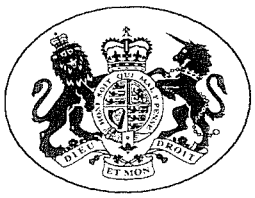

[2018] UKFTT 0075 (PC)

REF/2017/0032/0035

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

BETWEEN

IAN DAVID SPIRES

APPLICANT

and

(1) RICHARD JOHN STANLEY
(2) HAVERSHAM-cum-LITTLE LINFORD PARISH COUNCIL

RESPONDENTS

Property Address: Land at the rear of 33-51 Brookfield Road, Haversham, Milton Keynes MK19 7AF

Title Number: BM397313

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 20th day of December 2017

ORDER

IT IS ORDERED THAT the Chief Land Registrar shall cancel the Applicant's application in Form FR1 dated 22nd May 2015.

Dated this 15th day of January 2018

Owen Rhys

BY ORDER OF THE TRIBUNAL

[2018] UKFTT 0076 (PC)

REF/2017/0032/0035

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On: 20th day of December 2017

Applicant representation:	In person
1st Respondent representation:	Mr Christopher Vaughan of Scott Fowler Solicitors
2nd Respondent representation:	In person (Mrs Pamela Furniss)

DECISION

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1. This dispute relates to the site of a former sewage treatments works ("the Property"), lying to the south of Brookfield Road, Haversham and to the rear of nos. 35-51 Brookfield Road. On 22nd May 2015 the Applicant applied in Form FR1 to be

registered as the first proprietor of the Property, which has been allocated the provisional title number BM397313. As part of his application, he also applied for a right of way, allegedly acquired by long user, with or without vehicles, over an unsurfaced access way ("the Track") leading from Brookfield Road to the north-eastern corner of the Property. The Track runs south from Brookfield Road between nos. 31 and 33. The northern section of the Track is registered to the First Respondent. The southern section, being the part that adjoins the Property, forms part of a larger title (BM142461) registered to the Second Respondent (the Parish Council"), and which consists of allotment gardens ("the Allotments"). Both Respondents objected to the registration of the right of way, and it is that dispute that was referred to the Tribunal on 4th January 2017. There is no subsisting objection to the Applicant's registration as proprietor – the objections relate to the claimed right of way only.

2. The Applicant purchased the Property from Eileen Kathleen Banks, who (together with her husband) had acquired the Property from Anglian Water Authority by Conveyance dated 7th December 1983. The conveyance included the grant of a right of way over the Track in these terms: "*.... a full and free right of way at all times and with or without carts and vehicles over and along the roadway twelve feet in width running from Brookfield Road to the land hereby conveyed for the purpose of obtaining access....*". However, the grant to the predecessor in title of Anglian Water Authority (the Rural District Council for the Rural District of Newport Pagnell) was in more limited terms, namely: "*..... full and free right of way at all times ..... and with or without carts and vehicles over and along [the Access]for all purposes in connection with the maintenance and repair of the Sewage plant....*". The Property ceased to be used for the purposes of a sewage plant prior to the sale in 1983, and accordingly the express right of way came to an end. The grant by Anglian Water Authority in the 1983 Conveyance to Mr and Mrs Banks was therefore ineffective. The Applicant recognises this, which explains why this application is based on prescription, and not express grant.

3. There is no dispute as to the relevant principles to be applied to a claim to a prescriptive easement. Essentially, the Applicant must prove at least 20 years' user, as of right – namely without force, concealment or permission. There are of course

technical differences between the three modes of prescription (at common law, under statute and by "lost modern grant") but for present purposes these distinctions are not material. The burden is on the Applicant, therefore, to prove, on the balance of probabilities, that the Track has been used as access to and egress from the Property, as of right, for a period of at least 20 years prior to 22nd May 2015.

4. The Applicant himself has no knowledge of the Track or the Property prior to his purchase in 2014. His entire case rests, therefore, on the Statement of Truth made by Eileen Kathleen Banks on 19th May 2014. The material part reads as follows: "*Since 7 December 1983, I, together with my husband until his death in 1987, my son, Gary Banks of Cromwell House, Hillesden, Buckinghamshire MK18 4DB and my agents, have used the roadway on an occasional basis (about once a year) to gain access to my land. This is my only means of access to my land.*" Mrs Banks did not attend the hearing and could not be questioned on this statement.

