Ringwood Town Council

Ringwood Gateway,The Furlong, Ringwood, Hampshire BH24 1AT
Tel: 01425 473883
www.ringwood.gov.uk

SUMMONS

Dear Member 19th October 2023

You are hereby summoned to attend a meeting of the Town Council at the Forest Suite, Ringwood Gateway on 25th October 2023 at 7.00pm.

Mr C Wilkins
Town Clerk

AGENDA

1.* **PUBLIC PARTICIPATION**
There will be an opportunity for public participation for a period of up to 15 minutes at the start of the meeting

2. To receive Apologies for Absence

3. To receive Declarations of Interest

4. POLICE REPORT
To receive a report from Ringwood Police

5. To approve as a correct record the minutes of the meeting on 27th September 2023

6. To receive Minutes of Committees and approve recommendations contained therein:

Staffing	DATE:- 27th September 2023
Recreation, Leisure & Open Spaces	DATE :- 4th October 2023
Planning, Town & Environment	DATE:- 6th October 2023
Policy & Finance	DATE:- 18th October 2023

7. REVIEW OF MEMBERSHIP OF COMMITTEES AND OTHER BODIES AND OF APPOINTED REPRESENTATIVES
For members to review their committee memberships and status as appointed representatives, to resign from any as they wish and to seek appointment to any vacancies that arise.

8. BICKERLEY LITIGATION
To receive the report from the Town Clerk on the recently-concluded litigation concerning The Bickerley (*Report A*)

**No formal decisions can be made during this item.*

9. SPORTS DEVELOPMENT PROJECT AT LONG LANE
To receive a report from Cllr Briers (the Council's representative on the Steering Group) or Cllr Swyer (deputy) on project developments

10.* To receive such communications as the Town Mayor may desire to lay before the Council

11.* To receive Reports from County and District Councillors

12.* To Receive Reports from Ringwood Town Councillors

13. Forthcoming Meetings – to note the following dates:

Recreation, Leisure & Open Spaces	7.00pm	Wednesday 1st November 2023
Planning, Town & Environment	10.00am	Friday 3rd November 2023
Policy & Finance	7.00pm	Wednesday 22nd November 2023
Full Council	7.00pm	Wednesday 29th November 2023

If you would like further information on any of the agenda items, please contact Mr Chris Wilkins, Town Clerk, on 01425 484720 or chris.wilkins@ringwood.gov.uk

Council Members:	Officers:
Chairman: Cllr Gareth Deboos, Town Mayor	Chris Wilkins, Town Clerk
Vice-Chairman: Cllr Rae Frederick, Deputy Mayor	Jo Hurd, Deputy Town Clerk
Cllr Andrew Briers	
Cllr Luke Dadford	
Cllr Philip Day	
Cllr Ingrid De Bruyn	
Cllr Mary DeBoos	
Cllr Janet Georgiou	
Cllr John Haywood	
Cllr Peter Kelleher	
Cllr James Swyer	
Cllr Michael Thierry	
Cllr Glenys Turner	
Cllr Becci Windsor	

**No formal decisions can be made during this item.*

TOWN COUNCIL

A

25th October 2023

Bickerley Litigation

1. Introduction and reason for report

1.1 Members of the Policy & Finance Committee requested that the Town Clerk present a written report on the litigation to a meeting of the full Council.

2. Background

2.1 In 2020 the Council was notified that an application had been made to the Land Registry to remove some land from the Town Council's registered title to the Bickerley. The land in question is a narrow strip on the northern edge of the common. The matter was reported to the Council at the time and after due debate the Council resolved the application should be resisted.

3. Proceedings

3.1 The Town Clerk arranged to instruct solicitors and then a barrister to advise and represent the Council in the matter. Negotiations proceeded with a view to trying to settle the matter amicably, if possible. Unfortunately, that did not prove possible, and with the failure of those attempts, the Land Registry then referred the dispute to the First-Tier Tribunal. The litigation then proceeded in the usual way; mutual disclosure of documents, exchange of witness statements, gathering and exchange of expert evidence. This process took several months. Matters proceeded to a site visit by the judge in July, with representatives of the parties present, and then the following day, an all-day hearing took place remotely, via video conference.

4. Outcome

4.1 The decision was reserved by the judge; he did not announce his decision on the day. There was then, owing to an administrative error at the tribunal, an unfortunate slight delay in the communication of his judgment. In late August, the decision was announced, the judge found in favour of the Council and the tribunal ordered the Land Registry to cancel the application. Copies of the full judgement and order are annexed. The Land Registry has since confirmed cancellation of the application, so the title remains as it has always stood.

5. Financial aspects

5.1 The Tribunal, in addition to the order disposing of the application, also included a paragraph to the effect that it was assumed costs would follow the event and the tribunal invited submissions from the parties, as to the appropriate framing of the order. In effect, this was an invitation to the parties to agree what contribution the applicant would make to this Council's costs. Failing agreement, the tribunal would order assessment, a formal process, which might be summary or detailed. The time scale given to reach an agreement and make a formal proposal to the tribunal, as to the order they were to make, was very tight. The Town Clerk discussed with the lawyers what those costs would be.

5.2 According to the detailed records kept, the total costs that this Council has incurred in this matter are:- Solicitors fees £32,200, Counsels fees £9,175 and other fees (Land Registry and expert fees) £1,674. The total being £43,049. (All figures quoted are excluding VAT)

5.3 The Town Clerk sought advice from the solicitors as to the appropriate way of dealing with negotiations over costs. There followed negotiations to a tight deadline set by the tribunal, with proposals and counterproposals. This eventually resulted in the applicant offering to pay £28,000, by way of contribution to the Council's expenses, on condition that it would be paid within 7 days.

5.4 The lawyers advised acceptance and the Finance Manager was consulted. The Town Clerk explained that he would have ideally preferred to bring the question to members and have the decision made by them but an urgent decision had to be made. He felt that accepting the offer was the best course in the public interest for the following reasons:

- the Council's solicitors advised acceptance
- acceptance assured the Council of rapid receipt of the money
- rejecting the offer would mean more delay and more cost, with no assurance that this would achieve a better outcome; and
- this matter had taken up enough time and attention and he believed the Council would prefer his efforts to be spent on projects of the Council's direction, rather than this issue which had been forced upon it.

In view of this, he authorised the lawyers to accept the offer and the money has been paid. The net cost to the Council therefore is £15,049.

6. Practicalities

6.1 The Council's title remains unchanged and the land remains in secure public ownership and open to public access. It also remains part of the registered town or village green.

6.2 The question of maintenance will need to be addressed as a neighbour has kindly kept the land tidy and he will be consulted to see if he wishes to continue doing so or if he would prefer that the council assume its responsibilities.

6.3 The land has some electrical infrastructure on it, a double pole, a pole mounted transformer and an oversailing cable for which wayleave payments are due. They are nominal amounts, but the Council ought to have them and they haven't been claimed in the past. The applicant had kept claiming them. It would now be appropriate to register with the electricity company to make sure that those payments are received in future.

6.4 There has been no indication of an appeal, the deadline for appeal has passed and, in the Clerk's opinion, the judgment is so thoroughly and closely argued that it would be very hard to attack the chain of reasoning that led to the judge's decision.

7 Issues for decision and any recommendations

Members are respectfully invited to note this report.

