



[2019] UKFTT 0153 (PC)

PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 20171102
BETWEEN

WILLIAM BRAZIL

Applicant

and

THE CITY COUNCIL OF NORWICH

Respondent

Property: Land lying to the west of Mile Cross Road, Norwich

Title numbers: NK66025 and NK336687

The Chief Land Registrar is ordered:

1. To cancel the application to alter the title plan of title NK336687 under Schedule 4 to the Land Registration Act dated 13 February 2017
2. To cancel the application under paragraph 1 of Schedule 6 to the Act made on 6 February 2017
3. Pursuant to Rule 40(3)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to reject unconditionally any future application by Mr Brazil to any claim to any part of land registered under title NK336687 or to alter title NK336687 on any grounds.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 25th day of February 2019



[2019] UKFTT 0153 (PC)

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

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

**REF No 2017/1102
BETWEEN**

WILLIAM BRAZIL

Applicant

and

THE CITY COUNCIL OF NORFOLK

Respondent

Property: Land lying to the west of Mile Cross Road, Norwich

Title number: NK466025 and NK336687

**Before: Judge McAllister
Norwich Crown Court
9th and 10th January 2019**

Representation: Anthony Wooldridge represented the Applicant; Colin Moys of Counsel instructed by NP Law appeared for the Respondent

DECISION

Introduction

1. The Respondent ('the Council') is the registered proprietor of land to the west of Mile Cross Road, Norwich under title number NK336687. Title₂ was registered on 9 February 2006.

2. The Council's registered title shows that this land includes land let to the Minister of Public Buildings and Works by a lease dated 18 December 1967, a further lease to Anti Waste Limited for a term from 26 July 2016 up to and including 29 September 2023, (a re-cycling centre), and a Gypsy and Traveller site ('the Site') known as Mile Cross or Swanton Road. The Council granted a lease of the Site to Norfolk County Council by a lease dated 30 August 2017 for a term of 15 years from 1 April 2002.
3. In addition, the Council's registered title includes an area of open land to the west of the Site.
4. The Applicant ('Mr Brazil') lives on one of the pitches on the Site. By an application dated 13 February 2017 Mr Brazil applied to alter the title plan of title number NK336687 under Schedule 4 of the Land Registration Act 2002 by removing the Disputed Land on the grounds that, at the time of registration by the Council, he had barred the Council's unregistered title by adverse possession. He also made a separate application for registration based on adverse possession. The applications, as I understand it, were varied to show a smaller area of disputed land. The extent of the area claimed at the site visit is defined below. I will refer to the land in dispute as the 'Disputed Land.'
5. The substantive issue in this case is whether Mr Brazil has acquired title to the Disputed Land by adverse possession.
6. Before dealing with this issue, there are a number of preliminary points which I need to consider.

Preliminary points

7. Mr Brazil has some difficulty reading and writing. He has been assisted throughout by a number of individuals, the most prominent of which is Stuart Carruthers. By an order dated 14 May 2018, Judge Cook made an order that neither Mr Carruthers nor his wife Jane Carruthers nor any member of his family would be permitted to act as a Mackenzie friend in these proceedings in view of the order made Mrs Justice Cox in the High Court on 26 April 2016. This was later interpreted by another judge in this

jurisdiction as extending to preventing Mr Carruthers from appearing as a lay representative.

8. By a further order dated 6 June 2018 Mr Justice Walker refused Mr Carruthers permission to 'obtain' a declaration of the extent of the order made under section 42 of the Supreme Court Act 1981 and stated that *'Courts and Tribunals are fully entitled to control who it is that represents or assists parties to proceedings. There is no point in a sterile dispute as to what constitutes a 'Mackenzie Friend': even if you are not technically acting as a Mackenzie friend a court or tribunal is fully entitled 'in view of' what was found by Mrs Justice Cox to bar you from assisting parties to proceedings.'*
9. Mr Carruthers attended the hearing before me, but took no part in the proceedings. Mr Brazil was represented by Mr Anthony Wooldridge. In addition to Mr Wooldridge a number of other individuals have been assisting in the preparation of the hearing, and the various applications made throughout the reference.
10. Three matters arose at the outset of the trial. The first was an application made on Mr Brazil's behalf to allow to adduce the evidence of a further witness. I refused this application on the grounds that it was simply too late to adduce further evidence and that no satisfactory explanation had been provided as to why this application was made so late.
11. The second application was an application to determine an application under section 108(2) of the Act to set aside the registration of the Disputed Land in the Council's name. An application to this effect had been sent to the Tribunal on 3 January 2019.
12. Section 108(2) confers on the Tribunal jurisdiction to make any order which the High Court could make for the rectification or setting aside of a document which effects a qualifying disposition of a registered estate or charge, or a contract to make such a disposition. The procedure for dealing with applications under section 108(2) is set out in Rules 26 and 27 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. This application could not, self evidently, be dealt with at the hearing, nor was there any reason, in my judgment, for adjourning or delaying this matter to await the outcome of this fresh application.

