

Adversely possessed

Autumn 2015

It is a long settled legal principle [1] that acts of possession on a part of land to which an adverse possession claim is being made may be evidence of possession of wider land, where there is a 'common character of locality' - in other words, where the use of one part of land is inherently linked to the use of another part of land, a claim for adverse possession of the whole may be made.

The Upper Tribunal (Tax and Chancery Chamber) recently considered this principle in the case of *Smith -v- Frankland* and another [2015] UKUT 294 (TCC). However, in this particular case it found that there was not a sufficient link between the various parts of land (a garage, used for storage purposes, and other undefined land used for unrelated parking purposes).

Introduction

Adverse possession is the means by which a person who does not own land can become the legal owner if he or she possesses the land for a sufficient time and in a certain manner.

An applicant must show that he/she has had uninterrupted factual possession of the land with an intention to possess the land for at least 10 years (registered land) or 12 years (unregistered land), to the exclusion of the legal owner.

Factual possession means physically controlling the land, typically by enclosing it by fencing it off. However, the nature of physically controlling the land will be specific to the facts, and will depend upon the type of land in question and the manner in which land of that type would typically be used. It is critical that the use of the land is without the permission of the legal owner and as such, use of the land under an easement, or licence, will be insufficient to establish adverse possession.

As stated above, an act of possession on one part of land will be treated as possession of other land (also within the ownership of a legal owner) provided that there is a common character of locality that raises the reasonable inference that, if one part belongs to the person in possession, the other parts do too.

However, generally, this rule will not apply where the boundaries of the land are undefined, and this proved important in the current case.

Facts

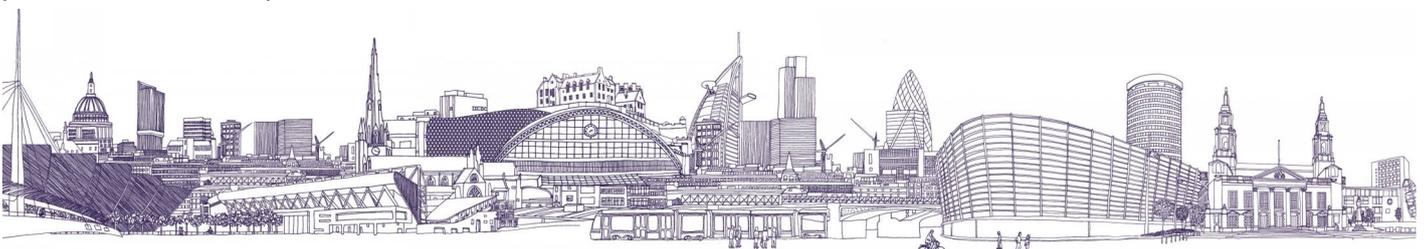
In this case, the applicant claimed adverse possession of a garage and open land to the west of the garage (the Western Land). The applicant used the garage for the purposes of storage and the Western Land was used as parking by a third party, Mr Wright, who had been granted a licence for this purpose by the applicant. The applicant asserted that as he granted the licence to Mr Wright, he was effectively in control of, and therefore in possession of, the Western Land.

In the First-tier Tribunal, it was held that the applicant had acquired adverse possession to the garage but not the Western Land, because it was not accepted that the possession of the garage was inherently linked to the use of the Western Land by Mr Wright.

On appeal, the Upper Tribunal upheld the findings of the First-tier Tribunal, stating:

1. The garage was enclosed with walls, whereas the Western Land was open land;
2. The boundaries of the garage (its walls) were clear, but the boundaries of the Western Land could not be obviously delineated; and
3. The use of the garage was for storage purposes and this raised no reasonable inference that the applicant was also in possession of the Western Land, which was used as parking by a third party licensee for purposes unconnected with the use of the garage.

Furthermore, the Upper Tribunal was not satisfied that the use of the Western Land as parking could amount to sufficient possession of the Western Land to give rise to adverse possession. At best, it could only give rise to an easement to park.



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Analysis

Whilst the case does not create new law, it is useful to understand that it is not easy for an applicant to claim adverse possession of land beyond the land on which the act of possession took place. Indeed, any landowner facing such an adverse possession claim should challenge the applicant to show the necessary inherent link between the land on which the actual act of possession took place, and any other land over which the claim is made. It will be very difficult for the applicant to succeed on this where the 'other' land is not enclosed, or its boundaries are not easily identifiable.

[1] *Jones -v- Williams* [1837]

If you would like to discuss any of the issues raised in this update, please contact:



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