For further information, contact:

Christopher Wilkins, Town Clerk
Direct Dial: 01425 484720
Email: chris.wilkins@ringwood.gov.uk

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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
LAND REGISTRATION

CASE NUMBER: REF 2022/0301

B E T W E E N:

TUDOR ROSE FARM LIMITED

Applicant

-and-

RINGWOOD TOWN COUNCIL

Respondent

Title Numbers: HP256470 and HP485575

Property:
1. Land at Bickerley on the south-west side of Bickerley Road, Ringwood
2. Land at Bickerley and Moortown, Ringwood

Before Judge Ewan Paton, sitting by Cloud Video Platform on 11th July 2023 (site visit on 10th July 2023)

ORDER

UPON HEARING Counsel for the Applicant (Mr. Charles Schwenn, instructed by Boyce Hatton LLP) and Counsel for the Respondent (Ms. Elizabeth Bowden, instructed by Laceys Solicitors)

IT IS ORDERED AS FOLLOWS:

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1. The Chief Land Registrar is directed to cancel the Applicant's original application on form AP1 dated 3rd December 2020.

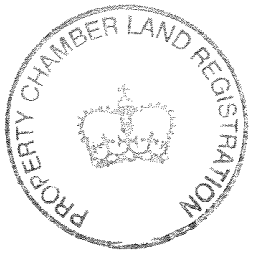
2. Any representations or agreement as to liability for the costs of these proceedings shall be filed and served by 5pm on 31st August 2023; including representations on whether assessment of any costs ordered should be summary or detailed.

3. A further order as to costs, and directions for assessment of any costs ordered to be paid, shall be made after 31st August 2023.

Judge Ewan Paton

Dated this 10th day of August 2023

BY ORDER OF THE TRIBUNAL



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Before Judge Ewan Paton, sitting by Cloud Video Platform on 11th July 2023 (site visit on 10th July 2023)

ORDER

FURTHER to the decision and order dated 10th August 2023

UPON considering the parties' correspondence

IT IS ORDERED AS FOLLOWS:

1. The Applicant shall pay the Respondent's costs of these proceedings, to be subject to summary assessment on the standard basis.

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2. The Respondent shall by 5pm on 4th October 2023 file and serve a schedule of costs for the purposes of such summary assessment, in or substantially in court form N 260.

3. The Applicant shall by 5pm on 25th October 2023 file and serve any representations and submissions on the Respondent's schedule.

4. The Respondent may by 5pm on 8th November 2023 file and serve any representations in response.

5. After 8th November 2023, the Respondent's costs shall be the subject of a written summary assessment, and a final assessed costs order shall be made.

6. The above directions are subject to any agreement the parties may reach as to the amount of costs, as to which they should inform the Tribunal forthwith.

This order is made pursuant to rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

REASONS

1. The parties have, sensibly in my view, agreed the basic order on liability for costs. The Respondent was the successful party in these proceedings.

2. They have also agreed that those costs should be the subject of a summary assessment if the Tribunal so directs. I am content so to direct, and to summarily assess the costs. This is likewise a sensible and proportionate step, saving the time and costs of a detailed assessment.

3. The parties have further requested that there be a hearing at which the summary assessment is conducted. I am not prepared to direct such a hearing. The normal practice of this Tribunal is to conduct summary assessments on written representations. Listing an oral hearing would be a disproportionate and unnecessary step, save in an unusual case involving some out of the ordinary assessment issue.

4. I have therefore instead directed filing and service of a schedule, then sequential representations on the amounts claimed. This will also, I hope, encourage the parties to reach an agreement on the amount of the Respondent's costs; and so remove the need for a final assessment. In default of agreement the assessment shall proceed as directed above.

Judge Ewan Paton

Dated this 13th day of September 2023

BY ORDER OF THE TRIBUNAL

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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
LAND REGISTRATION

CASE NUMBER: REF 2022/0301

B E T W E E N:

TUDOR ROSE FARM LIMITED

Applicant

-and-

RINGWOOD TOWN COUNCIL

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Before Judge Ewan Paton, sitting by Cloud Video Platform on 11th July 2023 (site visit on 10th July 2023)

For the Applicant: Mr. Charles Schwenn (counsel, instructed by Boyce Hatton LLP)

For the Respondents: Ms. Elizabeth Bowden (counsel, instructed by Laceys Solicitors)

DECISION

Key words: *AP1 – alteration of filed plan to show more accurate general boundary - construction of conveyance - depiction on plan - extrinsic evidence*

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Cases referred to:

Derbyshire County Council v Fallon [2007] EWHC 1326 (Ch)
Wigginton & Milner v Winster Engineering [1978] 1 WLR. 1462
Howton v Hawkins (1966) 199 Estates Gazette 229
Spall v Owen (1981) 44 P. & C.R. 36
Pennock v Hodgson [2010] EWCA Civ 873
Cameron v Boggiano [2012] EWCA Civ 157
Acco Properties Limited v Severn [2011] EWHC 1362 (Ch),
Federated Lodge Homes Ltd v Mill Lodge Properties Ltd [1980] 1 WLR 494

Introduction

1. By an application on form AP1, dated by the Land Registry as 3rd December 2020, the Applicant (quoting from the Land Registry case summary):-

   "..applied for alteration of title number HP256470 pursuant to Schedule 4 paragraph 5 Land Registration Act 2002, to alter the title plan to remove the land tinted blue on the plan to the B141 notice dated 26th January 2021 and add it to the land in title number HP485575."

   "The Applicant's grounds are that the land tinted blue on the attached B141 notice plan was not transferred from the Applicant to the Objector in 1984 and has erroneously been included in the registered extent of this title."

2. The land in dispute is a strip lying between:-

   i) to the east, a gravelled track which forms part of the Respondent's title HP 256470 to the village green known as "Bickerley Common" or "The Bickerley; and

   ii) to the west, the boundaries of three properties on which houses are situated (known as Riverside, Meadow View and West Side).

   An extract from the abovementioned B141 notice plan showing the land tinted blue is at Figure 1 below.

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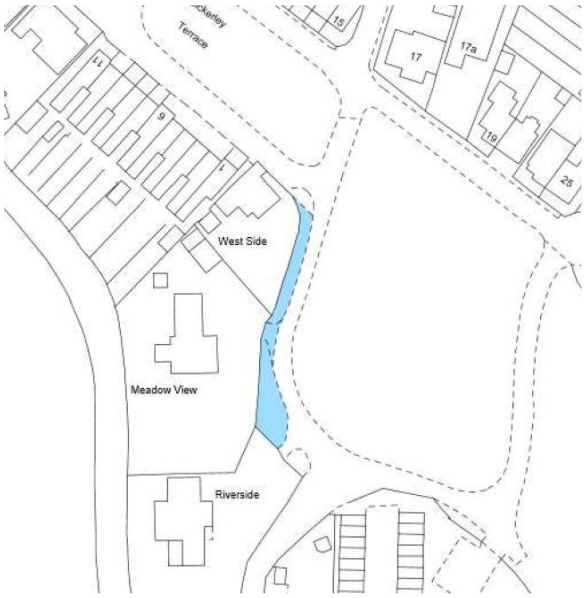

Figure 1: extract from B141 plan showing disputed land in blue

3. On the ground, and as seen by me on the site visit, the land consists of two quite contrasting portions. Approximately the southern half of it, adjacent to Riverside and Meadow View, now 'presents' as a mown grass verge area, bounded by small posts designed to prevent vehicles parking on it. Also situated on that portion are a large electrical transformer "H" pole, and some drain covers. This area, and the adjacent track, is best seen in the Land Registry survey photograph (numbered 20) below at Figure 2.

