

[2018] UKFTT 314 (PC)

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

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF NO: 2016 0023

BETWEEN

**John Paul McQue (1)
Fiona McQue (2)**

Applicants

and

**Taurusbuild Limited (1)
Shandar Salam (2)
William Henry Campbell (3)
Edwin Peter Goldsbrough (4)
David Ibbetson (5)
Julie Ibbetson (6)
Barry Stirling (7)
Gilliam Stirling (8)
Roy Hatton (9)**

Respondents

**Property address: 2 The Hall, Dinsdale Park, Middleton St George, Darlington DL2
1UB**

Title numbers: DU26253; DU34159 and DU262842

ORDER

Representation:

Applicants: Mrs Christine Goodwin Lay Representative

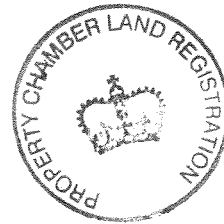
Respondents: Mr Richard Selwyn Sharp Counsel

It Is Ordered that

1. The Chief Land Registrar shall give effect to the application made in form AP1 and dated 10 December 2013 to enter the benefits and burdens of easements of the right to park and of way on the respective registers in part, so as to record on the register of title number DU262842 the burden that the applicants, as proprietors of title number DU262353, have the benefit of the right to park on those parts of car park spaces numbered 28 and 29 as fall within that title and an easement of way with vehicles over that title to and from the public highway and those spaces; and that the benefit of those rights be entered on the register of title number DU262353 as if the objections of the respondents had not been made;
2. The Chief Land Registrar shall cancel the remainder of the application; and
3. Any applications for costs shall be made in accordance with the directions set out in paragraph 6.2 of the decision dated 17 April 2018.

Dated 17 April 2018

John Hewitt



BY ORDER OF THE TRIBUNAL



[2018] UKFTT 0314 (PC)

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

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF NO: 2016 0023

BETWEEN

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Barry Stirling (7)
Gilliam Stirling (8)
Roy Hatton (9)**

Respondents

**Property address: 2 The Hall, Dinsdale Park, Middleton St George, Darlington DL2
1UB**

Title numbers: DU262353; DU34159 and DU262842

**Before: Judge John Hewitt
Sitting at: Alfred Place
On: 10 and 11 October 2017**

DECISION

Representation:

Applicants: Mrs Christine Goodwin Lay Representative

Respondents: Mr Richard Selwyn Sharpe Counsel

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The Issue and the Decision

1. The issue before the tribunal is set out in the application to Land Registry dated 10 December 2013 concerning a claim to a right of way and a right to park. The applicants seek to enter the burden of those rights on title number DU342159 and the benefit of those rights on title numbers DU262353 and DU3421589.
2. The decision of the tribunal is that:
 - 2.1 The Chief Land Registrar shall give effect to the application made in form AP1 and dated 10 December 2013 to enter the benefits and burdens of easements of the right to park and of way on the respective registers in part, and to record on the register of title number DU262842 the burden that the applicants, as proprietors of title number DU262353, have the benefit of the right to park on those parts of car park spaces numbered 28 and 29 as fall within that title and an easement of way with vehicles over that title to and from the public highway and those spaces; and that the benefit of those rights be entered on the register of title number DU262353 as if the objections of the respondents had not been made;
 - 2.2 The Chief Land Registrar shall cancel the remainder of the application; and
 - 2.3 Any applications for costs shall be made in accordance with the directions set out in paragraph 6.2 below.
3. The reasons for the decisions made are set out below.

NB later reference to a number in square brackets ([]) is a reference to the page number of the trial bundle provided to me for use at the hearing.

4. Before proceeding to set the scene and to explain my decisions, I wish to record my sadness that the need for a judicial determination of the issues between the parties has come about. The case concerns the homes of a number of people but those most adversely affected are the applicants. The legal issue is between the applicants and the first respondent. The second to ninth respondents are to some extent bystanders, albeit interested bystanders, who appear to have persuaded the first respondent and its predecessor in title to take a harsh, if not extreme, view which has resulted in an unsatisfactory position. I have no doubt that with the application of a little goodwill and a dose of common neighbourliness it would and should have been possible for a sensible and workable solution to have been arrived at. I do not apportion any blame and I readily accept that the applicants and some of the respondents may have got off on the wrong foot and rubbed one another up the wrong way and perhaps caused a little offence, but nevertheless those concerned ought to have taken a deep breath, applied some maturity and worked to achieve an amicable solution. It is disappointing that did not occur. But it is not too late. Despite this formal decision the parties are encouraged to work on a more satisfactory outcome.

The structure of this decision

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1. A short history of Dinsdale Hall

- 1.1 The case concerns a development known as Dinsdale Hall, or Dinsdale Park.
- 1.2 Dinsdale Hall was originally constructed in 1829 as a spa hotel for the first Earl of Durham, Lord Lambton. It was designed by the architect Ignatius Bonami. The East Wing, which I shall refer to shortly was added soon after the main building was constructed. Dinsdale Hall is now a Grade II listed building. Originally it stood in a rather grand park and woodland setting of some 11 acres. Much of that land has been sold off over the years. Some of what was the park is now operated as part of Dinsdale Spa Golf Course. Dinsdale Hall together with some of the adjacent or surrounding land is sometimes referred to as Dinsdale Park.
- 1.3 At some point Dinsdale Hall came into the hands of Durham County Council (the council) which used it as a residential school and/or for other institutional purposes. Those purposes came to an end in 1986 and the council put the property on the market for sale.
- 1.4 During 1988 the council, as the then local planning authority, granted to itself a deemed planning consent, a full planning consent and a listed building consent for:
- “... the conversion of the former Dinsdale Park Residential School, for the (a) change of use of the Hall to a Nursing Home and two private dwellings, together with the change of use of the modern kitchen/dining block for use in connection with the Nursing Home and for matron’s accommodation, the conversion of four former staff bungalows to two storey houses and the conversion of the former stable court to ten private dwellings including the erection of a new western wing to enclose the court, together with new garage provision for the dwellings; (b) for Listed Building Consent for the proposed consequential internal and minor external alterations to Dinsdale Hall (Grade II)”.*
- Evidently the objective of the council was to preserve, maintain and protect Dinsdale Hall and its East Wing for the foreseeable future.
- 1.5 In September 1988 the council sold two unregistered parcels of Dinsdale Hall and adjacent land to Raymond Ward and Suzanne Mildred Ward (the Wards) who sub-sold the adjacent land to Becksides Properties which carried out a residential development, with which I am not directly concerned.

- 1.6 On 23 November 1988 the Wards were registered at Land Registry as the proprietors of parcels of land which are now registered as follows:

Dinsdale Hall: Title number DU262842
The Hall: Title number DU205825
2 The Hall: Title number DU262353

The Wards ran a nursing home business from Dinsdale Hall for a number of years. The Wards resided in The Hall as their home and for a number of years until the mid-2000s Mr Ward's late mother resided in 2 The Hall.

- 1.7 At this point it is convenient to record that material to these proceedings, Dinsdale Hall comprises four elements which the parties tend to refer to as:

Dinsdale Hall: the main building itself;
The East Wing: an addition to the main building, sometimes referred to as a terrace, which has been divided and adapted into two parts to provide two dwellings:
2 The Hall: The southern part of the East Wing (sometimes referred to as The Cottage); and
The Hall: The northern part of the East Wing

- 1.8 Appendix 1 to this decision is a copy of a Notice Plan prepared by Land Registry which shows tinted in blue the right of way leading to some parking spaces which is claimed by the applicants. I have rather crudely annotated it to show, in very broad terms:

Dinsdale Hall: Edged in green;
2 The Hall: Edged in red;
The Hall: Edged in blue;
The McQuess' garden land: Tinted pink; and
The North or rear access road: Tinted brown

There is a courtyard between the eastern flank wall of Dinsdale Hall and the East Wing. The part tinted yellow is in the title of Dinsdale Hall; the part which is not tinted is in the title of 2 The Hall.

