



Brittany recently appeared on behalf of the Respondent in the Property Chamber of the First Tier Tribunal. She successfully resisted an application for alteration arising out of the Applicants' alleged adverse possession of the disputed land. The Applicants failed to demonstrate that they had adversely possessed the majority of the land and, in respect of that area where they had demonstrated 12 years' adverse possession, time had run against a tenant of the land, not the freehold owner. Consequently, the freehold title remained in the hands of the Respondent.

The application

The land in issue was largely woodland with some open scrub. There was a track on the land and some dilapidated outbuildings. At one end, the track joined the local highway (a rural lane). On the other side of the highway was a small parking area that also formed part of the disputed land.

Until 1991, the Applicants' land and the disputed land belonged to the same owner. In 1991 the Applicants bought their land and, over many years, restored buildings on that land so that they were, once again, habitable. The Applicants' land was not connected to the road but did benefit from a right of way, granted as part of the 1991 conveyance, which permitted access. In practice, that right of way was not passable and the Applicants restored and used the track on the disputed land.

The disputed land passed through inheritance and was first registered in 2010. The Respondent purchased it, along with other land, in 2016. The dispute arose in the months afterward and a claim for alteration brought on the ground that the Applicants had extinguished the paper title prior to first registration; a claim under the 'old law' of adverse possession.

The acts relied on

The tribunal considered that placing sculptures, crystallised stones or rubbish bins and the planting of irises and gunneras did not evidence physical control or an intention to possess. Use of the dilapidated buildings for storage and later salvage of materials from those buildings were also not evidence of possession or an intention to possess. In the tribunal's view, an occupying owner would have taken steps to preserve the buildings.

The Applicants had erected a short length of fencing on a portion of the land and maintained the remainder, which had been erected by farmers. The tribunal followed the guidance in *Jourdan*, agreeing that mere maintenance of fencing was of limited value when considering whether the requisite intention to possess had been established.

As to the track, the Tribunal found that the upper portion had been restored by the Applicants and, in places, widened. The tribunal agreed with the Respondent that the Applicant's acts in respect of the track were referable to their use and enjoyment of their own property and, consequently, equivocal when it came to evidencing adverse possession.

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In respect of parking, the tribunal found that the parking area had been used frequently and continuously by the Applicants and their guests. Further, the area had been extended by the Applicants in 2002. In respect of this area, the tribunal found that the Applicants had used it a way that an occupying owner might have done.

Effect of tenancies on claims for adverse possession

Therefore, the Applicants had established the requisite elements of adverse possession in respect of the parking area only. This being the case, the tribunal next considered whether the Applicants had adversely possessed against the owner of the disputed land or a tenant. The tribunal had found that a local farmer had had exclusive possession of land (which included the disputed land) since 1997 and in the tribunal's view, a tenancy existed. Consequently, time had run against the tenant, not the freehold owner. Therefore, as far as the parking area was concerned, the Applicants had not extinguished the freehold owner's title by way of adverse possession.

In light of the tribunal's findings, it was not necessary for the tribunal to consider the registration issues that would have arisen had adverse possession been made out.

Matters to bear in mind

This case is a reminder of the litigation risk that accompanies adverse possession claims and that, often, acts that are done may not be referable to adverse possession when later examined, even if those acts are done frequently (such as use of a track). It also reiterates that a party's acts on part of the land will not necessarily establish adverse possession over a wider area.

Given that adverse possession claims are evidence heavy and specific to the characteristics of the land in question, trials will normally require several days as well as a site visit, incurring hefty legal costs. There is a raft of case law considering various acts and the degree to which they assist in establishing adverse possession. It is recommended that counsel's opinion is sought at an early stage as to whether the nature and extent of acts are likely to assist in making out a claim so that parties can weigh the prospects of success against the likely length and cost of proceedings.

The decision can be found online at:

<http://landregistrationdivision.decisions.tribunals.gov.uk//Public/summary.aspx?id=1104>

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Guildhall Chambers
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