



[2019] UKFTT 0107 (PC)

REF/2017/0830

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

**LAND REGISTRATION ACT 2002**

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

**BETWEEN**

**Christopher Wharton Lowes**

**APPLICANT**

**and**

**Jenny Maria Lindqvist-Wortley**

**RESPONDENT**

**Property Address: Land on the north side of 38 Fortescue Road, Poole, BH12 2LJ  
Title Number: DT427201**

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**ORDER**

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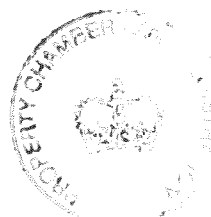
IT IS ORDERED as follows:

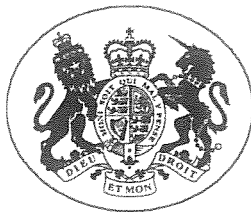
The Chief Land Registrar is to give effect to the original application dated 12 December 2016 for first registration, as if the Respondent's objection had not been made.

Dated this 18 January 2019

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL





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**DECISION**

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1. The Applicant, Mr Christopher Lowes, has made an application to HM Land Registry to be registered as proprietor of a small plot of unregistered land in Poole, Dorset, to which I shall refer as “the disputed land”. It is behind the houses on Fortescue Road, Poole; the Applicant lived at number 36 Fortescue Road from 1998 to 2007. He says that he has used the disputed land since 2000, fenced it in 2004, and has used it to store boats and other things. He says that he has continued to use it and maintain it since moving away and has had exclusive possession of it.

2. The respondent, Mrs Jenny Lindqvist-Wortley who lives at flat 1, 40 Fortescue Road, has objected to the registration and says that the Applicant has not used the disputed land to an extent sufficient to establish adverse possession.
3. I visited the land on 16 January 2019. I heard the parties in Poole on 17 January 2019; neither was legally represented.

#### **The land**

4. The disputed land is approached by turning off Fortescue Road into what I think must be an unadopted road, wide enough for vehicles, running between the houses and connecting Fortescue Road with Lincoln Road. The disputed land is approximately the size of one of the back gardens of the nearby houses, or a little smaller. It is enclosed on all sides, by the back of number 38's garage, by number 40's garden fence, by chain-link fencing next to a path, and on the road side by boarded fencing which opens as a gate, wide enough to drive in. On the disputed land at the moment are two trailers, some garden waste, and an old plastic paddling pool.

#### **The Applicant's evidence**

5. The Applicant says in his statement of case that he purchased the disputed land in 2000. When questioned about this at the hearing he explained that until 2000 the land was used by Ron Andrews of number 38. When Mr Andrews was about to retire and move to Spain he asked the Applicant if he wanted to buy any of his tools and equipment, and his truck. The Applicant did so, but asked if he could also have the disputed land, where the truck was kept. At that stage it was open and unfenced. Mr Andrews said the disputed land was not on his deeds, but that he had been using it since the 1960s and that no-one had ever questioned his use. He was content for the Applicant to take it over; the Applicant did not pay anything for it and nothing was put in writing about it, but he carried on using it as Mr Andrews had done.
6. In about 2004 a neighbour, Mr Lewis, parked his car on the disputed land for a while. The applicant says it was for about a week, and that he charged Mr Lewis £1 for the use of the land while the car was being repaired.
7. The Applicant says that after that he fenced the land on the road side with a chain-link fence, about his own height, which was secured by metal poles at either end and could be unclipped to allow access. He kept his boat there for some years, which he was renovating, and eventually the boat was lifted out when it was finished.
8. The Applicant says he has stored building materials and boats on the land. He explains that because the land backs onto the three flats at number 40 Fortescue Road, the

people living there have occasionally left rubbish on the land which he has removed. He has more recently replaced the chain-link fencing at the front with the boarded fencing and gate that is there now.

9. The Applicant called his daughter, Ms Shannon Lowes, to give evidence. She was born in 1995. She says that she always remembered her father being on the disputed land and doing things with boats. She says she would have noticed if anyone else had entered the disputed land, and she recalls being surprised when Mr Lewis' car was there.
10. The Applicant also produced letters from some of the neighbours who confirmed that he has used the land, but they did not attend the hearing and so I cannot attach much weight to their evidence.

### **The Respondent's evidence**

11. The Respondent says she moved in to number 40 in 2004. This was challenged, but I accept her evidence.
12. She says in her Statement of Case that on occasions over the years other people have parked on the disputed land. When asked about this at the hearing she explained that the plural was an error and that she meant only Mr Lewis. Her recollection is that Mr Lewis parked there for some months, after the Applicant moved away in 2007, and that Mr Lowes threatened to tow Mr Lewis' car away if he did not move it.
13. The Respondent says that before the boarded fence was put up the front of the disputed land it was open and unfenced.
14. In response to this the Applicant produced a date-stamped photograph showing his boat – which must have pretty much filled the disputed land – being winched out, and clearly showing the chain-link fence at the front. The date on the photograph is 19 Mar 2006. The Respondent accepted this, but thought that the fencing was not always closed and that the land was left open at times.
15. The Respondent says that the Applicant has offered to sell the land to her and her husband and that he lied about owning it but backed off when asked to produce evidence of ownership. The Applicant denies that that conversation took place; whether the Respondent's evidence on this point is true or not is not relevant to what I have to decide.

### **Conclusion**

16. The disputed land is a useful plot in an area that is crowded and has limited parking space for residents. It is not known who, if anyone, has a paper title to it; HM Land

Registry has of course sent notice of the Applicant's application to the neighbours but no-one has come forward. If the Applicant has used it, as an occupying owner would use it and to the exclusion of others, for 12 years then he has acquired title to it and any other title has been extinguished.

17. I find that he has done that. The conflict of evidence about the fencing was resolved decisively by the photograph, which establishes that there was a tall chain-link fence along the formerly open side, next to the road, in place by 2006. It also resolves the conflict of evidence about Mr Lewis' parking, because he must have left his car on the land before the road side was fenced, so the Applicant' recollection of 2004 is probably correct rather than the Respondent's estimate of 2007. She did accept that her memory of dates might well not be exact.
18. It is clear therefore that the Applicant has secured the land by fencing since at least 2006 and probably, as he says 2004. He has used the land for storage, for rubbish disposal, for the maintenance of boats, and so on ever since and has not let anyone else use it. He has made out his case in adverse possession and I have directed the registrar to give effect to his application as if the Respondent's objection had not been made.

Dated this 18 January 2019

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL

