



REF/2015/0388

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

BETWEEN

JOHN BLANCHARD

APPLICANT

and

BASINGSTOKE AND DEANE BOROUGH COUNCIL

RESPONDENT

Property Address: Land adjoining 41 The Woodlands, Chineham

Title Number: HP773847, HP579078 and HP402629

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place London WC1E 7LR

On: 7th April 2016

Applicant representation:

In person

Respondent representation:

Ms Christine Cooper of Counsel instructed by
Basingstoke & Deane BC Shared Legal Services

DECISION

1. By an application in Form ADV1 dated 22nd July 2014, the Applicant applied to Land Registry to be registered with a possessory title to a strip of land that lies between his property, 41 The Woodlands, Chineham, RG24 8GW, and a footpath in the Respondent's ownership. 41 The Woodlands is registered under title number HP402629, and the land subject to the application, along with other land, is registered

with title number HP579607. The Respondent objected to the application, and served a counter-notice in form NAP, invoking the conditions of paragraph 5 of Schedule 6 to the Land Registration Act 2002 (“the Act”). The Applicant is relying on the first and third conditions of paragraph 5, as I shall explain in due course. The dispute could not be resolved by agreement, and on 4th June 2015 it was referred to the Tribunal for resolution. The Respondent applied on 29th September 2015 for an order under Rule 9(3)(e) of the Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013, striking out the Applicant’s case on the grounds that it had no real prospect of success. In the event, the application was refused, and the matter proceeded to a substantive hearing before me. Evidence for the Applicant was given by himself, and by Mr Martin Biermann, a former local councillor. Evidence for the Respondent was given by Mr Littlefield, and Mr Buckingham, both employees of the Respondent. The Applicant represented himself, and Ms Christine Cooper of Counsel appeared for the Respondent. I shall refer to the Applicant as Mr Blanchard, and to the Respondent as “the Council”.

2. The Disputed Land lies on the western boundary of No. 41. Mr Blanchard claims to have maintained and treated the land as part of his garden since 1991. In his ST1 in support of the application he characterises his possession of the land thus: *“The acts relied upon are the planting of hedgerow and trees thereon as well as laying of gravel and brickwork and fencing upon the Property and maintaining the same thereafter to date from early 2001, spending thousands of pounds. Such use of the land was as garden land for the property owned by the applicant and known as 41 The Woodlands.”* The Woodlands forms part of a residential housing estate of some 50 houses, developed in the late 1980s. Mr Blanchard has owned his property since 1995. The vehicular access to the property is at its northern end, the drive connecting into the road known as The Woodlands. One of the features of the estate is a series of footpaths that run through it, connecting the estate roads. One such footpath runs along the western and southern boundaries of No.41. The area of which Mr Blanchard claims a possessory title is a strip of land running along the east side of the footpath and the west side of his garden. Although I shall describe this area in more detail, for present purposes I shall refer to it as “the Disputed Land”.

3. The relevant history of the matter, in brief, is as follows. In March 1996 Mr Blanchard approached the Council and asked if he could buy the Disputed Land. He believed that it was being neglected and not properly maintained and considered that he could improve it. He sent two plans to the Council – a location plan, and a sketch plan which he had prepared of the area he wished to acquire. This sketch plan identified the land as a strip (“6-8 FT APPROX”) lying between his western boundary and the footpath. His proposal for the land was also shown on the plan. He wished to erect a fence along some three-quarters of the land, towards the south of his property. He also wished to plant bushes within the line of the fence. At the northern end of the plot, he wished to erect a 2-bar 4 foot fence adjacent to his front garden, and to lay to grass the land within this fence. This produced a response in the form of a letter from Martin Littleboy, for the Head of the Council’s Property Services. He advised that the land was “*amenity open space*”, and for any sale to proceed, it would be necessary for Mr Blanchard to obtain planning permission for change of use, to garden land. He went on as follows: “*However, I can advise that, at this point in time, the land which you wish to acquire is not owned by the Borough Council, and I can only assume that it is still within the developer’s title. Accordingly, at this stage, I am unable to progress your application to purchase this land, although I would recommend that you re-apply in, perhaps, 12 months time, by which time the Council may have taken title to the amenity open space on your estate.*”

