



REF/2023/0590

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

**Janet Frances Mary Edwards
APPLICANT**

and

**Neil Morton Parker
RESPONDENT**

**Property Address: Land lying to the South of Arafon, Tremain,
Cardigan (SA43 1SL)
Title Number: CYM850106**

**Sitting at: Carmarthen Court
On:**

Applicant Representation: Mr Rhodri Donne (Applicant's lay representative)
Respondent Representation: Mr Parker (self-represented)

DECISION

Keywords: FRI application for first registration – whether conveyance is good root of title – construction of words – admission of extrinsic evidence in the form of subsequent conduct

Cases cited:

Pennock v Hodgson [2010] EWCA 873

Investors Compensation Scheme Ltd v. West Bromwich BS [1998] 1 WLR

Neilson v Poole (1969) 20 P&CR

Clarke v O'Keefe (1997) 80 P&CR

Ali v Lane [2006] EWCA Civ

J.A Pye (Oxford) Ltd v Graham and anor [2002] UKHL 30.

1. The Applicant Mrs Janet Frances Mary Edwards has applied for first registration of land known as Penbont Tremain. The application is based on paper title commencing with a conveyance of sale dated 31 August 1940 (“the 1940 conveyance”). Mrs Edwards also says that if she does not have paper title to the land it has been acquired by adverse possession. The Respondent, Mr Neil Moreton Parker objected to the application. He says that Mrs Edwards paper title is inadequate, and he also argues that she has not been in adverse possession of the land for the requisite period required for title to be acquired by adverse possession.
2. The Respondent entered the land as a trespasser on 17 April 2022 and has been squatting on part of it since that date. He has no proprietary interest in any adjoining land
3. Penbont Tremain appears on the 1905 Ordnance Survey(OS) map as a row of cottages with gardens extending south from the A487 trunk road to the Nant Arberth river, all situated within OS enclosure 301 (*Figure 1*). It is not clear if the row of cottages comprised one or more dwellings in 1905 but since that time the cottages together with those bordering the northern edge of the A487 have all but disappeared. Some were demolished in the 1960s to accommodate a road widening scheme. All that remains is a small lean-to extension that was joined to the rear of one of the cottages.

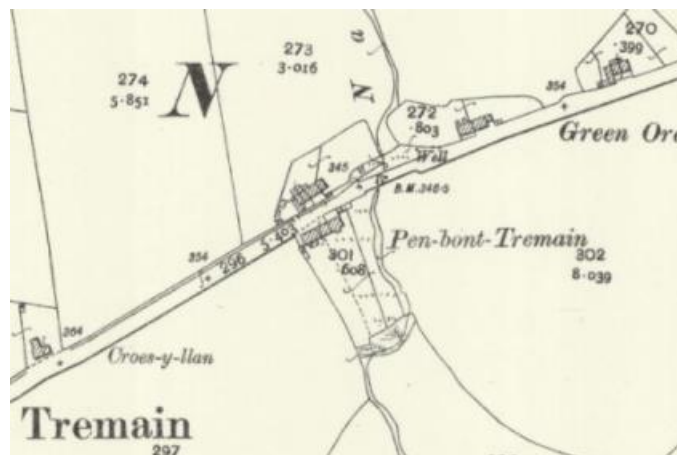


Figure 1 extract of 1905 OS Map

4. I visited the land on 8 October 2024 with the Applicant’s representative, the Applicant and her husband Mr Edwards and the Respondent. I heard the reference on the 9 and 10 October 2024 at Carmarthen County Court. The Applicant was represented by her son-in-law Mr Rhodri Donne, the Respondent represented himself.
5. I heard evidence from both parties and from the Applicant’s witnesses: Mr John Lyn Philips, Mrs Myra Jones, Mr John Huw Lewis, Mr Kevin Edwards, Mr Roger Davies and Mrs Lisa Donne. I also considered the witness statements of Mrs Evelyn Glenys Evans and Mr Robert Arlington who were unable to attend the hearing. I have no doubt each of the Applicant’s witnesses gave evidence honestly according to their recollection.
6. I find that the Applicant has paper title to the application land at Penbont; and if I am wrong about that she has acquired title by long possession. I have therefore directed the

registrar to give effect to the application as if the Respondent's objection has not been made.

7. In the paragraphs that follow I give reasons for my decision. I describe the land, explain the Applicant's title to the land, and the use of the land by the Edwards family; I then consider the Respondent's objections and the reasons why they do not succeed.

Background

8. Mrs Edwards inherited Penbont from her maternal grandfather Mr Daniel Evans Davies following his death in 1969. Mr Davies had owned Penbont since his purchase on 31 August 1940. Mrs Edwards and her family are farmers. They have lived in Tremain for over 80 years. Her mother, Mrs Evelyn Evans, inherited other property in Tremain from Mr Davies including the farmhouse Llysnewedd, and the adjacent 5.851 acres field (OS enclosure 274). Mrs Evans was 8 years old in 1940 when her father purchased Penbont. She is now 92 years old and continues to live independently at Llysnewedd, which is a stone's throw from Penbont.
9. Mrs Edwards was 11 years old in 1969 when she inherited Penbont. It was therefore held on trust by the executors of the will (her mother Mrs Evelyn Evans and aunt, Mrs Iris Maud Arlington). As a child, Mrs Edwards kept her pony 'Star' on the land. In about 1979 Mrs Edwards started a farming business with her husband Mr Edwards. From then the land was used for keeping livestock. As their farming business grew they acquired other land in Tremain and Llandeilo. Their use of Penbont for livestock gradually diminished but they continued to use the land on and off to graze horses and other animals, and occasionally to isolate sick animals. Restrictions on transportation of animals following outbreaks of bovine TB and foot and mouth in 2000/2001 affected the business. From then the land was largely untended, the Edwards concentrating on their other farmland.
10. The land is enclosed to the west by post and rail fencing and a mature hedge/treeline. Prior to Mr Parkers entry onto the land there was an overgrown hedge along the frontage with the A487. The Nant Arberth forms a natural river boundary on the southern and eastern sides. In 2022 Mr Parker was scouting this part of Wales for areas of unregistered land that might be suitable for long term squatting with a view to establishing possessory title. He identified Penbont as an opportunity and after observing it for lack of activity created an opening along the frontage to pull a caravan onto the land. This was quickly spotted by the neighbouring landowners who alerted the Edwards to his trespass.
11. The executors did not take steps to formally transfer title to Mrs Edwards until the need to establish legal title arose in the context of court proceedings to remove Mr Parker from the land in 2022. A formal assent in Form AS1 was made on 30 June 2022 by Mrs Evelyn Evans the surviving executor, in favour of Mrs Edwards who then sought to register her title to Penbont. She agreed to limit the application land to exclude a small rectangle of land objected to by Welsh Government because it now forms part of the adopted trunk road. That area is shown cross hatched on a copy of the Notice Plan dated 12 June 2023 (*Figure 2*). The remainder of the land edged blue on the Notice Plan is the application land. The remains of the lean-to extension is shown as a small rectangle on the northern boundary.

