

Horizons

Commercial Property

Autumn 2006

In this issue

Adverse Possession
and Human Rights

Are you a
responsible person?

Planning and
Compulsory Purchase
Act 2004 Update

Adverse Possession and Human Rights

Since land ownership began the rights of those in actual possession have enjoyed much protection, inspiring the phrase *"nine tenths of the law is possession"* - but this may no longer ring as true with the law being revisited in the wake of the Human Rights Act 1998.

Adverse possession is the process by which a trespasser acquires title to another's land by possessing it exclusively for a period of 12 years. In the House of Lords case of *J A Pye (Oxford) Limited v Graham* the squatter, Graham was held to have acquired title from the registered owner, Pye, of farm land which Graham had occupied for 12 years.

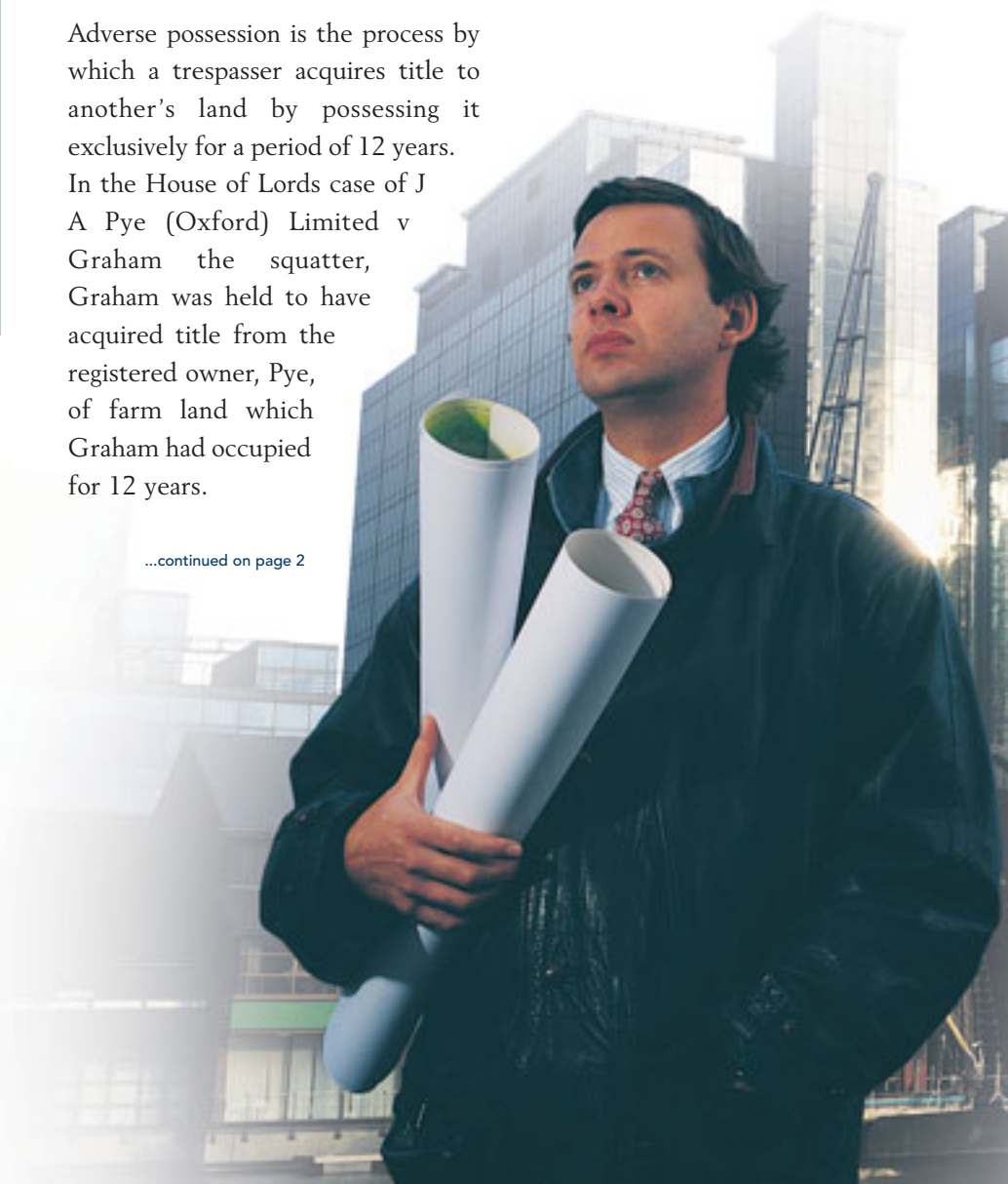
...continued on page 2



PARIS SMITH & RANDALL LLP
SOLICITORS

Hampshire's premier law firm

Providing a full range of legal services to
individuals and businesses across the region
for over 180 years.





