

**IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)
BETWEEN**

**PETER NIGEL JOSEPH STENNER
and
TEIGNBRIDGE DISTRICT COUNCIL**

Appellant

Respondent

STATEMENT OF FACTS AND ISSUES

Proceedings in the lower courts

First-tier Tribunal

Hearing: 30th and 31st July 2024 (two days)

Decision: 30th October 2024

Upper Tribunal

Hearing: 10th June 2025 (one day)

Judgment: 26th June 2025 [2025] UKUT 204 (LC)

Background Facts

1. The Appellant is the registered freehold proprietor of three beach huts located close to the beach where the River Teign meets the sea at the Point in Teignmouth, Devon: (i) Beach Hut 34 (title no DN427810 [329]); (ii) Beach Hut 41 (title no DN121970 [321]) and (iii) Beach Hut 42 (title no DN353858 [325]) (“the Beach Huts”).
2. The Respondent is the registered freehold proprietor of title no DN496449 [336] (“the Respondent’s Land”) which is a substantial area of land at the southern tip of the promontory which extends southward on the northern side of the mouth of the River Teign. The Respondent’s Land includes a car park, the Lower Point Car

Park (“the Car Park”), which is adjacent or near to the Beach Huts. The Beach Huts are, amongst other titles, within the curtilage of, and effectively carved out of, the Respondent’s Land.

3. The land which is the subject matter of the claim is a narrow triangle of the Car Park adjacent to the beach on which the Beach Huts are located (“the Triangle” also referred to as “the Boat Storage Area”). The Triangle is just to the north of the Beach Huts and at the western side of the Car Park.
4. There is a plan annexed to this Statement of Facts and Issues on which the Triangle is marked edged in green (**see Annex A Plan**) [16].
5. The Triangle contains sufficient space to park up to four cars on it. The Car Park as a whole has capacity for 34 cars.
6. The Appellant runs a boat hire business from the Beach Huts called “Teign Boat Hire” which business he took over in 1982. Before that, the business was run by one Sydney Back. Sydney Back purchased it in 1962 from his father in law, Fred Drew, who was running the business from around 1946. Before the Appellant bought the business from Mr Back, he worked there from 1970 [107 – 109].
7. The business is largely cyclical; the summer holiday season runs from the start of May to the end of September. During these summer months the boats are stored on moorings when not in use so boat storage space is only required during the off season which is between 1st October and 31st May [236]. The Appellant claims that since 1982 he has used the Triangle for the purpose of carrying out maintenance and repairs on up to six of the boats used in connection with his business and to store them along with related equipment during those winter months [238].
8. The Triangle was bounded on one side by white boundary stones and alongside these stones, metal railings. At some stage the boundary stones were tarmacked over and replaced by a blue line [353 – 366].

9. When the boats are stored on the Triangle they are elevated on blocks so that any necessary maintenance, repairs and painting can be carried out. Unless they need to be moved elsewhere for specialist repairs, the boats are stored continuously on the Triangle during the off-season. The FTT held that, with up to six boats stored on the Triangle during the off-season, it would not be possible for the Respondent to paint, re-surface or erect fencing within it and there would be no space available for the storage of boats belonging to others [122 - 123]. During the off-season, whilst it is impossible for cars to be parked on the Triangle, it is possible for pedestrians, should they wish, to pass over it, threading passage through the stored boats. During the summer season, the Triangle is clear and can be (and is) used for car parking.
10. The Appellant claims a prescriptive easement to store boats and equipment on the Triangle and to carry out maintenance thereon every year during the period from 1st October to 31st May (“the Disputed Easement”).
11. He duly applied to the Land Registry to register the benefit and the burden of the Disputed Easement on the titles to the Beach Huts and the Respondent’s Land. The Respondent objected to the same and the dispute was referred to the First-tier Tribunal. The matter came on for trial before Judge Colin Green sitting in the First-tier Tribunal (Land Registration Division) on 30 and 31 July 2024.

The judgments below

12. Judge Green, in a written judgment dated 30 October 2024 held as follows:
 - a. The Appellant had established continuous yearly use of the Triangle, since 1982, for the storage of up to six boats during the period from October to May being the winter months when the boats were laid up [111].
 - b. The Appellant’s user had been as of right [113 – 115], sufficiently continuous [113] and that, save for the application of what he called “the ouster issue”, the

Appellant had satisfied all conditions for the establishment of the Disputed Easement.

- c. The test as described in Batchelor v Marlow [2001] EWCA Civ 1051 is binding on the Tribunal and is the correct test for gauging whether the ouster issue is engaged [121].
- d. Applying the test as set out in Batchelor v Marlow, Judge Green concluded (at paragraphs 59 and 60) that the Respondent would be left with “*no reasonable use of [the Triangle]*” because “*for the period October to May ... the storage of six boats, leaving no room for anything else, would give [the Appellant] exclusive use [of the Triangle] .. during that period*” such that the Respondent would have no reasonable use of the Triangle [121 – 122].
- e. As a consequence the Appellant’s claim to the Disputed Easement failed and he was ordered to pay the Respondent’s costs of the proceedings [67].

13. The Appellant appealed to the Upper Tribunal on a number of grounds. The appeal came before the President of the Lands Chamber, Mr Justice Edwin Johnson, on 10 June 2025. In a written decision dated 26 June 2025 he held so far as material to this appeal, as follows (paragraph numbers are to those of the written judgment):

- a. The question so far as the ouster principle is concerned is the test as set out in Batchelor v Marlow which he called “the Ouster Question” (see paras 65-7 [80] and 75-6 [82]).
- b. When answering the Ouster Question:
 - (i) The question is to be answered by reference to the period during which the rights in the Disputed Easement are actually exercised being, on the facts, October to May (para 99 [86]). Thus, the fact that the Triangle is vacant from June to September is irrelevant to the Ouster Question.

