



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

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF NO:2016/0193

BETWEEN

Mr Roger Boot

Applicant

and

Bromford Housing Association Limited

Respondent

Property address: Land on the south side of Oak Lane, Burntwood, Staffs

Title number: SF365941

Before: Judge John Hewitt

DECISION

Representation

Applicant: Mr Roger Boot In Person

Respondent: Mr Matthew Haynes Counsel

Decision

1. The decision of the Adjudicator is that:
 - 1.1 The Chief Land Registrar shall cancel the original application dated 13 November 2014 made by the applicant to be registered as the proprietor of the of the whole title; and
 - 1.2 Any application for costs shall be made in accordance with the directions set out in paragraph 65 below.
- NB** Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the trial bundle provided for my use at the hearing.

Background

2. This case concerns a parcel of (essentially garden land) (the Land) which lies between 105 and 107 Oak Lane, Burntwood, Staffs WS7 2HD which are residential properties on an estate.
3. Part of the estate was laid out by Lichfield Council and comprised part of its social housing stock.
4. The Land was first registered at Land Registry on 6 June 1996 and was allocated title number SF365941 [165]. Lichfield District Council (the Council) was the registered proprietor.
5. The respondent, Bromfield Housing Association (Bromford) subsequently entered into arrangements whereby it took over and managed the Council's housing stock. On 17 November 2011 Bromford was registered at Land Registry as the proprietor of the Land.
6. On 13 November 2014 Land Registry received an application made by the applicant (Mr Boot) who sought to be registered as the proprietor of the Land having acquired a title to it by dint of adverse possession.
7. Bromford opposed the application. Land Registry, in its administrative capacity, was not able to dispose by agreement of the objection and on 22 March 2016 the Chief Land Registrar referred the application to the tribunal pursuant to section 73(7) of the Act.
8. Directions were duly given. Each party has served upon the other a statement of case, documents and the witness statements they wish to rely upon.
9. On Thursday 5 January 2017 I had the benefit of a site visit. Present were Mr Roger Boot, Mr Lee Wegg, a portfolio surveyor employed by Bromford and Mr Matthew Haynes, Bromford's counsel.

The hearing

10. The referred application came on for hearing on Friday 6 January 2017.

Mr Roger Boot represented himself. He was supported and accompanied by his brother, Mr Dennis Boot and his sister, Mrs Pearl Banks.

Mr Roger Boot gave evidence on his own behalf [73, 156 and 180] and he then called Mrs Banks [112 and 184] and Mr Dennis Boot [110 and 117] to give evidence on his behalf.

The respondent was represented by Mr Matthew Haynes of counsel.

Mr Haynes called several witnesses:

- Mrs June Meszaros [45 and 145] – tenant of 107 Oak Lane and the sister of Mr Roger Boot;
- Mrs Emma Jackson [114] – resident at 105 Oak Lane since 2002;
- Mrs Michelle Adams [117] – Community Safety Manager – Bromford;
- Mr Jason Holder [130] – Head of Property Maintenance – Bromford;
- Mrs Claire Bolton [133] – Portfolio Advise – Bromford; and
- Mr Lee Wagg [140] – Portfolio Surveyor – Bromford

Bromford had filed and served a witness statement made by PC Paul Seddon [104] but Mr Seddon did not attend the hearing. Evidently, he was engaged on other duties but no evidence to support that was put in.

Those witnesses who gave oral evidence took the oath or affirmed and were cross-examined by the opposite party. All witnesses confirmed that their written evidence was true when signed and remained true. The only witness who wished to correct errors was Mr Roger Boot. He wished to correct paragraphs 8 and 18 of his statutory declaration [156] where references were made as to his uncle, John Hayes having died moved out of 107 Oak Lane in 1976. He did not die at that time but he moved away to a bungalow in Longfellow Road.

Four of the witnesses are siblings:

- Mr Roger Boot (Roger)
- Mr Dennis Boot (Dennis)
- Mrs Pearl Banks (Pearl)
- Mrs June Meszaros (June)

When making reference to one another in the course of their oral evidence they used the forenames shown above. They also referred to John Hayes as 'Uncle John'. For ease of reference in this decision I will do likewise. No familiarity or lack of respect is intended.

The gist of the applicant's case

11. The gist of Roger's case is that in 1977 he began using the Land after Uncle John had moved out of 107 Oak Lane. In his statement of case [73] he simply says that he "*has been using the land since 1977 without objection and surpassed 12 years use in or*

about 1989.” He went to say he wished to rely on his statutory declaration, photographic and registration information and supporting evidence.

