IN THE COUNTY COURT AT CENTRAL LONDON

SITTING AT THE COUNTY COURT AT MAYOR'S AND CITY OF LONDON COURT

Case No. K02CL423

Guildhall Buildings
Basinghall Street
London
EC2V 5AR

Wednesday, 21st August 2024

Before:
HIS HONOUR JUDGE HELLMAN

B E T W E E N:

JD WETHERSPOON PLC

and

EVERITT ROAD PROPERTIES LTD

MR R COHEN appeared on behalf of the Claimant
MR M WARWICK appeared on behalf of the Defendant

JUDGMENT
(Approved)

HHJ HELLMAN:

1. The Claimant, JD Wetherspoon PLC, as is well-known, owns and operates public houses. It is the registered freehold proprietor of land at 107-109 Streatham High Road, London, SW16, on which it operates a pub known as the "Holland Tringham". The land is registered at HM Land Registry under title number 216405. I shall refer to it, depending on context, as "the Pub" or "the Property".

2. The Claimant became the registered freehold owner of the Pub on 14th May 2021. Before that it had rented the Property from the previous freeholder, Blue Property Management Limited. The lease was dated 13 July 1998 ("the Lease"). By a licence dated 16 March 1999, BP Management Limited gave the Claimant permission to carry out work to the Property, which appear to have involved converting it into a pub.

3. The Second Schedule to the Lease contained rights granted to the tenant. Clause 4 provided:

> "Subject to the provisions of the Deed a right of way at all times and for all purposes (including without limitation a right of fire escape) with or without vehicles over the land coloured brown on the plan together with the right to stop and load and unload for the purposes of servicing the Premises."

4. "[T]he Deed" was defined in the "Interpretation" section of the Lease as:

> "the Licence dated 25 July 1986 and made between The Times Furnishing Co (Properties) Limited (1) Times Furnishing Company Limited (2) and the Receivers for the Metropolitan Police District (3)."

The Times Furnishing Co Properties Limited were the freehold owners of the Property before Blue Property Management Limited ("the Landlord"). Times Furnishing Company Limited were their tenant ("the Tenant"). A Google search reveals that they were a national company selling furniture on hire purchase to new homeowners. The source of that information is the Museum of Domestic Design and Architecture. So, in those days, it appears that the Property was used to run a furniture business rather than a pub.

5. The Receiver of the Metropolitan Police was until 2000 a corporation sole whose duties involved holding land for the Metropolitan Police. This included a police station on the corner of Streatham High Road and Shrubbery Road and a car parking area around the back of the police station. Shrubbery Road formed a T-junction with Streatham High Road. Streatham High Road ran roughly north/south and Shrubbery Road ran roughly east from it at a right angle. You could drive into the police station and the police station car park from Shrubbery Road. The access area also gave access to the rear of the Property. That was the right of way mentioned in the lease.

6. I mention the Lease by way of introduction to the Deed, which is the document which lies at the heart of the case. The Preamble to the Deed records that: (1) the Landlord holds the freehold interest in the Property; (2) by a lease dated 17th February 1955 made between the Landlord and the Tenant, the Property was demised to the Tenant together with a parcel of land around the back of the police station; (3) the Receiver holds the freehold interest in 101 Streatham High Road and 2 Shrubbery Road, on which were built the two separate buildings comprising the police station; and (4) by an Agreement dated 5th June 1963 between

the parties to the Deed, it was agreed that the parcel of land round the back of the police station would be transferred to the Receiver:

> "and that within three calendar months from the date of completion a Deed (hereinafter called 'the Deed') would be executed granting unto the Landlord and its lessees and assigns a right of way coloured brown on Plan A annexed hereto (hereinafter called 'the Right of Way'), and a right of way for all purposes over the land coloured green on Plan A annexed hereto until such time as the said land coloured green shall be required by the Receiver for building purposes."

7. The land coloured brown is the access area which I mentioned in connection with the Lease. The land coloured green is a strip running along the southern edge of that part of the access area which lies between the two police station buildings. Although Plan A annexed to the Deed is quite small, at least in the copy before the Court, the Claimant has commissioned Colliers, a real estate business, to prepare two plans showing more clearly the land coloured green and the land coloured brown described in this judgment. I attach them as annexes to this judgment. It will be noted that "the Deed" mentioned in clause 4 ("the Future Deed") was to confer "a right of way coloured brown" but "a right of way for all purposes" over the land coloured green.

8. The first Colliers plan ("Colliers Plan One") shows a waiting area measuring 12.2m x 2.5m running longways from the boundary line between the brown land and the Pub. The dimensions are those of a large truck of the type used for loading and unloading kegs at the Pub with its trailer down. The Claimant claims the right to use this area for loading and unloading purposes.

9. The second Colliers plan ("Colliers Plan Two") shows a "keep clear" area measuring 7.83m x 4.41m running longways from the boundary line between the brown land and the Pub. Looking south, i.e. facing the Pub, it is marked by boundary lines to the left and right. I will describe how these lines reflect topographical features at the site later in this judgment. The Claimant claims the right to park cars and store bins in the keep clear area.

10. Returning to the Preamble, this further records that: (5) the transfer was completed on 2nd January 1964 but the Future Deed was never executed; although 6) the Landlord and Tenant had used the right of way since the transfer as if the Future Deed had been executed; and that (7) the parties had agreed that, in consideration of the Receiver confirming the Right of Way, the Landlord and Tenant would grant to the Receiver licence to carry out the alterations and works specified in the Schedule to the Deed. These involved building a covered bridge connecting the upper storeys of the two police station buildings. There would be room for traffic to pass in and out of the police station below.

11. The relevant operative parts of the Deed were clauses 2 and 3. Clause 2 stated:

> "IN consideration of the Licence hereby granted the Receiver declares and confirms the existence of the Right of Way for the Landlord the Tenant and their respective lessees and assignees for all purposes."

I remind myself that "the Right of Way" was defined in the Preamble as being the right of way coloured brown on plan A. Thus read together, recital (4) of the Preamble and clause 2

of the Deed confer a right of way for all purposes over both the right of way coloured brown and the land coloured green on Plan A.

12. Clause 3 stated:

> "IN consideration of the declaration and confirmation herein contained the Landlord and the Tenant hereby declare and confirm that they shall only enjoy rights over the land coloured green until the said land shall be required by the Receiver for building purposes in accordance with the terms of the said agreement and it is further agreed between the parties hereto that the Landlord and the Tenant have not acquired any rights by prescription or otherwise over the said land coloured green."

"[T]he said agreement" is the agreement mentioned at recital (7) in the Preamble. The "building purposes" mentioned in clause 3 are, therefore, the alterations and works specified in the Schedule. As the land coloured green was not required for those works, the limitation in clause 3 on the right of the Landlord and Tenant, and hence their successors in title, to use the green land can never come to pass.

13. On 23rd March 2015, the Receiver sold its land on the site to BBL Estates Limited for £4.25 million. On 15th September 2022, the Defendant bought what had formerly been the Receiver's land from BBL Estates Limited for £5 million. The land comprised the following titles: (1) 101 Streatham High Road, London SW16, TGL407088; (2) land in Shrubbery Road, Streatham, 153566; (3) land and buildings on the south-eastern side of Streatham High Road, London, LN237412; and (4) 4 Shrubbery Road, Streatham, London SW16 2AT, 400854. Together, these four parcels comprise what I shall refer to as "the Defendant's land". The Defendant's land covered the access area, that is both the right of way coloured brown and the land coloured green on Plan A to the Deed.

