

Business Clinic

Whether it's a legal, tax, insurance, management or land issue, Farmers Weekly's experts can help

Does planned house have right of access via lane?

Q In 1965, part of one of our fields, which we acquired with the deeds in 1974, was incorporated into a lane to widen it to provide vehicular access to three properties. One of the properties, a smallholding, has recently been sold, with the son of the previous owner retaining a field on which he has applied for planning permission for a house. The present owners of the three properties written into the agreement are against this development. We are questioning whether this intended new development has a right of way. We would appreciate your comments as to how we stand as grantors in this situation.

Jonathan Thompson
Senior associate
Thrings

A This is a classic conveyancing conundrum, with a number of possible answers leading to the same outcome. Did the 1965 document which created the use of the lane, both legally and practically, give specific information about how the lane may be used? Then, was this linked to a specific use of the land which is accessed by the lane?

In response to your question, I have assumed there is agricultural land and some of the three properties are houses.

First, in 1965, was the use of the field as a lane by a conveyance of the land or a right of way? If the former, was a type of use covenant imposed? If the right to use the lane was granted to one/three property owners by a deed of grant, what was the exact use in the deed of grant? It may be that it was a right granted to one person and they have sold off land with the benefit of the right to use the lane.

Is lane use specified?

Both lead to the same question: does the document allowing use of the lane specify the type of use? It might be for agricultural vehicles only and/or access to a house or specified number of houses.

Second, was the 1965 use of both the lane



Access and boundaries are common areas of dispute between rural neighbours

and the land, which it accesses, different to today? As the land is to be yet developed, it must currently be agricultural land.

The use type allowed is important, whether permitted by a use covenant in a conveyance or a specific use in a deed of grant. For a deed of grant, there should be a plan showing the area to be accessed over the lane. If the lane is owned by one or three property owners, there may be a covenant stating that the lane can only be used for agricultural or residential-type vehicles.

Some people with the benefit of a right of way try to enlarge that use. The law has a red light approach to such attempts. If person A grants person B a right for a specific use, that is all they have. Attempts to enlarge a right will be met with a big "stop" sign.

If the right granted was specifically for access to agricultural land and two houses for 57 years, then that is its use: no more than three property owners. However, if the right was granted for wider "agricultural and residential" purposes, that is unspecific in terms of how many people might use the lane.

In a recent case, it was considered whether a general use clause ("to access to and from property") may be limited to the generic use when created. In this case, that depends on the current and intended purpose of the benefiting land in 1965.

The general presumption is that the user of a right of way for a specific use can't change that use without the permission of the landowner of the access land. This is done by a deed of variation of the original deed granting use.

Planning permission issue

In the context of the smallholder's planning application, I recently experienced a similar matter when acting for the owner of the access with a specific use type. The access user wanted to change use of his land in a diversification project. The local planners wanted to see that the right of access supported the new use, which it didn't, and that had an impact on their decision to refuse planning.

In summary, if the smallholder has agricultural use access only, that would not support a residential development of their land.

How can we prepare for increasingly extreme weather?

Q With UK weather increasingly unpredictable, I'm worried about snow, ice and wind damage to my buildings, machinery and livestock. There is also the risk of slips, trips and falls by employees and visitors (we have a farm shop and café) and the possible insurance claims that may arise. What are the best practical measures that I can take to reduce extreme weather risks to my business, and at the same time reduce the likelihood of having to make a claim?

Jeremy Mitchell
Associate director
A-Plan Rural Insurance

A It's a good idea to anticipate trouble as the UK's weather becomes ever more erratic.

Even the best-engineered buildings will struggle when hit by extreme weather, so it's important to take the necessary measures to ensure they are fit to cope with things like snow load and high winds.

While it has been mandatory since 2014 for all fabricated steel structures to be CE marked – which should ensure that buildings are fit for the geographical areas in which they're situated – we all know that farms are dotted with old and historic buildings that have seen better days.

Creating a checklist and dealing with problems on a continuing basis could prevent bigger costs later on. Measures that will help include:

- Carrying out visual inspections at least once a year and keeping a maintenance plan
- Checking buildings and roofs are structurally sound, particularly load bearing parts like the gable ends. If not, insurers are unlikely to provide cover. Misrepresenting a risk could result in the claim being voided and the premium retained anyway
- Carrying out essential work as soon as possible – blocked gutters, drains and downpipes, general cracks and leaks
- Implementing local and large-scale flood defences, such as ditching, barriers and automated air bricks. It's also worth keeping up to date with local planning and flood alleviation schemes
- Regularly inspecting trees at risk of wind damage, especially those near buildings or machinery
- Ensuring pipes and header tanks are insulated and keeping heating switched on in unused buildings to help prevent freezing
- Removing heavy snow from roofs to prevent them from collapsing



Where possible, heavy snow should be removed from roofs but only with suitable precautions and using safe working methods, including not working alone

● Keeping on top of general checks and repairs relating to things such as chimneys, boiler servicing and oil levels.

Carrying out emergency measures and repairs when extreme weather has hit can be dangerous. If you are removing snow and ice from roofs, for example, never work alone, secure ladders properly, and be mindful of power lines.

Insurance can be tailored to cover machinery, produce, farm buildings and livestock that all may be damaged or injured by extreme weather.

Specific covers that could be helpful include storm, hail, weight of snow, flood, escape of water and/or fuel, and cover for increased cost of working. Some brokers or other insurance providers will also be able to include additional covers such as tree removal costs or loss of metered water.

Visitor and employee protection

To protect what is an essential stream of extra income for many, certain things should be implemented, such as:

- Clear signage and supervision so visitors don't wander into hazardous areas
- The removal of any tripping hazards
- On-site first aid station
- Covid-19 safety measures including hand sanitiser and information signs
- Gritting pathways in icy or wet conditions.

Public and Employer Liability are must-haves, as they ensure that businesses are covered should a member of the public or an employee be injured or suffer a loss or damage to their property while on your farm.

The right types and levels of cover, along with a risk-aware approach, can make an important contribution in reducing business risk in these challenging times.

DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue and *Farmers Weekly* will put your question to a member of the panel.

Send your enquiry to Business Clinic, *Farmers Weekly*, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS, and include a telephone number. You can also email fw-businessclinic@markallengroup.com

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