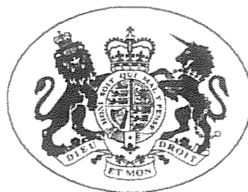


[2019] UKFTT 0018 (PC)

REF/2017/0612

**PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002**

BETWEEN

CARMARTHENSHIRE COUNTY COUNCIL

APPLICANT

and

JUSTIN STANLEY ADAMS

RESPONDENT

Property Address: Coracle Tavern, Cambrian Place, Carmarthen SA31 1QG

Title Numbers: CYM98145

Before: Judge Owen Rhys

Sitting at: Swansea Civil Justice Centre

On: 12th October 2018

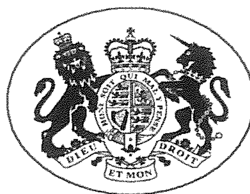
ORDER

IT IS ORDERED that the Chief Land Registrar shall give effect to the Applicant's application in form AP1 dated 10th October 2016.

Dated this 5th day of November 2018

Owen Rhys

BY ORDER OF THE TRIBUNAL



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Applicant representation:	Mrs Catherine Collins of Counsel instructed by Head of Administration and Law
Respondent representation:	Ms Rachel Anthony of Counsel instructed by Carreg Law

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D E C I S I O N

Background

1. The Applicant ("the Council") is the registered proprietor of two titles, CYM313772 being 32-84 Woods Row Court, Carmarthen, first registered on 6th October 2016. It is also the proprietor of CYM314249, 1-15 Cambrian Court,

Carmarthen, first registered on 4th October 2016. The Respondent is the registered proprietor under title number CYM98145 of the Coracle Public House, Cambrian Place, Carmarthen, first registered on 24th October 2002. By an application in form AP1 dated 10th October 2016, the Council applied to alter the register by removing two parcels of land from the Respondent's title and adding them to the titles referred to above.

2. The two parcels of land adjoin the Coracle to the north-east and south-west. The parcel to the north-east (referred to as parcel "A") lies at the entrance to the small housing estate known as 32-84 Woods Row Court. Until the events I shall describe, the area had the following appearance. It was enclosed by the flank wall of the Coracle to the west, and to the east by the brick wall that divided it from the footpath into Woods Row Court. To the south it was enclosed by a brick wall that separated it from the courtyard leading into Woods Row Court, into which a large steel gate was set. To the north, where it abutted the public highway, it was enclosed by a brick wall. Access to the area was therefore solely obtained through the steel gate in the brick wall to the south which, in turn, was accessed over the common areas of Woods Row Court. The parcel of land to the south-west (parcel "B") was enclosed by the flank wall of the Coracle to the north, and by brick walls on the other three sides. There is a steel gate set into the wall to the south. Access to this area was therefore only obtainable through this gate, which in turn gives onto the common parts of another small housing development known as 1-15 Cambrian Court.

3. Prior to the events described below, both parcels were laid out as laundry drying areas for the use of the occupants of the adjoining housing developments. These were built by the Council in the 1970s and were until recently designated as sheltered housing. They have been let to social housing tenants. Each area contained a rotary clothes dryer, and notices were posted on the gates as follows: "*This washing line area will be opened at 8 a.m every morning and will be closed when the last of the washing is removed no later than 8 p.m*". There were also signs in place indicating that the areas were for the Council's tenants only. The

walls surrounding the areas are constructed to a somewhat unusual design which closely matches the brickwork of the Council's housing units and common parts.

4. It is common ground between the parties that Parcel A should have been included in the title when CYM313772 was first registered. Equally, it is accepted by the Respondent that Parcel B should have been included in the Council's title CYM314249. Instead, they have both been registered as part of the Respondent's title CYM98145, which the Respondent acquired in July 2015. Prior to that time, the Coracle had been vacant for several years, having been closed down by the authorities due to persistent drug dealing and drug use on the premises. The Respondent's father, Mr Stephen Graham Adams, had been the brewery tenant of the Coracle between 1993 and 2008. The Respondent grew up at the Coracle, continuing to work as his father's bookkeeper after 2002 when he ceased to reside there.

Events leading up to the application.

