Press Summary

25 November 2026

Stenner (Appellant) v Teignbridge District Council (Respondent)

[2026] UKSC 38
On appeal from: *[2025] UKUT 204* (LC)

JUSTICES: Lord Sales (Deputy President), Lord Hamblen, Lord Burrows, Lady Simler, Lord Snowden

BACKGROUND TO THE APPEALS

An easement is a proprietary right over the land of another, such as a right of way. The land which has the benefit of the right is known as the dominant tenement and its owner as the dominant owner. The land which is subject to the right is known as the servient tenement and its owner as the servient owner.

The essential characteristics of an easement are: (i) there must be a dominant and a servient tenement; (ii) the easement must accommodate the dominant tenement; (iii) the dominant and servient owners must be different persons; (iv) a right over land cannot amount to an easement, unless it is capable of forming the subject matter of a grant. This appeal is concerned with the fourth condition and in particular the so called "ouster principle". This is the principle that "the right is not so extensive or invasive as to oust the servient owner from the enjoyment or control of the servient tenement" **[3]**.

It has been held by the Court of Appeal that the test for the application of the ouster principle is whether the claimed easement right "is such that it would leave the servient owner without any reasonable use of his land" – the 'no reasonable use' test. The Upper Tribunal granted a leapfrog certificate under section 14A of the Tribunals, Courts and Enforcement Act 2007 so that this court could consider the correctness of this test.

The factual context in which the issue arises is a disputed right to an easement over a triangle of a car park (the "**Triangle**") adjacent to the beach in Teignmouth, Devon. The appellant is the registered freehold proprietor of three beach huts located close to the beach. The respondent council is the registered freehold proprietor of a car park that is adjacent to the beach huts **[5]-[6]**.

The appellant claimed that, since 1982, he had used the Triangle during the winter months in connection with his boat hire business, which he ran from the beach huts. He claimed to use the Triangle to carry out maintenance and repairs on up to six boats, and to store the boats along with related equipment. This use prevented the respondent from painting, re-surfacing or erecting fencing within the Triangle, and there was no space available for the storage of other boats. It was impossible for cars to be parked on the Triangle, but it was possible for pedestrians to pass through. During the summer season, the Triangle was clear and was used for car parking **[7], [11], [13]**.

The appellant claimed a prescriptive easement (broadly, continuous user as of right for 20 years) to store boats and equipment on the Triangle and to carry out maintenance thereon every year during the winter months **[14]**.

The appellant's claim was dismissed in the First-Tier Tribunal and on appeal to the Upper Tribunal, as the appellant's use of the Triangle was held to fall foul of the ouster principle as it would have left the respondent servient owner without any reasonable use of its land **[15]-[16]**.

JUDGMENT

The Supreme Court unanimously allowed the appeal, with Lord Sales and Lord Hamblen giving the judgment of the Court.

REASONS FOR THE JUDGMENT

Unlike freehold and leasehold estates in English law, easements do not bestow a right of exclusive possession on the dominant owner. Easements are interests in or over land, and constitute lesser rights with respect to the use of land carved out of the wider general right of ownership, which will include limiting some ordinary use of the servient tenement by the owner. Where a right acquired amounts to a right to exclusive possession, that right will not be an easement, but will instead be an estate in land. In considering whether there is an ouster principle at all, this distinction is important **[29]-[31].**

The authority for the 'no reasonable use' test is the Court of Appeal decision in *Batchelor v Marlow* [2001] EWCA Civ 1051, which applied the judgment of HHJ Paul Baker QC in *London & Blenheim Estates Limited v Ladbroke Retail Parks Limited* [1992] 1 WLR 1278. Both judgments held that a right to park cars could not constitute an easement where, on the facts, the servient owner was prevented from having reasonable use of their land **[44]-[50]**.

The Court considered criticism of the 'no reasonable use' test in Scots case law, a Law Commission report headed "Easements that confer the right to extensive use", academic commentary and case law from Australia, New Zealand and Canada. In overview, the criticisms centre on the lack of precision associated with the 'no reasonable use' test, such that it is unclear whether rights that confer extensive or exclusive use of land constitute an easement. The concept of reasonable use, and when reasonable use by the servient owner is prevented, is vague, and it is difficult to delineate when the servient owner has been sufficiently deprived of his possession as to amount to an 'ouster' inconsistent with an easement. Further, there are arguments in favour of enabling a servient owner to confer rights to exclusive or extensive use on a dominant owner, short of transferring legal possession **[51]-[69]**.

The Court concluded that instead of an ouster principle, there is simply a dividing line based on whether the servient owner has purported to grant a right which is an interest in land and which satisfies the other criteria for an easement to exist, or has granted an estate in land (i.e. a freehold or leasehold estate) carrying with it the right to exclusive possession. This is the fundamental dividing line between interests in or over land and estates in land. If the right granted is one of full ownership in this sense, then it cannot constitute a lesser form of right in relation to land, such as an easement **[74]**.

In reaching this conclusion, the Court held that it is difficult to see that there is any justification for the ouster principle. There is no reason why an owner, who has autonomy to decide how their property should be used, should be prevented from granting to another a right to use land which is otherwise capable of qualifying as an easement, subject to the ouster principle **[72]**. Public policy as reflected in the common law is also strongly in favour of encouraging the productive use of land. There is no justification for a restriction such as the ouster principle, which prevents the creation of otherwise valid easement rights which may promote the beneficial use of land by the dominant owner **[73]**.

Furthermore, it is well-established that it is particularly important that property rights should be reasonably clear and certain in their effect. Such rights benefit and bind successive dominant and servient owners, and it is important that third parties know what rights and obligations are attached to land they acquire. The ouster principle is very uncertain in its effect, because a rule based on matters of fact and degree does not provide a clear result governing all relevant cases. It is very difficult if not impossible to stipulate a viable test of reasonableness of use to regulate a property right that binds third parties **[75]-[76]**. The clearest dividing line to satisfy the requirement of certainty is that between the grant of an estate in land and the grant of a mere interest, which depends on whether a right to exclusive possession of the land has been granted. This is a clear legal criterion of ownership which does not depend on issues of fact and degree. This is consistent with the Law Commission's recommendations [**77]-[78]**.

On the facts, the right claimed by the appellant did not amount to a right to exclusive possession and satisfied the other requirements of an easement **[81]-[82]**.