



Neutral Citation Number: [2022] EWHC 578 (QB)

Case No: QB-2020-000667

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 23/03/2022

**Before :**

**THE HON. MR JUSTICE EYRE**

-----  
**Between :**

**MILTON KEYNES COUNCIL**

**Claimant**

**- and -**

**(1) MR NATHAN WILSHER**

**Defendants**

**(2) PERSONS UNKNOWN**

-----  
-----

**Andrew Lane** (instructed by **Milton Keynes Council Legal Services**) for the **Claimant**  
**Timothy Jones** (instructed by **DFA Law LLP**) for the **First Defendant**  
The **Second Defendant** did not appear and was not represented

Hearing dates: 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> February 2022

-----  
**Approved Judgment**

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HON. MR JUSTICE EYRE

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time of hand-down was 10.00am on 23<sup>rd</sup> March 2022

**MR JUSTICE EYRE :**

**Introduction.**

1. The Claimant is the registered proprietor of Two Mile Ash Farm at Two Mile Ash in Milton Keynes having succeeded to the title of Buckinghamshire County Council. The dispute before me concerns three fields (“the Land”) forming part of that farm and within the Claimant’s registered title. The Land adjoins the Calverton Lane Travellers’ Site (“the Site”). The First Defendant is a Romany Gypsy. He and his wife and children live at the Site as does his mother and as did his late father, Joseph Wilsher. The First Defendant is a small livestock farmer. He grazes horses and some sheep on the Land and has undertaken other activities on the Land as I will explain below.
2. The Claimant says that the First Defendant is a trespasser on the Land and these proceedings were begun by the Claimant’s application for an injunction to restrain that trespass. The First Defendant contends that he has succeeded to the title to the Land which his father obtained by reason of adverse possession of the Land for at least 12 years before 13<sup>th</sup> October 2003. Alternatively he says that he has the benefit of a proprietary estoppel preventing the Claimant from challenging his right to the Land. Those contentions are disputed by the Claimant and the question for me is whether the First Defendant has established his right to the Land on either of those bases.

**The Applicable Law.**

3. There is no dispute as to the applicable law.
4. The relevant provisions of the Land Registration Act 2002 came into force on 13<sup>th</sup> October 2003. The First Defendant accepts that he cannot satisfy the requirements of that Act so as to obtain registration as proprietor of the Land by virtue of acts of adverse possession since October 2003. For the Claimant it is accepted that the First Defendant would be entitled to be registered as proprietor if the Claimant were subject to a proprietary estoppel in his favour. It is also accepted that if the First Defendant and/or his father had been in adverse possession of the Land for a period of at least twelve years before 13<sup>th</sup> October 2003 then the First Defendant’s rights would not be affected by the 2002 Act. In those circumstances the effect of section 75 of the Land Registration Act 1925 and section 15 of the Limitation Act 1980 would be that the Claimant as registered proprietor would hold the title to the Land on trust for the First Defendant who would have acquired rights by adverse possession and/or by succession to the rights which his father had so acquired.
5. It is common ground that the approach to be taken to determining the question of adverse possession as a consequence of the approval by the House of Lords in *JA Pye (Oxford) Ltd v Graham* [2002] UKHL 30, [2003] 1 AC 419 of the approach set out by Slade J in *Powell v McFarlane* (1979) 38 P & CR 452 was correctly summarised thus by Morgan J in *Food Convertors Ltd & another v Newell & another* [2018] EWHC 926 (Ch) at [34]:
  - “(1) there is a presumption that the owner of land with a paper title is in possession of the land;
  - (2) if a person who does not have the benefit of this presumption wishes to show that he is in possession of the land, the burden is on him to show that he is in factual possession of the land and that he has the requisite intention to possess the land;

(3) for a person to show that he is in factual possession of the land, he must show that he has an appropriate degree of physical control of the land, that his possession is exclusive and that he has dealt with the land in question as an occupying owner might have been expected to deal with it and no-one else has done so;

(4) whether a person has taken a sufficient degree of control of the land is a matter of fact, depending on all the circumstances, in particular the nature of the land and the manner in which such land is commonly enjoyed;

(5) the person claiming to be in possession may be in possession through his tenant or licensee, if that tenant or licensee has, on the facts, sufficient control of the land to amount to factual possession;

(6) the person seeking to show that he has had possession of land must show that he had an intention for the time being to possess the land to the exclusion of all other persons, including the owner with the paper title;

(7) the relevant intention is an intention to possess and need not be an intention to own;

(8) the intention to possess must be manifested clearly so that it is apparent that the person now claiming to have been in possession was not merely a persistent trespasser;

(9) if the acts relied on are equivocal then they will not demonstrate the necessary intention;

(10) it is possible in some cases for a person in possession to add to his own period of possession, the period of time during which his predecessor was in possession; this applies in particular where the predecessor relinquishes possession to a person who then takes possession.”

