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# ADVERSE POSSESSION AND OTHER BOUNDARY ISSUES

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## ABOUT RICHARD SNAPE

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## **ADVERSE POSSESSION: LAND REGISTRATION ACT 2002 (“LRA 2002”)**

### **The Law**

In unregistered land, a claim for adverse possession can be made after twelve years (thirty years in relation to the Crown) of having asserted factual possession (in layman’s terms - treating the land as one’s own) and an intention to possession (intending to bar all others including the paper owner from the land). There must also be discontinued use by or dispossession from the paper owner. This much is still clear and survives the decision, which only applies to registered land.

In relation to the latter, claims accrued pre-implementation of the Land Registration Act 2002, on 13 October 2003, basically retained the above requirement to show twelve years adverse possession. For claims arising on or after the above date only ten years adverse possession is required (this includes the Crown). However, the registered proprietor will be notified of any claim and has sixty-five working days in which to defend the claim. If an objection is made, adverse possession will only succeed for post October 2003 claims if one or more of three very limited circumstances apply: most notably, there has been a reasonable and genuine mistake as to where the boundary is.

In ***Baxter v Mannion 2011 [2011] EWCA Civ 120*** an applicant successfully claimed adverse possession as the registered proprietor did not object to the claim within 65 days of being notified of the application by the Land Registry. The Application did not have the requisite ten-year adverse possession and the application was set aside.

***J.A. Pye (Oxford) Ltd v Graham [2002] UKHL 30*** G. had grazing licences on 57 acres of land. The licences came to an end but G. continued grazing. The Land was subsequently worth £10 million and G. claimed adverse possession. The House of Lords stated that there must be a sufficient degree of continued physical control and an intention to occupy and not necessarily own. The fact that someone is prepared to pay for occupation does not prevent adverse possession nor is there a need for physical ouster from the land. The claim succeeded.

***Pye v United Kingdom [2007] ECHR 30***. The Grand Chamber of the European Court of Human Rights held that adverse possession in relation to a pre 2003 registered land claim did not constitute a breach of human rights.

### **Highways**

***R (Smith) v Land Registry and Cambridgeshire County Council [2010] EWCA 200*** - Following ***Bromley Borough Council v Morritt 1985***, parking of caravans and trimming hedges on a byway open to all traffic could not constitute adverse possession as it is a criminal offence to obstruct the highway and a claim cannot be based on a criminal offence. The Land Registry Practice Guide 5 states that if the Registry consider a claim to be over highway they will contact the highways authority. The Court of Appeal stated that only if a public right of way was extinguished could an adverse possession claim arise and this would not happen unless the claimant obtained title to the adopted surface which would not be the case. This is based on the principle of “once a highway always a highway” unless there is a surrender. It was assumed that driving vehicles over village green might also be illegal. However, in ***T.W. Logistics v Essex County Council [2021] UKSC 4*** the Supreme Court held that this was not the case if the local population and the drivers could live harmoniously together.

### **Meaning of Adverse Possession**

**S15(1) LA 1980** states:

*No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him....*

Thus, the limitation period only starts to run against the owner from the date on which the rights of action accrued.

By virtue of paragraphs 1 and 8 Schedule 1, LA 1980, this right of action accrues where:-

- the owner has been dispossessed or he has discontinued his possession; and
- some other person (the squatter) has taken adverse possession

Previously, once adverse possession had arisen, the property would be held on bare trust for the claimant who in registered land would have an overriding interest. This ended on October 13<sup>th</sup> 2006 and now they will only have an overriding interest which is binding on subsequent purchases if in actual occupation: **Clapham v Narga [2023] EWHC 3337**. Here fencing had fallen into disrepair and it was held that a purchaser on a reasonable inspection would not know of the adverse possession.

“Dispossession” refers to a person coming in and putting the owner out of possession. However, the owner need not know that he has been dispossessed. There can be dispossession even if the owner is unaware that a squatter has taken possession of the land.

