Neutral Citation Number: [2021] EWHC 637 (Ch)

Case No: F80LS056
Appeal ref: CC/2020/008

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
APPEALS
On appeal from the County Court in Leeds
Order of HHJ Saffman dated 16 December 2019

Combined Court Centre
1 Oxford Row
Leeds

Date: 19 March 2021

Before :

MR JUSTICE SNOWDEN

(Vice-Chancellor of the County Palatine of Lancaster)

- -

Between :

ANTHONY RICHARD HOWE	**Claimants/**
DEIRDRE HOWE	**Appellants**
- and -	
CHERYL GOSSOP	**Defendants/**
DEAN GOSSOP	**Respondents**

- -

N.A. Cameron (instructed by **Adie Pepperdine Ltd**) for the **Claimants/Appellants**
Andrew Vinson (instructed by **Stephensons**) for the **Defendants/Respondents**

Hearing date: 8 December 2020

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Approved Judgment

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 for hand-down is deemed to be 10 a.m on Friday 19 March 2021.

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MR JUSTICE SNOWDEN

MR JUSTICE SNOWDEN :

1. This appeal concerns the requirements for a proprietary estoppel and the relationship between such requirements and the provisions of section 2(1) of the Law of Property (Miscellaneous Provisions) Act 1989 ("Section 2").

2. Section 2 provides, in material part,

> "A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each."

3. In a lengthy reserved judgment given following a week-long trial in June 2019, HHJ Saffman determined, among other things, that the Respondents to this appeal (Mr. and Mrs. Gossop) were entitled to resist the claim of the Appellants (Mr. and Mrs. Howe) to possession of a piece of land that the Appellants owned, but which Mr. and Mrs. Gossop had fenced, cleared and seeded. The Judge held that a proprietary estoppel had arisen which should be given effect as if Mr. and Mrs. Howe had granted a licence to Mr. and Mrs. Gossop, which was irrevocable whilst at least one of them remained alive and continued to own the adjacent house, to use the land as part of the garden to that house.

4. Mr. and Mrs. Howe appeal with the permission of the Judge.

The Facts

5. Although the facts were hotly disputed at a trial which included a much larger number of issues, for the purposes of the limited appeal in relation to proprietary estoppel, the relevant facts as found by the trial judge are not disputed, and can be shortly summarised.

6. Mr. and Mrs. Howe own White Hart Farm, Barton-upon-Humber and a large area of the surrounding land and roads leading to and from the property. By a transfer dated 16 September 2011 (the "Transfer") they sold a former agricultural building (a barn) to the south east of White Hart Farm to Mrs. Gossop for conversion into a dwelling-house. That building is now known as Lea Farm. The Transfer also included a further barn building and a small area of land around it to the west of Lea Farm across an existing road which leads to White Hart Farm (the "Existing Road").

7. Under the terms of the Transfer, Mr. and Mrs. Howe granted Mrs. Gossop a right of way over another road which gave access to the site from the south (the "Access Road"), but on terms that Mrs. Gossop committed to resurfacing that Access Road by the end of 2012. Mr. and Mrs. Howe also agreed that when the resurfacing work had been done to their satisfaction, they would pay Mrs. Gossop £7,000.

8. Mrs. Gossop did the work resurfacing the Access Road, and was accordingly due £7,000. However, in March 2012 and at a time at which the parties were on good terms but before Mr. and Mrs. Howe had moved into White Hart Farm (which was being refurbished for them), Mr. Howe and his son, Sean, attended a meeting at Lea Farm with Mr. Gossop.

9. At the meeting Mr. Howe put a proposal to Mr. Gossop, which was that Mr. and Mrs. Howe would transfer two additional pieces of land to Mr. and Mrs. Gossop in return for the waiver of their obligation to pay £7,000. The two pieces of land were a small area of land to the north of Lea Farm (referred to in the judgment as the "Green Land"), together with a further area of land to the west of the Existing Road (the "Grey Land").

10. The Judge found that the parties clearly identified the extent of the Green Land by various trees and other markers and agreed that the Green Land could only be used as a garden for Lea Farm. The Judge also found, however, that the parties did not precisely identify the extent of the Grey Land to be transferred, nor agree the use to which it could be put.

11. Mr. and Mrs. Gossop's evidence was that the meeting was short, that Mrs. Gossop joined it towards the end, and that they orally agreed the proposal and shook hands on the deal with Mr. Howe. The Judge also found that Mr. Gossop's account of a concluded oral agreement sealed by a handshake was supported by the evidence of Sean Howe, who gave his evidence in answer to a witness summons.

12. In his evidence, Mr. Gossop also confirmed that nothing was written down at the meeting. He said that he expected that no doubt the agreement would be reduced to writing at some stage although that was never suggested at the meeting.

13. That evidence as to what was agreed at the meeting in March 2012 was disputed by Mr. Howe, who said that there was no agreement and the parties simply shook hands as a courteous parting gesture. In the early part of his judgment, however, the Judge found Mr. Howe to be a "profoundly unimpressive witness" who he described as "arrogant, argumentative, petulant, contrary and evasive". The Judge also recounted evidence which he interpreted as Mr. Howe offering substantial financial inducements to his son, Sean, to change his evidence.

14. In the result, the Judge rejected Mr. Howe's evidence and accepted Mr. and Mrs. Gossop's account of the meeting and the oral agreement that had been reached.

15. Almost immediately after the meeting in March 2012 Mr. Gossop started to undertake work on the Green Land and the Grey Land. In relation to the Green Land, this involved clearing a considerable amount of builder's rubble, importing topsoil and sowing grass seed, and fencing the land.

16. Mr. and Mr. Howe moved into White Hart Farm on completion of refurbishment works in about February 2013. Unfortunately, relations between the parties began to break down not long afterwards. By mid-2013 a dispute had broken out over Mr. Gossop's use of the barn to the west of the Existing Road for what were alleged to be commercial purposes connected with his haulage business in breach of a covenant in the Transfer.

17. Thereafter there was email correspondence in which Mr. Howe referred to it having been agreed, or at least agreed in principle, that there would be sale of additional land to Mr. and Mrs. Gossop, but he denied that this was a legally binding agreement.

18. Ultimately, Mr. and Mrs. Howe took proceedings in the County Court. The proceedings included a claim for possession of the Green Land and the Grey Land and damages for trespass to that land. Mr. and Mrs. Gossop defended those claims on the basis of an alleged proprietary estoppel, and sought a declaration that they should be entitled to an irrevocable licence to occupy and use the land.

The Judgment of HHJ Saffman

19. In his judgment on the proprietary estoppel point, the Judge first referred at length to some of the relevant authorities on proprietary estoppel, to extracts from the 8th and 9th editions of *Megarry & Wade, The Law of Real Property,* and to parts of the 33rd edition of *Snell's Equity*. I shall refer to those same works, in the current 9th and 33rd editions respectively.

20. At paragraph [126] of his judgment, the Judge recorded that it was common ground between the parties that in order to establish a proprietary estoppel,

    i) the owner of the land must have encouraged the claimant by words or conduct (that could be active or passive) to believe that the claimant has or will in the future enjoy some right or benefit over the owner's property that is not merely personal in nature; and that the claimant must have reasonably believed that those words or that conduct was seriously intended to create that right:

    ii) the claimant must have acted to his detriment in reliance on the belief that he has or will acquire some right over the owner's land: and

    iii) that it must be unconscionable for the owner to act in such a way as to defeat the expectation that the claimant had been encouraged or induced to believe.

21. Addressing those requirements, the Judge found,

    i) that Mr. Howe had made an oral offer at the meeting in March 2012 to transfer the Green Land and the Grey Land in return for waiver of the liability to pay £7,000, and that this offer was made to and accepted by Mr. and Mrs. Gossop (paragraphs [148]-[149] and [172]-[174]);

    ii) that although there was agreement of all the essential terms in respect of the delineation of the Green Land and the limited use to which it could be put (paragraphs [176]-[178]), this was not so in relation to the Grey Land, because there was no clear delineation of the boundaries of the Grey Land or agreement on the use to which it could be put (paragraph [185]):

    iii) that (paragraphs [187]-[188]),

> "I can find no basis for concluding, at least in relation to the Green Land, that [Mr. and Mrs. Gossop] could not reasonably believe that the assurances they were given could not seriously be relied upon.
>
> …the meeting at which those assurances were offered was arranged at the initiative of Mr. Howe. In my view it is reasonable for [Mr. and Mrs. Gossop] to conclude that if Mr.

> Howe organises a meeting and put suggestions to them, then if those suggestions are accepted, then he will follow through with his assurances.":

iv) that the work that Mr. Gossop did on the Green Land was carried out pursuant to the assurances he had been given, and that although Mr. Gossop had overstated the work he had done, it was sufficiently substantial to establish an equity (paragraphs [192] and [199]): and

v) that Mr. Howe knew that such work was being done as a result of his frequent visits to the site such that his conscience was bound (paragraph [203]).

22. At this stage in his analysis, the Judge turned to deal with the arguments that had been made by Mr. Cameron for Mr. and Mr. Howe that these factual findings were insufficient to give rise to a proprietary estoppel. He indicated (at paragraph [207] of the judgment) that those arguments were essentially five in number,

i) "that Section 2 creates a very high hurdle" – in other words, that the facts had to be "exceptional" before a proprietary estoppel could arise in respect of an agreement that did not comply with Section 2:

ii) that Mr. Howe had given no assurance to Mr. and Mrs. Gossop that the oral agreement would be treated as valid and binding notwithstanding the failure to comply with Section 2:

iii) that the fact that there were still terms to be agreed in relation to the Grey Land was fatal to a proprietary estoppel arising in relation to the Green Land since there was only one composite agreement under discussion:

iv) that this was a "transactional" case rather than a "familial" case which militated against a proprietary estoppel arising: and

v) that the evidence indicated that the parties subsequently initiated a process to reduce their agreement to writing, indicating that they did not intend the oral agreement reached in March 2012 to be immediately binding.

23. The Judge rejected those arguments. In short he held as follows,

i) that even where an agreement did not comply with Section 2, a proprietary estoppel could still arise, and the facts did not have to be "exceptional" before such an estoppel could exist:

ii) the fact that Mr. Howe did not give an assurance that he did not intend to rely on the absence of formalities complying with Section 2 was not fatal to a proprietary estoppel:

iii) it was possible to consider the agreement in respect of the Green Land and the Grey Land divisibly because the two areas were physically distinct (i.e. separated by the Existing Road). As a matter of principle it would also be unjust to preclude Mr. and Mrs. Gossop from continuing to forgo their

entitlement to the whole of the £7,000 on the basis that their equity extended only to the Green Land, if they were content to do so:

iv) although this was a "transactional" case, that was merely a factor to be taken into account and not fatal to the existence of an equity: and

v) it was only after Mr. Gossop had done work on the Green Land that he initiated a process for the agreement with Mr. and Mrs. Howe to be reduced to writing. The Judge referred to the evidence from Mr. Gossop that I have summarised in paragraph 12 above, and held that the fact that a party subsequently initiated a process to formalise an agreement would not preclude him from alleging that an equity had already arisen.

The arguments on appeal

24. Mr. and Mrs. Howe's grounds of appeal essentially took issue with each of the Judge's findings. In argument on their behalf, Mr. Cameron first contended, that this was a "transactional" case involving an agreement between parties dealing at arm's length which failed to be legally binding because it did not comply with Section 2. Relying on a dictum of Arden LJ in Herbert v Doyle [2010] EWCA Civ 1095 at [57] and a passage in *Megarry & Wade*, Mr. Cameron then argued that the Judge was wrong to reject the argument that such a case had to be "exceptional" before a proprietary estoppel could arise.

25. Secondly, Mr. Cameron relied on the fact that the parties had in any event not reached a certain agreement in relation to the extent and permitted use of the Grey Land. Mr. Cameron submitted that the decision of the House of Lords in Cobbe v Yeoman's Row Management Limited [2008] 1 WLR 1752 ("Cobbe") meant that it was not permissible in such a case for the Judge to treat the terms that had been agreed in relation to the Green Land as a separate promise upon which Mr. and Mrs. Gossop could rely to found a proprietary estoppel.

26. Mr. Cameron also submitted that Mr. and Mrs. Howe had given no separate representation or assurance that the oral agreement could be treated as immediately binding even though the necessary legal formalities under Section 2 had not been complied with; and he contended that although the Judge accepted Mr. Gossop's evidence that an agreement had been reached at the meeting in March 2012, he had failed to consider that the parties must have contemplated or intended that a formal legal contract would be required for sale of the land given that restrictions as to use were envisaged.