Figure 2: southern portion of disputed land between track and Riverside/Meadow View

4. Just after the point at which the disputed land passes an entrance to Meadow View bounded by black metal gates erected by the owners of that property, the mown grass verge ends. The northern portion of the land beyond that point, adjacent to West Side, is almost entirely planted and somewhat overgrown with a hedge, shrubs and brambles; almost right up to the edge of the track. That section can be seen, looking northwards, in the Land Registry survey photograph (numbered 26) below at Figure 3.

Figure 3: Northern overgrown/cultivated section of disputed land

5. The filed plan of Respondent's title HP 256470, which of course depicts "general boundaries" only in accordance with legislation and Land Registry practice, nevertheless appears to show the title as extending all the way up to the boundary with the titles to Riverside, Meadow View and West Side; and so including the disputed land as described above. An extract from that filed plan is attached below as Figure 4 (with an arrow, inserted by me, pointing to the area of the disputed land).

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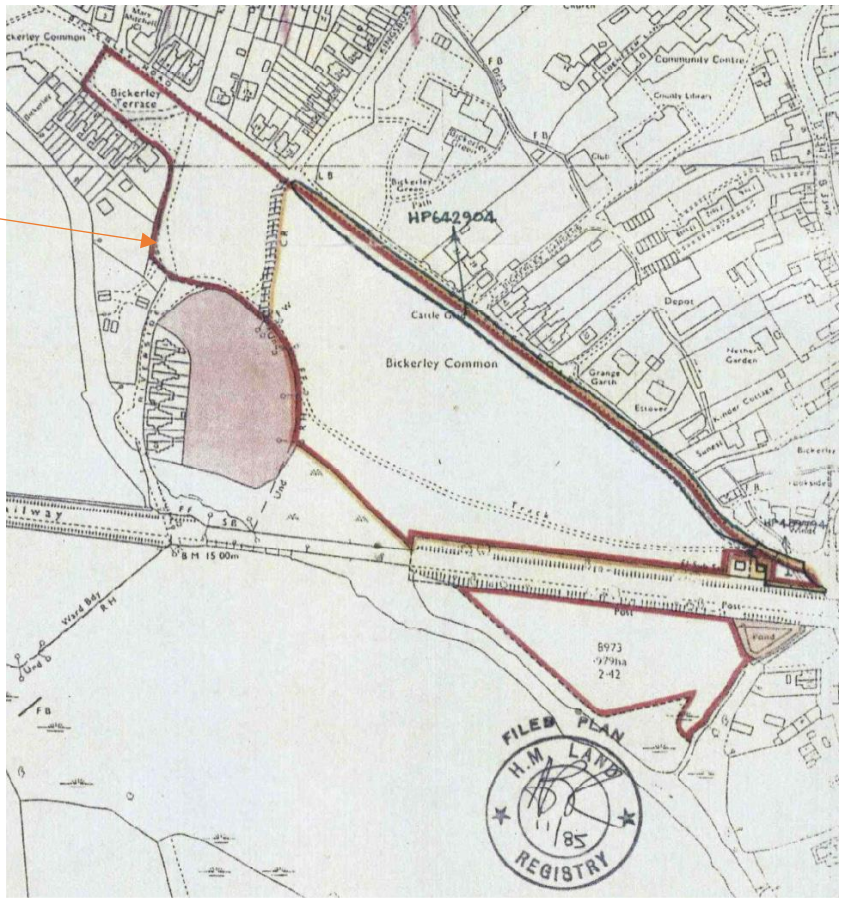

Figure 4: extract from Respondent's filed plan

6. The Applicant says that this was, and is, a mistake. Somewhat unusually, the parties in this case are the original parties to the conveyance by which the above land was transferred and the title first registered. There is no time limit for applications to alter the register, but the relevant and key conveyance was executed by the Applicant to the Respondent on 30th March 1984. The Respondent applied for first registration of the above new title shortly afterwards, and it appears that this registration was then completed by about January 1986; with effect from the date (29th May 1984) of the application. So if there is a mistake on the register, it has lain uncorrected for over 37 years.

7. It is important at the outset to emphasise what this application is, and what it is not. The above filed plan shows a general boundary only. This is not, for example, a determined boundary application made by the Respondent or any of the proprietors of the three properties referred to above (Riverside, Meadow View and West Side) whose titles are depicted as abutting the Respondent's title to the west.

8. The Applicant's case is that the mistake lies in the depiction of the above titles as abutting the Respondent's title, and that in fact it retained in 1984 - and so still retains now - a strip of land between them (the disputed land). It therefore seeks the removal of that strip from the filed plan of the Respondent's title, and its addition to its own residual title to a quantity of other land in this locality. Correction of that alleged mistake is sought by way of alteration to produce a more accurate depiction of the

general boundaries of both the Respondent's and Applicant's titles.

9. As was submitted by Mr. Schwenn, counsel for the Applicant, "The Applicant's case is that the Respondent has *never* had title to the strip of land". The above alteration, to produce a more accurate general boundary, would not therefore be a removal of land from the Respondent's title to the Respondent's prejudice, and so would not be "rectification" within the meaning of Schedule 4 Land Registration Act 2002. The alteration sought would merely produce "another general boundary in a more accurate position than the current general boundary" (*Derbyshire County Council v Fallon* [2007] EWHC 1326 (Ch) at paragraph 26).

10. Although this would technically be a mere general boundary alteration, there is however little doubt as to the location and limits of the disputed land on the ground, as described and pictured above (save perhaps for a minor uncertainty over where it ends within the overgrowth at the northern end). So in substance this is a form of "boundary dispute", in which the Applicant claims to own that land.

11. There are two other types of application which this is <u>not</u>.

12. This is not a claim for "rectification" of the 1984 conveyance itself on the grounds of mistake i.e. that it failed to reflect the parties' common intention as to the land to be conveyed, for example because of some mistake on its plan or another part of the conveyance. Such a claim for equitable rectification could have been brought by court proceedings, or direct application to this Tribunal under section 108(2) Land Registration Act 2002, but has not been.

13. Nor is there any claim for title by adverse possession, or on some other basis, by the adjoining owners who appear actually to be the only persons who have carried out acts on, or made use, the disputed land. It is common ground, and was unchallenged evidence, that the creation of the grassed and mown 'verge' area with posts at the southern end of the disputed land was largely the work of Mr. Donald Cole. He has been the joint owner of the property now known as Meadow View since 1982, and built a house on that land in around 2002. It was around that latter time that he cleared, levelled and grassed that area to create the verge now in existence. As for the cultivated and now somewhat overgrown northern portion, this appears to have been the work of a Mr. Stephen Kane, the owner of "West Side". He was challenged on this by the Respondent in 1996 correspondence, but responded by saying that he had always regarded the land as his and had cultivated it on that basis. This does not then appear to have been pursued further by the Respondent.

    Neither of those persons have, however, made any claims of their own to this land, by any application or proceedings. Mr. Cole gave evidence as a witness in this case for the Applicant, but Mr. Kane has played no part.

14. Finally, nor are these proceedings a trial of the Applicant's motives in wishing to own this land, or a finding on whether it could achieve or gain anything by doing so. There was at least some evidence that the Applicant may have made an agreement with Mr. Donald Cole to either sell the disputed land on to him, or grant an easement over it, if the application succeeds. Whether or not that is correct, and whether or not Mr. Cole

could then do whatever he sought to do by acquiring such land or right (whether creating a vehicular access or anything else) is not the issue before this Tribunal.

15. The sole issue is one of construction of the 30th March 1984 conveyance. Was this land conveyed to the Respondent by that conveyance, or did the Applicant retain it?