14. As the access area is referred to in the pleadings and the witness statements as "the brown land", I shall adopt that usage. Title to the Defendant's land was registered to the Defendant on 21st October 2022. The Defendant purchased the property with the benefit of planning permission to convert the former police station into residential apartments.

15. On 22nd September 2022, the Defendant put up locked gates across the entrance to the brown land from Shrubbery Road. This was to prevent the Claimant from accessing the brown land. The erection of the gates was preceded by a letter from the Defendant's solicitors on 20th September 2022. The letter stated:

> "It is apparent that you are trespassing on our clients' land in various ways including:
> 1. Vehicles serving your property are parking on our clients' land.
> 2. Your dustbins and refuse are situated on our clients' land.
> 3. It appears that you are accessing the rear of your property through our clients' land.
>
> None of these are lawful and you are required forthwith to cease all of them, remove your items from our clients' property and make good any damage."

16. The Claimant instructed solicitors, who responded on 28th September 2022:

> "1. Our client's current use of your client's land does not amount to trespass as you allege;

> 2. There is no right for your client to refuse and/or otherwise prevent our client access by the installation of gates;
> 3. The proposed gates will, once completed, block and entirely prevent the use of 4 out of 5 of our client's fire exits, amounting to a serious health and safety risk; and
> 4. There is no right for your client to interfere with our client's express right of way."

17. Solicitors' letters flew back and forth via email. Temporary access arrangements were agreed. For example, a letter from the Claimant's solicitors to the Defendant's solicitors dated 2nd February 2023 reads:

> "Thank you for confirming that your client is willing to extend the current temporary access arrangements until 22 February 2023 on the basis that:
> 1. Access is arranged via a dedicated email chain;
> 2. 24 hours' notice is required in writing for each access request. Each request requires BML Group's written approval;
> 3. Access is charged at £100 plus VAT per visit;
> 4. If access is gained without permission and a mobile response unit attends, a cost of £500 will apply;
> 5. You will provide your client's bank details, or our client can be invoiced on a monthly basis; and
> 6. Your client's security officer will attend site and meet with the site manager
>
> It is noted that, other than a cost of £500 applying in the event that access is gained without permission, these conditions mirror those proposed in your email of 19 January 2023 and agreed in our letter of 27 January 2023.
>
> Accordingly, our client agrees to these terms, albeit reluctantly. For the avoidance of doubt, we reiterate that your proposal is not practical and that providing a key to our client would be a better solution for both parties as previously requested by us."

18. Temporary access arrangements were due to come to an end on 26th June 2023 and the parties were unable to agree a more permanent way forward. The Claimant filed a claim form which was also issued on 26th June 2023. The brief details of claim stated that this was a claim that the Claimant's land, i.e. the Property, benefits from: (1) a right of way with and without vehicles at all times and for all purposes; (2) a right to load, unload and park; (3) a right to store bins over part of the land owned by the Defendant, pursuant to an express grant, alternatively a specifically enforceable contract to grant an easement, alternatively an estoppel, alternatively a prescriptive easement arising under the doctrine of lost modern grant, alternatively the Prescription Act 1832; and for an injunction prohibiting the Defendant and its agents from interfering with the rights set out above and the damages and interest thereon.

19. The Claimant also filed an application for an interim injunction. That application came on for hearing before HHJ Monty KC on 4th and 5th July 2023. On the morning of the second day, the Defendant agreed to give an undertaking until final judgment or further order of the Court not to prohibit the Claimant, its employees, agents and suppliers, including waste collectors, from accessing the Property through the brown land. That was the nub of the undertaking, although its terms were somewhat more detailed. The Court also gave directions managing the case to trial. The costs of the Claimant's injunction application were reserved.

20. So here we are. This is the judgment of the trial of the Claimant's claim. The Claimant seeks: (1) a declaration that the Property benefits from certain rights over the brown land, as detailed in the claim form; (2) an injunction prohibiting the Defendant by itself, its workmen or agents or otherwise from interfering with the exercise of those rights by the Claimant, its agents, visitors and suppliers, to include an injunction mandating that the gates be removed, alternatively left unlocked at all material times, alternatively that the Claimant and its agents, visitors and suppliers have unfettered access through the locked gates; and (3) damages in the sum of £21,953.98, alternatively (4) an order that the Defendant repay the payment made to them by the Claimant in that sum; in the amount of £21,953.28; and (5) such further or other relief as the Court thinks appropriate, together with (6) interest and (7) costs.

21. The Defendant resists the claim and counterclaims for: (1) an injunction to restrain the diverse acts of trespass upon the brown land; (2) damages; (3) interest be assessed; (4) further or other relief; and (5) costs.

22. The Defendant initially took the position that they did not have notice of a right of way conferred by the Deed when they purchased the land over which it runs. Following disclosure of the Defendant's conveyancing file, they realised that the Deed was disclosed by the seller's solicitors as part of the sales pack. Dr Al Majidi, the Defendant's director, made a witness statement in which he explained that the Deed was not disclosed to him by the Defendant's solicitor acting on the purchase. Once the Deed was drawn to his attention, he very properly made a witness statement conceding that the Claimant had a right of way, albeit one strictly limited to the terms of the Deed.

23. It is common ground that the deed is to be construed like any other commercial contract. The applicable principles are set out in a line of Supreme Court cases, including *Arnold v Britton* [2015] AC 1669 and *Wood v Capita Insurance Services Ltd* [2017] AC 1173, and are summarised in the context of construction of a grant in *Gale on Easements* 21st Edition at para 9.20. These principles include that, as a general rule, all relevant facts and circumstances can be taken into account as an aide to interpretation of the words used in the document. It was submitted that the following circumstances are particularly relevant.

24. The Claimant relied on the fact that, as of the date of the Deed, the Property was leased to a company which carried on business selling furniture on hire purchase and had been since 1955. It was a reasonable inference, the Claimant submitted, that large items of furniture would have been taken to and from the premises using the rear entrance, with vehicular access over the brown land, rather than the front entrance, which was adjacent to a busy main road.

25. On the other hand, the Defendant relied on the fact that, as at the date of the Deed, the brown land ran through an operational police station. It was submitted that the right of way should not be construed so as to permit access to large vehicles which blocked or significantly disrupted the use of other parts of the site, such as what was then the police car park.

26. Turning to the case law, I was referred to *Bulstrode v Lambert* [1953] 1 WLR 1064 ChD, in which Upjohn J stated at 1069 to 1070:

> "A passage which I think is helpful on that point was quoted from the well-known judgment of Sir George Jessel M.R. in *Cannon v Villars*, [Ftnt: (1878) 8 Ch.D 415.] It is clear, as was forcibly pointed out by Mr. Campbell, that the Master of the Rolls was dealing only with the grant of a right of way per se. Nevertheless I think that the passage is helpful. It is this [Ftnt: Ibid.