A helpful photograph of 2 The Hall is at [264] and one of both 2 The Hall (referred to as The Cottage) and The Hall is at [266]. Dinsdale Hall is shown in a photograph at [156] – but the annotation to it may be controversial.

To the east of The Hall there is an area of garden land. In more recent times, the Hall and the whole of the garden land was sold off as one parcel. Subsequently part of that garden land, to the east of 2 The Hall, was transferred to the applicants a little while after they purchased 2 The Hall. That garden land, which I have referred to as the McQuess' garden land, is now registered with title number DU342159.

It is also worth noting at this point that historically the main access road to the front of Dinsdale Hall was to the south. Part of it is shown tinted blue on the plan at Appendix 1. It can be seen that the drive sweeps round in a circle in front of the main building

and no doubt in years gone by carriages would have stopped here for the family and distinguished visitors to board and alight. I refer to this drive as the South drive.

It can also be seen that there is a separate access road to the north which runs immediately behind Dinsdale Hall. I infer that was regarded to be the trades mans' entrance. I refer to it as the North or rear access road. I have shown it tinted brown on Appendix 1 because that colour is used for that roadway in some (but not all) of the conveyances and Land Registry title plans in question.

- 1.9 In 2000 the Wards sought and obtained planning (and other necessary consents) to convert Dinsdale Hall into 16 self-contained apartments plus a conversion in the west wing to create 5 dwellings. Further detail is set out in Appendix 2 to this decision.
- 1.10 The Wards implemented the planning consent to a large extent and created a number of apartments which were sold off on long leases between 2005 and 2009. Finance for the project was obtained and secured by way of a number of charges on the three properties owned by the Wards. During the course of the project re-financing took place. However, before full completion of the project the Wards ran into financial difficulties. The upshot was that in or about 2010/11, as regards:

Dinsdale Hall: National Westminster Bank appointed Law of Property Act receivers in respect of its charge. The receivers put the property up for sale at auction in October 2013. It was purchased by the first respondent. The first respondent made an application to Land Registry to be registered as proprietor and that application is pending awaiting the outcome of these proceedings. The Wards remain as the registered proprietor [63].

The Hall: The Wards acting by Northern Rock (Asset Management) Plc, as mortgagees in possession with a power of sale, sold the property on 7 October 2013 to Stewart Thompson and Nicola Anne Thompson (the Thompsons) for the price of £240,000 [77].

2 The Hall: The Wards acting by Mortgage Agency Services Number Six Limited, as mortgagees in possession with a power of sale, sold the property on 5 April 2012 to the applicants, John Paul McQue and Fiona Claire McQue (the McQues) for the price of £119,950 [58].

The McQues' garden land: Subsequently the Thompsons sold part of the garden land of The Hall to the McQues for the price of £10,000 and on 28 November 2013 the McQues were registered at Land Registry as proprietors of that land which is registered with title number DU342159 [73]. I shall refer to this parcel of land as the McQues' garden land. It is shown tinted pink on the plan at Appendix 1. In effect it extends the McQues garden and it provides a narrow strip at the bottom which affords access to the rear or North access road.

2. A summary of my site visit and the hearing and my findings of fact

The site visit

- 2.1 On 9 October 2017 I had the inestimable benefit of a site visit. I was accompanied by Mrs Goodwin and Mr McQue and by Mr Selwyn Sharpe. I was able to walk around

the whole of the exterior of the subject properties. A number of physical features were drawn to my attention.

The hearing

- 2.2 The hearing took place on 10 and 11 October. The first respondent had made an application to file and serve an amended statement of case. It was opposed by the applicants. Having heard the rival arguments I was satisfied that the amendments were by way of clarity of the first respondent's position, did not add any new matters which required further documents or evidence and did not prejudice the applicants. I therefore granted the permission sought.
- 2.3 Mrs Goodwin presented the case on behalf of the McQues, her daughter and son-in-law. Mrs Goodwin made an opening statement and oral evidence was given by John Paul McQue, Fiona McQue, Mr Stanley Goodwin and Mrs Christine Goodwin herself. Those witnesses were cross-examined by Mr Selwyn Sharpe. The applicants had served witness statements of several other witnesses who were not to be called to give oral evidence. Although it was suggested that the applicants were unaware of the need to call those persons to give oral evidence it became clear that the real reason why they were not present was due to the fact that they lived and worked in or near Durham, had other commitments and the cost of travel to a hearing in London was not feasible for them. Mrs Goodwin sought to rely upon the witness statements as hearsay evidence.
- 2.4 Mr Selwyn Sharpe presented the case on behalf of the respondents. Oral evidence was given by Mrs Julie Ibbotson, Mr Roy Hayton, Mr David Ibbotson and Dr Shandar Salam.
- 2.5 At the conclusion of the oral evidence both Mr Selwyn Sharpe and Mrs Goodwin made final submissions.

Findings of fact

- 2.6 In the event there were relatively few material factual matters in dispute.
- 2.7 None of the witnesses had any first-hand knowledge of the manner in which the Wards operated the nursing home and what the parking arrangements were as regards the Wards themselves and visitors and deliverymen.
- 2.8 The obvious and natural access was from the lane and onto the south or front drive way to get to or from Dinsdale Hall. It is possible that some plant or storage facilities may have been located towards the rear of the main buildings and doubtless the North access road would have been used when convenient or appropriate.
- 2.9 It was not in dispute that for much of the time the Wards resided in The Hall but no evidence was presented to me as to where they parked when running the nursing home or the route they generally took to get to and from The Hall. I infer that likely or preferred route would have been via the South drive to a convenient parking area and then on foot along the front of 2 The Hall to reach The Hall itself.
- 2.10 Similarly, I have little doubt that when Mr Ward's mother was residing in 2 The Hall, she and her visitors would access 2 The Hall in the same way. There was no evidence

as to whether Mr Ward's mother had a motor car and, if so, where she may have parked it. Given the external mail box adjacent to the front door of 2 The Hall, I infer that the postman was more likely than not to have accessed that property via the South drive. It is possible to access 2 The Hall via the North access road to a courtyard and then down the courtyard. There was evidence, which I accept that until quite late on, up to 2012, Mr Ward kept the gates to the courtyard locked. There was no evidence as to when he may have commenced locking them.

- 2.11 Within the papers provided to me there is a number of dated aerial photographs, for example at [144] and [520- 526]. No formal evidence was given as to interpretation of them and what is depicted. I can only derive limited assistance from them. I do find however that the photographs at [520- 526], which are said to span the period 2005 to 2012, appear to show the orientation of spaces 26 – 29 running west/east and that in them at least one car is parked in one of the spaces numbered 28 or 29.
- 2.12 Mrs Ibbotson's witness statement is at [655]. Mrs Ibbotson confirmed it was true subject to one correction as to the date in which The Hall was repossessed, which she was in fact in 2012. Mrs Ibbotson moved into apartment 9 in January 2006. From her windows she can see her parking spaces 26 & 27 in the east car park. Mr Ward was on site most of the time from 2006 until 2015. He tended to be back and forth most of the time. In doing so until about late 2012 he would park all over, as it suited him and depending upon what he was doing. Mostly and if he had heavy shopping he would park in the garden of The Hall just in front of the wrought iron gates. Mrs Ibbotson confirmed that sometimes up to late 2012 Mr and/or Mrs Ward would park in spaces 28 and/or 29 and access The Hall by walking past the front of 2 The Hall to The Hall. Mrs Ibbotson said she had not seen the Wards park in spaces 28 & 29 in order to gain access to that part of their garden which is now the McQues' Garden Land. Mrs Ibbotson explained that she has a clear view of most of that land from one of her windows.
- 2.13 Mrs Ibbotson said that a number of different people parked in spaces 28 & 29, although they may not have had a legal right to do so. Evidently a Mr Harper wanted to purchase the right to park in one of the spaces but the receiver's representative refused to sell such a right.
- 2.14 Mrs Ibbotson said that when she first moved in to apartment 9, 2 The Hall was empty. In 2010 for about six months it was rented out to a young couple who tended to park in spaces 28 & 29. Mrs Ibbotson assumed that was with the consent of Mr Ward.
- 2.15 Mrs Ibbotson also said that when 2 The Hall was on the market for sale by Mr Ward, he would tend to meet prospective purchasers by the main gates, which at that time were always open, and walk up the South drive, past Dinsdale Hall and then left down to 2 The Hall. In doing so Mr Ward took the opportunity to show off the Dinsdale Hall development of which he was very proud.
- 2.16 Until the Wards left, the main gates were always left open. Part of the original marketing selling points was that a secure electric gated entry would be provided. Mrs Ibbotson explained that one of the purchasers, Mr Mike Morgan, held back part of the purchase price as a retention pending activation of the secure gated entry. The receivers were keen to have this retention released to them and so the receivers

procured the activation of the system, in or about late 2012. From that time on a zapper of fob was required to activate the gates. Mrs Ibbotson said that so far as she was aware Mr Ward never asked for a fob and ceased to use the South drive from about that time.

- 2.17 Mr David Ibbotson gave evidence and confirmed the evidence of his wife Mrs Ibbotson which I have summarised above. I accept that evidence from both Mr & Mrs Ibbotson.
- 2.18 Mr Roy Hayton's witness statement is at [660]. Mr Hayton is the lessee of apartment 8. His lease was granted in November 2006. He said he was aware that the Wards used to park in car park spaces 28 & 29 occasionally and before the receivers were appointed. Mr Hayton said that he moved into his apartment in 2006 and at that time the east car park had not been constructed. The Wards each had a red Jaguar car and tended to park in the spaces allocated to apartment 2. Later, and after the east car park was constructed, the Jaguars were taken away and then the Wards tended to park a small red car in space 29.
- 2.19 Mr Hayton also recalled that when 2 The Hall was tenanted for a short while in 2010 the tenants parked one car in space 29. Mr Hayton agreed that the only way to access parking spaces 28 & 29 is via the front or South drive. I accept that summary of Mr Hayton's evidence.
- 2.20 Mr Hayton also told me the reason for the objection to the McQues having rights is that there will be too many visitors using the South drive and children at the weekends. I accept that that is what Mr Hayton said and that it may reflect what other lessees might think, but I make no finding as to whether it is a reasonable or justifiable conclusion.
- 2.21 Mr Hayton said that current manager was Dinsdale Hall (Darlington) Management Company (2011) Limited and that the first respondent, which acquired the freehold to Dinsdale Hall at auction in October 2013, has some connection with it but he was not sure exactly what. [Post hearing note: A search at the Companies Registration Office shows that both companies have two officers and that they are both Pessie Berger and Berish Berger, both of whom give 24 Craven Walk, London N16 6BT as their correspondence address.]
- 2.22 Dr Shandler Salam's witness statement is at [653]. His evidence does not go to any material point I have to decide. In cross-examination he said that he bought his apartment, number 2 in 2014 and he had no knowledge of matters prior to that date. I derived no assistance from this witness.
- 2.23 The evidence of the McQues and the Goodwins was to the effect that when viewing 2 The Hall prior to purchase the main gates were open, they drove through along the South drive and then parked up in or near spaces 28 and 29. Between them several visits were made. I accept that evidence, which was not challenged.
- 2.24 During 2012 the McQues and the Goodwins saw the Wards park a red vehicle in space 28 or 29 and then walk along the front to gain access to The Hall. Mrs McQue said that on one occasion when the Wards returned home, it was raining, Mrs Ward had

washing out in her garden, having parked up in space 28 or 29, Mrs Ward rushed across that part of the garden which now comprises the McQues Garden Land in order to rescue her laundry. I accept that evidence, although note that it appears to be the only occasion on which the Wards were seen to use the south drive to gain access to parking spaces 28 or 29 and then onto what is now the McQues' Garden Land.

- 2.25 It was not in dispute that following the repossession of 2 The Hall, property managers were appointed by the lender to make weekly inspections and checks on the property. A schedule of inspections is at [303-304] and that in general the only or usual and routine method of gaining access by the agent was via the South drive .
- 2.26 The McQues were cross-examined in some detail about the legal effect of the contract they signed to purchase 2 The Hall and the implications for them. Mr Selwyn Sharpe appeared to attach some significance to this. It is not disputed that the McQues's solicitors made it clear to them that the title they were purchasing did not include an express right to park in spaces 28 and 29 and did not include an express right of way over the South drive. I find that the McQues understood this and took a view. I am not sure they fully understood the legal complexities at the time but they formed the view it was something that could get sorted out post-purchase.
- 2.27 It appears that as well as having some management role in the running of Dinsdale Hall, Mr Bodycombe had some in put with the receivers and the mortgagees. It also appears that the Mr Bodycombe was not keen that the sale of 2 The Hall to the McQues should go ahead and took some steps to try and avert it. That appears to have included giving some misinformation to those conducting the sale on behalf of the vendor. That may partly explain the approach taken by the vendor. That said it is not uncommon for mortgagee's in possession to take a very risk averse line and leave a purchaser to take a view.
- 2.28 Finally, for avoidance of doubt I have set out some findings of fact in my summaries of the Conveyancing history and the Planning history in Appendices 2 and 3 respectively. Those are to be read as incorporated into this part of my decision recording my findings of fact.

3. The gist of the case for the applicants

- 3.1 The gist of the case for the applicants is that as regards 2 The Hall, they have or ought to have a right of way with or without vehicles over and along the south or main access road to get to and from 2 The Hall and the right to park 2 vehicles in spaces 28 and 29 at all times for the purpose of parking and accessing the front of 2 The Hall and its garden. They say that such rights should also extend to the McQues' Garden Land, which in their statements and documents they refer to as 'the Additional Land'.
- 3.2 In support of that position their primary case relies upon the planning permission and the planning obligations set out in the conveyances of 1988 the benefits and burdens of which are said to run with the respective parcels of land. The argument is that the applicants have the right to call on the freeholder who has the land on which parking spaces 28 and 29 are situate to allow parking on those spaces and it may be implied from that the obligation to allow access to enable them to do so. It happens in the present case that it is the first respondent, which is waiting to be registered as proprietor, will be the owner of the freehold of both the parking spaces and the means

of access. Complications may have arisen if ownership of those parcels was in separate hands.

- 3.3 By way of back-up or an alternative case they rely upon s62 Law of Property Act 1925, and then *Wheldon v Burrows* [1879] 12 Ch D 31 and a number of other authorities. I mean no disrespect to the applicants in not setting them out in full.
- 3.4 The applicants say that at the time of the transfer it was the common intention of the parties that all the above rights would be transferred to the buyer.

4. The gist of the case for the respondents

- 4.1 The gist of the case for the respondents is that there is no evidence of the Wards using the south access way to gain access to 2 The Hall. They may well have used the South drive to gain access to The Hall, but that is not sufficient. There was no evidence about access whilst Mr Ward's mother resided in 2 The Hall. The only evidence was that for 6 months or so in 2010 the Wards' tenant in 2 The Hall used the south access road for access and parked in one of the two subject parking spaces. As to the McQues' Garden Land or the Additional Land, the only evidence of user of the South drive to gain access was the one occasion when Mrs Ward went to rescue her laundry.
- 4.2 At all material times the Wards were the legal owners of all three titles which effectively one development. Use of the South drive way by contractors, the receivers, selling agents or persons inspecting one or other of the properties was temporary and for a relatively short period, and is excluded by clause 27.5 of the contract of sale.
- 4.3 The contract of sale granted an express right of way over the North access road. There was no evidence that the 2012 TR2 intended to grant an express or implied right of way through the main gate to the South drive the use of parking spaces. At that time 2 The Hall was empty and no one was using the south drive or parking. Such use as had been made had mostly ceased in 2010 and there was no discernible sign or any such user.
- 4.4 As regards the planning obligation Mr Selwyn Sharpe accepted that effect of the 1988 conveyances might give the McQues the right to call on the registered proprietor of Dinsdale Hall to grant a right to park in spaces 28 and 29 and the means of access to them, but the right to call for a right is not the same as the granting of a right, whether express or implied. He suggested that the primary remedy may be a claim for specific performance, which is an equitable and discretionary remedy.

5. Discussion and conclusions

- 5.1 I have given careful consideration to the rival legal submissions and authorities put forward by the parties.
- 5.2 I can say at the outset that whilst there may be arguments as to the rights being claimed for the benefit of 2 The Hall, there is simply no case that the rights claimed can possibly benefit the McQues' Garden Land. Thus the application as regards the benefit to title number DU342159 is to be cancelled. The planning obligation issue does not apply to that land and there is no credible evidence of sufficient user to support the application.

- 5.3 The focus of the remainder of the discussion the application as regards the benefit of the title number DU262353 – 2 The Hall.
- 5.4 The transfer in form TR2 followed the contract and in particular the provisions of clause 27.5. It expressly excluded implied statutory rights. The applicants were aware that the title they were acquiring did not include the express right to use the south or front access road. That had been made clear to them by their solicitors.
- 5.5 The question then arises should there be implied into the transfer both the right to park and the right to access the parking spaces. It is clear to me that at the time of the transfer neither party had the intention to grant such rights. I infer that McQues' solicitors may have invited the vendor to grant the rights and the vendor may have refused but there was no evidence before me either way. The evidence was that the McQues were taking what was on offer and putting to one side for the moment the question of the access and parking.
- 5.6 I am not satisfied that the vendor had the ability to grant those rights in any event. The Property Register of 2 The Hall did not include those rights either expressly or by implication.

The power to grant those rights were vested in the Wards by virtue of a different title, that being the title to Dinsdale Hall. At the time of the sale of 2 The Hall, the title to Dinsdale Hall was legally vested in the Wards, but receivers had been appointed and such decisions or intentions as may have been made or formed were made or formed by the receivers on behalf of the Wards. The receivers were not a party to the sale of 2 The Hall.

The vendor named in the TR2 in respect of 2 The Hall was Mortgage Agency Services Number Six Limited. There is no or no credible evidence before me that that company had the power to or the intention to grant either of the rights claimed.

- 5.7 In those circumstances I am not presently persuaded that the applicants can make out a case based on s62 Law of Property Act 1925 and/or Wheeldon and Burrows. An implied right can only arise where a grantor would have the ability or power to grant an express right. The vendor did not have such a power or ability.

However, if the applicants were to seek and obtain a decree of specific performance in their favour for the grant by the freeholder of Dinsdale Hall of the rights claimed, they would be entitled to enter the burden of those rights on title number DU262842 and the benefit of them on title number DU262353.

- 5.8 In the circumstances I invited the parties to make submissions on what would be an appropriate order to make at this time. I shall comment on this further shortly.
- 5.9 I should also mention for the sake of completeness that the evidence which the applicants rely upon is simply insufficient to establish a quasi-easement or an easement by prescription, particularly if the easement sought is the exclusive right to park.

Equitable easement

5.10 As regards the point about an equitable easement mentioned in paragraph 5.7 above, I gave further directions for the filing and service of written submissions:

Respondents by 9 February 2018;
Applicants by 2 March 2018; and
Respondents in reply by 16 March 2018.

In response to those directions I have received submissions as follows:

First respondent's submissions prepared by Mr Duncan Kynoch of counsel;
Second to ninth respondents' submissions prepared by Mr Richard Selwyn Sharpe of counsel; and
Applicants' submissions in answer prepared by Mrs Goddard.

None of the respondents took opportunity to file and serve submissions in reply.

5.11 The respondents' respective counsel took broadly similar points and I can take them together.

5.12 The first was that the tribunal had no jurisdiction to make such an order or to give effect to satisfy an equity. Reliance was placed on the decision of Judge Cooke in *Stapleford Frog Island (Rainham) Limited v Port of London Authority* Case Ref: 2014/0689. The point made is not a good one. It is not here a question of making an order to satisfy an equity. It is a case of the potential of giving a direction to the Chief Land Registrar to protect a right which a party has.

5.13 The second point was that it would be wrong to give effect to an equitable easement because it was not an issue within 'the matter' referred by the Chief Land Registrar. The authority of *Murdoch v Amesbury* [2016] UKUT 3 (TCC) was cited. Aside from the question whether that remains a good authority, the application before me concerned the entry of the burdens/benefits of a claimed right on the respective registers. It was tolerably clear from the applicants' case that the rights claimed stemmed not only from the planning obligation but the separate obligations imposed on the purchaser in the 1988 conveyance which were to enure for the benefit of successors in title of the purchaser. Thus a decision by this tribunal as to whether or not the Chief Land Registrar should give effect to the application in whole or in part is plainly within the scope of the matter referred.

5.14 The third point focussed on the nature and creation of equitable easements, a topic I shall return to shortly.

5.15 The fourth point was that the applicants have no right to enforce a planning obligation; and that enforcement is a matter for the LPA. The authority of *Milebush Properties v Tameside MBC* [2011] EWCA Civ 270 was cited. In that case the local LPA, Hillingdon, entered into a s106 agreement with a developer under which the developer was to construct an access road to the rear of properties in the High Street. That road was owned by Tameside as a pension fund investment. Milebush owned adjacent property in the High Street. Milebush brought private law proceedings against Tameside and Hillingdon seeking a declaration that Tameside was obliged to grant to

Milebush rights of access referred to in clause 3.5 of the s106 agreement. The claim failed and the Court of Appeal held that Milebush as a neighbour and not a party to the s106 agreement was not entitled to the benefit of it and thus was not entitled to enforce its terms. I do not quibble with that. But, here the applicants are not strangers seeking to enforce a planning obligation or a planning agreement. They are successors in title to part of the land sold off by the vendor and are seeking to enforce a provision in the conveyance which imposes obligations on the purchaser and its successors in title.

- 5.16 Counsel for the second to ninth respondents also makes the point that specific performance is an equitable remedy. He rightly points out that the tribunal does not have the power to grant such a remedy
- 5.17 The applicants' representative has filed submissions in answer to the first respondent's submissions which run to 28 pages plus 3 annexes which run to a further 18 pages and has filed submissions in answer to the second to ninth respondents' submissions which run to 32 pages plus 3 annexes. There is a great deal of duplication and unnecessary points and detail have been included. The applicants' representative has raised a number of points which are way outside the ambit of the question of an equitable easement on which I sought submissions. I do not propose to respond to or comment on those points.
- 5.18 In paragraph 2.5.1.10 of their submissions, the applicants purported to make an application for rectification of title number DU262353 and that I direct the Chief Land Registrar to record on the register "*the expressly reserved rights in the Second Schedule part 1 of the 1988 Conveyance to the Sub-Purchaser which appear as Entry Number 5 in 2 The Hall's parent title DU205825, and as Entry No 6 in DU262842.*"

Such an application cannot be made to this tribunal in the course of determination of a different application. Equally in several places the applicants purport to make an application to the tribunal to give effect to several sections of the Act, including 72(6)(a)(ii), 72(7)(c) and 108(2)(a) and to give related directions to the Chief Land Registrar. Any such originating applications must be made in proper order in accordance with the relevant rules. An application pursuant to s108 must be made in proper order and indicate clearly what particular qualifying disposition is sought to be rectified and who the parties to such an application might be. Applications in respect of s72 must first be made to HM Land Registry in accordance with its rules. Jurisdiction to determine them will only vest in this tribunal if the Chief Land Registrar refers those applications to this tribunal pursuant to s73(7).

- 5.19 I am satisfied that the general scheme arising from the disposal of the development site by the council in 1988 was the protection of the listed buildings and control over the development of the site and that the benefit and burdens created by the sale documentation should run with and bind the land. To that extent I prefer the submissions made on behalf of the applicants as to the interplay of the respective conveyancing documents.
- 5.20 I am therefore satisfied that the first respondent as successor in title to the Wards is obliged to observe the obligations imposed by the 1988 conveyances. I am also satisfied that the applicants, also as successors in title to the Wards, as regards 2 The Hall, are entitled to the benefit of the obligations imposed. Thus I find that the

applicants are entitled to call on the first respondent to permit them to have the use of the parking spaces 28 and 29 in the East Car Park. It follows that the first respondent is also obliged to provide a reasonable means of access over title number DU262842 to enable them to do so. In arriving at this conclusion I have given careful consideration to the judgment of Scott J in *Celsteel Ltd v Alton House Ltd* [1985] 1 WLR 204 at 219H in which he explains how an equitable easement can arise from a contract. In the subject case the right arises from the 1988 conveyancing documents. I am reinforced in this conclusion because it was not in dispute that part of one of the parking spaces falls within the freehold title vested in the applicants.

