after they had already claimed to have done them, after the survey was carried out, and perhaps most tellingly, after they had already submitted photographic evidence of the work having been carried out. That is not just absurd. It is impossible.

2013 Permission

81. The second key factual dispute is whether Mr Bush gave the Applicants express permission to use some or all of the strip in September 2013. There is a prior dispute, which is whether he had any standing to give permission.

82. Although his written material suggested permission had been given at various times and in various ways, Mr Bush's position at trial was that he gave permission at a meeting with the Applicants in 2013. At that time, the paper title owner of the strip was Casablanca Investments Inc.

83. The Applicants say that there was no evidence of Mr Bush's interests in that company and that, if he was in control of that company it was not necessary to transfer the Disputed Land to him personally in 2016.

84. As to the first point, there is some evidence in Mr Bush's witness statement, as at para.8 he describes Casablanca Investments Inc as "an investment company wholly controlled by me" and mentions having entered into a settlement agreement in relation to another dispute as the representative of Casablanca Investments. Paragraph 12 of his statement of case was to similar effect.

85. That could be subject to the objection that it is a self-serving statement and that there is no documentary evidence about how the company was formed, how it operated, and what Mr Bush's position was. Against that, the Applicants had been given permission to file a Reply to Mr Bush's statement of case and they had not taken issue with the assertion therein that he controlled the company. It is therefore not entirely surprising that there is not much evidence about the company.

86. Mr Granby went further and submitted that as the company was based in Liberia, there would need to be expert evidence about Liberian company law if this point was being pursued. I do not consider that this is required because I accept Mr Bush's evidence on this point for three key reasons.

87. First, there was some documentary evidence in the bundle that was consistent with his position.

    a. The bundle included a fax from Gill Turner & Tucker Solicitors to Mr Bush, dated 26 September 2000, concerning the registration of Gwynfryn Plas Hotel. At that time, the property was owned by Casablanca Investments. The fact that the conveyancing solicitors were writing directly to Mr Bush offers some support for his evidence.

    b. The bundle also included a licence granted by Casablanca Investments in 2001. The signature appears to be that of Mr Bush and it is noticeable that this is a document that he had control of.

    c. The bundle also included the TR1 for the transfer of WA761146 from Casablanca Investments to himself. I note that the consideration for the transfer was £1, which is quite consistent with Mr Bush's position, and that the TR1 was signed by him on behalf of Casablanca Investments Inc as "a person who, in accordance with the laws of that territory [Liberia], is acting under the authority of the company". It was not suggested that this statement was not correct or that the transfer was fraudulent.

88. Secondly, insofar as Miss Coyle challenged the need for a transfer from Casablanca to Mr Bush personally, I was unconvinced of the relevance of the point. There could be many reasons, good or bad, why the property would be transferred by a company controlled by Mr Bush to him personally. As it is, he explained that there had been a change in the law about offshore companies and Capital Gains Tax and that this prompted the transfer. I accept that explanation.

89. Thirdly, in their statement of objection to the Respondent's application for registration, the present Applicants had said that he "was the sole director and controlling mind of Casablanca Investments" (see p.213).

90. As I have noted above, Mr Bush had given a witness statement in other proceedings in which he had said that he was a "part beneficial owner" of Casablanca Investments. The status of this statement in those proceedings was unclear and it is open to question whether it was permissible to rely on it at all in this matter. Assuming, for present purposes, that the Applicants could rely on it, I accept Mr Bush's oral evidence that the previous statement was wrong and that he was the full beneficial owner through a family trust.

91. Based on those findings, if Mr Bush did give consent to the Applicants, he did so on behalf of the paper owner. I turn to consider whether Mr Bush did in fact give permission.

92. While I do not doubt that Mr Bush genuinely thinks that he gave permission, I found his account too vague and inconsistent to satisfy me that he had actually done so. In my judgment, Mr Bush's recollection now is partly based on reconstruction of what he thinks that he would (or should) have said and done. I say that for the following reasons.

93. I have already referred to Mr Bush's statement of case, witness statement, and oral evidence about permission for the parking space. It will be observed that his position has not been consistent from one to the next.

94. In his statement of case, Mr Bush says that he gave permission to the Applicants for the various acts. He then goes on to plead that the acts of possession set out in paras 25 and 33-46 of the Applicants' statement of case (the vast majority of the acts pleaded by them) were carried out with his "retrospective approval". His witness statement contains the following.