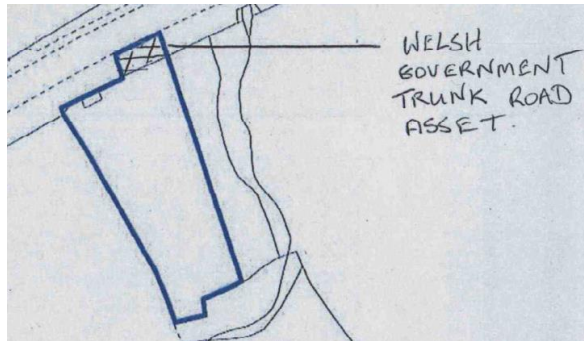


Figure 2 Notice Plan showing application land

12. Mr Parker acknowledges that he is a squatter with no registrable interest. He hopes that by succeeding with his objection he can secure an interest in possession to at least part of the land that will rank in priority over any other interest, and in due course entitle him to seek title by adverse possession.
13. The basis of Mr Parker's objection, put simply is that the application land comprises two distinct parcels of land which he calls Area 1 and Area 2 (Figure 3). In relation to Area 2 he argues that Mr Davies could not have bequeathed it by will to the Applicant because he didn't own it. Mr Parker does not dispute that Area 1 was owned by Mr Davies vendor but asserts that she did not own Area 2. This assertion is based on two agreements with the Secretary of State for Wales made in 1961 and 1966 respectively, in connection with a road widening scheme and two plans which Mr Parker believe date from about 1912. Mr Parker submission is that taken together these documents show (or at least create an inference) that Area 2 was not conveyed under the 1940 conveyance to Mr Davies.
14. In relation to both Area 1 and 2, Mr Parker also argues that the absence of a conveyance plan or any deed plan identifying the land conveyed by the 1940 conveyance means that it is impossible to determine the extent of land sold and the application should therefore be cancelled. Or, if not cancelled, limited to what is left of the dwellinghouse i.e. the lean-to extension, and a reasonable area of domestic garden immediately behind it.
15. Mr Parker also disputes that the Applicant has established title by adverse possession to any part of Area 1 or 2.

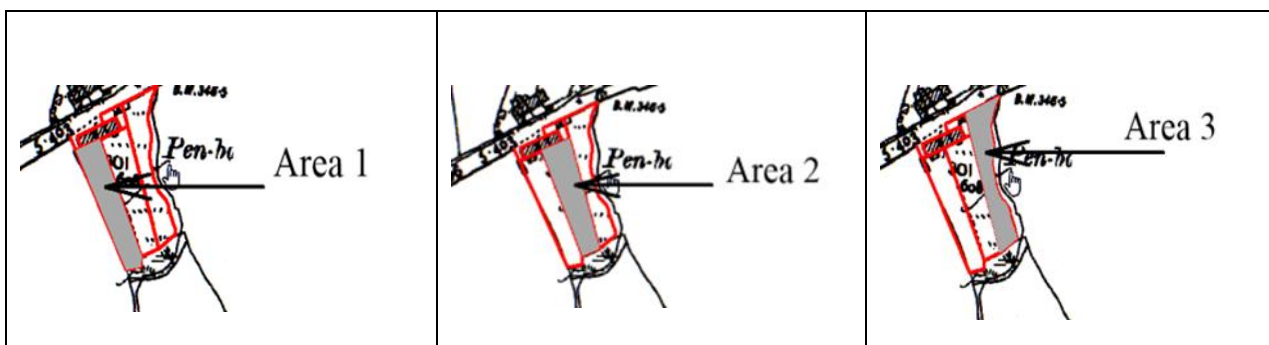


Figure 3 Mr Parker's area plans

The Applicant's paper title

16. The FR1 application is based on paper title commencing with the 1940 Conveyance made between (1) Elizabeth Jenkins of Llanderri Tremain and (2) Daniel Evans Davies of Llysnewdd Tremain. The original deed was submitted with the application. The Applicant also lodged an original 1940 Abstract of Elizabeth Jenkins title. The remaining documents are the grants of probate, the assent and official searches none of which are contentious. Mr Parker does not challenge the adequacy or validity of the documents filed in support of the application. His objection simply challenges the extent of land conveyed with the dwellinghouse and garden under the 1940 conveyance.
17. The 1940 conveyance recites the death of David Jenkins in March 1933 and the appointment of Elizabeth Jenkins as his executrix. It recites the agreement with Daniel Davies for the sale of the property at a price of £60.00.
18. Clause 1 of the operative provisions' states:

“In consideration of the sum of SIXTY POUNDSthe Vendor.....CONVEYS unto the Purchaser ALL THAT messuage or dwellinghouse garden and premises called PENBONT TREMAIN situate in the Parish of Tremain in the County of Cardigan and now in the occupation of David Jenkins.....”

19. There follows the usual acknowledgement found on a conveyance of part for production of the deeds specified in Schedule. The Schedule lists an Indenture date 30 September 1912 and the Will of David Jenkins dated 9 June 1933. The 1940 conveyance does not refer to a plan and no plan is attached to it.
20. The 1940 Abstract, presumably handed to the Mr Davies solicitor in 1940 with the conveyance, is handwritten. There is no transcript, but it is reasonably legible if somewhat painstaking to decipher.
21. It is an Abstract of an Indenture dated 30 September 1912 made between (1) Mary Jessica Propert Widow, William Thomas Fladgate Gentleman and Walter Archibald Propert Gentleman, and (2) David Jenkins Farmer. It commences with a long list of recitals concerning title devolution to the Properts. This is followed by the operative parts of the deed, which to summarise confirms that in consideration of the sum of £400.00 the Vendors conveyed to David Jenkins:

“All that messuage or dwellinghouse with the garden and premises thereto belonging and also All that field or close of land thereto adjoining All which said premises that formed part of and were held with the farmer of [Trefurlial] within the parish of Tremain within the county of Cardigan and comprise in the whole 7 Acres 2 Roods and 38 Perches or thereabouts and were delineated in the map drawn on the abstracting presents and therein coloured Pink such map being taken from the Ordnance Survey Map (2nd Edition 1905) of the said parish.”

22. Unfortunately, no copy of the map referred to as being drawn on the abstract accompanies the Applicant's deeds. The 1940 conveyance describes the property

without reference to either a plan, measurements, or OS parcels. The title out of which the property is conveyed (i.e. that referred to in the 1912 Indenture) is described by reference to its overall acreage and a plan which unfortunately is missing. The question which inevitably follows is whether the description of the property in the 1940 conveyance is sufficient to identify the property conveyed and if not what extrinsic evidence can be considered to clarify any uncertainty.

The issues

23. The relevant law governing applications for 1st registration is under:

Section 9 of the Land Registration Act 2002 which provides:

(2) A person may be registered with absolute title if the registrar is of the opinion that the person's title to the estate is such as a willing buyer could properly be advised by a competent professional adviser to accept.

(3) In considering this the registrar may disregard the fact that a person's title appears to be open to objection if he/she is of the opinion that the defect will not cause the holding under the title to be disturbed.

24. A competent professional adviser would be expected to advise a willing buyer to require the production of a good root of title commencing at least 15 years prior to the date of the conveyance – or in the case of voluntary first registration 15 years prior to the date of the application.

To be a good root of title the 1940 conveyance:

“must be capable of proving on the face of it (without the aid of extrinsic evidence) ownership of the whole legal and equitable estate in the property, containing a description by which the property can be identified and containing nothing to cast doubt on the title” (Williams on Vendor and Purchaser, 4th ed., vol 1, p.124).