5. According to Mr Adams senior, the Coracle had been advertised for sale for several months in 2015 without much interest. He came to hear about it, and contacted Christies, the selling agents. Mr Adams, being familiar with the Coracle, was aware of the Parcels A and B, and wrote to the Applicant asking whether or not they owned this land. The correspondence was dealt with by Mr Peter Edwards, the Valuations Manager. He wrote a holding email to Mr Adams, and instructed Sian Matthias, one of the team surveyors, to investigate the situation. Ms Matthias visited the site and took some photographs. She came to the view that the parcels had been mistakenly registered in the title of the Coracle, and reported back to her superior to that effect. This occurred on 18th May 2015. It appears that Mr Edwards did not revert to Mr Adams at this point, and on or about 2nd June 2015 the Respondent purchased the Coracle. At this time, of course, both Parcels A and B were laid out as drying areas, and carried signs indicating that they were for the sole us of the Council's tenants.

6. In or about January 2016 the Respondent caused locks to be placed on the gates into the drying areas, with printed notices attached with cable ties stating that the areas were owned by the Coracle and use of the land without the consent of the

owners would amount a trespass. This generated complaints from some of the Applicants' tenants, and Ms Matthias again visited the area and took photographs, which are in evidence. Later in that year, the Respondent caused the wall separating Parcel A from the street to be completely removed, thus allowing access for cars and pedestrians into it. Subsequently, a section of the brick wall separating Parcel B from Cambrian Place was removed, and a bench and table placed within the area. The rotary dryers and the Council's signage were also removed.

7. On 16th October 2016 the Council made application to the Land Registry in form AP1 for alteration of the register, to remove Parcels A and B from the Respondent's title and add them to CYM313772 and CYM314249, respectively. By letter dated 9th November 2016 the Respondent objected to the application, and the dispute was referred to the Tribunal under section 73(7) of the Land Registration Act 2002 ("LRA 2002") for resolution. I heard this case at Swansea Civil Justice Centre, having had the benefit of a site view in the presence of the parties on the preceding day. For the Council, evidence was given by Mr Peter Edwards, Mr Julian Williams, Ms Yana Evans, Ms Jennifer Bowling, and Mr Edward Clarke. The Respondent and his father also gave evidence on the other side. Mrs Collins of Counsel represented the Council, and Ms Anthony of Counsel the Respondent.

The legal framework.

8. Although in the initial stages of this dispute the Respondent did not concede that the Council could show an unregistered title to Parcels A and B, at the outset of the hearing that concession was made. Having looked at the pre-registration deeds, and the various plans and aerial photographs produced by the Council, that concession was plainly correct. The Council did have title to the parcels, and, therefore, they should have not have been included within the registered title of the Coracle when first registration took place in 2002. Clearly, it was a mistake, capable of correction under paragraph 5(a) of Schedule 4 to the LRA 2002. By paragraph 6(3), and where the mistake is proved, it is provided that the alteration to the register must be made unless there are exceptional circumstances

which justify not making the alteration. However, the position is different where the proposed alteration affects the title of a proprietor in possession, in that additional protection is given by the terms of paragraph 6(2), to which I refer below.

9. Two preliminary questions therefore arise. First, does the proposed alteration "affect the title" of the Respondent. Secondly, is the Respondent "in possession" for these purposes? Mrs Collins, for the Council, argues that the parcels in dispute fall within the general boundaries of the Respondent's title. If they are removed, therefore, the general boundaries will remain the same and accordingly the Respondent's title will not have been affected by the alteration. She refers me to the decision of the Court of Appeal in Drake v Fripp [2012] 1 P & CR4, and particularly the passage at paragraph 20 in which Lewison LJ considers the distinction between a "boundary dispute" and a "property dispute".

10. Although there can never be absolute clarity as to what is or is not included within the general boundaries rule, I am satisfied that the two parcels in question are separate, distinct and easily identifiable areas which do not fall within the general boundaries of the title. This is a far cry from the Cornish hedge in Drake v Fripp where it was not clear on which side the legal boundary ran. Nor am I assisted by the decision of the Deputy Judge in Prashar & Prakash v Tunbridge Wells Borough Council [2012] EWHC 1734 (Ch) which related to a layby. That being so, the removal of one or both of these parcels will affect the Respondent's title, and therefore paragraph 5(2) is engaged. It is then necessary to decide whether the Respondent was in possession of the parcels at the relevant date, which I consider must be the date of the application since, if the alteration is made, it will take effect from that date. By virtue of section 131(1) of the LRA 2002, the Respondent is treated as being in possession of the land if he was physically in possession at that date.

