

Mowing the grass: is it sufficient for adverse possession?

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Adverse possession – physical control – exclusive occupation – grass and lawn – open frontages – whether mowing a grassed area is sufficient

My clients had owned their family home from the time their estate was built, in September 1983. From then until today, there have been no fences, hedges or other boundary features between the houses on the estate, so that the frontages are open; indeed, the original conveyances feature a covenant against fencing in order to maintain that open aspect. The houses have short drives, and between them are narrow triangular banks. In my clients' case, this widens to an irregular shape at the top (nearest the houses). There is a slight slope downwards across the bank from their neighbours' drive towards theirs. This bank, or verge, has always been laid to grass. Centrally set into it is a manhole cover. A legal boundary passed lengthways through the triangle, dividing it between the two properties.

From 1983 until 2007, when their neighbours moved in, my clients had tended the whole verge. They mowed the grass weekly. This was one of their son's chores, and when he went to university, his mother did it, or more often her gardener did it on his weekly visits. Mowing was particularly troublesome around the manhole cover and at the narrow end. The family also re-seeded when the grass grew patchy, and on at least one occasion the mother tried planting bulbs, but the soil was poor and they did not take. There was also regular raking of leaves.



After their neighbours arrived in 2007, both families took care of the verge (though neither appears to have noticed the other doing so). Indeed, the neighbours employed Green Thumb to dress the verge on their quarterly visits. In late 2016, the neighbours began to construct an extension, using the verge for access and compacting the soil on it, so that they re-turfed it when construction was finished. In an all-too-predictable fashion, the construction of the extension brought the families into conflict. My clients asserted (amongst other things) that they had adverse possession of the verge.

Practitioners will be familiar with the authoritative test in *Powell v McFarlane* (1977) 38 P&CR 452 (Slade J):

The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed.

Readers will also recall the authorities about what constitutes sufficient physical control to demonstrate exclusive occupation, in particular *Thorpe v Frank* [2019] EWCA Civ 150, [2019] 1 WLR 6217, with the leading judgment delivered by McCombe LJ. The headnote reads:

In the light of the open plan nature of the land in front of the two bungalows, the paving of the triangle with a permanent new surface was precisely what an occupying owner would have done in dealing with the triangle, since it was a clear interference with the rights of the paper owner, asserting not merely a momentary control over the triangle but a control of it for the future; that, therefore, by the laying of the paving in 1986 and the continuation of that paving on the triangle at all times thereafter, the applicant had achieved the necessary factual possession of the triangle, even though

she had not prevented neighbours and others passing and repassing over its surface.

At [39], McCombe LJ confirmed that ‘enclosure of the land ... is not an absolute requirement and it is not the only way in which possession of land can be asserted and achieved’. Cases of apparently transient use of land which might – or might not – be sufficient are often cited, though each case will be decided on its own facts. Cultivation is sometimes sufficient (*Bligh v Martin* [1968] 1 WLR 804), and *Treloar v Nute* [1976] 1 WLR 1295 was a borderline case involving grazing cows, taking spoil onto the land and filling up a gully, levelling the land, storing materials, and riding motorcycles on the land (the squatter succeeded).

But the mowing or cutting of grass as the most significant act supporting a successful claim to adverse possession has featured in a number of cases.

- In *Cadija Umma & Anr v S Don Manis Appu* [1939] AC 136, PC, the two acres or so in dispute were to a great extent swamp on which lotus grew; on the portion which was not swampy there was a little wild grass, and buildings which had been put up from time to time. The grass could not be cut all the year round, but only for six or eight months according to the weather. For about six years, the occupier had grass from the disputed land cut by his own servants and paid the owner’s mother for it at the rate of ten cents a bag. It was not merely that the squatter was allowed to take some grass, but that he was allowed to sell it; and that this was continued over a number of years, and at a time when the grass was the only, or at least the main, advantage accruing from the land. In that case, the cutting of the grass was a sufficient indicator of exclusive possession, given the nature of the land at that time. (See pp139-141.)
- In *Michael Batt Charitable Trust v Adams* (2001) 82 P & CR 32, the squatter used a field mainly for pasture but also, on at least one occasion, for growing crops, and he maintained it by harrowing, top-dressing and seeding just as he did the rest of his farm. The use decreased over time but he continued to take off at least two crops of hay per year. Laddie J rejected the argument of leading counsel that taking two crops of hay per annum is insufficient to qualify as continuous factual possession ... It is not in dispute that the disputed land was of poor agricultural quality. It was wet and unsuited for use as arable land. Taking hay from it was likely to be the most efficient way of exploiting it. [The squatter] was exploiting it to the full for his own use. The judge also found it partially determinative of that conclusion that, within a single

fenced area, the disputed land and the squatter's tenanted land were contiguous but the border unmarked. (See paragraphs [11] and [17].)

- Gardening perhaps somewhat short of regular mowing was sufficient in *Hounslow LBC v Minchinton* (1997) 74 P & CR 221. 'The particular acts relied on were not substantial. Mrs Ritter and Mr Dunn maintained a compost heap upon part of [the disputed land] and kept it tidy in other respects and weeded and trimmed the hedge and so on. But that was the only sensible use of the land. It was rough land at the end of a garden': Millett LJ at p233.