> 421]: 'Again, if the road is not to a dwelling-house but to a factory, or a place used for business purposes which would require heavy weights to be brought to it or to a warehouse which would require bags or packages of wool to be brought to it, then a grant of right of way would include a right to use it for reasonable purposes, sufficient for the purposes of the business, which would include the right of bringing up carts and wagons at reasonable times for the purpose of the business'.
>
> It seems to me that this is exactly what the parties had in mind here when this reservation was made, and I am satisfied that on its true construction the plaintiff is entitled to bring upon this yard pantechnicons [large furniture lorries] and other heavy vehicles and to transport from those vehicles the furniture and other chattels by the door at the end of the yard into the auction mart. …
>
> There is, however, this to be said. Bringing in vans no doubt causes great inconvenience to the defendant, and the plaintiff is under a duty to minimize that. It is his duty, for instance, so to back in his vehicles, or to see that customers bringing the furniture so back in their vehicles, as to leave ample space for the defendant and his licensees to use the means of egress from the defendant's door into the side of the yard, either for the purpose of going out on to the road or for the purpose of going to the boilerhouse, the coal cellar, the water closet, or the store house. There is ample room for them to do that, and if the plaintiff's customers' vehicles do not give that amount of room, then, in my judgment the defendant will have a just cause for complaint. It is also, of course, the plaintiff's duty to move any vehicles out if at any time the defendant desires to get his car out from the garage."

27. I shall return to *Bulstrode v Lambert* later in this judgment. I was also referred to *Moncrieff & Anor v Jamieson & Ors* [2007] 1 WLR 2620 HL, and specifically the speech of Lord Scott at 2634 G to H.

> "The principle of civiliter, a Scottish law principle which regulates the manner in which a servitude may be exercised…is, if I have understood the principle correctly, equally applicable, although not so named, under English law and requires the dominant owner, the owner entitled to exercise servitudal right over the land of his neighbour, to exercise the right reasonably and without undue interference with the servient owner's enjoyment of his own land."

28. I remind myself that the right of way over the brown land was conferred for all purposes. The point of granting the right of way was to allow access to and from the Property for purposes of the Tenant's business. These purposes would have included the delivery and collection of furniture and the collection of rubbish. I am therefore satisfied that the right of way permits the Claimant, as owner of the dominant land, to use the right of way for the purposes of drinks and food deliveries to its premises, which are analogous to furniture deliveries, and the collection of rubbish. There is no limitation as such on the size of the vehicles which it can use to do this. I do not accept that the Urban Artic lorries that the Claimant uses for drinks deliveries are too large to use the right of way. Whether the Claimant used the right of way so unreasonably as to fall outside the right granted by the Deed would be a matter of fact and degree. There is no evidence the Claimant has ever done so.

29. The next question is whether there is an implied term in the deed that the Claimant can use the right of way for loading and unloading. Authoritative guidance as to when the Court will

imply a contractual term was given by Lord Neuberger PSC, with whom Lord Sumption and Lord Hodge JJSC agreed, in *Marks & Spencer plc v BNP Paribas Securities Services* [2016] AC 742 SC(E) at paras 14 – 32. He stated at para 15 that the type of implied term with which that case was concerned, as is the present case, was one where a term was implied into a particular contract in the light of the express terms, commercial common sense, and the facts known to both parties at the time the contract was made.

30. The judge then reviewed the applicable case law and approved a number of principles, of which the following are relevant:

    (a) For a term to be implied, the following conditions (which may overlap) must be satisfied: (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract so that no term will be implied if the contract is effective without it; (3) it must be so obvious that it goes without saying; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract. See para 18, citing *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266 PC at 283, per Lord Simon of Glaisdale L (speaking for the majority).

    (b) It is questionable whether Lord Simon's first requirement, reasonableness and equitableness, will usually, if ever, add anything: if a term satisfies the other requirements, it is hard to think that it would not be reasonable and equitable. See para 21.

    (c) Although Lord Simon L's requirements are otherwise cumulative, business necessity and obviousness, his second and third requirements, can be alternatives in the sense that only one of them needs to be satisfied. See para 21, citing *Attorney General of Belize v Belize Page 8 Telecom Ltd* [2009] 1 WLR 1988 PC, per Lord Hoffman at para 27.

    (d) Necessity for purposes of business efficacy involves a value judgement and does not mean absolute necessity. It may well be that a more helpful way of putting Lord Simon's second requirement is, as suggested by Lord Sumption in argument, that a term can only be implied if, without the term, the contract would lack commercial or practical coherence. See para 21.

31. I was referred to several cases in which the Court had to decide whether a right of way included a right to stop and unload. They are all fact-specific.

32. In *Bulstrode v Lambert*, mentioned earlier in this judgment, Upjohn J stated at 1070 – 1071:

> "So far, therefore, I have no doubt that the plaintiff is entitled to succeed, but there is a much more difficult point. Is he entitled to halt in the yard while these vans, his own or his customers', are unloading, that operation taking half an hour to an hour or more? …
>
> When I look at this reservation I see that the whole object of it is for the purpose of the vendor, his workmen, and others obtaining access to the auction mart. What is the object of that? It is to get access to business premises, and in particular to a place where goods are going to be auctioned and sold. The

> plaintiff can do it with or without vehicles. Therefore, as I have already held, he can, in my judgment, bring goods in the vehicles to his auction mart. If he is entitled to do that, then he must, of necessity in my judgment, be entitled to unload them. And if he is entitled to unload them he must, per contra, be entitled to load them.
>
> In my judgment, therefore, the vehicles must be entitled to remain in the yard for such time as is necessary to enable the plaintiff to enjoy his easement of bringing vehicles into the yard; that is, for such time as it takes to load or unload the vehicles. It is only an incident of the right of way expressly granted and may be described as ancillary to that easement, because without that right he cannot substantially enjoy that which has been reserved to him.
>
> The principle was put by Parker L of Waddington in *Pwllbach Colliery Co. Ld. V. Woodman* [Ftnt: [1915] A.C. 634, 646: 'My Lords, the right claimed is in the nature of an easement, and apart from implied grants of ways of necessity, or of what are called continuous and apparent easements, the cases in which an easement can be granted by implication may be classified under two heads. The first is where the implication arises because the right in question is necessary for the enjoyment of some right expressly granted.'
>
> It seems to me that the right of coming upon this land in order to get to the auction mart is virtually useless to the plaintiff, unless he can unload his vehicles there, and therefore he must have the right to keep his vehicles there while he unloads and loads them, and I think that the principle which I have just read is applicable here."

33. The next case to which I was referred was *McIlraith v Grady* [1968] 1 QB 468 CA per Lord Denning MR at 476 D – G. Having considered *Bulstrode v Lambert*, Lord Denning stated:

> "Every grant must be construed in the light of the circumstances. In that case it was held that there was a right to bring goods to the auction mart and by implication a right to halt to load and unload. So here. There was a narrow passageway leading into a small yard. There was necessarily imported, in addition to an actual right to pass and repass, also a right to stop for a reasonable time for the purpose of loading and unloading. I should have thought it obvious in 1901 that carts could come and unload provisions for the grocer's shop. So also now the post office vans can come and stop for ten minutes or more to load and unload the letters and parcels. … Suffice it that as a matter of construction the right of way includes a right to stop."

34. Finally in this context, I was referred to *London and Suburban Land v Carey* (1991) 62 P & CR 480 Ch D per Millett J (as he then was) at 483. He referred to the passage in *Bulstrode v Lambert* about vehicles being permitted to remain in the yard for purposes of loading and unloading and stated that the passage had to be understood in the light of the facts of that case. The facts of the case before him were very different:

> "That contrasts sharply with the present case where the servient land, the accessway, abuts on a large forecourt belonging to the defendants on which vehicles can park or halt in order to deliver or collect goods. There is, as far as I can see from the configuration of the land, no necessity for the defendant's vehicles to halt on the accessway in order to deliver goods or collect them rather than on the defendant's own land."

