REF/2024/0301

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

JAMES BAKER

APPLICANT

and

THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF REDBRIDGE

RESPONDENT

Property Address: Playing Fields at John Bramston Infants School North View Caravan Site and land and premises at Forest Road Hainault Ilford
Title Number: EGL52960

Sitting at: CVP hearing
On: Wednesday 12th and Thursday 13th March 2025 (site inspection on Wednesday 12th March 2025)

Applicant's Representation:	Elliott Costa (Solicitor, of Taylors Legal)
Respondent's Representation:	Jonathan Pennington Legh (Counsel, instructed by Legal Services, London Borough of Redbridge)

DECISION

KEYWORDS

Adverse possession, enclosure, possession

Cases referred to:

Powell v McFarlane (1977) 38 P&CR 452
JA Pye (Oxford) Ltd v Graham [2002] UKHL 30; [2003] 1 AC 419
Thorpe v Frank [2019] EWCA Civ 150; [2019] 1 WLR 6217

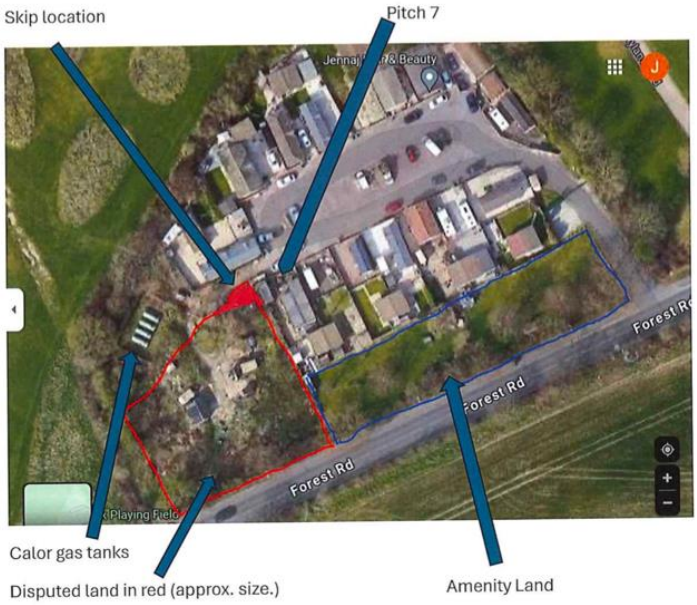
INTRODUCTION

1. The Applicant has applied to be registered as the proprietor of a patch of land adjacent to North View Caravan Site. The Respondent local authority, which owns and operates the caravan site, is the current registered proprietor. The Applicant's case is that he took possession of this land in around 2004, by erecting a fence and maintaining a gate which he kept padlocked, so that the land was enclosed and secured against access from others. This is not the Applicant's first application concerning this land and he relies on the provisions of Land Registration Act 2002 allowing an unsuccessful applicant to make a second application after two years.

2. That first application was made in May 2020 and rejected by HM Land Registry on 12th February 2021, because the Respondent had required the application to be dealt with under the procedure contained in Sch.6, para.5 of Land Registration Act 2002 (which I will refer to further below) and the Applicant had not indicated that he was relying on any of the conditions in para.5

3. One would normally expect the rejection of that application to have been the trigger for the Respondent to take action to move the Applicant off the land. Although an instruction was given to the site warden, who lives on site, very little was done. As will be seen, the site warden even supports the Applicant's claim in these proceedings. The Respondent asserts that this does not matter as the Applicant cannot show that he was in adverse possession for long enough prior to the failed application.

4. The relevant area can be seen in the two pictures below. The top diagram is an extract from HM Land Registry's notice plan, with the disputed land edged in blue. The overhead photograph underneath has the approximate area of the disputed land marked in red, and one of the parties has labelled some other features.



5. The Applicant says that in addition to securing the land, he has used it to keep animals on, and that he has maintained a workshop and stable there since 2004. Some structures can be seen in this area in the overhead photograph.

6. The Respondent's case is that it has been in possession of this land, because it has been used by the residents of the caravan site, who are all licensed by the Respondent to use the land for recreational purposes.