Possession

11. The evidence relating to this issue is as follows. As previously stated, and prior to the Respondent's purchase of the Coracle, Parcels A and B were designated drying areas for the tenants of Woods Row Court and Cambrian Court. The

signage made this clear, and entry was only possible through the common parts of these housing estates. A rotary dryer was installed in each area. There is some dispute as to whether these areas were kept locked, and the Respondent alleges that the areas were virtually never used. Mr Adams senior also alleges that he had free access to these areas during his time as the tenant of the Coracle. I shall consider these conflicts issue in more detail below. However, in my judgment there is little doubt that the Council was in possession of both parcels. That was the position when the title to the Coracle was registered in 2002, and remained the case when the Respondent became the registered proprietor on 22nd June 2015.

12. However, the position had changed by the date of the application in October 2016. In January 2016 the Respondent placed notices on the gates leading into the drying areas asserting his title. He also padlocked the gates. In July 2016 he caused the wall separating Parcel A from the street to be removed, and placed barriers at the opening to prevent access. To all intents and purposes, therefore, the Council and its tenants had been excluded from the areas from January 2016 onwards. It seems to me, therefore, that the Respondent went into possession at the same time, and was in physical possession at the date of the application.

The operation of paragraph 6(2).

13. That being so, alteration of the register cannot take place without the Respondent's consent (which is refused), unless (a) he has by fraud or proper care caused or substantially contributed to the mistake, or (b) *"it would for any other reason be unjust for the alteration not to be made."* Fraud or lack of proper care is not alleged in this case – nor could it be – and therefore the only ground for allowing the alteration is that set out at paragraph 6(2)(b) of Schedule 4. The formulation under paragraph 6(2)(b) could hardly be wider – the Tribunal must consider all potentially relevant factors in reaching a conclusion whether it would be "unjust" for the alteration not to be made.

Potentially relevant factors under paragraph 6(2)(b)

14. Mrs Collins for the Council has listed a number of factors at paragraph 15 of her Skeleton Argument, in support of the submission that it would be unjust for the alteration of the register not to be made. Underlying these specific factors is of

course the principal factor relied upon by the Council, namely that the drying areas was an amenity made available to the social housing tenants of Woods Row Court and Cambrian Place Court. If the application is refused, and the parcels remain within the Respondent's title, those tenants will lose that amenity. I shall consider this issue first. I should point out, however, that Mrs Bowling confirmed that the use of the drying areas is not the subject of any covenant with or obligation to the Council's tenants. Loss of the amenity would not, as I understand it, give rise to any claim against the Council by its tenants.

15. I heard evidence from a number of witnesses, on both sides, as to the historic use of the drying areas. Mr Adams senior – who managed and lived at the Coracle from 1993 to 2008 – said that the area was not used after the mid-1990s. He recalled one particular lady who used to hang out tea towels to dry but this ceased in around 1996. He also said that the gates were never locked and he was able to access both areas when needed.

16. The Council called various witnesses to speak as to the use of the parcels. I shall discount the statements of witnesses who did not attend for cross-examination. Evidence from Council officials on this issue was given by Ms Yana Evans, a Supported Housing Officer and Ms Jennifer Bowling, Housing Officer. Ms Evans was responsible for the sheltered flats between 2005 and 2012. She said that she saw washing drying in the area and on two occasions she caused the rotary dryers to be replaced as a result of complaints from tenants. She also recalled that one tenant was given permission to park his motorcycle in one of the drying areas. At this time the area was padlocked. She says that she never saw Mr Adams in either area. However, she did recall that tenants of the Coracle contacted the Council for permission to access the walls of the Coracle for painting, and also for servicing extraction vents in the walls. She was not aware of anti-social behaviour in the housing estate, but because it was being used as a short cut by members of the public to from the adjoining car park, the tenants requested the installation of a gate. This was done between 2007 and 2009, and fitted with a combination lock. All the tenants had the code. Ms Bowling confirmed this evidence.

