IN THE COURT OF APPEAL OF NEW ZEALAND

CA39/2013
[2014] NZCA 315

BETWEEN	HEATHER WINIFRED GREENSLADE, IAN KENNETH GREENSLADE, JOANNE MAREE FERGUSSON AND BARBARA WILSON Appellants
AND	HONEYMOON BAY HOLDINGS LIMITED First Respondent
	TASMAN DISTRICT COUNCIL Second Respondent
	SIDNEY BOYD ASHTON, JOHN WILLIAM DUDLEY RYDER AND RIKA JOSEPHINE RYDER Third Respondents
	PETER JAMES NICHOLLS, ROBERT MARK NICHOLLS, JOANNE MARIE WATTS AND ROSS HANNAY MCKECHNIE Fourth Respondents
	TYRONE BARRINGTON MUIR BROWN AND BARBARA ANNE BROWN Fifth Respondents
	JOHN FRANK SEFTON BALDWIN, ERICA LOIS BALDWIN AND ANTHONY ERIC BALDWIN Sixth Respondents
	PETER DOUGLAS LAWREY AND BERNADETTE MARGARET LAWREY Seventh Respondents

Hearing: 20 May 2014

Court: O'Regan P, Harrison and Miller JJ

Counsel: J M Fitchett and RDJ Fitchett for Appellants
J E Bayley for First Respondent
A E Baldwin (Sixth Respondent) in person

Judgment: 14 July 2014 at 11.30 am

JUDGMENT OF THE COURT

A The appeal is dismissed.

B The appellants must pay the first respondent's costs for a standard appeal on a band A basis, and they must pay reasonable disbursements incurred by the sixth respondents.

REASONS OF THE COURT

(Given by Miller J)

[1] The Greenslades[1] own a section at Honeymoon Bay, near Kaiteriteri, on which planning rules allow them to build a house. The section adjoins the bottom or beach end of a 285-metre driveway leading from the roading network to other properties in the bay. Those properties enjoy vehicular access over the driveway, but the Greenslades' section can use it for foot traffic only. This they knew when they bought the section many years ago.

[2] The section does enjoy a vehicular right of way over two other properties situated at the top of the drive. Those properties are owned by the third respondents, the Ryders. The Ryder right of way has never been developed. The land falls away steeply toward the beach where it meets the right of way, so the Greenslades would have to build a car deck if they were to develop it.

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[1] Ross Greenslade was an appellant but he passed away before the hearing. An order was made on 14 May 2014 substituting his executors (Heather Greenslade, Ian Greenslade and Joanne Fergusson) as appellants alongside Barbara Wilson. Ross Greenslade and Ms Wilson were siblings and in this judgment we refer to them as "the Greenslades".

[3] When securing building consent for a holiday home the Greenslades told the Tasman District Council that they would rely on sea and pedestrian access for both construction and use.

[4] The building consent was granted on a non-notified basis, the Greenslades having chosen not to tell the driveway's owner, Honeymoon Bay Holdings Ltd (HBH), and other neighbours (the third to seventh respondents) about it. The Greenslades then claimed that the section is landlocked because it lacks vehicular access over the driveway. When HBH did not concede the Greenslades brought this proceeding.

[5] In the High Court Simon France J held, after taking a view, that the section is not landlocked for purposes of s 328 of the Property Law Act 2007 because its combination of sea and pedestrian access is not unreasonable.[2] He added that should he be wrong he would deny relief; the balance of hardship favoured the Greenslades, but they bought the section knowing the facts and nothing had changed.

[6] The Greenslades appeal.

The situation

[7] We adopt with minor amendments the Judge's careful description of the physical situation and access arrangements:

> [5] Honeymoon Bay is a small secluded bay. It is a public beach but the only public access is by sea, or by foot around the coastline from [Breaker Bay] at low tide. Otherwise access is down a wide sealed driveway which runs from what is known as the Kaiteriteri-Sandy Bay Road.
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> [6] The driveway runs down and through a substantial tract of land owned by [HBH]. The driveway ends at the beach. Strictly speaking, it ends at a legal road which runs parallel to the beach, and which is [partly] formed, and partly sealed. [The legal road] runs only along the beach front, is not connected to anything, and cannot be accessed by cars other than down [HBH's] driveway.
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> [7] The land the driveway runs through is about 1.15 ha in size. Located at various points on the land are 13 dwellings, which are occupied by a licence which flows from ownership of the equivalent shares in [HBH]. Two

2 *Greenslade v Honeymoon Bay Holdings Ltd* [2012] NZHC 3346, (2012) 14 NZCPR 289 [High Court decision].

of the dwellings are close to the beach – the occupants of the rest walk down the driveway from wherever their house is situated.