12. The statutory declaration dated 12 November 2014 is at [156]. As corrected, in paragraph 8, Roger says that he began using the land after Uncle John moved out. He says at the time there was a pair of gates separating the Land from Oak Lane. He also makes reference to a small asbestos garage being on the Land and a fence ran down the right-hand side separating it from the adjacent property. I take this to refer to 107 Oak Lane.
13. As to his use of the Land Roger says that when Uncle John moved out the Land was ‘wild and overgrown’ and he cut down the weeds and brambles. After that he began to rotovate the Land and began seeding crops on an annual basis. Mostly he grew potatoes, he says, but he has grown other crops, generally vegetables. Roger also says, paragraph 14, that he used the garage to store his old flatbed truck (the Truck) and carried out repairs to other vehicles. When carrying out repairs to other vehicles the Truck would be ‘simply kept on the Land’. He says he took the garage down in about 1995 because of concerns about asbestos and damage to the garage. The Truck remains on the Land and is now kept on the hard standing where the garage used to be.
14. Finally, in paragraph 15 Roger says that he has carried out general maintenance and care of a type expected of a landowner, such as undertaking care of the tree in the middle of the Land. He says that he has also replaced the fence which separates the Land from 107 Oak Lane and that he has replaced the gates and fencing along the frontage with Oak Lane. In cross-examination Roger said that this fencing work started in 2013 and was finished by January 2014. Roger accepted in cross-examination that apart from this fencing and parking the Truck on the Land he has not used the Land much since 1989.
15. Exhibited to the statutory declaration was a letter written by a Mr David Handley of 94 Oak Lane [172]. That letter tends to support in general terms what Roger says in his statutory declaration. The letter is not endorsed with a statement of truth. Mr Handley was not called to give oral evidence. I was told he was elderly and unavailable. No medical evidence to support an inability to get to the hearing was provided. I find I cannot attach much weight to this letter.
16. Starting at [180] is a manuscript document dated 17 May 2015 written by Roger which is a detailed critique of the grounds of objection dated 13 April 2015 [58] filed by Bromford with Land Registry. For the most part it challenges a number of assertions made by Bromford. Roger may or may not be right, but not many of them relate to matters with which I am concerned. In relation to point 25 Roger maintained that he has been in factual possession of the Land for the relevant period 1977-1989 and beyond. In relation to point 33 Roger says: *“I have stated my intention to possess began in 1977 once again they try to imply consent w[h]ere there is none. (Assumption)”*
17. In support of his case Roger called Pearl to give oral evidence. A letter written by Pearl is at [184] and her witness statement is at [112]. In broad terms Pearl supports what Roger has to say. She also makes reference to Roger using the Land to repair cars, her own car included on several occasions. Pearl makes reference to Roger

having 'recently' erected a new fence with gravel boards along the boundary line and along the front with a locked gate to the left. In cross-examination Pearl made reference to a privet hedge which was planted along the boundary fence line separating the Land and 107 Oak Lane. The hedge ran the whole length of the boundary from Oak Lane right down to the bottom. Evidently this hedge grew and grew and became very large. Pearl said that sometimes she trimmed the hedge on her visits to see June. Pearl said that eventually the hedge was taken down but she did not know when or by whom.

18. Roger then called Dennis to give oral evidence. A letter dated 17 May 2014 written by Dennis is at [177] and his witness statement is at [110]. In broad terms Dennis supports what Roger has to say. He also makes reference to Roger repairing cars on the Land, rotovating the Land and growing produce, mostly potatoes. Dennis recalls the boundary between the Land and 107 Oak Lane being a large privet hedge, about 6' to 7' high. In cross-examination Dennis said that the hedge was removed in the 2000's, but he did not know who did it. With reference to the Truck Dennis says that it has been on the Land for "25 yrs+". Dennis recalled the garage was taken down in the 1990's by Roger who got a trailer to take away the remnants.