Title: background

16. This issue arises from the common ground that, prior to that 1984 conveyance, the Applicant *did* have title to the disputed land, as part of a larger quantity of land in this locality.

17. By a conveyance of 26th October 1955, one Cicely Katherine Smith, as the administratrix of the estate of Reginald Harry Smith, conveyed to the Applicant for £2600:-

"All those pieces or parcels of land situate in the parish of Ringwood in the county of Southampton particulars whereof are set out in the First Part of the Schedule hereto."

The First Part of the Schedule described these as follows, so far as relevant to the land now in dispute:

" FIRST all those pieces or parcels of land situate in the parish of Ringwood formerly forming part of the waste and commons of the manor of Ringwood and known as Bickerley and Hurst Commons and numbered 355a part 355b and 1364 on the Tithe Map for the said parish of Ringwood…"

The conveyance also included large areas including farm land, buildings and meadows. The totality of the land conveyed was then further described as follows:-

"All which premises…..described are for this purpose of identification only more particularly delineated in the plan annexed hereto and thereon edged pink coloured green and hatched green and particulars whereof are set out by reference to the Ordnance Survey Map for the said Parish (1940 Edition) below."

The table of OS parcels and descriptions which then followed included:

"97 Bickerley Common - Pasture - 8.647 [acres]"
"Pt. 94 Do [ditto - for "Meadow"] - Est. 2.000"
An extract from the plan attached to that conveyance is below as Figure 5, with an arrow added by me pointing to the area of the now disputed land. It can be seen that OS 94 is a smaller parcel at the south-east of the land, south of what were then existing railway tracks.

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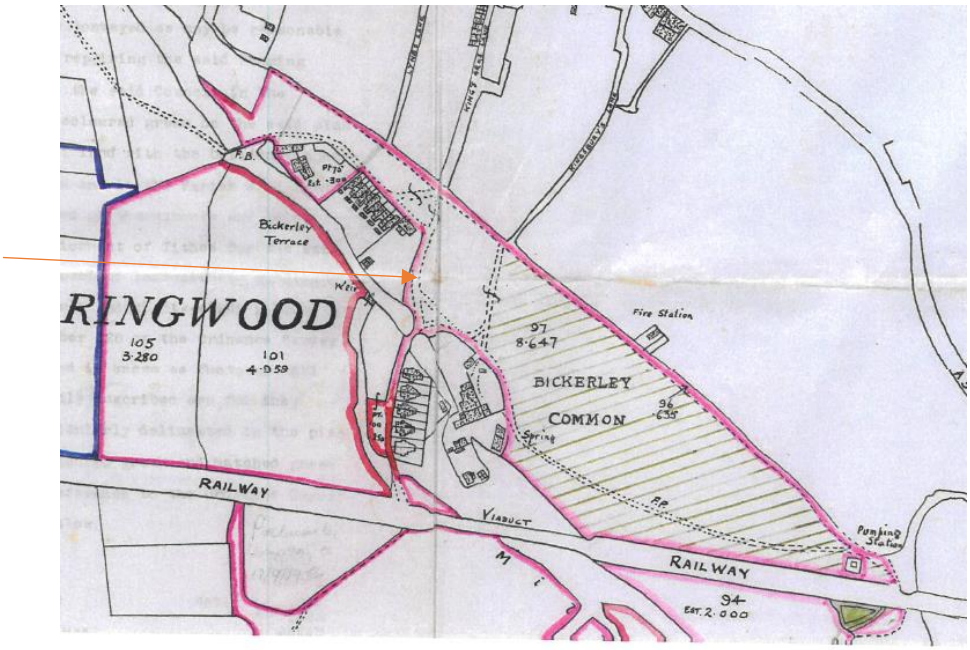

Figure 5: 1955 conveyance plan

18. It is common ground that the OS parcel 97 depicted above as comprising 8.647 acres extended not just to the hatched area marked "Bickerley Common", but also included the 'neck' of land north-west of the terrace of houses; and included the land now in dispute, by the depiction of the pink line on the boundary feature with what was then largely open land. Indeed, if that were *not* common ground, neither party would have had a case in these proceedings. The Respondent would not have been able to say the disputed land was subsequently conveyed to it in 1984, and the Applicant would not have been able to say that it retained it.

19. It was also common ground that the immediate background to the Applicant's decision and agreement to sell a quantity of this land to the Respondent in 1984 was the establishment in 1983 of commons and town and village green status for the land known as Bickerley Common or 'the Bickerley'; applications which the Applicant as the then owner had opposed. It is again common ground that the registered extent of the commons and village green appeared to be coextensive with the extent of the 1955 conveyance land in the area of what is now the disputed land, and so includes that disputed land: see Figure 6 below.

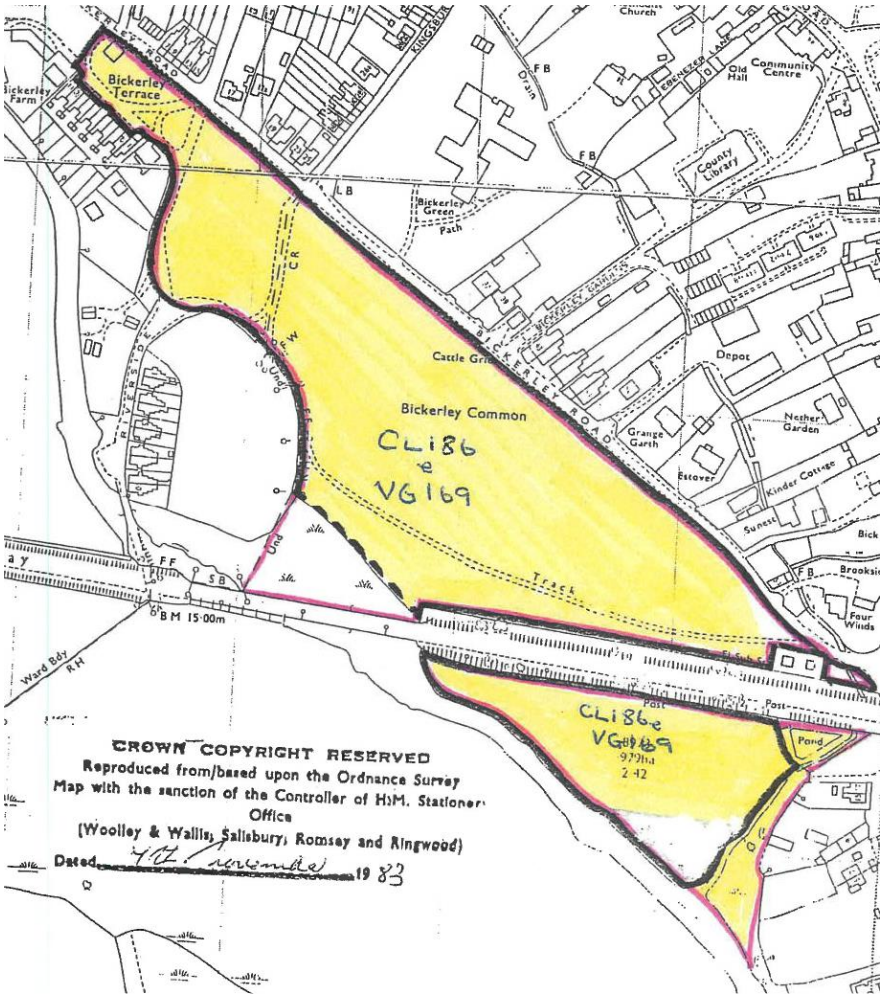

Figure 6: Commons and village green map

The 30th March 1984 conveyance

20. Before considering any arguments that any extrinsic or other evidence is even admissible in construing this conveyance, it is necessary to set out what it said and depicted on its face.