- 5.21 The question then arises as to what is the appropriate order I might make. I have found that the applicants have a right to park and an easement of way to the parking spaces to enable them to do so. In those circumstances I find that the applicants do not necessarily need to call for an express right by way of specific performance. They have the right already. The remedy of specific performance is, of course, a discretionary remedy vested in the court. It is not for me to speculate how a judge might exercise a discretion on the facts of this case, but I need not do so. However, in case it be of assistance to the parties I observe that where a right exists a court will generally strive to enable the party with the right to enjoy it, save where they may be exceptional circumstances. I cannot see that there are any such circumstances in the present case. A driveway to the parking spaces already exists. It is enjoyed by a number of persons in whom a like right is also vested. The use of that driveway by the applicants to get to and from the parking spaces is unlikely to impose any burden or give rise to excessive or damaging user. I conclude that on balance if an application for order an order for specific performance was before the court, it is more likely than not, that the court would grant it.
- 5.22 I have found that the rights exist. The application before me is whether or not the benefit and burden of those rights should be recorded on the respective registers. There is nothing before me which suggests that they should not. Of course the only issue before me is the recording of those rights on the registers. The physical enjoyment of them is a separate issue. In the event of any interference with them that may be an issue to put before the court.
- 5.23 I have therefore made an order requiring the Chief Land Registrar to give effect to the application in part and to record on the register of title number DU262842 the burden that the applicants, as proprietors of title number DU262353, have the benefit of the right to park on those parts of car park spaces numbered 28 and 29 as fall within that title and an easement of way with vehicles over that title to and from the public highway and those spaces; and that the benefit of those rights be entered on the register of title number DU262353; and that the remainder of the said application be cancelled.

6. Costs

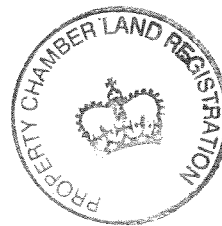
- 6.1 In this jurisdiction, as in the civil courts, costs follow the event save in exceptional circumstances. At present I am not aware of any such circumstances. I am therefore minded to make a costs order in favour of the applicants. Of course, I will, if need be, give careful to any application(s) for costs that may be made. I would encourage the parties to try and agree costs. For avoidance of doubt I wish to make it plain that my jurisdiction as regards costs is limited to those costs reasonably and properly incurred

since 7 January 2016 when the disputed application was referred to this tribunal by the Chief Land Registrar.

- 6.2 If the parties are unable to reach agreement on costs, any application(s) for costs shall be made in accordance with the following directions:
- 6.2.1 Any application for costs shall be made in writing by **5pm Friday 1 June 2018**. The application shall be accompanied by a schedule of the costs and expenses incurred/claimed supported by invoices/fee-notes where appropriate. A breakdown shall be given of any work carried by solicitors or qualified representatives and the charge-out rate(s) and grade(s) of the fee-earner(s) shall be set out. If costs are claimed as litigants in person full details of the time claimed for and the rate claimed shall be set out. A copy of the application and supporting schedule shall be sent to the opposite party(ies) at the same time as it sent to the tribunal.
- 6.2.2 The recipient(s) of an application for costs shall by **5pm Friday 29 June 2018** file with the tribunal and serve on the applicant for costs representations on the application and on the amount of the costs claimed and any points of objection they wish to take.
- 6.2.3 The applicant for costs shall by **5pm Friday 20 July 2018** file with the tribunal and serve on the opposite party representations in reply, if so advised.
- 6.3 In the absence of any objections I propose to make a determination on any application for costs, and if appropriate, to assess any costs ordered to be paid, without a hearing and on the basis of the written representations filed and served pursuant to the directions set out in paragraph 6.2 above.

Dated this 17 April 2018

John Hewitt

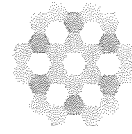


By order of the Tribunal

APPENDIX 1

Land Registry
Notice plan

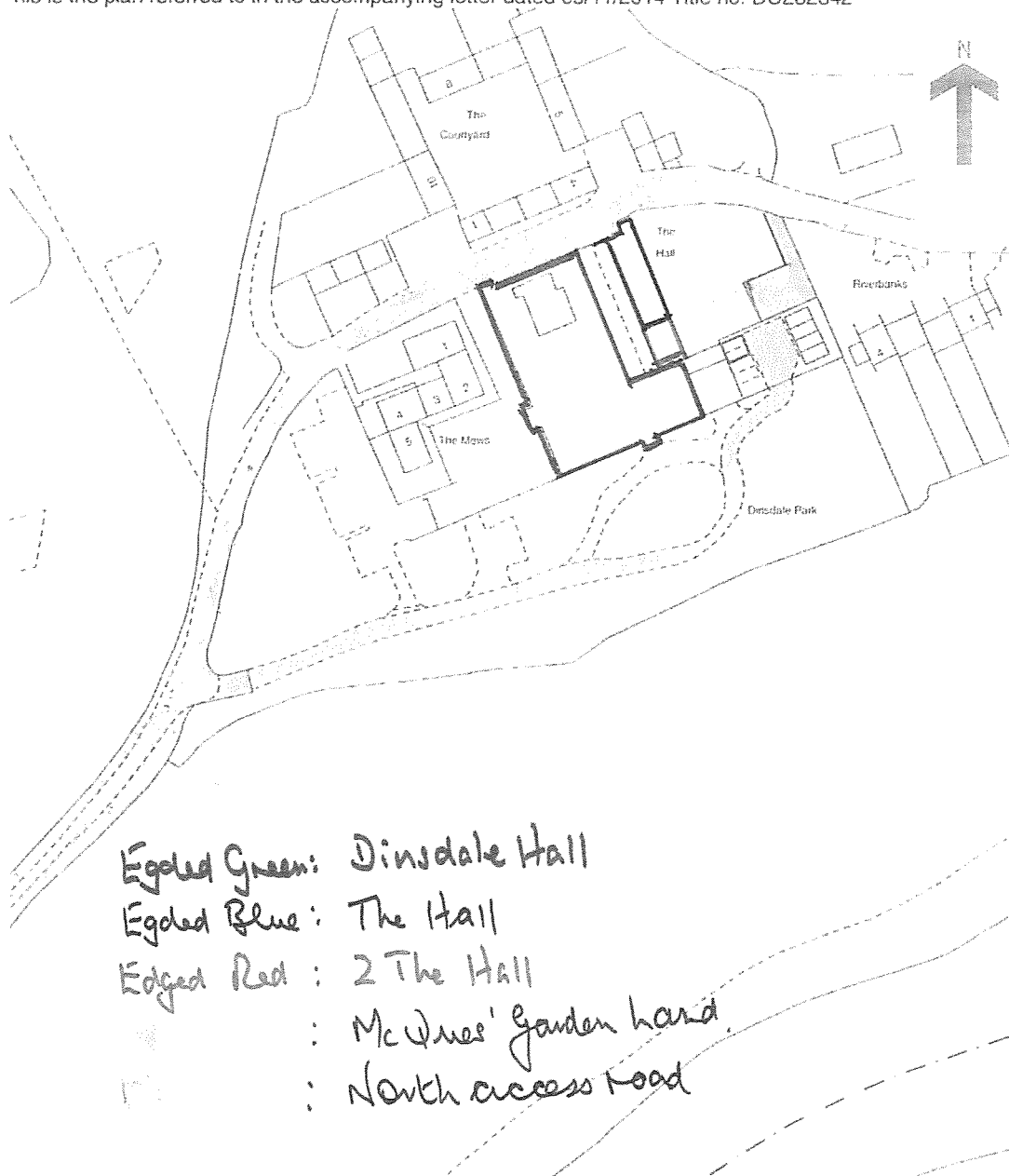
Title number DU262842
Ordnance Survey map reference NZ3412SW
Scale 1:1250 enlarged from 1:2500
Administrative area Darlington



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This is the plan referred to in the accompanying letter dated 05/11/2014 Title no. DU262842



This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

Appendix 2 The Conveyancing history

1. On 21 September 1988 three property transactions took place:
 - 1.1 A conveyance of the freehold of Dinsdale Hall by the council to Raymond Ward and Suzanne Mildred Ward (the Wards) (to include an assignment of a lease of a small parcel of adjacent land) [130] (the Dinsdale Hall Conveyance);
 - 1.2 A mortgage of part of the land conveyed by the above conveyance granted by the Wards to Northern Rock Building Society [98] (the Mortgage); and
 - 1.3 A conveyance of parcels of land to the north and to the east of Dinsdale Hall by the council to the Wards with a sub-sale to Becksid Properties Limited [107] (the Sub-sale Conveyance).