7. I conducted a site inspection in the presence of the parties on the morning of the first day of the trial. The trial was then heard through the Cloud Video Platform that

afternoon and the next day. I am particularly grateful to Mr Costa and Mr Pennington Legh for the clear and helpful way in which they presented and argued their respective cases, which was of great assistance to the Tribunal.

8. I will attempt to deal with all the key points in this decision (bearing in mind the Practice Direction from the Senior President of Tribunals on reasons for decisions), but I can assure the parties that I have had all of the points raised in evidence and submissions (both written and oral) well in mind when considering my decision.

LAW

9. The relevant principles concerning adverse possession were not in dispute and can be set out here fairly briefly (particularly bearing in mind that the Practice Direction expressly states that as this Tribunal is a specialist Tribunal, and so it is not necessary to set out every relevant authority).

10. Those principles can be primarily drawn from the key cases of *Powell v McFarlane* (1977) 38 P&CR 452 and *JA Pye (Oxford) Ltd v Graham* [2002] UKHL 30; [2003] 1 AC 419 and can be summarised as follows.

11. In order to establish adverse possession, there needs to be absence of the paper title owner's consent, as possession cannot be adverse if permission has been given. Consent or permission may be actual or implied and need not take the form of a written tenancy or licence. The Applicant needs to establish physical control shown by such acts that demonstrate in the circumstances, in particular the nature of the land and the way that it is commonly used, that he has dealt with the land as an occupying owner might normally be expected to do and no other person has done so. He also needs to demonstrate the intention to possess on his own behalf and in his own name to exclude the world at large, including the paper title owner, so far as was reasonably possible.

12. There are some acts which are so drastic as to point quite clearly to an intention to appropriate the land concerned. Examples that have been given include the ploughing up and cultivation of agricultural land, the placing of "keep out" notices if those warnings are enforced, and the locking or blocking of the only means of access.

Enclosure has been described as the strongest possible evidence of adverse possession, but it is not indispensable.

13. The nature of the land in question can be very important. In *Thorpe v Frank* [2019] EWCA Civ 150; [2019] 1 WLR 6217, McCombe LJ said at [38] that "in considering the question whether the alleged possessor has been dealing with the land as an occupying owner might have been expected to deal with it, the nature of the land in question is very important". McCombe LJ went on to say in the following paragraph that although enclosure of land is an obvious way in which a squatter can take possession, it is not an absolute requirement. On the facts of that case, and having regard to the nature of the land (an open forecourt area), the applicant had dealt with the land as an occupying owner would by ripping up an old surface, digging out the land, inserting hardcore, levelling the surface with the area surrounding it, and replacing flags/tiles with flags and bricks of their own choosing.

14. The requirement to demonstrate an intention to exclude the paper title owner is explained in *Powell v McFarlane* in this way.

> "In view of the drastic results of a change of possession, however, a person seeking to dispossess an owner must, in my judgment, at least make his intentions sufficiently clear so that the owner, if present at the land, would clearly appreciate that the claimant is not merely a persistent trespasser, but is actually seeking to dispossess him."

15. Because the land is registered, the Applicant relies on Land Registration Act 2002, Sch.6. In the first instance, para.1 of Sch.6 requires an applicant to demonstrate that they have been in adverse possession of disputed land for at least ten years. Although that is a shorter period than for unregistered land (for which twelve years is necessary), it is normally harder to succeed with a claim for adverse possession of registered land, despite that shorter period, so long as the registered proprietor responds and objects in the correct form. That is because it then becomes necessary to establish that one of the three statutory conditions contained in Land Registration Act 2002, Sch.6, para.5 is met. It is not necessary to set those conditions out here because the Applicant does not (and did not) rely on them.

16. He relies, instead, on paras 6 and 7 of Sch.6, which give a squatter the right to make a further application. So far as relevant, para.6 provides as follows.

> "(1) Where a person's application under paragraph 1 is rejected, he may make a further application to be registered as the proprietor of the estate if he is in adverse possession of the estate from the date of the application until the last day of the period of two years beginning with the date of its rejection."

17. Paragraph 7 provides that a person who makes an application under para.6 is entitled to be entered in the register as the new proprietor of the estate.