The gist of the case for the respondent

19. In relation to the use of the Land the respondent relied fairly heavily on the evidence of June Meszaros who gave oral evidence. June's witness statement written by herself in her own hand is at [145]. The gist of her evidence is that Roger has hardly ever used the Land. June accepted that in the early days potatoes were planted on the Land but she does not know who planted them. She suspected that some might have self-seeded from seedlings planted by Uncle John.
20. June said that she started to use the Land in 1980 and that she has had sole and continuous use of the Land since 1986 when her husband, Mike, left her. She has grown plants, laid the lawn and weeded the Land and laid down blankets and boards to suppress further weed growth. June was adamant that no one bothered her using the Land, and certainly not Roger. June was certain the Land was not part of her tenancy of 107 Oak Lane. By 2004 June considered that she may have acquired squatters' rights to the Land and took advice from a solicitor, she made reference to a barrister's report. I was not told what that advice was or what the outcome was. Evidently an application was not made to Land Registry at that time.
21. June said that she did remember some cars being repaired on the Land but she was not sure if Pearl's cars were among them.
22. June recalled the garage being taken down. June could not recall by whom, but she did recall breaking up pieces of it with a large hammer and putting the pieces in bags.
23. June said that for many years the Truck was parked, with her permission, on the driveway of 107 Oak Lane. In 2004 she went on holiday to Greece with her daughter, and whilst away, as a surprise, her children (or some of them) carried out a makeover of her garden at 107 Oak Lane. As part of this project they dragged the Truck from the driveway onto the roadway. Evidently, they were hoping the council might take it away. The council did not. Roger learned of this and pushed the Truck onto the front part of the Land. This is shown in the photograph at [187]. It can be seen that at that

time there was no fencing along the frontage of the Land with 107 Oak Lane. The photograph at [188] said to have been taken in 2012 shows the Truck still parked at the front of the Land near the footpath, and that some fence posts have been erected. The photograph at [189] also said to have been taken in 2012 shows the Truck parked in front of the hardstanding with the silver birch tree behind.

24. By 2008 the council had transferred its housing stock to Homezone. Homezone had concerns about June's upkeep and use of 107 Oak Lane, which included some mattresses apparently left out in the garden and some building works which had been undertaken. Officers made several visits and formal complaints were made. Homezone focussed on the garden and evidently assumed that the Land was part of the garden let with the tenancy. Homezone objected to the Truck being parked on the Land and required June to remove it. June said that she refused on two grounds. First, the Land was not included in her tenancy. Secondly, that she believed she had rights to the land in light of the advice given to her in 2004.

25. The housing stock was then transferred to Bromford. Bromford continued to complain to June about the state of 107 Oak Lane and required various works to be carried out, including the removal of the truck. Relevant correspondence between July 2011 and November 2013 is at [216-232]. June explained that Roger was aware that Bromford was giving her a hard time over the Truck being on the Land, which June believed to be her land. June and Roger had discussions about this and to help show that the Land was not part of the tenancy of 107 Oak Lane, the decision was arrived at to fence off the Land. Roger offered to carry out this work, but June says one of her children, Zitka, paid for some of the materials.

26. In late 2013 and early 2014 concrete posts and fence panels were erected along the boundary between the Land and 107 Oak Lane, by Roger, assisted by his son Richard.

27. June says that once the Truck was fenced in Roger began to have thoughts about wanting to have the Land for himself and suggested building a house to earn some money. Roger offered to give some of that money to June to enable her to buy her home. June said that to go along with what Roger wanted to do would involve her telling a lie and her beliefs as a Jehovah's Witness would not let her do so. This refusal led to a falling out between Roger and June.

28. June also said that on 10 October 2014 Roger and his son, Richard, turned up and started to replace some fence panels and put down gravel boards. June thought this might block her in and prevent her having access to the Land. June says she was totally ignored and the police were called by her son. By the time they arrived Roger and Richard had left.

29. June was shown a letter dated 13 October 2014 [64] written by her and sent to Bromford, which was in these terms:

"To whom it may concern
I am writing this letter to let you know that I know you are going head to head with my brother Roger Boot over the land adjacent to my address as stated.

But the main reason I write is to state I am not involved with what my brother has started, as that would mean I would be going along with a lie. And as I take my position with Jehovah as serious, I would not go along with a lie.

Besides the truth is, I am the one who has managed the land for over 20 yrs and am still doing so.

So if you have had the perception that I have put my brother up to anything regarding the land, you are wrong.

[Signed]"

