



MEETING PAPER

Subject: Trees at Uplands Road North

~~CONFIDENTIAL~~/NON CONFIDENTIAL

Meeting: Full Council Agenda Item 45.2A

Date: Tuesday 27 June 2023

Please refer to the previous meeting paper below.

Advice has been received from the solicitor at NALC and their full opinion is attached at the end of this meeting paper. The advice summary is copied here:

As I understand your request, it concerns (1) council powers in respect of trees on land the council does not own and (2) how to claim ownerless land. On the first point, it's not so much a powers question at this point in my view but a liability one. I advise the Council to first contact its insurers to let them know it is contemplating works to the trees on land it does not own. The Council's cover may not extend to such works so powers to undertake works would not come into it. Powers wise, going onto land belonging to another without permission and to undertake works to trees on the land would be trespass. The owner could sue although that would appear to be unlikely when the owner is unknown and attempts have been made to discover their identity.

On the second question, adverse possession would be the way to assume ownership of land with no known owner. I refer the Council to our advice in our Legal Topic Note 55 on adverse possession claims. Paragraph 13 of LTN 55 provides that a claimant can claim ownership of unregistered land after 12 years' adverse possession. Paragraph 3 provides that adverse possession has four elements. Unless the claimant can prove all four, they will not make a successful claim of ownership. They are exclusive possession (that is, excluding the world at large), intention to possess, no licence/agreement and continuous possession. The LTN gives more detail on all the elements.

Their recommendation to seek insurance has been followed up with the Council's insurer, Zurich, being provided with the NALC legal position and background information and they have duly advised:

With regards to the advice from NALC, it is not really a simple answer. Basically, we cover you for your liabilities and this would not exclude working on land that isn't yours. However, if you were not legally working on the land, then the cover would cease. So, if it was found that you were trespassing, we would not cover you for this. But we cannot advise you on whether or not you are trespassing but this has been touched upon by NALC in the advice. But NALC has stated it is unlikely the owner would sue as the owner is unknown and attempts have been made to discover their identity but it is still a risk we wouldn't cover if found to be illegally working on the site.

In addition, we have contacted Suffolk Highways again and they have revisited the site. The report of their site visit on 12 June is:

Our HAO (Highways Assessment Officer) has had a look at these trees, and these do not meet any criteria in our HMOP (Highway Maintenance Operational Plan) and are not causing a danger to any highway users including the footway.

The Highways Records Team have confirmed that they don't consider the 2 oak trees as being part of the maintainable highway at public expense as they form part of an historic boundary feature, which is denoted on site by a hedge/tree line. This is on unregistered land, so the highway boundary is regarded as being up to the roadside face of the well-maintained hedge/tree line. Consequently, the 2 oak trees and the hedge are the responsibility of the land owner, we understand that this is unregistered land so Suffolk Highways is not responsible for their maintenance.

Meeting: Agenda Item 10 – Parks and Open Spaces Committee

Date: Tuesday 30 May 2023

Background/Introduction

The Town Council had been contacted due to fears of branches falling from two oak trees at Uplands after a branch, which was understood at the time to be from one of these trees, had fallen into a garden. The resident contacting the Town Council had failed to establish ownership responsibility after contacting SCC and ESC.

Details

At a meeting on 21 March, the committee were asked to consider what powers it has to undertake tree works to trees on land not in its ownership and to note the recent Sheffield legal case which called for the councillors to stand down due to unauthorised tree works being undertaken. GPOC would enable the council to undertake activity that an individual can unless there is a statutory authority already undertaking the work/service. An individual could not undertake tree works on land they do not own.

The resolution of the committee was to:

Cllr Pearce proposed the decision be deferred until after the elections and for officers to seek a legal opinion on whether the Town Council has the authority to make a discretionary decision on the case, and to seek further advice in the interim if there is a legal impediment; seconded by Cllr Youngman. Cllr Brooks queried if the proposal could be amended to obtain a second opinion from a different arborist. Cllr Pearce felt that was

unnecessary as this Sub-Committee had not stipulated that the works only be undertaken on the grounds of health and safety. A vote was held with all Councillors in favour. The Deputy Clerk noted that the Highways Engineer had suggested to register the land as the owner may come forward, and had confirmed that the regular routine inspections would continue and if any health and safety concerns were perceived then the necessary works would be undertaken. Cllr Pearce requested his previous proposal, to ask Suffolk Highways if they can provide a quote to do the work on the Town Council's behalf, be followed up alongside the attempt to register the land.

