

The Isle of Man Land Registry

Application Number: 201001255

Applicants: Peter Keith Allen & Jane Vyvyan Allen

Property: Land at the rear of Eairy Veg
Village and Parish of Ballaugh
Isle of Man
IM7 5EF

Objectors: David Vernon & Christine Ann Vernon

Decision of G. E. Anderson, Legal Officer (Land), Assistant Chief Registrar in respect of a hearing held at Douglas on 25th April 2012

1. Introduction

This matter concerns an application under the provisions of Section 14(1) and (2) of the Land Registration Act 1982 ("the LRA 1982") for the first registration of the ownership of a freehold estate in the property with an absolute class of title ("the application") which was presented by the applicants to the Land Registry on the 9th July 2010.

Notice of the application was given to the objectors, as the registered owners of the qualified title to the property and therefore interested parties, who lodged an objection to the registration of the application.

The attempts which the parties made to resolve the dispute did not succeed and accordingly a hearing was convened under the provisions of Rule 120(1) of the Land Registry Rules 2000 ("the LRR 2000").

The hearing was held on the 25th April 2012 and I set out hereunder my decision in respect of the application.

2. Representation of the parties

The Applicants are Peter Keith Allen and Jane Vyvyan Allen and they are represented by Mr T McDonald, advocate of the firm of Carter Jones McDonald.

The objectors are David Vernon and Christine Ann Vernon and they are represented by Mr K Goldie, advocate of the firm of Callin Wild.

3. The location of the property

- 3.1 The applicants were the registered owners of the freehold estate, with an absolute class of title, in two parcels of land which are described in the title register held at the Isle of Man Land Registry as:

"Ballaveg", Main Road, Ballaugh, Isle of Man IM7 5EF ("Ballaveg").

The title was opened in the Land Registry on 12th March 2007 and an Office Copy and Filed Plan with Title Number 22-00146 was issued.

Ballaveg comprised two parcels of land – the first parcel contained the dwelling house and premises called "Ballaveg" and the second contained a garage and parking area ("the garage"). As will appear from what is set out below it is this second parcel of land – the garage - which adjoins the southern boundary of the disputed property.

- 3.2 The garage referred to in 3.1 was transferred to Jane Vyvyan Allen, one of the two applicants, on 4th October 2007 and the title to the garage was opened on 8th February 2008 and an Office Copy and Filed Plan with Title Number 22-00173 was issued.

- 3.3 The applicants are also the owners of a plot of land together with a dwelling house known as "Roslyn Cottage" ("Roslyn") to which they became entitled under a Deed of Conveyance dated 18th December 1998 from the vendors, Brian Paul Kneale and Janette Anne Duncan. This property, which lies to the east of Eairy Veg and the disputed property, has not been registered in the Land Registry.

- 3.4 The objectors are the registered owners of the freehold estate, with an absolute class of title, in land which is described in the title register as:

"Eairy Veg", Main Road, Ballaugh, Isle of Man IM7 5EF ("Eairy Veg").

The title was opened in the Land Registry on 13th December 2004 and an Office Copy and Filed Plan with Title Number 22-00088 was issued

- 3.5 The objectors are also the registered owners of the freehold estate, with a qualified class of title, in land which is described in the title register as:

Land at Eairy Veg, Main Road, Ballaugh, Isle of Man IM7 5EF

The title to this land was opened in the Land Registry on 16th December 2004 and an Office Copy and Filed Plan with Title Number 22-00087 was issued. I shall refer to this land in my decision as "the Property".

It is the Property which is the subject matter of the dispute between the parties.

4. The Property

- 4.1 The Property is bounded on the north by Eairy Veg, on the south by the garage, to the east by Roslyn and on the west by the lane or, as it is called on an earlier

deed plan to which reference will be made later, the "cartway". I shall deal later with the dimensions of the Property

- 4.2 According to the applicants, the Property stretched from the lane through the rear of Eairy Veg and into the rear garden of Roslyn and on the ground was a separate parcel of land which was demarcated by a fence at the rear garden of Eairy Veg and a stone wall on the southern boundary.
- 4.3 The applicants state that the fence at the rear of the garden of Eairy Veg was removed by the objectors in July 2005 and not replaced and the Property was then incorporated by the objectors into and at present forms a part of the rear garden of Eairy Veg. This is not disputed by Mr Goldie. There is now a double gate at the entrance from the lane on the west side and a gate at the eastern boundary of the Property where it enters the rear garden of Roslyn.
- 4.4 The applicants objected to the actions referred to in 4.3 and to protect their interests in the Property they registered a caution against title number 22-00087 on 27th April 2007.
- 4.5 At the heart of this dispute is the question as to whether the Property – the subject matter of the application – is, or is not, the strip of land which is referred to in a Deed of Conveyance referred to below as "the 1920 Conveyance".

5. The application and its effect

- 5.1 As stated above the applicants have applied to the Land Registry for title to the freehold estate, with an absolute class of title, in the Property and in respect of which the objectors already hold a qualified title under title number 22-00087.
- 5.2 The title of the objectors is qualified in the following manner:

"Excepting from the effect of registration any estate arising before a Deed of Conveyance dated 15 August 1990 and made between George Firkins and Lily Firkins of the one part and John Edward Lewis of the other part".

The title has been qualified in terms of Section 17(1) of the LRA 1982 which provides that where it appears that "the title [in an application] can be established only for a limited period, or only subject to certain qualifications" an entry will be made on the register excepting from the effect of registration any estate arising before a specified date or under a specified document or as otherwise described on the register.
- 5.3 As the root of title upon which the applicants rely in the present application predates, as we shall see, the aforesaid Deed of Conveyance dated 15th August 1990 should the applicants be successful the result will be that the qualified title of the objectors to the Property will be extinguished and the entry deleted from the title register and the applicants will be registered as the full owners of the absolute freehold estate in the Property.

6. The Epitome of Title

- 6.1 As is required in applications for first registration of title to estates in land the applicants provided an Appendix A: Epitome of Title which starts with a good root of title as defined in Section 2 of the Conveyancing Act 1985.

- 6.2 The first deed in the Epitome is a Deed of Conveyance dated 15th June 1865 made between Christian Gill of the one part and William Edward Quayle of the other part ("the 1865 Deed") and to which deed a plan was annexed. A copy of that plan is annexed hereto as "the 1865 Plan". This plan is relevant because reference is made to it in the 1920 Conveyance which is referred to below.
- 6.3 The 1865 Deed conveyed a property which was described as "a Dwelling House, Garden, Outoffices situated in the Parish of Ballaugh at the lower end of the Village, and adjoining the High road to Ramsey, the said premises being a part and parcel of the Quarterland of Ballamoar" and the specific measurements of the property are set out in both the deed and the plan.
- 6.4 It is accepted by the parties that the Property was contained within the parcel of land which was conveyed by the 1865 Deed. The parties agree – and I accept that this must be the position – that the rectangular shaped area which is marked as "GARDEN" ("the garden") on the 1865 Plan was in the course of time subdivided into the two properties which are now known as "Eairy Veg" and "Roslyn". The dimensions of the garden are given as sixty seven (67) feet three (3) inches long on the east side and fifty one (51) feet on the southern side.

The lane to the west of Eairy Veg which provides access to the rear of a number of properties is marked on the 1865 Plan as the "Cartway". Both Eairy Veg and the lane have an easement of right of way over the lane.

- 6.5 Under a Settlement made on 14th October 1907 ("the Settlement") the property which was acquired under the 1865 Deed was settled by the purchaser, William Edward Quayle upon himself and his wife, Alice Quayle and upon their deaths was to devolve to their children Ewan John Quayle and Alice Maude Mabel Quayle.

The parties are in agreement that the strip of land forms a part of the land held by the Settlement.

- 6.6 It is the case for the applicants that the Property remained vested in the Trustees for the time being of the Settlement and, as the Epitome shows, was eventually sold and conveyed by the then Trustees to the applicants by a Deed of Conveyance dated 16th February 2010. There is, therefore, for obvious reasons, no place in the Epitome of Title for the 1920 Conveyance referred to in 8 below.
- 6.7 It is the case for the objectors that, whilst the Property did in 1907 form part of the trust property of the Settlement, it was sold and conveyed as part of Eairy Veg by the 1920 Conveyance.

7. The 1920 Conveyance

- 7.1 By Deed of Conveyance dated 18th August 1920 ("the 1920 Conveyance") made between Ewan John Quayle and Robert Thomas Quayle as Trustees of the Settlement (the Vendors) of the first part, Ewan John Quayle, Robert Thomas Quayle and Alice Maude Mabel Quayle of the second part, Alice Quayle of the third part and Hugh George Williams (the Purchaser) of the fourth part a parcel of land which is described in the Schedule thereto was sold and conveyed to the purchaser.

The Schedule to the 1920 Conveyance provides as follows:

"ALL AND SINGULAR a plot or parcel of land with the Cottage and buildings thereon erected called Rose Cottage [now known as Eairy Veg] situate in the Village and Parish of Ballaugh being a portion of the land acquired by the said William Edward Quayle by Deed of Sale dated the Fifteenth day of June One thousand eight hundred and sixty five from Christian Gill and being a portion of the parcel marked "gardens" on the plan therewith [the 1865 Plan] the same being nine yards wide both at front and rear and twenty two yards one foot in depth and bounded on the North by the Highroad on the East by the property of the Vendors on the West by a cartway shewn on the plan the property of the Vendors and on the South by a strip of land part thereof having a well thereon and being two and a half yards wide and the remainder being an approach to the said Well and being one yard wide the property of the Vendors which is hereby expressly excluded from this conveyance and which shall be fenced off by the purchaser and granting to the Purchaser his heirs and assigns the right to take water from the said Well at all times hereafter he and they paying to the Vendors their heirs and assigns owners for the time being of the property called "Ivydene" for the use of the said Well one fourth of the costs of maintaining cleansing and repairing the said Well and granting also to the Purchaser his heirs and assigns a right of way for all purposes from the Main Road to the entrance to the garden at the rear of the said sold premises over the before mentioned cartway".

7.2 The 1920 Conveyance deals with the conveyance of the property called "Rose Cottage" (now called "Eairy Veg").

8. The Dispute

8.1 The objectors objected to the application on a number of grounds and the legal representatives of the parties filed Statements of Case and Skeleton Arguments which were most helpful in clarifying the issues and for which I am most grateful.

8.2 Prior to the hearing I was informed by the legal representatives that the areas of difference between the parties had been narrowed down to one issue – the correct interpretation of the 1920 Conveyance and the 1865 Plan - and that it was only this issue which had to be argued at the hearing and in respect of which an order need be made under the provisions of the Rule 120(2) of the LRR 2000.

8.3 The issue for decision relates to "the strip of land" referred to in the 1920 Conveyance and, in particular, whether the Property is:

8.3.1 the strip of land containing the well, in which case the Property was specifically excluded from and therefore was not conveyed as part of Eairy Veg by the 1920 Deed of Conveyance. The Property would then have remained vested in the Trustees of the Settlement. This is the case for the applicants; or

8.3.2 not the strip of land containing the well referred to in the 1920 Conveyance, in which case it was not excluded from but was conveyed by the 1920 Conveyance and now forms part of the Eairy Veg title. This is the case for the objectors.

9. The applicants' case

9.1 The applicants rely on the measurements on the 1865 Plan of the area called "gardens" which they state then enabled the parties to the 1920 Conveyance to use the same measurements when subdividing the garden into the two parcels of land called "Rose Cottage" and "Roslyn". In essence, it was a simple matter of dividing the garden into two "halves" and then excluding from the southern end of the parcel on which Eairy Veg was built, a strip of land which would enable the occupants of Roslyn to gain access to the well on the strip and to the cartway. The measurements therefore do not allow for any other interpretation.

9.2 The applicants also rely on the plain wording contained in the Schedule to the 1920 Conveyance to the effect that the parcel of land thereby conveyed is expressly excluded from the conveyance of Eairy Veg, the part excluded being "the strip of land part thereof having a well thereon and being 2 ½ yards wide and the remainder being an approach to the said well and being one yard wide..."

Accordingly, whilst the dimensions of the parcel of land sold were given as nine yards wide at the front and rear and twenty two yards one foot in depth, the applicants aver that the correct interpretation of the 1920 Conveyance is that the strip of land was expressly excluded from that parcel and therefore remained vested in the Trustees of the Settlement.

9.3 Mr McDonald on behalf of the applicants also raised a number of arguments in support of the application not related to the interpretation of the 1920 Conveyance:

9.3.1 that the strip of land was excluded from the conveyance because it contained a well which serviced a number of properties leading off the cartway – Ivydene (now known as "Ellan Vanin"), Eairy Veg, Roslyn and perhaps other properties in the immediate vicinity;

9.3.2 a number of photographs were produced at the hearing, without objection from Mr Goldie, which were given as proof that the strip of land was formerly a self contained parcel of land separate and fenced off from the rear garden of Eairy Veg;

9.3.3 reference was made to the witness statement of Brian Paul Kneale dated 3rd April 2006 which reinforced the evidence provided by the photographs to the effect that the right of way was a distinct parcel of land separate from the rear garden of Eairy Veg. Mr Goldie accepted the veracity of the statement; and

9.3.4 the title to a number of properties in the immediate vicinity of the Property appeared to show that the Property was a separate and demarcated lane or passageway at the rear of Eairy Veg leading from the cartway to the garden of Roslyn.

10. The objectors' case

10.1 The objectors likewise rely on the measurements contained in the 1920 Conveyance. In support of the case for the objectors, Mr Goldie was content to

rely on the argument that there is no reason to presume that the 1920 Conveyance was prepared in an inaccurate fashion and that accordingly in interpreting the 1920 Conveyance reliance should be placed on the plain words contained in the Schedule thereto, that is, the property conveyed by the 1920 Conveyance was "...a portion of the parcel marked "gardens" on the plan therewith [the 1865 Plan] the same being nine yards wide both at front and rear and twenty two yards one foot in depth..." and which is bounded "...on the South by a strip of land...". The dimensions which are measured from the main road would then include the Property.

The dimensions of Eairy Veg are therefore accurately described in the 1920 Conveyance.

- 10.2 The objectors also contend that whilst "a" strip of land was expressly excluded from the land conveyed by the 1920 Conveyance it was not the Property which is the subject matter of this application which was excluded and therefore the Property forms a part of Eairy Veg which was conveyed to the purchaser under the 1920 Conveyance.
- 10.3 Mr Goldie dealt briefly with the evidence of the applicants dealing with the photographs, the witness statement of Mr Kneale and the title to other properties in the vicinity which he argued were not supportive of the applicants' case. I shall not deal in detail with these matters because it is the interpretation of the 1920 Conveyance which concerns us.