35. The Claimant submits that the rights of way granted in the Deed include by necessary implication a right to load and unload. That is because, as at the date of the Deed, the physical configuration of what is now the Pub did not allow for loading or unloading on the Property.

36. The Property comprises a building with a yard at the back. Its external layout is the same today as it was at the date of the Deed. This is apparent from comparing the Colliers plans, which show the layout today, with a 1976 Ordinance Survey plan, which was filed with the Land Registry in 1975 and later marked up to serve as the title plan for 153566. The layout is the same in both sets of plans.

37. There might be room for a small van to fit in the yard area of the Property but not a large lorry. Moreover, the entrance to the yard area from the brown land is not large enough to admit even a small van. I am, therefore, satisfied that a right to park the vehicles in the right of way for the purpose of loading and unloading is an implied term of the Deed. Otherwise, a core purpose for which the right of way was granted, to permit hire purchase furniture, and by analogy other goods, to be taken to and from the Property, would be defeated.

38. Consistent with the principle that the dominant owner should exercise their rights reasonably and without undue interference with the servient owner's enjoyment of their land, I am satisfied that it was part of the implied term that delivery vehicles would park as close to the rear entrance of the Property as reasonably practicable, i.e. with one end of the vehicle adjacent to the rear entrance at the southernmost end of the shaded waiting area shown on Colliers Plan One.

39. The Claimant claims that the Property benefits from three prescriptive rights: (1) the right to load and unload on the brown land, this is in the alternative that the right is not an implied term of the deed to the full extent claimed; (2) the right to park up to two cars on the "keep clear" area; and (3) the right to place bins on the "keep clear" area.

40. As noted earlier in this judgment, the "keep clear" area measures 7.83m long x 4.4m wide. These measurements are taken from Colliers Plan Two. It is bounded by a wall to the west and a metal fence separating it from what was the police car park to the east. Plan A to the Deed shows that the fence or other fixed boundary was in place at the date of the Deed. The "keep clear" area is so named on Colliers Plan Two because the norther boundary of the area is marked by the words "keep clear" printed in yellow on the ground, so you can read them the right way up as you approach the "keep clear" area from the Shrubbery Road entrance to the brown land. The southern boundary of the "keep clear" area is adjacent to the rear entry to the Property. Thus you have to pass over the "keep clear" area to enter or exit the Property from the brown land.

41. The claim to prescriptive rights is founded on Section 2 of the Prescription Act 1832. This provides in material part:

> "No claim which may be lawfully made at the common law, by custom, prescription, or grant, to any way or other easement…when such way or other matter as herein last before mentioned shall have been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years, but

> nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; …"

42. The Claimant must show that they have used the right continuously for 20 years as if they were entitled to it. The Court must determine what acts are relied upon; that they amount to an assertion of a continuous right; and that they have continued for 20 years and are actually or presumptively known to the owner of the servient tenement. That is that they are *nec vi* (without force), *nec clam* (without secrecy) and *nec precario* (without permission). See *London Tara Hotel Ltd v Kensington Close Hotel Ltd* [2012] 1 P & CR 13 CA per Lord Neuberger MR at paras 24 – 26.

43. As to *nec vi*, *Megarry & Wade: The Law of Real Property* 10th Edition, states at para 27-050:

> "User is considered to be forcible 'once there is knowledge on the part of the person seeking to establish prescription that his user is being objected to and the use which he claims has become contentious'. … The continuous presence of legible signs throughout the prescriptive period may be sufficient to render the user contentious, and it is not necessary, to avoid acquiescence, for the servient owner to take active steps through physical means or by legal proceedings to prevent the wrongful user." [Citations omitted.]

44. The leading authority on signage is *Winterburn & Anor v Bennett & Anor* [2017] 1 WLR 646 CA, per David Richards LJ, giving the judgment of the Court, at paras 40 – 41:

> "41. In circumstances where the owner has made his position entirely clear through the erection of clearly visible signs, the unauthorised use of the land cannot be said to be 'as of right'. …
> 42. The erection and maintenance of an appropriate sign is a peaceful and inexpensive means of making clear that property is private and not to be used by others. I do not see why those who choose to ignore such signs should thereby be entitled to obtain legal rights over the land."

45. As to *nec clam*, *Megarry & Wade* states at para 27-051:

> "As the basis of a prescriptive claim is acquiescence by the owner of the servient tenement, he or she 'must have knowledge or the means of knowledge that the act is done'. …
> Knowledge should not be imputed to the servient owner unless the user is such as to put him or her on enquiry: the servient owner cannot make the user secret by shutting his or her own eyes. The user must therefore be:
>> 'of such a character that an ordinary owner of the land, diligent in the protection of his interests, would have, or must be taken to have, a reasonable opportunity of becoming aware of that enjoyment'". [Citations omitted.]

46. As to *nec precario*, *Megarry & Wade* states at para 27-052:

> "Prescriptive rights are necessarily established because of the acquiescence or tolerance of the landowner over whose property they are exercised. If a reasonable person would appreciate that A was asserting a continuous right of enjoyment over B's land, and B did nothing to resist it, B would be taken to have assented to A's conduct, and B's acquiescence or tolerance would not

> make the exercise of that right permissive. User under licence is of course permissive, whether or not there is a contract or some periodic payment being made. … Licence may be implied from the circumstances surrounding the use, although some overt conduct of the servient owner demonstrating that the use is with permission may be necessary. Passive inactivity cannot however lead to the inference of a licence." [Citations omitted.]

47. I was referred to *London Tara Hotel Ltd v Kensington Close Hotel Ltd*, mentioned earlier in this judgment, and specifically to the judgment of Lord Neuberger at para 27:

> "*Beresford* is also important because Lord Rodger and Lord Walker both emphasise that toleration on the part of the owner of the putative servient land, in the sense of knowing about the use and bearing it in silence, would not be sufficient to found an argument that the use was *precario*: to found such an argument, the toleration would have to amount to a communicated permission – see [65] and [77] … At [75], Lord Walker explained that, while consent could be given 'by non-verbal means['], what was required was 'a communication by some overt act which is intended to be understood, and is understood, as permission to do something which would otherwise be an act of trespass."

48. Turning briefly to evidential matters, the Claimant has the legal burden of establishing relevant use as of right but, if the Claimant can establish the use claimed openly and without interruption for 20 years, the evidential burden shifts to the Defendant to establish that such user was not as of right and, in particular, not *nec vi* or *nec precario*. See *Gale on Easements* at para 4-119.

49. In *Begley v Taylor* [2014] EWHC 1180 Ch D, the claimant claimed a prescriptive right to park on a private road. Ms A Tipples QC (as she then was) at para 78 rejected the claimant's submission that the Court should adopt a broad brush approach. She accepted the defendant's submission that it was necessary to concentrate on the historic use and analyse the evidence in order to see whether it supports the actual user and extent thereof claimed by prescription. I shall adopt that approach.

50. Turning, then, to the evidence on continuity, I shall consider first the evidence on loading and unloading. Tom Young gave evidence for the Claimant. He stated that he was currently a regional manager for the Claimant. Prior to taking on this role, he was area manager for the Claimant, and the Pub was one of the properties in the area which he managed. He worked in that role between 2002 and 2007, when Graham Roberts took over from him in 2007.

