



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

**REF/2017/0818**

**LAND REGISTRATION ACT 2002**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**B E T W E E N:**

**BEVERLEY ANN SHIMWELL**

**Applicant**

**and**

**PHILIP WILLIAM WHEELDON**

**Respondent**

**Property Address: Land to the North of Buckdale Lane, Winster, Matlock,  
Derbyshire DE4 5FB.  
Title Numbers: DY494554 & DY223822**

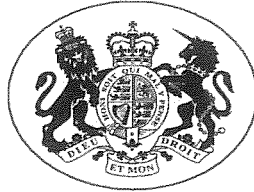
**Before: Mr Max Thorowgood sitting as Judge of the First-Tier Tribunal**

**Sitting at: Derby Magistrates Court, The Court House,  
St Mary's Gate, Derbyshire DE1 3JR  
On: 20<sup>th</sup> September 2018**

**Applicant's representation: Emily Duckworth of Counsel  
Respondent's representation: In person**

**1. Introduction**

- 1.1. I had the benefit of viewing the site on the afternoon before the hearing of this matter in company with the parties. The findings which I set out below are informed by my observations during the course of that site visit.
- 1.2. The usual benefits of seeing a site before the hearing were increased in this case by the fact that a proper understanding of the problem requires an understanding of the lie of the land which is not apparent from either the plans or the many photographs which have been produced.



- 1.3. The practical boundary between the two plots of land in question is a steep bank the existence of which, never mind its height and steepness, are not properly appreciable without sight of the position on the ground. I shall refer to this bank as, “the Bank” in this decision but it is worthy of note that considered from the point of access to both parties’ properties in Buckdale Lane, the height of the Bank (and hence the difference in height between the Applicant’s land and the main body at least of the Respondent’s land) rises from gradually from nothing to a point behind the Applicant’s shed/barn which I would estimate is not less than 15-20’.

## **2. The application**

- 2.1. The reference concerns the Applicant’s application dated 20<sup>th</sup> January 2017 in form AP1 to be registered with title to the land shown coloured and hatched red and green on the plan annexed hereto by reason of hers and her late husband’s adverse possession of it since 1984. References to, “the Disputed Land”, “the Red Land”, “the Green Land” and “the Plan” are to be construed accordingly.

## **3. The conveyancing history and other relevant background**

- 3.1. By a conveyance dated 2<sup>nd</sup> February 1984 the Applicant’s late husband, James Ian Shimwell, acquired the unregistered title to the parcel of land now comprised within title number DY494554. The seller was a Victor Melvin Yates. The land in question was in use as an agricultural implement and fertilizer store. It seems it had in the past been used for mineral washing. Mr Shimwell acquired the land for use as a yard in connection with his business as an agricultural haulage contractor.
- 3.2. There was already a substantial shed or barn on the land when Mr Shimwell bought it and in May 1984, shortly after his purchase, he paid for another lean-to shed to be constructed against the existing shed and hard up against the Bank (“the Shed”).
- 3.3. It is admitted by the Applicant that a substantial proportion of that new shed, the Red Land, was constructed on land which was not within the title conveyed to Mr Shimwell. Likewise, it is admitted that the means of vehicular access to it, the Green Land, was also not within his title.
- 3.4. I have little doubt that if Mr Shimwell had appreciated in 1984 the risk that he might be constructing his new shed on land which did not belong to him he would not have done so. I infer that he had no doubt at the time that the land, that is to say, both the Red and the Green Land at least, did belong to him.
- 3.5. On 18<sup>th</sup> April 1988 the Peak Park Joint Planning Board issued an enforcement notice in respect of the Shed. Mr Shimwell appealed against that notice to the Planning Inspectorate which upheld his appeal on the ground that the notice was defective and ought accordingly to be quashed.
- 3.6. By a conveyance apparently dated 13<sup>th</sup> June 1991 the Respondent acquired title to a close of land at Buckdale in the Parish of Winster from Barry Daniel Yates to whom it had passed by will. Title to that close was apparently registered under title