18. The parties were helpfully agreed that in order to succeed, the Applicant needs to show that he had been in adverse possession of the land for at least the ten years leading up to his first application and that he remained in adverse possession from the date of his first application until two years after that application was rejected, but that provided that he can show that period of adverse possession (which is a little longer than twelve years), he does not need to satisfy any of the three conditions in para.5.

19. With that legal framework in mind, I turn to look in the next section of this decision at the evidence. So far as evidence is concerned, I remind myself that in determining disputes of fact, I am applying the civil standard of proof (*i.e.* the balance of probabilities or whether something is more likely than not).

DISCUSSION & ANALYSIS

20. It is helpful to begin this section by identifying the relevant period for the Applicant's adverse possession claim. As I have already explained, the parties were agreed in this case that the effect of Sch.6, para.6 was that the Applicant had to show that he was in adverse possession for the period of ten years leading up to the making of his first application, for the duration of that application, and then for two years after it was rejected.

21. The first application was made in around May 2020. The date on the Form ADV1 is not entirely clear, but the date on the Form ST1 is clearly 20th May 2020. The material available to me does not clearly show what date HM Land Registry treated the application as being made on, which is not always the same as the date that the documents are signed. I shall assume that the Applicant needs to show that he was in adverse possession from 20th May 2020. As will be seen, it does not make any difference in this case if that is out by a few days. The date of rejection of that first application is clearly set out as being 12th February 2021. The Applicant therefore needs to prove adverse possession from 20th May 2020 to 12th February 2023.

22. The Applicant's previous, unsuccessful, application led to a survey being carried out. That is important because it provides evidence from an impartial surveyor showing what was on site, and how the site was arranged, at that time (July 2020). A survey report does, however, only provide a snapshot in time. It tells the Tribunal what was there at the time of the survey, but it does not tell me what was there ten years earlier, although it is also important to note that the surveyor's opinion was that boundary features were aged in excess of ten years. I will return to that further below.

23. I had the benefit of a site inspection and observed that the land and particularly the boundary features were much as they appear to have been at the time of the 2020 survey.

24. The key question in this case is whether those boundary features date back as far as the Applicant claims, or whether they are more recent additions, as the Respondent asserts. The Applicant's consistent position has been that he ensured the site was fully secured from 2004 onwards. He does not actually need to go as far back as that to succeed because, as explained above, the critical time is around May 2010.

25. The resolution of that key question involves consideration of the witness evidence.

26. The Applicant had submitted witness statements from twelve witnesses. He had not himself prepared a witness statement, but his Statement of Case was supported by a signed statement of truth.

27. A particularly concerning feature of the evidence on behalf of the Applicant is that the witness statements were all in identical, or virtually identical, terms. While I readily recognise that there are sometimes only so many ways in which the same facts can be explained, this immediately raises doubts as to whether each statement is truly in each witness's own words or really represents their evidence.

28. On behalf of the Applicant, I heard evidence from himself, Elizabeth Eastwood, and Lorraine Eastwood.

29. Mr Baker gave evidence in support of his own case. He clarified and expanded on a few matters in examination in chief, explaining that he had worked with Mr Eastwood, the site warden at the time, prior to 2004, and that he had taken over the site when Mr Eastwood "drifted away". I am afraid that in several key respects Mr Baker's evidence was simply not credible, as I will explain further below.

30. The next witness to give evidence in support of the Applicant was Elizabeth Eastwood. She lives at the caravan site and is also the site warden currently employed by the Respondent, after her husband passed away. Rather unusually, the trial bundle featured different witness statements from her in support of both sides.

31. The first statement had been signed by her for the Respondent. She explained in the second statement and in her oral evidence that she cannot read or write and the statement had been prepared for her. She told the Tribunal that she suffers from anxiety and when she went in to the Respondent's offices she simply wanted to get out as soon as possible. It is only fair to her to note that the statement contains an obvious and glaring error (about the date of her husband's death) that it is inherently unlikely that she would have made, which supports her claim that she did not read or understand the statement. I have not heard any evidence from the Respondent's employee who took the statement and discussed it with her, so I do not have any basis on which to disbelieve her explanation about that first statement.