13. On 28 January 2019 the Tribunal received an email written on behalf of Mr Brazil stating that, following the hearing, the Council had provided him with a number of documents received from Land Registry. Mr Brazil further stated that he wished to withdraw his application under section 108(2), albeit that he appears to be maintaining that there are mistakes in the Register, currently being considered by Land Registry. In any event, the application under section 108(2) appears to have been an application to alter a plan submitted by the Council at the time of first registration. This does not fall within the ambit of section 108(2).

14. The third issue raised at the outset of the hearing was this. Norfolk County Council has brought proceedings against Mr Brazil in the County Court at Norfolk for possession of Pitch 21 Mile Cross Gypsy site, where Mr Brazil resides or has resided. These proceedings are brought by a different party and concern a different property. Mr Brazil obtained permission in those proceedings by an order dated 4 October 2018 to join the Council (and NPS Property Services) as additional parties to his defence and part 20 counterclaim. The part 20 claim was made on 30 November 2018 and it claims that Mr Brazil is entitled to adverse possession of two areas of land in title NK336687. No further details have been provided.

15. Mr Brazil applied for an adjournment of this hearing in view of the County Court proceedings. I refused that application. The issue in that case is whether the County Council is entitled to possession of Plot 21. Even if the ambit of the dispute is widened by the Part 20 application I see no reason whatsoever to delay the hearing of this case.

16. The case before me therefore stands or falls on whether Mr Brazil can establish that he has acquired title to the Disputed Land by adverse possession, either under the transitional provisions set out in paragraph 8 of Schedule 12 to the Act or under Schedule 6 to the Act.

Background and evidence

Topography

17. The Disputed Land, as it was shown to me on the site visit the day before the hearing, is bounded by a slope to the north, on the other side of which is a footpath which used to be where a railway line owned originally by the Midland and Great Northern Railway ran. To the south it is bounded by a further slope leading down to a footpath running along the River Wensum. To the west, it is open to the public by means of an asphalt footpath, known as Marriott's Way, which leads to Sloughbottom Park. It is thought that this footpath was created by the Council in the 1990s. Vehicular access is gained from the east, along Swanton Road (which leads to the Site) and past what is now a locked metal barrier, leading to a dirt track which runs more or less east to west across the Land. The metal barrier was, it seems, first erected in 2011 by or on behalf of the Council to stop fly tipping. There is also a further means of access through a small gate to the north of the steel barrier.
18. There are some remains of wooden post and barbed wire fence to the north and south, and a concrete post and vertical lapped panel fence on the eastern boundary (to the north of the steel barrier, where the small gate is). The structures on the Disputed Land consist of two dilapidated caravans (although one may be in use), dilapidated sheds and a small stable, a horse enclosure and a chicken run. There are no signs on the Land indicating that the land is privately owned. There is no clear evidence as to when the caravans were placed on part of the Disputed Land: the Council's evidence is that one, at least, was placed there as late as 2017.
19. The Land Registry survey requisition report dated May 2017 described the Disputed Land as '*an area of waste land with currently two caravans on it*', as well as the structures referred to above.

The Council's paper title

20. As I have said, title is registered in the Council's name. The root conveyance is a conveyance dated 23 December 1909 whereby Charles Gambling conveyed to the City

of Norwich Waterworks Company the area of land coloured blue on the plan attached. This area constitutes the greater part of the Council's registered title less the south east corner which was already owned by the Waterworks Company.

21. The 1909 conveyance was followed by a lease on 24 December 1909 of the 'blue land' from the Waterworks Company to Mr Gambling for a term of 50 years. By a deed of transfer dated 24 March 1921 the Waterworks Company transferred their land to the City of Norwich Corporation. This document is missing, but the recitals to the indenture whereby the lease was surrendered to the City of Norwich Corporation refers to this deed of transfer. The original of the indenture was produced at the hearing. It seems to me unarguable but that the Council have documentary title to the Disputed Land. In any event, by virtue of section 58 (1) of the 2002 Act the legal estate in the Disputed Land is deemed to be vested in the Council on registration even if it would not otherwise be vested in him: this is the principle of conclusiveness of registration.