51. He was area manager at the Pub between 2002 and 2007. During that time, deliveries and refuse collection were only ever made via the brown land. His role required him to carry out weekly visits to the Pub to review and discuss various matters with the Pub staff and manager. On average, he visited the Pub at least once a week and sometimes two or three times per week while area manager.

52. During that period, he frequently saw deliveries arriving. The delivery lorries would drive through the brown land and park in the loading area to the rear of the Pub. They would stay in this area for the time that it took to unload stock and to reload any empty kegs and roll racks into the lorries. On average, he would say that this process took a minimum of one hour per delivery. The delivery lorries were large, approximately 18 tonnes, and would take up the entirety of the space between the loading area and the archway which bordered the roads.

53. Mr Young was cross-examined. He said the deliveries he saw were food deliveries. He said that the Pub was at the start of his journey as area manager. The journey took place early in the morning. Some of his pubs started as early as six o'clock.

54. Rhys Smith gave evidence for the Claimant. He explained that he was the managing director for Mansfield Property Maintenance Ltd ("Mansfield"), a business that he set up in August 2006. In that role, he was responsible for building and maintenance works at a number of properties within the UK, including the Pub. Prior to his role at Mansfield, he worked as a contractor with the Claimant and, more specifically, the Pub during his years working for Stenball Construction between February 2002 and May 2006. He had, therefore, been providing maintenance services to the Pub as a contractor from 2002 to the present day.

55. He referred to an email dated 1st March 2012 from the Claimant to him, setting out a request to quote for work. This included works to the external areas located in the area between the rear of the Pub and the brown land. He sent out a surveyor, Keith Reader, who carried out the works on 4th April 2012. Mr Smith produced Mansfield's site survey, along with a quote for the works, and photographs of the works, as evidence that they were carried out. Mr Reader and Mr Smith used the brown land to drive in and out of the area and to carry out the works.

56. Mr Smith referred to another example of Mansfield carrying out works to the external area between the Pub and the brown land, which was shown in a work request form dated 3rd May 2017. When carrying out those works, Mansfield used the brown land and did not obtain permission from anyone else to carry them out. If Mansfield did not have access to the brown land, it would be impossible for them to assist with any external maintenance, which was often required to the rear of the Pub, and to safely unload heavy tools and materials into the Pub.

57. Alex Vitue gave evidence for the Claimant. He explained that he was a distributions manager of the Claimant, responsible for managing supply chain operations between suppliers and all of the Claimant's pubs, including the Pub. He had worked in this role since September 2021. Prior to this, he started working for the Claimant on 7th January 2013, working in a number of pub roles. He started as a glass collector at the age of 17 and worked his way up to being a pub shift manager. In April 2016, he moved to a role in the Claimant's head office, working in accounts, dealing with accounts payable and then with the stocks finance team. Prior to becoming the distribution manager in September 2021, he had worked as a property finance analyst within the finance department at the Claimant's head office.

58. He stated that on 31st December 2022, he was contacted by Jane Parish of DHL and told that Tradeteam could not access the brown land to make the planned delivery of stock because the gates to the entrance had been padlocked. Save for an earlier incident on 22nd December 2022, this was the first time he became aware of any failed delivery due to access issues between September 2021, when he started in his current role, and 31 December 2022. Up until that date, he had arranged for all deliveries and collections to take place via the brown land. All deliveries had been completed in this manner, so far as he was aware from his communications with the area manager. Certainly, no issues had been brought to his attention with that use. Mr Vitue was cross-examined and stated that he first visited the Pub in May 2024.

59. Stephen Meeke gave evidence for the Claimant. He explained that he was the area manager of the Pub. He had worked in this role since 28th January 2020, when he was area manager at

the Pub for about one year. He was then asked by the Claimant in his role as area manager to focus his attention on other pubs in the Surrey. He then became area manager of the Pub again in July 2022 and that was his current role.

60. During his time as area manager, he had day-to-day responsibility for managing the personnel and business operations of the Pub on behalf of the Claimant. During his time as area manager, deliveries and refuse collection had only ever been made via the brown land. Part of his role was to ensure the management team within the Pub was managing and dealing with deliveries, including scheduling, dealing with stock levels, and ordering. As a result, he had direct oversight of deliveries via the brown land. He saw deliveries come into the Pub on a frequent basis when he was onsite. He had seen the delivery vehicles drive through the brown land, park in the loading area to the rear of the Pub, and stay in this area for the duration of unloading of stock and the reloading of empty kegs and roll racks into the lorries.

61. Graham Roberts gave evidence for the Claimant. He explained that he was a former employee of the Claimant, and that from 2007 to 2017 he was the area manager of the Pub. He took over this role in 2007 from Tom Young, and John Carrington took over from him in 2015. In 2017, he took over the role from Fran Smith, and Fran Smith took over from him again in 2018.

62. During his time as area manager, he had the day-to-day responsibility for managing the personnel and the business operations of the Pub on behalf of the Claimant. His role included managing and dealing with deliveries, including scheduling, dealing with stock levels, and ordering. As a result, he had direct oversight of deliveries via the brown land. He saw deliveries come into the Pub on a frequent basis. He saw on a regular basis the delivery vehicles drive over the brown land, park on the brown land in the loading area to the rear of the Pub, and stay in this area for the duration of the unloading of stock and the reloading of empty kegs and roll racks into the lorries.

63. Mr Roberts was cross-examined. He said he encountered delivery lorries on numerous occasions over the years. The lorries didn't reverse all the way down; they stopped with the flap down flush against the wall.

64. John Carrington gave evidence for the Claimant. He explained that from 2015 to 2016 he was the area manager of the Pub. He took over this role from Graham Roberts, who had the role between 2007 and 2015. During his time as area manager, deliveries and refuse collection were only ever made via the brown land. His role included managing and dealing with deliveries, including scheduling, dealing with stock levels, and ordering. As a result, he had direct oversight of deliveries via the brown land. He saw deliveries come into the Pub on a frequent basis. He saw on a regular basis the delivery vehicles drive over the brown land, park on the brown land in the loading area to the rear of the Pub, and stay in this area for the duration of unloading of stock and the reloading of empty kegs and roll racks into the lorries.

65. Jonathan Penfold gave evidence for the Claimant. He explained that he was the general site manager for DHL Supply Chain, Tradeteam, or "DHL" for short. He was responsible for organising DHL's drivers, known as operatives, to make deliveries to all DHL sites within the Salfords area. (That is Salfords in Surrey, not Salford near Manchester.) He had been working for DHL since 1998, where he started as a warehouse shift manager. In 2000 he progressed to

being a transport shift manager. In 2010 he became the transport manager for the Salfords sites. In 2018 he was promoted to his current role as general site manager for the Salfords sites. He had been working with the Claimant through his various roles at DHL and had been responsible for arranging deliveries to the Pub since 2007, when DHL first entered its contract with the Claimant.

66. From all the years that he had been working with the Claimant and arranging deliveries to the Pub, his delivery instructions had not changed. They were that operatives were to drive down Shrubbery Road, turn into the brown land, drive over the brown land, through the Claimant's grey gates, which were always open, and deliver into the Pub by using the internal goods lift to unload the supplies via the back door to the rear of the Pub. DHL's operatives were instructed to park to the right-hand side of the back entrance to the Pub when unloading the deliveries.