number DY223822 on 8<sup>th</sup> October 1991 and subsequently conveyed by the Respondent to a Ms Harrison (who either was then or later became his wife) on or about 6<sup>th</sup> August 1992. I say apparently because, the Respondent having previously disclosed no documentary evidence that he had ever held title to the Disputed Land did produce at the hearing the first page of what was apparently a copy of the conveyance to him which is referred to at entry A2 of the registered title but failed to explain why he had not produced the whole of the document. Ms Harrison, from whom the Respondent is now divorced, is still the registered proprietor of title number title number DY223822 but the Respondent has disclosed a transfer of the land back to him executed by his ex-wife and dated 22<sup>nd</sup> May 2007. It is unclear why he should not have applied to register that transfer, but it is not a requirement that a person objecting to an application to the Land Registrar have any interest in the land concerned and so the answer to that question does not seem to be relevant to the enquiry which I have to make.

- 3.7. What is notable is that the Respondent should have acquired his land from a different member of the Yates family. I heard evidence from Mr Glyn Yates, Melvin Yates's brother, who told me that his grandfather on his mother's side had owned both parcels of land and had operated a mineral washing business from the Applicant's land and had farmed the Respondent's land. On his retirement, Mr Yates said, his grandfather had sold the mineral washing business to his brother, Melvin (who sold it to Mr Shimwell) and the farm business to his father from whom, I gathered, Barry Yates (also Glyn Yates's brother) had inherited it.
- 3.8. Mr Yates told me that he had worked the field which is now the Respondent's land and that, so far as he was concerned, the boundary between it and the Applicant's land was the wire fence at the top of the Bank. He did not claim to have any detailed knowledge of the position in law but the evidence he gave of his impression is significant insofar as it indicates the way in which the lie of the land would have struck the ordinary observer without the benefit of sophisticated surveying equipment to tell him where a plan indicated the boundary should be.

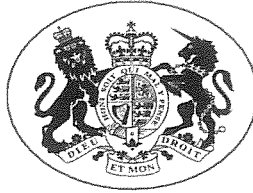
#### **4. Discussion as to the position of the boundary**

- 4.1. I have already expressed my conclusion that Mr Shimwell would not have erected the Shed in the position he did had he realised that the land on which he was erecting it might not belong to him.
- 4.2. This is consistent with what Mrs Shimwell and Mr Cooper told me about the installation of tembo beams to hold back the Bank from falling into the yard and to make it easier to scrape the yard as well as the adjoining fence and gate to the rear of the Shed in about 1996. Mrs Shimwell told me that the gate had been installed so that any cows which got onto the Bank, which was full of lead ore, could be brought back into the yard.
- 4.3. It was the Respondent's case, as set out in his initial notice of objection, and his Statement of Case, that in July 1991 he came to a mutual agreement with Mr Shimwell that in exchange for him allowing Mr Shimwell to use what he describes as, "his building," Mr Shimwell would allow him to allow him to lay hardcore on



the part of Mr Shimwell's land over which he had a right of way in order to improve the access to his land. He further says that he gave Mr Shimwell permission to construct the retaining wall, upon condition that he was still able to access his land. That, he said, was the purpose of the gate.