“Discontinuance” means that the owner has abandoned his possession. Mere non-user, however, may not constitute abandonment.

This applies equally to registered and unregistered land because paragraph 11 Schedule 6 LRA 2002 provides that:-

*a person is in adverse possession of an estate in land for the purpose of this Schedule if, but for section 96, a period of limitation under section 15 of the Limitation Act 1980 would run in his favour in relation to the estate.*

To bar the owner’s title, therefore, a squatter needs to establish not only dispossession or discontinuance (as explained above) but also adverse possession for the requisite period of time.

### **Possession must be adverse**

Possession is not adverse if the squatter is entitled to occupy the land under some lawful right such as an existing contract or licence granted by the owner. Thus in **George Wimpey & Co Limited v Sohn and Another [1967] Ch 487** it was held that there was no adverse possession as the squatter was merely exercising legal rights of way.

Similarly, a tenant cannot acquire a title by adverse possession to land that he occupies under a lease. His possession is by virtue of the lease and, accordingly, is not adverse. As the tenant’s possession is not adverse, the limitation period does not run. However, time can start to run in favour of a tenant who remains in possession when his lease has determined provided that the holding over is not with the consent of the landlord. If the tenant holds over with the consent of the landlord, a tenancy at will arises.

In the case of an oral yearly or other periodic tenancy, time runs in the tenant’s favour from the end of the first year or other period of tenancy. But if the tenant subsequently pays rent, the limitation period will restart from the date that the rent was paid (s15(6) and paragraph 5, Schedule 1 LA 1980).

### **Possession**

For there to be adverse possession, a squatter must establish both factual possession and the requisite intention to possess (or animus possidendi).

## Factual possession

Each case turns on its own facts and must be judged on its merits. Acts, which constitute factual possession in one case, may not be sufficient in another. The required degree of exclusive control will vary with the nature of the land and the way in which it is normally used or occupied.

Nevertheless, there are certain situations which regularly arise and consideration of these may help to explain the requirements for factual possession.

### Fencing

In ***Seddon v Smith (1877) 36 LT 68*** erecting fences or building on land is prima facie evidence of adverse possession.

For open land, enclosure can provide strong evidence of factual possession. Thus in ***Williams v Usherwood [1983] P & CR 235*** the enclosure of the land by fencing was an important factor in the court's finding that the squatter was in adverse possession.

However, even fencing and gates may be equivocal – as where it is insubstantial or intended merely to prevent access by the public (***George Wimpey & Co Ltd v Sohn and Another [1967] CH 487***).

***Chambers v Havering London Borough Council [2011] EWCA 1576***, repair of existing fencing was not enough.

### ***Thorpe v Frank [2019] EWCA 150***

To claim adverse possession then there must be a factual possession and an intention to possess. Fencing is clear evidence of factual possession but not essential. Here the Court of Appeal accepted that paving a piece of neighboring land could give rise to adverse possession where due to the layout of the land and the existence of restrictive covenants fencing was inappropriate.

### Parking

Whether the parking of cars or other vehicles constitutes factual possession is related to the nature of the land:

*.....the significance of parking varies greatly according to the exact circumstances of the relevant ground. Parking cars on a strip of waste land may have no evidential value whatever in relation to possession of land. In the enclosed curtilage of a private dwellinghouse however it may be regarded as evidence of possession. Cumming-Bruce LJ in ***Williams v Usherwood [1981]****

### Changing the surface

Changing the surface of land by, for example, laying tarmac, crazy paving or cobbles, can constitute strong evidence of factual possession – especially when accompanied by enclosure.

### Trivial acts

Trivial acts will not suffice. Thus in ***Boosey v Davis [1987] 55 P & A CR 83*** the use of land for the grazing of goats and the clearing of scrub to facilitate grazing was held to be minimal in terms of the quantity and quality of user and insufficient to constitute possession in fact.