27. Mr. Cameron contended that in these circumstances the Judge should have found that it was not unconscionable for Mr. and Mrs. Howe to refuse to give effect to the informal agreement reached at the meeting in March 2012.

28. For Mr. and Mrs. Gossop, Mr. Vinson contended that the Judge was right in the approach that he took. He contended that there was a spectrum of cases in which a proprietary estoppel might arise, that the key requirement was a finding of unconscionability, and that Section 2 did not amount to an absolute bar, or even a high hurdle requiring "exceptional" circumstances to exist, before a proprietary estoppel could arise in a particular case.

29. Mr. Vinson submitted that although the instant case did involve parties dealing with each other at arm's length, the Judge had rightly found that they were not simply negotiating towards a formal contract, but had reached what they thought was a binding agreement that could be immediately acted upon. He said that in such circumstances the subsequent detrimental reliance by Mr. and Mrs. Gossop upon those promises in relation to the Green Land was sufficient to found an estoppel preventing Mr. and Mrs. Howe from asserting their legal title to obtain possession of that land.

30. Mr. Vinson contended that the Judge was right to consider that it would be illogical to deny the existence of the estoppel in relation to the Green Land, in relation to which all the necessary elements of a proprietary estoppel had been made out, just because of the uncertainty as to the extent to which Mr. and Mrs. Gossop were to benefit in relation to the Grey Land. Mr. Vinson also submitted that it was unnecessary for there to be a separate representation by Mr. and Mrs. Howe that they would not rely upon Section 2, and that it made no difference that Mr. Gossop thought that the agreement might subsequently be reduced to writing.

Analysis

31. It was common ground before the Judge and on appeal before me that as Lord Walker outlined in Thorner v Major [2009] 1 WLR 776 ("Thorner") at paragraph [29], proprietary estoppel is based on three main elements: a representation or assurance made by A to B, reliance on it by B; and detriment to B in consequence of his (reasonable) reliance.

32. It is also clear that the case was argued before the Judge on the basis that it fell into what has been called the "promise-based" strand of proprietary estoppel. In other words, the relevant estoppel was not said to have resulted from Mr. and Mrs. Gossop having acted in a mistaken belief in their rights (as in an acquiescence case) or on a mistake of fact or fact and law induced by a representation to them by Mr. and Mrs. Howe. What was alleged was that Mr. and Mrs. Gossop reasonably relied to their detriment on a promise made to them by Mr. and Mrs. Howe.

33. The formulation of the principle applicable in such a case which was adopted by the Judge in his judgment at paragraph [126] (summarised in paragraph 20 above) was one that closely followed the suggestion in *Snell's Equity* at paragraph 12-036, namely,

> "[The principle] applies … where A makes a promise that B has or will acquire a right in relation to A's property and B, reasonably believing that A's promise was seriously intended as a promise on which B could rely, adopts a particular course of conduct in reliance on A's promise. If, as a result of that course of conduct, B would then suffer a detriment were A to be wholly free to renege on that promise, A comes under a liability to ensure that B suffers no such detriment."

The relevance of Section 2

34. In arguing that the Judge went wrong in his basic approach, Mr. Cameron's submissions commenced with a reference to an *obiter dictum* of Lord Scott in Cobbe concerning the relevance of Section 2 to such an estoppel.

35. The problem that had arisen in Cobbe was summarised by Lord Scott at paragraph [2] of his speech,

> "2. The essence of the problem to be resolved in this case can be quite shortly stated. A is the owner of land with potential for residential development and enters into negotiations with B for the sale of the land to B. They reach an oral "agreement in principle" on the core terms of the sale but no written contract, or even a draft contract for discussion, is produced. There remain some terms still to be agreed. The structure of the agreement in principle that A and B have reached is that B, at his own expense, will make and prosecute an application for the desired residential development and that, if the desired planning permission is obtained, A will sell the land to B, or more probably to a company nominated by B, for an agreed up-front price, £x. B will then, again at his own expense, develop the land in accordance with the planning permission, sell off the residential units, and, when the gross proceeds of sale received by B equals £2x, any further gross proceeds of sale will be divided equally between A and B. Pursuant to this agreement in principle B makes and prosecutes an application for planning permission for the residential development that A and he have agreed upon. B is encouraged by A to do so. In doing so B spends a considerable sum of money as well, of course, as a considerable amount of time. The application is successful and the desired planning permission is obtained. A then seeks to re-negotiate the core financial terms of the sale, asking, in particular, for a substantial increase in the sum of money that would represent £x. B is unwilling to commit himself to the proposed new financial terms and A is unwilling to proceed on the basis of the originally agreed financial terms. So B commences legal proceedings. "

36. At paragraph [3], Lord Scott considered a number of potential bases for the grant of relief to B in such a case, including, in particular, proprietary estoppel and constructive trust. He outlined the arguments in those respects as follows,

> "(i) First, there is proprietary estoppel. B has, with the encouragement of A, spent time and money in obtaining the planning permission and has done so, to the knowledge of A, in reliance on the oral agreement in principle and in the expectation that, following the grant of the planning permission, a formal written agreement for the sale of the property, incorporating the core financial terms that had already been agreed and any other terms necessary for or incidental to the implementation of the core terms, would be entered into. In

> these circumstances, it could be, and has been, argued, A should be held to be estopped from denying that B had acquired a proprietary interest in the property and a court of equity should grant B the relief necessary to reflect B's expectations.
>
> (ii) Second, there is constructive trust. In circumstances such as those described, equity can, it is suggested, give effect to the joint venture agreed upon by A and B by treating A as holding the property upon a constructive trust for himself and B, with A and B taking beneficial interests calculated to enable effect to be given to B's expectations engendered by the agreement in principle."

37. Lord Scott rejected the claimant's reliance on proprietary estoppel, primarily on the basis that the oral agreement that had been reached "in principle" between the parties, although containing the "core terms", did not contain all of the terms that would have been expected in due course to be dealt with in a formal written contract. He said, at paragraph [28],

> "Proprietary estoppel requires, in my opinion, clarity as to what it is that the object of the estoppel is to be estopped from denying, or asserting, and clarity as to the interest in the property in question that that denial, or assertion, would otherwise defeat. If these requirements are not recognised, proprietary estoppel will lose contact with its roots and risk becoming unprincipled and therefore unpredictable, if it has not already become so."