25. A purchaser who is acquiring an unregistered estate may expect to be advised to accept a good marketable title. A good marketable title has been defined as a title which may be forced on an unwilling purchaser but must not expose him to litigation or hazard – *Pyre v. Waddington* (1852) 10 Hare 1; and also as a title which would enable a purchaser to sell without making special conditions restrictive of the purchaser's rights – *In re Spollon and Long's Contract* [1936] Ch 713.

26. The registrar has the discretion to accept only a good holding title, which has been described as a title which a willing purchaser might reasonably be advised to accept but which the court would not force on a reluctant purchaser – *Barclay's Bank Plc v. Weeks, Legg & Dean* [1999] QB 309 at 324-326.

27. The issues for the Tribunal are therefore:

- a. Has Mrs Edwards has shown a sufficiently good title to the application land for the registrar to be directed to register her as registered proprietor of the whole or any part of the land with title absolute. Sufficiently good title meaning either a

good marketable title (i.e. a title that a willing buyer could properly be advised by a competent professional adviser to accept), or a good holding title (i.e. a title that a willing purchaser might reasonably be advised to accept).

- b. If the answer to that question is negative, has Mrs Edwards has been in adverse possession of any part of the application land for a continuous period of 12 years so as to have extinguished the true owners title to that part of the application land.
28. The absence of a conveyance plan makes it necessary to consider the language used in the 1940 conveyance and the features on the ground at the time in so far as they can now be ascertained. The essential question is what land did the parties to the 1940 conveyance understand was being described as the “*messuage or dwellinghouse garden and premises called Penbont Tremain.....now in the occupation of David Jenkins.....*”. It is obviously too late for that question to be put to the parties but evidence of the subsequent use of the land is also admissible in determining what was conveyed.
29. The Edwards family between them have knowledge of the extent of the land used by Mr Davies and subsequently Mrs Edwards going back to 1940. The land surrounding Penbont has been owned by the Jenkins family to the East and Mrs Jones family to the West and South for a considerable length of time. Each adjoining landowner provided a witness statement confirming their understanding, that the extent of Penbont is precisely as contended for by Mrs Edwards. The land to the North is maintained highway and not in dispute. The evidence of usage will now be considered in more detail.

Evidence of usage

30. Mrs Edwards provided a witness statement and gave oral evidence at the hearing. Her relevant evidence concerning the use of the land is as follows:
- a. Her grandfather Mr Davies occupied the whole of Area 1 and 2 as far back as she can remember. Mrs Edwards recalls the northern boundary with the A487 trunk road being re-fenced in the 1960s during the road widening scheme. She states that at the time there was a wire and wooden farm fence around the Eastern Southern and Western boundaries which her grandfather would repair from time to time to ensure it remained stock proof.
 - b. The land was used as a flower garden for a period. Mrs Edwards remembers picking and selling daffodils along the roadside when she was about 11 or 12 years, sometimes with her two cousins Michael and Martin. Her grandfather kept a pony “Star” on the land which she retained after his death in 1969. Mrs Edwards was only 11 when her grandfather died. She said it was very touching that he left Penbont to her rather than one of her cousins. It was initially used as a family asset where she enjoyed learning to garden with her parents.
 - c. In the mid-1970s Mrs Edwards met Kevin Edwards. They would later marry. He had a long-held ambition to become a famer but did not come from a farming background. They decided Penbont would be an ideal starter holding on which to keep livestock. The first animals they purchased were 7 calves bought at

Cardigan Market. Later the same year they purchased 16 ewe lambs from the Webbs at Wernyards Tremain. Penbont is quite small but perfect for calves and sheep. The lean-to shed was excellent for housing the calves and for lambing.

- d. Mr Edwards erected some wire fences for penning the livestock to contain them. He also erected a more substantial post and wire fence in square sections around the perimeter of Penbont. The fence between Penbont and the Jenkins family land to the East (identified as Area 3 on *Figure 3*), was erected along the boundary between Area 2 and 3. While Penbont was in use for sheep the Edwards kept a creep feeder on the land for the lambs. Mrs Edwards produced photographs taken in 1984 of her family on the land which shows her mother and nephew with the sheep and the creep feeder. The photos also show a large area of hard core that had been laid for their vehicles. Mrs Edwards remembers Mr Edwards working to keep the fences in in good stockproof repair to retain the livestock
- e. In 1982 the Edwards purchased 10 acres of land at Nant Llan which is close by. They moved the calves and sheep to Nant Llan, and for a time after that kept 3 gilt pigs on Penbont. They also kept small ponies on the land. Mrs Edwards showed Welsh Cobbs and recalls her daughter Lisa Donne (born in 1988) playing with them.
- f. In 1988 the Edwards were granted a nearby council farm where they lived until 1991. However, they continued to use Penbont for storage of machinery and for intermittently keeping livestock.
- g. In 1991 the Edwards family moved to Bethlehem near Llandeilo, Carmarthenshire where they ran a substantial dairy farming operation of some 80 acres. They travelled back and forth between their farms in Bethlehem and Tremain throughout the year. During this time, they let Penbont to a local girl, Joanna Orme, for her ponies in return for her looking after some of their livestock at Nant Llan. Mrs Edwards mother who lives just along the A487 at Llysnewedd, also visited periodically to keep an eye on things for the Edwards.
- h. In 1996 the Edwards moved to Palle Farm which is about 8 miles from Penbont. By then the road had become dangerously busy for keeping livestock in any number at Penbont. It was just used for limited numbers of stock, and they kept a pony "Playboy" on the land.
- i. From 2000 on the use of Penbont for livestock was badly affected by two events. The first being the 2000/2001 outbreak of bovine tuberculosis (TB) in Wales which led to severe restrictions on movement of cattle. The second being the foot and mouth outbreak in 2001. Movement of livestock between the farms was restricted for a prolonged period. The Edwards stopped taking livestock to Penbont in case they were prevented from moving it back to Palle Farm. After that use of Penbont became more intermittent, mostly just for storage of machinery. Mrs Edwards made enquiries about possible redevelopment but was told by her agent that planning permission was unlikely due to access issues from the A487. After this Penbont was effectively mothballed and this accounts for overgrown condition it was in just before Mr Parker entered the land.

31. Mrs Edwards also gave evidence concerning the deeds. She confirmed that the original deeds and will have always been held by the family solicitors. At no time have they been in her possession. She confirmed that she showed Mr Parker a copy of her grandfathers will at a meeting on 18 April 2022. She also showed him a copy of the 1905 OS map which shows the enclosure boundaries of Penbont (*Figure 1*). She stated that the will did not have a plan attached to it and she had not shown Mr Parker a 'conveyance plan' or any plan of the type he asserts was shown to him at the meeting. The only 'plan' shown to him at the meeting was the 1905 OS map.

The witnesses

32. Mr Parker did not call any witness evidence. Mrs Edwards called 6 witnesses and provided a statement from two witness who were unable to join hearing remotely.