- 4.4. The Respondent amplified that case slightly in the various supplementary documents which he filed shortly in advance of the hearing including his Chronology. That document made reference to Mr Shimwell asking his permission: on several occasions between 1992 and 2014 to store hardcore on the Green Land; in 1995 to extend the height of the doors to the Shed; in 1995 to construct the retaining wall; and in 1996 to remove some of the blockwork from the wall of the Shed in order to improve its ventilation.
- 4.5. At no point in any of his written evidence did the Respondent suggest that the Applicant had been present during any of these occasions save the very first, shortly after he has completed his purchase, when he said Mr and Mrs Shimwell approached him to warn him about the position of an electrical cable. Only in his cross examination of the Applicant did he suggest that she had been both a party to and an active participant in them.
- 4.6. Mrs Shimwell flatly denied that any of these alleged conversations took place. She said that she had certainly not been present and that she believed she would have known (because her husband would have told her) if the Respondent has spoken to her husband without her being present. She said that she very rarely, if ever, spoke to the Respondent and that she deliberately kept out of his way because of his bad reputation in the locality. The only occasion on which she could recall having done so was when she went onto the Respondent's land to ask him for his wife's telephone number in 2016 in order that she could write to her for the purpose of attempting to sort out the problem about the boundary which emerged upon her application for first registration of her title.
- 4.7. Mr Shimwell died on 23<sup>rd</sup> November 2013. It is apparent from the assent upon which her application for first registration of the property was based that the Applicant inherited it from him.
- 4.8. It is the Respondent's case that after Mr Shimwell's death, in Spring 2014, he approached Mrs Shimwell and told her that he didn't mind if she continued to store her late husband's things in the Shed until Christmas 2016 but, thereafter, he would need his land back because he was planning on expanding his agricultural activities.
- 4.9. It is useful to consider the Respondent's account in light of the events which happened towards the end of 2016. The Applicant had discovered that there was a possible problem concerning her title to the Disputed Land in late 2014 or early 2015 and the title plan to the title which she first registered on 20<sup>th</sup> July 2015 makes it quite plain that the boundary runs through the middle of the Shed.
- 4.10. It seems to have taken Mrs Shimwell some time to grasp the nettle which this discovery created but in October 2016 she instructed Rowley Surveying to prepare the Plan and on 21<sup>st</sup> November 2016 her solicitors wrote to Mr Wheeldon offering to purchase the Bank, in effect, in consideration of £5,000.00 and the cross transfer of some land to Mr Wheeldon.



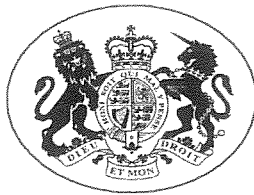
- 4.11. There was no immediate response to that letter but on 9<sup>th</sup> December 2016 Mr Wheeldon wrote to Mrs Shimwell asking that she refrain from entering onto his land and that she remove all her chattels from it by the 20<sup>th</sup> January 2017. Mr Wheeldon then wrote, on 14<sup>th</sup> December 2016, to Taylor & Emmett stating that he had not received their letter of 21<sup>st</sup> November 2016 until 12<sup>th</sup> December 2016, that he had already written to Mrs Shimwell to inform her of his wish that she should vacate his land and that he was not interested in receiving any proposals from her until she had done so.
- 4.12. Having written in those terms, Mr Wheeldon then proceeded, on 22<sup>nd</sup> December 2016, to saw the hinges off the doors to the Shed with an angle grinder thereby exposing the contents to the possibility of theft.
- 4.13. It is striking to me that Mr Wheeldon did not advance the case which I have set out above (or any part of it) in the correspondence which he sent to Mrs Shimwell and her solicitors in late 2016. Why, I ask myself rhetorically, if he had had the conversations which he says he had with Mr and Mrs Shimwell over the years and, perhaps more importantly, if he had told Mrs Shimwell in Spring 2014 that he would require the property back at Christmas 2016, did not cite those plainly pertinent facts to justify his first written demand that she give up possession of the Shed ? Further, why, if he had said he wanted the property back at Christmas It strikes me as implausible in these circumstances that Mr Wheeldon did have the conversations he claims to have had with Mrs Shimwell and/or her late husband.
- 4.14. That view is strongly reinforced by the developing nature of Mr Wheeldon's case as to the instances of licence upon which he relies. Perhaps the most striking example of this (made for the first time in his Chronology) was his suggestion that Mr Shimwell asked his permission to dump loads on lime or hardcore overnight on the green land in front of the Shed. In the context of a working agricultural haulage yard the main business of which was lime spreading this seems extremely unlikely, particularly so, if the initial agreement upon which Mr Wheeldon relies had been formed as he says. What would have been the need to continue to revert to him for permission, particularly with reference to such a common place, inconsequential, use of land which could not conceivably inconvenience Mr Wheeldon ?
- 4.15. These factors combined with Mr Wheeldon's evasive demeanour under cross-examination by Ms Duckworth combined to convince me that I could not place any real reliance upon his evidence.
- 4.16. Mrs Shimwell on the other hand was, for the most part, clear and consistent in her evidence. It is true though that she could not very convincingly explain why it should have been thought necessary to install the gate in the fence to the rear of the Shed and particularly so when that gate closed against the back of the Shed and could not be opened wide enough to make it plausibly useful for the purpose which she claimed it had, namely, to let cows which had escaped onto the Bank back into the yard. The true explanation I suspect is that the gate was not used as a gate but as a convenient extra bit of fence. Be that as it may, for the reasons which I have explained above, I do not believe it was installed at Mr Wheeldon's insistence in order that he might have access to his land. Quite apart from anything else, the



