



NEIGHBOURLY MATTERS IN CONSTRUCTION

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 **HÄGEN WOLF**
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ABOUT THE FIRM

Exclusively working in property litigation...



Development



Commercial



Telecoms



Rural



Residential

Our clients include:



Developers



REITs



Transport
operators



Industrial
groups



Landed
estates

ISSUES TO CONSIDER

- 1 SITE ACCESS
- 2 BOUNDARIES
- 3 RESTRICTIVE COVENANTS
- 4 MINES & MINERALS RIGHT
- 5 RIGHTS TO LIGHT
- 6 PARTY WALLS
- 7 CRANE OVERSAILING
- 8 SCAFFOLDING
- 9 NUISANCE
- 10 TELECOMS EQUIPMENT - *PODCASTS*



INJUNCTIONS





1. SITE ACCESS



ACCESS

To site:

- Express rights of way?
- Prescriptive rights of way?

To neighbouring land:

- Rights of way?
- Access to Neighbouring Land Act?



DERISKING SITE ACCESS





2. BOUNDARIES



BOUNDARIES

1

Crucial to establish the extent of a development site to:

- avoid encroachment and trespass
- understand the full extent of the developer's rights & liabilities attached to the land
 - *(primary remedy: injunction)*

2

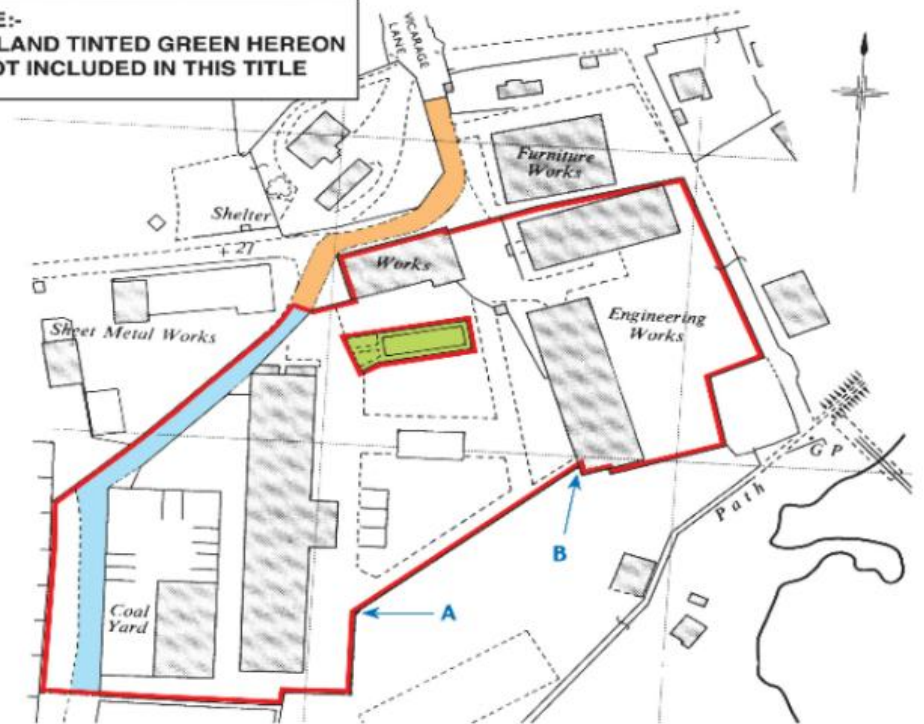
HM Land Registry filed plan?

3

The Originating Conveyance

H.M. LAND REGISTRY		TITLE NUMBER	
		CS 88706	
ORDNANCE SURVEY PLAN REFERENCE	TL 7802	SECTION H	Scale 1/1250
ADMINISTRATIVE AREA CORNSHIRE: MARADON			© Crown Copyright

NOTE:-
THE LAND TINTED GREEN HEREON
IS NOT INCLUDED IN THIS TITLE



THE ORIGINATING CONVEYANCE

1

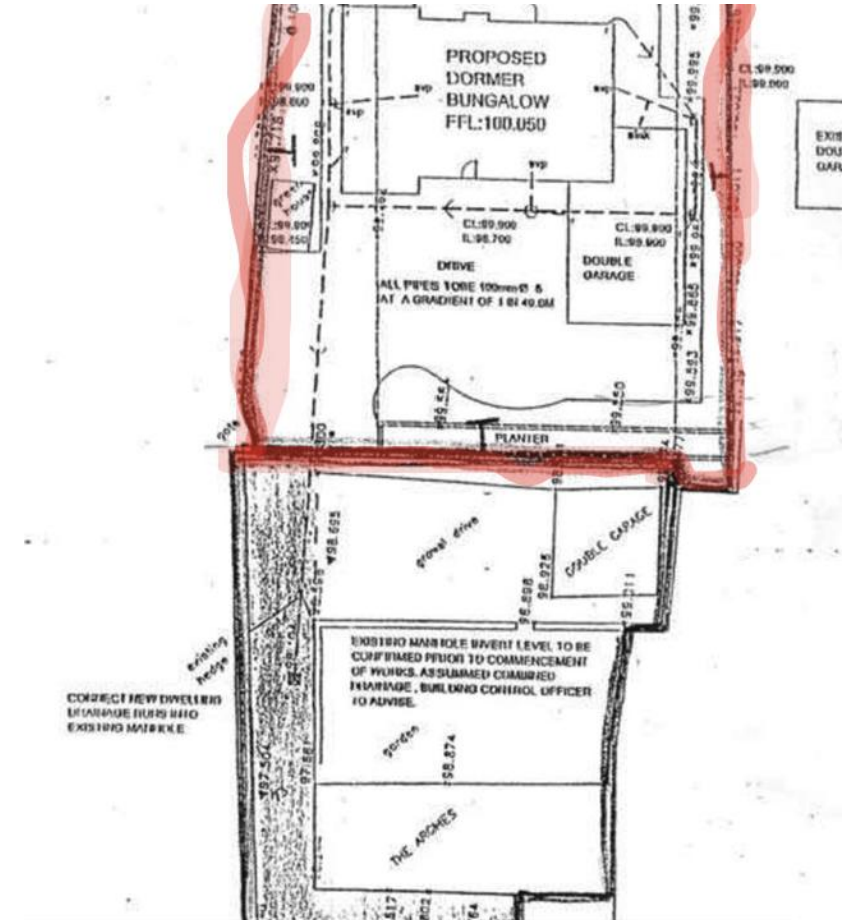
The Parcels Clause '*...All that piece and parcel...edged red on the plan...*'

2

'...for identification purposes only...'
– the wording prevails

3

'...more particularly delineated on the plan...'
– **the plan prevails**



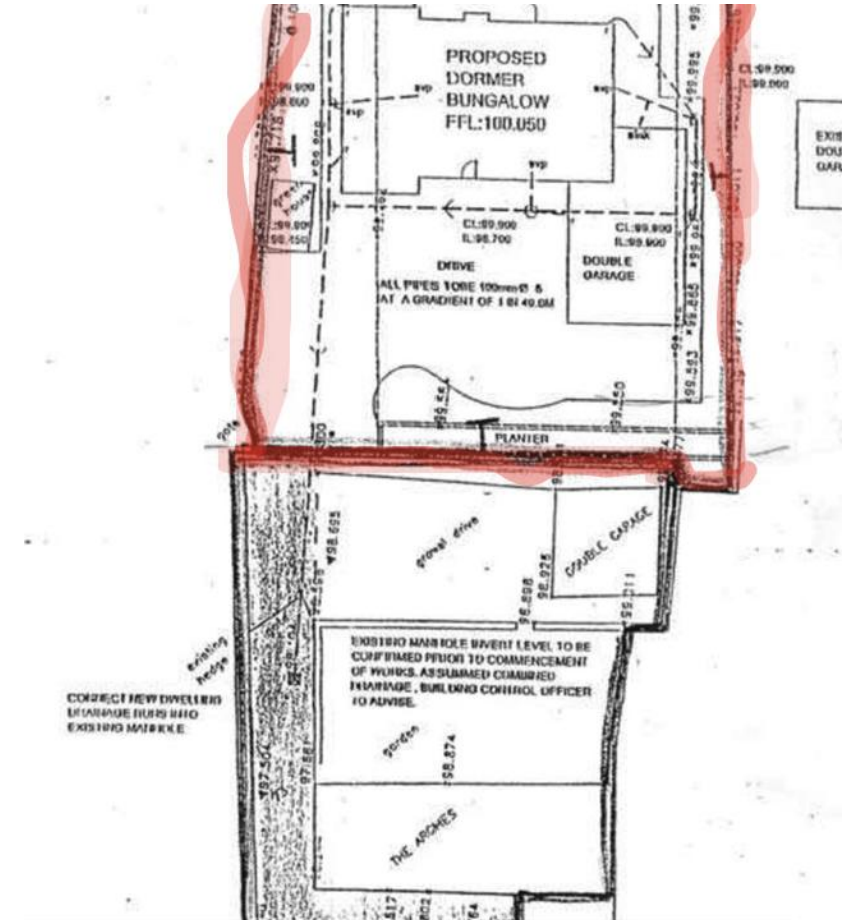
AMBIGUITY

1

Ambiguous wording, too small a scale, thick red pen lines, photocopy on a photocopy

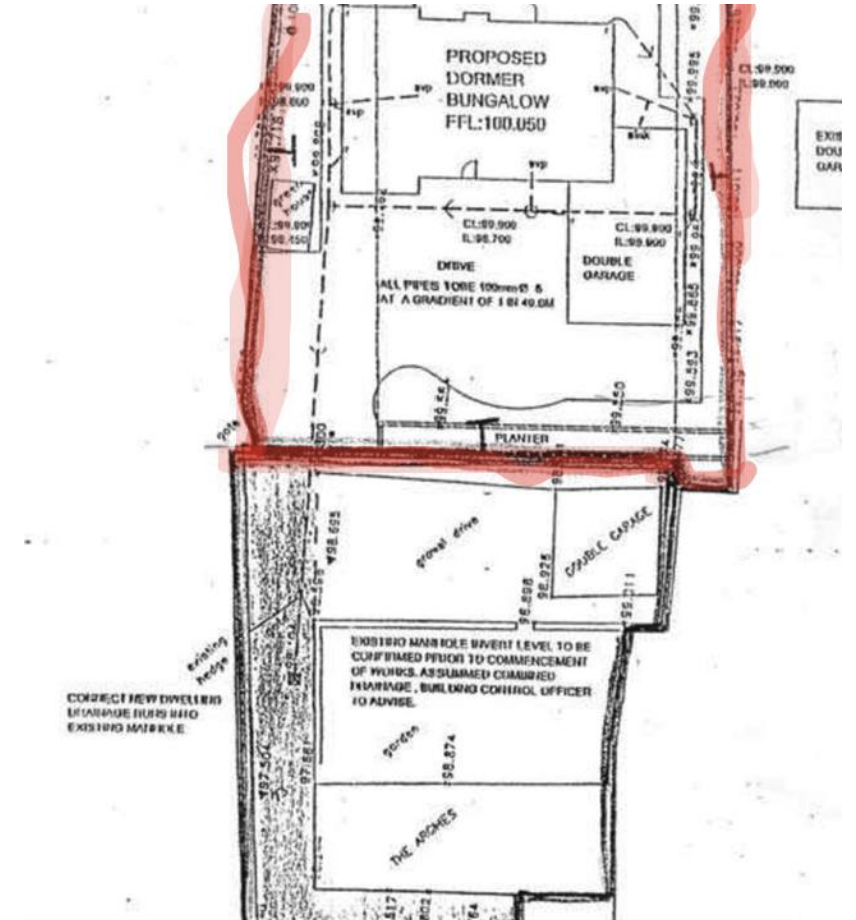
2

Where the parcels clause in the deed is not clear then extrinsic evidence may be admitted



EXTRINSIC EVIDENCE FROM THE DATE OF THE DEED

- Topographical/physical features
- Underlying base plan
- CPSE Replies
- Maps including old tithe and turnpike maps
- Photographs
- Planning Permissions
- Conduct of the parties