[8] From where the driveway meets the beachfront, as you look at the water, there are five dwellings to the left, and two properties to the right. The five dwellings to the left (one of which is part of the Honeymoon Bay Holdings) all have a vehicular right of way over the driveway. The two to the right have the benefit of a right of way limited to "on foot".

[9] The [Greenslades'] vacant lot is the first one to the right. It is a steep section, the back of which appears visually to be cliff like. Access from the [HBH] driveway would provide easy drive on. The section effectively abuts the end of the formed driveway. Presently the main foot and boat access to the beach is over a corner of the [Greenslades'] property. If this were not possible, there would still be room for foot access but launching a boat would be more difficult unless some shrubbery and a tree were cleared.

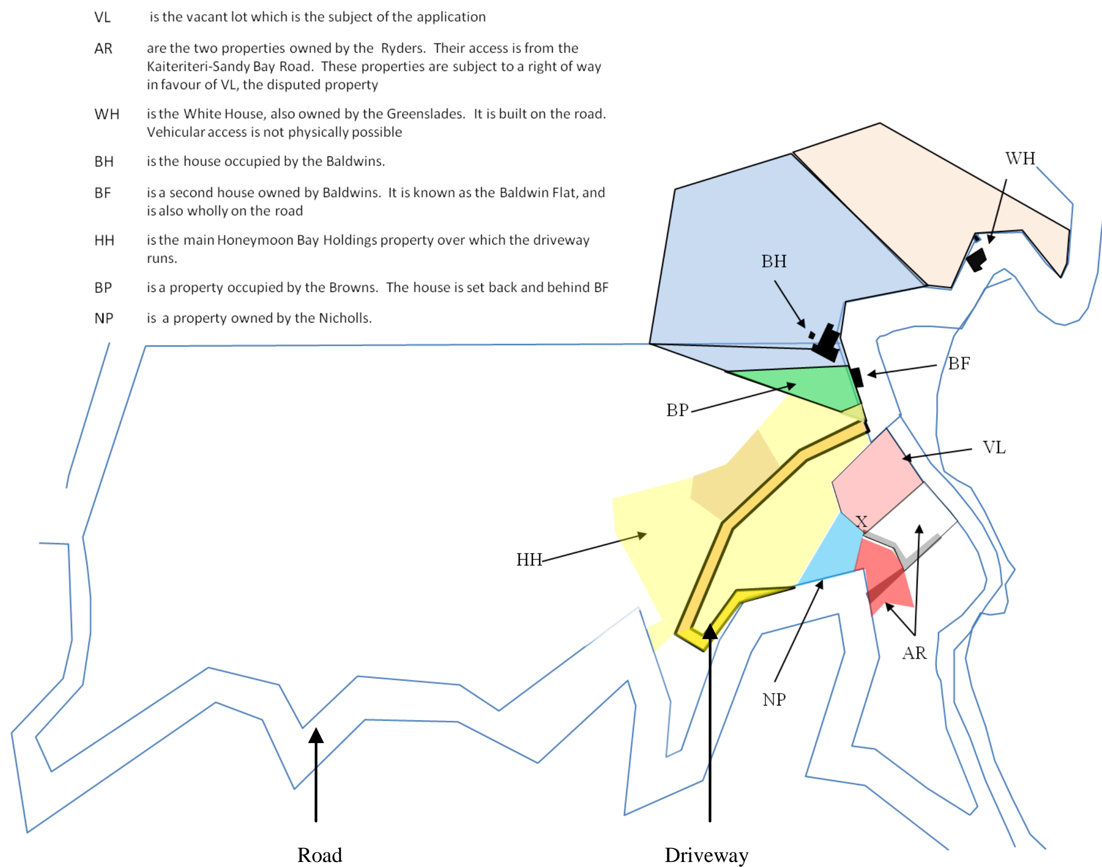
[10] The second section to the right is not affected in that the owners have built at the top. They also own the section which separates their beach front section from the main road, so have been able to establish two houses at the top. Access to these houses is off the Kaiteriteri-Sandy Bay Road, at the same point as the start of the [HBH] driveway.

