

ENGLAND AND WALES / JUDGMENT

Harrington Homes (Carbis Bay) Limited v David Hayman & Anor

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Neutral Citation Number: [2025] EWHC 3224 (Ch) Case No: PT-2024-000855 IN THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES PROPERTY TRUSTS AND PROBATE LIST (ChD) Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL Date: 17/12/2025 Before: MASTER CLARK

- ----- Between: HARRINGTON HOMES (CARBIS BAY) LIMITED Claimant
- and -

(1) DAVID HAYMAN

(2) GAVIN GEOFFREY BATES (as Trustee in Bankruptcy of Geoffrey Ronald Jelbert)

- -----

- ----- Defendants Lina Mattsson (instructed by Michelmores LLP) for the Claimant Jay Jagasia (instructed by Ashfords LLP) for the 1st Defendant David Mitchell (instructed by Talbots Law Ltd) for the 2nd Defendant Hearing dates: 8, 9 October 2025

- ----- Approved Judgment This judgment was handed down remotely at 10.00am on 17 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Master Clark: 1. This is my judgment on the claimant's application dated 12 November 2024 seeking summary judgment on its claim. Factual background, the parties, and the claim Parties 2. The claimant, Harrington Homes (Carbis Bay) Limited, is the registered proprietor of freehold land adjoining Carbis Bay Holiday Park, Laity Lane, Carbis Bay, St Ives, TR26 3HW ("the Property"), registered under 2 title numbers at HM Land Registry: CL371794 and CL372626. 3. 4. 5. 6. Title number CL371794 was transferred to the claimant on 25 March 2022 by Welshman Properties Limited ("Welshman") for £6.35 million. On 20 July 2022, Welshman transferred to Gareth Hughes (a director of the claimant) the land with title number CL372626, referred to as "the Jelbert Wedge". On 16 July 2024, Mr Hughes transferred the Jelbert Wedge to the claimant; registration of that transfer is pending. The claim relates to a strip of land on the south eastern side of the Property, about 3-5 metres wide, referred to as "the Disputed Land". The first defendant, David Hayman, claims beneficial title to the Disputed Land as successor in title to Geoffrey Jelbert, from whom Welshman bought the Property. The second defendant, Gavin Bates, is Mr Jelbert's trustee in bankruptcy: if Mr

Jelbert owned the Disputed Land as at the date of his bankruptcy order, Mr Bates remains the legal owner of that land. Factual background and the claim 7. For present purposes, the factual background begins with a conveyance dated 22 May 1972 by the personal representatives of Garfield Rogers to Eastern Green Caravan Park (Penzance) Limited (“Eastern Green”) of land (“the 1972 Land”) comprising: “ALL THOSE fields numbered 5082, 5978, 6778, 7678 and 8783 at Laity Farm in the Borough of Saint Ives in the County of Cornwall which are for the purposes of identification only delineated and surrounded by a red verge line on the plan annexed hereto (from the National Grid Ordinance Maps SW 5238/5338 and 5237/5337) comprising 16.44 acres or thereabout...” The plan attached to that conveyance is below: 8. 9. On 11 July 1972 Eastern Green conveyed part of the 1972 Land (OS fields 7678 and