> "18. Prior to 2013, I had given the Barniers (owners of Ty Nannau) permission to use part of the Coach House Stable for storage and jointly with the Applicants permission to use the area behind the Coach House for parking and storage. This resulted in a dispute in 2013 between the Applicants and the Barniers. The Applicants had threatened to restrict the Barniers access to the Stables and the area behind the Coach House which they had no right to do. I was requested by the Barniers to intervene and meet with the Applicants in 2013. I resolved the dispute by reaching an agreement with the Barniers and the Applicants limiting the area that the Barniers were permitted to use for storage and giving exclusive rights to the Applicants to use the area behind the Coach House for storage and parking. To reflect this new arrangement the Applicants built a wooden barrier providing access for the Barniers to the Coach House Stable, but blocking access to the area behind the Coach House which was in accordance with our agreement. …
>
> "19. From 2013 I visited the Plas and the Land much more frequently as I planned to sell it in parts or as a whole and I continued to have regular meetings with the Applicants

and the other neighbours. The Applicants had expressed interest in purchasing that part of the Coach House Stable known as the piggery and also the Coach House so I was happy for the permission I had given them to use the land between the Coach House and the stone wall to continue. We also discussed the gate and fencing erected by the Applicants. I informed them that I had no objection to these remaining in place as long as they did not block my access and the Applicants did not use it as argument to claim adverse possession. The Applicants agreed. I also specifically advised them that they would have to remove all items from behind the Coach House and remove the fencing on top of the stone wall if they did not purchase the Coach House. At no time did the Applicants assert any rights over or try to restrict my access to the Land.

"20. I had many discussions over several years with the Applicants … During this period I was not concerned by the use the Applicants made of the Land which I considered was encompassed by the permission I had given them to use the Land for parking and storage."

95. While those paragraphs are very similar to the way in which he responds at para.7 of his statement of case to para.23.a of the Applicants' statement of case, by the time of his witness statement he was not suggesting that any retrospective permission was given. That was plainly a correct adjustment to his position, in the sense that it was not argued that permission could operate retrospectively, but instead only stopped the limitation clock from the time that permission was given. That left Mr Bush needing to show that permission had been given before twelve years of possession had been completed.

96. I should add that although that witness statement refers in extremely vague terms to some permission having been given by Mr Bush prior to 2013, he accepted in cross-examination that he had not met the Applicants before 2013. There was no evidence to suggest that he had done anything to grant them permission to use the Disputed Land prior to meeting the Applicants for the first time.

97. Turning back to 2013, Miss Climpson said at para.14 of her witness statement:

"We did not meet Mr Bush until 2013 when he turned up at our gate. We had no idea who he was and asked him for identification. He had come to inform us that our licence to use the stable had finished but it still had another 3 years to run! We did not see or hear from Mr [B]ush again until 2016."

98. The Tribunal is therefore presented with two quite different recollections of what took place in 2013. On balance, I prefer Miss Climpson's account.

99. Mr Bush had, through Casablanca Investments, already been through an adverse possession dispute with the Applicants' predecessors-in-title. It is simply not credible that, armed with that experience, he would not have made some note or other record of the apparent agreement in 2013, but there is nothing from that time alluding to any agreement, let alone any detailed record of it. Yet where express permission was given to the predecessors-in-title, this took the form of a written licence agreement (and a further written licence agreement was in due course prepared for the Applicants for part of one of the buildings).

100. Mr Bush referred at one point to there being multitudinous emails but there were very few emails included in the trial bundle. Those that were included did not demonstrate a

general consent to use the Disputed Land and were more consistent with Miss Climpson's evidence. For instance, the earliest email that my attention was drawn to is one dated 1 September 2016 from Miss Climpson to the Respondent's solicitor, seemingly responding to a notice to vacate a building. In that email she said this:

> "He [Mr Bush] visited me in September 2013 when he believed the licence to use the Stable had finished. At that time he told me that he would like to come to some arrangement regarding the property – he did not say what but I assumed he either wanted to sell it or lease it – and you have written that he wishes to discuss the matter further with me on his visit to the Plas this September."

101. That is consistent with Miss Climpson's evidence about the meeting in September 2013 and is also consistent with her evidence that nothing further was heard from Mr Bush between 2013 and 2016. It is apparent that a meeting took place soon after that email, on 7 September 2016, and Miss Climpson (and Miss Whitehead) emailed the Respondent's solicitor again on 9 September, as follows.

