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# Who's that traipsing through your back yard?

Buyers must beware hidden rights of way, says Nick Kettles

Sunday February 20, 2005

[The Observer](#)

You may think antiquated rights of way add a certain charm to older properties - but beware. Private rights of way, also referred to as easements - a collective term that includes 'wayleaves' and the 'right to light' - point to legally enforced access still in use, or considered part of a neighbouring property's assets.

Nicholas Leeming, director of Propertyfinder.com says: 'An enforceable covenant which restricts the use that you can make of a property may result in as much as 50 per cent being wiped off its value.'

Steve Sparrow, Group Training Manager at Spicerhaart Estate Agents adds: 'The key with rights of way is what's referred to as the "quiet enjoyment of your property" and people have differing levels of tolerance depending on the situation.'

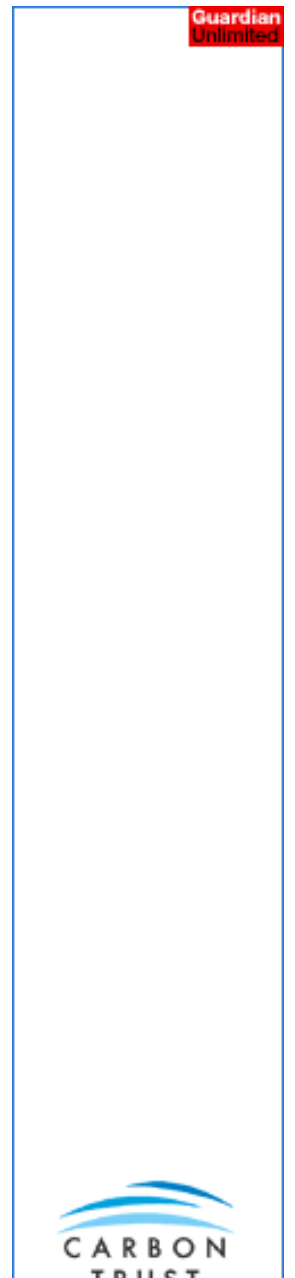
Quite. By definition, easements describe a 'dominant' landowner's right to cross or use a 'servient' landowner's land, for an expressed purpose.

But with careful research you may find they are not the burden they seem or, better still, can be removed, ensuring the deeds to the property are 'tidier' when you resell the property.

Jeremy Copestake, from Gichard Solicitors, Rotherham, says: 'When an easement comes up on a search look at the description. It may no longer be applicable. If possible talk to the dominant landowner. You should never assume lack of use amounts to abandonment.'

If it's on the edge of the land and used infrequently, it might be safe to leave it as it is.

If not, you may need to consider other options. For example it may



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be possible to amend the easement by deed of variation, whereby the point of access or pathway is altered to the mutual satisfaction of both landowners. But if the easement describes access to an outbuilding owned by the dominant landowner, but situated on your land, the easement can only be extinguished by buying it.

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On the other side of the fence? Then beware of losing your rights through neglect. Jeremy Copestake says: 'Common law suggests that if a dominant landowner blocks off the path of an easement by building a house extension across it, or fails to act or voice concern while the servient landowner does the same, the servient landowner might assume that the easement has been abandoned.'

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You should also avoid casually granting temporary rights of way, even to a neighbour you especially like, lest a future owner applies for them to become permanent because there has been a 'long user' (at least once annually for 20 years).

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- ▶ Christopher Green, Eddowes, Simm and Waldron, Ashbourne, suggests making such rights of way the subject of a written memorandum: 'This could stop the 20-year clock running. Alternatively, charge £1 a year, making it a wayleave which stops it becoming a permanent easement.'

More generally, wayleaves are defined as a right of way through land for various utility services, such as pylons, which unlike easements, will often provide some rent to the servient landowner.

Unfortunately, wayleaves are almost always vested in favour of the public body or utility company, but an interesting caveat has emerged. The wayleave may originally describe a usage that subsequently has changed - such as the right to lay copper telecom wires now upgraded to fibre optic, giving you the right to argue for an increase in rent.

By the same token, 'ransom strips' will provide savvy landowners with a trump card should neighbouring land come up for development.

While not strictly an easement, they represent land without which a neighbouring landowner can't access, or make full use of their own land.

The precedent of a case known as 'Stokes vs Cambridge' indicates that if the land opens access to enable development of neighbouring land, the owner is entitled to a third of its value.

Ransom strips can be as little as a few feet wide, but with development land fetching millions, it may be worth infinitely more. It might just be worth staking out your land to see where your pot of gold might lie.

Each case turns on its merits, and often the decision to pursue a change in an easement will depend on economics. As an asset of the dominant landowner, you may end up paying their legal costs. This is especially likely if the right of way you want altered is a public footpath, considered almost sacrosanct to the Ramblers

Association, a formidable lobby.

Feudal they may seem but easements remain a peculiar part of living in such close proximity with each other. Living with them may be the best option. Indeed, Green says: 'If you can help someone without prejudicing your own position or affecting the value of your property there is no legal reason to refuse; it's the neighbourly thing to do.'



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