38. Lord Walker also rejected the argument based on proprietary estoppel for a similar reason. At paragraph [71] he drew attention to the finding of the trial judge that both parties were very experienced in property matters and although the claimant regarded the defendant as "bound in honour" to enter into a formal written contract if planning permission was obtained, neither party regarded themselves as legally bound. He also noted, at paragraph [87], that the informal bargain that the parties had made was unusually complex, and that the claimant "was expecting to get a contract". He concluded, at [91],

> "…[the claimant's] case seems to me to fail on the simple but fundamental point that, as persons experienced in the property world, both parties knew that there was no legally binding contract, and that either was therefore free to discontinue the negotiations without legal liability—that is liability in equity as well as at law …"

39. As indicated above, Mr. Cameron relied on an *obiter dictum* of Lord Scott at paragraph [29] of Cobbe in which Lord Scott highlighted a further potential problem with the proprietary estoppel argument in the case. He said,

> "29. … Section 2 of the 1989 Act declares to be void any agreement for the acquisition of an interest in land that does not comply with the requisite formalities prescribed by the section.

> Subsection (5) expressly makes an exception for resulting, implied or constructive trusts. These may validly come into existence without compliance with the prescribed formalities. Proprietary estoppel does not have the benefit of this exception. The question arises, therefore, whether a complete agreement for the acquisition of an interest in land that does not comply with the section 2 prescribed formalities, but would be specifically enforceable if it did, can become enforceable via the route of proprietary estoppel. It is not necessary in the present case to answer this question, for the [oral "agreement in principle"] was not a complete agreement and, for that reason, would not have been specifically enforceable so long as it remained incomplete. My present view, however, is that proprietary estoppel cannot be prayed in aid in order to render enforceable an agreement that statute has declared to be void. The proposition that an owner of land can be estopped from asserting that an agreement is void for want of compliance with the requirements of section is, in my opinion, unacceptable. The assertion is no more than the statute provides. Equity can surely not contradict the statute…"

40. In the subsequent case of Thorner, the House of Lords distinguished Cobbe. The claimant (David) had worked without pay on a farm owned by his uncle (Peter) for many years, encouraged to do so by remarks that his uncle had made from time to time which the trial judge found were reasonably understood by the claimant to amount to an assurance that he would inherit the farm on his uncle's death. In fact, the uncle died without leaving a will and the claimant asserted that his uncle's estate was subject to a proprietary estoppel which prevented it from denying that he had acquired the beneficial interest in the farm.

41. The main issues on appeal in Thorner were whether the assurances given by the uncle to the claimant were sufficiently clear to found an estoppel. The House of Lords held that the assurances were clear enough, both in the sense that they could reasonably be understood to be a promise that the farm would be left to the claimant in the uncle's will, and also as to the identity of the property in question.

42. In the course of his speech, Lord Neuberger drew a clear distinction between the facts of Cobbe and those of Thorner. He said, at paragraphs [93] and [96]-[97],

> "[93] In the context of a case such as Cobbe, it is readily understandable why Lord Scott considered the question of certainty to be so significant. The parties had intentionally not entered into any legally binding arrangement while Mr Cobbe sought to obtain planning permission: they had left matters on a speculative basis, each knowing full well that neither was legally bound: see [27]. There was not even an agreement to agree (which would have been unenforceable), but, as Lord Scott pointed out, merely an expectation that there would be negotiations. Moreover, as he said in [18], an "expectation dependent upon the conclusion of a successful negotiation is not an expectation of an interest having [sufficient] certainty".

….

> 96. … the analysis of the law in [Cobbe] was against the background of very different facts. The relationship between the parties in that case was entirely arm's length and commercial, and the person raising the estoppel was a highly experienced businessman. The circumstances were such that the parties could well have been expected to enter into a contract, however, although they discussed contractual terms, they had consciously chosen not to do so. They had intentionally left their legal relationship to be negotiated, and each of them knew that neither of them was legally bound. What Mr Cobbe then relied on was "an unformulated estoppel … asserted in order to protect [his] interest under an oral agreement for the purchase of land that lacked both the requisite statutory formalities … and was, in a contractual sense, incomplete": para 18.
>
> 97. In this case, by contrast, the relationship between Peter and David was familial and personal, and neither of them, least of all David, had much commercial experience. Further, at no time had either of them even started to contemplate entering into a formal contract as to the ownership of the farm after Peter's death. Nor could such a contract have been reasonably expected even to be discussed between them. On the deputy judge's findings, it was a relatively straightforward case: Peter made what were, in the circumstances, clear and unambiguous assurances that he would leave his farm to David, and David reasonably relied on, and reasonably acted to his detriment on the basis of, those assurances, over a long period."

43. At paragraph [99] of Thorner, Lord Neuberger dealt with the issue concerning Section 2 that had been raised by Lord Scott in Cobbe,

> "99. The notion that much of the reasoning in [Cobbe] was directed to the unusual facts of that case is supported by the discussion, at para 29, relating to [Section 2]. Section 2 may have presented Mr Cobbe with a problem, as he was seeking to invoke an estoppel to protect a right which was, in a sense, contractual in nature (see the passage quoted at the end of para 96 above), and section 2 lays down formalities which are required for a valid "agreement" relating to land. However, at least as at present advised, I do not consider that section 2 has any impact on a claim such as the present, which is a straightforward estoppel claim without any contractual connection. It was no doubt for that reason that the defendants, rightly in my view, eschewed any argument based on section 2."

44. The instant case obviously falls between the two factual extremes of Cobbe and Thorner. This was not a case of an informal family relationship as in Thorner, where

uncle and nephew would never have thought it necessary to have a formal contract between them. The instant case concerns parties who were dealing at arm's length and who had previously entered into a formal contract for sale of other land and which created obligations to be performed by each other. However, it was also not a case such as Cobbe which involved parties who were experienced in commercial property transactions who would necessarily have known that they would not be legally bound in the absence of a formal contract, and who had deliberately left significant terms of their deal to be negotiated.

