

## **PRIVATE RIGHTS OF ACCESS**

Problems with private rights of access frequently arise between neighbours. They can generate high emotion and sometimes years of resentment and pettiness. Difficulties arise when a property comes to be sold and there are no documents to establish past history of use.

## **RIGHTS OF WAY**

Rights of way may be:-

(i) On foot only which means you may only come and go over your neighbours land to reach the public highway with or without a load one person can carry or pushing a small barrow or trolley or say a child's pram. You may push a bicycle but not ride it. A wheeled device must not be too wide for the footpath or any gates there may be.

(ii) With a Vehicle

A properly drawn right of way which may have been granted at the time when part of a property has been sold or by subsequent specific Deed of Grant should define the type of vehicle allowed to use the land. Examples would typically include a private motor car or trade vehicle not exceeding a specific weight or height and allow loading and unloading. There is no implied right to park on a right of way. If the dimensions are not specifically defined then the courts may decide that limits are set by the restrictions that were in place at the time the right was granted. This may be decided perhaps by the width of a gate onto the land at the entrance from the highway. Sometimes the track way may be narrower than the defined width of the right of way perhaps because of grass verges. In such a case you may pull onto the verge to pass or of course use a defined passing place in a single track road. However, you may not drive along the verges or park on them.

## HOW DO YOU GET A RIGHT OF WAY?

Such a right can be obtained in one of two ways:-

(i) Specific Grant by Deed

Often such a deed will be most carefully defined, especially in modern times. In the case of a residential estate development, it is essential to make sure all residents are subject to clear limitations designed to benefit all and to keep the estate a pleasant place to live. Often these are prohibitions against keeping unroadworthy vehicles, boats, caravans etc and there is no right of access for them.

(ii) Over time

There are a lot of such rights acquired over time in rural areas, sometimes going back over centuries for foot/access or to the early 20<sup>th</sup> century for motor vehicles. Twenty years and more should be enough provided you can prove that the access has been used openly and repeatedly and without the landowner's permission. If access is with permission or payment then it may be said to be a licence only which could be revoked but that is another topic altogether.

You should be aware however that you cannot gain a right of way through an illegal act. For example driving a motor vehicle across common land does not create a private right of way.

## HOW LONG DOES A RIGHT OF WAY LAST?

It is very difficult to bring an established right of way to an end, but that does not mean that the person entitled can abuse his position. The owner of the land subject to the right of way is entitled to the peaceful enjoyment of his land and to legitimate development of it provided that the right of way is not thereby lost.

## WHO IS LIABLE FOR REPAIRS?

If the right of way falls into disrepair and no-one can be identified as being responsible for maintenance then the person using the right of way may do so but – oddly – must be careful not to improve it. Therefore a gravel drive can be re-gravelled or pot holes filled in but not improved by concreting or tarmacing the surface. Usually it is possible for residents using a private roadway to come to a sensible and practical arrangement to repair or improve but by no means all residents will agree to contribute equally. Often the nearest to the highway considers his liability to be less than the furthest who therefore uses more of the surface. If the owner of the land obstructs the right of way e.g. by digging it up or building a wall across it, he is liable to a claim in nuisance. However, he may put a gate across provided that if it is locked, then a key is provided to the person entitled to use it.

## **PARKING RIGHTS**

(i) Excessive use of Private Right of Way

This is difficult to determine. Much depends on how the rights of way came into being. If by Deed - are there limitations of size or frequency of use? If by long term – how has the use been exercised by private cars or business or agricultural use? In one case, the court decided that an agricultural right or way granted “at all times for all purposes” was found to be excessive when the agricultural landowner changed the use of his fields to a 200 caravan site. That use exceeded the originally contemplated use in the light of the surrounding circumstances at the time of the grant. Probable use for a few caravans, so that the use was no more than the original agricultural use, would be allowable.

(ii) Parking Vehicles

This is an increasingly important topic in this age of the private motor car. Most modern developments include a parking area if one is not specifically included within the property itself. Sometimes spaces are not directly allocated to a property. In such cases, you simply get a right to compete for the available spaces. Not a very good basis for neighbourly behaviour!

(iii) Shared driveways

Difficulties have arisen over shared driveways. Usually each adjoining homeowner owns half the driveway leading to a garage or parking space but subject to the right of the other to pass over it. For this arrangement to work neither neighbour has a right to park their car on the drive so as to obstruct the other. The same goes for storing say dustbins or materials.

## **NATURAL ELEMENTS**

How about a right to a view, or wind and sunshine? Perhaps a new structure on a neighbour's land obstructs the passage of air to a windmill or extraction of smoke from a chimney, or even prevents sunshine from reaching solar panels, or spoils your view of the countryside or seascape. The best approach is to object to a planning application before such a structure is built. Alternatively, there may be a claim in nuisance but there can be no certainty as each such claim will be decided on the individual facts of the case.

## **BUYING, SELLING OR INSURING**

What can you do if buying or selling or the right of access is being insured?

First check what is in your title deeds to see if the right is specifically defined.

Second keep a careful record with photographs and a diary of use or abuse.

Third bring these matters to the attention of the person misusing the right.

## **ACTION**

At any stage seek legal advice about this complex and often emotive topic. Do not take the law into your own hands. You can contact me here at **Busbys** on **01288 35 9000** or email me **david.helman@busbyslaw.co.uk** to discuss your rights.

**David Helman, Notary Public, Busbys Solicitors, Bude & Holsworthy.**