ADVERSE POSSESSION

1

Factual possession

2

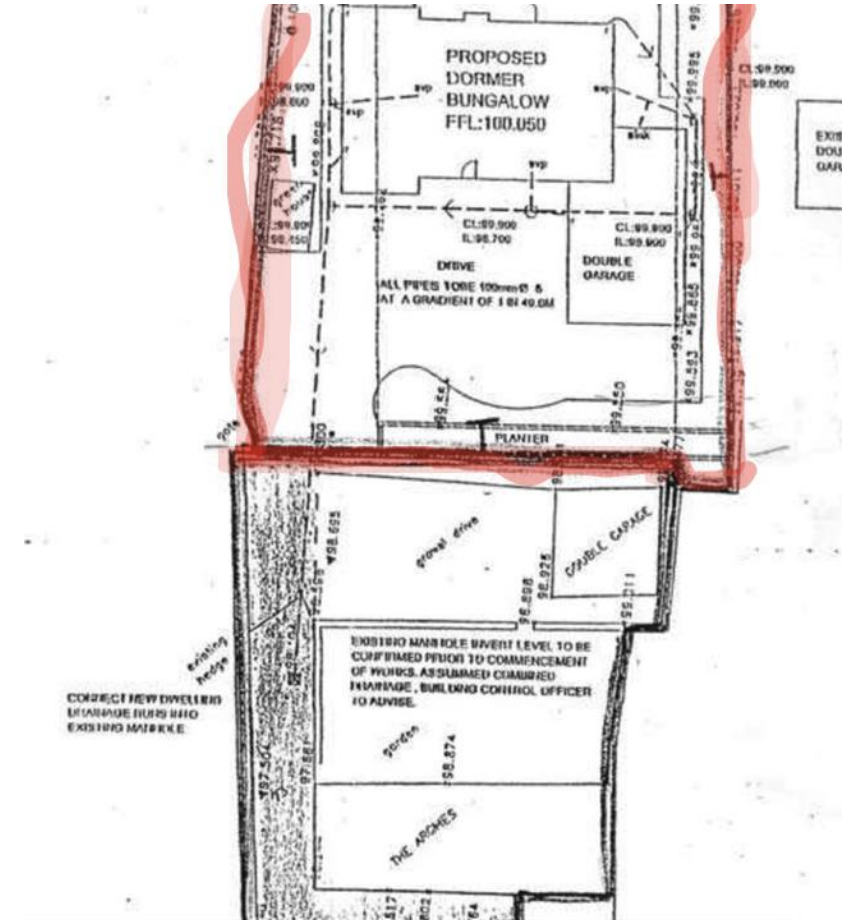
Intention to possess

3

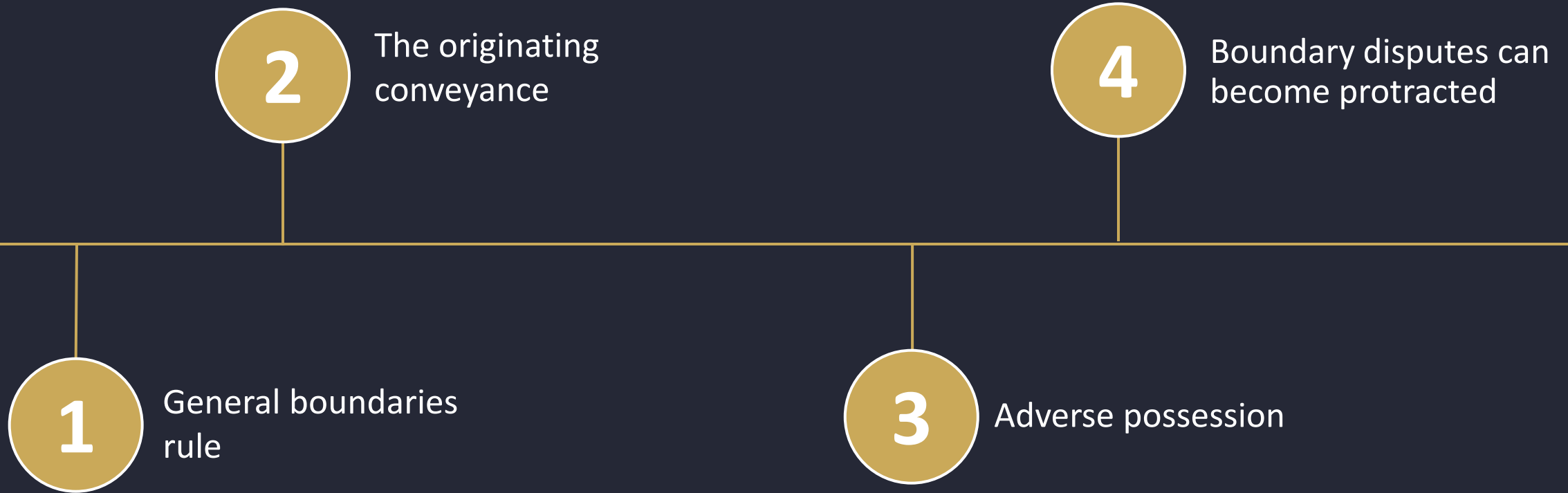
10/12 years

4

New rules – the paper landowner can defeat a claim so long as one of 3 exceptions does not occur – reasonable mistake as to the boundary.



