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INFORMATION SHEET NO: C4

**Unclaimed land and adverse possession:
protecting commons and other open spaces
with no known owner**

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Introduction

1. A recent inquiry arriving at our office ran: *Mr X took over part of our local common some years ago to look after it. Now he will not allow people to walk there. Can you give us advice...?*
2. Our alarm bells ring when we read this sort of letter, because Mr X may be building up (or by now have built up) a claim to ownership under the law of ~~ad~~adverse possession. This allows someone to take possession of land that is not his, if he occupies it for 12 years without the owner's consent. It will then generally be too late for the true owner to recover it (1980, section 15 Limitation Act).
3. As with most things, prevention is better than a cure. The best course is to persuade the local council* to take possession of any unclaimed land in your area so that it is held in the public interest. Otherwise an individual may succeed in appropriating it as his own.
4. Suppose there is a piece of unenclosed land where the ownership is not known, and the local public use it customarily as an open space or simply enjoy its open aspect. It might be part of the village green, it may have been common land, but you find it was never registered as such. Or, perhaps it is a drove-road or green lane created by an enclosure award but never adopted as a highway nor allotted by the award to a named owner.
5. How can you check that the land really has no acknowledged owner? There is no cut-and-dried answer: you should make such inquiries as are reasonable. You would ask around in the locality and follow up any clues, but without accepting the wishful thinking of neighbouring owners as conclusive.
6. If there are poles, kiosks etc, to whom do the statutory undertakers pay wayleave or rent? (Beware though, they sometimes pay it to a mere claimant, not always the true owner!) If there has been road widening, with whom did the county surveyor negotiate? If the land might be still owned by the lord of the manor, you should ask him or her; you could suggest a donation of the land to the council, or at least a management agreement.

* In England the parish or town council; in Wales the community or town council.

Finding out who owns the land

7. You can find out from the Land Registry whether land is registered under the Land Registration Acts and if so the name of the registered owner. An office copy of the register and plan relating to a title can be applied for on-line <http://landregistryservice.co.uk> for a fee of £14.89
8. A word of warning- be careful not to alert neighbours who might step in and take possession of the land in their own private interest. Only the true owner could turn them off, and he may neither know nor care. If you think this is a potential problem, get the council to take control of the land first before making your inquiries.

The procedure

9. The council should pass a resolution to undertake the care, management and control of the land as a public open space in the public interest. It should then take some steps to manage the land- for example grass cutting, tree planting, fencing a dangerous quarry. To avoid secrecy and allow the real owner to come forward, it is then advisable to erect a notice on the land simply giving the name of the council, perhaps adding any inquiries to it. The council should also put a notice in the local paper. This should identify the land, state that the council has undertaken the care, management and control of it in the public interest, and report the work that has been done.
10. If no one responds claiming ownership, the council should continue with regular management. If the acts of management amount to adverse possession, only the true owner can turn the council off the land.
11. Councils should, as an urgent priority, consider applying for voluntary registration of title, particularly where there have been boundary disputes, or where land is prone to squatters.

Adverse possession

12. The Land Registration Act 2002 came into force on 13 October 2003. It makes substantial changes in the law concerning title to land occupied by a squatter, if it has been registered under the system of registration brought into existence by various acts (for instance the Land Registration Act 1925 now subject to the 2002 Act). The law as contained in the Limitation Act 1980 will continue to apply to land, occupied by a squatter, which is not registered.

13. Enclosure is usually the strongest evidence of adverse possession but it is not a prerequisite of adverse possession, nor is it necessarily conclusive evidence. Adverse possession allows someone taking possession of land to acquire ownership of the land in certain circumstances. There are four elements to the concept of adverse possession: there must be acts of possession; those acts must be for a sufficient period; the acts must have been carried out with the intention of treating the land as one's own; and the true owner must not have given his permission for the acts.
14. Acts of possession must show that the council has taken possession of the land and excluded the true owner. Each case has its own special facts but the following are regarded as strong evidence: erecting fencing around the land (but this may be unlawful if the land is common land); infilling, re-grading, alterations to the surface of the land; clearing the land. Unless the acts of possession have been undertaken clearly on the land they are unlikely to carry much weight; thus a mere resolution of the council to take possession of the land which is unsupported by any definite acts of possession on the land is useless.
15. The Land Registration Act 2002 (at part 9) introduces a procedure which requires the Land Registry to serve a notice, of any application for adverse possession, on the registered owner, giving him the opportunity to oppose it and to take proceedings to remove the squatter. Provided that the squatter has actual possession and an intention to possess, any plans an owner might have had for the future use of the land are irrelevant.
16. A person seeking to recover unregistered land has 12 years in which to do so. Where the land is unregistered at the end of this period, he is statute barred from taking any action and the squatter acquires a good possessory title, by adverse possession. Where the land is registered, a squatter may apply to be registered as proprietor when he has been in possession of the land for ten years. The new procedure under the Land Registration Act 2002 will then apply.
17. Under the unregistered system, for land held by the Crown or the Duchy of Cornwall the period is 30 years. It may be 60 years in the case of foreshore and is 30 years in the case of certain types of charities or ecclesiastical organisations. Under the registered system, the ten-year period is replaced by a period of 60 years. Even longer periods can apply where the land is held on trust for persons by way of succession.