45. A comprehensive, and in my view accurate, identification of the issues arising in relation to Section 2 appears in *Snell's Equity* at paragraph 12-046 under the heading "Formality requirements and other possible bars". That paragraph states, (citations omitted),

> "[Section 2] provides that contracts for the sale or other disposition of an interest in land must satisfy certain formal requirements, although s.2(5) contains an express saving for constructive trusts. There has been some uncertainty as to the impact of this section on promise-based proprietary estoppel claims. Two principal views are possible. First, it could be said that [Section 2] imposes a prima facie bar on such claims, and therefore they can be made, if at all, only by means of a constructive trust. Secondly, it could be said that no proprietary estoppel claim is caught by [Section 2], as the section regulates the requirements of a contract for the sale or other disposition of an interest in land, and a proprietary estoppel claim, even if promise-based, is distinct from a contractual claim. The better view, it is submitted, is the latter. In particular, it should be remembered that [Section 2], on its express wording, does not purport to deny all legal effects to a promise, or to render an agreement void: it clearly applies only to contractual claims. It might be argued that the policy behind the statute is more extensive, but it has been accepted that the statute does not deny all legal effects to informal agreements and also that it has no impact on an acquiescence-based claim: "it would be a strange policy which denied similar relief to a claimant who had acted on a clear promise or representation that he should have an interest in the property". Moreover, there are no examples in the case law of an otherwise valid proprietary estoppel claim failing simply because of the effect of [Section 2]. The only practical impact of the first view is that judges have felt obliged to characterise a successful proprietary estoppel claim as giving rise to a constructive trust even if, on the facts of the case, there is no suggestion that A in fact holds any right on trust for B. The law would therefore be more transparent if it were clearly established that [Section 2], as was intended by the Law Commission when proposing the reforms that led to the 1989 Act, has no effect on any proprietary estoppel, whether based on A's acquiescence, representation, or promise."

The reference to the intention of the Law Commission when proposing the reforms that led to Section 2 was explained by Beldam LJ in Yaxley v Gotts [2000] Ch 162 at pages 188-190 and reiterated by the Court of Appeal in Dowding v Matchmove [2017] 1 WLR 749 at [26].

46. Although Mr. Cameron contrasted this analysis with the view expressed by the authors of *Megarry & Wade* in paragraph 15-020 (to which I will refer below), I consider that *Megarry & Wade* actually takes a similar view of the impact of Section 2 in paragraph 15-028 under the heading "Other bars to relief – enforcement contrary to statute". That paragraph states, (citations omitted),

> "The court will not give effect to C's equity if and to the extent that to do so would contravene some statute. This latter principle is subject to two qualifications. First, the court will give such relief as does not conflict with the statute even if it cannot give the more extensive rights which C might otherwise have sought. As has been explained, this requires the court to examine the mischief which the statute sought to address. Secondly, it is not every statutory provision that is fatal to the enforcement of an equity. If the statute merely regulates the dealings between the parties to a transaction, rather than laying down some more general rule of a public character, the court may give effect to an equity in [the claimant's] favour and [the landowner] may be unable to rely on the statute. [The landowner] may therefore be estopped from relying on the provisions of … a statute requiring compliance with certain formalities for contracts or trusts relating to land."

47. Further, in the footnote reference to "certain formalities for contracts" at the end of that paragraph, it is suggested that the view that an estoppel requires a constructive trust to "shield it from the effect of Section 2" (by use of section 2(5)),

> "fails to recognise that estoppels are not caught by Section 2 precisely because they remedy unconscionability. They do not purport to enforce the contract and do not need the shield of Section 2(5) and the constructive trust. Of course, it might be difficult to establish unconscionability arising from a failed contract where the parties are experienced persons of business.."

48. Although having a slightly different emphasis, I consider that those extracts from *Snell's Equity* and *Megarry & Wade* both seek to make the same basic point. Section 2 is aimed at problems in the formation of contracts for sale of land, whereas the purpose of an estoppel is to remedy unconscionability in the assertion of strict legal rights. Accordingly, there is considerable doubt that Section 2 is intended to affect the operation of proprietary estoppel at all, but even if it did, Section 2 could only operate as a bar to the grant of equitable relief if and to the extent that such relief had the effect of enforcing, or otherwise giving effect to, the terms of a contract for the sale or other disposition of an interest in land that the statute renders invalid and unenforceable.

49. So, for example, in Cobbe the claimant was in effect attempting to use proprietary estoppel to obtain an order *enforcing* the terms of an unwritten contract under which he would acquire an interest in the land owned by the defendant. That was why, in paragraph [29] of his speech, Lord Scott focussed directly on the question of whether a claimant could use an estoppel as a means of *enforcing* such a contract notwithstanding the clear statutory policy invalidating it,

> "My present view, however, is that proprietary estoppel cannot be prayed in aid *in order to render enforceable* an agreement that statute has declared to be void. The proposition that an owner of land can be estopped from asserting that an agreement is void for want of compliance with the requirements of section is, in my opinion, unacceptable. *The assertion is no more than the statute provides. Equity can surely not contradict the statute*…"
>
> (my emphasis)

50. Where, however, the alleged proprietary estoppel is not raised in order to enforce the terms of a contract for sale or other disposition of an interest in land, there is no equivalent reason why Section 2 should operate as a bar to the grant of equitable relief. That was the explanation given by Lord Neuberger in paragraph [99] of his speech in Thorner, where there was no question of any contract being agreed between the uncle and the claimant.

51. A similar approach was also taken by Falk J in Sahota v Prior [2019] EWHC 1418 (Ch) in which a claimant sought possession of a house after expiry of an assured shorthold tenancy which had formed part of a sale and leaseback arrangement to release equity for the tenants. Falk J upheld a decision of the County Court judge that a proprietary estoppel had arisen which (subject to the payment of rent) enabled the tenants to stay in the property for life. Falk J expressly considered and rejected an argument that Section 2 applied to defeat the proprietary estoppel. After referring to Lord Scott's *obiter dictum* from Cobbe, Falk J stated, at [26],

> "26. The dictum relied on at para. 29 is to the effect that proprietary estoppel cannot be used to make an agreement enforceable which the statute has declared to be void. That is, of course, right, but, in my view, that is not what [the respondents] are seeking to do. *They are not trying to enforce a contract for the sale or other disposition of land. They are not seeking to bind [the appellant] to transfer a property interest to them pursuant to a contract. What they are trying to assert is that [the appellant] is prevented from recovering possession of their home from them during their lifetime, because of an assurance on which they relied when they transferred the property and subsequently did work on it.* The claim that [the appellant] is not entitled to recover possession also does not involve an assertion that the assurance relied on was part of the term of any other contract, either for a sale to [the appellant] or the grant of a tenancy to [the respondents]. Indeed, in the case of the tenancy, [the respondents] were well aware that it was

> for only a five-year period, but they were told not to worry about that and that they would be able to remain thereafter, provided they continued to pay rent. What [the respondents] relied on was an assurance or representation which induced them to sign the TR1 Form pursuant to which the property was transferred, and later induced them to do work on their property."
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> (my emphasis)

52. I accept that the instant case is factually different from Thorner (where there was no contract at all) and Sahota v Prior (where the relevant assurance founding an estoppel was given entirely outside the agreements for sale and leaseback). In the instant case, on the facts found by the Judge, the only promise given by Mr. and Mrs. Howe upon which Mr. and Mrs. Gossop could rely was a promise in the unwritten, and hence invalid, agreement for sale of the Green Land and the Grey Land to Mr. and Mrs. Gossop for release of a debt of £7,000.