6. I was referred to a number of passages in other authorities but that was by way of emphasising the importance of one or other of the principles just stated or showing their application to particular circumstances. I need not rehearse all the examples which were cited though the following are of particular note. In *Powell v McFarlane* at 473 and 476 respectively Slade J explained that the requisite intention to possess cannot be shown by equivocal acts and stressed the limited value of the alleged adverse possessor's statements as to his or her own intent. In *Boosey & another v Davis & others* (1987) 55 P & CR 83 the Court of Appeal found on the particular facts that grazing by goats did not amount to a dispossession of the paper title owner even when accompanied by the cutting down of scrub and the reinforcement of an existing fence. In *The Inglewood Investment Company Ltd v Baker* [2002] EWCA Civ 1733, [2003] 2 P & CR 23 at [36] Aldous LJ noted the need for the appropriate degree of control to be shown for “the full 12-year period”. It is also of note that in that case the Court of Appeal upheld the trial judge's rejection of the defence of adverse possession notwithstanding the erection of some fencing and the presence for a limited period of time of a “trespassers will be prosecuted” sign. In *Batt v Adams* [2001] EGLR 92 Laddie J pointed out, at [34], that even where the alleged adverse possessor has maintained fencing it is necessary to consider the intention with which this was done. In particular it was necessary to consider whether the fencing was being maintained or installed for the purpose of preventing livestock from leaving the land in question or for that of preventing other persons from entering it with the former not being sufficient to indicate an intention to possess. Finally, in *Gallagher v Northern Ireland Housing Executive* [2009] NICA 50 at [14] the Court of Appeal of Northern Ireland emphasised the fact-sensitive nature of the exercise of determining whether a sufficient degree of physical control has been shown. It was explained that the court had to have particular regard to the nature of the

land; the manner in which it is commonly used; and whether the alleged adverse possessor has acted in the way an occupying owner might be expected to have acted.

7. There is no suggestion that either the Claimant or its predecessor represented to the First Defendant or to his father that it regarded them as having any right to the Land. In that context in order to establish a right by way of proprietary estoppel the First Defendant will have to show first, that he or his father acted to their detriment by incurring expenditure in relation to the Land believing that they had an interest in the Land. Next, he must show that they so acted in circumstances where the Claimant or its predecessor knew of that detrimental action and also knew that it was being undertaken in reliance on that belief. Finally, the circumstances must be such that the failure of the Claimant or the County Council to intervene amounted to an acquiescence such as to make it unconscionable for the Claimant now to rely on the First Defendant's absence of legal title.

### **The Background to the Dispute.**

8. Two Mile Ash Farm lies alongside and to the south-west of Watling Street, the A5. The farm is in two parts separated by Calverton Lane which runs from south-west to north-east where it meets Watling Street at a T junction. The farm is 43.476 ha in area of which the larger part including the farm house and farm buildings lies to the south-east of Calverton Lane.
9. The Site is on the north-west side of Calverton Lane. Immediately to its north-east and between it and Watling Street is a part of field 8175 which has at all material times been designated for the expansion of the Site. The balance of field 8175 is 2.844 ha in area and is the first of the three fields making up the Land. That field forms a rough rectangle running alongside Watling Street. The Site was formed out of the north-eastern corner of field 7855. The balance of that field, being some 5.128 ha, is the second part of the Land and lies immediately to the south of field 8175 and alongside Calverton Lane. The final component of the Land is field 6165, an area of 6.035 ha, which lies immediately to the south of the western part of field 8175 and runs along the north-western boundary of field 7855. Together with the Site and the area designated for its expansion the Land forms a block fitting into the western side of the right angle formed by the junction of Calverton Lane and Watling Street.
10. Two Mile Ash Farm was formerly owned by Buckinghamshire County Council but it was transferred to the Claimant in 1997 together with a quantity of other land owned by the County Council though the Claimant's title does not appear to have been registered until January 2008.
11. Joseph and Rose Wilsher, the First Defendant's father and mother, were the first occupants of the Site arriving there in the early 1980's. The First Defendant was born there in 1984 the youngest of their thirteen children. He has lived there all his life. It is common ground that members of the Wilsher family have grazed horses and some other livestock on at least parts of the Land in the period since Mr and Mrs Wilsher senior first moved to the Site or shortly thereafter. It was not disputed that the First Defendant had helped his father with this work as a young teenager and that he had substantially taken over this activity in 2002 when his father fell ill. The First Defendant has continued this activity since his father's death in February 2004. The precise locations

on which the farming activity took place; the precise nature and extent of the activity undertaken; and still more its legal effect are, however, matters of contention.