29. The respondent also called Mrs Emma Jackson to give oral evidence. Mrs Jackson moved into 105 Oak Lane in 2002. Mrs Jackson said that at time the Truck was parked on the driveway of 107 Oak Lane and it was a couple of years later that it was pushed onto the top part of the Land and then later, after 2012 it was pushed further down to just in front of the hardstanding where it remains today.
30. Mrs Jackson said that in 2004 June's family tidied up the Land, put grass down and that June has always maintained the land. Mrs Jackson has seen June weeding and laying down blankets and wooden panels to suppress further weed growth. She said she noticed it because it was a bit odd but it was how June manages the garden.
31. Mrs Jackson said that she had never seen Roger maintaining the Land, although she did recall him having a skip and putting some rubbish into it and she did recall him putting up some fencing.
32. Bromford then called Ms Michele Adams [117] to give oral evidence. Ms Adams confirmed her witness statement was true. Ms Adams produced a letter dated 31 January 2014 [63] written by Bromford to June in which reference was made to Kerry Cook, Housing Manager, having visited on 29 January 2014 and found that the top of the land adjacent to 107 Oak Lane had been fenced off. Ms Adams also produced June's letter dated 13 October 2014 referred to in paragraph 29 above. Ms Adams witness statement contains hearsay evidence of what other officers were recorded as having said or noted during visits to the property. The gist of that hearsay tends to support and corroborate what June had to say in her evidence.
33. Ms Claire Bolton gave oral evidence. Her witness statement is at [133]. In answer to questions from me Ms Bolton agreed that Bromford did not know whether the Land was included in June's tenancy agreement and that the suggestion it was, was pure speculation. Ms Bolton also agreed that she had no evidence to support her contention that "*any use of the Land by the Applicant will have always been with the consent of Mrs Meszaros under her tenancy agreement....*". Ms Bolton agreed that she simply does not know what consent, if any, Mrs Meszaros may have given to Roger.
34. Mr Jason Holder was called by Bromford. He is employed by Bromford as Head of Property Maintenance. Prior to his employment by Bromford Mr Holder was employed, in a similar capacity, by the council. Over the years Mr Holder's work has required him to have a good working knowledge of the housing stock and he regularly visited the estates and neighbourhoods making up the portfolio. Further, Mr Holder

was born and brought up in the family home about 500 metres from the Land. He lived there till about 2000 and while growing up there frequently visited friends who lived in the vicinity of 107 Oak Lane and the Land and regularly passed up and down Oak Lane, sometimes on foot and sometimes on his bicycle. He was also a regular visitor to the Boney Hay Working Mens Club which is located directly opposite the Land.

35. The gist of Mr Holder's evidence was that his impression was that the Land always looked as if it formed part of the garden of 107 Oak Lane. There was no obvious boundary feature, but there used to be a small privet hedge where the fence now stands. Mr Holder said that he had never seen anyone growing vegetables on the Land or using it to repair cars.
36. Mr Holder accepted in cross-examination that there is one tree on the Land, a silver birch. He said that for the past five years Bromford has inspected and maintained that tree. It is now on a three-yearly inspection cycle. It was last inspected in 2015 when it was recorded that no works to the tree were required.
37. The final witness called was Mr Lee Wagg. His witness statement is at [140]. Mr Wagg said it was true. Mr Wagg produced internal records produced after the date when Roger made his application to Land Registry. With no disrespect to Mr Wagg his evidence was not of assistance to me as regards the matters I have to decide.

Findings of fact

38. The critical period I am concerned with is the period 1977 to 1989. There is virtually no documentary or photographic evidence before me concerning this period. There is relatively sparse evidence from Roger, Pearl and Dennis which is hotly contested by June.
39. Clearly there are family issues between the four siblings such that I find I have to treat their oral evidence with some caution save where it is not contested or where it is corroborated by documents or others of a more independent nature. There is further post 1989 evidence which is also contentious. Whilst not directly relevant I find that this evidence assists me to evaluate the 1977 to 1989 evidence to help me ascertain who has the more accurate recollections of events.
40. Against this background and in the light of the written and oral evidence presented to me I make the findings of fact set out below.
41. 107 Oak Lane is a three-bedroomed semi-detached council house built in 1948. The then local authority granted Uncle John a tenancy of the house.
42. The Land, the subject of this reference lies to the west of 107 Oak Lane. Further to the west is 105 Oak Lane in which Mrs Jackson has lived since 2002. That property was built later, perhaps in the 1960's and it is of a different style and type of construction. I do not know whether it was built by the local authority or by a private developer. As it has a lower number I infer that at some stage the house numbers in Oak Lane may have been re-assigned, but that is not material to what I have to decide but it is a curiosity.