access to the gate via the Bank would have been very steep and completely useless for any practical purpose.

**5. The questions which I have to address**

- 5.1. Subject to the question of the consent which he says he gave, Mr Wheeldon did not dispute that Mr and subsequently Mrs Shimwell had been in possession of both the Red and the Green Land since 1984. I am quite satisfied that they were.
- 5.2. I have addressed Mr Wheeldon's claim that he licensed Mr Shimwell's possession so that it was not 'adverse' to his, or his wife's, interests as the registered proprietors of the freehold title to the land as a matter of fact and rejected it. I need say no more about it.
- 5.3. The second argument which Mr Wheeldon raises is that, because she vacated the Shed on 23<sup>rd</sup> December 2016 in response to his removal of its doors, Mrs Shimwell could not have been in actual occupation of the Disputed Land as at the date of her application. So, says Mr Wheeldon, because rights acquired under the Limitation Act 1980 and/or preserved by paragraph 18 of Schedule 12 are no longer (since 2006) preserved upon first registration and/or capable of being overriding interests if the claimant is not in actual possession she must have lost those rights.
- 5.4. Ingenious though that argument might at first appear (paragraph 18 of Schedule 12 notwithstanding), it is in fact wholly misconceived as Ms Duckworth convincingly argued. Mrs Shimwell's application relates to land the title to which has been registered since 1991. She and her predecessor in title were in possession of it continuously from 1984 until 23<sup>rd</sup> December 2016. Accordingly, since 1996 at least, Ms Harrison, as the registered proprietor of title number DY223822, has held the title to the Disputed Land upon trust; first for Mr Shimwell and latterly for Mrs Shimwell. There has been no first registration of the Disputed Land since 1991 when Schedule 1 did not apply and the rights in question had not yet accrued. They did accrue in 1996 since when there has been no registered transfer of DY223822 which could possibly have defeated them. Indeed, the transfer would have had to have been effected in the window between 23<sup>rd</sup> December 2016 and the date of Mrs Shimwell's application in order to defeat her claim.
- 5.5. I shall consider also briefly that by making an open offer to purchase Mr Wheeldon's land in November 2016 Mrs Shimwell may have acknowledged Mr Wheeldon's title. This is not an argument which was raised by Mr Wheeldon but it occurred to me in the course of the hearing that it could possibly be relevant, the relevant authority is the case of *Edginton v Clark* [1964] 1 QB 367 in which the Court of Appeal held that an offer to purchase land title to which was subsequently claimed to have been acquired by adverse possession could operate as an acknowledgment of title for the purposes of the Limitation Acts. I reject this possibility on the ground that any acknowledgment of Mr Wheeldon's title by Mrs Shimwell's offer occurred after the period of limitation had expired and accordingly that that period could not be extended, see para 16-01 of *Adverse Possession* (2<sup>nd</sup> ed.) by Stephen Jourdan QC and Oliver Radley-Gardner.



5.6. It follows, I consider, that there is no bar to Mrs Shimwell's entitlement to apply to register her title to the Disputed Land by adverse possession as against Ms Harrison, who does not object to her doing so.

## **6. Conclusions**

6.1. My conclusions are therefore as follows:

6.1.1. That Mr Shimwell was in possession of the Disputed Land from 1984 until his death.

6.1.2. Since then Mrs Shimwell has been in possession of it.

6.1.3. At no stage did Mr Wheeldon purport, as he claimed, to give either Mr or Mrs Shimwell permission to use the Disputed Land.