12. Two Mile Ash Farm lies to the south-west of the built-up area of Milton Keynes. In 2019 the Claimant entered an agreement for the sale and redevelopment of the farm and a further quantity of land. The project is to provide housing and employment opportunities. The Claimant intends that the Land will be used for work facilities and will be part of a larger block comprising housing, a school, parks, allotments, and public open space. The Claimant's witnesses were at pains to emphasise both the need for the development to provide for the expansion of Milton Keynes and that no threat to the First Defendant's home is intended (indeed the proposal is for the Site to remain and for the long-envisaged expansion to be completed). It became apparent that the First Defendant and his wife felt a degree of mistrust towards the Claimant and were concerned as to its intentions for their future. I accept that in bringing these proceedings the Claimant was not motivated by any ulterior motive of seeking to drive the Wilsher family from the Site and that there is a genuine intention that the Land form part of the wider redevelopment. However, those considerations are immaterial to the issues which I have to address. If the First Defendant has the rights for which he contends the Claimant is not entitled to exclude him from the Land no matter how beneficial its proposals might be. Conversely if the First Defendant does not have those rights then the Claimant is entitled to exclude him from the Land whether its proposals for the Land are otherwise desirable or not.

### **The Issues.**

13. It follows that the first issue is whether the First Defendant has shown that he and his father before him were in factual possession of any part of the Land, and if so which, with the requisite intention to possess for a period of at least 12 years in the period before 13<sup>th</sup> October 2003. Determination of that question requires, first, findings as to what has been established in respect of the actions and intention of the First Defendant and his father and, then, an assessment of whether the matters which have been established demonstrate factual possession with the requisite intention for the necessary period.
14. Determination of the First Defendant's secondary case asserting a proprietary estoppel requires an assessment, first, of whether he or his father acted to their detriment in reliance on a belief that they were entitled to the Land. Second, it has to be determined whether the Claimant or its predecessor were aware both of those actions and that they were undertaken in reliance on that belief. Finally, the court has to determine whether inaction on the part of the Claimant or its predecessor amounted to acquiescence such as to make it unconscionable for the Claimant now to assert its rights as owner of the Land.

### **The Actions of the First Defendant and his Father on the Land.**

15. The First Defendant called a number of witnesses giving evidence as to activities on the Land and put in evidence by way of hearsay statements the written evidence of a number of others. There was no challenge to the honesty of any of these witnesses though there was some questioning of the extent and reliability of their recollection but even that was limited. For the Claimant, Mr Lane's principal arguments related to the

consequences of the evidence and as to whether it established that there had been physical control of the Land with the requisite intention for the necessary period.

16. There was evidence from a number of witnesses giving repeated recollections of the grazing of horses over the Land by the First Defendant and his father over a significant period of time. The picture which emerged was several horses being in the fields with mares and foals generally running free but with stallions being tethered and with other horses on occasion being tethered to avoid laminitis through over-grazing. Mr. Lane sought to explore with the witnesses the extent to which they had seen horses in each of the three fields forming the Land. However, the more the witnesses were pressed on this issue the more apparent it became that the witnesses had seen Joseph Wilsher's horses in each of the fields.
17. I need not rehearse this aspect of the evidence in detail and will not recite the evidence of each witness. In general terms the witnesses can be placed in a number of groups. There were those who had visited the Land for professional purposes whether as vets, Richard Medd and Andrew Hayes, or to remove dead horses, Michael Wills, or as incumbent of the ecclesiastical parish, Fr Ross Northing. In addition there were others who had known the Wilsher family either as friends or in other capacities who were able to give evidence of what they had seen when going past the Land as part of activities unconnected with the Land or with the Wilshers. Thus Barbara Northend passed the Land daily on her way to school and thereafter regularly as part of her journey commuting to work. Similarly, Donna Shaw passed the Land regularly in the period from 1995 to 1997 and has visited it regularly over the last ten years. These witnesses did not go into a great deal of detail about the use of the Land but they were consistent in saying that they had seen horses (and in some cases other livestock) belonging to Joseph Wilsher and to the First Defendant on the Land when they had passed or visited it. As already noted when pressed the witnesses confirmed that they had seen horses on each of the fields forming the Land.
18. Most of the witnesses were addressing the period since 2000 but some were able to give evidence of the activity on the Land before then. Thus Barbara Northend gave evidence of seeing Joseph Wilsher's horses on the Land when she was attending secondary school between 1979 and 1983 and during her apprenticeship which began in 1984. Mr. Wills had been involved in removing dead horses from the Land since about 1985. Dr. Medd explained that he had been visiting the Land intermittently as a vet engaged by Joseph Wilsher since May 1989 and that his practice had first supplied medication for use by Joseph Wilsher's horses in November 1988. Donna Shaw had driven past the Land frequently in the period from 1995 to 1997 and seen Joseph Wilsher's horses on it then. As I will explain below John O'Brien gave evidence of the use of the Land since 1991 or 1992.
19. The evidence summarised thus far demonstrated that the First Defendant and Joseph Wilsher before him had grazed a number of horses and ponies and some other livestock on the Land over a number of years. I turn to the evidence of other activities.
20. A small stream or brook forms a ditch which separates the north-western part of field 8175 from the rest of the field. The aerial photographs show a rough track crossing field 8175 and leading to gate on to Watling Street. A concrete bridge has been installed at the point where the track crosses the ditch. The First Defendant says that his father installed the bridge when he, the First Defendant, was a young lad. He said that he