53. But what, in my judgment, is important, is that Mr. and Mrs. Gossop were not asserting a proprietary estoppel in an attempt to *enforce* the agreement that had been reached in March 2012. As set out above, they raised the proprietary estoppel argument in order to defeat the claim for possession against them by Mr. and Mrs. Howe.

54. Nor was it Mr. and Mrs. Gossop's pleaded case that the unconscionability of Mr. and Mrs. Howe seeking possession of the Green Land should be remedied by an order for sale of the Green Land to themselves in accordance with the terms of the oral agreement of March 2012. Instead, like the respondents in Sahota v Prior, their pleaded case was that the equity which they contended had arisen operated to prevent Mr. and Mrs. Howe seeking to assert their legal right to possession and should be given effect by a declaration that they be entitled to a licence to occupy the Green Land for their lives or until they sold Lea Farm.

55. It would seem from HHJ Saffman's judgment that counsel for Mr. and Mrs. Gossop sought in his Skeleton Argument for trial to advance an unpleaded case to enforce the oral agreement for sale. However, the Judge did not accede to that request and did not seek to remedy the unconscionability of Mr. and Mrs. Howes' claim for possession by making an order for sale of the Green Land to Mr. and Mrs. Gossop. Instead, consistently with the approach outlined in paragraph 15-028 of *Megarry & Wade*, the Judge ordered relief by way of an irrevocable licence to Mr. and Mrs. Gossop to occupy and use the Green Land as a garden for so long as they lived and continued to own Lea Farm. This satisfied the equity that had arisen, but did not contradict the terms or policy of Section 2 as regards the validity of contracts for sale of land (even if that section were applicable). I therefore consider that the Judge's approach in this respect was not prohibited by Section 2.

Must the case be "exceptional"?

56. I next turn to consider the question of whether the case must be "exceptional" before a proprietary estoppel can be established. Mr. Cameron's proposition in this respect

was based on a passage in *Megarry & Wade* at paragraph 15-020 which appears under the general heading of "Establishing the Equity – Unconscionability".

57. Paragraph 15-020 first makes the point that to establish an equity by estoppel it must be unconscionable for the landowner to act in such a way as to defeat the expectation that the claimant has been encouraged or induced to believe. The paragraph then includes the following, (citations omitted),

> "The courts have not attempted any definite list of factors that will determine whether [the landowner's] conduct is unconscionable, but have preferred to make a broad enquiry in each case. "In the end the court must look at the matter in the round." It is, however, possible to list some of the factors that have been considered in determining whether [the landowner's] conduct was unconscionable:
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> …in cases where the parties have tried, but failed, to enter into a binding contract for the disposition of an interest in land, the failed agreement may give rise to an estoppel when it is unconscionable to rely on the failure. However, this will only be in exceptional cases, and it may well be only where [the landowner] has expressly or impliedly promised not to rely on the lack of formality in the disputed transaction. It would be difficult to establish the equity if the parties intended to enter into a formal agreement setting out the terms on which land was to be acquired or where further terms remain to be agreed."

58. It should first be emphasised that there is no reason to believe that the examples given in the second part of that passage are intended to qualify the general approach advocated in the opening part – namely that the court should take a broad view of unconscionability and look at the matter in the round. In my view, the Judge rightly adopted such a broad approach in his judgment.

59. The proposition in the second part of that passage that a case has to be "exceptional" before an estoppel can arise is said to be derived from Herbert v Doyle [2010] EWCA Civ 1095. That case concerned a dispute between neighbours. Mr. Herbert wished to develop a walled garden on his land into mews houses, and Mr. Doyle and his business partner, who conducted a dentists' practice from the adjoining building, objected that the proposed development would encroach upon parking spaces forming part of their property. The parties had a critical meeting in April 2003 at which they reached an oral agreement which included provisions for the dentists to transfer the parking spaces upon which the mews houses were to be built to Mr. Herbert, in return for the transfer by Mr. Herbert to them of other parking spaces and the grant of long leases in respect of a ground flat and compressor house on his property which they used in their practice. The trial judge found that although the parties intended to instruct solicitors, their agreement was not subject to contract but was intended to be immediately binding and to be capable of being acted upon even though they well knew that Section 2 had not been complied with.

60. The case was legal and procedurally complex, but the main issue for the Court of Appeal was whether the trial judge was correct to hold that there was a constructive

trust arising out of the agreement reached in April 2003 binding Mr. Herbert to transfer the parking spaces to the dentists. The argument which Mr. Herbert raised was that the oral agreement reached in April 2003 was not sufficiently certain or complete to be compliant with the decision in Cobbe.

61. In her judgment, Arden LJ referred to the speeches of Lords Scott and Walker in Cobbe and then stated, at paragraph [57],

> "57. In my judgment, there is a common thread running through the speeches of Lord Scott and Lord Walker. Applying what Lord Walker said in relation to proprietary estoppel also to constructive trust, that common thread is that, if the parties intend to make a formal agreement setting out the terms on which one or more of the parties is to acquire an interest in property, or, if further terms for that acquisition remain to be agreed between them so that the interest in property is not clearly identified, or if the parties did not expect their agreement to be immediately binding, neither party can rely on constructive trust as a means of enforcing their original agreement. In other words, at least in those situations, if their agreement (which does not comply with section 2(1)) is incomplete, they cannot utilise the doctrine of proprietary estoppel or the doctrine of constructive trust to make their agreement binding on the other party by virtue of section 2(5) of the 1989 Act. "

62. It is important to appreciate that Arden LJ's comments were very much intended simply as a summary of the circumstances derived from Cobbe in which the parties to an agreement for the acquisition of an interest in property cannot rely on an estoppel or constructive trust "as a means of enforcing their original agreement" or "to make their agreement binding on the other party".

