



[2019] UKFTT 0167 (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 2018/0374
BETWEEN**

IAN SHARROCK

Applicant

and

SEFTON METROPOLITAN BOROUGH COUNCIL

Respondent

Property: Land adjoining 6 Compton Road, Southport PR8 4HA

Title numbers: MS637185, MS558402 and MS513891

**Before: Judge McAllister
Liverpool Family and Civil Centre
5 February 2019**

Representation: The Applicant was represented by Peter McKeown: the Respondent was represented by Gary Reynolds of Counsel instructed by Brown Turner Ross, solicitors.

DECISION

Introduction

1. The Respondent ('the Council') is the registered owner of two parcels of land in Southport. The first is registered with title MS558402 and was registered in the Council's name on 2 February 2005. The second is registered with title MS513891 and was registered in the Council's name on 17 October 2008.

2. The Applicant, Mr Sharrock, applied on 21 October 2016 for first registration of an area of land comprising some 0.4 acres which forms part of the two titles referred to above. The application was allocated provisional title number MS637185. The application was supported by a statutory declaration made by Mr Sharrock, and by further declarations made by Anne Sharrock, his sister, and James Sharrock, his cousin. On being informed by Land Registry that the Additional Land was registered land, a further application (dated 24 October 2016) to alter these titles by closing part and then to be registered with a separate title number. The Council objected by letter dated 21 April 2017.
3. I have taken the above information from the two case summaries sent to the Tribunal on 26 April 2018 when the matter was referred to the Tribunal and from some further material in the trial bundle. I do not have copies of the title plans to the Council's registered title. However, there is no dispute as to the extent of the land in dispute (which I shall refer to, as it was during the hearing, as 'the Additional Land').
4. As it is Mr Sharrock's case that title by adverse possession was obtained well before the coming into force of the Land Registration Act 2002 (13 October 2003) the application is made under the transitional provisions set out in paragraph 18 of Schedule 12 to the Act. The law to be applied therefore is the law under the Limitation Act 1980.
5. The Application Land is approximately rectangular in shape. It is bounded to the north west by the garden fences of a row of properties; to the east by a further fence (partly owned by Phoenix Tyres who have been at 3a Compton Road since May 2007); to the south by a fence separating the Additional Land from the remainder of the Council's land, and to the west by a further fence which divides the Additional Land from a property owned by Mr Sharrock's niece, Sarah Sharrock. There is a gate in this fence which is kept locked.
6. The only access to the Additional Land is through either a locked gate leading onto Sarah Sharrock's bungalow from Back Compton Road, or from other gardens of properties owned by other members of the Sharrock family, and from there through the further small gate, down a flight of steps, to the Additional Land.

7. For the reasons set out below I will order the Chief Land Registrar to give effect to the applications. In view of my findings the Registrar may consider it appropriate to register the title in Mr Sharrock's name with absolute title.

Background and evidence

8. There is no dispute but that the Additional Land (or, as I understand it, at least most of it) forms part of the Council's registered titles. The Council's root of title is a conveyance dated 3 August 1950 made between Halsall Estates Limited and the Mayor Aldermen and Burgesses of the County Borough of Southport. The conveyance was of two plots of land; first, land belonging to the Isle of Wight Farm adjoining Stamford Road Halsall, and secondly the plot of land adjoining a street called Warwick Street in Southport.
9. The greater part of the land conveyed formed part of the playing fields of Christ the King School of Stamford Road, Birkdale, Southport between 1965 and 1993. It is the Council's case that the playing fields extended to and included the Application Land. In 1993 part of the playing fields (and, on paper, the Additional Land) reverted to and was held by the Council's Corporate Resources Committee.
10. Mr Sharrock's evidence is that, as from 1965 or thereabouts, a fence was erected separating the school's playing fields from the Application Land and from the privately owned land to the west of the Application Land running to Broome Road. It is his case that this fence has remained in place since that date (and, moreover, that the owners of 33 and 29 Broome Road, and 6 Back Compton Road registered their titles to include land up to this fence, even though part of this land formed part of the Council's title). The original fence, made of concrete post and green plastic coated chain link mesh, was removed in 1999 by the police in connection with a murder inquiry and replaced by a wooden post and barbed wire fence. The police asked his permission to enter the Additional Land. It is still possible to see some of the original posts lying on the ground. These are approximately 1.2 metres high. It is also possible to see parts of the tensioning wire lying close to the ground.