A submission was made to SALC on the legal status of the Town Council undertaking work on land/trees not in its ownership. The response was as follows:

We have liaised with NALC who state the only way you would be able to maintain the trees is if the Council was to 'occupy' the land with a view to claiming ownership after 12 years. To do so would require fencing it off or putting up signs, cutting the grass etc. If you were not interested in pursuing ownership but for some reason wanted to deal with the tree maintenance, you could effectively unoccupy it after doing so.

Otherwise, you would not be able to use the GPOC as this is not something any person could legitimately do (they would be trespassing).

You have not described or identified the land in question so I don't know whether this is relevant or not, but you would need to liaise with Highways if the land in question happened to be 'highway waste' land. If you wish to pursue this any further you would need to submit a formal enquiry with detail of the actual land, what it is etc., or of course you are able to do this direct with NALC (as a direct access council).

Since then, a written submission has been made to NALC detailing to the best of our knowledge what the land is and asking for their advice on how long the 'occupation' would need to be in place before the works could lawfully take place *. A response is awaited.

Also, Suffolk Highways have been contacted again to ask for a reinspection of the trees to assess any danger from the trees. A response is awaited and they had been chased again. Suffolk Highways were unable to provide a quote to undertake the works

Recommendations/Decision

If the sub-committee is so minded, a recommendation is made to AID to consider the costs of 'occupation of the land' to enable the trees works to be undertaken. This will include erection of fencing, signage and maintenance of the land, subject to any time period specified by NALC. **This recommendation would be subject to NALC additional advice being received as mentioned at * above.**

These costs will be in addition to the cost of the tree works which have previously been quoted at approx. £1400 plus TPO application, approval of the TPO application and any costs for traffic management whilst the works take place.

Alternatively, the sub-committee makes a recommendation for a resolution by AID to accept that there is currently no legal power the town council can use to carry out these works and that the all works are addressed by Suffolk Highways and only when Suffolk Highways consider there is a health and safety need.

19 June 2023

Sarah Foote, Deputy Town Clerk
Lowestoft Town Council

cc - Suffolk Association of Local Councils

Our ref: Suff 23/474

Your ref:

Dear Sarah

Client: Lowestoft Town Council

Subject matter: Asset

Thank you for your emails of 9 and 13 June 2023. Lowestoft Town Council ("the Council") has requested advice as follows:

"The Town Council are being requested by a resident to carry out works on trees which are not on town council owned land. The Town Council are considering these works based on being 'a good neighbour'. We have not been able to identify the ownership of the land where the trees are located. Further details of Land Registry SKs etc are on the attached document.

What powers would the town council have to carry out works on land not in its ownership? The Town Council has GPOC but an individual would not be able to carry out works on trees they did not own, therefore we are not sure that this is the relevant power in this instance.

If the Town Council wished to claim ownership of the land what measures would it need to take and what time period would need to lapse before the works could be undertaken?

We are aware that the trees are subject to TPOs and relevant permission would also need to be sought from the LPA".

I have also been supplied with a document showing three pieces of land and giving information about the land. Your 13 June email contained further information and photograph attachments. The email contains a 13 June email to you from Suffolk County Council confirming they do not deem the trees in question to be a danger to highway users and that they are not on the highway.

Advice

As I understand your request, it concerns (1) council powers in respect of trees on land the council does not own and (2) how to claim ownerless land. On the first point, it's not so much a powers question at this point in my view but a liability one. I advise the Council to first contact its insurers to let them know it is contemplating works to the trees on land it does not own. The Council's cover may not extend to such works so powers to undertake works would not come into it. Powers wise, going onto land belonging to another without permission and to undertake works to trees on the land would be trespass. The owner could sue although that would appear to be unlikely when the owner is unknown and attempts have been made to discover their identity.