67. Mr Penfold was cross-examined. He said that his witness statement concerned drink deliveries and that Andre Clark, to whose evidence we shall turn in a moment, gave evidence about food deliveries. Drink deliveries were made using an Urban Artic lorry. He was aware that deliveries were made through the police station. The deliveries were made in the morning before the police station opened. The lorry would reverse into the brown land to the loading bay. If the vehicle would fit under the archway, then the vehicle would drive under the archway.

68. Andre Clark gave evidence for the Claimant. He explained that he was the national transport manager of DHL Supply Chain, which was the division of DHL Consumer responsible for providing transport, warehousing and management services. He had worked in this role since March 2021 and, as far as he was aware, DHL had supplied the Pub for at least the past 10 years or so. He was responsible for the organisation of weekly deliveries of food, drink and consumables to the Pub. Such deliveries were made roughly two or three times per week using 16- and 18-tonne rigid vehicles. To his knowledge, these deliveries had only ever been made via the brown land, as there was no viable alternative. To the front of the Pub, there was a pedestrian crossing where stopping or parking was not permitted for a safe distance in either direction. For the remainder of the road on both sides, double red lines prevented stopping or parking by any vehicle. There were no loading bays close to the Pub. DHL's drivers had used the brown land without issue or any need to obtain permission.

69. Suman Luthra gave evidence for the Defendant. She explained that she works at Union Lettings and Sales, which has premises in Shrubbery Road between the entrance to the police station and the intersection with Streatham High Road. There used to be a big lorry parked outside her office on the opposite side of the road. Police officers were watching how long the lorries were there for, as they would not allow obstructions. She said the word "Wetherspoon's" appeared in white writing on a blue plastic cover on the lorries. She remembered this. It just came into her mind. She hadn't mentioned it before and she also remembered that barrels were offloaded from the lorries. She didn't think she was mistaken. She said, "It is definitely a vision coming in front of me. I have seen it". She was 100% sure that they were rolling barrels out of the lorry and into the Pub. This used to happen at least once every week or every two weeks. She said that she was very confident now. She was told that you put into the witness statement what you remember (the implication being that she hadn't remembered this when she made her witness statement). There were lots of barrels

from the vehicle. They were taken up Streatham High Street. She confirmed that she saw "Wetherspoon's" written on the lorry.

70. Andre Vitue gave rebuttal evidence for the Claimant addressing Ms Luthra's evidence. He said he could categorically say that the Claimant's delivery routine would not be to unload on an area marked with a red line. It would also not be to block access to Shrubbery Road or unload in the middle of the road. Additionally, he could categorically say this would constitute a serious health and safety issue and would never be permitted. He could categorically say that a Claimant vehicle would not deliver lots of barrels once a week or once every two weeks. The Claimant had a distribution centre in Daventry and vehicles used out of that location were owned by the Claimant. He said, giving reasons, that he could categorically say that DHL would not, in a Claimant delivery vehicle, roll kegs off a vehicle or roll kegs into a Pub from the vehicle.

71. Finally on this issue, Marios Loizou gave evidence for the Defendant. He said that he was a barber and ran a hair salon from his property at 11 Shrubbery Road, which was situated directly opposite the entrance to the former Streatham police station. He had been running his hair salon from the above premises for over 30 years. Many police officers were, in fact, his regular customers prior to the police station closing. He brought to the Court's attention that along Shrubbery Road, almost directly outside his salon, there was a loading bay for deliveries. For many years, the delivery lorries would park in the loading bay and deliver the stock to the Claimant's premises. It had only been since the police station closed that deliveries to the Claimant had been over the accessway of the old police station. He was able to say this because traffic that had been caused by the lorries turning into and out of the old police station had become very noticeable, which had not previously been the case. In fact, on one occasion a lorry broke down, causing huge traffic problems for the area.

72. Mr Loizou was cross-examined. He stated that he could see the passageway, that is that part of the brown land which runs from Shrubbery Road into the police station area, clearly from his barbershop. Police vehicles used to park there. He did not see any non-police vehicles coming into the passage. He did not see any lorries enter the passage. Police used to tell everyone they were not allowed there. He knew because he was watching all the time. Sometimes, when it was very quiet, he used to look out of the window. After the police station closed, he saw a delivery lorry for the Pub delivering drinks. It reversed from the main road and stopped at the corner.

73. Mr Loizou explained his routine. He arrived at 7.30am to clean the shop, had breakfast at 8am – that was in the kitchen at the back of the shop – and he opened at 9am. He didn't open on Wednesday or Sunday. He closed at 5.30pm then left to go home. He took a holiday every September for seven days to Cyprus. He used to have four to five customers in the morning and there was a busy period between 3.30pm and 4.00pm. A haircut took about 15 minutes. He ate lunch in the shop. For most of the day, he focused on cutting hair. Sometimes he would look outside on to the road then carry on. It took time for a lorry to move in and through the gates, so he could look up and see them. He saw two to three private cars drive into the police station each day.

74. I turn now to the evidence on the right to park cars. Tom Young gave evidence on cross-examination that he used to park in the brown land but that he never saw cars parked in

the "keep clear" area, an area which he indicated in a photograph of the brown land which he was shown.

75. Rhys Smith gave evidence. He said that whenever he was attending the Pub when working for Stenball Construction, which was from February 2002 to May 2006, he always used the brown land. He remembered the Pub managers telling him he could drive through the brown land and park his van in the area to the rear of the Pub. He would then access the Pub via the rear kitchen door nearest the Pub, walk through the kitchen and report to the Pub manager. Throughout the period from 2002 to the present day, in his roles at Stenball Construction and, from August 2006, Mansfield, he had parked and still continued to park on the brown land to the rear of the Pub adjacent to the kitchen entrance door.

76. Mr Smith was cross-examined about this. He indicated that by the brown land, he meant the route off Shrubbery Road to the back of the Pub which they would all use to park. He would stop the car almost at the edge of the kitchen building, then cross from the brown land onto the Claimant's land. Sometimes the Pub was having a delivery, either when he arrived or after he had arrived, in which case he would move his car until the delivery was complete. When he could not park in the "keep clear" area, he would park on the street. They were there to help the Pub, not be a nuisance. He parked as far to the front as possible, as a member of staff might want to park behind him. Staff parking was fairly frequent, as everyone wanted the space. Fairly frequently, he would need to ask the Pub manager to get someone to move their car.

77. Graham Roberts gave evidence. He stated that, during the times he was employed as area manager, that is from 2007 through to 2017, he would access the Pub via the brown land and park on the brown land at the rear of the Pub, as this was the most convenient place to park to visit the Pub. He would park there at least once per week and sometimes more. He was aware that other people also used that area, for example maintenance workers and the Pub managers. The previous and subsequent area managers had told him that they also parked in the same area.

78. He had been provided with screenshots of images of the brown land captured from the street view function of Google Maps, copies of which were annexed to his witness statement. These images clearly identified the date that they were captured by Google Maps on the thumbnail at the bottom of each image. He was told that the images were screenshotted by the Claimant's solicitors on 30th January 2023. They included images captured in September 2012, September 2020 and July 2022. These images showed vehicles associated with the Claimant being parked in the parking area on the brown land. This was the same area he parked in on the brown land and the same location he saw other people park in the brown land, such as maintenance contractors and Pub managers, during his role as area manager. Those images were before the Court.