33. Mr Kevin Edwards provided a witness statement and gave oral evidence at the hearing. His relevant evidence is as follows:

- a. Mr Edwards said he had always wanted to be a farmer but unless you came from a farming family it was difficult to meet the criteria for obtaining one of the council farms. The land Janet inherited at Penbont was an ideal area of land on which to start farming. He describes their excitement when making their first purchase of calves (6 Charolais and 1 Herefordshire) from Cardigan Market in 1979. The land needed a bit of clearing and Mr Edwards erected a post and wire fence around the perimeter when they first started using Penbont for livestock. He said there had been an old rusted barbed wire fence between Penbont and Llandre's land, but it wouldn't have kept in stock, so he erected a post and wire fence between Areas 2 and 3. Mr Edwards was adamant there had never been any fencing between the Areas 1 and 2, the land has always been open.
- b. They used the whole of Penbont for calves, sheep, and pigs at different times. It wasn't the best land for grazing, but it was good for keeping livestock until the grass was growing on their other fields at which time he would rotate the livestock. It was also good for slimming overweight horses and isolating animals. Mr Edwards said that there had been a wooden farm gate with posts on the northern boundary which he chained up when animals were on the land. The gate has since disappeared. Mr Edwards said that he was particular about maintaining the fences while Penbont was in use for livestock because it was so close to a busy road. Once they stopped using it for livestock there was no reason for him to maintain the fences.
- c. Mr Edwards confirmed that the 1984 photographs showed Janet's mum (Mrs Evelyn Evans) and her nephew with the drip feeder and sheep. He explained that drip feeders stand on wheels so that they can be moved around the site to prevent the sheep standing or feeding on soiled land.
- d. Mr Edwards said that he and Janet planned to retire in 3 years and will move back to Llysnewedd. They will then clean-up Penbont and think about how to use it.

- e. During cross examination Mr Parker asked Mr Edwards to confirm that a section of fencing lying on the ground at the time of the inspection was in the same position as when he'd erected it. In other words, it was lying where it had fallen. Mr Edwards stated quite categorically that the perimeter fence had not been erected in that position and that someone had cut the wire where the fence was fixed to the southern boundary, and moved it. He also said that the section of fence on the ground might be one of the short stretches that he used to pen the sheep temporarily for transportation. These sections were not fixed at one end so that they could be moved to form a small enclosure. When asked, he agreed these sections served the same purpose as sheep hurdles.
34. I should mention that the day before the inspection Mr Edwards cleared part of the site. I was concerned that this might have affected some of the relevant features on the ground. Particularly after Mr Parker alleged that to be case during his oral evidence (although he had not put the accusation to Mr Edwards in cross examination when he had the opportunity). I recalled Mr Edwards to deal with the issue. He said that the frontage of the site had been blocked by silage bales. His solicitor advised him to clear the access and make sure that the land was generally accessible for the judge's visit. He explained that he had used a tractor to move the bales and clear a strip down to the southern boundary for access. The spoil had been pushed up to extend an existing pile that can be seen in Mr Parkers photographs. Mr Edwards said that he had not touched any of Mr Parkers chattels or moved the fence lying on the ground. Given the potential for dispute it would undoubtedly have been preferable for this not to have happened. However, as the fence was lying in a position that Mr Parker believed supported his argument it seems unlikely that Mr Edwards activities had any material bearing on the relevant evidence.
35. Mrs Evelyn Glenys Evans is the Applicant's mother, and the daughter of Mr Daniel Davies. She provided a witness statement and attended remotely to provide oral testimony. Unfortunately, Mrs Evans is 92 and suffers from very poor hearing which rendered remote participation impossible. Although she attempted to contribute it was quickly evident that Mrs Evans could not hear well enough to understand what she was being asked and I had to stand her down. This meant that Mr Parker was unable to put his questions to Mrs Evans. I have therefore considered what weight I can give to her written testimony given that it was not tested in cross-examination. Some of Mrs Evans recollections predate those of her daughter and can only have come from her and I have no reasons to suspect that the evidence is not hers. Mr Parker was not around at the time and can't really have much to say about it. Where relevant, I have therefore given weight to Mrs Evans early recollections and those parts of her evidence that are independently corroborated by other witnesses who were present at the hearing.
36. Her witness statement confirms:
- a. That it was prepared by JCP solicitors based on instructions provided by Mrs Evans and her daughter Mrs Edwards, in a telephone conversation. A draft statement was sent to her which she read. She confirms that the statement is correct to her knowledge when made. She confirms that the entirety of the application land (i.e. Areas 1 and 2) was owned and occupied by her family until Mr Parkers trespass.

- b. Mrs Evans confirms that she was born in 1932. She was 8 years old in 1940 when her father Mr Davies purchased Penbont, it has been part of her family's farm for over 80 years. Penbont originally consisted of a small dwellinghouse, garden and a section of land. Mrs Evans states that the boundaries of Penbont were always well defined and to the best of her knowledge the application land is the land her father believed he had purchased in 1940.
- c. Her recollections are that initially the stone cottages on the land were let by Mr Davies for rental income. In 1963 Welsh Government obtained a compulsory purchase order for land along the frontage in connection with a road widening scheme. The land was then re-fenced along the northern boundary. The Eastern, Southern and Western fences were wire and wood which her father kept in good stockproof repair. Mr Davies kept a small pony "Star" on the land. Mrs Evans recalls the land being used as a flower garden when Janet was 10 or 11 and her picking and selling the flowers along the roadside. She also recalls Janet playing on the land with her cousins Martin and Michael Harris and Robert Arlington as children.
- d. Mr Davies died in September 1969 appointing Mrs Evans and her sister Iris executors of his estate. Janet inherited Penbont under his Will. She states that they decided Janet was too young for a formal transfer of the land and that it would be used as a family asset for all to enjoy until Janet was old enough to look after it. Janet did however continue to use the land for her animals (she kept 'Star' on the land) and enjoyed gardening with the help of the adults.
- e. After meeting Kevin, who Janet went on to marry, they decided to purchase livestock to keep on Penbont. Mrs Evans recalls their first purchase of Charolais and Herefordshire calves from Cardigan Market. Kevin fenced the land to keep in the livestock. Mrs Evans states that the perimeter fencing on Penbont has never run between Areas 1 and 2 as contended by Mr Parker. It was always along the boundary between Areas 2 and 3.
- f. Later, around 1982 Janet purchased other land and moved the cattle to that field. After that Janet and Kevin began farming on a larger scale with sheep, cattle, pigs and ponies. Penbont was used for various things. Mrs Evans recalls the shed being used for lambing and as a shelter for the ewes.
- g. After Janet acquired a council farm in 1988, Penbont was used for storage of machinery and keeping livestock. The fences and hedgerows continued to be maintained to keep them livestock proof. Mrs Evans recalls that after 1991 when Janet moved to a larger council farm in Bethlehem the land was used by their neighbour Joanna Orme for her pony, and Mrs Evans kept a watchful eye on the land for them. In 1996 when Janet returned to the area to farm another council farm about 8 miles away, the road had become too busy to safely keep animals on Penbont. This was followed by a TB outbreak which placed travel restrictions on cattle. After Janet's planning enquiry came to nought the land was little used and then just for storage of machinery. It has been allowed to become overgrown in recent years.

were correctly shown. Mr Phillips confirmed to his solicitor that the boundary between Llandre and Penbont, as shown on the plan, was correct and stated that this remains his view.