4. Following this rebuff, Mr Blanchard took matters into his own hands, and carried out some landscaping works on the Disputed Land. There seems little doubt that the area had been untended and overgrown and very unsightly. At all events, a complaint was made to the Council in early 1997 about the works carried out by Mr Blanchard. He wrote to the Council in March 1997, enclosing a large number of letters from local residents supporting the work that he had done, namely landscaping and planting new trees. On 14th April 1997 the Head of Conservation and Control wrote to Mr Blanchard as follows: “*Having studied the relevant planning history of the site it has been established that the area of land adjacent to 41 Woodlands is subject to a legal agreement which required the land to be landscaped by the developer and conveyed to the Council as amenity open space. It has been confirmed that areas of the landscaping have been removed in order to facilitate the laying of block paving to create an increased parking and turning area. This represents a material change of*

use of the land from amenity land to land within the residential curtilage of the dwelling house.”

5. This letter led to a planning application by Mr Blanchard, dated 17th June 1997, for the following proposal: *“Change of use of land to land within the domestic curtilage, extension of driveway, erection of garden pagoda and erection of wall, fence and gate in excess of 1 metre high adjacent to the highway.”* The application was supported by a plan, prepared by Mr Blanchard himself. This plan seems to have been based on the original Transfer plan whereby the developer sold No. 41 (Plot 10) to his predecessor in title. This Transfer and plan were filed at Land Registry. The application plan shows the western boundary of No. 41 as including a dog leg, at some three-quarters of the length of the boundary towards its southern end. This boundary shape is replicated on the filed plan of both the title to No.41 and the land acquired by the Council from the developer. The land subject to the application, according to Mr Blanchard’s plan, is all the land lying between the western boundary of No.41 and the footpath, in other words it is identical to the Disputed Land. Mr Blanchard signed Certificate A on the application – certifying that he was the owner of the subject land.
6. The Council responded on 30th July 1997, raising a number of points. First, it sought confirmation that Mr Blanchard owned the subject land, since it was believed that the land was in fact owned by the Council. Secondly, objections on planning grounds were raised to the proposed wall and gate. Otherwise, the proposals were *“acceptable in principle”*, including the planting of trees on part of the subject land alongside the footpath.
7. It seems that a local councillor, Mr Biermann – who gave evidence before me – had also become involved by this stage, seeking an explanation on Mr Blanchard’s behalf from the Council for the poor condition of the land adjoining No. 41. The Director of Community Services gave an explanation. The original developer had gone into liquidation, and the remaining amenity land on the estate had not yet been transferred to the Council as originally envisaged. *“Once the Council receives confirmation that the transfer of the land to the Borough Council can be progressed I will start remedial works to tidy up the landscaped areas.”* Shortly afterwards Mr Biermann wrote to Mr Blanchard, enclosing a copy of this letter, and stating that *“until these*

details have been finalised, the Borough Council has no responsibility for the maintenance of the land". This took place in November 1997.

8. In an undated letter, Mr Blanchard wrote to the Council as follows: *"I wish to remove the following items from my planning application Extension of driveway Garden Pagoda Erection of wall and gate in excess of 1 metre I still wish to apply for change of use of the land to land within the domestic curtilage "domestic garden" and I still wish for planning permission for the 6' trellis fence."* These were the items identified by the Council as controversial. The application plan was amended at around this time. The planning application was granted on 24th December 1997, permitting a change of use of the amenity land to *"land within the domestic curtilage"* together with the erection of a trellis fence. The land in question includes the entirety of the Disputed Land. There is in evidence a copy of the report prepared by the planning officer of the site visit by the planning committee. This records that Mr Blanchard had already extensively planted the Disputed Land with a conifer hedge, but that no planning permission would be required for this.