- 8783) to Ronald Jelbert; and on 31 October 1978, he transferred them back to Eastern Green. On 18 August 1987 Eastern Green conveyed all of the 1972 Land to Geoffrey Jelbert (Ronald Jelbert’s son – “Mr Jelbert”) described in the conveyance as: “ALL THOSE freehold fields numbered 5082, 5978, 6778, 7678 and 8783 at Laity Farm in the Borough of Saint Ives in the County of Cornwall which are for the purposes of identification only delineated and surrounded by a red verge line on the plan annexed hereto (from the National Grid Ordinance Maps SW 5238/5338 and 5237/5337) comprising 16.44 acres or thereabout...”
10. The plan to that conveyance is below: 11. 12. It is common ground that the Ordnance Survey map used for the 1987 conveyance was the same edition as that used for the 1972 conveyance; and that the land conveyed by the 1987 conveyance was the 1972 Land. In about late 1989 and early 1990, Mr Jelbert removed the existing Cornish hedge (stone wall) (“the Old Hedge”) on the south eastern boundary of the 1972 Land, and built a new hedge/wall (“the New Hedge”) about 3-5m to the north west. The strip of land thereby created is the Disputed Land. The New Hedge forms a physical boundary of the north western side of the Disputed Land.
13. On 7 January 2002, Mr Jelbert executed a Form TP1 (“the 2002 Transfer”) transferring part of the 1972 Land to Welshman for a price of £750,000. The primary issue in this claim is whether on its proper construction, the land transferred by the 2002 Transfer excluded the Disputed Land, so that it was retained by Mr Jelbert.
14. This in turn depends upon the construction of the parcels clause (Box 4) of the 2002 Transfer (“the Parcels Clause”), which defines the “Property transferred” as: “All that freehold land at Carbis Bay in the County of Cornwall formerly part of Little Trevarrack Farm and Laity Farm Caravan Site which Title shall commence as: (See Rider 1) The Property is defined: on the attached plan and shown edged in red. ... Rider 1 ...
- (b) As to the other Part (formerly part of Laity Farm Caravan Site) a Conveyance on sale dated 22 May 1972 and made between Christopher Michael Clough, William Allen Johnston, David Rogers (1) Eastern Green Caravan Park (Penzance) Limited (2).

15. The 2002 Transfer was the occasion on which the first registration of the Property occurred. To achieve registration, it was therefore necessary to provide a “root of title” – as to which, see para 41 below.
16. Clause 13 of the 2002 Transfer includes a definition of the “Retained Land” as “the land for identification purposes shown edged light blue on the plan annexed hereto excluding land previously transferred.”
17. The plan (“the 2002 plan”) is below:
18. The 2002 plan appears to be based upon a more recent version of the OS plan than that used in the 1972 and 1987 conveyances. 19. It shows the Property edged in red, and the Retained Land edged in light blue. The Retained Land is the holiday park to the west of the Property, which was being developed by Mr Jelbert. The land in the position of the Disputed Land is not shown edged blue, so that the Disputed Land is not part of the “Retained Land”. The 2002 Transfer reserves various rights over and grants various rights in favour of the Retained Land. In particular, it grants in favour of the Retained Land a right of way over the roadway coloured brown on the plan (“the Access Road”), coupled with an obligation to pay a fair proportion of the cost of maintaining and renewing it.
20. The 2002 Transfer was registered at HM Land Registry on 8 April 2002.
21. On 1 September 2023, a bankruptcy order was made against Mr Jelbert, and the second defendant Mr Bates (to whom I will refer as “the trustee”) was appointed his trustee in bankruptcy.
22. On 23 September 2024, the trustee entered into a “Purchase Agreement” with the first defendant. This assigned to the first defendant: “All and any claims to the land and/or causes of action relating to the land belonging to Geoffery Ronald Jelbert now vested in the Trustee pursuant to section 306 of the Insolvency Act 1986 and more particularly delineated upon the plan annexed hereto (“the Land”). Any claims arising from the Land pertaining to the dispute with Harrington Homes (Carbis Bay) Limited (registered no. 13992447) as it relates to the Land and particularly the area referred to as the “Jelbert Wedge” located at the intersection of the Land and Laity Lane.”
23. The plan annexed to the Purchase Agreement is below – the Disputed Land is coloured green and hatched blue:
24. The claim was commenced as a Part 8 claim on 2 October 2024. The relief sought is a declaration that the only land retained by Mr Jelbert following the 2002 Transfer is the land defined as the “Retained Land” in that transfer, and thus neither defendant is the legal or beneficial owner of any other land which abuts or adjoins the claimant’s property.

25. On 18 October 2024, it was ordered that the claim proceed as if issued under Part 7. The first defendant is fully defending the claim. The second defendant's defence alleges that by the Purchase Agreement he has assigned his beneficial interest in the Disputed Land, and is required to transfer his legal interest in it, to the first defendant. He relies on the first defendant's Defence and does not advance any independent arguments. He appeared by counsel at the hearing and adopted the first defendant's submissions.
26. The first defendant's Defence dated 1 November 2024 relies upon the following in support of construing the 2002 Transfer as providing for the Disputed Land to be retained by Mr Jelbert: (1) (2) (3) (4) (5) (6) the use of the word "defined" in the following part of the Parcels Clause: "The Property is defined: on the attached plan and shown edged in red."; there is nothing material beyond that definition and the 2002 Plan that is relevant in construing the Parcels Clause; the positioning of the New Hedge marked the boundary as being in that place when the Property was transferred; the 2002 Plan shows the southeastern boundary following or largely following the line of the New Hedge and set back considerably further from the Highway than in the plans in the 1972 and 1987 conveyances in which the boundary follows the line of the Old Hedge; the definition of the "Retained Land" does not limit the extent of the land retained by Mr Jelbert, and is not relevant to construing the Parcels Clause; (presumably alternatively) the only purpose of defining and referring to "Retained Land" is to express and/or record certain rights granted and reserved by the 2002 Transfer; accordingly, since no rights were granted over (or reserved for the benefit of) the Disputed Land, there was no need to for the definition of the "Retained Land" to include the Disputed Land; (7) It is not the ordinary practice of conveyancers to define and identify land intended to be retained by a vendor simply for the purpose of identifying that land (there was no evidence in the application in support of this allegation).
27. The first defendant's evidence included evidence as to the circumstances leading up to the 2002 Transfer, as set out in the witness statements of:
 - (1) Andrew McGivern (dated 29 April 2025), who acted on Welshman's behalf in the relevant period;
 - (2) Mr Jelbert (dated 30 April 2025);
 - (3) Barry Lewis (dated 20 July 2017) – his witness statement was not made in this claim. That evidence is summarised below. Much of it is disputed by the claimant, although for present purposes, the disputed facts must generally be assumed in the first defendant's favour.
28. The sale which culminated in the 2002 Transfer was initially contemplated as being a sale between Mr Jelbert and The Housing Foundation ("THF"), a developer which specialised in the development of affordable housing. Mr Lewis acted on behalf of THF. THF had identified the Property as being suitable for affordable housing – it was not then considered capable of securing planning permission for non-affordable housing development. The Property was described by Mr Lewis in a letter dated 17 April 2000 as being land at Laity Land. Laity Lane is on the northern boundary of the Property, although separated from it by

a grassy strip (which Mr Jelbert did not own).

29. Before Welshman's involvement, by a letter dated 25 April 2001, Mr Lewis wrote to Mr Jelbert noting that they then needed to meet on site to "agree boundaries" and that "[t]he boundaries do, of course, need to be included in the contract". Mr Jelbert and Mr Lewis met on site to discuss the boundaries. As between them, it was explained and understood that the southern boundary of the site was identified by the New Hedge.
30. Welshman was initially involved because it was intended that it would lend to THF to support its acquisition. At all material times Welshman's dealings were conducted through Mr McGivern. There was then a change in THF's funding circumstances which meant that Welshman agreed to in effect step into the shoes of THF and acquire the site itself, with the intention that THF would re-acquire the site once planning had been obtained and funding would be available. There was no direct contact or communications between Mr Jelbert and Mr McGivern or anyone else acting on Welshman's behalf. Instead, Welshman relied on Mr Lewis - it was primarily concerned that Mr Lewis was satisfied with the arrangements as THF was to re-acquire the Property from it. Mr Lewis identified to Mr McGivern the extent of the land to be sold to Welshman.
31. Mr Lewis told Mr McGivern that the southern boundary of the site was identified by the New Hedge, and that Mr Jelbert was not selling the land between that boundary and the highway, because he wished to control this land for the purpose of future road widening.
32. The first defendant submitted that Mr Lewis also explained to Mr Jelbert and Welshman that he intended to access the site from Laity Lane and not Trencrom Lane, and that there were good planning reasons for doing so. However, Mr Jelbert's evidence (at para 31 of his witness statement) is that Mr Lewis did not make any specific enquiry about access to the Property. Mr McGivern's evidence is that Mr Lewis' vision for the Site was to create an access to it via Laity Lane. Mr Jelbert's evidence refers to access points from Laity Lane – however, the Property was separated from Laity Lane by the grassy strip referred to in para 28 above; so that there was only what Mr Jelbert described in his evidence as "possible public highway access not controlled by me".
33. Mr Lewis, on, he says, Welshman's behalf, was involved in reviewing and confirming that the transfer plan to the 2002 Transfer was consistent with the boundaries of the site to be transferred as he understood them to be and they were consistent with how Mr Lewis had described them to be to Welshman. Eventually THF and Welshman fell out and Welshman sought to progress its own non-affordable housing planning application.
34. The first defendant also relied upon the acts of both parties following the 2002 Transfer consistent with their case. In particular, he relies on an email from Mr McGivern to Mr Jelbert on 26 September 2014: "I have a...specialist doing a survey of my land next week. Whilst he is on-site, it seems to me that it makes sense that he also inspects your hedgerow along the highway and UNA boundary so that if we conclude a bargain for your land..." This refers to a hedgerow separating the highway from land owned by UNA, not the New Hedge;

and the reference to “your land” is opaque, with no evidence to show that it relates to the Disputed Land. It could equally well refer to the Retained Land.

35. The first defendant’s case includes that Mr Jelbert alone has at all material times up to the sale to the claimant been responsible and paid for maintenance of the Disputed Land; relying on invoices said to relate to repair works to potholes located on the Disputed Land between the edge of Trencrom Lane and the edge of the New Hedge.
36. Again, for present purposes, the facts include that in 2014-2015 Mr Jelbert asserted ownership of part of the Disputed Land and demanded compensation from Welshman, claiming that that part was retained by him when he executed the 2002 Transfer. Welshman has never formally acceded to these claims nor paid compensation. Summary judgment – legal principles
37. CPR 24.2 provides, so far as relevant: “The court may give summary judgment against a claimant ... on the whole of a claim or on an issue if— (a) it considers that the party has no real prospect of succeeding on the claim, ... or issue; and there is no other compelling reason why the case or issue should be disposed of at a trial.” (b)
38. A comprehensive summary of the principles emerging from the relevant caselaw was provided by Cockerill J in *Daniels v Lloyds Bank* [2018] EWHC 660 (Comm) [49], recently adopted by Nicklin J in *Lawrence v Associated Newspapers* [2023] EWHC 2789 (KB); [2024] 1 W. L. R. 3669 at [77]: “(i) (ii) (iii) (iv) (v) (vi) The burden of proof is on the applicant for summary judgment; The court must consider whether the claimant has a ‘realistic’ as opposed to a ‘fanciful’ prospect of success: *Swain v Hillman* [2001] 1 All ER 91; The criterion ‘real’ within CPR r 24.2(a) is not one of probability, it is the absence of reality: Lord Hobhouse of Woodborough in *Three Rivers District Council v Bank of England (No 3)* [2003] 2 AC 1, para 158; At the same time, a ‘realistic’ claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] CP Rep 51, para 8; The court must be astute to avoid the perils of a mini-trial but is not precluded from analysing the statements made by the party resisting the application for summary judgment and weighing them against contemporaneous documents (*ibid*); However disputed facts must generally be assumed in the claimant’s favour: *James-Bowen v Comr of Police of the Metropolis* [2015] EWHC 1249 (QB) at [3]; (viii) (vii) An application for summary judgment is not appropriate to resolve a complex question of law and fact, the determination of which necessitates a trial of the issue having regard to all the evidence: *Apovdedo NV v Collins* [2008] EWHC 775 (Ch); If there is a short point of law or construction and, the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725; However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment,

but also the evidence that can reasonably be expected to be (ix) available at trial. The court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] Lloyd's Rep PN 526; *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 3; ...”

39. The burden of proof is on the applicant to show that the conditions in CPR 24.2 are satisfied. Construction of conveyancing documents – legal principles

40. A convenient summary of the relevant principles is found in *Ruoff & Roper: Registered Conveyancing* at para 5.011:

- (1) The key question is: what would the reasonable lay person think they were buying, looking at the conveyance or transfer, including the plan: *Chadwick v Abbotswood Properties Ltd* [2004] EWHC 1058 at [44], per Lewison J.
- (2) Evidence of the parties’ subjective intentions, beliefs and assumptions are irrelevant, as are their negotiations. *Chadwick v Abbotswood Properties Ltd*

[2004] EWHC 1058 at [44], per Lewison J.

- (3) Where a plan is said in the deed to be “for the purposes of identification only”, a more precise description in the wording of the deed will prevail over the plan; where the property is “more particularly delineated” by the plan, it will prevail if the words are unclear: *Dunlop v Romanoff* [2023] UKUT 200 (LC) at [41].
- (4) However, as long as the plan does not come into conflict with anything which is explicit in the description of the property in the body of the deed, the fact that the plan is said to be “for the purposes of identification only” does not exclude it from consideration: *Wigginton & Milner Ltd v Winster Engineering Ltd* [1978] 1 W. L. R. 1462 at 1473-4.
- (5) Where there is inconsistency between clear words and a clear plan, and the property is “more particularly delineated” by the plan, the latter will generally prevail; it may not where extrinsic evidence or “business common sense” favours the verbal description: *Dunlop v Romanoff* [2023] UKUT 200 (LC) at [89]–[97]. (6) It will normally be the parcels clause within the conveyance, or the equivalent panel in the Form TP1 or TP2 (panel 3), that, with the plan, identifies the extent of the land involved, but where it does not do so sufficiently, other parts of the conveyance or transfer can be considered: *Drake v Fripp* [2011] EWCA Civ 1279 at [11]
- (7) Where “the transfer and/or the transfer plan is clear and unambiguous” and there is a “mismatch” with the “actual physical features on the ground”, the transfer prevails: *Cameron v Boggiano* [2012] EWCA Civ 157 at [57], per Mummery LJ.

- (8) Where the transfer with its plan is not sufficiently clear and unambiguous, recourse can be had to evidence of the actual features on the ground—the topography—at the time of the conveyance or transfer as “part and parcel of the process of contextual construction”: *Pennock v Hodgson* [2010] EWCA Civ 873 at [12], per Mummery LJ.
- (9) Recourse can also be had in these circumstances “to extraneous evidence, including evidence of subsequent conduct, subject always to the evidence being of probative value in determining what the parties intended.” This principle only allows for consideration of the subsequent conduct of the parties to the original deed, and not their successors: *Ali v Lane* [2006] EWCA Civ 1532 at [36] [38], per Carnwath LJ. Root of title
41. As noted above, the 2002 Transfer was the occasion of first registration of the Property. In those circumstances, the Registrar was required to satisfy themselves that the seller had good title. This requirement was satisfied by the production of a good root of title. As Ruoff & Roper explain, at para 5.012, a good root of title ‘must be an instrument of disposition dealing with or proving on the face of it (without the aid of extrinsic evidence) the ownership of the whole legal and equitable estate in the property sold, containing a description by which the property can be identified and showing nothing to cast any doubt on the title of the disposing parties’ (*Williams on Vendor and Purchaser*, 4th ed, Vol. I, p 124). Discussion and analysis Parcels clause
42. The starting point in construing the 2002 Transfer is the Parcels Clause. The first part of it identifies the land to be transferred by reference to the 1972 conveyance. It is (rightly) common ground that the Disputed Land is included in the land conveyed by the 1972 conveyance. If, therefore, the Parcels Clause had concluded at that point, then it would have been clear that the Disputed Land was not retained by Mr Jelbert.
43. However, as noted above, the Parcels Clause continues, to provide: “The Property is defined: on the attached plan and shown edged in red.” 44. In construing the 2002 Transfer, the use of the word “defined” is in my judgment indicative (but not determinative) that the description in the plan should prevail over the other parts of Transfer. It is closer in meaning to “more particularly delineated” than to “for identification purposes only”. It must, however, be construed in the context of the 2002 Transfer as a whole. 2002 Plan 45. In doing so, the first part to consider is the 2002 Plan itself: whether it is clear, and adequate to exclude the Disputed Land from the 2002 Transfer.
46. As to this, the evidence in the application relied upon by the first defendant included a CPR Part 35 compliant report dated 24 November 2018 by Jon Maynard FRICS for Mr Jelbert. At paragraph 44, Mr Maynard observes that the mapping on the 2002 Plan is consistent with the Ordnance Survey mapping of the period. At paragraph 47, he states that boundaries shown on the plan (based on 1:2500 scale mapping) are “inevitably ambiguous due to the lax accuracy tolerances of the Ordnance Survey map.” 47. In *Scarfe v Adams* [1981] 1 All E. R. 843, CA at 845 Cumming-Bruce L. J. warned that: “a conveyancing technique which may have been effective in the old days to convey large property [sic.] from one vendor to one

purchaser will lead to nothing but trouble, disputes and expensive litigation if applied to the sale to separate purchasers of a single house and its curtilage divided into separate parts. For such purposes it is absolutely essential that each parcel conveyed shall be described in the conveyance or transfer deed with such particularity and precision that there is no room for doubt about the boundaries of each, and for such purposes if a plan is intended to control the description, an Ordnance map on a scale of 1/2500 is worse than useless. The plan or other drawing bound up with the deed must be on such a large scale that it clearly shows with precision where each boundary runs.” This warning was repeated by Dillon L. J. in *Mayer v Hurr* (1985) 49 P. & C. R. 56, CA. In this case, the width of the Disputed Land is sufficiently small to render a plan at a scale of 1:2500 inadequate for the task.

48. Thus, even on the first defendant’s case, the 2002 Plan is not sufficient of itself to show that the Disputed Land was retained. In those circumstances, the boundary of the Property is determined by the root of title (the extent of the 1972 Land being clear), subject to any land retained by Mr Jelbert. The first defendant has in my judgment no real prospect of showing the contrary. Retained Land provisions
 49. One turns therefore to the remainder of the 2002 Transfer itself. This includes, first, the fact that it expressly provides for and identifies land to be retained by Mr Jelbert; and there is no express provision for the retention by him of the Disputed Land. In circumstances where the Property was only part of the 1972 Land, a reasonable buyer would, in my judgment, expect the land to be retained by Mr Jelbert to be clearly identified. I therefore reject the first defendant’s submission that the provisions relating to the Retained Land are only for the purpose of granting and reserving rights in respect of that land. Extrinsic evidence The New Hedge 50. Since the 2002 Transfer is clear, it is not necessary to consider extrinsic evidence, including the topographical features on the ground. Thus, if there is a “mismatch” with the “actual physical features on the ground”, the transfer prevails: *Cameron v Boggiano* (cited above).
 51. The first defendant relied upon the New Hedge as marking the boundary at the time of the 2002 Transfer. As stated above, this is not admissible evidence. However, even if it were, the New Hedge did not when constructed or at any time thereafter mark a boundary, as Mr Jelbert continued to own the land on either side of it. Statements made by the parties before the 2002 Transfer
 52. The first defendant’s Defence does not plead or rely upon the parties’ statements to each other before the 2002 Transfer. On the contrary, his pleaded case is that there is nothing beyond the definition and plan in the 2002 Transfer to ascertain and/or construe the Parcels Clause: para 14.4.1. However, for the reasons given in *Bhamani v Sattar*
- [2021] EWCA Civ 243, this does not preclude the court from considering it in deciding whether the claimant is entitled to summary judgment, even if reliance upon it would require obtaining permission to amend. 53. In seeking to rely on these statements, the first defendant cited *Taylor v Hamer* [2003] 1 EGLR 103, Sedley LJ observed (at [90]): “In the

manner seminally described by Lord Hoffmann in *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, 912–3, the meaning to be ascribed to “the Property” in the conveyance is the meaning it would be given by a reasonable person who knows what the parties knew at the time they contracted. This, of course, begins with the geographic area comprised in the registered titles. On Judge Bursell's findings, it includes the facts that the claimant had been shown premises which included the flagged dog garden and that he had not been told before contract that this was no longer part of the realty. In my judgment such facts are not within the exclusion zone of prior negotiation and subjective intent described in Lord Hoffmann's third principle in *ICS* (above). They are the normal means by which the subject matter of any offer and acceptance is identified”.

54. The first defendant relied upon Taylor as supporting the proposition that the statements made by Mr Jelbert to Mr Lewis (and conveyed by him to Mr McGivern) as to the geographical extent of the Property, coupled with the known position of the New Hedge are admissible in construing the Parcels Clause. However, Taylor was not concerned with the geographical extent of the property in that case. It was concerned with whether flagstones embedded in the earth of the dog garden were part of the property identified in the contract of sale.
55. That decision does nothing to undermine and is not inconsistent with the established proposition that evidence of the parties' subjective intentions, beliefs and assumptions are irrelevant, as are their negotiations, set out above. Conduct of the parties after the 2002 Transfer
56. The first defendant's Defence does set out that Mr Jelbert carried out annual maintenance of the Disputed Land, but does not rely upon this fact in support of the construction of the Parcels Clause contended for. To do so would also be inconsistent with para. 14.4.1 of the Defence; but again, this does not preclude reliance upon it.
57. The first defendant relied upon the proposition that evidence of subsequent conduct is admissible as an interpretative aid of parcels clauses if it is probative of the parties' intention at the date of the conveyance, particularly where it is bilateral conduct of the parties to the conveyance; *Ali v Lane* [2007] 1 P&CR 26. They also relied on *Haycocks v Neville* [2007] EWCA Civ 78, in which the Court of Appeal decided that the trial judge was right to have admitted evidence of acts of ownership which took place after the conveyance in question. 58. Similar principles apply to subsequent conduct as to other types of extraneous evidence. They are only admissible when the transfer is unclear. In addition, as *Ali v Lane* makes clear, the subsequent conduct relied must be of probative value; and the unilateral actions of the owner of one side cannot be relied upon as binding on the owner of the other side: see [38].

59. Mr Jelbert's acts of maintaining the Disputed Land were unilateral acts. The first defendant has no real prospect of showing that they are of probative value in construing 60. the 2002 Transfer. In addition, when in 2014/2015 Mr Jelbert asserted a right to part of the Disputed Land, Welshman did not accept it. Furthermore, even in 2015, Mr Jelbert's conduct was equivocal. This is shown by a letter dated 24 July 2020 from Welshman's solicitors, Foot Anstey to Mr Jelbert. That letter sets out that in an email dated 3 January 2015, Mr Jelbert accepted that his obligation to maintain the Access Road included the section that adjoins the main highway. This is clearly inconsistent with a claim to own the strip of land between the Access Road and the public highway (hatched blue on the plan at para 23 above). 61. Similarly in the same letter, Foot Anstey set out other correspondence from Mr Jelbert in 2015 which is clearly inconsistent with ownership of the Jelbert Wedge.
62. Thus, even if such evidence were admissible, I am not satisfied that the first defendant has any real prospect of showing bilateral conduct which supports their case. Business common sense 63. Finally, even if the extrinsic evidence relied upon by the first defendant were admissible, the 2002 Transfer is to be construed in the light of "business common sense". As set out at paragraph 28 of the Court of Appeal's judgment in *Wood v Capita Insurance Services Ltd* [2015] EWCA Civ 839 (affirmed in the Supreme Court): "In a case where, as here, parties have used language which is capable of more than one meaning, the court should consider the implications of the rival constructions: *Gan Insurance Co Ltd v Tai Ping Insurance Co Ltd* [2001] CLC 1,103 at [16]; and is entitled to prefer a construction which is consistent with business common sense and to reject one that is not." 64. In this case, the relevant features of the commercial context were in my judgment the following:
- (1) The price paid was substantial – about £1.4 million at today's value – this reflected its status as development land, for which access from a public highway was essential;
 - (2) There was no access to the Property from a public highway other than from (3) Trencrom Lane; In particular, there was no access from the public highway Laity Lane on the northern boundary of the Property, as it was separated from the lane by a grassy strip (which, in any event, Mr Jelbert did not own). 65. If therefore, Mr Jelbert had retained the Disputed Land, the Property would have been landlocked. This is a highly unbusinesslike and unreasonable result. It is difficult to imagine why Welshman would have intended to make such a bargain. Thus to the extent necessary, the commercial context favours the claimant's position. Conclusions 66. I conclude that first defendant has no real prospect of showing that, on the proper construction of the 2002 Transfer, Mr Jelbert retained the Disputed Land. It is not therefore necessary to consider the claimant's arguments based on the highway presumptions and *New Towns v Gallagher Ltd* [2002] EWHC 2668 (Ch), [2003] 2 P. & C. R. 3. 67. For the reasons given above, therefore, I will grant summary judgment in favour of the claimant. 17

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