> "Philip Bush called to see us on Wednesday evening to discuss the above outbuildings at Plas Gwynfryn. During the discussion Mr. Bush told us that he would be happy for us to remain in the outbuildings until he has decided what to do with them. He asked me to communicate this by e-mail to you."

102. I observe that this shows that Mr Bush understood the importance of documenting discussions and that there is a clear acknowledgement of permission having been given to use the outbuildings, yet there is no such acknowledgment at any point so far as the Disputed Land is concerned. To the contrary, in an email of 30 September 2016, Mr Bush said that

> "I had noticed you have fenced off the area beteween the coach house and the back road.
>
> "This area is part of the Plas's property. In the Boomer days he did try a manoever on this land as part of his adverse possession games and put a note on the registry.
>
> "When we met a few weeks ago in the evening we aluded to the problem of mistakes in the registry. When we first purchase the property from Hooper he was clear that this area was included in the Plas's land …
>
> "I know when the land was registered this small area was not included which leads me to believe that the mistake was made back when the initial contract for purchase was made … I will start trying to unravel this."

103. There are some minor typographical errors in the email but the general sense of it is clear: Mr Bush had observed that the Applicants had installed a fence so that the Disputed Land was fenced off and was pointing out that he believed that this was his land.

104. It is not entirely clear what fence Mr Bush is referring to. It is probably the fence along the top of the boundary wall, which the Applicants had installed in 2009. If it is not that fence then the latest fencing works that the Applicants carried out were in 2013-2014. Either way, this again demonstrates the Respondent's lack of involvement with the area and his lack of up-to-date knowledge of what is going on.

105. More significantly for the present issue, at no point does Mr Bush refer back to any permission that he had given. Indeed, the natural inference to draw from this email is that Mr Bush considered that the Applicants had done something without permission. That does not support his account.

106. One corner of the strip of land is fenced off so that the Applicants cannot access it. It is Mr Bush's case that this was done as part of the agreement reached in 2013. The fenced-off area is used by the occupiers of the neighbouring property (the Barbiers) to obtain access to part of one of the outbuildings. Mr Bush had at one point said that this fencing was installed by the Barbiers, although he subsequently accepted that it was actually the Applicants who installed it. His previous incorrect view is more evidence that he was not as involved in matters on the ground as he may have liked to have thought. It is also odd that he now says that this installation by the Applicants was in accordance with the agreement when until relatively recently he thought that someone else had installed it. As a further, albeit minor, point, Mr Bush consistently gets the name of the other parties to the supposed agreement wrong. While only a slight spelling error, it does not inspire confidence in his accuracy.

107. In her oral evidence, Miss Climpson said that this fencing had been put up in 2012, before Mr Bush's visit. On the balance of probabilities, I accept her evidence on this point. Although she was not always accurate about every date, she tended to have a better recollection of dates generally and the broad sequence of events than Mr Bush, and he has not given a consistent account about this fenced-off area. It follows that I do not accept that any agreement was reached between the Applicants and the Respondent about fencing off that area. During cross-examination, Miss Climpson said that she and Miss Whitehead had negotiated with Mrs Barbier and agreed to put up a fence in a way that allowed the Barbiers to walk straight into the outbuilding that they use. I am satisfied on the balance of probabilities that this is correct and Mr Bush was not involved in brokering any agreement between the two sets of neighbours.

108. Towards the end of his cross-examination, Mr Bush said that the 2013 permission was "absolutely clear and concise". It is telling, however, that at no point was he able to say with any degree of precision what the terms of that permission were. He had been asked about how and when he had given permission for various acts. He gave a vague answer that he had discussed things with neighbours frequently, but I consider that he was prone to unintentional exaggeration and that any discussions were not frequent. I have already noted at para.80.f, above, his oral evidence concerning the parking space. He also said that maintenance of part of the area and removal of sycamore and shrubs were discussed in general terms. That was slightly troubling, because as was pointed out to him, in his witness statement, he had said that could not recall and did not notice that work being carried out.

109. Mr Bush's oral evidence was inconsistent with his written evidence in other respects. In cross-examination he said that he specifically gave permission for the woodstores in 2013, but in his witness statement he referred to the Applicants' sub-hearing "Wood stores to store wood for the Applicants fuel (2009)" and said this:

> "I was aware of this structure being built and considered it within the parameters of the permission I had given to the Applicants to use the area for storage. I had several conversations with the Applicants in 2015-2017 when they were discussing purchasing the Coach House that the wood stores would have to be moved if they did not proceed

with the purchase. The Applicants accepted that the wood stores would have to be moved."