32. Leaving that statement to one side and concentrating just on her short statement in support of the Applicant, I have reached the conclusion that her evidence is not reliable on key details.

33. For instance, she said in cross-examination that there was barbed-wire fencing on all four sides of the disputed land. This is plainly wrong, as there is a wooden fence along one side. She claimed that she had not been there for a while and did not know, but as the site warden and someone who has lived at the site for many years, that was not a plausible explanation. Furthermore, she said that she had been on land adjacent to the disputed land just three to four days before the hearing, from where the wooden fence can clearly be seen, and so it is inconceivable that she had not been aware of that fence unless she pays so little attention to details such as this that her evidence is of very little value.

34. Her evidence was also hopefully inconsistent on significant details. By way of example, she said that her line manager had not asked her in her capacity as site warden to do anything about the disputed land after the Applicant's rejected first application, but she was then read a letter from him in which he asked her to do various things including removing a section of barbed wire fence. Elizabeth Eastwood then accepted that she had been asked to remove the fence (although she was never able to give a good reason as to why she did not do so). Her explanation was that she forgot and that she gets confused.

35. But that explanation, if it is true, creates a tremendous problem. If she had genuinely forgotten that because she had been confused, then this again suggests that she is an unreliable witness. In the circumstances, and for further reasons given below in relation to the key details, I have been unable to place any reliance on Elizabeth Eastwood's evidence.

36. Finally, the Tribunal heard evidence from Lorraine Eastwood, Elizabeth Eastwood's daughter. She accepted that the Applicant was a family friend and they used to play together when they were much younger, so was clearly not impartial. Not only did her statement contain similar wording to other statements, it also included the same grammatical error in the second sentence of paragraph 2 as another witness statement. The point here is not the error itself, which would be of little consequence as witness statements are not intended to be an examination of literacy skills (and even judges are not immune from making typographical errors in judgments), but the fact that there was no explanation for why the same additional word erroneously appeared in the exact

same place in two different statements. The only reasonable conclusion to be drawn is that they do not represent each witness's own words.

37. Furthermore, her evidence was inconsistent and unreliable. For example, she said that the disputed land would not have been used by residents of the caravan site for fires, because it would cause distress to the animals to put a fire on this land. She later accepted, however, that there was a photograph showing the disputed land (which is reproduced at paragraph 43, below), which showed smoke emanating from a pile on that land and which was clearly evidence of the remnants of a fire. She also could not give any reliable account of the current fencing arrangement around the disputed land.

38. The Applicant's other ten witnesses did not attend to be cross-examined. Given my concerns about the wording of their statements, I consider that there is little or no weight that can be safely attached to them.