...continued from page 1

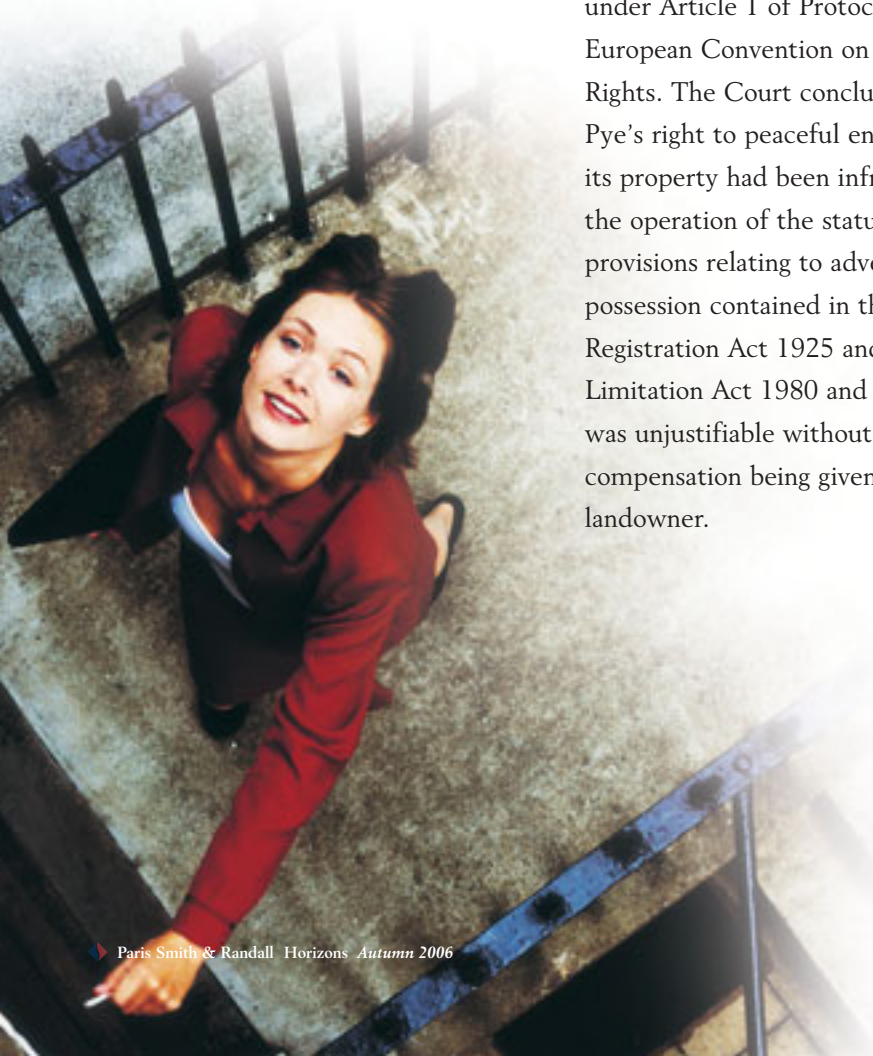
Adverse Possession and Human Rights

This was despite evidence that Graham had during the 12 year period been willing to pay for his occupation. The case represented a high point for the rights of the “squatter”.

However, Pye brought a claim against the government in the European Court of Human Rights (“ECHR”), alleging that the decision of the House of Lords was incompatible with its human rights under Article 1 of Protocol 1 to the European Convention on Human Rights. The Court concluded that Pye’s right to peaceful enjoyment of its property had been infringed by the operation of the statutory provisions relating to adverse possession contained in the Land Registration Act 1925 and the Limitation Act 1980 and that this was unjustifiable without compensation being given to the landowner.

The European Court observed that changes introduced by the Land Registration Act 2002 (“LRA 2002”) address much of the potential injustice of adverse possession law for registered landowners. The Act though was not in force when Graham acquired title from Pye and as its effect is not retrospective had not affected the decision of the House of Lords.