43. In the late 1940's/early 1950's Uncle John laid a hard standing, very roughly in the middle of the Land and erected upon it a garage or workshop made of sheet metal or tin. In the 1960's Uncle John demolished that garage or workshop and replaced it with a more substantial structure which comprised sheets of an asbestos material fixed to a wooden framework. Uncle John parked his car in this garage. He also planted and grew vegetables on the Land behind the garage. This evidence of Roger and Dennis was not challenged on these points.
44. Uncle John moved out of 107 Oak Lane in 1976. In 1976 June moved in and was granted a tenancy. Pearl, her then husband and their children also moved in at that time but Pearl and her family moved out after a short while; returning in 1978 until about 1981 when she was granted a tenancy of a flat nearby.
45. It was common ground that June was granted a tenancy of 107 Oak Lane. Exactly when and on what terms is not clear. In 1997 Lichfield District Council transferred its housing stock to an organisation known as Homezone who then transferred it to Bromford. The files and papers passed on to Bromford make reference to June's tenancy being dated 15 June 1981, but none of those concerned with these proceedings have been able to provide a copy. It may be helpful to record here that Bromford does not now assert that the Land is comprised within June's tenancy, certainly it has not adduced any evidence to suggest that might be the case.
46. At some point potato seedlings were planted to the rear of the Land, probably by Uncle John or by Roger. Potatoes were grown on the Land after Uncle John moved away.
47. Also after Uncle John moved away Roger parked some cars on the Land and worked on them, using the garage to store his tools and equipment. This was done by Roger on his own volition and without reference to or with the consent of June. This was only carried out for a few years and had ceased by 1980 or thereabouts.
48. Since 1980 or thereabouts Roger has not cultivated the Land, kept it, maintained it or used it to repair cars or store his tools and equipment. On this issue I prefer the evidence of June who, I find, has the more accurate recollection of events. I prefer June's evidence because quite a good deal of it (albeit post 1989) is corroborated by others who are independent. I can give some examples.
49. On her own evidence June's use of the Land was minimalistic amounting to the keeping the weeds down. This accords with the evidence of Mrs Jackson and Mr Holder. Mrs Jackson also corroborates the 2004 garden makeover and the move of the Truck from the driveway of 107 Oak Lane onto the Land and then further down the Land. This is consistent with the photographic evidence.
50. Correspondence and file notes prepared by Bromford support June with regards to the presence of the Truck on the Land and their wish that she takes steps to remove it. I find that June had sought legal advice in 2004 about her rights to the Land and in the light of that advice she resisted the pressure from Bromford with regards to the use of the Land. That pressure culminated in the fencing of the Land in late 2013 which was completed by January 2014. The fact of that fencing was noted by an officer of Bromford who wrote the letter referred to in paragraph 32 above. I find the fencing

was erected by Roger with the help of his son Richard. This was undertaken with the knowledge and approval of June and her son Zitka contributed to the cost of some of the materials which he paid for on his credit card.

51. June gave evidence about an event which occurred at the Land on 10 October 2014. It had something to do with the gravel boards being placed by Roger and his son Richard. It was not in dispute that something occurred. Bromford has produced a witness statement of PC Paul Seddon [104]. It bears a statement of truth. It recites a record in a log as follows:

“Incident 407 of 10/10/14 – refers to a third party report stating that Boot was at the location, fencing off the unoccupied piece of land as he’d said that it was his, as his car had been parked on it for years. Meszaros had told him to stop doing this ay which he was alleged to have said, ‘If you get in my way or move the boards I will clout you and put you in hospital. Meszaros had subsequently called the informant who had in turn, contacted the Police.

On Police attendance, they report that Boot had already left the location and that there had been no damage caused to Meszaros’ address nor were there any other offences disclosed. Boot was spoken to on the phone and advised. The matter was recorded as a family incident but no further Police action was taken.”

52. In his oral evidence Roger accepted that he and Richard had attended the Land on 10 October 2014 with some panels and gravel boards. Initially he denied that the police were ever called and that they had not arrived whilst he was there. Later, in cross-examination he did accept that he received a telephone call from the police at about this time. He could not now recall what they had to say to him save that it was about the fencing and that he was certain he was not advised to keep away from the Land.

53. Despite the absence of PC Seddon I find that I can give some weight to his evidence. In a sense he simply produces an extract from a police log record. I find that it is an accurate record of the logged entry and records what the officers who attended were told. Whether the detail were of what they told was accurate is perhaps another matter, but I find it is independent evidence of corroboration of what June had to say about police being called to an incident which Roger had flatly denied at the outset. To my mind it tends to support the general tenor of June’s evidence which leads me to prefer her evidence where it conflicts with that of Roger.

54. The timing is also of some significance because some three days later June wrote to Bromford the letter referred to in paragraph 29 where June is plainly distancing herself from Roger’s claim to the Land. A rift had occurred between Roger and June and I find that it was caused by June’s unwillingness to give false evidence to support Roger’s claim to the Land. Such reluctance is also consistent with June’s own claim to the Land which she had sought advice about in 2004.

The law and discussion

55. Both parties made submissions to me as to the law to be applied. There was no difference in substance between them.

For the sake of convenience, a summary of the relevant law is set out in the Schedule to this decision.