9. It seems that Mr Blanchard continued to complain to the Council about the state of the footpath and adjoining land. On 21st July 1999 Jen Brewer, the Council's Arboricultural Officer, wrote to Mr Blanchard, explaining that the land had been transferred to the Borough Council, but was awaiting registration (which occurred in November 1999). She recorded his concerns regarding the *"lack of maintenance of the area and also the security and privacy of your home"*, together with fly tipping. She writes: *"Your ideal solution would be that the land is transferred to your ownership following clearance of the area by the Borough Council except certain plants to be agreed with you, and that a hedge is planted which you would maintain at 1m high with a membrane overlaid with shingle to the rear. I have been advised that the land has been designated as open space and that any request for the transfer of ownership, with or without payment, is unlikely to be accepted, however, I will ask my colleagues in Property Services to contact you direct regarding this aspect. I will be asking Mark Littlefield, the new Horticultural Officer for Chineham, to view the area and to contact you to discuss and agree a mutually acceptable solution. I have made him aware of the overgrown footpath to the rear of your property."*

10. On 2nd August 1999 Mr Batting, of the Council's Finance Department, wrote to Mr Blanchard. He stated that he understood from Jane Brewer that Mr Blanchard wished to purchase "*part of the amenity open space at the side of your property*". He writes as follows; "*Unfortunately, the Council is unable to consider the sale of an area of land such as this unless the land has planning permission for change of use from amenity open space to garden land.*" He also advises that an application for change of use is likely to be refused. On a date at or around this time, Mr Mark Littlefield visited the site and met Mr Blanchard. He was a Horticultural Officer for the Council, responsible for Chienham, and gave evidence before me. There is a dispute as to what was said at this meeting, but it is common ground that a meeting did take place on site. I shall come back to this meeting in due course when considering the evidence.

11. Following these events, it is agreed that Mr Blanchard remained in exclusive factual possession of the Disputed Land. The possession took the form of re-planting the conifer hedge (a large number of trees had died as a result of drought) and maintaining it and generally taking responsibility for the maintenance of the land. The Council has conceded that Mr Blanchard has been in adverse possession of the Disputed Land for more than ten years prior to the date of his application. The real dispute in this case is whether Mr Blanchard can bring himself within one of the conditions under paragraph 5 of Schedule 6. He relies on the first and third conditions, which are as follows:

"The first condition is that—

(a) it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the applicant, and

(b) the circumstances are such that the applicant ought to be registered as the proprietor

The third condition is that—

(a) the land to which the application relates is adjacent to land belonging to the applicant,

(b) the exact line of the boundary between the two has not been determined under rules under section 60,

(c) for at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him, and

(d) the estate to which the application relates was registered more than one year prior to the date of the application

Mr Blanchard's case on both these conditions is, to a greater or lesser extent, dependent on his evidence of the meeting with Mr Littlefield referred to above. The principal factual allegation is set out in his second witness statement, dated 13th October 2015, and elsewhere, and is in these terms: *"..... when Mr Littlefield visited and we agreed for me to have and maintain the land, along with the fact that all letters from the respondent referencing the encroachment of the land stopped after his visit, I like any other reasonable person, believed the land was now mine."*

12. Based on this central allegation of fact, he relies on both conditions. As to the first condition, he contends that Mr Littlefield represented to him that the Disputed Land was or would be his and, in reliance on that representation, he expended money on the land in the form of planting trees and shrubs and generally carrying out all necessary maintenance over a period of some 15 years. Alternatively, and this is an argument developed in his closing submissions, the Council's inactivity and acquiescence in the knowledge that he was maintaining the land, amounts to some form of representation. As to the third condition, the Council accepts that sub-paragraphs (a), (b) and (d) are satisfied. That leaves the requirement that Mr Blanchard must establish that he *"reasonably believed"* that the Disputed Land was his for the required period. He contends that he did believe the land was his, and that was a reasonable belief, based on his conversation with Mr Littlefield and the failure by the Council to take any steps to recover the land or assert its title until very recently. It will be appreciated, therefore, that a great deal turns on my findings as to the discussion between Mr Blanchard and Mr Littlefield in 1999.