6.1.4. In the premises, by reason of s. 75 Land Registration Act 1925 and paragraph 18 of Schedule 12 to Land Registration Act 2002, Ms Harrison, who is currently the registered proprietor of title number DY223822, has since 1996 held the Disputed Land upon trust for Mr and now Mrs Shimwell.

6.2. It follows that I propose to direct the Chief Land Registrar to give effect to the Applicant's application dated 20<sup>th</sup> January 2017 as if the Respondent's objection had not been made.

6.3. It would ordinarily follow, because costs in the Land Registration Division of the First-tier Tribunal follow the event as it is said, that I would make an order that the Respondent should pay the successful Applicant's costs of the reference. However, in view of the fact that I know nothing of any 'Without Prejudice' discussions which there may have been between the parties, I shall give the parties permission to file submissions in that regard should they be so advised.

## **ORDER**

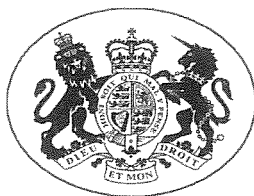
**UPON** hearing counsel for the Applicant, Ms Duckworth, and the Respondent, in person

### **IT IS ORDERED THAT:**

1. The Chief Land Registrar shall give effect to the Applicant's application dated 20<sup>th</sup> January 2017 as if the Respondent's objection had not been made.







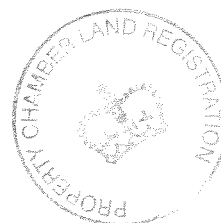
2. If the Respondent wishes to contend that he should not be ordered to pay the Applicant's costs of this reference, such costs to be assessed on the standard basis by a Tribunal Judge specialising in the assessment of costs if not agreed, he must file and serve written submissions setting out his reasons by 5 pm on 10 December 2018.
3. If the Respondent files and serves written submissions in accordance with paragraph 2 above, the Applicant has permission, if so advised, to file written submissions in answer to those of the Respondent by 5 pm on 4 January 2019.
4. If the Respondent does not file and serve submissions in relation to his liability to pay the Applicant's costs of this reference in accordance with paragraph 2 above, the Respondent shall pay the Applicant's costs of this reference and those costs shall be assessed, if not agreed, in accordance with the following directions:
  - a. The Applicant shall file and serve a Statement of her Costs of this reference in form N260 together with copies of all necessary supporting vouchers by 5 pm on 7 January 2019;
  - b. The Respondent has permission to file and serve Points of Dispute in relation to the Applicant's Statement of her Costs of the reference by 5 pm on 21 January 2019; and
  - c. The Applicant has permission to file and serve Points of Reply in relation to the Respondent's Points of Dispute by 5 pm on 4 February 2019.

Thereafter the matter shall be listed for hearing before a Tribunal Judge specialising in the assessment of costs.