The total purchase price was £204,050 of which £135,000 was achieved from the sub-sale, leaving the Wards to find the balance of £69,050. The Mortgage Advance was £45,000.

The Dinsdale Hall Conveyance

2. The most critical document is the Dinsdale Hall Conveyance which is at [130].

Material definitions include:

The Vendor;	the council;
The Purchaser;	the Wards;
The Property:	the pieces or parcels of land shown for identification purposes only edged red on the plan [143] (essentially Dinsdale Hall and its immediate curtilage) to include the Leasehold Property;
The Retained Land :	the land edged blue on the plan;
The Indenture:	an indenture dated 1 July 1919
The Conveyance:	the conveyance of even date – the sub-sale conveyance
The Leasehold property:	the land demised by a lease dated 10 September 1999 granted by Barbara Tarren to the council

By clause 1(a) the council conveyed the Property to the Purchaser together with (in addition and without prejudice to the general words implied by section 62 Law of Property Act 1925) “(ii) the rights detailed in the First Schedule hereto”

By clause 2 the parties agreed and declared in terms set out in the Fourth Schedule.

By clause 3 the Purchaser gave an indemnity in respect of the covenants on the part of the tenant in respect of the Leasehold property.

Clause 4 provides:

“IN PURSUANCE of Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 the Purchaser for himself and his successors in title hereby covenants with the Vendor and its successors in title to the intent that the burden of this covenant may run with and bind the Property and each and every part thereof and to the intent that the benefit thereof may be annexed to and run with the retained land and each and every part thereof to observe and perform the restrictions and stipulations specified in the Fifth Schedule hereto PROVIDED ALWAYS THAT the neither the Purchaser nor any of his successors in title shall be under any liability in respect of any breach of this covenant occurring after the Purchaser or his successors in title shall have parted with all interest in the Property or such part thereof on or in respect of which such breach shall occur”

The First Schedule sets out a number of rights, including:

“1. The benefit for the Purchaser and his successors in title the owners and occupiers for the time being of the Property and all persons authorised by them and all other persons from time to time entitled to the like rights (in common with the Vendor and all other persons having a like right) of:-

- (a) the right of way over the whole of the road shown coloured brown on the said plan as is granted and more particularly described in the Indenture;*
- (b) ...*
- (c) ...*
- (d) Such rights as the Vendor may enjoy in respect of:*
 - (i) ...*
 - (ii) ...*
 - (iii) the right to carry out works of maintenance and repair to the said road coloured shown coloured brown on the said road*

The Fifth Schedule provides, so far as material:

- 1. To enable the Vendor to enforce the terms of the planning consent dated fourth day of July [1988] in respect of the Property the Purchaser shall carry on and complete every part of the development in respect of the Property authorised by that consent in strict accordance with the plans submitted with the application or any amended plans which might be approved in writing by the Vendor in pursuance of that consent within a period of five years from the date hereof*
- 2. The Purchaser shall until completion of the development authorised by the planning consent or any approved variation to such consent take such steps as are reasonably required by the Vendor and notified in writing to the Purchaser to ensure the proper preservation of those parts of the Property which are listed in accordance with Section 54 of the Town and County Planning Act 1971*
- 3. ...*
- 4. ... ”*

3. On 23 November 1988 the Property conveyed under this conveyance was registered at Land Registry under three separate titles with the Wards as registered proprietor of each title which are now registered with the following title numbers:

Dinsdale Hall: Title number DU262842
The Hall: Title number DU205825
2 The Hall: Title number DU262353

The Mortgage

4. I mention the mortgage granted by the Wards to Northern Rock because the applicants attach some importance to it. It is dated 21 September 1988 and secured a loan of £45,000.
5. The Mortgage deed is at [98]. The property charges is described in The Schedule at [100]. It states that the security was the freehold land shown for the purpose of identification only edged red on an attached plan “*together with the messuage or dwellinghouse thereon or on some part thereof known as East Wing, Dinsdale Park ...*”. The plan is at [105] and edged red is the courtyard, the East Wing (including both 2 The Hall and The Hall) and the garden land to the east thereof.

The Schedule goes on: “*AND TOGETHER ALSO WITH (in common with the Borrower and his successors in title to all or any part or parts of the adjoining and neighbouring land and premises belonging to the Borrower [hereinafter referred to as ‘the Retained Land’] and his or their tenants agents servants workmen licensees and all persons to whom the like rights may have been or may hereafter be granted and to the exclusion of the general words implied by Section 62 of the Law of Property Act 1925 the benefit of the following rights:-*

- (a) *The rights and easements granted by a Conveyance (hereinafter called ‘the Conveyance’) of even date herewith and made between the [council] and the Borrower ... [which Conveyance relates to the property hereinbefore described and the said Retained Land] so far as the same currently serve the said property*
- (b) *The right to enter onto any part of the adjacent premises which may from time to time remain open and unbuilt upon and if and so far as the said adjacent premises form part of the Retained Land with or without workmen or apparatus to inspect clean ... repair ... any part or parts of the said property which are not reasonably accessible from within the boundaries of the said property provided ...*
- (c) – (d) ...

The sub-sale conveyance

6. Again I mention this conveyance because the applicants attach some importance to it.
7. The conveyance is at [107].

Material definitions include:

The Vendor: the council;

The Purchaser: the Wards;
The sub-Purchaser: Beckside Properties Ltd;
The Property: the parcels shown for the purposes of identification only as to part edged with a thick black line and hatched red and as to the remainder coloured green on the plan annexed (in essence this is a parcel of the land to the north of the North access road and a parcel to the east of the garden land to the Hall and 2 The Hall);
The Retained Land; the parcels of freehold land adjoining or near to the Property and shown edged with a thick black line and unhatched on the plan [129] (so far as I can tell from the poor quality of the coloured plan provided to me, this appears to comprise the land conveyed by the Dinsdale Hall Conveyance);
The Vendor's adjoining land: the land shown edged blue on the plan (so far as I can tell this is the North access road plus the parcel of land edged blue on the plan and referred to as 'the Retained Land' in the Dinsdale Hall Conveyance).