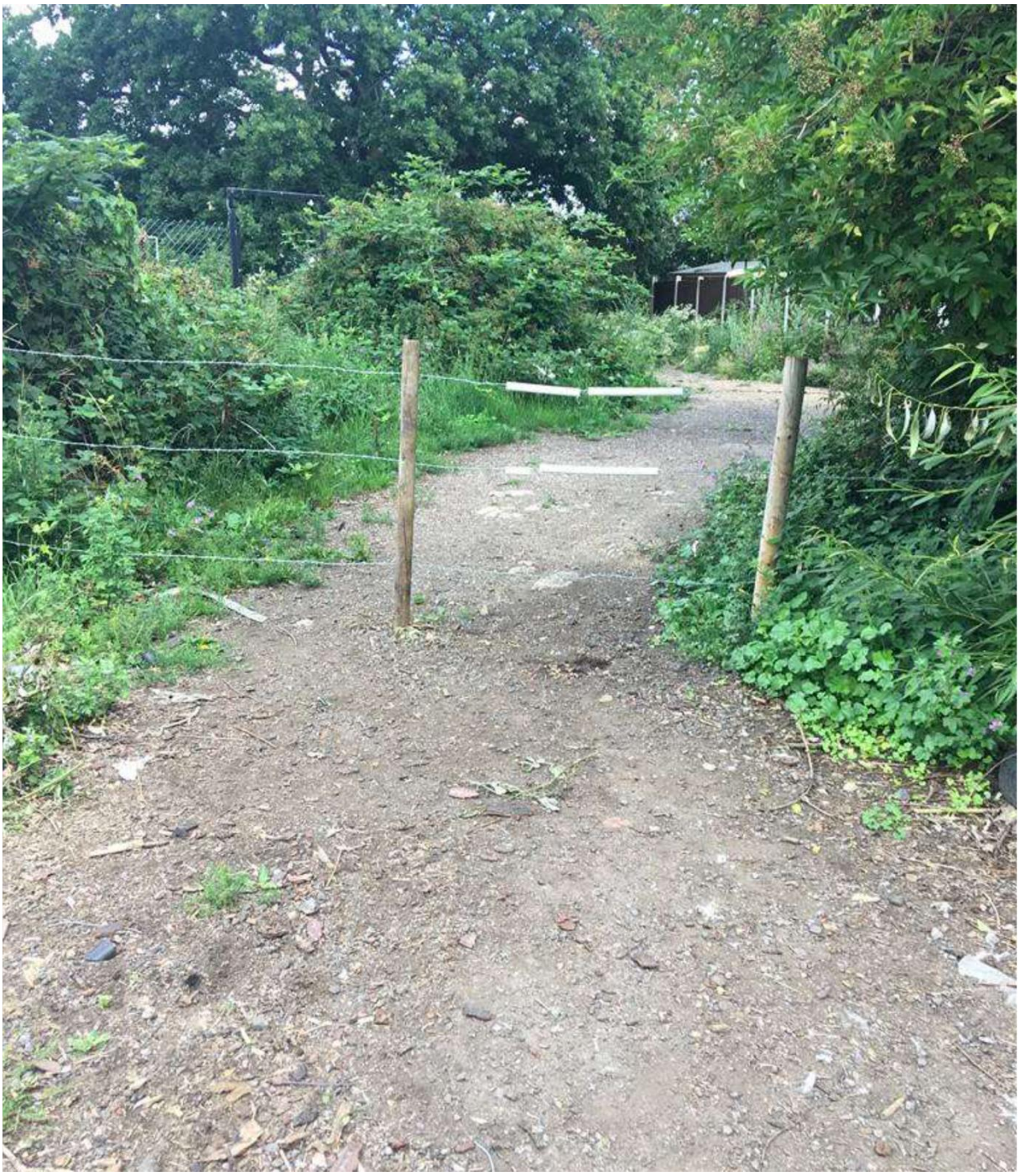
39. The Respondent's first witness was Ian Jardine, an Environmental Service Manager who had dealt with this site in different capacities at various times since the 1980s. There was no real challenge to his evidence and he was plainly an honest witness. I accept such evidence as he was able to give about the site, although a lot of his evidence was also hearsay and so of limited value.

40. The other witness for the Respondent was Zulfiqar Mulak. He was clearly an honest witness, but his evidence was of very little value. His witness statement dealt with three issues. First, the strategic importance of the site. That has no bearing on whether or not the Applicant has been in adverse possession. Secondly, to clarify why the area in question had not been properly secured following the previous adverse possession application. Again, this is not really relevant (and it is plain that the Respondent could have done far more than it did). Finally, to provide an overview of incidents where the Respondent's staff and contractors had been subject to intimidation. Again, this was of marginal relevance to the issues between the parties and was all hearsay evidence.

