**Guide to Easements**

The legal term for rights over other people’s property is an easement. There are fairly obvious ones, such as a right of way or a right to runner a water pipe to your property over someone else’s land but there are also slightly less obvious ones such as a right to light (you’d have a right to sunlight getting on to your property and a right to stop the neighbour building a tall building which would block out the light on to your property).

Mostly these rights are written down and noted at the Land Registry. However if you have used a track to access your land for years and years without the right having been officially granted then you may have a legal right to carry on using that track and also to have that right noted at the Land Registry.

Easements are often essential to be able to use land effectively. What use is a right of way on foot only if you need to drive vehicles to your land in order to develop it? There is usually also an implied right to carry out repairs to enable the easement to be effectively used (for example, if you had a right of way over a track, then implied into that would be a right to carry out repairs over the track).

If you are thinking about granting an easement then there are different aspects to consider:

1. Is the easement permanent? Perhaps it is only needed for a set period of time (in which case, don’t grant an easement, there will be another route to go down).
2. If someone else is going to use your track, do you want to share the cost of maintaining/repairing that track?
3. Do you want to limit how much someone can use the track or perhaps the drainage pipes? For example, you may be ok with a neighbour accessing your track or your pipes because there’s only one house, but what if they build 5 additional houses in their back garden?
4. Would you ever develop your property in the future? If so, perhaps you need the ability to move the position of the track or drains in the future.
5. Should the easement be conditional on something else? For example, if there’s a right of way to enable a fire escape to be used, should the right of way continue if the fire escape is no longer in existence?
6. What’s the extent of the land that is to benefit from the easement? If the neighbouring landowner acquires additional land then that additional land won’t automatically benefit from any easement.

One of the most controversial aspects of easements is when the land which has the right tries to develop the land to the extent that the other landowner complains that the proposed new extra use is excessive and beyond what is permitted by the easement. There have been some recent cases on that issue:

<https://www.wilsonbrowne.co.uk/news/business/acquired-rights-of-way-and-drainage-intensification-or-change-of-use/>

and one yet to be finally decided by the courts and reported on by the Times:

<https://www.thetimes.co.uk/article/two-new-houses-will-ruin-my-rural-peace-for-ever-says-lawyer-9hh5ctjv7>

If you have been asked to grant an easement or your land needs an easement then please contact one of the team for legal advice.