On the second question, adverse possession would be the way to assume ownership of land with no known owner. I refer the Council to our advice in our Legal Topic Note 55 on adverse possession claims. Paragraph 13 of LTN 55 provides that a claimant can claim ownership of unregistered land after 12 years' adverse possession. Paragraph 3 provides that adverse possession has four elements. Unless the claimant can prove all four, they will not make a successful claim of ownership. They are exclusive possession (that is, excluding the world at large), intention to possess, no licence/agreement and continuous possession. The LTN gives more detail on all the elements.

I hope this has been of assistance.

Yours sincerely

Jane Moore

Senior Solicitor and Legal Services Manager

November 2007

CLAIMING OWNERLESS LAND

The New Law

1. The law relating to occupying and ultimately claiming ownership of land without an apparent owner (i.e. claiming "squatter's rights") was radically altered in 2003 with the introduction of the Land Registration Act 2002.

Preliminary

2. Before explaining the law as it now stands it will be useful to correct a common misunderstanding. Two separate systems of proving ownership of land exist side by side and will continue to do so. In the old system the landowner possesses title deeds showing how and when he acquired the land. These title deeds are his proof of ownership. In the new system, a state institution, the Land Registry, holds a central record of land ownership. For some years now all new transfers of land have, by law, been carried out through the Land Registry and ownership is proved by reference to the official record.
3. Where ownership of land has not changed hands, the old system of title deeds still applies. The fact that a piece of land is not included in the Land Registry records is therefore no guarantee that it has no, or no apparent, owner. It may only mean that there has been no change of ownership for many years.

Notification of dealings in registered land

4. Where anyone has an interest in land they may apply to the Land Registry to be notified of applications for registration of that land and have the opportunity to object.
5. Applicants may only be made by someone who has, himself, some claim to or other legal interest in the title. No one, not even a public authority, can object on any other

ground. Unless a council has some claim to a legal interest in the land it cannot, therefore, object even though it might know that an application is unjustified or even against the public interest.

Obtaining ownership of land by adverse possession

6. In order to claim ownership of land against the true owner (whether the land is registered or unregistered) the claimant must be in "adverse possession" of the land. Adverse possession has four elements. Each of these is discussed in turn below.

i Exclusive Possession

7. The claimant must have actual and exclusive possession of the land. To determine whether someone is in "adverse possession" of the land it is necessary to look at the relevant case law. The most recent and most important case relating to adverse possession was decided by the House of Lords case *Pye v Graham* [2002]
8. It is clear from that case that to satisfy the court that he is in adverse possession of land a person will need to satisfy the court of two things:
 - a. he has sufficient degree of physical custody and control ("factual possession"); and
 - b. he has an intention to exercise such custody and control on his own behalf and for his own benefit ("intention to possess").

ii Intention to Possess

9. The claimant must have an intention to possess the land and to exclude the world at large. Mere presence on land will not in itself establish intention to possess.


iii No Licence or Agreement

10. The possession must be adverse i.e. the claimant must not be in possession by virtue of any agreement with or licence from the true owner, nor give any acknowledgement of the true owner's title.

iv Continuous Possession

11. The claimant must have possessed the land continuously for the period laid down by law. In the case of registered land the period is ten years; in the case of unregistered land; twelve years.
12. Unless the claimant can prove all four elements he cannot make a claim to ownership. There are different rules when claiming ownership by adverse possession of registered and unregistered land.

Claiming ownership of registered land

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13. After ten years' adverse possession a claimant can apply to the Land Registry to be registered as owner in the place of the former owner. Anyone already registered as owner of the land, together with those having a legal interest in it (e.g. a mortgagee) can raise objections to the claim.
 14. If no objections are made, the Land Registry will register the claimant as owner. If valid objections are made the application will be refused. If a "ten year" claim is refused because of objections, the true owner then has two years in which to take court proceedings to eject the claimant.
 15. If the true owner fails to evict the claimant for more than two years after a court order for possession and the claimant remains in adverse possession he is then entitled to be registered as owner regardless of any objections.
 16. Where a claimant's application is successful, his name will be put in the Land Register as owner in the place of the former owner. He will thus acquire the identical title of his predecessor.

Claiming ownership of unregistered land

17. After twelve years' adverse possession, a claimant is in a position to claim ownership. However, to obtain a secure documented title and prevent any challenges the claimant must seek registration for the Land Registry.
18. When a claimant makes an application, the Registry will inform anyone who appears likely to have a legal interest in the land and give them an opportunity to object.