Similarly, in ***Powell v McFarlane [1977] P & CR 454*** the grazing of cows, the cutting of hay, the repair of fences and the cutting of Christmas trees were held not to be sufficient acts of user to constitute factual possession.

Nevertheless, where the squatter is using the land in the only way it can be used, there can be adverse possession. Thus, in ***Red House Farms (Thorndon) Limited v Catchpole [1977] EGD 798*** shooting over marshy ground was held to be sufficient possession as the land was useless save for this purpose. The owner's only access to the land was by a bridge, which had long been in disrepair.

## Intention to possess

Factual possession alone is not enough. A squatter needs to also establish the necessary intention to possess.

The Court of Appeal has clarified the nature of this intention to possess in **Buckinghamshire County Council v Moran [1989] Ch 625** where it was held that the requirement is that the squatter intends to possess the land to the exclusion of all other persons including the owner. No intention to own or acquire the land is needed.

In the **Moran** case, the Council acquired a piece of land to carry out an intended road diversion in the future. Mr Moran's predecessor incorporated the land into his adjoining garden. Mr Moran was aware of the Council's intentions. The Council sought possession of the land more than 12 years after the land was incorporated into the garden. It was held that the Council's title was barred by adverse possession.

As well as this subjective intention to possess the land, a squatter must show by his outward conduct that this was his intention:-

*.....the courts will ..... require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large that he has intended to exclude the owners as best he can, the courts will treat him as not having the requisite animus possidendi and consequently as not having dispossessed the owner – Slade J in **Powell v McFarlane 38 P&CR 452.***

In **White v Amirtharaja [2022] EWCA 11**, adverse possession was claimed over a passageway. This failed as a predecessor had not shown sufficient to exclude the world at large.

In **Batt v Adams [2001] EGLR 92** factual possession of more than 12 years was established. The question for the court was whether there was sufficient intention to possess the land. The squatter was a tenant and was unaware that the title to the land was owned by anybody other than his landlord.

He believed that he could use the land at will but did not intentionally exclude a person with title. There was thus no intention to possess. Accordingly, no adverse possession arose.

However, in **Mayor and Burgesses of Lambeth v Blackburn [2001] EWCA 92** the Court of Appeal had to consider a squatter's claim to possession of a flat in one of the council's block of flats. When he moved in, he undertook repairs to the flat to make it habitable and replaced the locks.

Whilst he was in occupation, he always thought that he would eventually be evicted and was willing to move out if he had to do so. He was willing to negotiate with the council and was prepared to pay rent. On the facts of the case, the squatter had established the required 12 years' factual possession and the question centred on the intention to possess. The Court of Appeal decided that the squatter's willingness to accept a lease and his knowledge that he was a trespasser within the 12 years did not negate an intention to possess. All that was necessary was to show an intention to possession to the exclusion of others. This had to be distinguished from an intention to own. Adverse possession therefore was established.

Since S.144 of the Legal Aid Sentencing and Punishment of the Offenders Act 2012 came into force then it is illegal to squat in residential property. Whether this changes the decision is debatable.

In **Malik v Malik [2023] EWHC 59** it was held that payment of a service charge by the paper owner of a 999-year lease did not prevent adverse possession. On November 4<sup>th</sup>, 2024, the Court of Appeal **[2024] 1323** reversed the claim but on different grounds and did not discuss this point.



### **Land owned by the Crown: unregistered land**

Where the owner is the Crown the limitation period is 30 years, or 60 years in the case of foreshore. Land held by the Crown includes land held as bona vacantia, typically following the dissolution of a company. Thus, for example, the proprietor of a property on a developed estate who has enclosed and is adversely possessing a strip of land which remains registered in the name of the now dissolved developer company will have to establish 30 years' adverse possession in order to become registered as proprietor of the strip, unless the developer's title has been barred prior to dissolution.