recalled being present when his father did this adding that one of his brothers was also present and had to be taken to hospital after suffering burns when raw concrete entered his boots. This account was not challenged on behalf of the Claimant and it is of note that it first emerged in the course of the cross-examination of the First Defendant when he was being taken through a number of photographs taken in September 2007 one of which happened to show the bridge. I remind myself of the care needed when placing weight on the demeanour of a witness. However, even when regard is had to the need for caution it is of note that the First Defendant's evidence about the bridge gave the strong impression of being a genuine recollection prompted by being cross-examined about the photograph showing the bridge. In that respect it is of note that the First Defendant had not referred to the bridge in his earlier witness statements and that his account came out for the first time in cross-examination. That account is, moreover, consistent with the aerial photographs which show a feature, which Mr Lane accepted appears to be the bridge, present in the photographs taken in 1990 and thereafter but absent in the photograph from 1980. Accordingly, I find that Joseph Wilsher installed the bridge and did so after 1980 but some time before the end of 1990.

21. There is an entrance on to field 7855 from Calverton Lane. In 2001 or 2002 the First Defendant installed a gate at that point securing it with a chain and a lock. The First Defendant also placed a sign on the gate bearing the words "Private Property Keep Out" and an image of a galloping horse. The First Defendant said that he and his father before him had maintained the Land by cutting the grass; chain harrowing the Land; removing ragwort from the Land; removing fly-tipped material from the Land; cutting the hedges; and maintaining the hedges. As to the last of those elements it was not suggested that the First Defendant or his father had installed new fences or new hedges. Rather their actions had consisted of plugging gaps in the already existing hedges. The Claimant was not able to challenge the First Defendant's evidence about his installation of the gate and sign nor that of the other activities though it is to be noted that the First Defendant's evidence of what was done by way of work on the Land was in somewhat general terms.
22. Joseph Wilsher died in February 2004. His wake was held on the Land. Fr Northing had conducted the funeral and he attended the wake estimating that there were about 2,000 people present. Entry to the Land was through the gateway from Calverton Lane. The First Defendant had removed the gate to facilitate access by those attending the wake. In particular he had done this to allow Kelly Potter to enter the land with her equipment to set up a hog roast for the wake. Miss Potter is a butcher who provides outside catering including hog roasts. She ran the hog roast at Joseph Wilsher's wake doing so under a marquee which had been installed on the Land. Miss Potter said that many of those attending the wake were staying on the Land and that a number of them stayed up all night as part of the wake. That was the first time Miss Potter had visited the Land but she has done so since installing and running a hog roast in a similar way on a further three or four occasions for the First Defendant in connexion with funerals and christening parties.
23. John O'Brien was a friend of the late Joseph Wilsher. He has known the family since 1991 or 1992 and said that throughout that period the Wilsher family have kept horses on the Land. In about 1998 or 1999 Mr O'Brien was asked to help the Wilsher family with work on the Land. He has done so since then describing his work as including "fencing, ragwort [removal], feeding [horses], chain harrowing and overall maintaining

of the Land”. This work was done on each of the three fields making up the Land. Mr O’Brien said that in return for his assistance the First Defendant and his family had allowed him and his family to have camping breaks on the Land on a number of occasions. In addition the First Defendant had allowed Mr O’Brien to use the Land to teach his sons to ride motorbikes and his daughters to ride horses.