A squatter claiming title, but not having 12 years possession accrued before the LRA 2002 came into force, is required by the LRA 2002 to serve notice on the landowner who then has the opportunity to object and to take action to evict before title is lost. Save in limited circumstances the squatter has no defence to the registered landowner’s claim for possession where the landowner has responded to the notice within prescribed time limits.



Main Points

1. The Human Rights Act 1998 (which came into effect on 2 October 2000) is not retrospective. Those who have obtained possessory title by adverse possession by 2 October 2000 will not lose their title as a result of this decision but it is possible the Courts may make it harder for a Claimant to prove that it had obtained title.

2. The Land Registration Act 2002 makes it now much more difficult for a registered owner to lose title inadvertently through adverse possession.

3. The rules governing adverse possession of registered land pre-October 2003 are a violation of the registered owner's human rights but continue to have effect notwithstanding the ECHR decision which is not binding on the Land Registry. The Land Registry has stated that they will continue to accept applications.

4. Article 41 of the European Convention on Human Rights permits the European Court to award compensation to a party whose rights have been infringed. The decision may open the way for other dispossessed landowners to bring such claims against the government.

5. Adverse possession against unregistered land is unaffected at present but the Courts attitude may alter favourably for the landowner if they seek to interpret the old law in the light of the ECHR Pye decision.

It is imperative for this reason that landowners ensure their up to date contact details are recorded at the Land Registry to ensure receipt of notices. Contact details kept by the Land Registry can include email addresses enabling notices to be received even when away from the office or home which may be critical as the time limits for responding under the LRA 2002 are very short.

Although the decision of the European Court has no direct effect in this country, there is an obligation on the government to consider what has caused the breach of Article 1 of Protocol 1 and to take steps to avoid future breaches.

This may yet result in further legislation limiting even more the scope of adverse possession law in relation to registered land but the

legislative position in relation to unregistered land is unlikely to change. As a consequence any unregistered landowners should consider voluntary registration of title.

It remains to be seen whether and to what extent the English Courts will embrace the spirit of the European Court decision and reinterpret the established law of adverse possession in favour of the landowner.

If the Courts do make a move in this direction then even unregistered landowners or those involved in pre-LRA 2002 claims such as in Pye may benefit from the decision of the ECHR. ♦

Are you a responsible person?

On 01 October 2006 the Regulatory Reform (Fire Safety) Order 2005 came into force. This repealed over 70 separate pieces of legislation including the Fire Precautions (Workplace) Regulation 1997 and the Fire Precautions Act 1971 (the two major pieces of fire safety law which formerly applied in England and Wales).

The new regulations impose a broad breadth of obligations on the individuals and companies who will be charged with ensuring that the appropriate levels of compliance are attained.

For those who are unwary (whether a sole trader, a company, or an officer of a company) and fail to meet the necessary standards they may face either a fine or up to two years imprisonment.

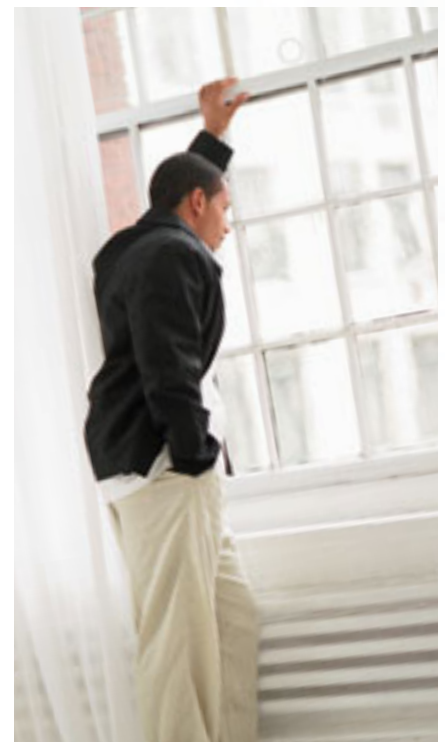
Under the provisions of the Order the responsibility for compliance will rest with the “responsible person”. This will for the most part be the employer in relation to a workplace if it is to any extent under its control.

Where the property is not a workplace (this may include such places as an events marquee) the responsible person will be the person who has control of the premises if it is in connection with a trade or business carried on by him and, if not (for example vacant premises), the owner of the

premises. In a property which is subject to multiple occupiers, it is of course likely that there will be a number of responsible persons.

