

[2019] UKFTT 0103 (PC)

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

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

**REF No 2017/0478
BETWEEN**

TRACEY HOLDEN

Applicant

and

**STUART JOHN HANCOCK
DEBBIE ELIZABETH HANCOCK**

Respondents

Property: 3 Whidborne Mews, Bishopsteignton, Teignmouth TQ14 9PQ

Title number: DN406252

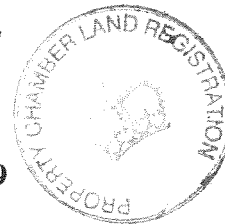
ORDER

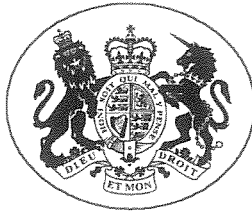
The Chief Land Registrar is ordered to cancel the application dated 28 October 2016

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 28th day of January 2019





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Title number: DN406252

**Before: Judge McAllister
Exeter Magistrates Court
15 January 2019**

Representation: both parties appeared in person

DECISION

Introduction

1. The Applicant, Ms Holden, is one of the registered proprietors of 3 Whidborne Mews, Bishopsteignton Teignmouth ('the Property'). The Property is one of a number of converted properties which once formed part of a large farm, and includes a parking area ('the Parking Area') for two cars. The Respondents, Mr and Mrs Hancock, are the

registered owners of two parcels of land, registered respectively with titles DN550266 and DN475429.

2. The issue between the parties is the extent of the Parking Area. By an application dated 28 October 2016 Ms Holden applied to alter the title plan of DN475429 by removing the land tinted blue on the Land Registry plan accompanying their letter to Mr and Mrs Hancock dated 30 November 2016. I will refer to the land in dispute as ‘the blue land’. The basis of the application is that the blue land formed part of the Parking Area first conveyed to Ms Holden’s brother by a conveyance dated 30 October 1998 (‘the 1998 Conveyance’).
3. The Parking Area (and the other parking spaces forming part of the titles of the other 7/7 mews houses) are on the opposite side of the access road from the mews properties. Due to the narrowness of the road, the cars park in a horizontal line, rather than at right angles to the road.

The 1998 Conveyance

4. The 1998 Conveyance was made between Loadhire Limited (the vehicle through which Kenneth and Lesley Dawe carried out the development referred to above) and Glenn Holden and Anna-Maria Roache. The Property was defined as *‘the land and buildings outlined in red on the Plan being part of the land comprised in title number DN396583 and to be known as 3 Whidborne Mews Old Walls Hill Bishopsteighton Devon’*.
5. The Plan is a site plan of the proposed development dated June 1995. It is marked as drawing number 97/30/02. It is to a scale of 1:500. The Plan shows two parking areas running south west of the Property, on the other side of the access way. There are no measurements on this Plan. However, firstly, it is clear that the easternmost line of the Parking Area is in line with the western edge of the path way leading to the front door of the Property, and secondly, as scaled, the Parking Area measures 13.5 metres.
6. It is also significant to note that a further parking space is marked to the south west of the Parking Area, beyond which a smaller, curved area of land is shown. The Parking Area, and the land beyond, lie between an embankment to the north and the access way to the

south. The access way continues south westwards, and also branches southwards, creating a turning head, towards Mr and Mrs Hancock's property, Whidborne Court.

7. Mr and Mrs Dawe were granted planning permission for change of use and conversion to seven dwellings (and other ancillary matters) on 1 May 1996. On 20 December 1995, as a result of a consultation with the Highway authority, it was noted that whilst the correct number of parking spaces had been shown, their size and manoeuvring were not to a correct size. The correct area between spaces 1 and 3 should have been a minimum of 6 metres. The planning consent stated the planning spaces indicated on the drawings for the parking of vehicles should not be used for any other purpose, unless an alternative and equivalent area of land within the curtilage was provided for car parking spaces to the satisfaction of the local planning authority.
8. The plan referred to in the planning consent ('the Planning Consent Plan') is a variant of the Plan. It was prepared by the same architect, and bears the same date and drawing number. But it shows, at the south western end of the run of parking spaces, and in line with what appears to be the western most edge of the Parking Area, an area cut back into the hillside where a number of other car parking spaces are indicated (and where the cars would park at right angles to the access way). The spaces for unit 3 (the Property) are again shown as running west from a point in line with the eastern edge of the pathway to the house. Measurements are provided on this plan. The Parking Area measures 13.5 metres.
9. Mr Holden told me that he has measured 13.5 metres from the (agreed) starting point, and showed me where this would be on the ground, during the site visit. This was not an agreed measurement, in the sense that the Respondents had not carried out the exercise of measuring this distance with Mr Holden or on their own. Mrs Hancock believes the true boundary is further east.

Further conveyances

10. The 1998 Conveyance was the first conveyance of the Development. It was followed by a conveyance dated 6 November 1998 of Number 4 Whidborne Mews. The vendor was Loadhire Limited. The same plan as the Plan is used, showing two parking areas

immediately to the north east of the Parking Area. On 17 December 1999 Numbers 1 and 2 Whidborne Mews were conveyed, again using the Plan. The vendors were Mr and Mrs Dawe. This shows the parking area for Number 2 as the one area opposite this property (next to the Parking Areas), and the tapering area referred to above. The remaining mews were sold off at various dates in 1998 and 1999.