24. The Claimant has put in evidence a series of aerial photographs showing the Land, the Site, and the area designated for expansion of the latter on unspecified dates in 1980, 1990, 2005, 2007, 2009, 2012, and 2016. These do not appear to show the presence of animals or other activity on the Land at the time of the photographs. However, they were taken at height and are at low level of magnification with the consequence that it cannot definitively be said that no animals were present at those times. The photographs from 1990 onwards do show the concrete bridge to which I have already referred. The photographs taken in 2007 and in 2012 show circles in the fields (significantly more so in the latter than the former photograph). The First Defendant plausibly says that these show the consequences of horses having been fettered so as to prevent over-feeding with the circle around the point of fettering having been grazed more extensively than the surrounding land. The First Defendant said that the same feature was shown on the 1990 photograph but in my assessment that was by no means as clearly shown. I find that the First Defendant’s explanation of the features in the 2007 and 2012 photographs was correct but do not find that effect to have been shown on the other photographs.
25. On 31<sup>st</sup> August 2007 a representative of Carter Jonas LLP, property consultants, attended at Two Mile Ash Farm on behalf of the Claimant and prepared a Photographic Schedule of Condition dated 6<sup>th</sup> September 2007. This contains a considerable number of photographs of the farm buildings and of those parts of the farm lying on the eastern side of Calverton Lane. However, it also contains seventeen photographs taken on the Land. These include a photograph showing the concrete bridge. They do not show any livestock save for one sheep and one Shetland Pony which are on the Land but which are immediately next to fence and hedge separating the Site from the Land. The First Defendant sought to explain this by saying that the photographs were showing the hedges and boundaries of the Land and that the horses would have been present but in the middle of the fields. It is right to note that most of the photographs were taken looking towards the hedges but a number of them show views across the fields and that horses were not present in those photographs.
26. The schedule of condition prepared by Carter Jonas described Peter Harrison as being the “land occupier” of Two Mile Ash Farm. The bundle contains a series of Farm Business Tenancy Agreements between Mr Harrison and the Claimant. They cover the period from 4<sup>th</sup> November 2009 to 28<sup>th</sup> September 2017 with each tenancy having been granted for a term of two years. The holding demised to Mr Harrison included the Land together with the farm house and farm buildings and the fields to the eastern side of Calverton Lane. The area of land designated for the expansion of the Site was excluded from the holding. The Land is 14.007 ha in area and so was 32.22% of the total holding. The agreements from September 2011 all specified a rent of £2,185 per annum. The agreement of November 2009 specified a rent of “£2,185 for the Term”. Read literally that would mean that sum was the total payable for the two-year term with the rent doubling at the commencement of the September 2011 tenancy. However, there was no suggestion that the rent had been increased at any time and I will proceed on the basis



that the 2009 agreement should have referred to a rent of “£2,185 per annum for the Term”.

27. In 2014 Bidwells were acting for the Claimant and on 19<sup>th</sup> June 2014 those agents inspected Two Mile Ash Farm. The inspection resulted in a report which was signed off on 7<sup>th</sup> July 2014 and which said the following under the heading “land”:

“For the past 3 years the eastern block of land over the road [in fact a reference to the western part of the holding] has been occupied by gypsies. Mr Harrison does not pay rent for this land and does not want any further grief from the gypsies and wants to leave situation as it is.

Remainder of land used for silage, grazing of cattle and growing of maize. New fence erected across land”

28. The bundle also contains a document on Bidwells’ letterhead entitled “Note for file”. This is dated 20<sup>th</sup> June 2014. The document appears to have been prepared as a consequence of the inspection the day before. The relevant passage makes substantially the same point as the report saying:

“ Block of land opposite side of road, not taken silage for 3 years on this site as had too much grief from the gypsies. Had a run in with them in the past and they smashed up brand-new tractor, when was dairy farm needed the land and would continually have to re-fence the area due to fencing being cut. No longer so desperate for the land and does not pay rent on this land, therefore prefer to let the gypsies keep their horses on the land and not have any conflict.”

29. The inspection report bears an indecipherable signature but there was otherwise no indication as to the identity of the author of the report or of the note.

30. On 12<sup>th</sup> January 2016 Celia Meacham of Bidwells sent an email to Rod Aitken of the Claimant. The subject line of the email was “Milton Keynes Rural Estate – Handover Notes” and appears to have been sent in the context of the transfer to Fisher German LLP of responsibility for the Claimant’s landholdings. The email sets out as a “Memo” notes in respect of a number of farms. The note in relation to Two Mile Ash Farm contains the following passage:

“In addition, for the past 4 years the western block of land has been occupied by travellers. Mr Harrison does not pay rent for this land and does not want any further trouble from the travellers, has had previous difficulties with them – would like situation left as is.”

