



Neutral Citation Number: [2025] UKUT 141 (LC)

Case No: LC-2024-344

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

FTT ref: 2020/0509

Royal Courts of Justice, Strand,  
London, WC2A 2LL

9 May 2025

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

*LAND REGISTRATION – BOUNDARY DISPUTE – determined boundary application – true boundary uncertain – agreement between spouse of unregistered proprietor and neighbour – whether boundary fixed by agreement – s. 60, Land Registration Act 2002 – appeal dismissed*

**BETWEEN:**

**GRAHAM PORTEOUS BISHOP**

**Appellant**

**-and-**

**LINDA MARGARET JAQUES**

**Respondent**

**The Avenue and Beacon Cottage, North Road, Battle,  
East Sussex TN33 0HU**

**Martin Rodger KC,  
Deputy Chamber President**

**29 April 2025**

*Oliver Ingham*, instructed directly, for the appellant

*Simon Williams*, instructed by Donaldson Dunstall, solicitors, for the respondent

The following cases are referred to in this decision:

*Nata Lee Ltd v Abid* [2014] EWCA Civ 1652

*Neilson v Poole* (1969) 20 P. & C.R. 909

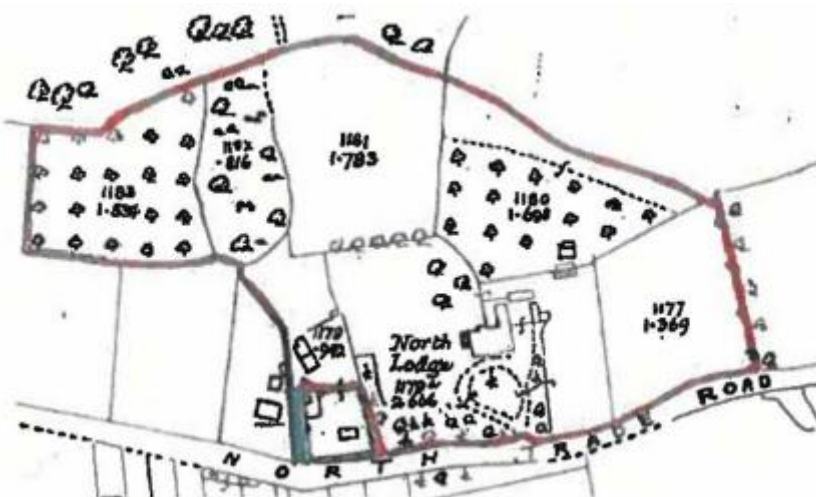
*White v Alder* [2025] EWCA Civ 392

## Introduction

1. This appeal is against the dismissal by the First-tier Tribunal, Property Chamber (Judge Thorowgood) of an application by the appellant, Mr Bishop, for the determination of the boundary between a strip of land belonging to him known as "The Avenue", and the garden of Beacon Cottage, belonging to the respondent, Mrs Jaques. The Avenue provides access to a potential development site, also belonging to Mr Bishop, but it may not be wide enough to accommodate development if the boundary with Beacon Cottage is in the position identified by the FTT.
2. The FTT decided the position of the boundary by reference to an agreement reached in 1971 between the husband of the then owner of Beacon Cottage, Mrs Dewar, and the then owner of the Avenue, Mr Noble. It also found in favour of Mrs Jaques on two alternative grounds: first, that the boundary agreement of 1971 was in accordance with the paper title established on a conveyance of Beacon Cottage in 1949 out of the larger estate of which it was formerly part; and secondly, if both of the previous findings were wrong, that the owners of Beacon Cottage had been in adverse possession of the disputed portion of The Avenue since at least 1980 and had acquired title to it before the commencement of the Land Registration Act 2002.
3. Mr Bishop was granted permission to appeal by this Tribunal. For the appeal to succeed, and for Mr Bishop to establish that the boundary of the Avenue is where he believes it to be, he will have to show that the FTT was wrong in all three of its conclusions.
4. Mr Bishop had represented himself at the hearing before the FTT, and he prepared his own grounds of appeal, but he was represented at the hearing of the appeal by Mr Oliver Ingham. Mrs Jaques was represented, as she had been before the FTT, by Mr Simon Williams. I am grateful to them for their submissions.

## Background

5. The FTT's decision contains a comprehensive description of the relevant conveyancing history, from which the following abbreviated account is derived.