Applying for registration

18. If the land is unregistered under the Land Registration Acts and the council has been in adverse possession, consideration can be given to applying to the appropriate district Land Registry for registration of a caution against first registration. This entitles a cautioner to be notified of any application for first registration affecting the land, or (if there has been more than, say, five years of adverse possession) first registration of the land with possessory title. Since the Land Registration Act 2002 it is now only possible to enter a notice or restriction on the register.
19. The inquiry section of any district Land Registry will be able to explain the procedures relating to cautions against first registration but cannot give legal advice.
20. It is important to bear in mind that the registration of title to a piece of land will not necessarily bring to an end all land disputes (although it eliminates a large number). Registration of title should not always be seen as a simpler and cheaper alternative to court proceedings. If there is a dispute over the ownership of the land that the council is seeking to register, it will be prudent to seek legal advice before going ahead.
21. The council must certainly disclose the facts of the dispute to the Land Registry when any application for registration is made.
22. The National Association of Local Councils, <http://www.nalc.gov.uk> at 109 Great Russell Street, London WC1B 3LD, can advise its members further on the process of taking control of land and on what to do if other claims arise. In Wales this is covered by One Voice Wales, <http://www.onevoicewales.org.uk>

Common land

23. If the land is registered as common land, but no one is registered as the owner and no rights of common are registered, the local council can take control as described above.
24. Where rights of common exist over the land, the same procedure can be followed, but the council will need to ensure that any management work carried out does not interfere with the exercise of rights and has the commoners' agreement. The first step would be to form a voluntary management committee including all the varied interests and to sort out a management plan.

Section 45 of the Commons Act 2006

25. Section 45 repealed section 9 of the Commons Registration Act 1965, but it has in the main re-enacted section 9. Sections 8 and 9 of the Commons Registration Act 1965 dealt with registered common land for which no ownership was registered. These cases were to be referred to Commons Commissioners, and by now they have all been inquired into, leaving great areas of ownerless land where provision was made by section 9. Each of the local authorities—county, district and local council—was given concurrent powers, and they are left to agree among themselves as to which of them shall act. The power is to take action against trespass and encroachment on an unclaimed common in its area, *as if it were* the owner. This is the recourse open to our correspondent, provided that Mr X has not established a claim to ownership by adverse possession as explained above.
26. A parish council overstepped the mark when it constructed banks around unclaimed common land in its parish to prevent invasion by campers. The work impeded access and should have had the consent of the Secretary of State for Environment, Food and Rural Affairs or the National Assembly for Wales under section 38 of the Commons Act 2006 in England).
27. The Secretary of State or the assembly may consider an application on an unclaimed common but, if a local council does exercise its powers on an unclaimed common, it must not overstep the legal constraints with regard to fencing and other constructions.
28. Before using its section 45 power, it is most important for the council to make an up-to-date check both in the ownership section of the common land register, and with the Land Registry. Otherwise, an owner registered in either place might take proceedings against it for trespass and damage to his property.

Management schemes under the 1899 Commons Act

29. Another way of dealing with the problem of an unclaimed common is to persuade the district council to promote a scheme under the 1899 Commons Act. Such a scheme will give the council power to undertake some aspects of management. It can be vetoed by an owner or by persons representing a third of the interests of the commoners. So if ownership of the common is unclaimed and no rights are registered, promoting a scheme can be a straightforward process.

30. The district council can delegate the scheme to the local council or can authorise another body to carry out management work. The scheme does not confer all the advantages of ownership. For example, the council may be able to carry out temporary fencing, but it will still require the permission of both the owner and the Secretary of State or assembly to construct a car park.

Unclaimed greens

31. Problems over unclaimed town or village greens should not exist once the Commons Commissioners hearings are over, as from April 2010. This is because section 8 of the 1965 Commons Registration Act made provision for the ownership of greens to be vested in the local council when no other owner could be identified and recorded in the register. There is no provision in the Commons Act 2006, to register ownership of greens, where there is no known owner.

The Land Registration Act 2002 can be obtained at <http://www.legislation.gov.uk/ukpga/2002>

While the Open Spaces Society has made every effort to ensure the information obtained in this factsheet is an accurate summary of the subject as at the date of publication, it is unable to accept liability for any misinterpretation of the law or any other error or omission in the advice in this paper.

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