19. If there are no, or no successful, objections then the Registry will, normally, grant a registered title. The type of title will depend on the strength of evidence produced by the claimant. If unchallengeable an absolute title will be granted: if weaker, though still convincing, a possessory title will be granted. This can be described as a provisional title, dependent upon no stronger claimant coming forward. After a period without challenge (10/12 years) it will usually be converted, on application, to an absolute title.

What steps should a council take?

20. The first step is to see whether the land is already registered and if not, research any possible owner. Anyone may make a search in the Land Registry to discover whether a particular piece of land is registered (Land Registry form 313 is a start).
21. If it is not registered then reasonable enquiries should be made to attempt to discover the owner. Councils have power to require an occupier or anyone with an interest in land to provide details of its ownership (s.16 Local Government (Miscellaneous Provisions) Act 1976). Local enquiries should also be made, the extent of which will depend on the circumstances.
22. If an owner is discovered or someone is already in the process of obtaining ownership by adverse possession, in most cases it would be better for the council to seek to negotiate rather than to enter a ten/twelve year exercise with uncertain outcome.
23. Where a council decides to go ahead, they must from the start ensure that they fulfil all elements of adverse possession (paragraphs 6–12):
 - i They must have exclusive, physical control of the land dealing with it as a true owner might have been expected to deal with it and show that no one else has done so. The degrees of control will depend on the nature of the land and the manner in which it is used, but must be substantial and evident. All other persons must be prevented from entering or, as a minimum, clearly only allowed to enter with express consent. On previously open ground, fencing is strong evidence but neither indispensable nor conclusive. Activities such as grass cutting, amenity planting and minor tidying are helpful but not in themselves capable to showing exclusive possession.

- ii They must have an *intention* to possess (though not necessarily to acquire ownership) to the exclusion of everyone including the true owner and to make that intention clear to the world. This intent is to be inferred from the acts of possession; mere statements of intent are considered self-serving and of little value. Council minutes, press and public notices, though useful to establish dates, will not by themselves be adequate.
- iii There can be no “adverse” possession where the land is occupied under a lease, tenancy, licence or other agreement, express or implied, with the true owner. Where an agreement comes to an end and the occupier “holds over” his possession will not normally be adverse even though he does not pay rent. Any express or implied acknowledgement of the true owner’s title will destroy the claim and start the ten/twelve years running again.
- iv The adverse possession must be continuous over the ten/twelve year period. Any break will mean starting afresh.

Transitional Cases

- 24. Specific advice will be required by any council which is in the process of acquiring title or which can claim ten/twelve years’ adverse possession but has not yet claimed. Complicated transitional provisions may apply in the period October 2004 to October 2006. Requests for advice should be made straightaway to avoid missing any deadlines.

Professional Advice

- 25. There have been substantial changes in the law, an increase in its complexity and in the rigour of the Land Registry’s investigations.
- 26. It is the considered opinion of NALC that this is no longer a purely DIY exercise, as might have been the case in the past. Once a council have made preliminary enquiries into ownership and wish to go ahead, they should seek advice from their county association *before* taking any further action. NALC can provide advice on the appropriate action to be taken to meet all the requirements. This advice will be tailored to the individual circumstances of each case. It is for this reason that this Legal Topic Note does not contain general suggestions on the steps to take to evidence possession and intention to possess.

27. This advice will be provided under NALC's free legal advisory service but this free advice cannot extend to the preparation and submission of an application to the Land Registry. In all but the simplest cases councils should accept that they will need to instruct private solicitors to carry out this work.
28. The Land Registry have a valuable website www.landreg.gov.uk allowing all forms, costs, information and district registry addresses to be downloaded. For more detailed information on adverse possession, two booklets are available: Land Registry Practice Guides 4 & 5 covering adverse possession of registered land and unregistered land and transitional provisions. District Registry addresses and telephone numbers can also be found in the telephone directory under "Land Registry".

Other Legal Topic Notes (LTNs) relevant to this subject:

| LTN | Title | Relevance |
|-----|-----------------|---|
| 46 | Registered Land | Explains the differences between registered and unregistered land |

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