63. It is also important to bear in mind the point subsequently made by the Court of Appeal in Dowding v Matchmove [2017] 1 WLR 749 at paragraphs [31]-[32],

> "31. In his submissions counsel for Matchmove analysed Arden LJ's judgment as envisaging three different situations where section 2(5) could not be relied on: (1) if the parties intend to make a formal agreement setting out the terms on which one or more of the parties is to acquire an interest in property; (2) if further terms for that acquisition remain to be agreed between them so that the interest in property is not clearly identified; and (3) if the parties do not expect their agreement to be immediately binding.
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> 32. As counsel for Matchmove accepted, however, it is important not to construe this paragraph of Arden LJ's judgment as if it were a statute. In our judgment, Arden LJ was not intending to describe three different situations in which section 2(5) would not apply, but rather to describe the Cobbe case in three different ways. That was a case in which the

> parties reached an agreement in principle, but intended to make a formal agreement setting out the terms of the acquisition, further terms remained to be agreed and the parties did not regard the agreement in principle as immediately legally binding. Accordingly, there was no constructive trust upon which section 2(5) of the 1989 Act could bite. The reason why there was no constructive trust was because, as Lord Scott put it, at para 37, "Mr Cobbe never expected to acquire an interest in the property otherwise than under a legally enforceable contract" or, as Lord Walker put it at para 87, "Mr Cobbe was expecting to get a contract".

64. Pulling those threads together, I consider, first, that the passage upon which Mr. Cameron relied in paragraph 15-020 of *Megarry & Wade* is directed (as were the judgments in Cobbe and Herbert v Doyle) at a case in which the claimant is seeking to use estoppel to obtain an order enforcing a contract for sale of an interest in land that does not comply with Section 2. I do not consider that it is intended to undermine the broader point to which I have referred, namely that Section 2 does not inhibit the grant of equitable relief on the basis of a proprietary estoppel provided that such relief does not amount to enforcing a non-compliant contract.

65. Secondly, at no stage in her analysis in Herbert v Doyle did Arden LJ suggest that there was some requirement that the facts of a case be "exceptional" before a proprietary estoppel could be found to exist. That is a simply a comment or characterisation inserted by the authors of *Megarry & Wade*, and I consider that the Judge was right to reject Mr. Cameron's attempt to elevate it to an additional and specific hurdle to be surmounted before an estoppel could be held to exist.

66. What the remainder of the extract from paragraph 15-020 of *Megarry & Wade* does do, however, is to reinforce the point that it cannot be unconscionable for a defendant simply to rely on Section 2 as a defence to an attempt to enforce a non-compliant contract. Hence if a claimant is seeking relief that amounts to enforcement of a non-compliant contract, he needs to point to something else as the basis for an estoppel based on unconscionability.

67. The example given in that respect by *Megarry & Wade* in the footnotes to paragraph 15-020 is Kinane v Mackie-Conteh [2005] EWCA Civ 45. That was a case in which the claimant had been induced to lend to a company (Almack) connected with the defendant on the understanding that he would only make the loan if he got security, and on the strength of a document produced by the defendant which, although it amounted to an agreement for a charge over the defendant's property, did not comply with Section 2 and hence could not validly create a legal mortgage. As with the other cases to which *Megarry & Wade* refers, the claimant sought equitable relief amounting to specific performance of the non-compliant agreement that he be granted a legal mortgage over the defendant's property.

68. The Court of Appeal held on the facts that the defendant had encouraged and represented to the claimant that the security agreement he had produced was valid in order to induce the claimant to make his loan, and hence it was unconscionable for the defendant to rely on Section 2. In her judgment explaining this approach, Arden LJ stated, at paragraphs [28]-[29],

> "28. In my judgment, therefore, a party seeking to reply on proprietary estoppel as a basis for disapplying section 2(1) of the 1989 Act is not prevented from relying in support of his case on the agreement which section 2(1) would otherwise render invalid. Thus, the requirement that the defendant encouraged (or allowed) the claimant to believe that he would acquire an interest in land may (depending on the facts) consist in the defendant encouraging the claimant (by words or conduct) to believe that the agreement for the disposition of an interest in land (here a security interest) was valid and binding. Here, Mr Mackie-Conteh gave Mr Kinane that encouragement. Mr Kinane made it clear that he required security for his loan. Mr Mackie-Conteh responded by providing the security agreement and persuading him that, once he had got that letter (and the cheque for £15,000 had been banked), he should make the loan to Almack. By his conduct, Mr Mackie-Conteh thereby encouraged Mr Kinane to believe that the security agreement was valid and binding. He must stand by that conduct even if he himself misunderstood the effect of section 2(1) on the security agreement. Accordingly, the requirement for encouragement by Mr Mackie-Conteh of Mr Kinane in the erroneous belief that he would obtain a security interest over the property is satisfied.
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> 29. It is to be noted that, even on this scenario, reliance on the unenforceable agreement only takes the claimant part of the way: he must still prove all the other components of proprietary estoppel. In particular, the requirement that the defendant encouraged or permitted the claimant in his erroneous belief is not satisfied simply by the admission of the invalid agreement in evidence. In this sort of case, the claimant has to show that the defendant represented to the claimant, by his words or conduct, including conduct in the provision or delivery of the agreement, that the agreement created an enforceable obligation. The cause of action in proprietary estoppel is thus not founded on the unenforceable agreement but upon the defendant's conduct which, when viewed in all relevant respects, is unconscionable."

69. It is to be noted that Arden LJ's first point in paragraph [28] was that a claimant who was seeking to establish a proprietary estoppel was not prevented from relying for that purpose on the terms of agreement that Section 2(1) had rendered invalid. That is consistent with the approach in paragraph 12-046 of *Snell's Equity* that I have set out above.