11. Mr Sharrock is part of a large family. Members of his family live in the houses near the Application Land. Mr Sharrock's evidence is that his family had lived on the land now known as Back Compton Road and the land on the Broom Road side since 1911. Peter McKeown, who represented him at the hearing, is his son in law, and lives at Number 31 Broome Road. Ann Sharrock is the eldest sister, and her daughter, Sarah, who is severely disabled, lives at 6 Back Compton Road. This is a bungalow which was built for her by Mr Sharrock's company.
12. Numbers 31 and 33 Broome Road used to be a piggery, owned first by Mr Sharrock's father and then by him. The Additional Land formed part of the piggery. It was on the same level as the remainder of the land and not distinguishable from it, other than that the pigs were housed on the land to the west. The Sharrock family kept a piggery between 1966 to 2004. The Additional Land is now used for poultry and pheasants.
13. Between October 2003 and October 2004 the Council was in communication with Birkdale United football club regarding the possible use of 'land adjacent to Broome Road' for the purposes of the club. In the event, the Council decided not to take this further, as the land was being retained as a possible development site. The land adjacent to Broome Road was described, in a letter from the club secretary, as having been dormant for 30 years.
14. I heard evidence from Kevin Stockley, who was chairman and treasurer of the football club between 2002 and 2014. He is also married to Mr Sharrock's sister, Kim, and has known the Sharrock family since the early 1980s. He helped Mr Sharrock's father collecting the swill for the pigs which were on the Application Land and the land to the south west. He attended Christ the King School between 1974 and 1979. Mr Stockley was clear in his evidence that the 'land adjacent to Broome Road' in the correspondence referred to above did not include the Additional Land. It would, I think, be odd if it did: the shape of the land does not lend itself to a football pitch and the remainder of the land owned by the Council is certainly large enough for a number of pitches. He stated that, for as long as he could remember, a fence ran from Broome Road to the end of the Application Land dividing this land from the land now owned by the Council. The Application Land was first used by Mr Stockley senior, then by

Mr Stockley. It was not used by anyone else and, as I have said, was not part of the land proposed to be used by the football club.

15. In June 2005 a planning application was submitted by Sarah Sharrock in relation to the land that is now 6 Back Compton Road. The application related to the demolition of what was described of an existing derelict pig farm to construct a bungalow. In answer to the question: '*State whether the applicant owns or controls any adjoining land*' the reply was no. This application was made on her behalf by solicitors instructed by Mr Sharrock, as Sarah was not capable of giving instructions. It was suggested to Mr Sharrock that by making the application on her behalf, Mr Sharrock was stating that he did not own or control any adjoining land. This is manifestly incorrect: the statement was being made on her behalf. Sarah Sharrock does not own or control any adjoining land.

16. The bungalow was built by a company owned by Mr Sharrock. It was necessary – partly because of the presence of Japanese knotweed, referred to further below – to raise the level of the ground so that the bungalow now sits above the Application Land.

17. On 21 July 2005 a site inspection was carried out by Keith Parkinson, a Senior Estates Surveyor employed by the Council. The Council relies on this as showing the Application Land as woodland with no evidence of use as a piggery. Mr Sharrock's case is that these photographs show land other than the Additional Land. In any event there have been no pigs on the land since 2004. It seems to me difficult to be clear as to what these photographs show, but in any event they are of little assistance.

18. As part of the planning application for the bungalow now lived in by Sarah Sharrock, a management plan for the extermination of Japanese knotwood was prepared by L Coogan on behalf of Sharrian Developments. The plan states as follows: '*A large area of Japanese knotwood exists outside the site extensively beyond the north eastern and south eastern site boundary not being treated at the moment it is understood these areas belong to the Council*'. The Council's case is that this statement is an acknowledgement by Mr Sharrock that he did not own the Additional Land. Mr Sharrock's response to this point is that the areas in question was not the Additional Land.

19. There was a site meeting on 22 August 2007 at Mr Sharrock's request. This was attended by Mr Jones and Mr Merry (of R M Services, a provider of weed control) on behalf of the Council. The meeting was called because Mr Sharrock believed the knotweed to have migrated from Council land onto the development plot. The notes of the meeting refer to the fact that he would control the infestation in the garden at the side of the plot (behind 6 Wrights Terrace). The garden land, behind 6 Wright Terrace, is the Additional Land.
20. The Council also relies on a further meeting between Council officers to inspect the land owned by them in relation to the Japanese knotwood problem. Mr Sharrock was not involved in this meeting. The plan used shows that the problem extended significantly into the Council land beyond the fence.
21. Finally, the Council entered into negotiations to grant a grazing licence of 6.48 acres of their land to a Mr Parkinson. The plan attached to the licence shows the Additional Land, but, interestingly, it also shows the fence separating the Additional Land from the remainder of the Council's land. Nothing seems to have come of this proposal, and there is no further evidence about it.
22. On behalf of Mr Sharrock I also heard evidence from James Sharrock, who lives at 18a Broome Road, and has known the Application Land all his life. He is Mr Sharrock's cousin. As far back as he can remember, he recalled that Mr Sharrock and his father used the Application Land initially as a piggery, and now to keep chickens and burning knotweed.
23. Mr McKeown also gave evidence. He has known Mr Sharrock since 2003, and lives with Mr Sharrock's daughter, Kelly, but has memories of the Additional Land dating back to 1987. He too attended Christ the King's school, between 1987 and 1992 and then again between 1993 and 1994. He distinctly remembered a fence running between the playing fields and the Additional Land, and the Land being used solely occupied and used by Mr Sharrock senior then by Mr Sharrock, including chopping and storing wood, burning knotweed, keeping pheasants and more recently chickens.