31. There is no indication whether that passage was based on any further conversation with Mr Harrison or was a recapitulation of the information in the earlier file note.

32. On 28<sup>th</sup> February 2017 Charles Leather and Isabel Bingham of Fisher German LLP inspected Two Mile Ash Farm. Their report of February 2017 said that they had met with the tenants described as being “John and Pete Harrison”. The following was included amongst other items under the heading “concerns”:

“Gypsy site has been a big issue: the site on corner paddock has been excluded from the tenancy (2008). The Harrisons have stopped farming dark blue land over road and is in occupation by gypsies (2012/13). The farm is not claiming BPS on it because of damage caused.”

33. In April 2019 Rod Aitken was the Claimant’s Property Manager and by that time a dispute about entitlement to the Land had arisen with the First Defendant’s solicitors

having asserted his claim to the Land. On 5<sup>th</sup> April 2019 Mr Aiken sent an email to a number of his colleagues asking that the claim being made by the First Defendant's solicitors be rebutted and saying:

“For your information and by way of background I have spoken to Peter Harrison and he advises me that the travellers first started to stray into this land (edged pink on third attachment) around 2011. They were very confrontational at that time and actually wrecked one of his tractors. In the light of this Peter 'backed off' and has not used the land since that time, albeit technically it was in his tenancy. Similarly rather than be confrontational we have shied away from taking any action and this is now coming back to bite us. I'm not sure how they can claim the land, as I say it's registered to the Council, they have not been there long enough to claim adverse possession and as far as I know there are numerous horses on the land, which probably means there is more than one owner (of the horses) so query who actually is making a claim to own the land.”

34. Mr Aitken retired from the Claimant's employment in May 2019 and the Claimant did not put in evidence any statement from him.
35. Peter Beer is employed by the Claimant as its Estates Lead and as such he manages its commercial property estate. On 2<sup>nd</sup> September 2019 he emailed a number of colleagues saying that he had asked Fisher German to speak to Mr Harrison “about the traveller occupation at Two Mile Ash Farm” and that Fisher German had reported back as follows:

"Peter Harrison re the travellers that are on the land that he has vacated and he stated that he did not have an agreement with them but allowed them onto the land as in short, it was too much trouble to keep them off. They have never paid any rent and Peter stated that he only let them on the land because they kept forcing their way onto it. Peter reports that it was circa 2011 that he last mowed the grass in those fields therefore the travellers could have been in occupation since then."
36. In his witness statement Mr Beer had said that he believed that “the first complaint with regard to travellers accessing the land appears to have been made in 2011”. He said that he learnt of this in a conversation with a colleague who had recalled Mr Harrison “informing her of an altercation with a group of persons” and that his had caused Mr Harrison “to merely leave the land alone”. When being cross-examined Mr Beer said that he believed the colleague to have been Marie Hogan, the Claimant's senior property secretary. He described the exchange as “just a passing conversation” of which he had not made any written note.
37. The first difficulty with this material from the Claimant is that no evidence from Mr Harrison himself was adduced nor was there any explanation as to why there was no such evidence. Indeed there was no statement from any of the various persons who had themselves actually spoken to Mr Harrison and who had made the various notes or records which were put in evidence. Those persons were professionals acting as such in various capacities. I am satisfied that in making their notes they were seeking to record what they believed Mr Harrison to have told them and also that the records had been triggered by some comment from Mr Harrison. Nonetheless there was no evidence of the context in which the comments had been made nor of how those making the notes came to understand Mr Harrison to be making the points which he was recorded as having made let alone any account of any impression which Mr Harrison made when speaking to those who subsequently reported his comments.