BOUNDARIES

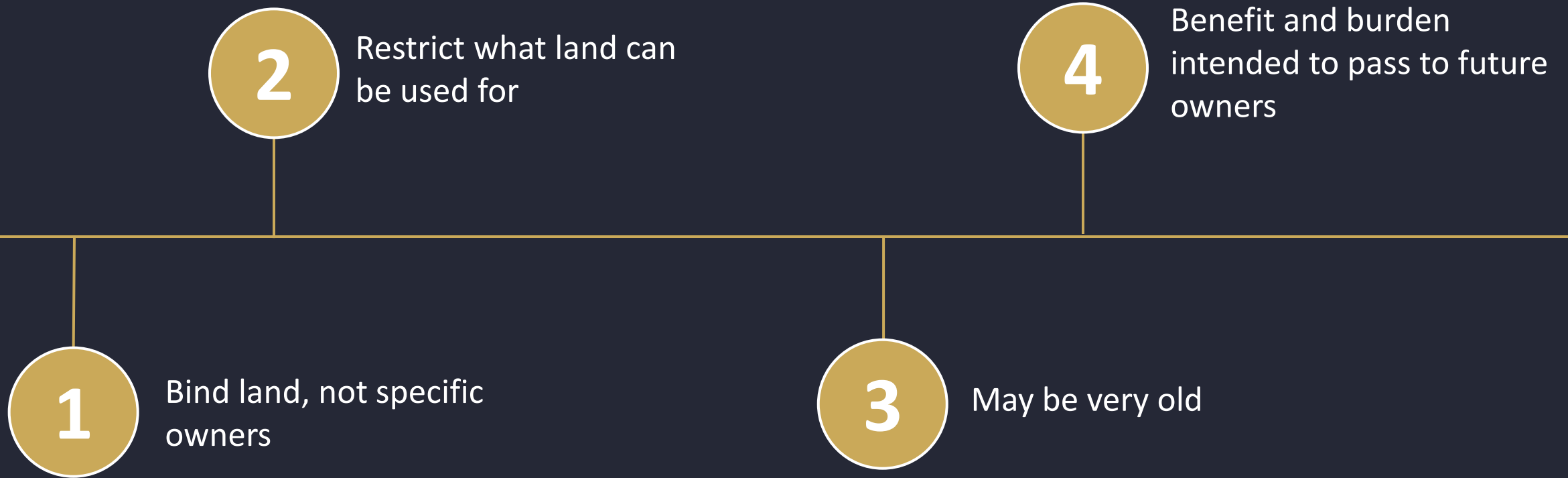




3. RESTRICTIVE COVENANTS



WHAT ARE RESTRICTIVE COVENANTS?



WHY DO THEY MATTER?

Injunction:

2

- To stop building work
- To stop particular uses
- To pull down buildings of parts of buildings

4

Affects land

1

Can be enforced by owners of land with benefit of the covenant. There could be many.

3

Damages
(up to 1/3rd of development profit)

5

Puts off buyers

HOW TO IDENTIFY THEM?

Registered land:

Recorded on title of burdened land

Unregistered land:

Pre 1st Jan 1926 covenant

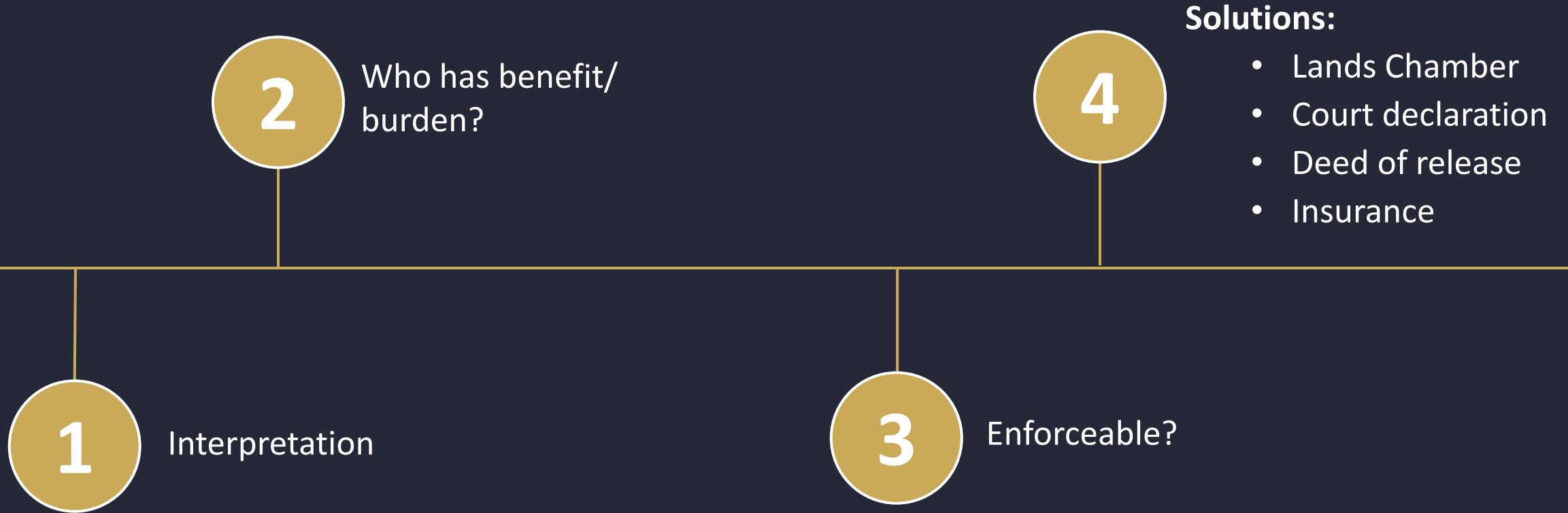
In title deeds

Post 1st Jan 1926 covenant

Class D(ii) Land Charge
against name of original
covenantor



RESTRICTIVE COVENANTS?





4. MINES & MINERALS RIGHTS



MINES & MINERALS RIGHTS

Presumption: a freehold surface landowner owns everything right up to the heavens and down to the centre of the earth except:

- Gold and silver
- Petroleum
- Coal
- Mines and Minerals which have been severed from the surface



MINES & MINERALS RIGHTS

- Exception/Reservation in a Deed
 - By Crown grant
 - By Inclosure Acts
 - Enfranchisement of copyhold land
 - Compulsory purchase
-
- Often centuries ago.



WHY ARE MINES & MINERALS A PROBLEM?

- *Bocardo SA v Star Energy UK Onshore Ltd [2010] UKSC 35* – constructing a pipe through mines and minerals of another was found to be an actionable trespass
- We are in the realms of the law of trespass and nuisance – this is not new law
- Foundations, drains, site levelling - a cut of the development profit
- Injunction/Damages in lieu



MINES & MINERALS RIGHTS

What should a developer do?

- Investigate – obtain a detailed history of the property and uses over time
- Identify - any document which may have severed the mines and minerals
- Interpretation – scope and extent of the mines and minerals/general words - not every substance is a mineral
- Geology surveys



MINES & MINERALS RIGHTS

The meaning of the words used: *'Mine'*

2

'Mine' – the space in which the minerals are worked and the void created after the minerals are extracted

1

'Mine' – the workings underground for the purpose of getting minerals and the stratum/seam of a mineral

3

'Mine' – mineral owner will own the void. No mention of mine then they will not.

