



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

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2015/0318

BETWEEN

**PAUL ANTHONY RUSHFORD
PAULINE BERYL RUSHFORD**

Applicants

and

**NEIL CHARLES TURNER
SUSAN TURNER**

Respondents

Property Address: 3 Caistor Road, Barton upon Humber

Title numbers: HS159517 and HS375527

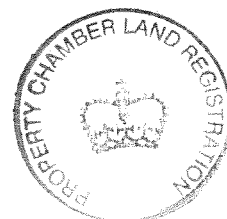
ORDER

The Chief Land Registrar is ordered to cancel the undated application to register prescriptive rights for the benefit of land in title HS375527 over land comprised in title HS159517.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 29th day of June 2016





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Title numbers: HS159517 and HS375527**

**Before: Judge McAllister
Alfred Place, London**

Representation: both parties appeared in person

DECISION

Introduction

1. The dispute between the parties relates to the provision of services (specifically water and electricity) to a plot of land which was formerly part of No 1 Caistor Road ('No

1') Barton upon Humber, which plot was purchased by the Applicants on 3 July 2014, and upon which the Applicants have built a bungalow. This plot (which I will refer to as 'the Plot') is now No 1A Caistor Road. It is registered with title HS375527. Immediately to the east of the Plot is No 3 Caistor Road ('No 3') which is owned by the Respondents who have lived there since they purchased their property in November 1988.

2. Access to the Plot and to No 3 is along a track leading east off Caistor Road. The track forms part of the Respondents' title. By an undated application in form AP1 supported by a statement of truth, the Applicants applied for the registration of the benefit and burden of a number of easements. The first was a right of access to the Plot. The second was a right of easements for services to the Plot under and/or over the track leading to the Plot. The statement stated that the period of user was from 1992 until 2014, and further that the Respondents did not object in principle, but were making a number of unreasonable (financial) demands.
3. The Respondents' position was set out in a letter from their solicitors on 19 January 2015. There is no issue as to the right of access (or drainage). As the letter points out, the Applicants' right of access is noted on their title. By a conveyance dated 8th May 1946 between Arthur Stamp and William Henry Pownall a plot of land of 784 yds approx was conveyed to Mr Pownall together with '*a right of foot and carriage way over and drainage under the said accommodation road 12 feet wide leading from the eastern extremity of the land hereby conveyed and Caistor Road and Whitecross Street*'. The plot of land conveyed included the Plot (a strip of land approximately 2 metres wide was retained by No 1 on the sale of the Plot in 2014). I should add that I have not seen the 2014 transfer of the Plot.
4. The issue therefore is whether the Applicants have the benefit of service easements (water and electricity). The Respondents' case is that these rights could not have been acquired by prescription since the Plot was (at the time of writing) a vacant plot being developed by the Applicants which did not have any services installed, and that accordingly such rights to water, electricity, and other services as No 1 may have do not extend to the Plot. Putting it another way, the dominant tenement, in so far as prescriptive rights is concerned, is No 1 and not the Plot.

5. As explained below, I agree with this analysis and accordingly I will order the Chief Land Registrar to cancel the application made by the Applicants.

Background and evidence

6. In 1946 the Plot was part of a larger area of land. The conveyance dated 8 May 1946 refers to the Plot as *'ALL THAT piece or parcel of land situate in and being part of a larger piece of land on the North Side of Caistor Road Barton on Humber aforesaid containing 1 acre and 14 perches (more or less) conveyed to the Vendor by a conveyance dated the first day of March One thousand nine hundred and thirty four..... as the said piece of land hereby conveyed is bounded on or towards the North by Bardney Hall grounds on or towards the South by an accommodation road on or towards the West by other property of the Vendor and contains an area of 784 square yards (more or less)....'*
7. Mr Stamp, therefore, purchased a number of plots in 1934, including what are now No 1, the Plot, and No 3. There is no documentary evidence relating to what happened to what is now the Plot, save that, by 1982, this plot was owned by Ivor Gawtry and Dorothy Gawtry.
8. By a conveyance dated 8 January 1982 made between Mr and Mrs Gawtry as vendors and Donald Egan and Shirley Elizabeth Egan as purchasers, Mr and Mrs Gawtry sold two parcels of land to the Egans; first, an area of 592 square yards bounded on the north by Bardney Hall grounds and to the south by the track, and to the east by the second parcel; and second the land conveyed by the 1946 Conveyance, both plots being shown for identification purposes only on the plan attached. The plots were sold *'together with and subject to all rights easements appurtenances as now used and enjoyed with the said property or to which the same is now subject'*. The first plot contained a house (Bardney Cottage) (and is No 1) and the second was used as a garden or orchard (and is the Plot)