By clause 1 the council conveyed the property to the sub-Purchaser together with the rights *"for the benefit of and appurtenant to the Property as detailed ... in the First Schedule... BUT EXCEPT NEVERTHELESS AND RESERVED (or insofar as the same rights do not already exist excepting and reserving unto the Purchaser and others as therein set forth the rights set out in Part I of the Second Schedule hereto and unto the Vendor the rights set forth in Part II of the Second Schedule hereto"*

Clause 3(b) provides:

"IN PURSUANCE of Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 the sub-Purchaser for himself and his successors in title hereby covenants with the Vendor and its successors in title to the intent that the burden of this covenant may run with and bind the Property and each and every part thereof and to the intent that the benefit thereof may be annexed to and run with the Vendor's adjoining land and every part thereof to observe and perform the restrictions and stipulations specified in the Third Schedule PROVIDED ALWAYS THAT the neither the sub-Purchaser nor any of his successors in title shall be under any liability in respect of any breach of this covenant occurring after the sub-Purchaser or his successors in title shall have parted with all interest in the Property or such part thereof on or in respect of which such breach shall occur"

The Second Schedule Part I provides:

*"The following rights and liberties are reserved from the Conveyance in favour of the Purchaser and his successors in title...for the time being of the Retained Land ... namely:-
All such easements quasi-easements rights privileges and advantages whatsoever whether as regards way water drainage ... over or in respect of the Property for the benefit of the Retained Land or any part ... thereof as are now being enjoyed or as are necessary for the more convenient use maintenance support and enjoyment of the Retained Land or any part ... thereof and in particular and without prejudice to the generality of the foregoing:-"*

... ”

Leases of apartments within Dinsdale Hall

8. At [268] is a marketing brochure prepared by Mr Ward regarding the apartments. It is not dated. In describing the Development Features it mentions, amongst other things:
“ *Resident’s car park with 2 allocated parking spaces per apartment.
Gated entrance.
Intercom door entry system – except apartments with own entrance* ”
9. The charges register of the title to Dinsdale Hall (Title number DU262842) includes a schedule of notices of leases granted out of that title. A number of leases are listed which variously refer to flats or apartments. The leases were granted over the period November 2005 to March 2012. I do not know whether the apartment leases are in common form. A sample lease – that of Apartment 9 is at [216].
10. The lease of apartment 9 is dated 5 January 2006 and was granted by the Wards to David Ibbetson and Julie Ibbetson for a term of 999 years from 31 July 2004. Also a party to the lease was a company, Dinsdale Park (Darlington) Management Company Limited (Company Registration No. 4328773) defined as ‘the Managers’.

The Estate is defined to be the land and buildings at Dinsdale Hall registered with title number DU262842.

The Premises is defined to be the Property which, in turn, is defined to be “*Flat Number 9 on the first floor of Dinsdale Hall...* ”

Clause 4.10 is a covenant on the part of the tenant not at any time to do or permit any act of thing on or in respect of the Premises which contravenes the provisions of the Planning Acts (as defined) and to keep the landlord and the Managers indemnified against all claims demands liabilities in respect thereof.

Clause 7 is a covenant on the part of the Managers to insure the Buildings and to provide services which are set out in some detail. Evidently the scheme is that the lessees of the apartments are all to be members of The Managers and that the Managers will run the development utilising services charges payable by the lessees. The Managers do not appear to have been granted any property rights over the Estate. There is a covenant on the part of the landlord in clause 6.5 that if the Managers fail to perform any of its obligations, the landlord will perform them on specified terms.

[Post hearing note: A search at Companies Registration Office records that Dinsdale Park (Darlington) Management Company Limited (Company Registration No. 4328773) was dissolved on 15 March 2011. A company named Dinsdale Park (Darlington) Management Company (2011) Limited appears to have had some role in the management of Dinsdale Hall but on what legal basis, if any, was not explained to me.)

The Second Schedule sets out a number of rights granted to the tenant which include:

“(1)(b) *the right to pass and repass:-*

- (i) *on foot and with private motor cars over and along the roadway coloured brown on the ground floor Plan*
 - (ii) *on foot only over and along the footpaths coloured green on the ground floor Plan and all Common Parts situate between the footpaths coloured green and the Premises which provide access to and egress from the Premises*
- (8) *The Exclusive right to park two roadworthy and taxed private motor cars in the Parking Spaces. [The Parking Spaces are defined to be the spaces numbered 26 and 27 on the ground floor Plan.]*

At [257] there is a plan. It is dated April 2004 and appears to be Revision C. It bears a number of labels, including "*Main Hall Proposed ground floor plan*", "*Site plan*" and "*Ground Floor Plan*" and which bears signatures which may be those of the Wards. However, the copy provided to me does not bear colouring consistent the text set out above. Also it bears a number of annotations which I suspect were not on the original lease plan.

The 2012 sale of 2 The Hall

11. The sale was effected by Mortgage Agency Services Number Six Limited as mortgagee in possession with a power of sale.
12. At [264] there is a marketing brochure prepared by Fine & Country (Circa 2008-2010). It refers to the property at The Cottage. The asking price is said to be £225,000. On both pages 2 and 3 there are brief descriptions of the accommodation as follows:
 Page 2: *"Externally thee is a good sized front garden, enclosed courtyard to the rear and two car parking spaces."*
 Page 3: *"Outside
 Good sized front garden laid to lawn with established shrubs.
 Two parking spaces enclosed courtyard to the rear."*

Those parking spaces are not identified as such. The McQues assert the two spaces mentioned are those numbered 28 & 29. I infer that they may ne right.

13. At [282] there is a marketing brochure prepared by J W Wood, Estate Agents (Circa 2011). It refers to the property as 2 Dinsdale Hall and invites offers in the region of £119,950. In its Introduction states: "*Occupying a very pleasant position in the beautiful grounds of Dinsdale Hall*"; it then goes on to describe the accommodation in brief states that externally there is a lawned garden to the front and a small forecourt garden to the rear. It makes no express reference to parking spaces.

At [282] there is a photograph of 2 The Hall, which shows an external mail box fitted to the wall in close proximity to the front door.

At [284] there are directions to the property, starting from the agents' Duke Street premises and "... *Follow this road along and turn right onto the Dinsdale Hall development and follow the road passing in front of the hall and around to the left where the property lies to the left hand side.*"

14. The McQues negotiated to purchase the property for the price of £119, 950, subject to contract.

At [286] is a report on title dated 5 March 2012 prepared by the McQues' solicitors, Thompsons. Material for present purposes is a paragraph towards the top of [287] which reads:

“The property has the benefit of the rights set out in the Property Register. There are rights of way over the road coloured brown on the plan. There are also rights for service media (gas, electricity, water, drainage, telecommunications) that serve the property to pass through the estate together with a right of access for the purposes of repair and maintenance. There is not right of way over the road way leading to the front of the property. We have been advised by Dinsdale Park Management Company that gates will be installed preventing access to the front of the property. Please be aware that this may deter future purchasers...”

15. At [296] is a letter dated 6 March 2012 sent to Thompsons by Dinsdale Park (Darlington) Management Company (2011) Limited (Company Registration No. 7330651) and signed by a D A Bodycombe, Property Manager. The letter asserts that the gates erected to entry into Dinsdale Park do not affect the road coloured brown. I infer from this that the reference is to the gates across the South access road, tinted blue on Appendix 1. The letter also makes an assertion which was subsequently found to be incorrect as regards the courtyard to the rear of 2 The Hall, part of which is within the title of 2 The Hall, and part in the title of Dinsdale Hall, which he referred to as an ‘Italian Garden’.

16. At [301] is an email dated 19 April 2012 which Mr Bodycombe sent to John-Paul McQue, It states to be written on behalf of ‘the owners in Dinsdale Hall’. It makes a number of points including:

- that access by the gate by car or on foot through the gates is not allowed as you do not have right of way;
- Individuals have been observed peering into a private flat and garages opened which has caused upset;
- Owners of flats in Dinsdale Hall purchased them with security and privacy in mind and are not pleased that someone who does not have rights of access should walk around the estate and open outside buildings.

The McQues contend that that email was sent at the direction of all or some of the lessees of flats within Dinsdale hall. The language adopted suggests that contention may well be right.

17. The contract is at [319]. The very poor quality of the copy made available to me does not enable me to read its date. I mention some extracts from it because Mr Selwyn Sharp attaches some importance to them.

“27.3 this contract contains the entire contract between the parties and supersedes all previous contracts between the parties relating to its subject matter.

27.5 all representations, warranties and conditions expressed or implied statutory or otherwise in respect of the property or any of the rights, title or interests sold or to be procured to be sold are expressly excluded (including, without limitation, all

warranties and conditions as to title, quiet possession and description). The buyer agrees that the terms and conditions of this contract and the exclusions which it contains, are fair and reasonable in the context of a sale by a mortgagee bearing in mind.”