Mr Brazil's case

22. Mr Brazil's case has been set out extensively in a number of Statements of Truth in support of his applications to the Land Registry, his Statement of Case, and a number of witness statements. He also gave evidence before me. In essence his case is as follows. His family, and that of Tom Gallagher, and another family, moved to the Disputed Land and land further to the west in 1980 or earlier and since at least 1989 when his father died, or 1991 when Tom Gallagher died, he has been in exclusive occupation of the Disputed Land. The Land has been used for keeping horses, chickens, dogs and storage. Since 1989 Mr Brazil has constructed, replaced and/or maintained a number of structures, including shelters, chicken coops, dogs runs and dog kennels.
23. Prior to 1989 or 1991 the Disputed Land was used by a number of families in the same way. Mr Brazil's father died in 1989. Mr Brazil's case is that he became the sole occupier/owner of the Land around this time, or a little later, with the agreement of the gypsy community following the departure of the Smith and Gallagher families and the

death of Tom Gallagher. The Council and others always asked for permission to enter the Disputed Land for the last 40 years.

24. In 2003 Mr Brazil claimed to have allowed those living at the Site (where he himself moved with his family in about 1981) to use the Disputed Land for temporary accommodation whilst works were being done by the Council on the Site.
25. The Council fitted the steel bar gate at the east entrance to the Disputed Land, but this, Mr Brazil said, replaced a 5 bar gate which had originally been installed by the Gallagher family.
26. In about 2010 the Site was extended westwards (into land which Mr Brazil claims to have acquired by adverse possession) with, he claimed, his permission to enable three more pitches to be erected, two of which were for members of his family.
27. Other aspects of his evidence are set out below, in replies to cross examination by Mr Moyes.

The Council's documentary evidence relating to the Disputed Land.

28. By an application dated 15 September 1969 the Norwich Corporation applied for permission to use the Disputed Land for tipping builders' rubble, soil and building materials. The Disputed Land was described as 'marshland'. Mr Brazil agreed that the Disputed Land was used as tipping ground and that it was marshland when he arrived, with his family, in 1973 (this date is earlier than the date given in some of his written evidence). At that time, his family (and a number of other families, some of whom were there before him) stopped on what were once the railway tracks to the north of the Disputed Land. Mr Brazil's evidence is that he built a hardstanding on part of the Disputed Land in 1980.
29. The first Mile Cross Gypsy site was opened in the early 1970s. On 4 September 1979 the District Council applied for planning permission to upgrade the gypsy caravan site and to provide four further additional caravan spaces, toilets and common rooms at the Site. Mr Brazil moved to that site in 1980. In February 1987 there was a further application to extend the Site to accommodate another 20 caravans. This proposed

land was described as 'waste land'. The application, as is clear from the plans, related to the Disputed Land.

30. Following this second application the Site was extended and the new pitches built. This was done, according to Mr Brazil, under protest. In any event, as he accepted, the extension was 'smack in the middle' of the Disputed Land. There is no evidence of any protest by Mr Brazil, or his father, in relation to the construction of the extended site. The extended site was pulled down, he said in 1993. The evidence as to this is not entirely clear: it appears that the new site was vacated before 1993, and may not have been cleared until 1999. In November 1993 a further planning application was made, this time to refurbish the (existing) Site, replace the amenity blocks and erect a warden's office.
31. Mr Brazil was shown a number of aerial photographs from 1988 onwards, which show the Disputed Land as open, with no structures (save a few shelters for the horses), and essentially laid to grass. There is no evidence of any occupation of any part of the Land. A photograph taken in 1999 shows a very large area of cleared brown land, surrounded by grass and trees. There is no barrier between the end of Swanton Road and the Disputed Land, and the footpath at the western end is clearly marked. It is not possible to see any horses on the Land. If, as Mr Brazil maintains, the Disputed Land was cleared of pitches in 1993 and if the photograph shows the remains of the cleared area, it must follow that there was very little, if any, activity on this, large part, of the Disputed Land between 1993 and 1999.
32. Correspondence between Anglian Water Authority and the Council between 1988 and 1995 regarding the siting of, and re-routing of, a water main confirms that both the Water Authority and the Council considered the Land to be owned and occupied by the Council. A plan attached to one of the letters from the Water Authority describes the Disputed Land as a refuse tip.
33. Mr Brazil again maintained that Anglian Water asked for his father's permission to come onto the Disputed Land. When asked why no reference to this was made in any of the numerous statements made by him, he replied that in reality neither he nor his father had any choice but to let Anglian Water onto the land. As he put it, if they had

objected, they would have been asked to leave. They were 'always scared of being thrown off' the Disputed Land. Mr Brazil was being told what to do, not being asked.