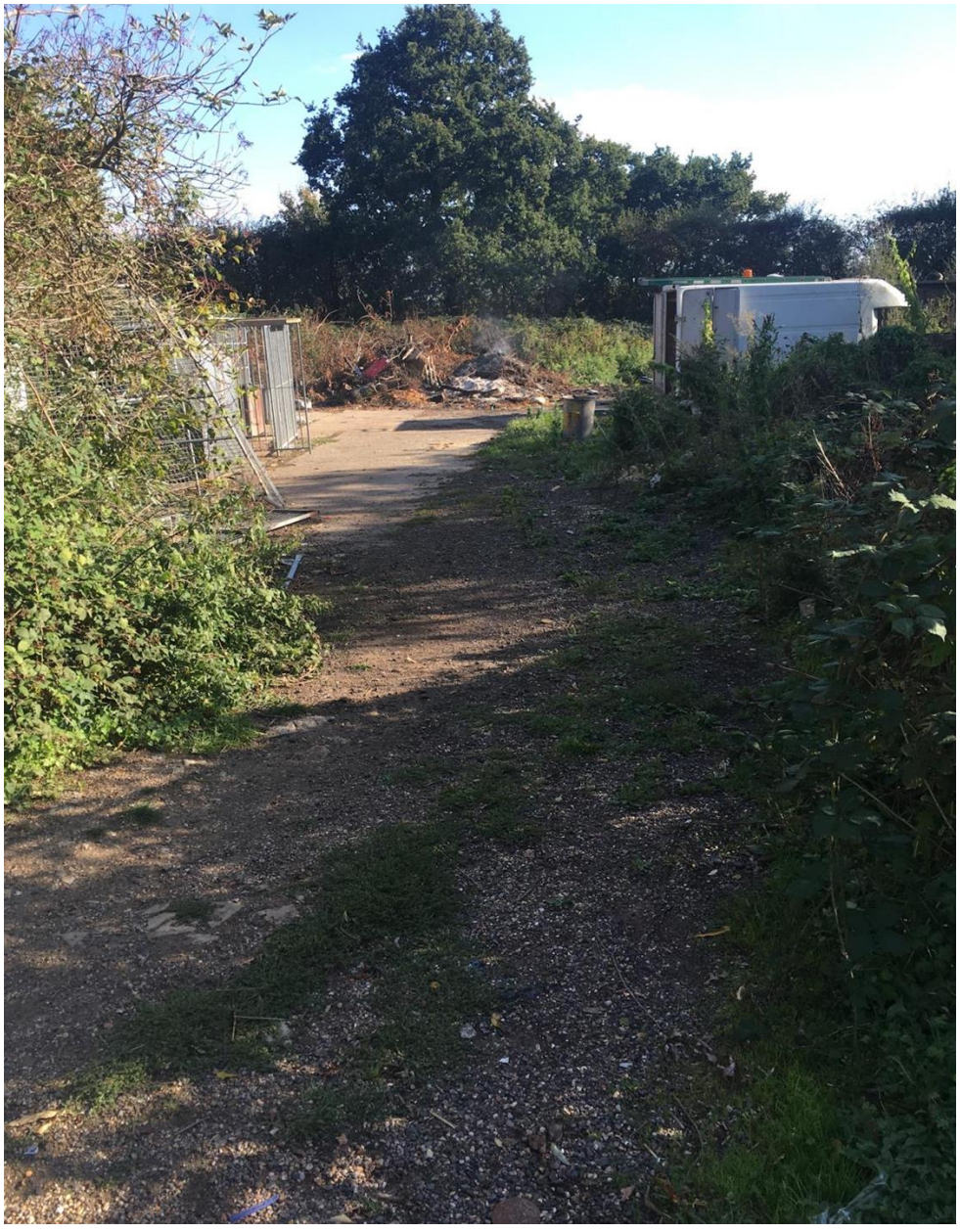
41. Having made those observations, I can turn to consider the evidence about the Applicant's control and use of the disputed land, his case being that he "has fenced the land off to the exclusion of all others and has maintained a gate and padlock on the land

to stop anyone else coming on to the land. The Applicant always maintained the Land and the fences which enclose the land" (Statement of Case, paragraph 2).

42. There was a fence along the northern edge of the disputed land during the site inspection. It is apparent that this fence was in place in July 2020, as it can be seen in the survey photographs, as shown below in an extract from one of those photographs.



43. That photograph is taken from within the disputed land, looking north. From my observations during the site inspection, the fence is currently in the same position as in the photograph above. I note that in the July 2020 survey, this fence (along with other features) was described as "estimated to be aged in excess of 10 years". The Respondent, however, contended that this fence was only installed shortly before the first adverse possession application. This argument relied heavily on a photograph taken during an inspection in September 2018. That photograph was taken outside of the disputed land, looking south towards it. Part of that photograph is reproduced below.



44. The fence that the Applicant claims was in place cannot be seen in this photograph, even though this covers the position that the fence was located in at the time of the site inspection and the survey. Note also what appears to be the remnants of a bonfire at the end of the hardstanding, which I have previously referred to (see paragraph 37, above).