- (ii) It is legitimate, when identifying whether the servient owner would be left with any reasonable use of the servient land, to discount any use which is not practicable or likely to eventuate given the specific features on the ground. Thus, the fact that pedestrians could move across the Triangle and between the boats was irrelevant because they would be more likely to pass over the surrounding land (being unencumbered by boats) (para 109 [88]).
 - (iii) Potential uses are to be discounted; rather the focus is on actual uses. Thus, the fact that the Triangle could be used by the Respondent, for example, for lighting or for the underground passage of utilities was to be discounted given that there was no evidence that the Respondent did, in fact, use the Triangle for those purposes (para 118 [89]).
- c. In light of the findings made by Judge Green, the FTT had not made “some significant error or was otherwise plainly wrong” in answering the Ouster Question and thus the Appellant’s appeal was to be dismissed.

The Supreme Court

14. The Appellant applied for a certificate for a leapfrog appeal pursuant to section 14A of the Tribunals, Courts and Enforcement Act 2007 which was granted by Mr Justice Edwin Johnson with his reasons set out in a decision given on 14th August 2025 [98].
15. On 10th September 2025, the Appellant applied to the Supreme Court for permission to appeal and on 27th November 2025 the Supreme Court granted permission to appeal and approved the leapfrog from the Upper Tribunal.

AGREED ISSUES

1. Should the test for the “ouster principle” as set out in London & Blenheim Estates Limited v Ladbroke Retail Parks Limited [1992] 1 WLR 1278 and approved in Batchelor v Marlow [2001] EWCA Civ 1051 and as applied in both Tribunals below which, as currently formulated, asks whether the claimed right would leave the servient owner without any reasonable user of the servient land, be replaced by a test which asks whether the claimed right would deprive the servient owner of: (i) lawful possession and (subject to reasonable exercise of the right in question) control of the servient land, alternatively, (ii) exclusive possession of the servient land?
2. If not, then, when determining whether the claimed right would leave the servient owner without any reasonable use of the servient land, is it correct (as both Tribunals have done):
 - (i) To apply the test or answer that question only by reference to the period during which the rights in the easement are exercised.
 - (ii) To discount any use which is not practicable or likely to eventuate given the specific features on the ground.
 - (iii) To discount potential and/or notional alternative uses of the land by the servient owner and/or potential and/or notional alternative uses by the servient owner for which there is no present evidence.
3. Given the answer to (1) and (2), is the Disputed Easement an easement recognised by English and Welsh law?

DISPUTED ISSUES

The further issues below are: (i) advanced by the Respondent and (ii) ones which the Appellant does not agree:

4. Is it relevant to the application of the ouster principle in these particular narrow circumstances where the issue is between possession and servitude, that the right claimed is prescriptive in nature?
5. In assessing reasonable exercise of the right in question, is it the characteristics of the servient land or the characteristics of the right that speak to the reasonableness of the user?
6. If the correct test is the test in Batchelor v Marlow then, when determining whether the claimed right would leave the servient owner without any reasonable use of the servient land, is it correct to take into account in these narrow circumstances where the issue is the line between a species of possession and servitude that an easement is claimed by prescription and has not or might not have been expressly granted.

Signed:

COUNSEL FOR THE APPELLANT

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COUNSEL FOR THE RESPONDENT

JONATHAN WARD

STENNER V TEIGNBRIDGE DC

**CHRONOLOGY ANNEXED TO
THE STATEMENT OF FACTS
AND ISSUES**

Date	Event
Prior to 1962 (perhaps from 1940s)	Fred Drew starts Boat Hire business from Beach Hut 34
1962	Fred Drew sells the boat hire business to his son in law Sydney Back
1970	Appellant starts working in the Boat Hire Business run by Sydney Back
3/12/81	Freehold title to Beach Hut 41 first registered Title No. DN121970
1982	Appellant buys the Boat Hire business (now named “Teign Boat Hire”) from Sydney Back
1982	Appellant buys Beach Hut 42 (title DN353858) but only registered as freehold proprietor on 10 March 1995
From 1982	Appellant runs the boat hire business and uses (continues to use) the Boat Storage Area to store up to six boats during the winter months (1 st October – 31 st May) “as of right”
1999	Appellant buys Beach Hut 41 (title DN121970) and registered as freehold proprietor on 22 July 1999

09/06/00	Appellant buys beach hut 34 (title No. DN427810 and registered as freehold proprietor on 29 June 2000
26/5/04	TDC registered with freehold title DN496449 “Land and Buildings at The Den, Teignmouth” i.e. the Respondents Land
14/9/21	Appellant applies to Land Registry to register easement against TDCs title no. DN496449
3/10/22	Appellants Statement of Case
?	TDC’s Statement of Case
30 and 31/7/24	Hearing before FTT (Judge Green)
30/10/24	Decision of FTT
13/1/25	FTT refuses permission to Appeal
24/2/25	Upper Tribunal grants permission to appeal
14/8/25	Upper Tribunal grants certificate pursuant to section 14A of the Courts Tribunals and Enforcement Act 2007
10/9/25	Appellant applies to the Supreme Court for Permission to Appeal
27/11/25	Supreme Court grants Permission to Appeal and approves the leapfrog certificate

ANNEX A PLAN

1 to 48
Leander Court

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