17. One of the tenants, Mr Edward Clarke, also gave evidence. He lived at 73 Woods Row between August 2001 and October 2013, and currently lives at 3 Cambrian Court. He confirmed that he regularly used the drying areas, winter and summer, although when the weather was wet he would use the tumble dryer in Woods Row. However, he had to pay for this and preferred to use the free rotary dryers. In cross-examination he accepted that there had been problems with drug users around the Coracle, and also that after the gates had been installed, at the access into the scheme from the street, they were often left unlocked. He recalled that a number of other tenants would use the drying areas, although those on the upper floors at Woods Row Court had washing lines on their balconies and would use those. However, the ground floor flats did not have drying space of their own and tended to use the communal areas. He also recalled that a motorbike had been parked in one of the areas for a while. He did recall seeing Mr Adams senior on a few occasions inside the drying areas, but not very often.

18. Having heard the evidence, I conclude that the drying areas continued in use by the Council's tenants right up until the Respondent took possession in or around January 2016. That is not to say that they were in constant use, but according to Mr Clarke's evidence he would dry washing on average twice per week. Allowing for the effect of bad weather, and the alternative attractions of the communal tumble dryer, it is clear to me that there was regular use. Given the number of tenants in the two housing estates, that is hardly surprising. Accordingly, the loss of this amenity would affect those tenants who did make use of the drying facilities.

19. To set against that loss of amenity, there is of course a corresponding gain to the Respondent if he retains the drying areas and is able to make use of them for the purposes of his business. Mr Adams senior gave evidence that it was intended to use one of the drying areas for car parking, and the other as a smokers' area. Given that the Coracle has no other outside space, I think it is apparent these areas would provide a useful addition to the business. I should say, however, that I do not accept the Respondent's evidence to the effect that the Council allowed

the drying areas to be used for drug taking and anti-social behaviour. The Coracle itself was closed as a result of such activity on the premises, but I am satisfied from the evidence of Ms Evans and Ms Bowling that the estate was properly managed and supervised in this regard.

20. I shall now turn to the other factors relied on by the parties. The Council's points set out at paragraph 15 of the Skeleton Argument essentially amount to this: the Respondent was well aware when he bought the Coracle that there was a doubt about the title to Parcels A and B, and he therefore went into the transaction with his eyes open. He should not therefore be allowed to profit from the initial mistake by the Land Registry, and it would amount to a windfall if the register remained unaltered.

21. The Respondent argues precisely the opposite. Ms Anthony sets out the material factors at paragraph 6 of her Skeleton Argument, which are as follows:

    (1) The Council's loss can be indemnified.

    (2) The Respondent did not cause or contribute to the mistake.

    (3) The Respondent has expended a great deal in clearing the yard.

    (4) The Respondent's father used the areas, particularly Parcel A, throughout his tenancy in conjunction with the pub business.

    (5) The parcels have no value to the Council's tenants and were the scene of drugs use and anti-social behaviour.

    (6) submits that the Respondent purchased the title to the Coracle in good faith.

    (7) In her closing submissions, Ms Anthony also drew attention to the fact that the Respondent bough the title in good faith, and the Council did nothing to alert him to the claim to the disputed parcels when it was or should have been aware of the impending sale.

22. In dealing with these opposing submission, it is necessary, in my view, to make some findings about the Respondent's state of knowledge as at the date of purchase. If he was genuinely unaware that there was any dispute as to the

ownership of the parcels, that would in my view strengthen the argument that it would not be unjust to alter the register. By the same token, if he was indeed aware that the Council laid claim to the land, that might render it unjust not to alter the register.