45. Faced with this photograph, the Respondent argued that the photograph was taken from a position very close to the fence, where the photographer had taken the picture over the top of the fence. He suggested that this had been done deliberately to miss the fence.

46. I reject that explanation. While the Respondent was obviously correct that it would have been possible to take a photograph from just behind the fence at such an angle that it did not show the fence, I am quite satisfied that this was not what was done here. A comparison of the two photographs above makes it clear that the location of the present fence was well within the frame of the 2018 picture.

47. Elizabeth Eastwood's explanation for the missing fence was even less impressive. She said that this position was the gateway in and that if Mr Baker was taking animals into the disputed land then he might pull the fence back. This was a very surprising suggestion as the Applicant himself had not put this forward as a possibility. It was also an entirely implausible suggestion, as Mrs Eastwood accepted that the fence posts would still be there and they were not visible in this photograph. As can be seen from the first photographs, one of the posts was even in the middle of the path, yet there is no trace of any presence of that post in the second photograph. I am afraid to say that Mrs Eastwood's evidence on this point was wholly unbelievable.

48. It was to Lorraine Eastwood's credit that she did not try to come up with any explanation for the missing fence, saying only that she did not know what could have happened to it.

49. In my judgment, the simplest explanation provides the answer. The reason that the fence cannot be seen in the 2018 photograph is because that fence had not been fitted at that time.

50. What then of the surveyor's opinion that the boundary features were aged in excess of ten years? That can only ever be an opinion and an estimated opinion at that. Estimating the age of fences is notoriously tricky as it depends on how they have been affected by weathering, which is not always uniform, and how well they have been maintained, which is even less likely to be consistent from one site to the next. It also assumes that features were brand new when they were fitted, which is not always the case (and even "new" fence posts or panels may have been sitting around in a yard before they were purchased and fitted). I appreciate that the surveyor had the benefit of a visual inspection on site at that time, while I can only rely on their photographs, but I have some difficulty in seeing how the fence shown in the photograph above could be said to look at least ten years old. The visible appearance as seen in that photograph could easily be much younger than ten years.

51. Be that as it may, I have come to the clear conclusion that the post and wire fence that the surveyor saw in July 2020, and which I saw during the site inspection, was not in place before September 2018. Despite the Applicant's protestations, I am satisfied that his fence would have been visible in that photograph had it been there and I reject as entirely fanciful the suggestion that the fence had somehow been rolled out of the way to allow animals in.

52. Mr Baker was adamant that he had ensured that there had been gate with a padlock on it at the Forest Road entrance since 2004.

53. There were some Google Street View images in the bundle showing that entrance, although they were not very clear. The parties agreed that the Tribunal could consider further photographs available on Google Street View showing the gate. I looked at these in between the first and second days of the hearing. I then discussed with the parties what I had been able to see. Neither party disagreed with my descriptions of what the photographs showed. That was as follows.

    i. October 2008: no padlock but picture is not clear;
    ii. November 2012: no padlock but picture is not clear;
    iii. October 2014: no padlock;
    iv. August 2015: no padlock;

v. July 2016: concrete block;
vi. August 2017: concrete block, brambles growing across gate;
vii. April 2018: concrete block, brambles growing across gate;
viii. May 2019: concrete block, brambles growing across gate, extremely overgrown behind gate;
ix. October 2020: no concrete block, blue padlock on gate, brambles and vegetation cleared;
x. March 2021: padlock on gate (colour not clear);
xi. August 2021: blue padlock on gate;
xii. March 2022: blue padlock on gate; and,
xiii. September 2024: blue padlock on gate.

54. Mr Costa acknowledged in his oral submissions that the concrete block in particular was a "tricky point". I think he was right to do so. Despite the skill with which Mr Costa sought to argue this point for the Applicant, I cannot accept the Applicant's case about this gate.

55. Because the pictures are not entirely clear, I do not think that I can safely make a finding that there was no padlock in the October 2008 or November 2012 photographs. I am, however, satisfied on the balance of probabilities and find as a fact that there was no padlock in place in any of the photographs taken between October 2014 and May 2019.