34. It is clear from the documents that in or about April 2001 the Council began (again) to consider in some detail how best to use the Disputed Land. A memo dated 5 April 2001 refers to a disused travellers site which was dismantled and cleared some time ago, leaving a vacant site. A block plan prepared at the same time shows the Site (occupying some 1.22 acres) and the proposed new site (which would occupy some 1.5 acres) on the Disputed Land. A report dated 24 April 2001 indicated that the Disputed Land would not be suitable for residential accommodation. Reference was also made to the ground conditions: these were made up of land/fill. The best use the Disputed Land would be for light industrial or storage. It is clear from this report that the Disputed Land was not considered to be occupied. Mr Brazil accepted in cross examination that the first time he and others had a meeting with the Council about the proposed redevelopment of the Disputed Land was in 2006.

35. As mentioned above, by a lease dated 7 January 2002 the Council granted Norfolk County Council a lease of the Site for 15 years from 1 April 2002 for use as a permanent gypsy caravan site for caravans owned and occupied and lived in by travellers. The County Council in turn entered into an agreement with NPS Property Consultants Ltd for the provision of property services at a number of sites, including the Site. NPS managed the Site from March 2003 to March 2012.

36. On 6 March 2002 the Council granted a grazing licence to Julie Ann Bassett for a year of 1.33 acres on the Disputed Land, in the western half. The fee (£150) was paid in full in advance. Once again, there is no reference in the documents to this area being occupied by Mr Brazil. Ms Bassett left after a year, it seems. Mr Brazil's evidence is that he allowed her to use the Disputed Land for grazing Shetland ponies, and disclaimed any knowledge that the Council had granted her a licence. His case was that the Council had simply no right to grant her a licence. This evidence was given for the first time at trial.

37. In 2002 and 2003 the Council expressed concern about horses from the Gypsy site being tethered on Sloughbottom Park. Mr Brazil stated that a Mr Jones kept horses on the other side of the western footpath, beyond his land.

38. In 2003 part of the Disputed Land was used a temporary base for residents on the Site whilst pitches on the Site were being refurbished. NPS provided toilets and shower blocks.
39. Mr Brazil was the manager of the Site (appointed by NPS) at the time. There is a note of a meeting in February 2004 during which it was agreed that the bottom half of the Disputed Land could be used for grazing, and that Mr Brazil agreed to fence this off at his cost. This was confirmed in a further note. The note reads: *'The new manager (Mr William Brazil) had said that if they could use the field they would fence it at their expense. Whilst this area is close to Sloughbottom Park it is rarely used by members of the public and I feel that if the horses are fenced in they should be safe. We agreed in principle that we were happy for the travellers to use the bottom part of the site for horses.'* Mr Brazil stated that no new fencing was erected, and the fencing remained the same as it had been for 30 years. A letter from NPS dated 5 February 2017 confirms that Mr Brazil enjoyed uninterrupted use of the Disputed Land for the purpose of grazing horses since 2004.
40. The problem with the horses did not go away. In May 2006 the Council were still concerned about the presence of horses on the Disputed Land. A reference was made in a memo dated 18 May 2006 to removal some 10 years previously of a Mr Sean Smith and his associates from the site. Mr Brazil stated that the horses referred to in the memo were horses belonging to Mr Jones: his horses were on 'his land' and not in issue. However, a memo dated June 2015 refers to the horses having been a problem for many years. They were grazing on the land suggested for the new site, as well as far south as the river, and the area to the west. This had been tolerated but the horses had strayed onto Marriott's Way and Sloughbottom Park. This area was described as being in a poor condition with litter, fly tipping, illegally cut down trees and Japanese knotweed. There is no mention of Mr Brazil occupying any part of the Disputed Land. More horses were seen on Sloughbottom Park in 2016.
41. Mr Brazil's response was that these notes were fabricated and the contents untrue: at the time, his then wife, Maria Brazil, was the manager, and he had been grazing horses there since his father died. The Council had moved Mr Smith and his (25) horses off the Disputed Land.