[11] So in summary, there are presently 17 dwellings that have vehicular use of the right of way. Thirteen of those own the land and the driveway. The other four enjoy the use of it. When the driveway stops, the occupants of those four drive along the paper road to their respective properties. However, the furtherest of these properties, a house known as the "White House", cannot be fully accessed by vehicles. There is a tall rock promontory which extends out onto the beach. At high tide the residents can only access this house by walking over a track that has been formed at the back of the rock promontory. This house is also owned by the [Greenslades].

[12] The only property in dispute is the one vacant lot. It is in a prime position. It is zoned residential. As noted, it has a foot right of way over the driveway but is the only section without vehicular access. Hence the application.

[13] A diagram of the situation existing at Honeymoon Bay follows:[3]

[3] The plan we have used differs slightly from that found in the High Court judgment.



[8] The Property Law Act authorises a court to grant an landowner "reasonable access" to "landlocked" land by, among other things, imposing an easement upon a neighbouring owner or vesting a piece of that owner's land in the applicant.[4]

[9] "Landlocked land" is "a piece of land to which there is no reasonable access", and "reasonable access" means:[5] "physical access for persons or services of a nature and quality that is reasonably necessary to enable the owner or occupier of the land to use and enjoy the land for any purpose for which it may be used in accordance with any right, permission, authority, consent, approval or dispensation enjoyed or granted under the Resource Management Act 1991."

[10] The Court must consider:[6]

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4 Property Law Act 2007, ss 327 and 328.
5 Section 326.
6 Section 329.

(a) the nature and quality of the access (if any) to the landlocked land at the time when the applicant purchased or otherwise acquired the land:

(b) the circumstances under which the land became landlocked:

(c) the conduct of the parties, including any attempts they have made to negotiate reasonable access to the landlocked land:

(d) the hardship that would be caused to the applicant by the refusal of an order, in comparison with the hardship that would be caused to any other person by the making of an order:

(e) any other relevant matters.

[11] An order may be made subject to any conditions which the court thinks fit, including payment of reasonable compensation.[7]

[12] The legislation is remedial, in the sense that it does not codify the restrictive common law action for an easement of necessity but rather permits a court to grant an owner of landlocked land reasonable access on reasonable terms.[8] Early decisions[9] suggested that a central purpose was that of remedying anomalies arising through inadvertence or historical accident in early subdivisions,[10] but it is now settled law that the legislation is not restricted to such situations and the broad statutory criteria speak for themselves.[11] The legislation being remedial, there is no room for a presumption against interference in another's property rights.[12]

[13] That said, neither does the legislation presume that a court will grant access to a landlocked property. Put another way, the legislation does not simply convert a respondent's property rights, a term used to describe rights alienable only by consent, into liability rights, a term used to describe rights that others may choose to invade at a price calculated by a court after the fact.[13]

7 Section 330.
8 *Murray v Devonport Borough Council (Note)* [1980] 2 NZLR 572 (SC) at 573.
9 The remedy was introduced in 1975 as s 129B of the Property Law Act 1952.
10 *Roberts v Cleveland* (1990) 1 NZ ConvC 190,452 (HC).
11 *Kingfish Lodge (1993) Ltd v Archer* [2000] 3 NZLR 364 (CA) at [38].
12 *Cleveland v Roberts* [1993] 2 NZLR 17 (CA) at 23–24; *Squally Cove Forestry Partnership v Wagg* [2013] NZCA 463, [2013] 3 NZLR 793 at [23].
13 The term "liability right" is normally attributed to a well-known article in law and economics: G Calabresi and A D Melamed "Property Rules, Liability Rules, and Inalienability: One View of the Cathedral" (1972) 85 Harv L Rev 1089.

[14] By way of explanation, we draw attention to four points. First, the applicant must show both that the land is landlocked and that an order should be made.[14]

[15] Second, as a matter of construction a court must consider the matters listed in s 329, so far as applicable, when deciding both whether land is landlocked (that is, without "reasonable" access) and whether an order should be made.

[16] Third, the legislation recognises that access has a value, and by prescribing that a court must consider the parties' conduct, "including any attempts they have made to negotiate reasonable access", it establishes an important norm: an applicant may need to show that it has behaved reasonably before it will get relief. In particular, an applicant who can point to no historical accident or mistake may need to show that it made a reasonable attempt to purchase access. As will be seen, the Greenslades approached this case as if a liability right were at stake, with predictable results.

[17] Finally, the successful applicant will be granted reasonable access only, not the best or most convenient or least-cost access available.

[18] The first consideration listed in s 329 is the nature and quality of access when the applicant acquired the land. Where a property was deliberately established without vehicular access and the applicant acquired the property knowing that fact, a court may conclude that such existing access as it enjoys is reasonable since the applicant evidently found it so.[15] Alternatively, the court may conclude that the land is landlocked but decide, having regard to the existing access and other relevant circumstances, including relative hardship and conduct, that the application should be refused. Simon France J took the first view in this case, but he would have taken the second had it come to that.

[19] Mr Fitchett contended that whatever may have been the position when the bay was first subdivided in the 1950s, or when the Greenslades bought the section in

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14 *Cleveland v Roberts*, above n 12, at 23–24; *B A Trustees Ltd v Druskovich* [2007] 3 NZLR 279 (CA) at [15].

15 *Kingfish Lodge*, above n 11, at [34]–[35].

1982, vehicular access is now considered necessary. He cited the following statements from *Asmussen v Hajnal*:[16]

> … nowadays the situations in which non-vehicular access will be regarded by a Court as reasonable are likely to be few, as they are to be determined in the light of contemporary requirements as well as the general topography and nature of the area in question.
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> …
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> Full recognition of the very great dependence people now have upon the motor vehicle must be given. The utility to people's lives through being able to drive their vehicle upon their land cannot be underestimated.

[20] Insofar as these dicta[17] suggest that courts will almost always find vehicular access necessary they are incorrect, as this Court held in *Murray v BC Group*.[18] Reasonable access may include vehicular access, but it all depends on the circumstances.

[21] Mr Baldwin, who is a lawyer, surveyed the authorities and identified only one in which vehicular access was granted to a vacant property which had not previously enjoyed informal vehicular access and was not affected by some historical mistake about access. That case is *Brankin v MacLean*.[19] It is readily distinguishable from this case: vehicular access was needed to get building consents for a permitted use (housing), there was no alternative to foot access, foot access was very difficult, and the applicant had made every effort to explore alternatives. In other cases relief was granted to an applicant who purchased the land knowing that it enjoyed no vehicular access, but in each case there had been prior informal access or a clear historical expectation of public access.[20] Of course, to say this is not to identify a rule or principle: we repeat that it all depends on the circumstances; further, a court may set compensation at a level which shares in some appropriate manner any gains made at

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16 *Asmussen v Hajnal* (2005) 6 NZCPR 208 (HC) at [58]. The High Court judgment was affirmed in part by the Court of Appeal with the Court of Appeal only differing on the quantum of compensation to be awarded: *Hajnal v Asmussen* [2010] NZCA 410, (2011) 12 NZCPR 169.

17 In *Murray v BC Group (2003) Ltd* [2010] NZCA 163, [2010] 3 NZLR 590 at [21] this Court observed that the property in *Asmussen* had always enjoyed vehicular access until it was lost through the closure of an existing driveway.

18 *Murray v BC Group (2003) Ltd*, above n 17; *B A Trustees Ltd v Druskovich*, above n 14.

19 *Brankin v MacLean* [2003] 2 NZLR 687 (HC).

20 *McNeilly v Hoessly* HC Whāngarei M33/01, 16 April 2003; *Yullundri Pastoral and Development Co Ltd v Smith Developments Ltd* (2005) 6 NZCPR 868 (HC); *Wentworth v Sayes* (1994) 2 NZ ConvC 191,859 (CA).

the respondent's expense, just as one would expect had access been negotiated between willing parties.[21]

Is the section landlocked?

[22] Mr Fitchett accepted a number of the Judge's findings. In particular, it is not now suggested that the existing state of affairs results from any error, or that the Greenslades bought the section in ignorance, or that they were ever promised access. But counsel did challenge the Judge's findings about sea access, and the reasonableness of pedestrian access, and the availability of vehicular access over the Ryder right of way.

Sea access

[23] The Council normally requires, as a condition of a building permit, that the site concerned must enjoy practicable vehicular access to the roading network. It has waived that requirement here, at the request of the Greenslades.

[24] It seems that the original non-notified application for building consent may have been silent about vehicular access. When the respondents learned of the consent they sought a review, pointing out that the site lacked vehicular access. The Greenslades' resource management consultant responded by emphasising that "there is nothing unique about having to rely upon boat access for use or construction". The Council agreed. When affirming its original decision on 23 August 2012, it stated that:

> The applicants intend accessing their property from the sea (which is a permitted activity) and then across the unformed legal road. This type of access situation exists elsewhere in the Tasman District Council area without adverse environment effects and is not expected to create adverse environmental effects in this instance.

[25] As Mr Fitchett submitted and Simon France J recognised, the stance the Greenslades took with the Council is not dispositive. But we agree with the Judge

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[21] *Jacobsen Holdings Ltd v Drexel* [1986] 1 NZLR 324 (CA) at 328–329.

that it supplies strong evidence that they found the combination of sea and pedestrian access reasonable, for both construction and use.[22]

[26] The Judge heard evidence that the Greenslades had previously used sea access and a temporary mooring as a way to live in their other property, the White House.[23] The bay normally offers calm water for mooring and for loading and unloading boats because a headland shelters it from northerly winds. In bad weather boats may be moored in shelter at Kaiteriteri or taken from the water there. The Judge was also told that a water taxi which runs from Kaiteriteri will stop at Honeymoon Bay if required: that would be a very short trip, a matter of minutes.

[27] On appeal Mr Fitchett initially contested the Judge's findings about water taxi access, having regretted his decision not to challenge them at first instance. He suggested that water taxis transport people between Kaiteriteri and the Abel Tasman National Park, with no stops in between. We extended him the indulgence of an opportunity to file affidavit evidence. After investigating the point, he conceded that at least one of several operators will stop at Honeymoon Bay on request.

[28] The position remains, then, as the Judge understood it; there is ready access by sea to the beach at Honeymoon Bay for private vessels, boats can be moored there on temporary moorings or at nearby Kaiteriteri, and water taxis service the bay.

Pedestrian access and parking

[29] As noted earlier, Simon France J found the section's combination of pedestrian and sea access reasonable in the circumstances. On appeal, Mr Fitchett challenged this finding in two respects; he contended that the driveway is too long, and its gradient too steep, for pedestrian access to be considered reasonable, and he contended that the Judge was wrong to find that car parking was available at the top of the driveway, where it meets the roading network.

[30] With respect to the first of these points, the driveway is 285 metres in length and falls about 30 metres over its length. Simon France J referred to authorities in

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22 High Court decision, above n 2, at [42].
23 As to which, see [11] of the High Court decision, quoted above at [7].

which the length and gradient of foot access have been in issue.[24] He found that the walking access is not difficult, although someone carrying items would find it harder. He appears to have accepted that heavier items can be brought in by sea. Mr Fitchett conceded that the assessment requires a value judgment. We agree. The Judge walked the driveway; we are not persuaded that he was wrong to find that pedestrian access is not difficult.

[31] Simon France J also found that foot or sea access to holiday homes and beach homes is far from uncommon in the region.[25] Mr Fitchett disputed this finding, arguing that it is true only of private beach houses located in the nearby National Park and all other properties in Honeymoon Bay enjoy vehicular access. That may be so, but it remains true that the sea offers a viable means of access for local properties, most of them holiday or weekend homes.

[32] Turning to the second point, parking exists for two cars, and more if vegetation were cleared, at the top of the drive. Anyone may park there. Simon France J found that, there being no public access to the beach, only those with a connection to houses in the bay would want to park there.[26] He also noted that the Greenslades had not asked the Council to reserve the parking for them via an encroachment licence, although the Council was open to an application and there was no reason to suppose it would not be granted. Further, the parking area can be expanded. The area contains a power pole and substation, but the electricity lines company has advised that these things would not preclude expanded parking, and the Judge was not persuaded that it would be particularly difficult.