21. For this purpose, I take the conveyance which appeared at pages 172 to 175 of the hearing bundle, and which contains both a duty stamp and the seal of the Applicant company, as the relevant document. There was a mystery in the bundle, which neither party was able to resolve, as to why an apparent "certified copy" of that conveyance at pages 180 to 182 appeared to have (at page 182) a slightly different plan. I take the document commencing at page 172 to be the original, and so the relevant and operative conveyance.

22. In consideration of £17,500, the Applicant as Vendor conveyed to the Respondent (as Purchaser):-

"ALL THOSE parcels of land situate in the Parish of Ringwood in Hampshire formerly forming part of the waste and commons of the Manor of Ringwood and known as Bickerley or The Bickerley or Bickerley Common and being a substantial part of the Enclosures numbered 94 and 97 on the Ordnance Survey Map for the said Parish (1940 edition) which land for identification only is shown on the plan attached hereto and thereon edged in red."

The plan (at page 175 of the bundle) is attached below as Figure 6.

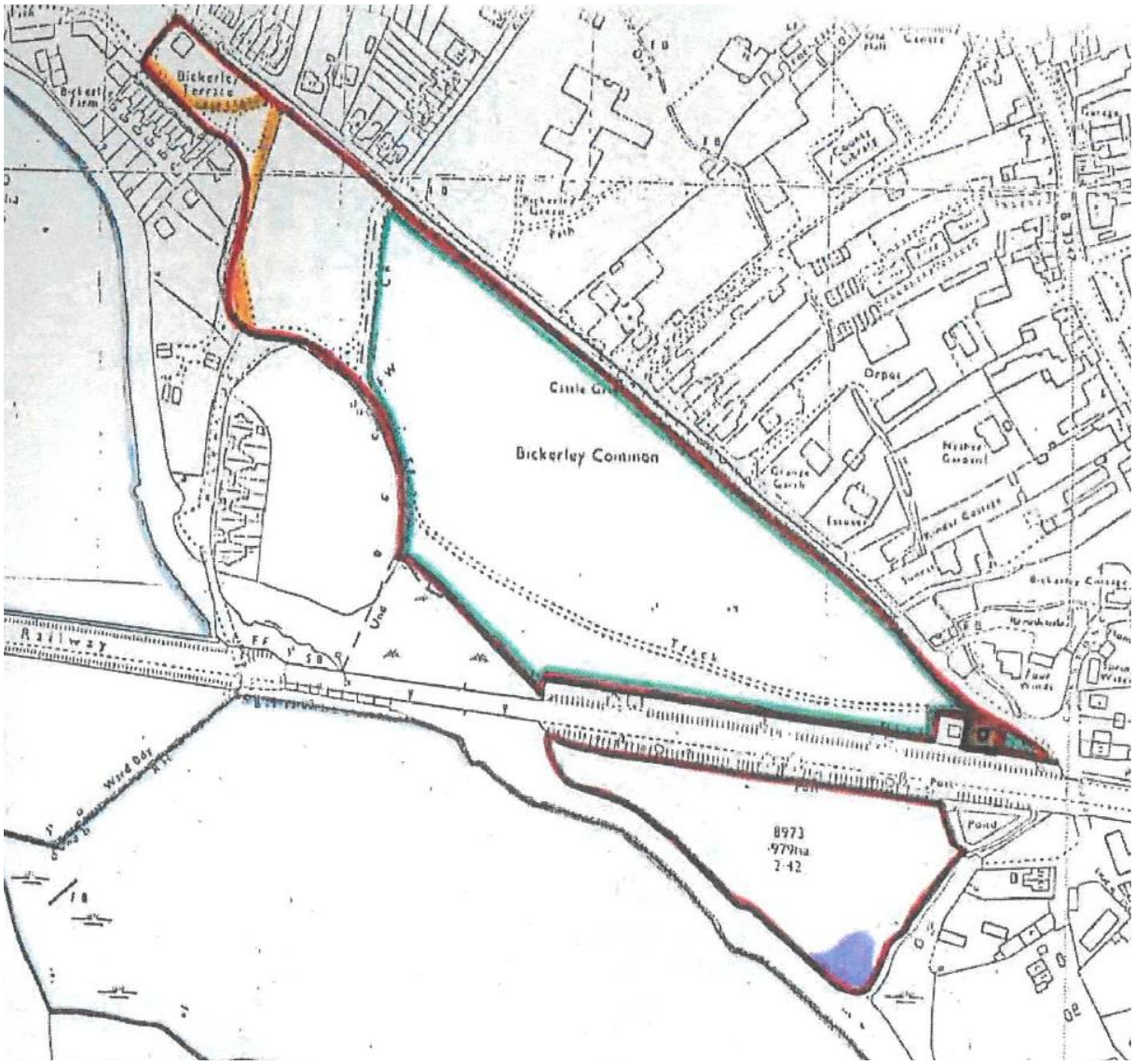

Figure 6: 1984 conveyance plan

A magnified extract from the above plan, showing the disputed land and (therefore) almost the entire basis of this application, is below at Figure 7.

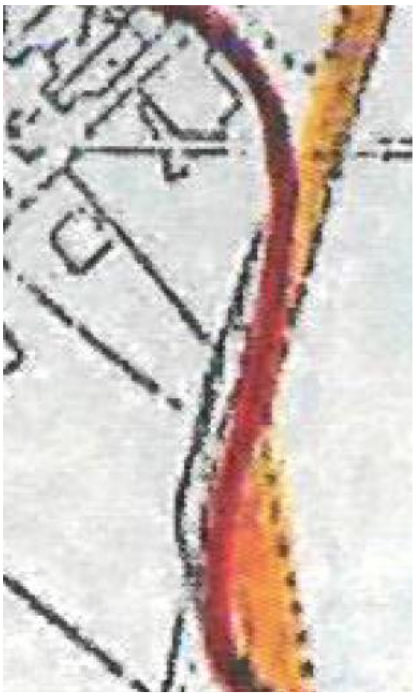

Figure 7 : magnified section showing disputed land

23. The Applicant's essential case is simple, and as follows. The general description by itself does not enable one to ascertain with any certainty what is being conveyed. The land "known as" The Bickerley, Bickerley Common etc. was in this general area but its precise extent and limits may have changed over time. No point in time is specified for the identification of it, or specific OS parcels said to constitute it.

24. It is therefore necessary then to consider the further definition and qualification of this description:

    "and being a substantial part of the Enclosures numbered 94 and 97 on the Ordnance Survey Map for the said Parish (1940 edition)"

    This is a more specific definition, and homes in on two particular OS parcels from the 1940 edition (numbers 94 and 97).

25. This is still, however, insufficient to identify what is being conveyed, because of the phrase "a substantial part". This means that not all of parcels 94 and 97 is being conveyed - only part. That raises the question - which part? And how is one to ascertain which part?

26. The argument is then that one can and must necessarily have recourse to the plan, even if expressed to be "for identification only", to answer that last question. As Buckley LJ stated in *Wigginton & Milner v Winster Engineering* [1978] 1 WLR. 1462 at 1470:

    "Accordingly, so long as the plan does not come into conflict with anything which is explicit in the description of the parcels, the fact that it is said to be "for the purposes of identification only" does not appear to me to exclude it from consideration in

solving problems which are left undecided by what is explicit in the description of any parcel."

Here, there is no "conflict" between the parcels clause and the plan, because the former necessarily invites consideration of the latter in order to decide which "substantial part" of OS 94 and 97 is being conveyed.

27. The argument then effectively concludes by saying - look at the plan, and in particular Figure 7 above. It is said that this clearly shows a strip or gap between the red line and the black line indicating the solid boundary feature of the three properties to the west. That strip, therefore, was not intended to be and was not conveyed by the Applicant to the Respondent.

28. Although I remain somewhat sceptical as to the relevance and weight of expert evidence on how to look at a plan, the Applicant also relies on the opinion of a land surveyor, Mr. Peter Collings. He states that "the 1984 conveyance plan is a very poor copy of an OS map", which he then identifies as the 1971 edition. He thinks that the red edging on the conveyance plan follows a "dashed line" visible on the 1971 OS plan, and not the solid line of the other properties further west. He does not himself offer an opinion on what any such dashed line boundary feature might have been, but the Applicant's submission appeared to be that this was probably the edge of the made-up track. This leaves the gap or strip between the two in that area, which he drew as a triangle A-B-C (Figure 8 below).

Figure 8: expert's superimposition of conveyance plan line onto trace of 1971 OS plan; and 1971 OS plan extract

29. The Applicant then further argues that if the position is still unclear, extrinsic evidence including the subsequent conduct of the parties in relation to the disputed land may be admissible as an aid to construction. In that regard, the Applicant relies upon:-

    i) its continued collection of wayleave payments for electrical poles, at least one of which (the transformer/ "H" pole) is situated on the disputed land; further to the wayleave originally granted to the electricity board in 1956.

    ii) the lack of any maintenance or use by the Respondent of this land; and the alleged giving of permission by the Applicant to Mr. Cole to maintain it instead.

30. The Respondent's case is that there was no mistake in the registration, and that the conveyance conveyed the disputed land along with, and as part of, the land "known as" Bickerley Common. Ms. Bowden submitted that a sufficiently clear "known as" description prevails over a depiction on a plan; citing *Howton v Hawkins* (1966) 199 Estates Gazette 229. That was a case, however - as was *Spall v Owen* (1981) 44 P. & C.R. 36 - in which the "known as" then referred either to the address of a property, or (as in *Spall*) a specific plot number; not a general locale such as "Bickerley Common".

31. As to the "substantial part" qualifier in the definition, Ms. Bowden accepted the proposition that this required consideration of the plan referred to; since not all of OS 94 and 97 were therefore being conveyed. She then, however, pointed to the key feature of the plan being that clearly identifiable parts of OS numbers 94 and 97 were excluded from that plan; so that *this* was the meaning and purpose of the "substantial part" phrase.

32. She highlighted three excluded areas in particular, comparing the conveyance plan with the 1940 OS plan and 1955 conveyance plan, which were formerly in those OS parcels but were not by the time of the 1984 conveyance: i) an area of land at the north-west corner of OS 97 which had by 1984 been sold off to a local man known as "Ted" Hiscock ii) a pond and 'hockey stick' shaped parcel forming part of OS 94 and iii) a small square within OS 97 which by 1984 was the site of an electrical sub-station.

33. Her submission was that the apparent "strip" visible in Figure 7 above was not in the same category as those clearly excluded areas. Again, while expert opinion on how to read plans is of little evidential value, she submitted that the drawing of the red line in Figure 7 was probably attributable to little more than "inaccurate penmanship", which a purported expert on "real estate and professional practice" (a Mr. Mark Adcock, a retired conveyancing solicitor) said was prevalent in conveyancing plans at this time.

34. Her submission was therefore that a court or tribunal should construe the conveyance not by minute examination of the line on the plan, but in the light of the known surrounding circumstances at the date of the conveyance; citing the now very well-known dictum of Mummery LJ in *Pennock v Hodgson* [2010] EWCA Civ 873, at paragraph 12:

    "Looking at evidence of the actual and known physical condition of the relevant land

at the date of the conveyance and having the attached plan in your hand on the spot when you do this are permitted as an exercise in construing the conveyance against the background of its surrounding circumstances. They include knowledge of the objective facts reasonably available to the parties at the relevant date. Although, in a sense, that approach takes the court outside the terms of the conveyance, it is part and parcel of the process of contextual construction."

35. I would add that 'construction of the conveyance' means not just the parcels clause and any plan, but the whole of the conveyance, which may include other clauses:-

"When a court is required to decide what property passed under a particular conveyance, it must have regard to the conveyance as a whole, including any plan which forms part of it. It is from the conveyance as a whole that the intention must be ascertained." (per Buckley LJ in *Wigginton & Milner v Winster Engineering* [1978] 1 WLR. 1462, 1473; in which case he was (at 1474H) able to decide the boundaries of the land by "looking only within the four corners of the conveyance".)

36. Both Ms. Bowden and Mr. Shwenn cited and relied upon *Cameron v Boggiano* [2012] EWCA Civ 157, for the following further propositions:-

i) "If the plan is not, on its own, sufficiently clear to the reasonable layman to fix the boundaries of the property in question, topographical features may be used to clarify and construe it." (per Mummery LJ at paragraph 65)

ii) [where the plan is not sufficiently clear]

"….the court can, and in my view must, have regard to all admissible evidence with a view to elucidating the true sense of the transfer. Such evidence will not of course include the parties' prior negotiations or their expressed subjective intentions as to the land to be transferred [see also per Mummery LJ at paragraph 52: "I agree that evidence of the subjective intentions of the parties, of the pre-contract negotiations between the parties and of the existence of other plans, such as Plan B and Plan C, are not available for the construction of the title documents."]

It will, however, include a consideration of the topography of the relevant land at the time of the transfer. Recourse can be had to such evidence not for the purpose of contradicting Plan A but for the purpose of elucidating the true sense of its uncertain elements, in particular the line of the northern boundary. The court's interpretation is ultimately guided by the answer that the reasonable man, armed with the relevant material, would give to the relevant question." (Rimer LJ, paragraph 114).

See also *Acco Properties Limited v Severn* [2011] EWHC 1362 (Ch), per HHJ Barker (at paragraph 11)

"3. In order to determine the exact line of a boundary, the starting point is the language of the conveyance aided, where the verbal description does not suffice, by the representation of the boundaries on any plan, or guided by the plan if that is intended to be definitive.

4. If that does not bring clarity, or the clarity necessary to define a boundary, recourse may then be had to extrinsic evidence — such as topographical features on the land that existed, or maybe supposed to have existed, when the dividing conveyance was executed.

5. Admissible extrinsic evidence may also include evidence of subsequent conduct where of probative value in showing what the original parties intended."

37. Ms. Bowden's submission was that all of the circumstances of the conveyance pointed to an intention to convey the whole of the land in this area up to the boundary shown in the 1955 conveyance, and within the town and village green registration; and not for the Applicant to retain some form of buffer, 'ransom strip' or verge.

38. On the specific question of intentionally retained land, she made the point that the conveyance actually defined land edged blue as the "retained property" of the Applicant intended to benefit from a restrictive covenant made by the Respondent to use the land otherwise than as a village green or open space for the benefit of the residents of Ringwood. That blue retained land comprised two large areas considerably west and south of the land conveyed, but did not include the disputed land which - on the Applicant's case - would have actually been adjacent to and contiguous with the conveyed land subject to the covenant.

39. A surprising feature of this case and the evidence at the hearing - despite the apparent agreement between counsel, at least by the time of their submissions, that such material was inadmissible on the authorities cited above- was a lengthy focus and traversing of the alleged *subjective intentions* of the parties, and the course of their negotiations and dealings leading up to the conveyance.

