Business Clinic

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

Take care from the start with telecoms access

Q I have been approached by an agent for a mobile telecoms operator wanting to access my land for a survey. I do not have a telecoms mast currently, but they say that they have "code rights" to access my land. What does this mean and, if so, is there anything I need to be aware of?

Paul Williams
Head of telecoms
Carter Jonas

A It sounds as if this request relates to investigations for a new site requirement in the area. This is increasingly common as mobile operators look to roll out sites as part of the Shared Rural Network, a 50:50 publicly subsidised commitment of non-profitable geographic coverage for lucrative 5G spectrum licences.

An operator is likely to carry out several activities as part of its investigations, ranging from a simple visual inspection to photos taken with a cherry picker or drone, through to a geotechnical or "borehole" survey which is more intrusive.

Under the previous Electronic Communications Code, many rural landowners will have been tempted to host a telecoms site on their land, in return for annual rents of £5,000-£6,000. However, armed with new code legislation, operators now offer a fraction of these sums – in some cases as low as tens of pounds a year. Understandably, this, and regular intrusive access, has resulted in landowners treating approaches for new sites with caution.

Once an operator has rights over land it is very difficult (not to mention costly) to remove them, so it is important that any initial approach – even for a seemingly benign "visual survey" – is considered carefully. The agent's assertion that their operator client has "code rights" is misleading, but not uncommon.

Operator rights over land are difficult and costly to remove

TIM SCRIVENER

No grant of access obligation

You are under no obligation to grant access. An operator can only be granted (or conferred) rights under the code by written consensual agreement between the parties, or by an operator obtaining a court order. Operators (whether mobile or fibre) have no automatic rights under the code.

The first thing to be aware of is that granting access to land without proper documentation covering such items as damage, reinstatement, liability or scope can leave landowners exposed to unrecoverable costs or even third-party claims from occupiers, neighbours and the public.

Where access is required to (or over) land which is tenanted, in environmental stewardship, contains livestock or has public rights of way, the situation is more complex.

Protect interim rights

Having a clear document setting out what "interim rights" are granted to an operator is a double-edged sword. A written document agreed between the parties will always attract statutory protection under the code and, as such, can only be terminated on specific grounds, irrespective of the likely short-term requirement.

While this might be less of an issue if any proposal progresses to a full installation, should an operator not proceed, their rights under that agreement continue to burden the land and bind all future owners and occupiers.

The only way for a landowner to have the protection of a written agreement dealing with interim rights, but not the burden of statutory continuation, is for such agreements to be drafted and presented to the court for execution.

While this is more time-consuming and costly for the operator, it does provide landowners with comfort that an operator's rights end absolutely on an agreed date or event.

Most operators are quick to litigate for permanent rights once they have a confirmed design on site, putting landowners under costs pressure, and in some cases even submit planning without the landowner's knowledge. A carefully considered interim rights agreement at the outset, along with clear communications and engagement, will be key to a successful outcome.

Seeking specialist advice on your specific situation, as well as expert representation from the outset, will pay dividends in the future.

OLEG/ADOBE STOCK

Lost land, boundaries and development

Q I bought six acres of unregistered farmland in 1982. It's roughly square with one corner cut out, which I do not own. This was a youth hostel (YH). At purchase, my land had an inner line of new barbed wire fencing erected. The original YH fence joining my land on two sides was plain wire. The fact that my fencing is an inner line, not a boundary, is clearly proven in another corner where the 1982 fencing cuts off a dell. All maps define that corner as mine.

The hostel closed many years ago, and I did not use my land for a number of years. My blackthorn hedge at the rear of the YH plot grew extremely thick. The YH was sold and at some stage their original plain wire was removed. I have lost a small strip of land, 30m long by up to 5m wide, with the blackthorn on it. The corner posts are still present and the tiny scale maps show this as a straight line. But with the YH plain wire fence removed, the 1982 barbed wire has a curve on it to my neighbour's benefit. The land value is immaterial, but his claiming it has enabled him to go on to my land two years ago and uproot my hedge.

The owner turned the old YH into multiple occupancy housing some years ago; adding one mobile home that has an enforcement order on it. The YH occupancy continues despite a certificate of lawfulness refusal. In 2017, the owner built two more units that don't meet permitted development, which I have objected to within timescales. A month ago he added a new mobile home. Council enforcement is grinding along slowly.

I am left with multiple occupation, noise, vehicle movements and unauthorised building in an AONB. The owner has damaged my fences, dumped spoil, made offensive comments and is impossible to negotiate with.

Ken Kaar
Associate solicitor
Thrings

A We are often asked to advise on this sort of multi-faceted situation involving planning breaches, interference with private property rights, and sometimes criminal behaviour, all by one individual.

We break the situation down into distinct issues and consider the legal position of each. In your case, we can isolate three potential issues: trespass, breaches of planning regulations, and harassment or criminal behaviour.

Boundary encroachment

The potential trespass is in the form of boundary encroachment. In a boundary dispute there are often two elements of roughly equal importance. First is the correct location, on the ground, of the true legal boundary which was created when one piece of land was split from another. The second is adverse possession.

A wide range of evidence can be taken into account to establish the true legal boundary. The original deed by which the boundary was created is of course very important, but it is rarely sufficiently accurate to be conclusive. The physical features – hedges, fences, walls – are also very important. Ordnance Survey plans and those based on OS data, like Land Registry title plans, are less useful.

Most plans, whether they are Land Registry plans or old deed plans, are for "identification purposes only", meaning you cannot rely on the plan as showing precisely where the boundary is. When a court is required to make a decision on where the true legal boundary lies, it may take into account all of the evidence, some of which has greater "evidential weight", to establish where, on the balance of probabilities, the boundary was intended to be by the parties to the deed.

However, just because the original legal boundary followed a particular line does not mean the current legal boundary does. It could have changed over the years through adverse possession. Because your land is unregistered, the "old" adverse possession rules apply.

These are the rules that people tend to be familiar with – after 12 years of continuous possession, with an intention to possess and to the exclusion of all others including the true owner, the "squatter" cannot be removed.

Essentially, if your neighbour has fenced off and occupied your land exclusively for more than 12 years it is quite possible that you have lost ownership of the annexed land. It is worth saying that if your land was registered it would be subject to different rules, although it is not clear which would be more favourable to you.

Planning breaches

In terms of the planning breaches, it sounds like you are doing all you can. It is not for you to enforce planning regulations; only the local planning authority (LPA) can do that. Sometimes there is scope for forcing the LPA to take enforcement action where it has refused to do so, although it sounds as though the LPA is working its way through a slow process.

Finally, you say you have had some heated encounters with your troublesome neighbour. In truth, it does not sound like his behaviour amounts to harassment in the legal sense. Under the Protection from Harassment Act 1997 harassment is, in short, a course of conduct which causes alarm or distress.

If sufficiently serious, harassment is a criminal offence but a private person can seek an injunction in court if the police do not take action. The courts have said that such an injunction will only be granted where there has been a criminal level of behaviour, which is rare. What you describe is much more common but probably does not amount to harassment, despite being deeply unpleasant.

These are all very complex legal issues and the foregoing has all been greatly simplified, to the extent that it cannot be relied on for what are important and long-term decisions. You are advised to seek specialist legal advice.

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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