56. The burden of proof rests on the applicant Roger and it is a high burden.
57. On the evidence before me I conclude that Roger has not made out his case. I accept that Roger used the Land on occasions between 1977 and 1980 and during that period he may have grown potatoes or other vegetables on it. But such occasional and transient use is not sufficient to establish a case.
58. I find that Roger used the Land at that time because it was convenient to him to do so, Uncle John having moved out recently. After about 1980 Roger's interest in the Land waned and he used it rarely, if at all. Such limited maintenance of the Land as was undertaken after that was undertaken by June.
59. On his own admission, Roger's maintenance of the Land after 1989 was minimal. He placed much emphasis on his alleged use of the Land to store the Truck. He says it was on the Land throughout. I reject that evidence. I find that the Truck was stored or parked on the driveway of 107 Oak Lane until 2004 when it was removed as part of the garden makeover following which Roger moved the Truck onto the Land. I am thus satisfied that the Truck was not parked on the Land between 1977 and 1989.
60. On the evidence, I reject Roger's submission that he has had uninterrupted use and continuous use of the Land since 1977. I do not accept that such use as he did make gave him the necessary degree of custody and control of the land. There is no evidence that the original gates leading on to the Land that were there when Uncle John moved out were locked or otherwise secured. I find that fencing work was not undertaken by Roger until 2013 and that was part of a joint venture with June as part of a strategy to get Bromford off her back as regards the alleged breach of the tenancy agreement and the parking of the Truck on the Land at that time. The fencing was not erected by Roger at that time to secure the property and enable him to have custody and control of it. I am reinforced in this conclusion by the photographic evidence presented to me. Further Roger has not had exclusive possession for the requisite period having regard to June's use of the Land since 1980.
61. For much the same reasons I conclude that Roger did not have the requisite intention to possess the Land; he simply used it occasionally when it was convenient to him to do so.
62. I conclude that Roger's real interest in the Land was not sparked until 2013 when he agreed to do some fencing work to help June get Bromford off her back. Roger sought the assistance of June to pursue a claim to a title by dint of adverse possession. Relations became strained when June would not cooperate in the manner in which Roger sought.
63. In these circumstances, I find that Roger has not made out his case and I have required the Chief Land Registrar to cancel his application to alter the register.

Costs

64. In this jurisdiction, as with the civil courts, costs follow the event save in exceptional circumstances. I am therefore minded to make a costs order in favour of Bromford. I will, however, give careful consideration to any applications for costs that may be made.

65. If the parties are unable to reach agreement on costs, any applications for costs shall be made in accordance with the following directions:

65.1 Any application for costs shall be made in writing by **5pm Friday 3 March 2017**. The application shall be accompanied by a schedule of the costs and expenses incurred/claimed supported by invoices/fee-notes where appropriate. A breakdown shall be given of the work carried by solicitors and the charge-out rate and grade of the fee-earner(s). A copy of the application and supporting schedule shall be sent to the opposite party at the same time as it sent to the tribunal.

65.2 The recipient of an application for costs shall by **5pm Friday 17 March 2017** file with the tribunal and serve on the applicant for costs representations on the application and on the amount of the costs claimed and any points of objection they wish to take.

65.3 The applicant for costs shall by **5pm Friday 24 March 2017** file with the tribunal and serve on the opposite party representations in reply, if so advised.

66. In the absence of any objections I propose to make a determination on any application for costs, and if appropriate, to assess any costs ordered to be paid, without a hearing and on the basis of the written representations filed and served pursuant to the directions set out in paragraph 65 above.

Dated this 17 January 2017

John Hewitt

By order of the Tribunal



**The Schedule
Legal Considerations**

1. In order to establish adverse possession a squatter or adverse possessor has to show that he has dispossessed the paper owner by taking possession himself and that he has remained in such possession for the requisite period.
2. In relation to unregistered land the requisite period is twelve years.

Registered Land

3. In relation to registered land there are two considerations, the new regime and the transitional provisions.

The new regime

Section 96 of the Land Registration Act 2002 provides:

“96 (1) No period of limitation under section 15 of the Limitation Act 1980...shall run against any person, other than a chargee, in relation to an estate in land or rentcharge the title to which is registered

Section 97 of the Act gives effect to Schedule 6 of that Act. Schedule 6 sets out the circumstances in which an adverse possessor may apply to the Land Registry to be registered as a proprietor of an estate. The requisite period is 10 years. In addition, the adverse possessor must meet certain conditions, notably those set out in paragraph 5.

4. Paragraph 11 of Schedule 6 provides a meaning of ‘adverse possession’ which is as follows:

“11 (1) A person is in adverse possession of an estate in land for the purposes of this Schedule if, but for section 96, a period of limitation under section 15 of the Limitation Act 1980 (c.58) would run in his favour in relation to the estate.

(2) A person is also to be regarded for those purposes as having been in adverse possession of an estate in land:-

(a) where he is the successor in title to an estate in land, during any period of adverse possession by a predecessor in title to that estate, or

(b) during any period of adverse possession by another person which comes between, and is continuous with, periods of adverse possession of his own.