As with the Fire Precautions (Workplace) Regulation 1997 the new regulations provide for a risk assessment based approach to fire safety. The responsible person is required to consider risks to “relevant persons” when carrying out the fire risk assessment and not just employees. The relevant persons will not only include any persons lawfully on the premises (or in its vicinity) but also includes fire fighters carrying out their duties (other than fire fighting, or carrying out rescues from fire).

The responsible person is required to undertake an assessment of the risks to which the relevant persons are exposed so as to identify the general fire precautions needed. This assessment will need to take into account the various characteristics of the building and those persons or items situated within the building.



The findings of the assessment must then be recorded (including the preventative and protective measures which have or will be taken) as well as details of any persons identified by the assessment as being specifically at risk. The responsible person will then need to give effect to such arrangements as are appropriate, given the size and nature of the undertaking and its activities.

The responsible person must also ensure that the premises are equipped with appropriate fire fighting equipment, detectors and alarms and that any non-automatic equipment is easily accessible, simple to use and indicated by signs. What is appropriate is determined having regard to the extent and use of the premises as well as the persons and items contained within the premises.

The risks identified by the risk assessment must also be communicated to the employees along with the corresponding preventative and protective measures. This obligation also extends to the provision of information to contractors.

Coupled with the duty to provide information to its employees, the responsible person is also under a duty to ensure that employees are provided with adequate safety training at various times during their employment (for example on their being exposed to a new or increased risk).

Compliance with the Order will be regulated by the “enforcing authority” which is likely to be the fire and rescue authority local to the premises.

The Department for Communities and Local Government has published a number of guides (which can be found on their website at www.communities.gov.uk), relating to the different types of

premises that are covered by the Order. Those who suspect that they may be deemed to be a “responsible person” should take time to familiarise themselves with the appropriate guide as some, for instance the guide for Factories and Warehouses, are in excess of 140 pages long.

For small to medium sized businesses “A Short Guide to Making your Premises Safe from Fire” has also been published which is a more palatable 9 pages. As the short guide itself notes it does not replace any of the more wide ranging guides. ◆



Planning and Compulsory Purchase Act 2004 Update

Just when Planning Lawyers and Planners were getting used to the development plan regime the Planning and Compulsory Purchase Act 2004 ("the Act") was given Royal Assent on 13 May 2004 to fix something that wasn't entirely broken.

Despite the fact that the Act has been around for over a couple of years now, most of the provisions within it have been brought into force gradually by Commencement Orders, the first of which came out in August 2004.

As alluded to above, the major reform has been to the development plan regime which is revamped in an attempt to streamline the system and introduce a regional approach for spatial strategy in place of an approach based on the County boundaries.

Some of the more controversial reforms envisaged by the Act, most notably a reform of planning obligations, are still being worked on. The Government is consulting on proposals for a new regime and it is expected that these reforms will result in the introduction of a form of development land tax. However, as these are not concrete proposals at this stage it is not intended to deal with them in this article.



So, on to a summary of the reforms which are now in force:

- *Reform to the development plan system so that:*
 - Local Plans are replaced by Local Development Frameworks comprising of a series of documents including a Local Development Scheme, Statement of Community Involvement, Development Plan Documents, Supplementary Planning Documents, Local Development Orders (see latest developments below) and an Annual Monitoring Report.
 - Structure Plans are replaced by Regional Spatial Strategies which are prepared by Regional Assemblies and not County Councils.

Note that these reforms are subject to transitional arrangements so that some local plans are "saved" until Local Planning Authorities have completed the statutory process to introduce Local Development Frameworks;

- *Local Planning Authorities have the power to issue Temporary Stop Notices in order to immediately halt breaches of planning control for a period of up to 28 days while further enforcement action is considered;*
- *Local Planning Authorities have the discretion to refuse a Planning Application if it is the same or substantially similar to an application they, or the Secretary of State on appeal, have already refused. It should be noted that where an application has been revised in a genuine attempt to take account of objections to an earlier proposal, it should not be regarded as similar for the purposes of this section;*
- *New rules are set in relation to applications for Major Infrastructure Projects which are to be determined by the Secretary of State;*