11. On 24 May 2005 Philip John Titley and Amanda Kate Titley conveyed back to Mr and Mrs Dawe the parking areas marked on the plan for Numbers 1 and 2 Whidborne Mews (presumably this property had been further sold since 1999). On the same day Mr and Mrs Dawe transferred two of the newly created furthest parking spaces cut back into the embankment to Mr and Mrs Titley.
12. Mr and Mrs Hancock became the owners of their two titles, as I understand it, on 18 March 2005 and 23 February 2007.
13. By a further transfer dated 2 September 2009 the Property was transferred Ms Holden and Trevor Derek Heald.

The position on the ground

14. Part of the difficulty which has arisen in this case stems from the fact that the position for the Parking Area shown on the Plan did not accord with the areas marked out on the ground. Mr Holden's evidence, which is not disputed, is that, when he first visited the Development (at a time when the Property was in the very final stages of completion and the other mews houses were at much less stage of completion) the car parking spaces for the mews properties were clearly distinguishable. Each space was marked with a painted number and an arrow pointing in the direction of the space. The numbers were painted on upright girders holding railway sleepers against the landscaped embankment.
15. By the time of completion of the purchase of the Property the access road had been gravelled and dividing concrete spacers had been placed between each of the parking spaces allocated to each house. Each property had, it seems, an area covering 5 railway sleepers.

16. Of note is the fact that the western edge of the Parking Area, as marked on the ground, ran to the point where the land is now cut away, allowing for the further parking spaces. At all times Mr Holden, and subsequently Ms Holden, believed that their Parking Area ran from a point opposite the western edge of the pathway to their property to the point where the upright girder was marked with number 3. This area measures considerably more than 13.5 metres.
17. The problem arose in about 2014 when on looking closely at the conveyancing documents (in connection with the sale of two flats in the development) Mr and Mrs Hancock raised the question whether the Parking Area should in fact extend as far south westward as it does.

Legal Principles

18. The starting point is the construction of the Conveyance. As stated above, the Property is defined by the Plan. The Plan is not for identification only. It follows that the land conveyed is that shown on the Plan. It is clear from the Plan that the Parking Area did not extend to the end of the run of parking spaces. The Plan is to scale.
19. Of some assistance, and some relevance, is the Planning Application Plan which clearly shows that the Parking Area was to measure 13.5 metres from the edge of the pathway to the Property. Although the two plans are not identical, they both show the Parking Area in the same place. The physical location of the turning head has not changed. The western edge of the additional space shown to the west of the Parking Area on the Plan coincides with the area to the west of the Blue Land. It is at this point that the land was cut back to create the six additional spaces.
20. As is well known the filed plans show general boundaries only. In a case such as this, altering the line on the filed plans would, at best, simply show them in a more accurate position but would not necessarily mean that these coincide with the legal boundaries. An application for a determined boundary, on the other hand, requires the boundary to be drawn with great precision, namely accurate in a number of points to + or – 10 mm. That is not the application in this case.

The parties' positions.

21. Both parties seem to have obtained some legal advice at the outset. Ms Holden's initial position seems to have been that the Parking Area should be as marked on the ground by the girders and the concrete dividers, and that therefore the mistake was that the area was not properly shown on the Plan. There is however no application to rectify the 1998 Conveyance, and no other claim has been made to this area of land. At the hearing it was accepted by Ms Holden that the true boundary between their land and the Hancock's land was somewhere to the east of the previously marked point, and should measure 13.5 metres from the edge of the pathway to the Property. It is no longer being argued that the problem lies with the Plan. This position is in fact consistent with the application, which refers to the Blue Land, and not to the further parcel of land to the west of this land.
22. Mr Holden measured 13.5 metres and, as I understand it, told me that it corresponds to the position of the third window of Number 2.
23. Mrs Hancock also accepts that the Parking Area extends beyond the area shown on the filed plans, but states that it does not go as far as Mr Holden claims. Relying on what she was told by her solicitor, it is her case, as I understand it, that the boundary line is in line with the second upright girder, which is itself in line with the western edge of the first window of Number 2. I do not know on what basis her solicitor came to this conclusion. No-one seems to have obtained surveying evidence.

Conclusion

24. The issue in this case is straightforward. The Parking Areas are clearly marked on the scaled Plan. The two parking spaces together measure 13.5 metres from the western edge of the pathway to the Property. This area is not as extensive as the area marked on the ground or which has been used by the Holdens, and it is this which has caused the difficulties. It is a simple matter to measure the area and agree the position on the ground.
25. I will therefore cancel the application, on the basis that making the alteration would serve no practical basis, as the area in question is small, and, as in any event the boundary would remain a general boundary. Of more importance for the parties is my finding that

the boundary between titles DN406252 and DN475429 is, as I have said, 13.5 metres measured from the agreed point, namely opposite the western edge of the pathway to the Property.

26. This leaves the question of costs. If either party wishes to make an application for costs, a schedule of costs, and the reasons why they are being sought, is to be sent to the Tribunal and the other party within 14 days of receipt of the Decision.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 29th day of January 2019