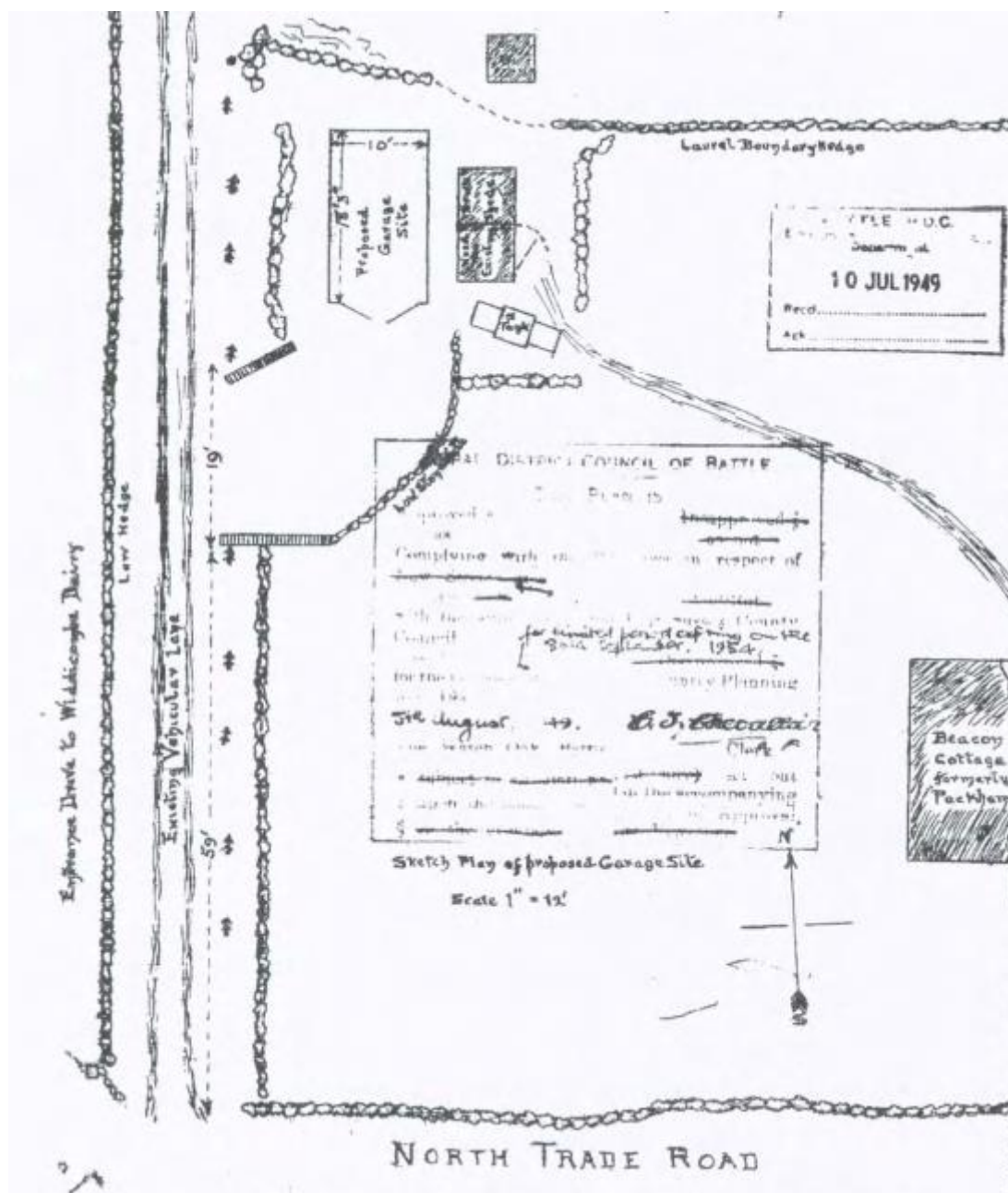


6. The plan above shows the North Lodge estate, situated on North Trade Road in Battle, East Sussex, as it was in 1949. North Lodge is a substantial house in extensive grounds. Beacon Cottage and its own garden were originally part of the same estate, as was The Avenue, which lies immediately

to the west of the garden of Beacon Cottage. The Avenue leads from North Trade Road, past Beacon Cottage to some further cottages and then to land which also formed part of the estate.