11. Decision

- 11.1 The legal representatives of the parties agreed that the resolution of the dispute lay in the interpretation of the 1920 Conveyance and therefore the 1865 Plan which was incorporated by reference in the 1920 Conveyance.
- 11.2 The advocates for the parties did not refer me to any legal text or case law to assist me in the task of the interpretation of the conveyance. However the general rules which are applied where the description of a property in a conveyance is inadequate or inaccurate are set out in Megarry & Wade, "The Law of Real Property" (7th Edition") at pp.275 to 276. I set out the parts which are relevant to our enquiry:

"Very often a conveyance both describes the property verbally and also includes a plan. In that case it is advisable to provide that one or other shall prevail in the event of inconsistency. For example, if the plan is expressed to be included "for the purposes of facilitating identification only", the verbal description will prevail. However, if the property is said to be "more particularly described in the plan", then the plan will prevail. If the verbal description is insufficient, as by failing to indicate a boundary, the court may have recourse to the plan, even though it is "by way of identification only". In such a case the court adopts an objective test. Taking into account the surrounding circumstances, including the topography, the language of the conveyance, and the representation of the plan, what would the reasonable lay person think that they were buying?"

- 11.3 There is no separate plan of the Scheduled Property – “Rose Cottage” as it was then called but which later became known as “Eairy Veg” – on which the boundaries have been delineated.

The Schedule to the 1920 Conveyance contains a verbal description of the parcel of land conveyed by that deed but it also contains references in that description to the 1865 Plan when it refers to the parcel being “a portion of the parcel marked “gardens” on the plan therewith” [annexed to the 1865 Deed] and to the property being bounded “on the West by a cartway shewn on the plan”.

In my view the verbal description in the 1920 Conveyance is insufficient and therefore I shall adopt the objective test referred to in 12.2 above when deciding on the position, extent and the boundaries of Rose Cottage by examining both the language of the 1920 Conveyance and the representation of the whole parcel of land in the 1865 Plan.

I may say that this was the approach adopted by both Mr McDonald and Mr Goldie during their arguments when they both referred to the 1920 Conveyance and the 1865 Plan.

- 11.4 Eairy Veg is described in the 1920 Conveyance as being a portion of the “gardens” referred to in the 1865 Plan. The only two dimensions of the “gardens” contained in the 1865 Plan, as stated above, are sixty seven feet three inches on the eastern boundary and fifty one feet on the southern boundary. Whilst the drawing or the representation in the 1865 Plan of the parcel of land sold by the 1865 Deed is itself rudimentary and not to scale I have no reason not to accept that the measurements contained therein, particularly where such measurements are given in inches, are reasonably accurate.

Therefore to work out the length of the western boundary of the gardens one has to deduct the measurement given for the depth of the property conveyed by the 1865 Deed which was one hundred and twenty seven feet (measured along the length of the cartway) and if you deduct the sixty feet shown on the plan, the western boundary of the “gardens” is sixty seven feet or three inches shorter than the eastern boundary. Mr Goldie argued that this could not be done given the angle of the line depicting the measurement of sixty feet but in my view, taking into account all of the measurements contained on the 1865 Plan, this is the logical and only conclusion that can be arrived at.

I am therefore of the view that the parties to the 1865 Deed intended that the “gardens” area was of a rectangular shape which means that the sides of the rectangle are sixty seven feet long or twenty two yards one foot long and the width fifty one feet or seventeen yards wide. The representation of the gardens on the 1865 Plan supports this view.

- 11.5 Bearing in mind the dimensions of the rectangle, the 1920 Conveyance conveys a parcel of land “being a portion of the parcel marked “gardens” on the plan therewith the same being nine yards wide at front and rear and twenty two yards one foot in depth” which, and I agree with the applicants on this point, is the subdivision of the garden into two “halves”. I do not think that these measurements are a coincidence.

The Schedule to the 1920 Conveyance then goes on to state that the parcel of land containing Rose Cottage is bounded:

"...on the South by a strip of land part thereof having a well thereon and being two and a half yards wide and the remainder being an approach to the said Well and being one yard wide the property of the Vendors which is hereby expressly excluded from this conveyance and which shall be fenced off by the purchaser" [underlining mine].

In my view the language of the Schedule is clear – the strip of land formed a part of the parcel measuring twenty two yards one foot long and nine yards wide but was then excluded from the conveyance of Rose Cottage. Given the measurements of the rectangle and the fact that the land to the south of the rectangle was not owned by the vendors in the 1920 Conveyance and could not therefore, by definition, be excluded by them I am of the view that the Property and the strip of land referred to in that Conveyance are one and the same.