### **The Land Registration Act 2002**

The Act provides a new scheme for adverse possession in relation to a registered estate in land. The provisions only apply to registered land. The essence of the scheme is that:

- Adverse possession of itself, for however long, will not bar the owner's title to a registered estate in land or a registered rent charge.
- A squatter will be entitled to apply to be registered as proprietor after ten years adverse possession (Form ADV1) and the registered proprietor, any registered chargee, and certain other persons interested in the land will be notified of the application.
- If the application is not opposed (within 65 days) by any of those notified, the squatter will be registered as proprietor of the land. Form ADV2 allows someone to notify the Registry that they should be notified of a claim.
- If any of those notified oppose the application it will be rejected, unless the adverse possessor can bring him or herself within one or more of three conditions.
- If the squatter's application for registration is refused but the squatter remains in adverse possession for a further two years, he or she will be entitled to apply once again to be registered and will this time be registered as proprietor whether or not the registered proprietor objects.
- Where the registered proprietor brings proceedings to recover possession from a squatter, the Act allows the squatter to establish certain limited defences which are consistent with the three conditions mentioned above.

*Paragraph 5* provides that if the applicant can show that one or more of three conditions applies, the applicant is entitled to be registered as the new proprietor of the estate. If a recipient who has objected disputes that a condition applies, then if the objection is not disposed of by agreement the matter will have to be referred to the adjudicator under the general provision as to objections.

The first condition in paragraph 5 provides statutory recognition for the equitable principles of proprietary estoppel.

For example:

Where the applicant/squatter has built on the registered proprietor's land in the mistaken belief that he or she was the owner of it and the proprietor has knowingly acquiesced in his or her mistake. The squatter eventually discovers the true facts and applies to be registered after ten years: e.g.

#### ***Inwards v Baker [1965] 2QB29***

- Where neighbours have entered into an informal sale agreement for valuable consideration by which one agrees to sell the land to the other. The "buyer" pays the purchase price, takes possession of the land and treats it as his own.. There is no binding contract because the agreement does not comply with the formal requirements for such a contract under **S.2 Law of Property (Miscellaneous Provisions) Act A 1989**. The "buyer" discovers that he or

she has no title to the land. If he or she has been in possession of it for ten years he or she can apply to be registered as proprietor: see e.g. *Yaxley v Gotts [2000] 1 All ER 711*

In each of these cases, an equity arises by estoppel, to which the legislation should be able to give effect by registering the squatter as owner of the registered estate in place of the existing proprietor.

Examples of the second condition (some other right to the land) might be:

- The squatter is entitled to the land under the will or intestacy of the deceased proprietor.
- The squatter contracted to buy the land and paid the purchase price, but the legal estate was never transferred to him or her. In a case of this kind the squatter-buyer is a beneficiary under a bare trust, and, as such, can be in adverse possession.

The third condition (reasonable mistake as to the boundary) would cover cases such as:

- Where the boundaries as they appear on the ground and as they are according to the register do not coincide, for example, because when the estate was laid out the dividing fences or walls were erected in the wrong place and not in accordance with the plan lodged at the Land Registry.
- Where the registered proprietor leads the squatter to believe that he or she is the owner of certain land on the boundary when in fact it belongs to the registered proprietor. If there has been detrimental reliance, then there might also be a proprietary estoppel.

One of the requirements of the third condition is that estate to which the land relates was registered more than one year prior to the date of the application. This requirement is imposed because title to *unregistered* land can normally be acquired after twelve years adverse possession while under the third condition title to *registered* land may be acquired after ten years adverse possession. There might be a case where the squatter had been in adverse possession of unregistered land for more than ten but less than twelve years, the title was then registered and the other requirements of the third condition are met. The squatter would not have barred the title of the landowner prior to registration of the title but if this provision was not made he or she would be entitled to apply to be registered as proprietor as soon as the owner was registered.

