

# Housebuilder Top Tip: From Paving to Adverse Possession

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It is widely regarded that fencing land is an essential ingredient to establish a claim for adverse possession, but a recent Court of Appeal case has held that the act of paving can be sufficient.

An applicant must be able to demonstrate the following in order successfully to claim adverse possession:

1. actual possession of the land without the owner's consent;
2. intention to possess the land to the exclusion of all others; and
3. the above to have been true for at least 12 years prior to the application.

The meaning of the second element was recently considered by the Court of Appeal. The land which was the subject of the application was a triangular area in front of two neighbouring semi-detached bungalows with adjoining open forecourts. The owner of one of the bungalows applied to the Land Registry to have the land in question registered in her name, from her neighbour's registered title. She relied on the fact that in 1986 she had paved the area of land in question. The respondent argued that the act of paving was merely a temporary trespass and did not exclude others from the land.

The Court of Appeal disagreed. They held that the nature of the land, and the manner in which it was commonly used or enjoyed, was important and that where open land is concerned it was impossible to secure every boundary to exclude others. In this case, the land had always been open and as a result, it would be very difficult to secure the entire boundary to prevent others from using it. The act of paving the area with a permanent surface was a clear assertion of possession and the Court held that the applicant had therefore incorporated the land into her property.

Developers therefore ought to be aware of any activities that third parties may carry out to their land and remember that fencing land is not always necessary for a successful adverse possession claim.

## Authors



**Bhavini Patel**

*London - Walbrook*

+44 (0)207 894 6491

[bpatel@dacbeachcroft.com](mailto:bpatel@dacbeachcroft.com)