70. Arden LJ's second point in paragraph [29] was that the invalid agreement could not *of itself* suffice to establish the estoppel and that there needed to be some *additional* representation or conduct by the defendant upon which the claimant relied. That was said in the context of an attempt by the claimant to obtain equitable relief amounting to specific enforcement of an agreement that had failed to be binding as a result of

non-compliance with Section 2. Hence Arden LJ's observation at the end of paragraph [29] that what she referred to as the "cause of action in proprietary estoppel" needed to be founded in conduct that was unconscionable and not simply on the terms of the unenforceable agreement.

The decision in the instant case

71. I turn to apply the analysis set out above to the findings in the judgment below.

72. I have already indicated in paragraphs 48-55 above why I consider that the relief which was granted by the Judge was not barred by Section 2 because it did not amount to enforcement of the terms of the oral agreement reached in March 2012.

73. I have also indicated in paragraphs 56-65 above why I agree with the Judge that a case does not need to satisfy some super-added test that it be "exceptional" before a claim to a proprietary estoppel can succeed.

74. I further consider that the Judge was right to reject the argument that an estoppel could not arise in relation to the Green Land because the agreement between the parties was incomplete in respect of the Grey Land. The connecting factor between the two pieces of land was that the parties had reached a composite agreement under which Mr. and Mrs. Gossop were to waive the debt of £7,000 as consideration for the sale of both pieces of land. But the basis for the equitable relief granted by the Judge was not the enforcement of that informal agreement by the transfer of land to Mr. and Mrs. Gossop.

75. The unconscionability upon which the Judge found the estoppel to exist related to the promise that had been made to Mr. and Mrs. Gossop in respect of the Green Land upon which they relied to their detriment in performing work to improve that land. There was no uncertainty in relation to any aspect of that matter which would prevent the grant of equitable relief. The estoppel operated to prevent Mr. and Mrs. Howe from claiming possession of the Green Land; the extent of the Green Land had been defined; and so had its permitted use. As such, there was no uncertainty of the type mentioned by Lord Scott in paragraph [28] of his speech in Cobbe.

76. In agreement with the Judge I also cannot see how Mr. and Mrs. Howe can sensibly complain of the relief granted by the Judge in circumstances in which they have been provided with the benefit of waiver of their entire debt, and yet Mr. and Mrs. Gossop have only been given equitable relief in respect of the Green Land. The Judge's approach was in no sense unfair to Mr. and Mrs. Howe in that regard.

77. Accordingly, if the Judge was right to find that the subsequent reliance by Mr. and Mrs. Gossop on the promise made in relation to the Green Land made it unconscionable for Mr. and Mrs. Howe to renege on that promise by seeking possession of the Green Land, I think he was also right to find that the fact that there was uncertainty over the Grey Land made no logical difference.

78. I also consider that the order made by the Judge was not invalidated by the fact that Mr. Howe had not separately represented that he did not intend to rely on "technicalities" (i.e. Section 2). As indicated above by reference to the decision in Kinane v Mackie-Conteh, such an additional factor might well have been essential

before the Judge could have made an order in effect enforcing the non-compliant agreement for sale of the Green Land to Mr. and Mrs. Gossop. But that is not what the Judge ordered.

79. Finally, I also do not consider that the Judge erred in his consideration of the fact that Mr. Gossop subsequently sought to initiate a process to have the agreement with Mr. and Mrs. Howe reduced to writing. I agree with the Judge that there is nothing legally or logically inconsistent in a party seeking to have an agreement for sale of land reduced to writing in order that it can be enforced, and when that is refused, seeking to contend that an equity had arisen at an earlier stage.

80. As is apparent from the summary of the principle in *Snell's Equity* set out in paragraph 33 above, the key question for the purposes of establishing the equity is whether, at the time the party in question acted to his detriment, he reasonably believed that the other person's promise was seriously intended as a promise on which he could rely.

81. In that respect, on one side are cases such as Cobbe where, as a sophisticated property investor, Mr. Cobbe knew that nothing would be binding unless and until a formal contract had been signed ("Mr. Cobbe never expected to acquire an interest in the property otherwise than under a legally enforceable contract" and "Mr. Cobbe was expecting to get a contract").

82. The contrast is with cases such as Dowding v Matchmove [2017] 1 WLR 749 where the key finding by the trial judge was that although the parties knew that there was a "technicality" to be complied with at the end of the day, they regarded the oral agreement that they had reached as binding immediately (see paragraph [35] of the judgment of the Court of Appeal).

83. In the instant case, the Judge plainly accepted the evidence of Mr. and Mrs. Gossop, supported by Sean Howe, to the effect that the deal proposed by Mr. Howe at the March 2012 meeting was accepted by them "there and then" (paragraphs [148]-[149] and [172]-[174] of the judgment).

84. The Judge also expressly held that, at least in relation to the Green Land, there was no basis for a conclusion that the assurances given by Mr. Howe at the meeting "could not seriously be relied upon" (paragraph [187]). I take this to be a finding that Mr. and Mrs. Gossop could seriously rely upon what was agreed at the meeting as conferring upon them a proprietary right in or over the Green Land.

85. I accept that, taken in isolation, there might be said to be some ambiguity in the Judge's comment that Mr. and Mrs. Gossop could reasonably conclude that if they accepted Mr. Howe's suggestions "then he *will follow through* with his assurances" (paragraph [188] of the judgment: my emphasis). However, when considered in the context of what had preceded it in the judgment, in my view it is clear that the Judge meant that the parties intended the oral agreement that they had made to be immediately binding, so that Mr. Gossop could act upon it and Mr. Howe would not subsequently be entitled to refuse to give effect to the promises he had made. In my judgment that was sufficient to form the basis for the finding that when Mr. Gossop acted shortly thereafter to his detriment in reliance on the promises he had received, an estoppel arose.

86. I note Mr. Cameron's point that since the parties envisaged that there would be restrictions on the use of land, the judge should have asked himself whether it must had been intended or contemplated that there should be a subsequent written agreement. This was, in reality, a challenge to the Judge's finding of fact that the parties intended the agreement reached at the March 2012 meeting to be immediately binding and capable of being acted upon. I was not, however, taken on the appeal to any evidence to show whether, and if so, how, the question of restrictions on the use of the land were explored with the witnesses or the point argued before the Judge. In the circumstances I cannot regard the point to be of such inherent or obvious weight to require me to conclude that the Judge's finding that the parties regarded the oral agreement as immediately binding was obviously flawed.

Conclusion

87. For those reasons I conclude that the Judge was right in the conclusion that he reached and the order that he made in relation to the Green Land. The appeal must be dismissed.