5. Evidence for the Respondents was given by Pamela Mary Furniss and Gareth Phillip Pobjoy, in the form of witness statements which they verified at the hearing, and on which they were cross-examined. Mrs Furniss has been a Parish Councillor since 2005, and between 2005 and 2016 had responsibility for the management of the Allotments. She has also lived at 31 Brookfield Road since 1989 – this house being immediately adjacent to the entrance to the Track. From Parish Council records she was able to show that the Parish Council had become the freehold owner of the Allotments in 1989, but had gone into possession on 18th March 1985. It seems that the Allotments had been acquired by means of a Compulsory Purchase Order in 1982 but various complications had resulted in a delayed completion. She also produced documentary evidence to show that the Parish Council had in 1985 erected a gate at the southern end of the Track where it entered the Allotments (at the junction between the portion of the Track owned by the First Respondent and the Parish Council). A padlock was attached to this gate and keys purchased for and issued to the individual allotment holders. Mrs Furniss was able to confirm, from her own experience since moving to 31 Brookfield Road in 1989, that the gate has been in position since that time and has always been kept locked. She stated that at the time of the sale of the Property in 2014, and as a goodwill gesture, a key to the padlock had been provided to the selling agents. There is email correspondence which confirms this arrangement,

with the Parish Council pointing out to the estate agents that any claim to a right of way over the Track was challenged. Mrs Furniss expressed some surprise that the Respondent still held a key to the padlock, since only one key had been issued and she understood that the agents had returned that key to the Parish Council. She stated that she had personally never seen any signs of activity or maintenance on the Property throughout the period since 1989 when she moved to Brookfield Road. She had never been aware of any use of the Track other than by allotment holders to whom keys had been issued by the Parish Council.

6. Mr Pobjoy is the owner of 51 Brookfield Road, which he purchased from Eileen Kathleen Banks, who had lived at no. 51 since 1975. The Property lies to the rear of no.51 and can be accessed from it. According to Mr Pobjoy's evidence, Mrs Banks had offered to sell the Property together with no.51 and he had agreed to buy the entire plot. However, very shortly before exchange of contracts, Mrs Banks withdrew the Property from the sale and thereafter retained it in her ownership (until the sale to the Applicant). The Property lies directly adjacent to the end of the garden of no. 51. Mr Pobjoy could not recall any occasion after 1987 when he saw Mrs Banks on the Property, nor indeed had he ever seen anyone on the land other than around the time of the sale in 2014. Nor has he seen any signs of maintenance having been carried out on the Property. He also said that in 2014 he had informed the vendor's solicitors, and the auctioneers, that there was no right of way leading to the Property.

7. That is the extent of the evidence called on either side – the First Respondent did not attend and was represented by his solicitor, who conducted cross-examination of the witnesses and made submissions but did not call any evidence. In my judgment, the Applicant has failed to adduce sufficient evidence to support his claim to a prescriptive easement. Even if there had been no rebutting evidence, I cannot see that Mrs Banks's ST4 would have been sufficient to prove a right of way by prescription. Use of the Track "*.....on an occasional basis (about once a year).....*" would not in my judgment have established a right of way, and I very much doubt that the Tribunal would have been able to find the existence of a right of way on the basis of such a vague and untested statement. However, in this case there is ample oral evidence, from Mrs Furniss and Mr Pobjoy, to rebut any suggestion of a prescriptive easement. It has been established that the Track was gated, and the gate locked, from at least

1989 onwards, and probably from 1985 onwards. Use of the Track whilst the Property was in use as a sewage works was by reference to the express easement. The prescriptive right could only have commenced after 1983, and manifestly there can have been no use since the gate and lock were in place. Quite apart from that, neither Mrs Furniss nor Mr Pobjoy ever witnessed such user. Mrs Banks's ST4 states that the Track represented the only access to the Property since 1983. In point of fact, she retained ownership of 51 Brookfield Road until 1987, and was able to obtain direct access from the rear garden of that property. Taking all the evidence together, therefore, the Applicant has not been able to establish a right of way over the Track by virtue of long user. In all probability, there has been no access to the Property between 1983 and 2014, when Mrs Banks decided to sell it and arrangements were made to obtain a key from the Parish Council. There seem to have been a few incidents of trespass at the time, presumably when potential buyers attempted to obtain access despite the locked gate.

8. I shall therefore direct the Chief Land Registrar to cancel the Applicant's application in Form FR1 dated 22nd May 2015. As to costs, I am minded to order the Applicant to pay the Respondents' costs, but will give him an opportunity to make submissions on the point within 7 days of being served with the costs statements. I assume that the Respondents will want to recover costs – they should file with the Tribunal and serve on the Applicant their costs statements (the Second Respondent is limited to costs payable to a litigant in person) within 7 days of receiving this Decision and Order.

Dated this 15th day of January 2018

Owen Rhys

BY ORDER OF THE TRIBUNAL