18. The transaction duly completed. The transfer dated 5 April 2012 in form TR2 is at [83]. On 15 May 2012 the McQues were registered at Land Registry as proprietors.

The sale of the Hall

19. I mention this in brief for the sake of completion but nothing critical turns on it. The Hall and its fairly substantial garden was sold by the Wards acting by Northern Rock (Asset Management) Plc, as mortgagee in possession with a power of sale to the Thompsons on 7 October 2013 for the price of £240,000. The Thompsons were duly registered at Land Registry as proprietors.

The McQues' garden land

20. Subsequently, on 28 November 2013 the Thompsons sold off a parcel of their garden to the McQues for the price of £10,000. That land is registered with title number DU342159 and the McQues are the registered proprietors.

Appendix 3 The Planning History

1. At [157] is a report to Darlington Borough Council (LPA), Planning Application Committee. The report is dated 7 July 2000. In essence the application was the conversion of the existing building into 16 apartments with refurbishment and conversion of west wing to form 5 dwellings. The report makes a number of observations including that:
 - New developments will normally be required to provide safe space for vehicle parking and servicing within the site;
 - During the course of the application amendments were made to omit two proposed garages to the east to serve House A and B. These amendments were made following an email from a Highway Engineer [167] in which he said *“The site would operate far better if access to all of the units was from the existing access road into the complex.”* The effect of the amendment was that that no additional vehicles will need to pass along the lane between the two developments. [The plan at [165] indicates that House A is the Hall and House B is 2 The Hall. The ‘lane’ referred to appears to the North or rear access road tinted brown on Appendix 1. I infer that *“the existing access road”* referred to was the South or front access road shown tinted blue.];
 - The report recommended that permission be granted, subject to conditions.

2. Permission was duly granted. A copy is at [184]. It is dated 9 October 2000. Condition 7 is as follows:

“(7) The garage or car-parking accommodation shown on drawing no DDH/005 Rev A, shall be provided prior to the dwelling to which it relates being occupied and thereafter it shall be retained permanently available for parking purposes and for no other purpose without the prior written permission of the Local Planning Authority. REASON- To safeguard the residential amenities of the neighbourhood and to ensure the provision of adequate off-street parking accommodation to avoid the congestion of surrounding streets by parked vehicles.”

A copy of the drawing DDH/005 Rev A is at [299]. Material for present purposes it shows in a stippled area 4 parking spaces in a yard area to the east of Dinsdale Hall, with an extension of the South drive leading to them. The orientation of these spaces is shown north/south.

3. Inevitably there was some discussions between Mr Ward and officers following the application being lodged. There were a number of revisions to some of the detail. Material for present purposes it can be seen from [166] that Mr Ward originally proposed garages for Houses A and B to be located in the garden land of The Hall and accessed via the North access road. That was not acceptable to the LPA.

At [171] there is a letter from the LPA to Mr Ward dated 15 August 2000 dealing with highway matters and which makes the observation: *“It would seem that there is no intention to use the road to the north of the Hall to access any part of the development and you should confirm this point in writing.”*

Mr Ward replied by letter dated 22 August 2000 [173] which enclosed a number of drawings, including *“DDH/005 Revised 17/08/00 car parking, bins, apartment No.5 omission of double garages for houses A & B.* The letter goes on to state: *“We can*

confirm that all parking for the new development, as shown on our revised plans, are now accessed through the new entrance gate at the west of the development.”

A copy of the drawing is at [175]. It shows that the proposed garages have been removed. It also shows four stippled parking spaces which appear to be allocated to Dinsdale Hall (also stippled) and two un-stippled parking spaces.

4. At the project developed Mr Ward sought to amend the parking arrangements.

At [177] is a letter sent by Mr Ward to the LPA. The letter was headed:
***“Dinsdale Hall Development
Stage 2***

Please find enclosed two copies of the Site Plan and the proposed East car-parking and access roads.

I hope that these meet with your approval and look forward to your comments.”

That letter is date stamped as having been received by the LPA “15 AUG 2003” and bears annotations which suggest it may have been copied to two officers on 27/08.

At [178] is a drawing also date stamped by the LPA “15 AUG 2003” I infer it is revision C because it bears the legend “C. 04/07/03 New access roads to east garden revised.”

5. Evidently a site visit took place, following which the LPA wrote to Mr Ward on 1 October 2003 [179]. That letter suggests there was discussion about parking for House A (the Hall) and House B (2 The Hall). The letter states, amongst other things:

“On the issue of car parking, it was suggested that a modified parking arrangement in the south east corner could be acceptable but it should not extend in front of House B. If this were re-drawn accordingly, then it would be possible to agree this change as a minor amendment.

Parking for House A could then be the subject of a further application for a garage which could derive its access from the lane to the north (as previously agreed).

6. At [180] is Mr Wards reply dated 3 October 2003. It is date stamped by the LPA 06 OCT 2003”. He says, as far as material: *“I have reverted back to the approved layout for the south east corner amending only the driveway to accommodate the two silver birches.
A further application for House A will be submitted in due course.”*

At [182] is a drawing date stamped by the LPA “06 OCT 2003” which is a version of DDH/007 B revision C. It shows six stippled car parking spaces. Two are oriented north/south and these are numbered 24 and 25 and four in a separate courtyard area also oriented north/south and numbered 26, 27, 28 and 29.

7. Mrs Goodwin said, and it was not challenged, that the LPA has committed most of its historic documents and drawings to microfiche and/or digital format and tracking documents and obtaining good quality copies has proved very difficult.
8. The lease plan for apartment 9 is at [257] The lease is dated 5 January 2006. It grants the exclusive right to park in spaces 26 and 27. These and spaces 28 and 29 are shown on the lease plan. They are in the same position as the spaces shown on the drawing at [182] above but the orientation of the four spaces is west/east as opposed to north/south. During my site visit it was clear to me that as built on the ground the orientation of the spaces is west/east. The same lease plan was adopted for apartment 7 [527] which lease was granted in December 2006.
9. As I understand it, Mrs Goodwin has not been able to locate any express approval of the LPA to the change in orientation. But, in May 2006 Mr Ward sought and obtained planning approval for the construction of four garages in what might be termed the east car park. At [263] is a drawing date stamped as having been received by the LPA "31 MAY 2006". It also bears a stamp in red ink:

*"DARLINGTON BOROUGH COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990
PLANNING REF No. 06/00528107 [?]
LISTED BUILDING
CONSENT GRANTED
Subject to conditions
14 NOV 2006"*

In addition to showing the location of the four proposed garages it also shows the orientation of the spaces numbered 26, 27, 28 & 29 running west/east.

10. To complete on this topic the most recent document from the LPA is an email dated 7 March 2012 sent to the McQues' solicitors [298] to which was attached "...copies of ... approved plans ... which indicate approved vehicle parking on the site." Evidently what was attached at [299] was drawing DDH/005 revision B dated stamped by the LPA "24 AUG 2000".

It may be that the LPA search for historic documents was not as diligent as that of Mrs Goodwin.

11. There is no doubt in my mind that the LPA approved the location of the six parking spaces numbered 24 to 29. The lease plans I have referred to show the orientation as on the ground when I made a site visit on 9 October 2017. It is reasonable to infer that the solicitors acting for the purchasers of apartments 7 and 9 would have satisfied themselves on planning issues. Whilst the subject of the plan at [263] was the approval of the proposed garages, it shows the car parking spaces orientated west/east as laid out on the ground. I infer the LPA had no objection to that layout and that it was an approved layout.
12. Insofar as may be relevant I find that the LPA has approved the orientation of spaces 26 to 29.

13. I find as a fact that spaces 24 and 25 and been allocated to the exclusive use of apartment 2, that spaces 26 and 27 have been allocated to the exclusive use of apartment 9 and that spaces 28 and 29 have not been allocated by the freehold owner of Dinsdale Hall to any apartment or dwelling within the development.
14. I also find that as a matter of a planning obligation the LPA imposed an obligation on the freehold owner that spaces 28 and 29 were to be for the use of the owners or occupiers of House B, namely 2 The Hall.