Figure 4 Extract from title plan of Llandre (Mr Phillip's land)

39. Mr John Huw Lewis is a neighbour and friend of the Edwards. He was born in 1952 and has lived in Tremain all his life. Mr Lewis provided a witness statement and gave oral evidence at the hearing. His relevant evidence is as follows:
- a. Mr Lewis spend a lot of time as a youth visiting Llysnewedd, Janet's family home. He recalls the road widening scheme in the 1960s which included his family's farmland at Treprior. He also recalls Mr Davies renting out the cottage on Penbont to the Jenkins family for period before they were moved as part of the scheme. The land was more open then and good for rough grazing. It was certainly farmable if you brought feed on to supplement the grazing.
 - b. He remembers trespassing on Penbont as a youth with a group of friends until caught by Mr Davies who gave them a bit of a fright. He also remembers the cottage being demolished as part of the bridge replacement leaving just the lean-to at the back which is still there.
 - c. Mr Lewis said that Mr Davies and subsequently Janet and her family used the whole of the land referred to by Mr Parker as Area 1 and 2. He remembers there was a rhubarb patch which Janet and her parents maintained with the gardens and a larger area of land that was used for livestock. Mr Lewis recalls Janet and Kevin using the land for a small number of calves and applying for the council tenancy of the farm at Rhandir. They also kept pigs.
 - d. He remembers there being a fence between Penbont and Llandre (Areas 2 and 3) but has no recollection of a fence ever having existed between Area 1 and 2. In evidence he stated that Penbont comprised a wide area of land extending to the small sliver of land alongside the river. Although he hadn't seen Mr Edwards in the act of erecting the fence it was clearly stockproof otherwise the animals would have broken out. Mr Lewis also recalls that after 1991 when Janet and Kevin took on the farm in Carmarthenshire there were horses on the land which Janet's mother Evelyn would feed.

- e. In evidence Mr Lewis confirmed that he was 72 years old and lived just half a mile from Penbont. He said that the last time he saw much activity on the land was in the late 1990s but he had entered the land in 2020 to carry out a rook survey. He did not see any fencing between Areas 1 and 2.
40. Mrs Lisa Donne is the daughter of Janet and Kevin Edwards. She was born in 1988 and has personal knowledge of Penbont going back to childhood. She provided a witness statement and attended the hearing to provide oral evidence. Her relevant evidence is as follows:
- a. Lisa remembers her mother and grandmother keeping sheep and calves on Penbont. She used to walk down to Penbont from her grandmother's house at Llysnewedd to feed the animals. She named one of the pigs Sally Soch after her favourite book. Her mum kept a pony called Playboy on the land around 1996 and also some Welsh Cobbs and a Shetland pony which they took to horse shows.
 - b. Although her parents moved away for a period of some 8 years prior to 1996 they regularly came back to Tremain to visit her grandmother at Llysnewedd and to move the animals around the other holdings.
 - c. Lisa recalls that there was a wire sheep fence with wooden poles around the perimeter. It did not run between Area 1 and 2. She said the land was then quite open.
41. Mr Robert Arlington is a cousin of Mrs Edwards. Mr Davies was his grandfather. He filed a witness statement and was proposing to join the hearing remotely from Spain. Unfortunately, the Applicant discharged her solicitors a few weeks before the hearing and was unaware of the need to obtain the consent of the relevant Foreign Authority in Spain for Mr Arlington to give evidence from that jurisdiction. He could not therefore join the hearing to give oral testimony. I have therefore considered what weight can be given to Mr Arlington's written statement given that he could not be cross examined on his evidence. Much of Mr Arlington's evidence is corroborated by other witnesses who attended the hearing, to that extent I have taken account of his evidence.
42. Mr Arlington's relevant evidence is as follows:
- a. His memories of the land go back to childhood when he and Janet played in the grounds of Penbont. One side was overgrown with a large tree canopy bordering onto a further section with a stream running through it.
 - b. Mr Arlington does not recall Penbont ever being divided by fencing. It was always used as one large area. When his grandfather died the land was bequeathed to Janet. She was still young at the time so looked after Penbont with her father Gerald.
 - c. He recalls there being Welsh Cobbs on the land around 1982 and Janet and Kevin erecting a sheep fence around the perimeter which ran between their land and the land to the East.
 - d. Mr Arlington states that Janet and Kevin used the whole of Area 1 and 2 as one open field just as his grandfather had done.

43. Mrs Myra Jones owns Llandderi, the land immediately adjacent to the West and South of Penbont (*Figure 5*). She has owned Llandderi since 1984. The land was first registered in 2004. Mrs Jones provided a witness statement and attended the hearing by remote video conferencing to give oral evidence. Her relevant evidence is as follows:
- a. Mrs Jones has lived in Tremain all her life and has personal knowledge of Penbont. She has early memories of cottages at Penbont but can't recall who lived in them. She recalls Janet and her father keeping cows on the land.
 - b. She stated that the Edwards family have always kept livestock on the land and also farm machinery. As far as she could recall the Edwards family occupied the whole of the land without any distinction between Areas 1 and 2.
 - c. She knows of no other person owning or occupying the land prior to Mr Parkers trespass.

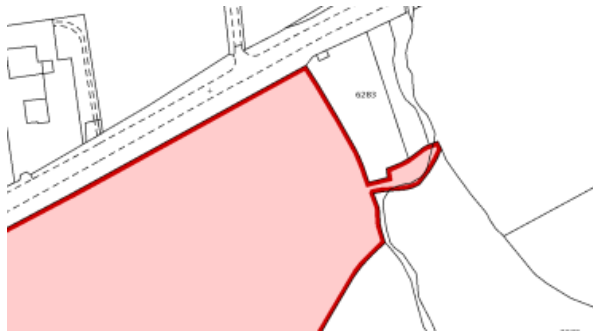


Figure 5 extract from title plan of Llandderi (Mrs Jones' land)

44. Mr Roger Davies is a chartered surveyor and auctioneer. He joined the firm of JJ Morris in 1977 and was based in the Cardigan office working as a calf auctioneer at Cardigan Livestock Market. Mr Davies provided a witness statement and gave oral evidence at the hearing. His relevant evidence is as follows:
- a. In the late 1970s he came to know Janet and Kevin and Janet's father Gerald Evans. He remembers Janet and Kevin purchasing calves at the market in Cardigan during the late 1970s but unfortunately cannot provide written records of the sale because they do not go back that far. He does however recall the calves being collected for transport to Penbont. Janet and Kevin were going to rear the calves at Penbont and then move them on so that they could keep sheep on the land.
 - b. Mr Davies remembers Kevin and Janet being given the tenancy of Rhandir in 1988. It was a smallholding that would have required the future tenant to have a farming background such as the smallholding at Penbont. In 1996 they obtained a larger council smallholding at Pallau.

Mr Parkers evidence

45. Mr Parker filed statement of case and gave oral evidence at the hearing. His personal knowledge of the land only dates from his entry onto the land in April 2022, although he states that he made covert visits to the area on a few occasions before this to scope out the potential of Penbont for adverse possession. Consequently, Mr Parker's

statement largely comprises submissions and legal argument concerning the Applicant's evidence. Mr Parker has no relevant evidence concerning occupation and use of the land for the period from 1940 to his entry on the land in 2022 because he was not there and has not produced a single witness who was.