In other words, the owner would have no opportunity to evict the squatter. Presumably, the successful applicant would be entitled to absolute title.

In *IAM Group v Chowdrey [2012] EWCA 505* - it was held that in determining a squatter's reasonable belief, they should not be imputed with their agents, e.g. their solicitor's knowledge. In deciding whether the lease is reasonable, it is appropriate to ask whether the squatter ought to have raised questions of their solicitor. However, if the paper owner has not challenged the exclusive possession of the squatter, there would be no reason to raise enquiries.

*Zarb v Parry [2011] EWCA 1306* the applicant must reasonably believe that the land is theirs for the previous ten years prior to the claim where there is a reasonable mistake as to boundaries. If circumstances make this belief unreasonable then there can be no claim. Here, however, the fact that the neighbour had queried the boundary line some years previously did not make the belief unreasonable.

*Brown v Ridley [2024] UKUT 14*. Here the Upper Tribunal reluctantly decided that they had to follow the Court of Appeal cases of *Zarb v Parry [2012]* and *IAM Group v Chowdrey*. For registered land claims under the Land Registration Act 2002, as of October 13<sup>th</sup> 2003 a claim can arise after 10 years but may be defeated if there has been a reasonable mistake as to boundaries. The mistake must be for the 10 years immediately prior to the claim and not for any 10 year period.

### **The Notice of Adverse Possession**

***Hopkins v Beacon [2011] EWHC 2899*** - The registered proprietor failed to tick the counter notice box on the Notice of Adverse Possession. The Court held that if it was clear what defence was being relied upon this was not fatal. However, here this was not the case and all the applicant had to do is show that adverse possession existed.

### **Adverse possession and leaseholds**

***St Marylebone Property Company Limited v Fairweather [1963] AC 510***. In unregistered land, even though the adverse possessor has acquired a new title, he is not free from incumbrances. Therefore, even an unregistered land charge is binding on the adverse possessor. Here adverse possession of property subject to a leasehold did not terminate the lease.

Compare ***Spectrum Investments v Holmes [1981] 1 WLR 221***, where in registered land adverse possession was held to terminate the existing lease.

## **Moorings**

***Port of London Authority v Tower Bridge Yacht Company [2013] EWHC 3054*** mooring rods fixed to the riverbed did not give rise to an adverse possession claim as they constituted use of the river bed and not taking possession. The rods were there to facilitate mooring above the riverbed. Moorings could, however, in different circumstances, give rise to an adverse possession claim, see ***Port of London Authority v Ashmore [2010] EWCA 30***. Here a barge would sit on the river bed at low tide. The claim succeeded but river users could not be prevented from passage. In ***Port of London Authority v Mendoza [2017] UKUT 146*** mooring of a houseboat did not give rise to adverse possession.

## EASEMENTS

### Rights to Light

***Ough v King [1967] 1 WLR 1547*** - These can only exist through a defined window.

Most of such rights are created by prescription, either through lost modern grant, or an indefeasible easement may come into existence under **S.3 Prescription Act 1832**.

***Colls v Home and Colonial Stores [1904] AC 179***, accepted that the amount of light must be sufficient for the comfortable enjoyment of the occupation of land. Thus here, a business premises required less light than a residence. There is no general 45° rule: ***Theed v Debenhams [1876] 2 Ch D 165***.

In ***Newham v Lawson [1971] 22 P&CR 582***, a church required relatively little light. In ***Allen v Greenwood [1980] Ch 119***, an injunction was granted preventing the erection of a fence on land near a greenhouse, as the retained light would be inadequate for growing plants.

A right to light is not deprived by the change in the use of the building through which the light comes. In ***Carr-Saunders v Dick McNeil [1986] 1 WLR 922***, one room had been divided into several smaller rooms, although the windows were the same. Each room was entitled to a reasonable amount of light.

The owner of land cannot, however, increase the windows thus requiring more light: ***Martin v Goble (1808)***.