110. That is quite a different account. Elsewhere in his witness statement he had described some works carried out by the Applicants between 2005 and 2008 as being "to maximise the benefit of the permission I had given them to use the Coach House for storage and the area behind the Coach House for storage and parking". That is at odds with his acceptance in oral evidence that he did not meet the Applicants until 2013 and mixes up the issues of the outbuilding (for which there was a licence agreement, although not at that pointed granted by Mr Bush to the Applicants), with the outside space.

111. On the balance of probabilities, I find as a fact that there was a discussion between the Applicants and the Respondent in around September 2013 and that this occurred when the Respondent visited the Applicants at their cottage, without prior warning.

112. I also find that Mr Bush did suggest that the licence for the Piggery/Stable had elapsed or possibly not been passed on to the Applicant, and it was then accepted that the licence would continue until 2016. I do not accept that there was any discussion about using the Disputed Land.

113. I also find as a fact that there was no contact between Mr Bush and the Applicants from September 2013 until 30 August 2016 when the notice to vacate was sent to them by his solicitor. There was no direct contact until the meeting on 7 September 2016, a gap of almost exactly 3 years.

Had consent been given?

114. Based on those factual findings, I reject the Respondent's case that he gave express permission in September 2013.

115. Mr Granby put the Respondent's case on permission in three other ways. The first is that the Applicants had the benefit of a right of way and that this amounted to permission for some of the acts relied upon.

116. It was agreed that the Applicants have the benefit of a right of way in the 1967 conveyance, expressed to be "the right with others entitled thereto with or without vehicles to use the private road and the land lying between the said private road and the property first and secondly hereinbefore described shown on the said plan for the purpose of obtaining access to and egress from the said property".

117. Mr Granby accepts that the existence of a right of way does not prevent the owner of the dominant tenement being in adverse possession of the servient tenement if they are doing something more than the right of way allows for. He pointed out that a right of access can include a right of parking, relying on *Moncrieff v Jamieson* [2007] UKHL 42; [2007] 1 WLR 2620. That case concerned the Scottish law of servitudes but the same approach applies to easements in the law of England and Wales. In that case, it was not possible to park a car on the dominant tenement and the House of Lords decided that there could a right to park as ancillary to a right of way with vehicles if it was necessary for the enjoyment of the right of way, and that on the "particular and unusual" circumstances of that case, the

rights ancillary to the right of way included a right to park vehicles on the servient tenement insofar as it was reasonably incidental to the enjoyment of the dominant tenement.

118. Here, there is a rather different unusual feature, which is the small piece of land that was conveyed with the cottage, on which a car could have been parked. A right to park on the Disputed Land is therefore not necessary for the enjoyment of the right of way. It is true that the right of way with vehicles extends over some of the Disputed Land so that a car could be driven past the parking space to get access to the cottage, perhaps stopping on the Disputed Land but that still does not make a right to park there necessary.

119. In my judgment, the right of way did not authorise parking on the Disputed Land.

120. The second alternative way that the Respondent's case on consent was put was to submit that a right to a gate might be inferred as either an easement or tacit permission. In Mr Granby's skeleton argument, he submitted that there was evidence of a gate of some description being a historic feature. This point was not pressed this way in oral submissions. Instead, the focus of Mr Granby's submissions on the gate seemed to me to be an argument that the presence of a gate did not demonstrate sufficient control to amount to physical possession until the gate was locked, and in that context the long history of a gate was important.

121. Mr Bush's evidence was that there had been a gate in this location in 1979. Miss Climpson's witness statement acknowledged that there was an old gatepost when they moved in and so a gate must have hung there. There was no evidence about when a gate had first been fitted prior to 1979 or when that gate was removed. It is apparent, however, that there have been times when there was no gate. The evidence before me did not demonstrate any particular unbroken period of time when a gate was in place. No easement to hang a gate has been claimed. In those circumstances, and as the point featured little in the evidence or submissions, I do not find that there was an easement to hang a gate. I shall consider the argument about "tacit permission" below, because it fits with the Respondent's next submission.

122. The final alternative way that this case was put in the Respondent's skeleton argument was that there was an implied permission as a result of the Respondent's visits from 2008 onwards.