24. The evidence for the Council was given by Suzanne Rimmer who is a Senior Surveyor. She has worked for the Council since 2016 and has no personal knowledge of the Additional Land, other than seeing it once a few months ago from outside the fence dividing it from the bungalow. Ms Rimmer has carried out a throughout search of the Council's files and a great deal of the evidence set out above is taken from the documents attached to her statement.

Conclusion

25. As Mr Reynolds accepted in his closing submissions, this case does not raise any issues of law. The burden is on Mr Sharrock to establish that, for a period of 12 years or more, he or his father had had exclusive possession of the Additional Land with the requisite intention to possess the land. The well known test has been re-stated in *JA Pye(Oxford) Ltd v Graham* [2003] 1 AC 419: namely, a sufficient degree of physical custody and control ('actual possession') and an intention to exercise such custody and control on one own's behalf and for one's own benefit ('intention to possess'). Once the necessary period of time has passed, the land in issue will be held on trust by the paper owner for the squatter by virtue of section 75(1) of the Land Registration Act 1925.

26. It follows, therefore, that once the limitation period has expired, no written acknowledgement of title can have any effect on the running of time (see section 29(7) of the 1980 Act). In any event, it seems to me that Mr Sharrock's response to the Council's letter dated 1 August 2017 would not amount to an acknowledgement of title. The Council had offered (on a without prejudice basis) to sell the Additional Land for £66,500 and Mr Sharrock replied saying that the offer was wholly unreasonable in view of the fact that the land had been part of his family's estate for over 60 years, but that he remained willing to negotiate. This letter written in the context of a possible referral to this Tribunal.

27. There is a further point to note. As title to the Additional Land is registered, paragraph 6 of Schedule 4 to the 2002 Act provides that, where there is power to make an alteration of the register (in this case on the grounds of mistake) the alteration will be

made unless there are exceptional circumstances which justify not making the alteration. There are no such circumstances here.

28. I have no doubt, having heard the evidence and considered the documents, that Mr Sharrock has discharged the burden of establishing that title was barred many years ago, by 1977 if not before. I fully accept the evidence given by him and his witnesses. Evidence given by family members is not of itself any less probative than evidence given by others, and I found all the witnesses to be clear and straightforward. Nor do I accept that such evidence needs to be bolstered by evidence given by others: it is in the nature of a claim such as this that family members will be most familiar with the land, albeit that I accept the evidence that the fact that the land was used by the Sharrock family was known in the local community.
29. I accept the evidence that the Additional Land, and further land to the west, was separated from Christ the King's School playing fields, and then from the Council's land, by a fence which ran all the way from Broome Road to the end of the Additional Land in or about 1965. The land continued to be shown on various plans (taken from the original 1950 conveyance plan) but these plans did not correspond with the reality on the ground. The Council has taken no interest in the land until this application was made. The discussions relating to playing fields for the football club did not include this land. The discussions relating to Japanese knotweed do not, in my judgment, in any way throw doubt on the possession of the Additional Land by Mr Sharrock or of his intention to possess it: to the contrary, the reference to controlling 'his garden' is entirely consistent with Mr Sharrock's case.
30. I am satisfied that the Additional Land was used as part and parcel of the Sharrock's piggery up to 2004 or thereabouts, and that the land was further separated from the larger area when the bungalow was built. It has never been accessible to the public, but has always been maintained and used by Mr Sharrock and his father before him.
31. As stated above, I will order the Chief Land Registrar to give effect to the applications. This leaves the question of costs. Mr Sharrock is the successful party, and, in principle, is entitled to his costs from the date of the reference (26 April 2018). As he is a litigant in person, these are limited to any disbursements (such as travelling costs, and photocopying) and the amount reasonably spent in preparing the case (at the

rate of £19 per hour). If a claim for costs is to be made, it must be sent to the Tribunal and to the Council by 1 March 2019. The Council may make any representations or objections within 14 days of receipt of the schedule.

BY ORDER OF THE TRIBUNAL

Inn McAllister

Dated this 13th day of February 2019