(3) In determining whether for the purposes of this paragraph a period of limitation would run under section 15 of the Limitation Act 1980 there is to be disregarded:-

(a) the commencement of any legal proceedings, and

(b) paragraph 6 of Schedule 1 to that Act.”

The transitional provisions

5. The Act makes transitional provisions. Paragraph 18 of Schedule 12 provides as follows:

“18 (1) Where a registered estate in land is held in trust for a person by virtue of section 75(1) of the Land Registration Act 1925 immediately before the coming into force of section 97, he is entitled to be registered as the proprietor of the estate.

(2) A person has a defence to any action for the possession of land (in addition to any other defence he may have) if he is entitled under this paragraph to be registered as the proprietor of an estate in the land.

(3) ...

(4) ...

(5) ...

6. Section 97 of the Act came into force on 13 October 2003.

7. Paragraph 75 of the Land Registration Act 1925 provides as follows:

“75 (1) *The Limitation Acts shall apply to registered land in the same manner and to the same extent as those Act apply to land not registered, except that where, if the land were not registered, the estate of the person registered as proprietor would be extinguished, such estate shall not be extinguished but shall be deemed to be held by the proprietor for the time being in trust for the person who, by virtue of the said Acts, has acquired title against any proprietor, but without prejudice to the estates and interests of any other person interested in the land whose estate or interest is not extinguished by those Acts.*

(2) *Any person claiming to have acquired a title under the Limitation Acts to a registered estate in the land may apply to be registered as proprietor thereof.*

The Limitation Act 1980

8. The Limitation Act 1980 provides as follows:

“15 (1) *No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.*”

“17 Subject to:-

(a) ..., and

(b) section 75 of the Land Registration Act 1925;

at the expiration of the period prescribed by this Act [12 years] for any person to bring an action to recover land... the title of that person to the land shall be extinguished.”

Schedule 1

“8 (1) *No right of action to recover land shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run (referred to below in this paragraph as ‘adverse possession’); and where under the preceding provisions of this Schedule any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.*

(2) *Where a right of action to recover land has accrued and after its accrual, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be treated as having accrued and no fresh right of action shall be treated as accruing unless and until the land is again taken into adverse possession.*

(3) ...

(4) *For the purpose of determining whether a person occupying any land is in adverse possession of the land it shall*

not be assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter's present of future enjoyment of the land.

This provision shall not be taken as prejudicing a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case."

General Principles

9. The right of action accrues when the squatter goes into adverse possession of the land.
10. It is now settled that the interaction of the Limitation Act 1980 and s75 of the LRA 1925 does not engage human rights issues – see *Emmanuel Ofulue v Erica Bossert* [2008] EWCA Civ 7.
11. Although the 2002 Act introduced a new regime for an adverse possessor to make an application to be registered as the proprietor of an estate in land it did not make any changes to the concept of adverse possession and the circumstances in which a person will be held to be in adverse possession of land. Accordingly, the well established principles and body of law on this subject continues to be of relevance.
12. There is a presumption that the paper title owner of land is both in physical possession of the land and has the intention to possess it. The paper owner is deemed to be in possession as being the person with the prima facie right to possession. If the law is to attribute possession to someone who has no paper title to be possession, he must be shown to have both **factual possession** and the requisite **intention to possess**. Both elements are equally important and both must be shown.
13. The burden of proof rests on the adverse possessor. The standard of proof from an adverse possessor who takes land without the true owner's consent is a high one – see *Powell v McFarlane* [1977] 38 P & CR 452 at 472. The evidence in support of the claim must clear, affirmative and unequivocal – see per Sachs LJ in *Tecbuild Limited v Chamberlain* [1969] 20 P&CR 633 at 641 and per Rimer LJ in *Sava v SS Global & anor* [2008] EWCA Civ 1308 at paragraph 74.
14. The law is now clearer, at least to some extent. The modern principles were reviewed and clarified by the House of Lords in *J A Pye (Oxford) Limited v Graham & anor* [2002] UKHL 30; [2003] 1 AC 419 in which Lord Browne-Wilkinson (with whom the other members of the House agreed) approved the much admired approach of Slade J in *Powell v McFarlane*. It is clear from this authority that the question for a judge dealing with a claim to adverse possession is whether the occupier has been in factual possession over the relevant period, i.e. has he used the land as an occupying owner might have been expected to use it while no-one else has done so; there must be "a sufficient degree of exclusive physical control".

Factual possession

15. The principles may be summarised as follows:
 - 15.1 Factual possession signifies an appropriate degree of physical control of the land.

