



In *Brown v Ridley & Ridley* The Lands Chamber has provided clarification in relation to the criteria considered when making a claim for adverse possession of registered land.

### What is adverse possession?

Adverse possession is a process by which a party who is not the legal owner of land can acquire title to it by being in exclusive possession of the land for a period of time. The rules governing adverse possession differ depending on whether the land in question is registered or not, as well as the period during which the land in question is claimed to be adversely possessed. For claims of unregistered land the applicant has to show exclusive possession for a continuous period of 12 years. The same rule applies to registered land where the 12 year period ends before 13 October 2003.

In the case of registered land where the applicant is reliant on a period of occupation that extends beyond 13 October 2003, the process is different and is governed by the Land Registration Act 2002 (the **2002 Act**). It is this second procedure that was under consideration in *Brown*.

### Summary of the facts

The Ridleys and Mr Brown owned adjoining parcels of land, each having purchased their respective parcels in the early 2000s. Part of the land within the Brown title was under occupation by the Ridleys who, prior to making their application, constructed a dwelling house located in part on this disputed parcel. When the encroachment was eventually discovered by Mr Brown, the Ridleys made their application for adverse



possession. The case came before the First Tier Tribunal who found for the Ridleys and it is against that decision that Mr Brown appealed to the Lands Chamber.

## The relevant statutory provision in the 2002 Act

Under the 2002 Act if the registered title owner of the land opposes an application for adverse possession they can only succeed if they can show that the application does not meet all the conditions set out in the 2002 Act. *Brown* focused on the interpretation of the following condition that:

“For at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him”.

## Mr Brown’s argument

The position argued by Mr Brown was simply this: The Ridleys became aware that they were not the true owner of the land prior to making the application and so couldn’t satisfy the above condition. That belief came to an end on one of the following events:

- February 2018: The application for planning permission for the development was made (it is unclear from the judgment but it is assumed that in preparing documents for the application the true extent of their ownership will have become apparent).
- October 2019: Mr Brown points out that the Ridleys had built in part on his land.
- November 2019: The Ridleys’ solicitors acknowledge that their client had built in part on Mr Brown’s land but that the period of their use and occupation of that disputed parcel was sufficient to make an adverse possession claim.

The application for adverse possession was made on 20 December 2019, around a month after the letter from the Ridleys’ solicitors.

It was determined by the Tribunal judge in the court of first instance that it was more likely than not that the Ridleys had realised they were not the owners of the disputed parcel by February 2018. However, this was irrelevant as the judge interpreted the relevant condition in such a way that the applicant must prove they had a reasonable belief they owned the land for *any* continuous 10 year period of use and occupation prior to the date of the application and not specifically a 10 year period ending on the date of the application.

On appeal to the Lands Chamber however, it was determined that the correct interpretation of the statutory provision, settled by the Court of Appeal in *Zarb*, was that the 10 year period during which belief of ownership existed had to run up to the point at which the application was made. It was decided that the Tribunal judge had correctly determined that such belief ended by February 2018, over a year before the application was eventually made, and therefore the adverse possession claim could not succeed and Mr Brown was successful in his appeal.

## A potential twist

While a determination by the Lands Chamber based on existing Court of Appeal authority might not be revolutionary, what is interesting is that, in coming to this determination, The Honourable Mr Justice Edwin Johnson took the view that *Zarb*, the existing Court of Appeal authority on the interpretation of the relevant statutory provision, was in his view wrong. He went so far as to say that but for the existence of this authority he



would have determined that the correct test was that any continuous 10 year period of belief within the totality of the period during which the land was adversely possessed would suffice and that what was important was that the adverse possession continued until the application was made.

So it remains to be seen whether this case or any future case may come before the Court of Appeal to potentially provide a new test for adverse possession under the 2002 Act. For now at least, the law requires the applicant to believe it owned the land in question up to the point at which the application is made, which is plainly a challenging test to satisfy. A change to the test as suggested in Brown may open a route to adverse possession claims that is presently sealed shut. For now the owners of registered land defending claims for adverse possession can rest easy that any applicant has a challenging condition to meet in order to mount a successful claim.

## How we can help

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