46. I will first deal with an allegation Mr Parker made that Mrs Edwards concealed evidence from and has sought to mislead the Tribunal and HM Land Registry about the extent of the application land. He states that Mrs Edwards showed him what he describes as a 'conveyance plan' when they met on 18 April 2024. He said the plan identified the land which he describes as Area 1 and believes it had been attached to either the will or the 1940 conveyance. He said he was familiar with the form of deeds plan and was convinced that the plan he was shown by Mrs Edwards was a deeds plan. I asked him how the land was identified on the plan. He said he thought it had been edged in red or just heavily edged but couldn't recall which. He also doubted Mrs Edwards oral evidence that she had never been in possession of the original documents.
47. I do not accept Mr Parkers evidence concerning the alleged plan. First, neither the will nor 1940 conveyance refer to a plan. Secondly, I found Mrs Edwards to be a straightforward and honest witness. She gave her evidence simply, and with unmistakable integrity. Thirdly, I do not find it credible that Mr Parker would have forgotten whether the area of land he has taken such pains to distinguish was coloured on the plan or just heavily edged. I have no hesitation in finding that Mrs Edwards did not show Mr Parker a conveyance or deeds plan of the type described which she subsequently concealed. I accept that the only plan shown to Mr Parker was a copy of the 1905 OS map.
48. Much of Mr Parkers argument depends upon the position of the livestock fence erected by Mr Edwards. He argues the topography of the land shows an historic boundary structure of some sort dividing what he refers to as Area 1 from Area 2 and believes that line was followed by Mr Edwards when he erected his livestock fence. Unfortunately, no part of the fence erected by Mr Edwards between Penbont and Llandre remains in position. Mr Parker refers to this at paragraph 13 of his statement where he says: "*This fence is almost entirely collapsed, and the portions of it that were accessible have been removed by me. There remains enough of the fencing to clearly determine its original line. The line of the fence has been shown on Map 6.*" On inspection it was clear that no part of the Eastern perimeter fence remained standing. I could see a short length of post and wire fencing on the ground, in a fairly central position, which Mr Parker submitted must have been in its original position because a tree had fallen across it. Mr Edwards categorically denied the perimeter fence had ever run in that position, he said that either Mr Parker had moved the fence, or it was one of his short lengths of fencing that could be moved to hurdle the sheep.
49. By the time of my inspection no part of the eastern perimeter fence remained standing; and it was not possible to see the position of any rotted posts remaining in the ground because the site was overgrown, and in places completely impenetrable. It was also not possible to say with any degree of certainty whether the short length of fence lying on the ground was in its original position when the tree collapsed. No one knows when the fence or the tree collapsed. No one knows if the fence and/or tree was moved, because the land has been out of regular use by the Edwards family for over 20 years. The one stretch of eastern perimeter fence that was standing when Mr Parker took possession,

was a section running north to the road. This section was unfortunately removed by Mr Parker. He said the fence was falling over, and that he had not appreciated the significance of its position when he removed it because the only evidence he had seen at that time was the will and map.

50. Whatever the motivation, the simple fact remains that it was not possible to determine the original position of the eastern perimeter fence from what was visible on the ground during my inspection. I was not convinced that the changes in level that Mr Parker pointed me to indicate the line of an historic boundary structure. The ground at those points was generally bumpy and completely overgrown to the extent that it would not have been possible for me to identify on a map precisely where we were standing. It was an argument that needed a detailed topographical survey of the land and an expert report on the surveyor's findings. No inference concerning this point could possibly be drawn from what was visible on the ground during a short visit

Law

51. Neither party cited any law concerning construction of the conveyancing documents or the legal principles to be applied. Mr Parker's challenge relies on extrinsic evidence which is of little weight in construing the 1940 conveyance. He cited *J.A Pye (Oxford) Ltd v Graham and anor* [2002] UKHL 30 as authority for arguing the requirements for adverse possession had not been met.
52. The 1940 conveyance identifies the land only by reference to its address. There are no measurements in the conveyance itself or by reference to the OS parcels that comprise Penbont. There is no plan delineating the extent of the property. It is identified only as the property known as Penbont Tremain, being that which was in the occupation of David Jenkins when he died in 1933. The title out of which the 1940 conveyance devolves is described in the 1912 Indenture by reference to acreage and a plan based on the 1905 OS map drawn on the abstract. If the plan was not missing it could have provided certainty that the application land was entirely within the land conveyed by the 1912 Indenture, but it would not have assisted in determining the extent conveyed by the 1940 conveyance.
53. The underlying aim of the process of construction is to ascertain the intention of the parties to the title document in question, in this case the 1940 conveyance. The Court of Appeal in the case of *Pennock v Hodgson* [2010] EWCA 873 provides a useful summary of the authorities, most of which concern ambiguities between the wording of the conveyance and the plan, or the wording of the conveyance, the plan, and the position of the physical boundaries on the ground. This is not that type of case. There is no inherent ambiguity in the wording of the conveyance. The issue here is whether the property description is sufficient to identify the land. It is established authority that in cases where there is some uncertainty as to the description, in construing the document it is permissible to have regard to the surrounding physical and other circumstances to determine what, against the relevant objective factual background, the parties to the 1940 conveyance would reasonably have understood was being conveyed (*Investors Compensation Scheme Ltd v. West Bromwich BS* [1998] 1 WLR).

54. *Neilson v Poole* (1969) 20 P&CR is authority for admitting evidence afforded by subsequent conveyances of land (albeit in that case by a common vendor), a principle upheld in *Clarke v O'Keefe* (1997) 80 P&CR by Peter Gibson LJ:

"I have to say that it would seem to me to be somewhat absurd, in a case where there is no verbal description of the land such as would serve to identify its boundary accurately and where the plan is imprecise in showing the boundary as following a vegetation line in 1977, and where both vendor and purchasers agree its exact position, if the court were then to shut its eyes to evidence of what they agreed was the true boundary."

55. Where the information contained in the conveyance is unclear or ambiguous, it is permissible to have regard to extraneous evidence, including evidence of subsequent conduct, subject always to that evidence being of probative value in determining what the parties intended. I should add that in principle, reference to the intentions of the parties means the parties to the original conveyance, i.e. the 1940 conveyance. However, where the intention of the original parties is unclear, long and unchallenged usage may be probative:

"... Where the evidence of the intention of the original parties is unclear, long and unchallenged usage may be a "good reason for tending to construe the (original) conveyance as having done what the parties appear to have treated it as having done..." (Carnwath LJ in *Ali v Lane* [2006] EWCA Civ 1532 para 38)

56. That principle may by extension, not necessarily be confined to use by the original parties. Particularly where, as in this case, the land was inherited from one of the parties and neither the successor to the common vendor or the adjoining landowners have at any time since 1940 disputed the position of the boundaries.

57. There is no evidence of any dispute between the parties to the 1940 conveyance concerning the extent conveyed. The witness evidence and OS maps indicate that the boundaries of Penbont were well defined in 1940 and apart from realignment of the northern boundary to accommodate the road widening scheme, have not changed. There has been no dispute between the Edwards family and the owners of the land surrounding Penbont concerning its boundaries. In fact, all agree that the boundaries of Penbont are precisely as contended for by Mrs Edwards and they have provided witness statements confirming this. The surrounding titles have all changed hands since 1940 and are now registered. The only unregistered parcel is the application land, the boundaries of which are not contradicted by the surrounding registered titles. The long unchallenged use of the land and the acceptance of its extent by the adjoining owners allows for an inference that the parties to the 1940 conveyance understood and intended that the extent of the land conveyed is as shown on Mrs Edwards application plan.

58. The only person to cast doubt on the extent of the Penbont title is Mr Parker. His argues that the wording of the parcels clause in the 1940 conveyance is ambiguous and allows for a construction that supports his objection. The ambiguity being the absence of a definitive plan or measurements that identify the extent of the land. Unusually in this type of case, Mr Parker is not coming at the argument as an adjoining landowner who believes the disputed land falls within his title. He is a trespasser who is objecting to the

1st registration application because he hopes to secure a prior interest in possession to part of the land.