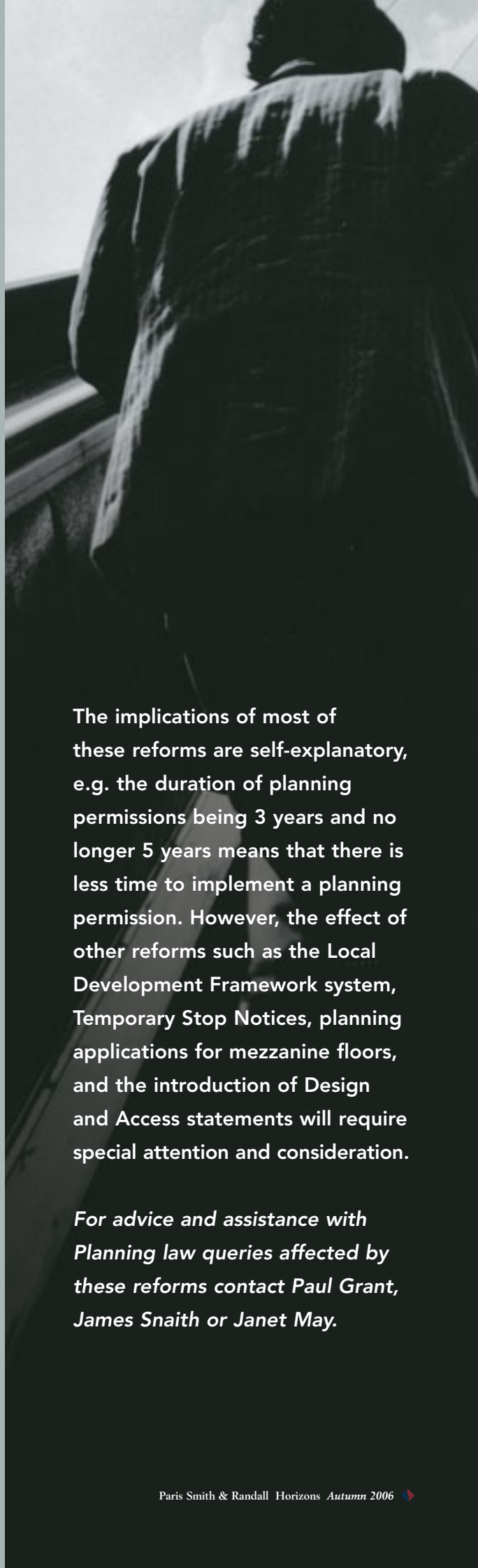
- *The duration of the life of a planning permission is reduced to 3 years from 5; and*
- *Where outline permission is granted, development must begin no later than 2 years after the approval of reserved matters.*

Reforms in force from 10 May 2006 include:

- *Local Planning Authorities are empowered to create Local Development Orders to grant planning permission for a class of development within any part of, or all of, the land within the area of the authority;*
- *Increasing retail floor space through internal works, i.e. the construction of mezzanine floors, now requires planning permission; and*
- *Local Planning Authorities now have 13 weeks instead of 8 weeks in order to determine planning applications for "major developments" which are applications in respect of:*
 - mining;
 - waste development;
 - housing developments for 10 or more dwelling houses or on a site of 0.5 hectares or more if the development will comprise 10 or more dwelling houses;
 - developments for a building or buildings where the floor space created by the development will be 1000 square metres or more;
 - development on a site of one hectare or more.

New rules in force from 10 August 2006 include:

- *Rules on reserved matters have changed, meaning that more information will need to be provided at the "outline" planning application stage to the Local Planning Authority; and*
- *A Design and Access statement will need to be provided when submitting an application for planning permission. ◆*



The implications of most of these reforms are self-explanatory, e.g. the duration of planning permissions being 3 years and no longer 5 years means that there is less time to implement a planning permission. However, the effect of other reforms such as the Local Development Framework system, Temporary Stop Notices, planning applications for mezzanine floors, and the introduction of Design and Access statements will require special attention and consideration.

For advice and assistance with Planning law queries affected by these reforms contact Paul Grant, James Snaith or Janet May.

Need some help or guidance?

Please contact us:

John Mansell 023 8048 2251
Head of Corporate Division

Mark Howarth 023 8048 2255
Head of Department
Commercial Property
and Planning Department

David Eminton 023 8048 2284
Property Litigation
Commercial Property
and Planning Department

Edward Power 023 8048 2341
Secured Lending and
Corporate Support
Commercial Property
and Planning Department

Paul Grant 023 8048 2169
Planning Team
Commercial Property
and Planning Department



PARIS SMITH & RANDALL LLP
SOLICITORS

Number 1 London Road
Southampton
Hampshire SO15 2AE

Telephone: 023 8048 2482

Fax: 023 8063 1835

E-mail: info@parissmith.co.uk

DX 38534 SOUTHAMPTON 3

www.parissmith.co.uk



INVESTOR IN PEOPLE