38. The First Defendant said that the account which Mr Harrison was recorded as having given was incorrect. He did not accept that Mr Harrison had farmed the Land up to 2011 let alone that the First Defendant or his family members had driven Mr Harrison from the Land or caused damage to his tractor. The First Defendant said that there had been interaction with Mr Harrison on the Site in 2007 or 2008. He said that Mr Harrison had had “a soft spot” for the First Defendant’s sister and had attended at the Site because of that. The First Defendant’s mother had regarded Mr Harrison as pestering her daughter and had called the police who had caused Mr Harrison to leave. I heard nothing from Mr Harrison about that interaction and I make no finding about what actually happened on that occasion. However, the First Defendant’s account again gave the impression of being given spontaneously in response to Mr Lane’s cross-examination and, more significant, it would be a somewhat strange explanation for the First Defendant to have invented. In those circumstances it does appear that there had been some further dealings between Mr Harrison and members of the First Defendant’s family going beyond the matters recorded in the various notes.
39. There are a number of further difficulties with the account which Mr Harrison is recorded as having given. The first is that there was clear evidence from multiple sources of the use of all parts of the Land by the First Defendant and his father at dates and for sustained periods well before 2011. The assertion that the first incursion on to the Land by members of the Wilsher family was in 2011 simply cannot stand in the face of that evidence. Next, Mr Harrison is recorded as having said that he was not paying rent for the land from which he had been excluded by those living on the Site. However, the position as shown by the tenancy agreements was that Mr Harrison did not pay rent for the plot designated for an expansion of the Site and which was excluded from his tenancies but that he did pay rent for the Land and that the rent payable under the tenancy agreements remained the same throughout the period from November 2009. Mr Beer initially confirmed this position. In re-examination he said that perusal of the Bidwells note of 20<sup>th</sup> June 2014 would change his assumption in that regard. The evidential position, however, remained that the agreements showed the same rent throughout the period and there was no confirmation other than comments reported from Mr Harrison that the rent had been reduced. If the arrangement had been changed at any point with the consequence that the rent payable was being reduced then it would be expected that this reduction and the new rent would have been recorded. In the absence of such material I am unable to accept that there was a reduction of the rent or the exclusion of any part of the holding from the area for which rent was being paid. This leads to a further point which is that the Land was 32.22% in area of the total holding let to Mr Harrison. If Mr Harrison had been excluded from such a proportion of his holding for the first time in 2011 or thereabouts he could have been expected either to seek redress from the Claimant as his landlord (particularly as it is a public body) calling for the Claimant to help restore him to the Land or to have sought a reduction in the rent. Moreover, the Claimant or its agents would be expected to have made a record of such an approach. There is, however, no record of Mr Harrison having taken either of those steps.
40. In those circumstances I am not able to regard the comments which Mr Harrison is recorded as having made as altering the picture which emerged from the evidence of those whose statements were before me and, in particular, those who gave oral evidence and who were subject to cross-examination.

41. Looking at the evidence in the round I find that the First Defendant's father began using the Land by keeping horses and ponies on it at some point in the mid-1980's and that this use extended to all three of the fields constituting the Land. I reject, as contrary to the clear accounts of a multiplicity of witnesses and for the reasons just given, the contentions made at least initially by the Claimant that the use of the Land or any part of it only began in 2011. The activity on the Land involved the grazing on it of a number of horses and ponies in connexion with a business of breeding and raising horses. A small number of other animals were also kept on the Land on occasion but predominantly Joseph Wilsher and the First Defendant used the Land for the horse-breeding business. The activity undertaken on the Land included the construction of a concrete bridge over the ditch in field 8175 at some point before the end of 1990. Joseph Wilsher and the First Defendant undertook maintenance work on the Land to facilitate the grazing of it by horses and in so doing removed ragwort, cut grass, and engaged in similar activities. The existing hedges and fences were maintained with gaps being plugged. In 2001 or 2002 the First Defendant installed a gate which he secured with a chain and lock and on which he positioned the sign I have described above. The First Defendant has given others permission to use the land and at least since his father's wake in February 2004 has held social events on the Land. It is to be noted, however, that to the extent the members of the Wilsher family exercised control over the Land that did not prevent a surveyor from Carter Jonas LLP entering the Land in September 2007 and taking a number of photographs there.

### **The Consequences of the Evidence.**

42. In the light of those findings has the First Defendant shown that there was a twelve-year period before October 2003 in which he and/or his father had been in factual possession of the land with the necessary intention to possess? That has to be shown on the balance of probabilities but on the footing that actions which are equivocal do not amount to possession or to the demonstration of an intention to possess. I also have regard to the caution which the principles and authorities set out at [5] and [6] above require to be exercised before the court can be satisfied that the requisite elements have been established.
43. The first matter of particular significance in addressing the central questions is the construction of the concrete bridge by Joseph Wilsher. I regard this as showing Mr Wilsher dealing with the Land in the way in which an occupying owner would be expected to act. The action of constructing the bridge demonstrates his attitude to the Land and goes markedly beyond merely grazing his horses on the Land. The construction of the bridge undoubtedly did facilitate the use of the Land for the grazing of horses but it went beyond the actions of a casual trespasser. It shows Mr Wilsher was exercising a degree of control over the Land. Moreover, it indicates both an intention and expectation of continuing unconstrained use of the Land and the likelihood that such use had been continuing for some time before the bridge was installed. Installation of the bridge was not a major act of building work but it was not a trivial matter. Common sense suggests that Mr Wilsher would not have installed the bridge unless he had already been using the Land for some time and expected to continue to do so. In that regard it is of note that the bridge was installed before the end of 1990 and so before the start of the period of twelve years leading up to October 2003. Moreover, the bridge was installed in field 8175. Not only was this the field which Mr Lane sought to suggest to the various witnesses had not been used (or not used until latterly) by Joseph Wilsher

and by the First Defendant but the bridge would clearly have the effect of facilitating passage across that field to Watling Street from the other two fields.

