

Adverse possession and registered land (Dowse v Bradford MBC)

The Land Registration Act 2002 radically changed the law of adverse possession in relation to registered land.

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Property analysis: The Land Registration Act 2002 radically changed the law of adverse possession in relation to registered land. Although it allows an applicant to apply to be registered as proprietor after only 10 years' adverse possession, the current registered proprietor can generally resist the application as long as the correct process set out in the 2002 Act is followed.

One of the exceptions to this however is where the land in question was adjacent to land belonging to the applicant, the exact boundary line between the two had not been determined and the applicant had reasonably believed that the land had belonged to them.

In this case, an attempt to rely on this exception to claim title to about two acres of land failed. The judge ruled that this exception only applies to cases where there is uncertainty about the position of the general boundary between two pieces of land. In doing so, he gave effect to the policy behind the 2002 Act to limit the circumstances in which a squatter can acquire title to registered land.

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Dowse and another v City of Bradford Metropolitan District Council [2020] UKUT 202 (LC)

What are the practical implications of this case?

The doctrine of adverse possession has always sat rather uneasily with the concept of registered land and its mirror principle – i.e. the idea that you should be able to tell just from looking at the title all the important details about a piece of land (including who owns it). That was why the Land Registration Act 2002 severely curtailed the ability of a squatter to claim title to registered land – the sanctity of the title register should generally prevail.

This case is significant because it gives clear effect to that principle. Unless a squatter can prove 12 years' adverse possession of registered land before the 2002 Act came into force, the registered proprietor holds all the aces. As long as the correct process is followed, there are only three narrow exceptions where a squatter's claim can succeed. Two of those exceptions were not relevant here – where it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the applicant and where the applicant is for some other reason entitled to be registered as the proprietor. The third exception was the subject of the litigation in this case and the judge gave it a narrow interpretation severely limiting its application.

Anyone advising a client on an adverse possession application should check at the outset if the claim will be dealt with under the 2002 Act. If so, they should check if one of the three exceptions may apply. If not, they should generally advise a client that the claim is unlikely to succeed.

What was the background?

Mr and Mrs Dowse (D) claimed in 2017 to be entitled to be registered as proprietors of approximately two acres of open land registered in the name of the City of Bradford Metropolitan District Council on the basis of adverse possession. The land (or at least part of it) was adjacent to the garden of their house. They claimed to have been in possession of the land since 1974 and, indeed, had had a prior application for adverse possession rejected by the Land Registry in 2001. They had initially used the land for grazing, but more recently they had placed a caravan and trailer on the land, stored materials on the land, grown hay on the land and they had made access to the land more difficult.

D's claim was based on the exception in paragraph 5(4) of Schedule 6 of the Land Registration Act 2002. This required them to show that:

- (a) the land in question was adjacent to their own land;
- (b) the exact boundary line between the two had not been determined;
- (c) they had reasonably believed that the land had belonged to them for at least 10 years prior to the date of the application; and
- (d) the land had been registered more than one year prior to the date of the application.

What did the court decide?

D claimed that the conditions mentioned above were satisfied on a literal reading of those conditions - after all, the land in question had a boundary with D's land and so could be said to be 'adjacent' to it, the boundary had not been determined and D had reasonably believed that the land had belonged to them on the basis of adverse possession (they disagreed with the Land Registry's rejection of their claim in 2001).

However, the judge pointed out that the cases where a squatter's claim could still succeed under the 2002 Act were exceptional cases which applied despite the general hardening of legislative policy against squatters. You would therefore expect to find some clear justification for the exceptional treatment in those cases. On that basis, the judge rejected this literal interpretation and concluded that the exception only applies to land in the area of the general boundary between the applicant's land and the registered proprietor's land. He was able to do this by construing condition (a) to mean that the whole (or possibly substantially the whole) of the disputed land would have to be capable of being described as 'adjacent to' the applicant's land. That is the case when the land in dispute is land within the general boundary area between the two parcels of land, but it is not the case where (as here) only a small fraction of the land in dispute adjoins the applicant's land.

In other words, the exception only applies in the context of a boundary dispute - where there is uncertainty about the true position of the common boundary between two pieces of land.

Case details

- Court: UK Upper Tribunal (Lands Chamber)
- Judge: Justice Fancourt
- Date of judgment: 23 June 2020

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