- 15.2 Control must be unitary or single and exclusive; there can be only be one person in possession at any one time.
- 15.3 The question what acts constitute exclusive physical control must depend on the circumstances of each particular case, having regard to the nature of the land and the manner in which it is commonly used or enjoyed.
- 15.4 Broadly what must be shown to constitute factual possession is that the adverse possessor has dealt with the land as an occupying owner might have been expected to do with it and that no-one else has done so.
- 15.5 It is sometimes difficult to determine what side of the line the facts of a particular case will fall. See, for example *Treloar v Nute* [1977] 1 All ER 230 where the Court of Appeal assumed that the trial judge found that acts such as grazing cows, taking spoil and partially filling a gully, storing materials and riding motor-cycles on the land were sufficient acts and which the Court considered to be on the border line, but just sufficient to constitute factual possession. In *Buckinghamshire County Council v Moran* [1990] Ch 623; [1989] 2 All ER 225 the crucial acts of possession consisted of securing a complete enclosure of the plot and the changing of locks on a gate.
- 15.6 The Court of Appeal has said that it is not possible to lay down any specific rules as to what may or may not constitute possession. In *Lord Advocate v Lord Lovatt* [1880] 5 App Cas 273 at 288 Lord Hagan's regularly approved statement said:
- "The acts implying possession in one case may be wholly inadequate to prove it in another. The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow with due regard to his own interest – all these things, greatly varying as they must, under various conditions, are to be taken into account in determining the sufficiency of possession."*
- 15.7 Possession must be open and obvious such that if the true owner, if he took the trouble to be aware of what was happening on his land, would know that the adverse possessor was in possession. In *Prudential Assurance Co Limited v Waterloo Real Estate Inc* [1999] 2 EGLR 85, Peter Gibson LJ said:
- "It would plainly be unjust for the paper owner to be deprived of his land where the claimant had not by his conduct made clear to the world including the paper owner, if present at the land, for the requisite period that he was intending to possess the land..."*
- 15.8 Possession can obtained or continued through an agent such as a contractor, licensee or a tenant provided it is clear that the acts done and relied upon were done with the adverse possessor's authority – see *Roberts v Swangrove Estates* [2007] EWHC 513 (Ch).
- 15.9 Once the possession has been established it can only be ended within the requisite period by the occupier vacating the property, by the occupier giving a written acknowledgement of title, by the true owner granting the occupier permission or a tenancy of the land or by the true owner physically re-entering the land, or part of it, and recovering possession.

Intention to possess

16. The intention to possess is best explained by Slade J in *Powell v McFarlane* as;

“... the intention, in one’s own name and on one’s own behalf to exclude the world at large, including the owner with the paper title, so far as was reasonably practicable and so far as the processes of the law would allow.”

17. The principles may be summarised as:-
- 17.1 The intention must be to possess the land for the time being to the exclusion of all others, including the paper owner.
 - 17.2 The adverse possessor need not also show or demonstrate an intention to own the land; it is sufficient if he intends to possess the land for the time being.
 - 17.3 The adverse possessor must show the absence of the paper title owner’s consent to the use of the land.
 - 17.4 The intention to possess must be unequivocal and manifest throughout the requisite period to establish the claim. In *Inglewood Investment Company Limited v Baker* [2002] EWCA Civ 1733 at para 19 Slade J said:
“... the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner.”
 - 17.5 Promises to move off the land, even if such promises are not kept, amount to evidence that the occupier did not have the requisite intention to possess the land.
18. There has been some conflict in the authorities as to the nature of the test to apply where a squatter (who is not a tenant) believes, wrongly, that he has the permission of the owner to use the land.
Contrast Hart J in *Clowes Developments (UK) Limited v Walters* [2006] 1 P&CR 1 at paragraph 40:
“A person who is in factual possession and who intends to remain in possession (and to use that factual possession for his own benefit) so long as the true owner continues to permit him to do so does not have the necessary intention to possess for the purpose of starting a period of limitation running in his favour.”
- With David Richards J in *Wretham v Ross* [2005] EWHC 1259 (Ch) at paragraph 41:
“An erroneous belief by the occupier that he has the consent of the owner does not mean that he is not in possession of the property. On the contrary, the missing element of the owner’s consent will mean that he is in adverse possession.”
19. The conflicting authorities were reviewed by HHJ Marshall QC sitting as a High Court Judge in *J Alston & Sons Limited v BOCM Pauls Limited* [2009]. She sided firmly with David Richards J.

20. Given the *Alston* decision the matter is now settled, at any rate at any level below the Court of Appeal and I have to follow *Alston*.