42. The Council arranged a meeting with the travellers in May 2006 to discuss the possibility of extending the Site onto the Disputed Land, alterations to the land, and the horses issue.
43. In October 2016 the Council arranged for the posting of notices warning against fly grazing on land at Swanton Road. Mr Brazil claims that these were posted on the land to the west of Marriott's Way which is a site of special scientific interest, also, according to Mr Brazil, known as 'Mile Cross Marsh'.
44. In December 2016 a total of 5 horses were on the Disputed Land. They were all described as being in very poor condition and weak and in need of worming and foot treatment. The horses were seized. Mr Brazil's evidence is that they were taken the land to the west and were not his horses, but all belonged to Mr Jones.
45. In November 2016 the Council spent £60,000 odd clearing Japanese Knotwood. An aerial photograph taken in April 2016 shows the extent of the infestation. It also shows that the Disputed Land was empty of structures (save for one small shelter to the south, and what looks like a caravan in the north east corner, surrounded by various items of debris).
46. Mr Brazil claimed that his permission was asked for the clearing of the knotweed.
47. On 17 May 2016 the Council held a consultation with the residents of the Site. The officer dealing with the matter asked questions and wrote them down immediately afterwards. The form filled in for Mr Brazil states that he was OK with the proposals for the new site (on the Disputed Land) but needed more land for grazing. In answer to the question: 'The potential for more pitches in the future, should need increase?' he replied ' would rather use the land himself'. There is no claim, or suggestion, that any part of the Disputed Land was his by adverse possession or howsoever.
48. Asked about the meeting and the form, he replied that he could not remember the meeting and that he had not provided the answers on the form. The form is not signed.
49. In February 2017 the Council arranged for a contractor to enter the Disputed Land and remove a significant amount of debris/rubbish which had accumulated. When the

contractor attended the barrier was down and locked. The Council's notes states that the community claimed to own the land and were unwilling to allow any access.

50. On 17 August 2017 Broadland Housing Association entered into a licence agreement with the Council to enter into the Disputed Land to carry out pre build investigations in furtherance of the plan to build a new traveller's facility. The proposal involves the creation of 13 new pitches. Funding for the proposal, in the sum of nearly £900,000, has been made available by Homes and Communities, and continues to be available.
51. Other activities carried out by the Council over the years included clearing up damaged trees.

Evidence given on behalf of the Council

52. I heard from Karen Wright and David Moorcroft. Karen Wright was Norfolk County Council's Service Development Manager for Norfolk and Suffolk Gypsy Roma and Traveller Service from 2013 until very recently. Between 1999 and 2007 she was the Education officer for the Service, and regularly visited the Site, and made several visits to the Disputed Land to assess the situation there. No-one has ever lived on or occupied the Disputed Land (apart from the period in 2003 when refurbishment of the Site was taking place). At no time was permission asked of Mr Brazil or anyone else to visit the Disputed Land.
53. Ms Wright attended the consultation meeting in 2016 and confirmed that Mr Brazil was very agitated. He claimed that the Disputed Land was his and stated that the proposed development would not take place because the land belonged to him. She also confirmed, however, that Mr Brazil did complete the questionnaire. Ms Wright was not concerned with the management side, but became more involved with the Disputed Land after 2011, dealing with horses etc. The barrier at the Swanton Road entrance, she believes, was paid for by government funding. Most of the time the barrier is up, although it has been put down in last few years.
54. David Moorcroft is the Director of Regeneration Development at the Council. In that capacity he oversees a range of services, including planning, highway, economic development. Mr Moorcroft reviewed a range of documentation going back in time,

much of which has been referred to above. He confirmed that the first time he found any reference to Mr Brazil in all the Council's papers was in 2004.