79. When cross-examined, Mr Roberts stated that he parked either on the "keep clear" area or under the arch. If both areas were free, he would park under the arch so as to leave the "keep clear" area free for others. It was very difficult to park in Shrubbery Road as it was always busy there.

80. John Carrington gave evidence. He stated that during the times he was employed as area manager, that was from 2015 to 2016, he would access the Pub using public transport as much

as possible. However, when he did drive, he would access the Pub via the brown land and park at the rear of the Pub, as this was the most convenient place to park. He would park in this location approximately twice a month, and he pointed out the area where he parked in photographs which were before the Court, annexed to his witness statement.

81. Stephen Meeke was cross-examined about parking. He said that in 2004, he visited the Pub for two days to complete a company project. He always asked the manager, who was called Lee, if there were any car parking spaces. Lee said there were two round the back and that, if they were free, he was welcome to use them. The two spaces were not marked out. On his return to the Pub in July 2022 as area manager, Mr Meeke said that he used to visit on a week-by-week basis. There was usually one vehicle parked there belonging to "Rafa", who was the holding manager of the Pub while the permanent manager was on maternity leave. Sometimes two vehicles were parked, in which case Mr Meeke would park on the street or in the supermarket car park. He said you can comfortably fit two large vehicles in the space. He always parked in the same space. He did not think to ask anyone; he did not think he needed to. He would likely have been told by many people that he could park there. He could recall instances where the Pub management had to move parked cars when a delivery lorry arrived.

82. Turning to the evidence on bins, Tom Young gave evidence that the Claimant's commercial bins were collected once a week. Collections usually took place in the morning, but there was never a specific timeframe agreed for this, like there was for deliveries. When he was area manager of the Pub, that is from 2002 through to 2007, he also saw their bins being collected. The refuse collection lorries would drive through the brown land and park in the loading area to the rear of the Pub. Although the refuse collection was a lot quicker than any delivery, it still took several minutes due to the large number of bins the Claimant required. As far as he was aware, the Claimant's bins were always stored on the brown land. They never had any problems with storing bins like this. If there had been any issues, he would have been alerted to them, as he would have been the first point of contact for dealing with issues.

83. Mr Young had been provided with screenshots of images of the brown land captured from the street view function of Google maps. Copies were annexed to his witness statement and were before the Court. He referred to an image captured in July 2008, which was taken facing the Pub. It showed bins located outside the "keep clear" area, running along the wall to the right of the "keep clear" area. There was also an image captured in October 2009, again taken facing the Pub, showing bins running along the left-hand wall of the "keep clear" area. The thumbnail underneath each image clearly identified the date on which the image was captured by Google Maps. Mr Young was told that both images was screenshotted by the Claimant's solicitors on 30th January 2023. Both images showed the Claimant's bins being stored on the brown land. He personally saw the bins being stored like this during his role as area manager between 2002 and 2007.

84. Stephen Meeke gave evidence. He stated that, as far as he was aware, and based on his knowledge since he had been visiting the Pub, that is from January 2020, the bins had always been stored on the brown land and that, during the time he worked at the Pub, they had never had any problems with storing the bins in that way.

85. Mr Meeke had been provided with screenshots of images of the brown land captured from the street view function of Google Maps. Copies were annexed to his witness statement and were before the Court. They included two images captured in September 2020. These were taken

facing the Pub and showed bins along the wall to the right of the entrance to the "keep clear" area. An image taken in March 2021 showed bins along the right-hand wall of the "keep clear" area but protruding into the brown land outside of it. An image taken in July 2022 showed bins along the right-hand wall of the "keep clear" area. Each of these images clearly identified the date on which it was captured by Google Maps on the thumbnail at the bottom of the image. He was told that each of these images was screenshotted by the Claimant's solicitors on 30th March 2023. The thumbnail underneath each image clearly identified the date on which the image was captured by Google Maps. Mr Meeke personally saw the bins stored like this on the brown land every day during his role as area manager since January 2020 and during his visit to the Pub in 2024.

86. When cross-examined, Mr Meeke said that bins had always been on the brown land during his visits. When he first visited the Pub in 2004, they were on the right side, which I take it meant the right side of the "keep clear" area, and they had always been on the right side since 2020.

87. Graham Roberts gave evidence. He stated that when parked in this area, he could remember seeing the large commercial bins associated with the Pub being stored in the brown land and, during the time he worked at the Pub, that is from 2007 to 2015 and 2017 to 2018, he did not recall the Pub having any problems with storing bins on the land. The area the bins were stored in was shown in the photographs enclosed with his witness statement which were before the Court. He had been provided with screenshots of images of the brown land captured on the street view function of Google Maps. Copies were annexed to his witness statement and were before the Court. The thumbnail underneath each image clearly identified the date on which the image was captured by Google Maps. Mr Roberts was told the images were screenshotted by the Claimant's solicitors on 30 January 2023. They include images captured in October 2009, September 2012, September 2014 and April 2018. The images showed bins on the left-hand side of the "keep clear" area against the boundary fence. The April 2018 image showed bins spilling out of the "keep clear" area onto the brown land and in front of it.

88. Mr Roberts was cross-examined about this and stated the bins were always there and he had to make sure that they were not blocking the fire exits.

89. John Carrington gave evidence, including evidence about the same Google Maps images that Mr Roberts gave evidence about. The wording of his witness statement relating to them was very similar to the wording of Mr Roberts' witness statement. He stated that, during his role as area manager between 2015 and 2016, it was not unusual for a row of bins to be stored next to one another. For example, he had been provided with an image which was before the Court and to which he had now made reference, captured in September 2012, which showed two large bins next to one another plus three smaller bins.

90. That concludes my summary of the evidence.

91. I am satisfied that the Claimant has established continuous use of the waiting area shown on Colliers Plan One for purposes of loading and unloading for the past 20 years.

92. I found the weight of evidence from the Claimant's witnesses persuasive. They gave evidence in a clear and convincing manner. Their evidence concerned things they would have needed

to know in the course of their work. Their evidence was unchallenged. It would not have been reasonably practicable to run the Pub without using the waiting area for these purposes.

93. The evidence of the Defendant's two witnesses did not persuade me otherwise. As deliveries typically took place early in the morning, Marios Loizou and Suman Luthra would not necessarily have been present at the time. If they were present, they would not have had any particular reason to pay attention to the lorries making deliveries to the Pub. The fact that they do not recollect seeing delivery vehicles driving onto the brown land is not persuasive evidence that delivery vehicles did not do so.

94. The police station had closed by March 2015, when the Receiver of the Metropolitan Police District sold the land on which it was situated to BBL Estates Limited. That was nine years ago. Memories fade with time and can be shaped by an understandable wish to be helpful to the party calling the witness and the Court. In the case of Ms Luthra, we saw false memories, which she sincerely believed to be true, generated before our eyes. I acknowledge the possibility that the smaller food delivery vehicles may occasionally have parked in the street but, for the reasons given by Mr Vitue, it would not have been practicable for the larger Urban Artic vehicles to make their deliveries in the manner recollected by Ms Luthra in her vision.

95. I am satisfied that the Claimant has established continuous use of the "keep clear" area shown on Colliers Plan Two for parking up to two vehicles at a time for the past 20 years.