40. Both sides attempted to adduce and rely on evidence on such matters, and it formed a large part of disclosure then the cross-examination of witnesses. If I am attributing responsibility for this, it seems to me that the Applicant 'started it'. Mr. Pierson, a director of the Applicant since about 1970, purported to give evidence in his statutory declaration, then paragraph 22 of the statement of case, then at paragraphs 11 to 13 of his witness statement, as to his alleged personal subjective intention to retain the disputed land in 1984; clearly suggesting that the depiction of the land on the plan was a deliberate and conscious decision to reflect this.

41. The Respondent Council, however, perhaps feeling that it had to respond in kind, produced and relied upon a number of Council minutes about the decision to purchase the land, its negotiations with the Applicant, matters such as pre-contract enquiries, a draft contract, and several other versions of plans; including a plan alleged to have been the one put forward by the Applicant for consideration at the Council meeting. There was no surviving councillor from 1984 who could give direct evidence from that time. In none of the documents, minutes and other material (including post-conveyance and pre-registration correspondence) was there any suggestion of an intention to exclude and retain the disputed land as a distinct parcel.

42. All of this may have been very interesting, and potentially relevant to any claim which might have been brought for rectification of the conveyance itself, but it is clear from the above authorities that it is inadmissible on both sides as an aid to construction of the resulting conveyance itself. It provided a major distraction in the proceedings, and the course of the evidence, until (as stated) both counsel seemed to accept in their closing submissions that it was inadmissible and irrelevant. A lot of time could have been saved if this had been accepted sooner.

43. For what it is worth, however, I note that in his oral evidence Mr. Pierson did not in fact 'come up to proof' on his own allegations of his subjective intention to retain the disputed land. It emerged, and he accepted, that the conveyance plan had in fact been drafted and drawn up entirely by the *Respondent* and its solicitors, and so did not in fact result from any calculated decision by him or his advisers to draw a line in the position shown in Figure 7 above so as to retain this land.

44. I make clear, however, that I will ultimately disregard evidence of the parties' alleged subjective intentions, or their negotiations leading up to the conveyance, in construing that conveyance. I consider that the nature of the exercise of construction is well summarised by the passage from the judgment of Mummery LJ in *Pennock v. Hodgson* and other cases set out above.

Analysis and conclusions

45. First, I do not consider that it is possible in this case to decide the question of the inclusion or exclusion of the disputed land in the conveyance simply by reference to the "known as" description of "the Bickerley" or "Bickerley Common". This is not a case of description of a particular address or plot. The disputed land is too small, and the area which may at various times been known by that name too large and varying, for that name alone to be any sort of reliable guide. There is no specific evidence either way which could point to whether or not this strip was ever historically "known as" part of the common. I have noted above, however, that it was included in the 1983 commons and village green registration.

46. Second, I agree - and it seems that Ms. Bowden agreed, in relation to her submission on the three excluded parcels - that the "substantial part" reference in the parcels, then reference to the plan (even if expressed only to be for identification), necessarily invite at least *some* contemplation of that plan to assist in ascertaining which "substantial part" was being conveyed. The words of the conveyance alone could not suffice.

47. Third, once one looks at the plan - which was "for identification purposes only" - I am satisfied that this clearly assists in *identifying* some parts of the former OS parcels 94 and 97 which are excluded from the conveyance (in relation to the words of the parcels clause "..substantial part of the Enclosures numbered 94 and 97 on the Ordnance Survey Map for the said Parish (1940 edition)..". I accept Ms. Bowden's submissions that there are three significant areas - the "Ted" land, the 'hockey stick' shaped parcel and the 'small square' - which were part of those OS numbers but are very clearly not included within the plan.

48. I am not, however, satisfied that it is similarly clear, having regard to the conveyance as a whole, that the disputed land could similarly be "identified" as similarly excluded land.

    I reach that conclusion for these reasons.

49. First, I do not consider that the plan is a sufficiently clear and unambiguous indication of an intention that the Applicant retain a narrow strip of land in this location to resolve that issue by itself, and so clearly "identify" it as excluded land. Had the plan been given primacy by words such as "more particularly delineated", then such a line, , relative to the size of the land being conveyed, might have been capable of such a reading. But it did not do so. I consider that the margins involved, and the scope for inaccuracy in drawing such lines, take this area out of the category of e.g. the much larger and clearly excluded "Ted" land or the 'hockey stick' area.

50. Looking at that line (and with the greatest of respect to the two gentlemen who provided reports on this issue), I do not require expert evidence to form the view that:-

    i) although the red line does on one view appear to exclude the disputed land, it runs close and almost parallel to the black line bounding the properties to the west.

    ii) it is quite possible, looking at this and as a matter of common sense, that this is a factor of how that red line has been transposed onto the version of the plan used, and gives the appearance of exclusion of a small area only because of (in Ms. Bowden's phrase) "inaccurate penmanship".

    iii) it is now common ground as a result of the evidence at the hearing - and this is not a question of the subjective intentions of the parties or their 'negotiations' - that as a matter of fact, this plan emanated from and was drawn by representatives of the Respondent, not the Applicant.

51. This is not, therefore, a case in which one can say unambiguously of the plan, on this issue, that the 'inquiry ends there'. Looked at in isolation, without reference to any other parts of the conveyance or its surrounding circumstances, it might support the view that a strip has been excluded. Once one considers the rest of the conveyance, and the surrounding circumstances, the position is somewhat different.

52. Second, I consider it highly significant that the parties to the 1984 conveyance expressly considered and defined "retained property" of the seller (the Applicant) for the purposes of the restrictive covenant imposed by clause 2.

53. That restrictive covenant, as Mr. Pierson confirmed in his oral evidence, was of some importance to the Applicant. It had unsuccessfully opposed the commons and village green registration application. It was for that reason that it decided to sell the land now burdened with that status. An important condition of that, and presumably a factor in the price agreed, was the restrictive covenant preventing its use for any purpose other than a village green and public open space, for the enjoyment and benefit of the inhabitants of Ringwood. In short, if the Applicant could not develop or do anything else with this land, it was concerned to ensure that neither the Respondent nor any

successors in title could do so either. It appears that in about 2016, the Applicant may even have threatened the Respondent with a claim for damages for an alleged breach of this covenant, over vehicles parking on the common or other matters.

54. It was therefore of importance that the Applicant, as the covenantee, retained land capable of taking the benefit of this covenant, so that it could be enforced against successors in title of the Respondent to the burdened land. If such land was identified in the conveyance, the benefit would be annexed to each and every part of it, under section 78 Law of Property Act 1925 as explained in *Federated Lodge Homes Ltd v Mill Lodge Properties Ltd* [1980] 1 WLR 494 and other cases.

55. The parties to this conveyance therefore did expressly define, *and* identify on the plan, the "retained property" of the Applicant which would take that benefit. As has already been pointed out, this consisted solely of two quite large parcels of land edged blue, one south of the disused railway and another to the west of the Bickerley Terrace houses; but neither of which were contiguous to the land conveyed. It did not include the disputed land.

56. Had the parties intended that the Applicant would also retain what is now the disputed land, then it is difficult to see why this would not also have been identified as part of the "retained property". It would, in that scenario, have been the only piece of retained land contiguous to the conveyed and burdened land. While the larger blue edged parcels are clearly capable of taking the benefit of the covenant, so that the Applicant or its successors to those lands could enforce the covenant - a point made by Mr. Schwenn - there would have been no obvious reason to exclude that benefit from the disputed land, if it was intended to be retained. Ownership of such a contiguous strip with the benefit of the restrictive covenant attached to it might then have been very useful for its future owner or owners, as "a hidden treasure which may be discovered in the hour of need" (per Simonds J. in *Lawrence v South County Freeholds Ltd* [1939] Ch. 656), both for the purposes of direct enforcement (e.g. by injunction) and for opposition to any application to modify or discharge the covenant under section 84 Law of Property Act 1925.