13. As I have said, I heard evidence from both Mr Blanchard and Mr Littlefield. Both were cross-examined on their statements. Mr Littlefield made a witness statement on 16th October 2015. He says that he recalls visiting No. 41 and meeting Mr Blanchard. *"I do not recall specifically my conversation with the owner Mr Blanchard. However, I can say without a shadow of doubt that I have never offered council land to anyone. I could not do that as I do not have and never have had that authority. Indeed in Jane Brewer's letter she states that she will ask her colleagues in Property Services to contact him direct regarding the ownership change but I am to view the area to deal with the overgrown footpath."*

14. Mr Blanchard, under cross-examination, reiterated that he thought that the land had been given to him. He said that he believed that Mr Littlefield was going to talk to him about ownership. There was some discussion of coppicing and the use of hazel as a screen. It was suggested to him that Mr Littlefield was simply the Horticultural Officer, and clearly had no authority to give the land away. This is how he responded: *“He didn’t turn up and give it to me. I could retain the land. I had it enclosed. I believed that he was in charge of the whole of Chineham. We were discussing the land. I got the impression that he allowed me to keep the land……. I did know I didn’t own the land. Maintenance and replacement of the trees was done after I thought I was allowed to keep the land.”* When cross-examining Mr Littlefield, he suggested to him that there was possibly some confusion, in that Mr Blanchard believed that they were discussing ownership of the land, whilst Mr Littlefield was only concerned with the clearing of the footpath. Mr Littlefield repeated that his only concern was the care and maintenance of the footpath. He said that if any discussion of selling the land to Mr Blanchard had taken place, he would have followed it up with a letter.

15. Having regard to the “live” evidence that I heard, the large number of documents that have been relied on by both sides, and the inherent probabilities, I am able to make the necessary findings of fact. I should point out that there was a great deal of additional evidence, either produced by Mr Blanchard or at his request by the Council, which related to peripheral matters. There were a number of recent discussions with the Council, and a site visit in 2014 by one of the Council’s surveyors, all of which are covered in detail in the documentation.. Equally, Mr Blanchard was at pains to establish that the Council has treated him unfairly, in that other local residents have been allowed to purchase similar areas of amenity land for the general benefit of the estate. At Mr Blanchard’s insistence, evidence was given by another of the Council’s officers, Mr Buckingham, with regard to the sale of other, similar land to another estate resident. Mr Biermann, who was an impressive witness, seemed to share the view that Mr Blanchard might have been dealt with more sympathetically. However, none of these matters can affect the fundamental issues, namely whether Mr Blanchard can fulfil either the first or third conditions under paragraph 5.

16. My principal findings of fact are as follows:

- a. Mr Blanchard was aware from an early stage that he did not own the land between the legal boundary of No. 41 and the footpath to the west. His sketch plan faxed to the Council in 1996 makes this clear. It was this land that he wished to plant with shrubs and trees, fence and generally improve and maintain.
- b. Although he may initially have been confused as to the exact shape of the western boundary line – his 1996 sketch plan shows a straight, rather than dog-legged boundary – by the time that he made his planning application in 1997 he was aware of the true boundary line. His own plan attached to the application is based on the original transfer plan for No.41, and accurately identifies the legal boundary line.
- c. The land subject to the 1997 planning application is the Disputed Land. This is the same land that was under discussion between Mr Blanchard and the Council between 1996 and 1999, in connection with a proposed sale. Both parties were well aware that the land did not belong to Mr Blanchard.
- d. Although in the planning application Mr Blanchard certified that the land was his, he accepted under cross-examination that he should not have signed that certificate and knew at the time that the land did not belong to him.
- e. In August 1999 an officer in the Council’s Finance Department had informed Mr Blanchard that “.....*the Council is unable to consider the sale of an area of land such as this unless the land has planning permission for change of use....*” It may be that this letter was written on the basis of a misunderstanding, since Mr Blanchard already had planning permission for change of use. However, he did not point this out to Mr Batting, or the Council generally, and the Council’s formal position was that it would not progress the sale to Mr Blanchard. This was the last written communication received from the Council prior to the dispute blowing up in 2014.
- f. At or around this time (July/August 1999) there was a meeting on site between Mr Blanchard and Mr Littlefield. Mr Blanchard had been informed (see the letter from Jane Brewer) that the new Horticultural Officer for Chineham would visit the site to discuss the situation, and that he would be made aware of the overgrown footpath. In the same letter she had informed Mr Blanchard

as a separate matter that she would ask Property Services to contact him regarding the requested sale.