Mr Parkers submissions

59. His first challenge concerns two road agreements between Welsh Government and the owners of Penbont and Llandre. The first is an agreement dated 26 September 1961, with John William Jenkins of Llandre (Mr Philips grandfather) under which Mr Jenkins agreed to transfer a narrow strip of land fronting the A487 to Welsh Government if called upon to do so. The plan attached the agreement includes a strip of road frontage within Area 2. The second agreement dated 31 January 1966, is with Mr Daniel Evan Davies (Mrs Edwards grandfather). It is in similar terms to the Llandre agreement, but the strip of land does not extend the full width of Area 1 and 2. It includes part of the cottage on Penbont and some adjoining road frontage. The agreements are executory and appear not to have been completed by formal transfer of the land, although the land referred to in each agreement now forms part of the adopted trunk road.
60. Mr Philips registered the Llandre title in May 2009. The registration did not include any part of Area 1 and 2. In July 2009 Welsh Government applied to register title to the strips of road frontage referred to in the two agreements. It was only granted possessory title to each and the strip of frontage within Area 2 was excluded from the registration. This has left a small strip of unregistered highway land within OS301 that sits immediately to the north of Area 2. The area is that crossed hatched on *Figure 2*.
61. Mr Parker states that the cross hatched strip roughly lines up with the northern section of Area 2 and is therefore evidence that the whole of Area 2 was not included in the deeds of either Penbont or Llandre. There are several problems with this argument. First, the agreements only deal with the road frontage, not the land behind. Secondly, we do not know if title was deduced to Welsh Government by either landowner in 1961 or 1966. The agreements do not indicate that title was deduced. Thirdly, we do not know on what basis the plans attached to the agreements were drawn, or the physical conditions on the ground in 1961 and 1966. The plans do not appear to be drawn to a consistent scale, as acknowledged by Mr Parker in his statement. Fourthly, we do not know what title was produced to HM Land Registry in May 2009 on the application to register Llandre or by Welsh Government in July 2009 on its applications. The fact that only possessory title was granted to Welsh Government indicates that paper title to the strips was not produced. The exclusion of the cross hatched area is consistent with that area not being within the Llandre's paper title. However, it doesn't follow that the cross hatched area and/or the land south of it was not within Penbont's unregistered title. Welsh Government may have assumed the cross hatched area was part of Llandre's title, but we do not know why. We also do not know if Welsh Government had any reason to believe it was not within Penbont's title, particularly if neither landowner had deduced title. Fifth, and most importantly, the agreements tell us nothing about the intentions or subsequent conduct of the parties to the 1940 conveyance, or that of their successors.
62. The second argument advanced by Mr Parker places reliance on two plans that were disclosed as part of Mrs Edwards documents. The plans were not referred to by Mrs Edwards in her statements or in any of the witness statements. The source of the documents was therefore unclear. However, during the hearing Mr Donne confirmed

the plans had come from Mr Philips who had apparently found them with his Llandre papers and handed them to Mrs Edwards.

63. I will describe the documents as Plan 1 and Plan 2. There is a full copy of Plan 1 and an enlarged extract of the Penbont area (*Figure 6*). Plan 1 is undated but described in the bottom left corner as a plan of Trefwtial Nant-Y-Llan and shows the small holdings of accommodation lands of Cwrt-Isaf, Pen-Y-Bont, Pen-Llain and two other holdings. The plan states that it shows Lots 1-11 in the accompanying Particulars of Sale. The areas corresponding with Lots 1-11 are shaded in different colours. No copy of the particulars of sale accompanies Plan 1 and there is nothing to connect Plan 1 to the 1912 Indenture. Mr Parker has however put forward a theory that the 1912 conveyance to David Jenkins must relate to the sale and purchase of Lot 1 because the acreage is consistent. The yellow colouring of Lot 1 does not include Area 2. Therefore, he argues Area 2 was not within the Jenkins title in 1940 when Penbont was sold to Mr Davies.
64. It is a plausible theory but no more than that. There is no evidence that connects Plan 1 to the 1912 Indenture. We do not know when Plan 1 was prepared, or the date of the proposed sale referred to. The missing plan drawn on the 1940 abstract might have included Areas 1 and 2, or just Area 1. It might have been inconsistent with the acreage specified in the parcels clause of the 1912 Indenture. We do not know because although the abstract refers to a plan, there was no plan with the abstract. However, there is nothing other than Mr Parkers conjecture to link Plan 1 to the 1912 Indenture. Other theories are available. Plan 1 might be the auction plan prepared for a sale of the Lots in 1912, it might not. In any event it doesn't follow that the holdings were sold as originally lotted. Lotted estates are often sold by private treaty before during and after auctions, and the sale contracts do not always follow the parcel boundaries lotted in the original catalogue. Unlike contract and deeds plans, plans attached to particulars of sale are not probative of the land actually conveyed.

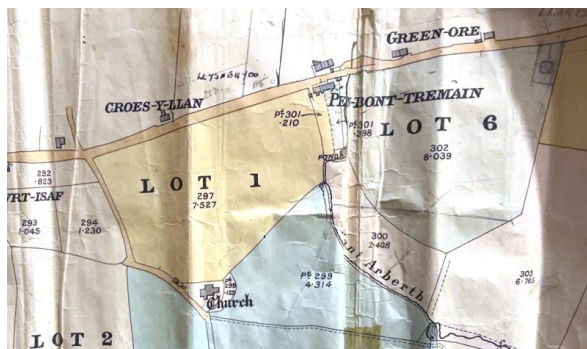


Figure 6 Plan 1 (particulars of sale plan)

65. Plan 2 is an extract of a map showing the boundaries of Llandre heavily edged and the acreage of the edged fields (*Figure 7*). The edging is consistent with the registered title of Llandre (*Figure 4*) save that it includes Area 2 within the edging. The plan is undated and its purpose unclear. Mr Parker theorises that it was prepared from Plan 1 and dates from an estate sale in 1912. He suggests the plan is for the sale of Lot 6 and that Area 2 is therefore either part of Llandre's title or has "fallen into legal limbo". The problem

with this theory is that Plan 2 includes the 2.408-acre field OS300. That field falls within Lot 11, not Lot 6.

66. The short point is that Mr Philips handed these plans to Mrs Edwards, and she disclosed them. That is all we know about their provenance. They are not attached to a sale contract or deed; they are undated and without any context. They cannot be reliably linked to either the 1912 Indenture or the 1940 conveyance and therefore have little or no probative value to the relevant issues in this case.