In my clients' case, judgment was delivered extempore at the end of a county court trial in January 2026. The judge reminded herself at the start of the judgment that '*the party asserting factual possession must show an appropriate degree of physical control, and single possession, that is exclusive, and not at the same time as the owner: that the land has been dealt with as an occupying owner might be expected to, and no-one else has done*'. She accepted that the land was poor, a narrow triangle between two properties on an estate where there is no right to put up fences to enclose one's own land. She asked herself: '*In what manner is it envisaged that the owner should use it?*' She concluded that it should be used 'as a grass verge': given that it cannot be enclosed, that not much grows, and later had been compacted by construction traffic, the land was never very good. It was to act as a grass verge and to house a manhole cover. She would expect the paper owner to mow, to re-seed, possibly to try to plant bulbs, but to do nothing any more successful. She wouldn't expect such an owner to plant a hedge (or other boundary feature) in breach of covenant. She concluded that, though in many cases this might not be sufficient, still my clients had exercised a sufficient degree of physical control. Significantly, she also found that their neighbours' predecessor, who had lived there for many years prior to 2007, believed that the verge 'belonged entirely to' and was for the exclusive use of his neighbours, theirs to use as they saw fit, and he never challenged them about their use of the verge.

On 23 February 2026, Judge Elizabeth Cooke sitting in the Upper Tribunal heard the case of *Dobson v Unsted* [2026] UKUT 93 (LC), in which my colleague Robert Weatherly was instructed.¹ The essence of the squatter's argument was: '*This was part of an open-plan front garden laid to lawn. The immediate neighbourhood is similar. All that was done to the open land at the front was mowing it and keeping it tidy – what more could the appellants have done?*'

¹ See the brief case note in our April 2026 newsletter at <https://www.3pb.co.uk/newsletters/property-estates-law-newsletter-spring/>.

The landscape in that case had some resemblance to the open frontages possessed by my clients and their neighbours:



The disputed land is adjacent to the near end of the wall.² The squatters had mowed, raked up leaves and twigs and scarified the lawn, replaced topsoil and turf where necessary now and then, let their children play on the grass, used it to take the mower and barrow to the lower terrace, put their bins on an area that included the disputed land, put a sign on it, and introduced herbs into the grass following incursions of vegetations from a neighbour's land.

- The Judge asked herself: 'what does one have to do to prove adverse possession of an area of lawn in an open front garden with no fencing to mark the boundary either with [the neighbour] or with the verge? It cannot be correct to say that the only way to adversely possess such land is to change its use by digging a flower bed or putting up a fence ...' [65]
- She held that 'In an open-front mown front garden, what an occupying owner might have been expected to do would be to mow the grass and keep it tidy, for their sake and their neighbours'. ... In my judgment that was what was needed to establish

² The full report contains a plan and photographs, including that reproduced here:
https://www.iclr.co.uk/document/2026001444/2026ukut93lc_TNA/html

adverse possession in this period, both in terms of the relevant conduct and in terms of the objective manifestation of intention' [72].

- At [80]-[82] she concluded: 'Looking, again, at the nature of the land, I fail to see what more an occupying owner could have done. And, again, no-one else was doing so ... I agree that some of those activities in isolation were not enough. ... Taken together it seems to me perfectly obvious that the appellants were in possession of the disputed land, and that their acts of possession taken together demonstrated their intention to possess it. The judge failed to put side-by-side all the separate activities and see the whole picture ...'

What do all these cases have in common? What must one's squatter client prove?

- (1) Realistically, mowing grass and nothing more is unlikely to amount to exclusive occupation. Mowing grass and other incidents of tending a grassed area (raking, scarifying, re-seeding) may amount to physical occupation of the necessary quality, should that be '*the manner in which land of that nature is commonly used or enjoyed*', particularly if boundary features are absent or especially if they are forbidden. In many open-aspect housing estates, the land between properties is likely to be designed for use as – and nothing more than – a grassed area, in which case the 'mowing and tending' argument may be viable.
- (2) But the cases also show that one must not forget the second half of Slade J's ratio: that to be sufficient, the physical control must be 'exclusive'. In my clients' case, the Judge reminded herself more than once of the correct test: 'the question is whether they dealt with the land as an occupying owner might **and nobody else has**' [emphasis supplied]. For the relevant period, their neighbour had left them to it and did nothing on the verge. And again in *Dobson v Unsted*, the judge was able to say, from all the evidence, at [72] 'The appellants' predecessors in title ... did so from when they bought the property ..., **and no-one else did so**'; and at [80] 'I fail to see what more an occupying owner could have done. **And, again, no-one else was doing so**' [emphasis supplied].
- (3) Finally, if one's client is mowing and doing some other things, the argument must be that cumulatively those acts amount to exclusive physical occupation. Even if mowing is the most frequent or visible activity, one ought in most cases try to demonstrate

more activity: there seems to be no reported case in which grass-mowing alone has established adverse possession.

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14 October 2026



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