7. By a conveyance of 31st May 1949 (the 1949 Conveyance), the owner of North Lodge, Sir Henry Birkmyre, conveyed Beacon Cottage to Francis Garret Ridley. No copy of that conveyance survives, but it is recorded in a memorandum endorsed on a 1954 abstract of Mr Ridley's title which also includes what was taken by the FTT to be an accurate copy of the 1949 Conveyance plan (above). Beacon Cottage was there described as "lying on the North side of the North Trade Road and being the South-western corner of the property within described [i.e. North Lodge] and edged pink on the plan (and also for the purpose of identification only shown on the plan attached hereto and edged purple)." It was conveyed "Together with the right of way for all purposes over the roadway along the west side leading off the North Trade Road coloured green on the attached plan."
8. As the Judge noted, the plan to the 1949 Conveyance depicts the western boundary between Beacon Cottage and the roadway coloured green (The Avenue) by a solid line, indicating the presence of a boundary feature greater than 12" in height.
9. Further evidence of topographical features at around the time of the 1949 Conveyance is provided by an application for planning permission to build a garage in the northwestern corner of the grounds of Beacon Cottage. It is dated 5th July 1949 and was made by Mr Ridley within little over a month of his acquisition. The application was supported by a sketch plan of the proposed garage site drawn at a scale of 1" to 12', which is reproduced on the next page. The Judge accepted that the plan provides an impression, contemporaneous with the 1949 Conveyance, of features on the ground at the time the conveyance plan was prepared.
10. The plan shows part of Beacon Cottage on the right of the image (east) and The Avenue (marked "existing vehicular lane") on the left (west). The Avenue is bounded on its west by a "low hedge". A measurement of 59' is marked immediately to the right of the lane showing the distance from North Trade Road to an entrance to the site of the proposed garage (which I will call the garage entrance). The garage entrance itself is shown as being 19' wide. The first feature shown to the east of The Avenue is a row of trees, five between the road and the garage entrance, and a further four beyond the entrance; these feature in many later photographs and were tall pine trees which remained in position until the hurricane of 1987. To the east of the trees is a hedge, shown as a continuous feature without gaps, running from the frontage with North Trade Road to the garage entrance; it is convenient to refer to this hedge as "the 1949 hedge" (although that was not a designation used by the Judge). At the garage entrance it forms a right angle with another feature, believed to be a fence, a brick wall, or simply a line of bricks set into the ground (there is a line of bricks at ground level in the same location to this day). The Judge drew attention to the fact that, on the 1949 planning application plan, the fencing on either side of the garage entrance projects beyond the line of the 1949 hedge.
11. The substance of the dispute between the parties is whether the boundary between The Avenue and the garden of Beacon Cottage is immediately to the west of the row of pine trees or lies further to the east, following the line of the 1949 hedge shown on the planning permission plan.
12. Photographic evidence from 1966 confirms that at that time a hedge was still present in the same location as the 1949 hedge shown on the planning permission plan. It had been removed by 1970. Mrs Susan Dewar, who purchased Beacon Cottage in 1971, gave evidence to the FTT that when she and her husband moved there, there was no hedge between the house and the row of pine trees, although there was a cotoneaster hedge between the trees themselves ("all kind of interlocking"). It is possible that the 1949 hedge was removed in connection with a proposal to build a second

house in the garden of Beacon Cottage for which planning permission was granted in 1967. The planning application was made by Mr Heughan, who (jointly with his wife) had acquired Beacon Cottage in 1964 and who sold it to Mr and Mrs Dewar with the benefit of the planning permission for a second dwelling in about February 1971.



13. The 1971 sale of Beacon Cottage by Mr and Mrs Heughan to Mrs Dewar is significant because it provides the context for the agreement on which the FTT based its conclusion about the position of the disputed boundary. A report on title provided to Mrs Dewar by her solicitor, Mr Peter Munday, on 1<sup>st</sup> December 1970 was in evidence. Mr Munday explained that to the western side of Beacon Cottage there was a private roadway which was owned by a Mr. Noble of North Lodge over which Beacon Cottage enjoyed a right of way. After reporting on various other matters Mr Munday then said this:

"According to the Vendor, you will be responsible for the maintenance of the fences or hedges on the West and South side of the Property. The other fences are maintained by adjoining owners. There is a dispute regarding the ownership of the Pine Trees that are on the Western boundary of the Property. The vendor states that the trees are outside of the boundary hedge, and therefore, must belong to the owner of the lane, i.e. Mr. Noble."

14. In an ironic reversal of the positions now taken by their successors in title, it appears from Mr Munday's report that in 1970 the owner of North Lodge, Mr Noble, and the owners of Beacon Cottage, Mr and Mrs Heughan, were each keen that the land on the eastern margin of The Avenue on which the pine trees stood should belong to the other. The pine trees were very tall and in the FTT's decision the Judge agreed with a suggestion made by Mr Bishop that Mr and Mrs Heughan may have been anxious not to have responsibility for maintaining them. Whether that is correct or whether there was some other unknown reason for the dispute it is clear that there was a dispute. A dispute about the ownership of the trees was necessarily also a dispute about the position of the boundary.
15. In her evidence to the FTT Mrs Dewar explained that after the sale was completed the dispute was resolved and that she and her husband applied for a tree preservation order with the consent of Mr Noble. She produced a typed memorandum signed by both Mr Noble and Mr Dewar dated 28th October 1971 which reads as follows:

"This is to certify that it is agreed between Stewart Grant Dewar of Beacon Cottage, Battle, and Charles Patrick Cay Noble of North Lodge, Battle, that the strip of land and the trees thereon which forms the western boundary of Beacon Cottage is the property of the said Stewart Grant Dewar."

The Judge referred to the agreement as "the Memorandum" and I will do the same.

16. The decision goes into some detail about events after the signing of the Memorandum but for the purpose of the appeal it is enough for me to record that title to Beacon Cottage was first registered in 1977 on a sale by Mrs Dewar to Mr Salmon and that Mrs Jaques, the respondent, and her husband became the registered proprietors in 1982. North Lodge (including The Avenue) was sold in 1979 by Mr Noble to Mr and Mrs Ashworth from whom Mr Bishop acquired it in May 1992. At some later date he sold the house and retained only The Avenue and a small field in the northwestern corner of the grounds of North Lodge which by then had been zoned for residential development.

### **The defined boundary application**

17. In May 2020 Mr Bishop applied to the Land Registry to determine the boundary between the two properties. He asserted that the true line of the boundary was along a line shown on the application plan which was intended to denote the position of the 1949 hedge on the western side of the garden of Beacon Cottage. Mrs Jaques objected to the application which was then referred to the FTT for determination.
18. Mrs Jaques' objection was based on three propositions. First, that the boundary shown on the 1949 Conveyance was immediately to the west of the row of pine trees which had existed at that time. Secondly, that the parties' predecessors in title, Mr Noble and Mrs Dewar, had reached an agreement in 1971 that the land on which the pine trees stood was part of Beacon Cottage and that agreement was binding. And finally, that in any event Mrs Jaques and her predecessors had been in

control and exclusive possession of the land now claimed by Mr Bishop for more than 12 years before 13 October 2003 and that, by reason of that adverse possession, if the land was within Mr Bishop's title he held it on trust for her benefit.

### **The FTT's decision**

19. The FTT's decision was framed by reference to the grounds of Mrs Jaques' objections. The Judge dealt first with the boundary agreement, which he held to be decisive. He identified the relevant principles by reference to the decision of the Court of Appeal in *Nata Lee Ltd v Abid* [2014] EWCA Civ 1652 and the decision of Megarry J in *Neilson v Poole* (1969) 20 P. & C.R. 909. He determined that the Memorandum was not ineffective for failure to comply with formalities for the transfer of land, because it had not been intended to effect a transfer of land, but rather had recorded the parties' agreement about the true position of the boundary; as the Judge explained, "they certified that they agreed that the land *is* (i.e. already, as opposed to from henceforth) owned by Mr Dewar." In the light of Mr Munday's report of 1 December 1970 identifying the existence of a dispute over the ownership of the pine trees, the Judge interpreted the Memorandum as an agreement that the trees and the strip of land on which they stood were part of the property of Beacon Cottage. Finally, the Judge considered whether the fact that the Memorandum was made between Mr Noble and Mr Dewar, rather than Mrs Dewar, who was the owner of Beacon Cottage, robbed it of binding force. He decided that it did not, because:

"It is clear from Munday's correspondence that Mr Dewar dealt with matters relating to the purchase of the property on his wife's behalf. He acted as her agent and in the case of the Memorandum she was an undisclosed principal."