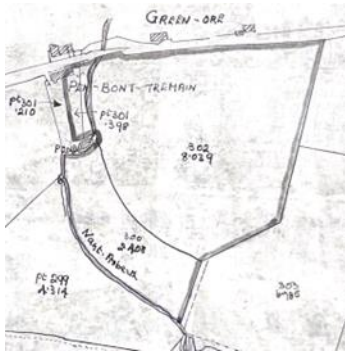


Figure 7 Plan 2

Discussion

67. On the face of it the absence of a plan or other means of determining the extent of the land referred to in the 1940 conveyance might indicate that it is not a good root of title. The abstract of the 1912 Indenture does not assist in identifying the application land although it is reasonable to conclude that David Jenkins executors owned the land when it was sold in 1940. Mr Parkers theories concerning the implications of Plan 1 and Plan 2 are too insubstantial to cast doubt on the 1912 or 1940 conveyances.
68. The OS maps in the documents bundle go back to 1905. All show OS parcel 301 divided by hard lines into two main areas. Those areas are the application land (Area 1 and 2) and the Llandre land (Area 3). A hard line generally denotes the presence of an obvious physical boundary. The two areas are consistent with the Penbont and Llandre boundaries and indicate the presence of historical boundary features going back to 1905.
69. This is borne out by the established lines of fencing, hedging and mature trees along the western and southern boundaries of OS301 and the Nant Arberth river boundary to the east of the Llandre strip. The Applicant's witnesses all say that a stockproof fence ran along the common boundary between Area 2 and 3 (i.e. between the Penbont and Llandre part of OS301). Mr Edwards says he erected it in place of an old, barbed wire fence. The established boundary features are therefore consistent with the markings on the OS maps of enclosure OS301. They are also consistent with the updated OS mapping on which the title plans of Llandderi, (registered in 2004) and Llandre, (registered in 2009) are based (*Figures 4 and 5*). Neither plan shows any boundary feature existing between Areas 1 and 2.
70. Mr Parker asserts there is a topographical feature on the same line as the dashed line shown running through the middle of OS301 on the earlier OS maps. Somewhat

conveniently, the dashed line also marks the boundary between of Area 1 and 2. However, a dashed line does not generally indicate the presence of a physical boundary. It is generally used on OS maps to denote a low kerb, a path edging, or similar low-level feature. I do not find that the dashed line on the earlier OS maps to be relevant in identifying the boundary structures ground in 1940. I have already found there to be no evidence on the ground of an historic topographical feature along this line and I prefer the Applicant's witness evidence overall to that of Mr Parker in relation to the line of the eastern perimeter fence.

71. This is because Mr Parker has only been on the land since April 2022 and has not provided any objective witness evidence that a fence was erected between Area 1 and 2. On his own evidence the perimeter fence had almost completely collapsed and what was left standing he removed. The photographic evidence from 1984 supports the Edwards family narrative. It shows Penbont when it was used for keeping sheep. It shows a large area that had been cleared for hardstanding, the drip feeder in action, and the comparatively new field boundary fence on the western boundary. The evidence is all of a piece with the witness testimony in confirming that the Edwards families use of the land since inherited by Mrs Edwards is as they describe it. Initially for general family enjoyment, then as a starter holding for Janet and Kevin. The gradual rotation of stock with the other holdings they acquired and the decline in use as the Edwards expanded their farming enterprise over the holdings with better grazing. The witnesses are all from a close community, or family of Mrs Edwards, but that does not undermine or cast doubt on their integrity.
72. The witnesses all confirm that to the best of their knowledge no boundary fence ever divided the land into Areas 1 and 2. That is the evidence of Mr Edwards who erected the perimeter fence, Mrs Edwards who was there at the time, Mrs Evans whose husband Gerald assisted Mr Edwards with the installation, and importantly Mr Phillips the owner of Llandre, who observed the fence from his side of it. He confirms that it ran along the boundary between Penbont and Llandre (i.e. between Area 2 and 3), and he also remembers the fence disappearing after Mr Parkers entry onto the land. All save for Mrs Evans and Mr Arlington gave oral evidence at the hearing. I found all the witnesses to be utterly convincing. They gave their evidence simply and without exaggeration or hesitation. If they were unsure or in doubt about any question they said so. I have no reason to doubt what each were saying about the line of the eastern perimeter fence and conclude that it was not erected along the line suggested by Mr Parker. Their evidence is also consistent with the OS maps and the title plans of Llandre and Llandderi. I find as a fact the eastern perimeter fence was erected along a line that, more or less, followed the eastern boundary of the application land.
73. I say more or less because it seems clear from Mr Edwards evidence that the purpose of the fence was to keep in livestock. He no doubt kept in mind the need to keep within Penbont land, but it seems probable that his primary aim was to erect a secure fence along a line that did not obviously trespass into Llandre's land, rather than stake a boundary. The fact that Mr Edwards fixed the front section to a tree rather than a boundary post indicates that keeping in stock rather than marking the boundary was the main driver. This does not however detract from the clear evidence of the Edwards family and Mr Philips as to the correct line of the common boundary between Penbont and Llandre, which is as shown on the application plan.

74. The description of Penbont in the 1940 conveyance, when considered with the conduct of the parties and their successors in title since 1940, and the long established and undisputed use of the whole of the application land, are in my judgement sufficient to establish that Mrs Edwards has sufficiently good title to be registered as proprietor of the application land with title absolute.

Adverse possession

75. This effectively disposes of the application, but if my construction of the 1940 conveyance is incorrect it would be necessary to consider the adverse possession issue raised by the Applicant. If Mrs Edwards has been in adverse possession of the land for a continuous period of 12 years at any time she would through operation of the Limitation Act 1980 bar the title of any paper owner and be entitled to be registered as proprietor of the land.

76. Mrs Edwards and her witnesses gave evidence that Mrs Edwards and before that her grandfather Mr Davies have been in continuous exclusive possession of the whole of the land since 1940. Mr Parker can have nothing relevant to say about this because he was not there. His statement of case is a closely argued submission and argument, but he has not called any witnesses who were present.

77. The evidence (and my findings above) leave no doubt that Mrs Edwards has been in uninterrupted and exclusive factual possession of the whole of the land from when she inherited it in 1969 until Mr Parkers trespass in April 2022. It is not necessary to be physically present on the land to be in possession of it, particularly when the land is effectively secured. I find as a fact that from 1979 until around 2001, the application land was continuously used as part of the Mrs Edwards family farming business and that no one other than the Edwards family and those authorised by Mrs Edwards was in possession. That of itself is more than sufficient time to bar the paper owner's title. After 2001 the land was effectively mothballed until Mr Parkers trespass but that does not affect Mrs Edwards title which had by that time already been established. She was perfectly entitled to use the land as she wished. It was nevertheless fully enclosed by fences and hedging along three boundaries and inaccessible from the east without crossing the Nant Arberth river. Mr Parker had to force an entry onto the land through the overgrown frontage.

78. It can be inferred from the evidence that Mrs Edwards had the necessary intention to possess the land throughout believing as she did that that she was the owner. I am using the expressions "*exclusive factual possession*" and "*intention to possess*" as they have been defined in the leading case on the subject, namely *J.A Pye (Oxford) Ltd v Graham and anor* [2002] UKHL 30.

The Order

79. I shall direct the Chief Land Registrar to give effect to the Applicant's application dated 29 July 2022 (limited to exclude the highway land) as if no objection had been made.

Costs

80. The Applicant made an application for costs in her statement of case and has provided a schedule on Form N260 of her solicitor's costs totalling £31,601.40 for summary assessment.
81. The Tribunal has full power to make an order for costs in a land registration case. Where the Tribunal makes an order, it will usually order the unsuccessful party to pay the costs of the successful party. My preliminary view is that it would be fair and just to make an order for costs and that the fair and just order would be that Mr Parker pay the Applicants costs, to be assessed (if not agreed) on the standard basis.
82. Any party who wishes to submit that a different order should be made concerning costs must serve written submissions on the Tribunal and the other party by **5pm on 28 November 2024**.

BY ORDER OF THE TRIBUNAL

Judge Diana Barlow

DATED THIS 8 November 2024