23. Mr Adams senior accepted that he had contacted Mr Phil Davies at the Council prior to the purchase, with a view to clarifying the ownership of Parcels A and B. It was this enquiry that gave rise to the internal investigation, which led to Ms Matthias inspecting the site in May 2015. It seems to me obvious that Mr Adams would not have taken this step if he had been confident that the title to the Coracle included the drying areas. He was clearly in some doubt – in cross-examination he said that he was surprised to discover that the parcels were included in the Coracle's title. This is hardly surprising, given that the two areas were quite clearly in the possession and control of the Council and on occasions used by its tenants. There was no access from the Coracle itself, and although the gates both to the estate, and to the drying areas themselves, may have been left open for long periods, access to the drying areas was controlled by the Council. The signage also made it clear that the areas were for the residents of the estate. Indeed, Mr Adams, when he was the tenant of the Coracle, had offered to buy the land from the Council. His letter dated 16th August 2006, with accompanying plan, contains the proposal. In the event, the Council did not wish to sell, and he was informed of this in September 2006. When he was asked about this, he said that he had been the brewery tenant, and did not know precisely what land was included in the title of the Coracle. However, what is abundantly clear is that he believed that the parcels were owned by the Council, and were in use as drying areas.

24. The Respondent, Mr Adams's son, was at pains to say in his evidence that he did not visit the Coracle before he bought it – he first went there in August 2015, according to him. He also denied that he had asked his father to discuss the ownership of the parcels with the Council, or indeed that he had any knowledge of his father's approach to Mr Davies and request for clarification of the Council's ownership. He maintained that he bought the title without any inkling that there was an issue regarding the ownership of the drying areas. I do not

accept this evidence. It seems to me clear that the purchase of the Coracle was supervised by Mr Adams senior from start to finish. It was he who initially became aware of the sale, it was he who dealt with the solicitors prior to the sale – which explains how he saw the Land Registry title which showed the ownership of the drying areas – and it was he who contacted the Council for clarification. Throughout his cross-examination he used the word "we" when referring to the purchase of the Coracle, and the advice given by the solicitors as to the drying areas. It was obvious that he was the moving spirit behind the purchase, whatever may have been the reason for putting his son on the title. That being the case, it is in my judgment overwhelmingly likely that Mr Adams junior was well aware of the issue regarding the drying areas before he purchased the Coracle – it is inconceivable that his father did not discuss it with him. In any event, he must have been aware from his historic knowledge of the Coracle – initially as an occupant and then merely as his father's bookkeeper – that it did not own the drying areas, which were controlled by the Council for the benefit of its tenants.

25. I have concluded, therefore, that the Respondent was aware that there was an issue as to the Council's ownership of the drying areas, and that the Council was in possession of them, before he became the registered proprietor of CYM98145. When he carried out work to Parcel A in July 2016 (as to which no evidence or disclosure regarding the expenditure has been given), by demolishing the wall that separated it from the street, he did so in the knowledge that this was so. I do not therefore consider that the example given in Claridge v Tingey In re Seaview Gardens [1967] 1 WLR 134 (at 141H-142A) is in point. It seems to me that the Respondent took the risk that the Council would assert its title to the drying areas. Indeed, he carried out work to Parcel B in 2017, after this application had already been made.

26. In regard to the other factors relied upon, it is of course true that the Respondent did not in any way cause or contribute to the initial mistake. However, that is a pre-requisite of the protection given to him by paragraph 6(2) and does not, in my view, assist in determining the justice of the case. As to the indemnity issue, if the register is altered against him, the Respondent will be entitled to apply for an indemnity, which would involve consideration of the value of the parcels.

Conclusion

27. I recognise that the areas would be of value to the Respondent in relation to the running of the pub business, and that the Council could have done more to assert its title – by making this application – at an earlier stage. I also recognise that the use made by the Council's tenants of the drying areas is not intensive, and is inevitably irregular when bad weather intervenes. However, in my view, and taking all the various factors into consideration, I consider that it would be unjust not to alter the register, by removing Parcels A and B from title CYM98145, and adding them to the Council's two titles. I shall therefore direct the Chief Land Registrar to give effect to the Council's application dated 10th October 2016. I am minded to award the Council its costs on the standard basis. I direct it to file and serve on the Respondent a statement of costs within 7 days. If the Respondent objects to the amount of costs, and to the proposed order, he should file and serve his submissions within 14 days of receiving the costs statement, and the Council may respond within 7 days thereafter.

Dated this 5th day of November 2018

Owen Rhys

BY ORDER OF THE TRIBUNAL