44. The evidence of Mr O'Brien is also of significance. Mr O'Brien's evidence explains the general nature of the activity on the Land in which he participated from 1998 or 1999 by way of assisting the Wilsher family. It is also significant because it shows the First Defendant and his father holding themselves out as having the right to give others permission to camp on the Land and impliedly confirms that those present on the Land with that permission were not removed by others.
45. The actions of the First Defendant in installing a locked gate and erecting a "Private Property" sign took place towards the end of the period of twelve years leading up to October 2003 but are nonetheless significant. Those actions demonstrate both physical control and an intention to possess at that time. In the light of the evidence as a whole I accept that neither the control nor the intention were new matters at that time. I am satisfied that in so acting the First Defendant believed that he was continuing the approach which his father had taken to the Land.
46. The wake held for Joseph Wilsher took place in early 2004 and so was outside the relevant period but was shortly after the end of that period. Initially I doubted whether this event bore the significance which Mr Jones sought to place on it. However, on reflection I am persuaded that it is a relevant and significant matter. It demonstrated the occupation and control of the Land to a marked extent. It was an act of physical control of the Land and showed the First Defendant acting in relation to the Land in the way in which an owner would be expected to act. However, what is more significant is the attitude which it revealed the First Defendant to have in relation to the Land. Mr Jones was right to say that the First Defendant would have been unlikely to have organised that event on the Land unless he had believed that he was entitled to do so and that this use of the Land would not be challenged. As with the "Private Property" sign that belief is unlikely to have been newly formed in 2004 but rather is to be seen as a continuation of an existing belief and understanding.
47. I have reflected on the most potent aspects of the Claimant's evidence which are the photographs showing the Land without livestock on it in September 2007 and the fact that the representative of Carter Jonas was able to enter the Land and take the photographs at that time. Those are indeed matters of note. They do not, however, outweigh the impression which is given by the rest of the evidence taken together. I am satisfied that the First Defendant has shown that from at the latest 1990 his father and subsequently he had sufficient physical control of the Land to constitute factual possession and that they also had the necessary intention to possess the Land against others including the Claimant (and its predecessor) as paper title owner. I am also satisfied that both the physical control and the intention continued until October 2003 and after. In those circumstances the claim to a title by adverse possession is made out.

#### **The Assertion of a Proprietary Estoppel.**

48. In the light of that finding the First Defendant's secondary case that he has the benefit of a proprietary estoppel becomes academic and I can state shortly why the First Defendant has failed to establish such an estoppel.

49. Although there did come a time by when the First Defendant had come to believe that he owned the Land I am not able to find that the expenditure was incurred in reliance on that belief as opposed to an intention to possess the Land. Even if the first precondition for the existence of a proprietary estoppel were to be established I would find that the other elements are not present here. It has not been shown that the Claimant or its predecessor were aware of the activities of the First Defendant and his father let alone that they were incurring expenditure in reliance on a belief that they had rights in the Land. The evidence indicated that the Claimant and its predecessor had very little knowledge of what was happening on the Land. The visits to the Site by the Claimant's Gypsy Liaison Officer, who also served as warden of the Site, and by those engaged in its Traveller Education Service were not sufficient to give the Claimant knowledge of what was being done on the Land let alone of any belief on the part of the First Defendant or his father in reliance on which expenditure was being incurred or otherwise detrimental activity undertaken. In addition the circumstances are not such that it would be unconscionable for the Claimant to rely on its legal rights. In that regard it is to be noted that although the works undertaken went beyond merely facilitating the use of the Land for the grazing by horses and other livestock that was their predominant purpose and they were undertaken in circumstances where the First Defendant and his father had the benefit of using the Land without paying rent. In those circumstances there would be no scope for a finding that there was a proprietary estoppel operating in the First Defendant's favour.

**Conclusion.**

50. My finding that the adverse possession claim is made out has the consequence that the claim for an injunction against the First Defendant fails and the First Defendant is entitled to the declaratory relief sought in the Counterclaim subject to submissions as to the appropriate form of words.