Dated this 26<sup>th</sup> day of November 2018

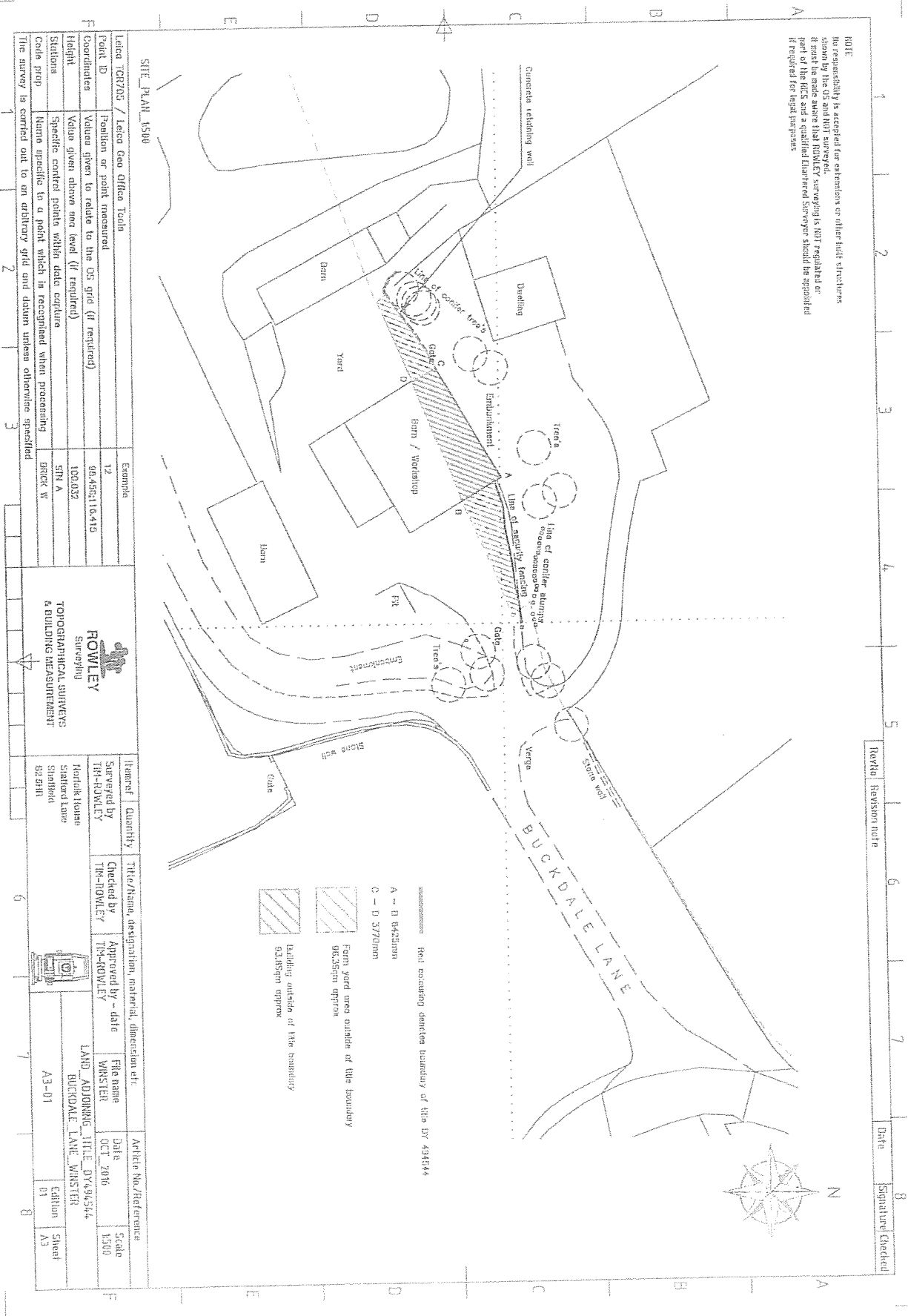
*Max Thorowgood*

BY ORDER OF THE TRIBUNAL





NOTE  
No responsibility is accepted for extensions or other built structures shown by the OS and NOT surveyed.  
It must be made aware that ROWLEY surveying is NOT regulated or part of the RICS and a qualified Chartered Surveyor should be specified if required for legal purposes.



1	2	3	4	5	6	7	8	
Revised / Revision note							Date	Signature / Checked

SITE PLAN 1500

Latest TOG703 / Leica Geo Office Total Station	Example
Point ID	12
Coordinates	96,456,110,415
Height	100,032
Sidings	SIN A
Code prop	BRICK W

The survey is carried out to an arbitrary grid and datum unless otherwise specified

<p><b>ROWLEY</b> Surveying TOPOGRAPHICAL SURVEYS &amp; BUILDING MEASUREMENT</p>		Handled by	Quantity	Title/Name, designation, material, dimension etc.	Approved by - date	File name	Article No./Reference
		Surveyed by	TR-R	Checked by	TR-R	TR-R	WINSHER
		Standard Lane	Standard			LAND ADJOINING TITLE D17494534	
		S2 SHH	S2 SHH			BUCKDALE LANE WINSHER	
						A3-01	EARTH
							Sheet
							A3

- Red wavy line denotes boundary of title D17494534
- A - B 6445mm
- C - D 3770mm
- From yard area outside of the boundary 6425mm approx
- Building outside of the boundary 6425mm approx