For a prescriptive easement there must be a degree of continuity. However, in ***Cooper v Straker [1888] 40 Ch.d 21*** where shutters in a warehouse were usually closed unless business required otherwise there could still be a right to light. In ***Smith v Baxter [1900] Ch 138*** a boarded up window could not give rise to a right to light but shelving in front of a window still amounted to continuity.

Note: The **Rights of Light Act 1959** allows registration of a local land charge in order to prevent creation of prescriptive rights. The registration must occur within 19 years and a day of the commencement of the time period. There must be interruption of a right for a year under the Prescription Act 1932, for the claim to have to start afresh.

In ***Tamares (Vincent Square) Ltd. v Fairpoint Properties (Vincent Square) Ltd. [2007] EWHC B3 (Ch)*** an injunction was refused in relation to restrictive covenants which blocked rights to light. However, one third betterment value was awarded as compensation. This in spite of the fact that the Premises would normally be artificially lit.

### ***HKRUK II v Heaney [2010] EWHC 2245 (Ch)***

Normally once work is underway, an injunction will not be granted to deal with breaches. However, in the present case, a landlord went ahead with development which obstructed rights to light in complete disregard of the facts that the work would obstruct rights to light. In these circumstances, the injunction was granted.

The decision in ***Heaney*** is particularly controversial after ***Coventry v Lawrence*** above. In the County Court case of ***Scott v Aimiuwu (2015)*** the Judge refused to order an injunction where a residential extension encroached on the light of a neighbouring workshop and outbuildings. Damages, if based one-third of betterment value, would have been £54,000, if based on the reduced value of the neighbouring land it would have been £12,000. The Judge decided that factors such as the behaviour of the parties would be relevant and awarded £31,000.

In ***Ottercroft Limited v Scandia Care Limited & Another [2016] EWCA Civ 867*** the Court of Appeal awarded an injunction in relation to infringement of light by a re-built fire escape. The loss to the neighbouring café premises was only £886. An alternative fire escape would have cost an additional £12,000. In awarding the injunction the Court decided that factors such as the behaviour of the defendant and his non-compliance with an undertaking he had agreed were factors to be taken into account.

### ***Salvage Wharf Ltd & Anor v G&S Brough Ltd [2010] Ch 11***

Where rights of light prevents development work, there may be an agreement to allow the development to go ahead. Here the courts drew a distinction between two types of clause. Firstly, a clause that deals with the position as it exists at the date of the agreement. This will be effective to establish the existing legal rights of the parties but will not prevent subsequent acquisition of a right of light by prescription. Secondly, a clause which deals with what might happen in the future. This clause may prevent the acquisition of a right of light by prescription if what is authorised would interfere with the right. It is not necessarily for the clause to use the word 'light' nor to provide that the enjoyment of light is permissive.

### ***RHJ Limited v FT Patten Ltd [2008] EWCA 151***

It was held by the Court of Appeal that an agreement did not have to contain an express reference to rights to light to prevent such rights being acquired under **S.3 of the Prescription Act 1832**.

See also ***CGIS City Plaza Shares v Britel Fund [2012] EWHC 1594*** for a similar decision whereby the agreement was held to binding on successors in title.

### **Fencing Easements**

Usually, an easement cannot involve positive expenditure on the part of the servient owner. See ***Regis Properties v Redmond [1956] 2 QB 612***. However, in ***Crow v Wood [1971] 1QB77***, a customary obligation to fence was recognised as an easement.

### ***Churston Golf Club v Haddock [2019] EWCA544***

Several past cases had accepted that there may be an easement to fence which arises through custom. This is an exception to the normal rule that easements cannot require positive expenditure on the part of the servient owner. In the present case the High Court had accepted that a positive covenant to maintain boundary walls and fences forever hereafter could constitute an easement. The Court of Appeal have reversed this decision. It could not be an easement as it referred to the right being a positive covenant. The Court left open the question as to whether there may be a general easement to fence.