- g. As Horticultural Officer, Mr Littlefield did not have and did not ask for authority to negotiate a sale of the Disputed Land to Mr Blanchard, and was present on site for the sole purpose of trying to agree a solution to the perceived problems of lack of maintenance of the land adjoining the footpath.
- h. He did not say anything to Mr Blanchard that could reasonably have been interpreted either as “giving” the land to him, or representing that the land would be his at some future date. In view of the correspondence from Jane Brewer, Mr Blanchard could not reasonably have believed, if indeed he did, that Mr Littlefield had any connection with the issue of the sale, which was to be considered further by the Council’s Property Services. If the meeting took place after the letter of 2nd August 1999, Mr Blanchard must at that time have been aware of the Council’s position.
- i. The discussion centred on the practical steps that could be taken to tidy up the area from a horticultural point of view. Mr Littlefield may well have indicated that the Council would have no objection to Mr Blanchard carrying out maintenance of the Disputed Land. Indeed, he accepted under cross-examination that the Council did not have a problem with residents mowing Council verges, for example. However, he did not and could not have stated that Mr Blanchard had a right to retain the Disputed Land against the Council if he carried out such work.
- j. It may well be that as time passed, and the Council took no steps to recover possession of the Disputed Land, Mr Blanchard began to convince himself that the land had indeed been given to him. However, nothing was actually said to him by the Council, either in correspondence or by Mr Littlefield in person, or by conduct, that could reasonably have given him the impression that he was entitled to the land for all time.
- k. Although undoubtedly Mr Blanchard has expended time and money on the planting and improvement of the Disputed Land, he had already embarked on this course in late 1996/early 1997, long before any alleged representation had been made by the Council’s employee. Indeed, long before the Council became the owner of the Disputed Land. The motivation for this expenditure was Mr Blanchard’s desire to improve the appearance of the area generally,

and his western boundary in particular. Even if a representation had been made in 1999, I would have held that the original and subsequent expenditure by Mr Blanchard was not attributable to any such representation. The main item of subsequent expenditure was the replacement of the conifers that had been planted in 1996/7.

17. In view of these findings, I conclude that Mr Blanchard cannot satisfy either of the conditions that he relies upon. I should add that he has submitted, in his written closing arguments, that the Council's failure to take any steps to remove him from the Disputed Land, or to prevent him from maintaining it, in some way amounts to a representation by acquiescence, or conduct, or inaction, for estoppel purposes. As a matter of law such an argument is untenable. The fundamental ingredient of estoppel is a representation of some kind. I have held that the Council made no representation regarding the transfer of ownership of the Disputed Land to Mr Blanchard. A failure to take steps to recover the land from Mr Blanchard for a lengthy period cannot in itself create a representation. Indeed, the paper title owner's failure to take steps to recover the land or assert his title to the land is the fundamental ingredient of a claim to adverse possession.

18. I shall therefore direct the Chief Land Registrar to cancel his application. I recognise that this outcome will be extremely disappointing to Mr Blanchard, and I am grateful to him for conducting his case before me with skill and moderation, given the strong feelings that he has with regard to the Council's alleged behaviour towards him. It may well be that the Council could have dealt with him more sensitively, given the fact that he has indeed cared for and improved the appearance of the Council's land for the benefit of the locality as well as himself. However, this case must be decided on the basis of established legal principles and his application must fail.

Dated this 8th day of June 2016

BY ORDER OF THE TRIBUNAL