96. My interpretation of Mr Meeke's reference to two spaces is that the Claimant made use of the entire "keep clear" area for parking but that two motor vehicles was the maximum number that it could comfortably accommodate at any one time. Mr Young said that he used to park on the brown land but, by reference to one of the photographs, never saw cars parked in the area with orange bins, which I take to be the "keep clear" area. It was not clear whether he meant that he never parked in the "keep clear" area either. His evidence suggests that the "keep clear" area was not in constant use as a car park, but I am satisfied from the weight of the Claimant's evidence that it was in continuous use for the requisite period.

97. The Pub was located on a busy high street. Mr Roberts gave unchallenged evidence that it was very difficult to park in Shrubbery Road as it was always busy there. As the "keep clear" area was a convenient place to park free of charge, it would have been surprising if Pub staff and visiting contractors had not used it for that purpose. Mr Roberts also gave evidence that sometimes he parked under the arch joining the two police station buildings. However, there is insufficient evidence for me to conclude that the Claimant's staff and contractors have parked continuously on the brown land for 20 years anywhere other than in the "keep clear" area. The Claimant does not contend otherwise.

98. I am satisfied that the Claimant has established continuous use of the "keep clear" area for storing bins for the past 20 years.

99. Bins have been stored along the left-hand fence and the right-hand wall during that period, but not elsewhere in the "keep clear" area. Bins have sometimes been stored on the brown land outside the "keep clear" area but the Claimant has not established continuous use of other areas of the brown land for this purpose. There would have been room to store bins in the yard at the back of the Pub, which one can enter from the "keep clear" area, but I accept that

the Claimant found it more convenient to store the bins in the "keep clear" area itself. That is where refuse collection lorries drove up to collect them.

100. I am, therefore, satisfied that each of the acts relied on to give rise to a prescriptive right has continued for 20 years. These acts were carried out openly. The question is whether they were also carried out without force or without permission.

101. It is common ground that there was no discussion between the police and the Claimant or their contractors about any of the acts. The police did not expressly give the Claimant permission, whether oral or in writing, or expressly asked them to desist.

102. I turn to consider the evidence regarding contact with the police.

103. Thomas Young said, when cross-examined, that he does not recall activity from the police. The police station did not open until 9am. The only time they had a conversation with the police was when the police needed to bring people through the Pub. They co-existed. The Pub manager had a good rapport with the police. They had regular monthly licence checks which involved communicating with the police.

104. Rhys Smith said, when cross-examined, that he never spoke to the police, as he understood he was parking on the Claimant's land. If he had understood he was parking on police land, then he would have spoken to them.

105. Graham Roberts said, when cross-examined, that he never sought permission to park from the police but that they had pleasantries. He knew the area of the brown land on which he parked was private. When a lorry was unloading, there was room for police cars to get past on the inside of the lorry. There was quite a wide area that would allow them to do so, that is to get from the police car park past the lorry into the area of the brown land leading to Shrubbery Road.

106. Jonathan Penfold said, when cross-examined, that the police were always understanding. If there was a police car that was difficult to get around, they were always very helpful. They, that is Mr Penfold or other drivers from the Pub, would wait in Shrubbery Lane while the car was moved. In 2005, there were terrorist attacks in London. Police stations were very busy. The following day, DHL did not make any deliveries. He discussed that with his colleagues. Police cars used to park there. Sometimes it was quite busy. They would not block the police entrance. The police would help them with deliveries. Mr Penfold recalls seeing signs saying: "No Unauthorised Vehicles No Entry to Public" and "No Turning Police Access In Constant Use". But he said DHL was not reversing to turn the lorry around but to make a delivery, and that they were authorised to make deliveries to the Pub.

107. Marios Loizou also gave evidence about the police. He said that sometimes police were standing in front of the arch and had turned people away. He would notice a lorry or car if the police let it through.

108. The Defendant relies on police signs. Google images captured in July 2008, October 2009 and September 2014 show two signs displayed on each side of the entrance to the brown land from Shrubbery Road – that is two signs on each side, four signs in all. As Mr Penfold recalled, one sign said, "No Turning Police Access In Constant Use" and the second sign said,

'No Unauthorised Vehicles No Entry to Public". They are the sort of signs which one might expect to see displayed outside a police station. I draw the reasonable inference that they were there throughout the 20-year prescription period.

109. The "No Turning" sign simply means that the entrance to the brown land from Shrubbery Road was not to be used as a turning space. The Claimant has not claimed a prescriptive right to use the entrance for that purpose.

110. The "No Entry to Public" sign did not prevent the Claimant and its invitees from entering the brown land from Shrubbery Road because the Claimant has a right of way over the brown land for all purposes. The Claimant says the "No Entry to Public" sign is, therefore, not relevant to the question of prescription.

111. The Defendant says that, by necessary implication, the "No Entry to Public" sign prohibits the public from entering and using the brown land. The Deed, in conferring a right of way on the Claimant, carves out an exception to that general prohibition to the extent of the rights conferred by the Deed, but no further, as the Deed does not confer the right to carry out the acts said to give rise to prescriptive rights, at least not the rights to park cars and put out bins. Those acts, the Defendant says, were prohibited by the "No Entry to Public" sign. The Claimant carried them out forcefully, in breach of the prohibition, breaching the *nec vi* requirement.

112. I prefer the Claimant's clear and obvious interpretation of the "No Entry to Public" sign to the strained construction advanced by the Defendant. The sign was simply seeking to keep out unauthorised persons. It did not purport to do anything more. I am, therefore, satisfied that the Claimant has established the prescriptive rights claimed in favour of the Property as they were enjoyed for a continuous period of 20 years *nec vi*, *nec clam*, and *nec precario*.

113. The Defendant concedes that if, as I have found, the Property has rights to stop to load and unload, then the damages claim follows. The claim is for the sum of £21,953.28, being the costs: (1) incurred by the Claimant as a result of the Defendant's denial of access; and (2) paid by the Claimant to secure access. The sum is broken down in two witness statements made by Erina Kourtis, a senior solicitor employed by the Claimant. I therefore award damages in that sum.

114. In summary and conclusion, I grant the Claimant the following declarations:

    (a) Pursuant to the Deed, a right of way for all purposes over the land coloured green and the land coloured brown, as shown in plan A annexed to the Deed and Colliers Plans One and Two.

    (b) For the avoidance of doubt, the Deed confers on the Property a right to park vehicles, including Urban Artic lorries, in the right of way for the purpose of loading and unloading, provided that such vehicles park as close to the rear entrance of the Property as reasonably practicable.

    (c) If I am wrong, and the Deed does not confer on the Property a right to load and unload, then the Property benefits from a prescriptive right to load and unload within the 12.2m x 2.6m waiting area shown in Colliers Plan One.

(d) The Property benefits from a prescriptive right to park up to two vehicles at a time on the "keep clear" area measuring 7.83m x 4.41m shown on Colliers Plan Two.

(e) The Property benefits from a prescriptive right to place bins on the "keep clear" area shown on Colliers Plan Two along the flank wall, and the parallel flank fence opposite.

115. I decline to grant the Claimant an injunction. In view of the above declarations, no injunction is necessary.

116. I award the Claimant damages in the sum of £21,953.28.

117. The counterclaim is dismissed.

118. I shall hear the parties as to costs and interest and any consequential directions. That concludes my judgment.

End of Judgment

Transcript of a recording by Acolad UK Ltd
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Acolad UK Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof

This transcript has been approved by the judge.