[33] Mr Fitchett argued that the Judge was wrong to find that parking is available; there is no guarantee that the two parking spaces will always be free during peak holiday periods, and if they were in use the Greenslades would have to park in Kaiteriteri, too far away for foot access. Counsel conceded that the Judge might properly criticise the Greenslades for having failed to seek an encroachment licence, but he argued that that had nothing to do with the property's landlocked status, which is a question of present fact.

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[24] At [34]–[35]. *Murray v BC Group (2003) Ltd*, above n 17; *Brankin v Maclean*, above n 19.
[25] At [37].
[26] At [21].

[34] We are not persuaded that the Judge was wrong. For most of the year the area experiences no parking pressure. If the parks are in use, as may happen at peak times, people and supplies might have to be dropped off at the top of the driveway, with vehicles then being returned to Kaiteriteri for parking, but reasonable access need not require that parking be available at all times. Nor was the Judge wrong to criticise the Greenslades for failing to pursue an encroachment licence; there is no reason to suppose that one would not be forthcoming, if only they had requested it. It was for the Greenslades to show that the land presently lacks reasonable access, and the Judge might properly reason that they should not be permitted to establish that by relying on a state of affairs of their own making.[27]

The Ryder right of way

[35] As noted earlier, the Greenslade section enjoys a vehicular right of way at the top, over two properties owned by the Ryders. These properties are marked AR on the plan shown above. The right of way runs along the right hand edge of the property nearest the Kaiteriteri road and then turns left along the back boundary of the front section, meeting the Greenslades' section at the point marked X.

[36] Simon France J made the following findings about the Ryder right of way:

> [27] Presently, the first part of the right of way would coincide with an existing driveway, but from where it turns left it would cut through the existing arrangements for combined use of the two properties. There is no building which would obstruct use, but a wall and garden would. A formed right of way would also run next to the recreation area for the properties. The owners of these properties filed evidence indicating they would not facilitate use of the right of way in the sense that it would plainly be obstructive to their enjoyment of their land, and they would resist to the limits allowed by law.
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> [28] Where the right of way leaves the subservient land and enters the [Greenslade] property, the land is very steep. One would need to erect a car deck in the air, as it were….

The Judge also noted that in addition to the right of way entering the Greenslades' section at the top of a very steep slope, their section is itself subject to a small right of way in favour of the adjoining section marked NP on the plan. The significance

[27] *Cooke v Ramsay* [1984] 2 NZLR 689 (HC) at 695.

of this last point is that it might possibly allow the owners of that section, the Nicholls, to obstruct or even prevent a car deck, although that remains to be seen.

[37] At a later point in his judgment, dealing with other considerations relevant to relief, Simon France J observed that the Greenslades led no evidence to explain the apparent difficulties of developing the Ryder right of way.[28] He found that the Greenslades had made no real effort to explore the possibility, or at least none that was placed before him.

[38] Mr Fitchett commenced his argument on appeal by criticising the Judge for, as he put it, overlooking evidence about the difficulty of developing the Ryder right of way.

[39] But the Judge did not take this evidence into account when considering whether the section was landlocked. He treated the Greenslades' failure to explain why the Ryder right of way is impracticable as the last in a series of considerations affecting relief. When considering whether the section is landlocked, he put the Ryder right of way entirely to one side, accepting that it does not presently offer any access and would require considerable development.

Conclusions

[40] We are not persuaded that the Judge was wrong. On the contrary, we agree with him: the Greenslade section is not landlocked, because its existing combination of pedestrian and sea access is reasonable in the circumstances.

Considerations relevant to relief

[41] We need not address this issue, but we do so briefly, lest we should be wrong in our conclusion that the section is not landlocked.

[42] We have already mentioned that the section was developed without vehicular access via the driveway and the Greenslades bought it knowing that to be the case. They made three attempts over the years to get vehicular access: in 1988, 1993 and

[28] At [68].

2004. HBH declined, taking the view in 1993 that the section had reasonable access, the Greenslades knew the facts when they bought it, and any extension of the right of way would inconvenience other users. In 2004 the company did not close the door entirely; it observed that the Greenslades had not provided any details of the proposed development and indicated that, if access were sought in the future the Greenslades would need to provide such details.