Relevant legal principles

55. The relevant legal principles for determining whether title has been barred by adverse possession have been set out in the well known case of *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419 in accordance with the judgment in the earlier case of *Powell v Macfarlane* (1977) 38 P&CR 452. A more recent re-statement of the law can be found in *Balevents Ltd v Sartori* [2014] EWHC 1164 (Ch).
56. The starting point is the presumption that the paper title owner is in possession of the land. To establish adverse possession, the squatter must prove that he had both factual possession and the requisite intention to possess. The burden is clearly on the applicant.
57. Factual possession requires an appropriate degree of exclusive physical control. The squatter must deal with the land in the way an occupying owner would, and no-one else has done so. Whether or not the squatter has taken a sufficient degree of control is, of course, fact-sensitive and depends on the nature of the land, and how the land would commonly be enjoyed. Enclosure is the best evidence of adverse possession, but it is not indispensable.
58. So far as intention is concerned, it must be an intention to possess (not to own); to exclude the world including, so far as reasonably possible, the true owner. This intention must be clearly manifest, so that it is apparent that the squatter was seeking to dispossess the true owner. If the acts are equivocal, the squatter will not be treated as having the necessary intention.
59. Prior to the coming into effect of the Land Registration Act the law was governed, in the case of the registered land, by the Limitation Act 1980 and section 75 of the Land Registration Act 1925, section 75. For the period before 13 October 2003, therefore, a person claiming adverse possession must show that he or she was in possession for a period of at least 12 years. The 2002 Act introduced a different regime, set out in Schedule 6. The necessary period of adverse possession was reduced to 10 years

before the date of the application, but further safeguards were put in place to protect the registered proprietor if invoked by the proprietor which could block the application. Where the allegation is that the applicant had been in possession for 12 years before the coming into effect of the new act, the transitional provisions set out in paragraph 8 of Schedule 12 to the Act

60. In this case, Mr Brazil would need to show either that he had been in exclusive possession for 12 years before 13 October 2003 or 10 years before the date of application to Land Registry. His application to alter the Council's title by removing the Disputed Land is based on his claim that he had barred the Council's unregistered title before February 2006.

Conclusions on the evidence

61. In my judgment, whether the claim is made under the transitional provisions, or under Schedule 6, it cannot succeed. I say this for the following reasons.

62. First, I do not accept that Mr Brazil has had exclusive physical control of the land. It is open to the public on the western boundary from the public footpath. It is clear that horses (not belonging to Mr Brazil) have come onto the land freely. At the eastern end, the steel barrier is recent: it was erected at the same time as the Site was extended (in 2010/2011). It was erected by (or at least paid for) by the Council. The evidence of Ms Wright, which I fully accept, was that the barrier was, until fairly recently, always open. It was therefore possible for anyone to gain access from Swanton Road. It is still possible, in any event, to gain access to the Disputed Land from the gate in the fencing to the north of the barrier.

63. Secondly, there is no or little evidence as to any acts of possession on the Disputed Land. It is well established that trivial acts are not sufficient. At its highest the evidence is that Mr Brazil occasionally kept horses for grazing, kept chickens, used the land for limited storage, and kept two caravans (one of which is very dilapidated). Mr Brazil did not deal with the Disputed Land as an owner would: he did not clear the knotweed, nor did he husband the land in any way.

64. Thirdly, it is overwhelmingly clear from all the evidence, that the Council at all times dealt with the Land as an owner would do. Various applications for planning permission were made from the 1960s onwards. A second site for pitches was constructed on the Disputed Land at some point in the late 1980s/ early 1990s and removed some years later. The Land was used to decant the occupiers of the pitches in 2003/4 when the Site was being refurbished.
65. In addition, the Council granted a grazing licence to Julie Bassett in 2002 and a grazing licence to Mr Brazil in 2004 which was allowed to continue. For a considerable period, therefore, he occupied the Land or part of it (to the extent that he did) with permission. Moreover there was no other activity or use of the Land which could have alerted the Council to any possible claim by him.
66. The claim in short is, in my judgment, opportunistic and without merit. I do not doubt that Mr Brazil believes he has some sort of right to continue using the Disputed Land in some very limited way, but the evidence taken as a whole falls far short of what is needed to establish that Mr Brazil has had exclusive possession of the Land for the requisite period with the necessary intention to occupy and to exclude the world at large.
67. Accordingly I will order the Chief Land Registrar to cancel the application dated 13 February 2017 and the further application under paragraph 1 of Schedule 6 for all the reasons set out above. The ADV1 is dated 6 February 2017. Mr Brazil is not, and has never been, in adverse possession of the Disputed Land.
68. I will further order the Chief Land Registrar to reject unconditionally any future application by Mr Brazil to any claim to the Disputed Land or any application to alter the Council's registered title on any grounds. This further order is made pursuant to Rule 40(3) (b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Costs

69. This leaves the question of costs. The Council is the successful party and in principle entitled to its costs. A schedule in Form N260 or the like is to be filed and served by 8

March 2019. Mr Brazil may make any representations or objections he deems appropriate within 14 days of receipt of the schedule.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 25th day of February 2019