9. Mr and Mrs Egan remained in possession until the Plot (less a strip to the west) was sold to the Applicants. The Plot was vacant, apart from a brick built shed, and what was probably an air raid shelter. The brick shed is some 20ft by 8ft. It is common ground that there was once an electricity supply to the shed, which may have been used as a vinery, and the electricity used for heating the vines. A new shed was built in 1997. Mr Turner was involved in the building of the shed and produced an invoice. There was also, at one time, an electricity supply to the air raid shelter: Mr Turner said there was a junction box there. As for water, Mr Rushford found an old iron pipe coming from No 1 which he believes may have been a water pipe. Mr Turner's evidence was that both the water supply (if any) and the electricity supply to the shed and to the air shelter were disconnected in 1982. There is no satisfactory evidence of when the water supply (if such it was) and the electricity supply were installed, and when they were removed, although it is clear that the electricity and the water came from No 1.
10. The electricity is supplied by overhead cables to Nos 1 and 3. The wires cross the track, and, in order to reach No 3, cross the Plot. There is no connection however to the bungalow built by the Applicants, the electricity to which is supplied by a generator. Water is supplied in 40 litre drums. In order to obtain a connection to the mains water supply which runs under the track it would be necessary to lay 3 metres of pipe. Mr Rushford's evidence is that, in any event, he could not use the current overhead wires to connect to the electricity supply because it is substandard, and that his preferred option would be a new underground cable supply.
11. So far as the telephone is concerned, Mr and Mrs Rushford have a telephone, installed by Open Reach. They believe that they are entitled to this by reason of flying wires legislation. Mr Turner told me that they had objected to this, because the connection box for the flying rights is fed by a cable over their property. As he put it, they 'have not bottomed out' the telephone rights. But their position is clear: they object to all services, other than rights of way and drainage, expressly provided by the 1946 Conveyance.
12. As mentioned above, Mr and Mrs Turner purchased No 3 in November 1988. Their house was one of a number built by Mr Stamp in the 1930s. They bought from Mr

Stamp's sister. It had been rented between 1935 and 1988. Mr and Mrs Turner objected to the planning application for a new bungalow on what is now No 1A, and although there were some discussions about, and the draft of, a grant of easements by way of a deed with Mr and Mrs Egan, these discussions came to nothing, and their position remains that they object to water, electricity and, it seems, a telephone connection. I note that in a letter dated 30 December 2013 from Mr Turner to the solicitors acting for Mr and Mrs Egan he stated that they would not object to the purchaser laying in pipework to supply water, subject to certain conditions and reinstatement to a certain standard. This letter, he stated, was written in the belief that the Plot had a right to a water supply.

The law

13. The Plot has the benefit of the express rights conferred by the 1946 conveyance. The conveyancing history in this case is scant, but it is likely that No 1 also had express rights of way and drainage over the track. There is no evidence that any other rights were acquired expressly, and, if they were, they would obviously have been limited to No1. If no express rights (to draw water, and have an electricity supply) were granted expressly, then, clearly, at some point, and before 1982, No 1 also acquired these easements by prescription.
14. In the same way, there is little information about the conveyancing history or use of what is now the Plot. The best evidence is that it remained vacant, and was used (if at all) as a garden or orchard together with No 1. I do not know when the two plots were purchased by the Gawtrys (or possibly their predecessors).
15. Two questions therefore arise. First, and assuming that No 1 and the Plot were used as one plot (whether in common ownership or not) did the rights acquired by prescription by No 1 extend to the Plot? In other words, can it be said that the dominant tenement comprised both No 1 and the Plot? Secondly, if not, is there any evidence that prescriptive rights for underground services and other similar rights were acquired, by prescription, for the benefit of the Plot alone?

16. In my judgment the answer to both those questions is no. It is settled law that the extent of the dominant tenement is limited to the land intended to be benefited when the right is acquired: see *Harris v Flower* (1905) 74 L.J. Ch 127, *Peacock v Cousins* [2001] EGLR 87, *Das v Linden Mews* [2002] EWCA Civ 590. In other words, if a right is granted for Land A, the owner of Land A cannot also use that right to benefit Land B, simply because he owns Land B. The courts have always been careful not to enlarge the burden on the servient land. It follows, accordingly, that if what is now No 1 acquired rights to water, electricity etc, those rights did not extend to the Plot merely because No 1 and the Plot were in common ownership, and the easements (water and electricity) were extended into the Plot.
17. So, is there any evidence of user by the Plot over a sufficient period of time such that, in its own right, the Plot acquired prescriptive rights? The answer to this is no. There is no evidence as to the separate ownership or use of the Plot, and there is no evidence that the Plot ever had a water supply or electricity supply directly from the track.
18. The Applicants rely on section 62 of the Law of Property Act 1925. This only operates where a piece of land is in common ownership, and the owner sells part. Any rights which the part conveyed enjoyed over the part retained will become easements. The section has no application where, as here, the rights are claimed not against the vendor, but against a third party.
19. It may be that the Applicants can resolve their difficulties in other ways, but, in my judgment, they have no rights over or under the track owned by the Respondents, other than the rights set out in the 1946 conveyance.

Costs

20. In principle, the Respondents are entitled to their costs since the date of the reference (6 May 2015). I am aware that solicitors have been acting for them. A schedule of costs in Form N260 or the like is to be filed with the Tribunal and served on the Applicants by 15 July 2016. The Applicants may make such objections or representations as they deem appropriate within 2 weeks of receipt of the schedule, and I will then make an order.

BY ORDER OF THE TRIBUNAL

Ann McAlliste.

Dated this 29th day of June 2016