MINES & MINERALS RIGHTS

Coleman & anor v Ibstock Brick Ltd [2008] EWCA Civ 73:
the meaning of “*Minerals*”

The Vernacular Test – *what the words might have meant to the mining world, the commercial world and the landowners at the date of severance*

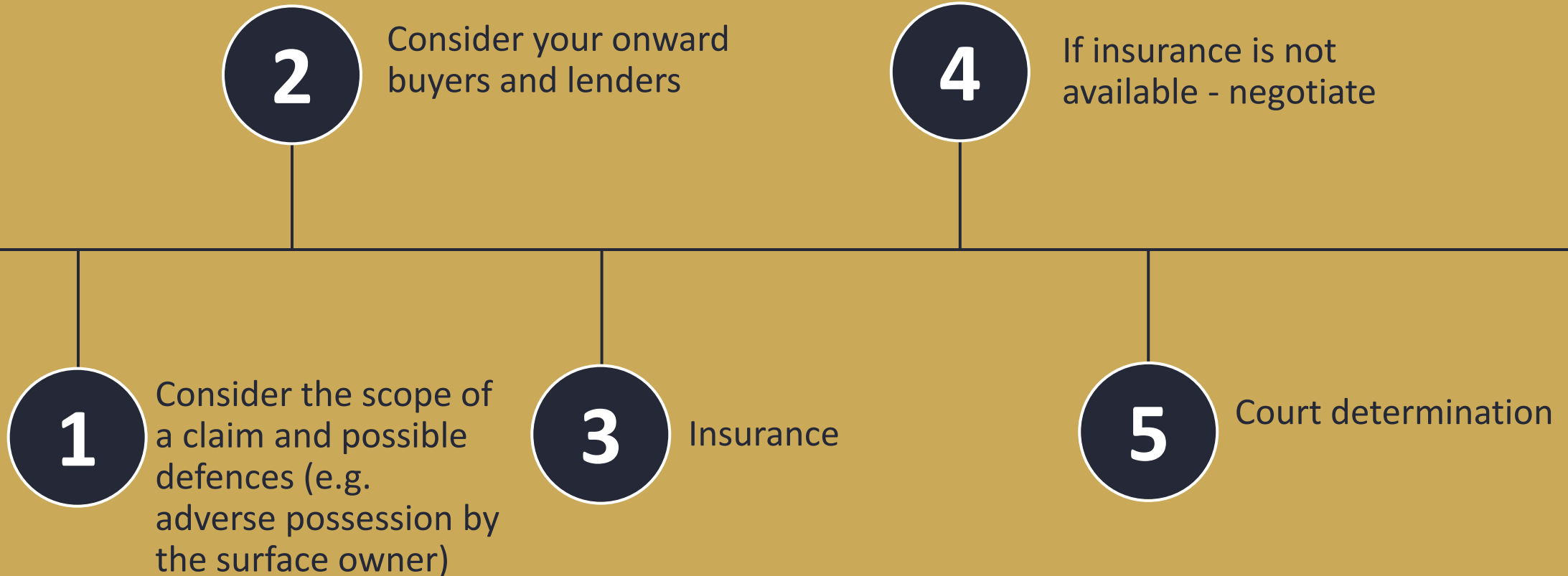
The Exceptionality Test – whether the substances beneath are exceptional in use, in value and in character and not the ordinary soil of the district at the point of the severance

The Working Rights Test – is there any power of working in the document that sheds light on the type of mineral (e.g. *to break the surface*)



MINES & MINERALS RIGHTS

What to do next?





5. RIGHTS TO LIGHT



RIGHTS TO LIGHT

2

Test for infringement

4

Solutions:

- Negotiation
- Insurance
- Court declaration

1

How are they acquired?

3

Damages vs. injunctions

HANDSTONE V ABRI (2024)

- Works had commenced
- Interim injunction
- Serious issue to be tried?
- Is damages an adequate remedy?
- Balance of convenience
- No injunction awarded

Why?

- C was commercial operator
- Development had public interest (33 affordable flats)
- Diminution in value est. at under £16,000
- Abri attempted to negotiate compensation before starting work
- 4 years since planning before bringing claim



BANKSIDE (2025)

- Built and let
- No injunction
 - Public benefit
 - Disproportionate harm to legitimate interests
 - Waste of high-quality valuable resource
- Damages awarded (£500k and £350k) (£6.6m claimed)
- S.203 Housing & Planning Act 2016
- Waldram test approved

BANKSIDE LOFTS
(CLAIMANTS)



ARBOR TOWER,
BANKSIDE YARD
(DEFENDANTS)





6. PARTY WALLS



PARTY WALL etc. Act 1996

2

Existing party wall or structure, construction of a new wall at the line of junction and excavation works near neighbouring buildings (3m/6m depending on depth)