123. Save for one exception, the parties were broadly agreed as to the applicable law. The one point between them was in relation to a title owner's permission. Miss Coyle asked Mr Bush what he had done to show to the rest of the world that he had given permission. I queried the relevance of this. Miss Coyle relied in her submissions on a passage in *Zarb v Parry* [2011] EWCA Civ 1306; [2012] 1 WLR 1240. At [26], Arden LJ set out the following passage from the 7th edition of *Megarry & Wade: The Law of Real Property*:

> "If a person is in possession of land with the permission of the true owner, his possession cannot be adverse. That permission may be expressly given or it may be implied. It will be implied [where] there has been some overt act by the landowner or some demonstrable circumstance from which it can be inferred that permission was given. It is immaterial whether the squatter was aware of these matters but they must be probative of and not merely consistent with the giving of permission. *They must also be such that a reasonable person would have appreciated that the user*

was with the permission of the landowner. Possession with permission, which can never be adverse, is quite different from possession in which the landowner acquiesces, which may be adverse." (emphasis added)

124. A similar passage appears at §7-029 of the 9th edition. Miss Coyle relied on the emphasised words as showing that the owner needs to demonstrate to the world that they have given permission to the person in possession. In my judgment, that is not the effect of the law. It simply means that whether or not the acts or circumstances lead to an implied permission is to be judged objectively rather than based on the occupier's subjective understanding. Furthermore, the hypothetical reasonable person is to be assumed to have knowledge of the material facts: *Batsford Estates (1983) Co Ltd v Taylor* [2005] EWCA Civ 489; [2006] 2 P&CR 5, at [25], *per* Sir Martin Nourse.

125. The argument that an implied permission can be inferred from the Respondent's visits from 2008 onwards obviously cannot survive the correction to Mr Bush's witness statement given at the outset of his evidence. Even if this was adapted to be a suggestion that permission can be inferred from visits from 2013 onwards, I do not accept that Mr Bush's visits were as frequent as he has suggested or that he carried out any sort of regular inspections of the Disputed Land, and I accept Miss Climpson's evidence that they did not see him again until September 2016.

126. In my judgment, this falls a long way short from proving that it can be inferred that permission was given. At the absolute highest, Mr Bush's infrequent visits and inspections might show that he had acquiesced, but as the extract from *Megarry & Wade* demonstrates, the landowner needs to do more than acquiesce.

127. I also do not accept that there was implied permission, or some other sort of tacit permission, to hang a gate. While there had historically been a gate in place, at some point between 1979 and 2002 that had been removed. There was no evidence as to when during that period it was removed or why it was removed. The fact that there had once been a gate but it had at some unknown time been removed could have been just as consistent with there being no permission as with there having been permission. Again, it may have demonstrated no more than acquiescence by the owner.

Acts of possession

128. In their statement of case and skeleton argument, the Applicants placed some reliance on possession by their predecessors-in-title (see, *e.g.*, para.24 of the statement of case and para.25(1) of the skeleton argument). There was a statutory declaration from one of them, Mr Boomer, dated 25 July 2001. I have already recorded above Miss Climpson's oral evidence about this statutory declaration. Based on that, I do not consider that I can attach any weight to the statutory declaration and I shall only consider acts of possession by the Applicants themselves.

129. Having resolved the factual dispute concerning the date of the parking hardstanding, I have no difficulty whatsoever in accepting the evidence of Miss Climpson concerning the other acts that she and Miss Whitehead carried out and when they did them. As I have already said, there was no serious challenge to the vast majority of them. While Mr Granby rightly cautioned the Tribunal against the dangers of self-serving statements, I have already found that Miss Climpson was an honest witness, who was generally reliable.

130. I agree with Mr Granby's characterisation of the first impressions being that this area all looks like the Applicants' garden but, as he said, there are other factors to take into account. One slightly curious feature is that, although the Applicants rely in part on having enclosed the strip of land, some of Mr Bush's registered title still lies within the physical boundary features that they rely on. His title plan, reproduced above, shows that he has a small rectangular piece of land at the southern edge of the cottage garden and a small slither immediately adjacent to the outbuildings. In other words, the whole area looks as if it is all the Applicants' garden, but they seem to accept that some of it is not.

131. In my judgment, some of the acts that the Applicants rely upon do not demonstrate possession of the Disputed Land. I consider that the removal of ivy from a building and fitting of guttering and ridge tiles were more to do with the Applicants' use of part of that building. Any benefit or relevance to the Disputed Land was marginal. Similarly, moving the post box struck me as a minor point.

132. While I disagreed with the Respondent about the significance of a previous gate so far as permission is concerned, I do consider that this reduces the value of the new gate in showing possession. On balance though, it does still have some value when taken with all the other boundary work that the Applicants carried out.