20. The Judge explained, correctly, that his conclusion on the binding effect of the Memorandum resolved the application conclusively against Mr Bishop. But, because he had heard a good deal of evidence about adverse possession and about the location of the boundary on the paper title, he considered those issues as well.
21. As to the location of the boundary on the 1949 Conveyance, the Judge considered that the line of pine trees which had lined the Avenue in 1949 was most probably the feature which the parties would have taken to mark the boundary. He decided that they were the feature which was being depicted by the solid line on the 1949 Conveyance plan and although there probably was a hedge inside the line of the trees the trees would have been the substantial boundary feature. There would have been some doubt about the matter, as there was in 1970, but a reasonable person would have understood that the pine trees rather than the 1949 hedge marked the boundary and that that is why Mr Noble and Mr Dewar were able to agree the point in 1971.
22. On the issue of adverse possession the Judge first directed himself on the relevant principles then considered evidence about the maintenance of the cotoneaster hedge by Mrs Jaques and her predecessor Mrs Dewar, and the disposal of the fallen trees after the hurricane of 1987 (again by Mrs Jaques). He dealt with care and in detail with disputed evidence concerning conversations between Mrs Jaques and Mr and Mrs Bishop about the trees and the hedge, before concluding that, even if his previous findings were wrong, Mrs Jaques and her predecessors have been in adverse possession of the land up to the line of the trees since at least 1980 and that if it did not belong to her already, she had acquired title to it by that means.

### **Grounds of appeal**

23. The issues for which permission to appeal was granted were these:

1. Whether the FTT erred in law or was plainly wrong in concluding that the 1949 paper title boundary lay along the western edge of the line of pine trees.
  2. Whether the FTT was wrong in law to treat the 1971 agreement as valid and binding despite having been executed by Mr Dewar, who was not the registered proprietor.
  3. Whether the FTT was wrong to conclude that the Memorandum operated as an effective boundary agreement, despite failing to meet the formal requirements for a transfer of land.
  4. Whether the FTT erred in concluding that Mrs Jaques had acquired title to the land by adverse possession.
24. As the Judge pointed out when himself refusing permission to appeal, it is necessary for Mr Bishop to succeed not only on ground 2 or ground 3 but also on both of grounds 1 and 4, since these were free standing alternative grounds for the dismissal of his application. It is nevertheless convenient to begin by considering the validity and effectiveness of the Memorandum as a boundary agreement, which the Judge found to be determinative. Unless Mr Bishop can dislodge the Judge's conclusions on grounds 2 or 3 the appeal must fail.

### **Was the Memorandum binding?**

25. Grounds 2 and 3 are both concerned with the validity and effect of the Memorandum and whether the FTT was entitled or correct to find that it established definitively that the location of the boundary was in a different position from the line proposed by Mr Bishop and was therefore fatal to the success of his application.
26. On behalf of Mr Bishop, Mr Ingham took four points against the FTT's decision on the effect of the Memorandum of 28th October 1971, two each under grounds 2 and 3 of the grounds of appeal.

#### *Ground 2: pleadings and evidence*

27. Mr Ingham first took a procedural point, submitting that what he referred to as "the agency theory", namely, that Mr Dewar had acted as his wife's agent in concluding the agreement recorded in the Memorandum, and that "she was an undisclosed principal", had not been pleaded in Mrs Jaques' statement of objection to the defined boundary application nor in her statement of case in the FTT proceedings and had appeared for the first time in the Judge's decision, not having been raised at the hearing. Mr Bishop, who represented himself at the hearing, had not been alerted to the significance of the proposition that Mrs Dewar was an undisclosed principal, and had not had a fair opportunity to respond to it, to test the evidence or to consider how he might challenge it by evidence or argument. That was unfair and amounted to a procedural irregularity which vitiated the FTT's conclusion.
28. I do not accept this submission. In my judgment the proceedings were conducted fairly and the case Mr Bishop had to meet was clearly explained in advance.
29. I begin with the objection to the application for a defined boundary submitted to the Land Registry on Mrs Jaques' behalf by her solicitor on 13 July 2020. In it, Mrs Jaques asserted that the disputed land between the line of the 1949 hedge and the western edge of the verge on which the pine trees had formerly stood was within her ownership. One reason was the Memorandum, which was said to be a binding agreement between the parties' respective predecessors: "The then owner of North Lodge, Mr Noble, signed a written boundary agreement with Mr Dewar, acting on his and Mrs Dewar's behalf, to agree that the land and the pine trees thereon formed part of Beacon Cottage's title."



30. In her statement of case for the FTT proceedings, Mrs Jaques case was put in the same way: Mr Dewar had agreed with Mr Noble that the strip of land on which the trees stood was his (Mr Dewar's) property, but "In fact Mr Dewar was not the owner of Beacon Cottage but he was negotiating with Mr Noble on behalf of his wife, who was the owner."
31. Mrs Dewar had previously made a witness statement (in 2015) which was relied on by Mrs Jaques in the proceedings. In her statement she explained that legal correspondence at the time she acquired Beacon Cottage in 1971 had been addressed by her solicitor, Mr Munday, to her husband, as they were personal friends. She referred to the report on title and the information that there was a dispute regarding the ownership of the pine trees on the western boundary. Her statement continued:

"There was an issue as to who was responsible for maintaining the trees. Stewart and I then agreed to apply for a preservation order with the consent of Mr Noble who then acknowledged our ownership of the Pine trees and the boundary hedge alongside it. I refer to a letter dated 28<sup>th</sup> October 1971 signed by Mr Noble and my late husband, Stewart.

By 28<sup>th</sup> October 1971, I believe I had transferred Beacon Cottage into the joint names of me and Stewart. I was not a signatory to the letter of 28<sup>th</sup> October 1971 but I was fully aware of it."

32. Mrs Dewar was mistaken in her belief that she had transferred the property into joint names by the time the Memorandum was signed. But the material I have referred to gave Mr Bishop ample notice that it was Mrs Jaques' case that Mr Dewar had acted on his wife's behalf when he signed the Memorandum which described Beacon Cottage as his property when at that time it belonged to her.
33. Mrs Dewar attended the hearing and was cross examined by Mr Bishop. There is a transcript of the proceedings. Mr Bishop put this question to Mrs Dewar about the Memorandum:

"Q. Yes; so there's a very simple agreement and the key bit is, apart from where the people are, is that the strip of land and the trees thereon, which forms the western boundary of Beacon Cottage, is the property of the said Stewart Grant Dewar, which means you, as well. Now, that doesn't mention the Scots Pines, does it?"

It is clear from Mr Bishop's question that he considered that when the Memorandum referred to Beacon Cottage as the property of Mr Dewar, it was to be understood as meaning Mrs Dewar as well.

34. Mr Ingham submitted that it was not enough for Mrs Jaques to allege that Mr Dewar had acted on his wife's behalf. Her statements of case did not allege that Mr Dewar had actual or ostensible authority to bind his wife in law. In my judgment that is not a sustainable criticism. It was enough for the statements of case to make clear that Mr Dewar was negotiating on his wife's behalf, and for her evidence to confirm that she was fully aware of that. Had Mr Bishop wished to explore whether Mrs Dewar had specifically asked her husband to represent her, or whether he had been acting on his own, with her knowledge but without her approval, he had the opportunity to do so.
35. Nor did the Judge's description of Mrs Dewar as an "undisclosed principal" have any effect on the fairness of the proceedings. It was not part of the case advanced by Mrs Jaques that Mrs Dewar was undisclosed and there does not seem to have been evidence going to the question of whether Mr Noble knew that she was the owner of Beacon Cottage. Whether Mr Dewar made it clear that

he acted on behalf of his wife, notwithstanding the reference in the Memorandum to the property as belonging to him is unknown. Mr Ingham did not explain why it mattered whether Mrs Dewar's role was disclosed or undisclosed and I do not think it did. What mattered was that Mr Dewar acted on behalf of his wife, who was the owner. I therefore reject Mr Ingham's first point.

36. Mr Ingham next submitted that there was no evidence that Mr Dewar had authority from Mrs Dewar to reach an agreement on her behalf. I disagree. Mrs Dewar's evidence was that she was aware of the agreement with Mr Noble. In the course of her cross examination by Mr Bishop she responded to a question about the absence of a plan from the Memorandum by saying this:

"A. In those days, we weren't going in for a lot of litigation. It was a conversation which we discussed with Colonel Noble; they discussed it; we said, "We are responsible"; and he certified that piece of paper and that was to cover everybody."

That evidence might be said to have been unclear about whether Mrs Dewar herself had participated in the relevant conversation, or whether it had been conducted only between her husband and Mr Noble. But it provided ample material from which, in view of the correspondence which he saw and the general circumstances, the Judge was entitled to infer that Mr Dewar had acted with his wife's authority. That was Mrs Jaques pleaded case, with which the evidence was consistent and which on that point was not challenged by Mr Bishop. I therefore reject Mr Ingham's second point under his ground 2.