57. Third, save in a wholly clear and unambiguous case, it is necessary to go further and consider the conveyance in the manner described in the extracts from *Pennock* and *Cameron* above "..construing the conveyance against the background of its surrounding circumstances", which includes both the topographical features at the relevant time and "..knowledge of the objective facts reasonably available to the parties at the relevant date". Whether those matters are ones of "extrinsic evidence" or merely "part and parcel of the process of contextual construction." may only be a semantic question. When taking that approach, one does so hypothetically with the 'plan in hand' but only as one among all of those circumstances.

58. There is no photographic or other direct evidence of the condition of the disputed land in 1984, but as a matter of inference from i) aerial and other photographs from 2000 and 2001 and ii) the evidence of Donald Cole, I find on the balance of probabilities that it would not have 'presented' on the date of the conveyance as a particularly

distinct strip of land, as it now appears. The likelihood is that it was mostly overgrown and unmaintained, and indistinguishable from many other similar 'nooks and corners' and verges on the common. I also infer from the evidence of Mr. Cole that there was some form of chain link fence bounding the land known as Meadow View when he first acquired it (also in the early 1980s), in front of which was the then overgrown and now disputed land.

59. I consider that a reasonable purchaser in 1984 would have been aware of, and considered, the following matters:-

    i) the Applicant was conveying large parts of land which had very recently been registered as a commons and village green.

    ii) the area of that registered commons and village green appeared to extend all the way to the neighbouring properties to the west (see Figure 6 above).

    iii) the Applicant was not conveying all of the 1955 conveyance land, and was retaining some land of its own in the vicinity.

    iv) some "retained property" had been specifically identified and coloured blue on the plan, for the important purpose of the restrictive covenant and its future enforcement

    v) the plan was for identification purposes only, and so not a delineation of every exact boundary at all points.

    vi) there was nothing particularly distinctive or special about what is now the disputed land. It was probably in the condition described above at paragraph 58.

60. I consider that the reasonable purchaser, having regard to those factors when (hypothetically) e.g. walking along the track adjacent to the now disputed land, would therefore have considered that the land "..known as Bickerley or The Bickerley or Bickerley Common and being a substantial part of the Enclosures numbered 94 and 97" extended all the way to the boundary features with properties and lands to the west, such as the fence at Meadow View, and so included the then fairly nondescript and overgrown area between the track and those properties. I do not consider that it would have been reasonably apparent to them that the seller intended to retain that area. Had that thought occurred to him/her, simply from looking at the plan, they would have been reassured by the points above in paragraph 59. This land had not been identified as additional "retained property" to benefit from the covenant; there was nothing to suggest that the vendor intended to retain for itself some small strip of the registered common and village green (indeed the purpose of the conveyance was to dispose of it now that it was thus registered); and in any event the plan was for identification purposes only.

Other extrinsic evidence, and subsequent conduct

61. The Applicant placed some emphasis on the 1956 wayleave agreement, and the fact that it has continued to collect the wayleave payments since then, including those due for the "H" pole on the disputed land. While that might, in a different case or

application, be evidence of some acts of possession in relation to the land, I do not consider that it casts any light on construction of the 1984 conveyance. The wayleave was not mentioned in the conveyance. Nor, it seems, was it mentioned in any pre-contract enquiries. It is not a matter which has been raised between these parties until these proceedings.

62. As to any other subsequent conduct of the parties in relation to this land, which might cast light on their intentions in 1984, the striking feature is how little there has been from either of them. Neither the Applicant nor the Respondent claim to have maintained the disputed land. The only persons who have done anything to it are Mr. Cole and Mr. Stephen Kane, as described at paragraph 13 above, but they are not parties to this case and have made no applications of their own.

63. Both parties, for what this is worth, have at different times asserted that they owned the disputed land - the Respondent to both Mr. Kane and Mr. Cole in the mid-1990s, and the Applicant (via Mr. Pierson) to Mr. Cole more recently (in about 2019 or 2020), although Mr. Cole also gave some general evidence about seeking permission from the Applicant to store bins on the land in the early 1990s. I am not persuaded that those actions take matters much further when construing the 1984 conveyance.

64. Of potentially more relevance are the parties' actions in the immediate aftermath of that conveyance. Ms. Bowden took me to some of the post-conveyance correspondence; which I agree (in her phrase) is the "best evidence [of] the parties' initial reaction to the conveyancing plan". Between the date of the conveyance, and eventual first registration of the new title in January 1986, there was a Land Registry survey, followed by a number of requisitions as to the extent of the new title. Both parties, and their solicitors, assisted in that process. Indeed, the Applicant actually sent the Respondent their solicitors' (Tozers) bill for assisting in that process:-

"Some of the questions posed required the help of Messrs. Tozers acting for Tudor Rose Farm Limited, including the supply of certain certified copy documents. They gave us what help they could and now that registration has been completed have submitted to us a note of their fee with VAT." (letter from Respondent's solicitors, Meesons, 29th January 1986).

65. There was even a follow up to that in February 1987, when Tozers, acting for the Applicant, wrote a very detailed letter relating to the extent of the land conveyed to the Respondent, specifically focussing on another area of land, one which had been referred to as coloured green in the original 1955 conveyance. Given this level of attention to detail by these solicitors, and Mr. Pierson's statement that the "company is in the business of selling off parts of land", it is of at least some significance that there was no suggestion then, or at any time for nearly 34 years thereafter (until this application was brought) that the publicly inspectable registered title of the Respondent had mistakenly included a parcel which the Applicant had intended to retain. If that was really the case, one would have thought that the Applicant and its solicitors would have been (in colloquial parlance) 'all over' such an important issue at that time or at least shortly afterwards.

66. The fact that this argument has not in fact been pursued until very recently might suggest that this is, as the Respondent submitted, something of an opportunistic application, seeking to exploit a slight discrepancy and uncertainty only recently noticed on the 1984 conveyance plan; possibly with a view to making some commercial arrangement with Mr. Cole. There is nothing wrong *per se* with such a motive for an application, but in my judgement this argument simply does not reflect the objectively ascertained intentions of the parties in relation to this land at the time of the 1984 conveyance. Despite what that plan may appear to show when looked at in isolation, I am satisfied that the parties intended to convey this area, along with the rest of the common, to the Respondent.

Conclusion

67. For these reasons, I will direct the Chief Land Registrar to reject the Applicant's application.

Costs

68. The order provides for representations on the issue of liability for the costs of these proceedings. The Respondent has clearly been the successful party. The presumption in such a case would usually be that the Applicant would pay the Respondent's costs, which it estimates (in a schedule filed prior to the hearing) at just over £40,000 plus VAT. I will permit both parties to make representations on costs liability by the date stated, but unless there is some persuasive reason to make another order, I am likely to make an order as above. The parties should also state whether they contend for a summary or detailed assessment of costs. After the date stated in the order, a further order will be made dealing with costs and directions for any assessment process. The parties are of course free (and are encouraged) to seek to agree the matter of costs between themselves.

69. I am grateful to both parties and their representatives for the clear, efficient and courteous manner in which the hearing was conducted.

Judge Ewan Paton

Dated this 10th day of August 2023

BY ORDER OF THE TRIBUNAL