133. In my judgment, that boundary work, taken together with the other uses that the Applicants have made of the Disputed Land do show that they were using the land in the way that one would reasonably expect the owner to do and in a way which clearly signalled that they were using it as their own. While none of the acts on their own would be enough, the totality of them is a good example of the weight of the aggregate of the numerous acts taken together being much greater than the sum of the weight of each act taken separately, particularly having regard to the nature and character of the land.

134. In this regard, I consider that the Applicants went well beyond simple repair and maintenance of existing boundary features. They put a new fence, including a pedestrian access, on top of the longest boundary feature. There was some dispute at trial over whether this fence could properly be called "stock" fencing. The Respondent may be right on that, but that fence clearly enhanced the existing boundary and made it appear as the edge of the Applicants' property.

135. Similarly, the removal of the existing fence along the track merged the appearance of the Disputed Land with the Applicants' garden. The Respondent pointed out that some of the fence posts remained in place until at least 2008 and possibly as late as 2012. Even if those did remain in place until 2012, the photographs do not suggest that this marked the land on either side of the posts as being two separate bits of land in different ownership.

136. The Applicants also fenced off a small area to provide an access route for the neighbours. Importantly, this was part of the process of seeking to keep those neighbours off of the land that the Applicants were using.

137. The Applicants installed a new parking area and erected several garden stores for keeping logs. In my judgment, the installation of the parking area meant that the Applicants were parking vehicles in such a way as to control that area to the exclusion of the owner. They also cultivated part of the area and it was, in effect, an extension of their garden.

138. The Respondent submitted that the Tribunal should take a nuanced approach and, effectively, divide up the Disputed Land so that the Applicants' claim would, at best, succeed only over part of it. There was some force in that submission as the Applicants had done more on some parts of the land than on others and some acts had less weight as demonstrating possession than others. In my judgment though, the Disputed Land was always treated by the Applicants as all part of the same land. It is true that they made different uses of some of it but I consider that those uses can all be brought together and understood as being use as part of a larger garden.

139. As it was put for the Applicants in closing submissions, what more could they have done with the land to use it and incorporate it into the garden?

Intention to possess

140. The question of intention to possess did not form the focus of the parties' oral submissions. It can often be rather difficult to separate this question out from the issue of possession.

141. In his skeleton argument, Mr Granby noted that the "element of intention may require more evidence than physical control where physical control can be considered equivocal" and gave the example of a locked gate at the end of a passageway not showing the necessary intention.

142. In the end, this is inevitably a fact-sensitive analysis. I accept that some matters might, taken on their own, be equivocal, such as the gate.

143. Once all matters are taken together and considered in the round, I am satisfied that the Applicants have shown an intention to possess on their own behalf and in their own name to exclude the world at large, including the paper title owner, so far as was reasonably possible.

CONCLUSION

144. The Applicants are entitled to be registered as the proprietors of the Disputed Land having acquired title by adverse possession. I will direct the Chief Land Registrar to give effect to their application as if the objection had not been made.

145. I add here though that this does not include the small area in the north-eastern corner that was fenced off by the Applicants to allow the neighbours access into the outbuildings. The Applicants are not in possession of that piece of land and did not suggest that they were. As I interpreted the plan showing the Disputed Land, this area was not included within the claim but I make clear that they are not entitled to be registered as the proprietors of that small area.

146. That being the case, I shall direct the Chief Land Registrar to cancel the Respondent's application. While he has satisfied me that he was the paper title owner, the effect of the success of the Applicants' application is that his application cannot now succeed.

Costs

147. I said to the parties that I would make provision for any dispute about costs in the order that accompanies this decision.

148. The normal order in disputed matters in this Tribunal is that the losing party pays the costs of the successful party and some good reason is normally required before making any different order. In my judgment, when both applications are looked at in the round, the Applicants have been the successful party. While I would have directed the Chief Land Registrar to give effect to the Respondent's application had it not been for their success in their application, the net result is that it is the Applicants' application which has succeeded.

149. The order will, nevertheless, make provision for representations on liability for costs which I will consider after the date stated in that order. I anticipate that there will then need to be an order dealing with costs liability and the steps for an assessment of the amount of costs to be paid.

Postscript

150. I should record my thanks to the parties and their legal representatives for their flexibility with the timings for the site visit and the hearings, and the sensible way that they dealt with the trial, which meant that it was possible to complete the evidence and the submissions well within the time allotted for them.

Judge Robert Brown

Dated this 11th September 2023

BY ORDER OF THE TRIBUNAL