### *Ground 3: Interpretation and formalities*

37. Since the decision of the FTT in this case, which was based on *Neilson v Poole* and on *Nata Lee Ltd*, the statements of principle concerning the binding effect of a boundary agreement which were relied on have been analysed and confirmed by the Court of Appeal in *White v Alder* [2025] EWCA Civ 392.
38. The issue in *White v Alder* was whether a boundary agreement between predecessors in title of the parties, of which the parties themselves had been unaware at the time of their own acquisitions, was binding on them. Having reviewed the relevant authorities at [21]-[52], Asplin LJ (with whom Zacaroli LJ and Sir Launcelot Henderson agreed) took stock, at [53]-[54]:

"53. Where does that leave us? Drawing all of the authorities together, it seems to me that as Megarry J first explained, there are two types of boundary agreement. The first is an agreement the purpose of which is to move a boundary so as to transfer land from one neighbour to another. That first type is subject to the formalities necessary for the transfer of land. The second type is an agreement, the purpose of which is to define a previously unclear or uncertain boundary, even if it includes the conscious or unconscious transfer of a trivial amount of land. It is presumed that the land transferred is trivial unless the presumption is rebutted. This second type, a boundary demarcation agreement, binds the parties to it for the reasons explained by Briggs LJ in *Nata Lee Ltd* at [32]. The consideration for the agreement is the substitution of certainty for uncertainty and the avoidance of the risk of future disputes. Although in many cases, the parties will act upon the agreement, for example, by building a wall or erecting a fence, there is no need for anything more in order to render it binding as between them. [...].

54. Such an agreement has proprietary effect and, as a result, also binds successors in title. It does so because of its very nature. It defines and delineates the boundary

between the properties as from the root conveyance or transfer. Such an agreement is, of its very nature, a delineation of the property transferred or conveyed and is so for all purposes. As no one is able to transfer or convey more than they own, such an agreement effectively “binds” successors in title whether or not they have knowledge of it. It does so because it defines what they purchase. As “*Ruoff and Roper on the Law and Practice of Registered Conveyancing*” explains at paragraph 5.020, a legal boundary does not move because the land is subsequently conveyed or transferred. The boundary demarcation agreement is ancillary to the conveyance or transfer. As Megarry J explained at 919 of *Neilson v Poole*, the boundaries established are, in the words of Lord Hardwick L.C. in *Penn v Lord Baltimore*, “presumed to be the true and ancient limits”. In other words, a boundary demarcation agreement establishes on the ground the physical extent of the respective legal estates created by the conveyance or transfer. The boundary is presumed always to have been in that location.”

39. Mr Ingham’s next challenge to the effectiveness of the Memorandum was to the Judge’s interpretation of the document. He submitted in his skeleton argument that the Judge should not have treated the Memorandum as determinative when it referred only to trees and not to defined boundary features. It contained no plan, dimensions, coordinates or title references. Its subject-matter was described in general terms and, Mr Ingham submitted, there was ambiguity even as to which trees it referred to. Despite this, the Judge concluded that the parties could not have been referring to anything other than the Scots Pines, and that the boundary had thereby been fixed. This conclusion was said to ignore the presence of other significant trees and vegetation in the area at the time, as shown in photographs and expert analysis.
40. I do not accept these submissions. The Memorandum was clearly intended to be a formal document; it recites that its purpose is to record the existence of an agreement and to some extent it is couched in legalese. With the benefit of the near contemporaneous correspondence and the planning permission plan it is abundantly clear what trees are being referred to, namely the trees shown on that plan. Those trees were not individual specimens but stood in a line, and so were consistent with the reference to “the strip of land and the trees thereon”. They were also very substantial and required no other qualifying description to make it clear which they were. Significantly, the context in which they were being referred to in the Memorandum was the resolution of a dispute, as Mrs Dewar explained, and the trees about which there had been a dispute between Mr Noble and the previous owner of Beacon Cottage were specifically identified in the report on title as pine trees. I therefore agree with the Judge that it is fanciful to suggest that the trees with which the agreement was concerned were other than the row of pines trees shown on the planning application plan.
41. The original parties having agreed that the trees and the strip of land on which they stood (a reference to the verge on the eastern side of the Avenue) were part of Beacon Cottage, it is immaterial for the purpose of these proceedings that the precise position of the trees was not specified. The stumps of the trees are still present and their location is not in doubt. Nor is there any need for a boundary agreement to satisfy the technical requirements of a determined boundary application. What matters is that the owners of land on both sides of the boundary agreed that the trees and the strip of land they stood on form the western boundary of Beacon Cottage. That is enough to defeat Mr Bishop’s application to determine a boundary up to three or four metres to the east of the trees.
42. Mr Ingham’s fourth and final submission about the effect of the Memorandum was that the Judge had failed to distinguish sufficiently between the two different types of boundary agreement identified in the authorities and at times had treated the Memorandum as an agreement to transfer

land. If the agreement was of that type, it was invalid as it did not meet the requirements of section 52(1), Law of Property Act 1925 that all conveyances of land must be made by deed.