1

It's a statutory framework to prevent/resolve disputes

3

If a Building Owner fails to comply with the Party Wall Act, an adjoining owner can apply for an injunction

PARTY WALL etc. Act 1996

What is what:

1. A Party Wall forms part of a building and sits astride the boundary (Type A) or a wall that sits wholly on one land but separates buildings (Type B)
2. A Party Fence Wall is a wall that sits astride a boundary (not a fence, not a wall wholly on one person's land and does not separate buildings)
3. A Party Structure can be a party wall, floor or part of a building that separates it from another building

*A new wall can only straddle a boundary with consent otherwise it must be built wholly on the building owner's land (s.1(4))



PARTY WALL etc. Act 1996

MUST follow procedure under the Act:

- Line of Junction Notice (s.1) & Notice of Adjacent Excavations (s.6) - 1 month notice
- Party Structure Notice (s.3) – 2 months' notice
- Consent/Serve Counter Notice
- No response - deemed dispute after 14 days
- Appoint an agreed surveyor/ two surveyors (with a third surveyor) to prepare an Award



PARTY WALL etc. Act 1996

The Award:

- Set out what work can be done
- How and when it can be carried out
- Any protective measures (*e.g. weather proofing, dust and debris control*)
- Access agreements (*section 8 of PWA*)
- Schedule of Condition
- Associated drawings
- Costs

Once finalised and no appeal then the Building Owner can proceed in accordance with the terms of the Award



PARTY WALL etc. Act

Points to note:

2

If a party takes the view that an Award was made without jurisdiction, and is a nullity, then it is unnecessary to appeal it

4

Section 8 of the PWA includes provisions to permit access but only to the extent access is reasonably necessary to undertake PWA works.

1

If a party wishes to challenge the content of an Award they can do so by Appeal to the County Court

3

An appeal **MUST** be filed with the County Court **within 14 days beginning with the day on which an award is served on them – this is a strict time limit**



7. CRANE OVERSAILING



CRANE OVERSAILING

- 1 Airspace ownership
- 2 Trespass (whether intentional or not)
- 3 Strict liability
- 4 Do you need to oversail?
- 5 Damages
- 6 Injunctions
- 7 Licence





8. SCAFFOLDING



SCAFFOLDING

1

Will the scaffolding sit within the boundary of the development site?

2

If not, then consider:

- Express rights of entry on to adjoining land
- Access to Neighbouring Land Act 1992
- Section 8, Party Wall Act etc 1996
- Scaffolding licence





9. CONSTRUCTION NUISANCE



TYPES OF NUISANCE

Private nuisance

Substantial and unreasonable interference with someone's enjoyment of their own land

(Remedies: Injunctions, damages)

Public nuisance

Endangers the life, health, property, morals or comfort of the public or obstructs the public in the exercise or enjoyment of rights common to all. Or prejudicial to health.

(Remedies: Abatement Notice; Notice under s.60 Control of Pollution Act 1974; unlimited fine)



CONSTRUCTION NUISANCE

- Noise
- Vibration
- Dust
- Fumes
- Smoke
- Odours
- Artificial light
- Excessive vehicle movements



EXAMPLES (CASES)

Jones v Ruth

Four years of work. Excessive noise, vibration, dust and lack of privacy. Scaffolding enabled workman to see into neighbour's garden and bathroom (£75,000).

Video London Sound Studios v Asticus

Dust and rubble fell on neighbouring property damaging equipment (£200,000)

Fearn v Tate Gallery – Overlooking (£tbc)

Lawrence v Fen Tigers – excessive noise

Pinnacle Tower Development – vibration nuisance (injunction, but subsequently settled at £350,000)



PRACTICAL TIPS

- Familiarise yourself with the Control of Pollution Act 1975 and Environmental Protection Act 1990
- Consider seeking s61 consent under 1975 Act
- Create a Noise and Vibration Management Plan outlining predicted levels, mitigation strategies, and monitoring procedures
- Keep neighbours informed
- Restrict noisy work to 8am to 6pm (weekdays) and 8am to 1pm (Saturdays)
- Strategic site layout
- Noise/dust barriers
- Avoid jackhammers if other quieter methods available



SUMMARY





THANK YOU!





QUESTIONS?





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