I am of the view that the strip of land must have formed the southern boundary of the garden area on which Rose Cottage was built.

I do not agree with Mr Goldie's submission that the strip of land excluded was not the same strip of land which is the subject matter of the application. Taking all the above into account I am of the view that there could not have been another strip of land.

Due to the difficulty in describing the dimensions of the "strip of land" being "two and a half yards wide and the remainder being an approach to the said Well" or representing that accurately on a plan, it would seem to be reasonable to suggest that the parties to the 1920 Deed decided to use the exact measurements of the rectangle and then merely to deduct the strip of land from the parcel of land on which Rose Cottage was built. It may have been difficult to measure the exact dimensions of "the approach" and to then use those measurements in delineating the southern boundary of Rose Cottage.

It is therefore my view that it was the intention of the parties to the 1920 Conveyance to subdivide the garden area in two "halves" of roughly the same size and to exclude – or to deduct - from the half containing Rose Cottage, at its southern most boundary, the strip of land referred to in the Schedule from the extent of Rose Cottage for the purposes of access to the well. My decision is that the strip of land is the same as the Property.

- 11.6 Accordingly, the application of the applicants for the registration of absolute title to the Property is to proceed and the qualified title of the objectors held under title number 22-00087 is to be deleted from the register of title held at the Land Registry.

12. Dimensions of the Property

It remains for a decision to be made as to the extent and the dimensions of the Property. In other words, is the Property or the whole of the parcel of land in respect of which the objectors hold a qualified title – the parcel represented on the Filed Plan with title number 22-00087 – to be first registered with an absolute title or should we once more look to the 1920 Conveyance for instruction in this regard.

As is evident from the above, the strip of land is referred to in the 1920 Conveyance as "...being two and a half yards wide and the remainder being an approach to the said Well

and being one yard wide...". The description is inadequate and were it not for the offer of the legal representatives which I detail below, I am of the view that we would have to adopt the approach to the interpretation of conveyances set out by the authors, Megarry & Wade, "The Law of Real Property" (7th Edition) at page 276:

"A common defect of conveyances is that boundaries are inadequately defined. In that case extrinsic evidence is admissible to establish the true intent of the parties, which may be clear from other documents, such as auction particulars. That extrinsic evidence may include the subsequent conduct of the parties to the conveyance".

At the hearing the legal representatives for both the applicants and the objectors informed me that, if I were to find in favour of the applicants, the parties were willing to enter into reasonable discussions about the exact position and the dimensions of the Property to be registered in the name of the applicants.

I am grateful to the parties and to their representatives for this offer. It is preferable, particularly in a long standing dispute such as this matter, that the position, extent and boundaries of the Property should be agreed upon by the affected parties. I am hopeful that a mutual agreement will remove an area of potential conflict in the future. The parties may wish to avail themselves of the procedure for declaring boundaries as conclusive as outlined in section 59(2) of the LRA 1982 and Rule 78 of the LRR 2000.

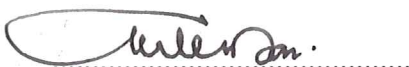
However, should the parties fail to reach agreement on the boundaries within a period of twenty eight (28) days calculated from the last day for the noting of an appeal to the Land Commissioner under section 6(1) of the LRA 1982, I shall make such further order as to the position, extent and the boundaries of the subject matter of the application as I consider just in order to enable registration of the application to take place.

13. Costs

Rule 135 of the LRR 2000 provides that an award of costs in respect of any proceedings on a hearing shall be in the discretion of the Registrar and he may direct by and to whom costs are to be paid.

I request that the parties let me have representations in respect of the question of costs within the same period as is referred to in paragraph 13 above.

Dated at Douglas on the 4th day of June 2012



G. E. Anderson
Assistant Chief Registrar
Legal Officer (Land)