43. Contrary to Mr Ingham's submission, the Judge left no doubt at all that he accepted the pleaded case of Mrs Jaques and the submissions of Mr Williams that the Memorandum was not intended to achieve a transfer land from one title to the other. It was, he said, an agreement "in which the parties agree that the true position of boundary is or shall from henceforth be agreed to be in the position they decide without consciously transferring any land between them." No formalities were required to be completed to give effect to that agreement. The Judge also rightly recognised that the question whether any transfer was actually effected was irrelevant, because the parties expressed themselves simply to be recording the position and ownership of the boundary as it already was, not as it was intended to become as a result of the agreement. That approach is entirely consistent with the reasoning of Asplin LJ in *White v Alder* at [54] and specifically with the statement that "a boundary demarcation agreement establishes on the ground the physical extent of the respective legal estates created by the conveyance or transfer. The boundary is presumed always to have been in that location."
44. The passages which Mr Ingham relied on to suggest that there was some ambiguity in the Judge's approach concerned the question whether the extent of the land which might in fact have been transferred was trivial or not. At paragraph 3.5 that question was specifically stated by the Judge to be irrelevant. What followed in paragraph 3.6 was therefore based on a counterfactual and dealt with a matter which was known to be irrelevant. It was no doubt included out of courtesy to the wide ranging arguments presented by Mr Bishop, but it did not cast any doubt on the Judge's clear conclusion that the boundary agreement did not transfer any land from North Lodge to Beacon Cottage.

### **Other grounds of appeal**

45. Mr Bishop was given permission to appeal the FTT's conclusion that the western boundary of Beacon Cottage in the 1949 Conveyance was along the line of the pine trees. He contends that the Judge overlooked the agreed position between the experts that the solid line shown on the OS plan used as the base of the Conveyance plan most probably represented the 1949 hedge shown on the contemporaneous planning application drawing. There is force in the submission that the Judge may have overlooked the importance of that evidence and that his assumption that the pines which lined the Avenue were the feature which was being depicted by the solid line on the 1949 conveyance plan was an unexplained departure from it. But whether that is so or not is irrelevant and has been irrelevant since the position of the boundary was agreed in 1971. The parties are bound by their predecessors' agreement, even if it is contrary to whatever may have been the intention of the original parties to the 1949 Conveyance. I therefore intend to say no more about the first ground of appeal.
46. Mr Bishop was also given permission to challenge the FTT's conclusion that Mrs Jaques could also rely, if necessary, on a title acquired by adverse possession. Because of the Judge's finding about the effect of the Memorandum, it was not necessary for Mrs Jaques to rely on her fallback adverse possession case, and as Mr Ingham recognised, that may have influenced the way the issue was approached in the decision. The Judge concentrated on determining a number of hotly contested disputes about who had said what to whom about planting a new hedge and about ownership of the trees which he obviously felt ought not to be left unresolved. He dealt more economically with the facts necessary to sustain a claim based on adverse possession, but that economy was perfectly justified in the circumstances. In the event, that issue does not arise and I need not determine the fourth ground of appeal.

## **Disposal**

47. By reason of the 1971 Memorandum, the title to North Lodge which Mr Bishop acquired in May 1992 did not include the strip of land on which the row of pine trees had previously stood. His application to determine the boundary in a position which would incorporate that strip of land into his title therefore could not succeed and his appeal against the FTT's dismissal of his application fails. If the Chief Land Registrar has not yet given effect to the FTT's direction to cancel Mr Bishop's application, he should now do so.
48. In a land registration appeal the successful party is usually entitled to recover their costs from the unsuccessful party. Mrs Jaques is the successful party in this appeal and should be entitled to her costs unless there is some good reason to make a different order. If Mr Bishop wishes to make submissions on the form of order I should make he may do so within 14 days of the date on which this decision is sent to him.

Martin Rodger KC  
Deputy Chamber President

9 May 2025

## **Right of appeal**

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.