### **Rights of Support**

***Dalton v Angus (1881) UKHL 1*** established that there is an easement of vertical supports which may be expressed, implied, for example by the rule in ***Wheeldon v Burrows [1879]***, or prescriptive through acquiescence. However, there is no easement of horizontal support and such a covenant will not be enforceable in freehold land as maintenance is a positive covenant: ***Rhome v Stephens [1994] UKHL3***. This is the issue with flying freeholds.

However, negative easements cannot exist. In ***Phipps v Pears [1965] 1 QB 76***, there was no easement of protection from the weather where a nearby, but not adjoining, building was pulled down. Also see ***Bond v Nottingham Corporation [1956] 2 QB***. The owner of a building is under no obligation to repair or provide positive supports, but must not remove existing supports.

See also *Holbeck Hall v Scarborough Borough Council* [1997] 57 Con LR 113 - for a similar decision where inaction does not constitute a tort.

Note: Tort claims *Bradburn v Lindsay* [1983] 2 All ER 408. One of two semi-detached properties was demolished. The servient owner was liable in nuisance and negligence. The claim extended not merely to damages in relation to rights for support but also to the effects of weather and dry rot. In *Rees v Skerrett* [2001] 1 WLR 1541 a right of support, if it exists, extends to protection afforded against the weather.

### **Section 38 Law of Property Act 1925**

Section 38 states the following:

#### **Party structures**

1. Where under a disposition or other arrangement which, if a holding in undivided shares had been permissible, would have created a tenancy in common, a wall or other structure is or is expressed to be made a party wall or structure, that structure shall be and remain severed vertically as between the respective owners, and the owner of each part shall have such rights to support and user over the rest of the structure as may be requisite for conferring rights corresponding to those which would have subsisted if a valid tenancy in common had been created.
2. Any person interested may, in case of dispute, apply to the court for an order declaring the rights and interests under this section of the persons interested in any such party structure, and the court may make such order as it thinks fit.

## **THE ACCESS TO NEIGHBOURING LAND ACT 1992**

This Act gives limited right for one land owner to call on neighbouring owner and occupier for access, with the Court, having power to make an order in the event of disagreement. Any pending application should be registered at the Land Registry or Land Charges Department to make it effective against successors in title. This right cannot be contracted away.

The court will only make such an order if it is satisfied, first, that the works are reasonably necessary for the preservation of the whole or any part of the 'dominant land' (here the Act uses the terminology of easements) and, secondly, that they cannot be done or would be substantially more difficult to do without 'entry' upon 'the servient land'. Entry can include doing anything necessary, such as drilling or erecting scaffolding, depositing plant and materials and temporary deposit of waste in the process of its speedy removal.

The court may decline to make such an order in situations where it is satisfied that any servient owner or occupier would suffer interference or disturbance or hardship of such a degree that it would be unreasonable to make the order.

This right is limited to enabling 'basic preservation works' which include:

- the maintenance, repair or renewal of any structure in the dominant land and the clearance, repair
- the renewal of any drain, sewer, pipes or cable on that land
- the treatment, cutting back, felling or replacement of any hedge, tree, shrub or other growing thing that is or is in danger of becoming damaged, diseased, dangerous, insecurely rooted or dead, and
- filling in or clearance of any ditch

The works may incidentally involve the making of some alterations, adjustment or improvement or demolition.

There is an ancillary right of inspection to assess the need for works and to prepare plans and generally in connection with them.

The court can impose conditions as to the carrying out of the works and also award fair and reasonable compensation. This compensation can be assessed with regard to both the applicant party's financial advantage and the respondent party's inconvenience. The Act lays down a cost/benefit comparison process to be gone through in reaching the amount of compensation. The court can also award reimbursement of expenses reasonably incurred by the respondent party and require that security should be provided in advance, as well as making the usual award of costs.



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