56. Mr Costa suggested that this merely meant that the Applicant was on site, and so would have removed the padlock to get access. In my judgment it is simply improbable that this would have been the case in six consecutive photographs taken across five years. It is just too coincidental to be plausible.

57. Furthermore, a concrete block can be seen directly behind the gate in the photographs from July 2016 to May 2019, clearly blocking vehicular access.

58. Mr Baker had sought to explain the presence of the concrete block by saying that he had placed it there, with the help of his brother-in-law, when he was concerned about a group of travellers in the nearby playing fields. He said that it was not kept there for long and was removed when the travellers moved on after about a month, but that he had put it

back from time to time when he felt the need and each time it would be in place for a few weeks.

59. In my judgment, this evidence was wholly untrue. There are several factors that show that the Applicant was lying.

60. First, there was documentary evidence from the Respondent in the trial bundle, showing that one of its officers had instructed the placing of a concrete block.

61. Secondly, the block is in an identical place in each of the photographs which is far more consistent with it having been placed once and left in position than with it having been placed, removed, and replaced several times.

62. Thirdly, in the later photographs in this sequence, there is vegetation growing around the gate, which suggests that it was not being used.

63. Fourthly, it is again far too much of a coincidence to be plausible to suggest that the photography car happened to only go past during the short periods when Mr Baker had arranged for a block to be in place.

64. Furthermore, and as already noted in relation to the concrete block, the vegetation that can be seen in the photographs is inconsistent with Mr Baker, or anyone, making routine use of this gate. From August 2017, brambles can be seen to be growing across the gate and by the time of the May 2019 photograph the area behind the gate appears very overgrown and it does not look possible to use this access way to get onto the disputed land without having to push past bushes.

65. I am therefore satisfied that the land cannot have been enclosed by the Applicant until any earlier than May 2019, as at that point the gate was not padlocked and was secured by the Respondent's concrete block. While it is possible that the post and wire fence on the northern boundary was fitted at some point between September 2018 and May 2019, I consider it more likely that both projects were done at the same time or at least very close in time to each other. On the balance of probabilities, I find that this took place

sometime after May 2019. It is not necessary to be more precise than this, as this finding is fatal to any claim to have been in adverse possession through enclosure.

66. It is also therefore not necessary to determine whether the land has ever been sufficiently enclosed to engage the law of adverse possession, although if Elizabeth Eastwood was correct that the fence could be rolled back to allow animals in and out, this would surely call into question whether the fencing was to keep animals *in* rather than to keep people *out*.

67. While it is possible to demonstrate possession without enclosing the land, the Applicant's case before this Tribunal has been predicated on establishing that he has been responsible for the fences all around and securing the gate with a padlock. In any event, it is my view that the credibility of the Applicant's timeline is so undermined by these factual findings that I do not accept that he has otherwise been consistently using the land as he has claimed. I accept that he has used some of the land for some of the time, but I consider that his evidence has demonstrated a tendency to exaggerate the extent and duration of his use.

68. I am satisfied on the balance of probabilities that there has been other use by some of the residents of the caravan site, as asserted by the Respondent. It was accepted by the Eastwoods that residents would set fires. They claimed that this was not on the disputed land, but on a small wedge of land next to the disputed land, which has sometimes been referred to as the "black land". I was able to see that land during the site inspection. It was a very small piece of land, backing on to one of the caravan plots. It is simply not credible to suggest that this site was used for fires, nor does the alleged reason why fires could not have been on the disputed land hold any water when the photographic evidence of a fire on that land is taken into account.

CONCLUSION

69. For the reasons given above, the Chief Land Registrar will be directed to cancel the Applicant's application.

70. I informed the parties at the hearing that this decision would include a provisional indication as to which, if any, party appeared to be entitled to an order for costs, in accordance with this Tribunal's normal practice. As the Applicant's application is to be cancelled, my preliminary view is that the Respondent authority should be entitled to its costs. This is no more than a provisional indication and the order that accompanies this decision will include provision for both parties to make written representations on costs.

Dated this 12th May 2025

Judge Robert Brown

BY ORDER OF THE TRIBUNAL