[43] The Greenslades did not take up that invitation. They neither disclosed their plans nor made any attempt to negotiate before seeking the building consent. After getting it they requested vehicular access in a letter in which they also made it clear that proceedings would follow if HBH did not agree. They then exhibited inflexibility; Simon France J found that Mr Ross Greenslade evidently felt committed to holding onto the building consent that he had obtained.[29] An applicant may seek access that is reasonably necessary for any use which the Resource Management Act allows, but it does not follow that access negotiations may not reasonably extend to the size and other characteristics of the proposed development.[30]

[44] Compensation was offered. The letter of 15 December 2009 containing the offer is in evidence, but the amount has been masked because the offer was made "without prejudice". The amount was said to be generous, hence non-negotiable. The record contains no other evidence about compensation.

[45] Mr Fitchett tried to separate access from compensation; he pursued an order that access be granted and the question of compensation reserved for later negotiation and, failing that, the High Court. In some factual settings compensation may sensibly be left for another day, but this is not one of them. Conduct in negotiations must be considered when the court decides whether to order access at all, and conduct is a live issue here. The Greenslades need to show that they made a reasonable attempt to purchase access. We have already noted that they took an inflexible approach to both the characteristics of the house and the amount of compensation. Mr Fitchett stressed that they did offer compensation, but like the

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29 At [57].

30 See, for example, *Asmussen v Hajnal*, above n 16; *Kingfish Lodge*, above n 11; *Yullundri*, above n 20.

Judge we find ourselves unable to attach material weight to an offer the reasonableness of which we cannot gauge.

[46] The Judge nonetheless found conduct a neutral consideration, observing that HBH wants to influence the size and type of house to be built but did not respond when the Greenslades belatedly asked what HBH would find acceptable.[31] The Greenslades eventually offered, in December 2011, to reduce the size of the house somewhat.

[47] We are disposed to take a less charitable view of the Greenslades' behaviour in negotiations than did Simon France J. As has been said before, an applicant is normally wise to take the respondent into its confidence from the outset.[32] The Greenslades eschewed that approach when seeking building consent, then insisted on vehicular access to the driveway, evidently confident that an order was a mere formality. Resistance was predictable.

[48] Mr Baldwin sought to persuade us that Simon France J was wrong to find that hardship favoured the Greenslades; he argued that hardship was more or less evenly distributed. He emphasised that the Greenslades still want to build a large house by local standards and it will attract a number of vehicles, displacing others parked in common areas and affecting a communal play area. Simon France J saw some substance in these effects, but he did not attribute them all to the Greenslades. We are not persuaded that the Judge was wrong to find that the Greenslades would suffer more from being denied vehicular access than other users of the right of way would suffer from them having it. We observe that, as Mr Fitchett submitted, conditions might be imposed to limit the impact on other users. Nor are we persuaded, however, by Mr Fitchett's assertion that the Judge understated the extent of hardship suffered by the Greenslades.

[49] The Judge rightly attached significance to the Greenslades' failure to show they could not park at the top of the driveway. They bore the onus of showing that they needed to park at the bottom or beach end; that meant excluding other

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31 At [57].
32 *Asmussen v Hajnal*, above n 16, at [67].

reasonable alternatives. That is also why he criticised the Greenslades for failing to prove that the Ryder right of way is impracticable.

[50] We take Mr Fitchett's point that by its very existence the Ryder right of way proves the Greenslade section was originally intended to have vehicular access, albeit to a car deck at the top end. But it does not follow that because the right of way is now inconvenient, difficult, and perhaps expensive, the section should have access via the HBH driveway. The Ryder right of way was considered adequate when the land was developed and it exists in law, meaning that the Greenslades prima facie could still insist on using it. The right of way would have to be developed at some expense, but it is not clear that the cost would be prohibitive, especially when one recognises that the Greenslades need not pay compensation for using it. They have not explored the Ryder right of way thoroughly because it suits them to characterise it as impracticable. Even if it were, that would not tip the scales in the Greenslades' favour in this case.

[51] We are not persuaded that the Judge was wrong to conclude that even if the existing access is not considered reasonable, relief should nonetheless be denied.

Decision

[52] The appeal is dismissed.

[53] The appellants must pay the first respondent's costs for a standard appeal on a band A basis, and they must pay reasonable disbursements incurred by the sixth respondents.

Solicitors:
Rout Milner Fitchett, Nelson for Appellants
Rhodes & Co, Christchurch for First Respondent