

Business Clinic

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



Acting beyond the scope of a right can be grounds for a claim for damages

Does neighbour's right of way extend to paying guests?

Q My neighbour has a right of way over my land to access the highway. He is obliged to contribute to the maintenance of this access. He has decided to let a part of his property on short-term lets (between one and three days) using Airbnb. This is not ideal for us and is detrimental to the privacy of our tenant, who is right next to the part of the property that is being let out. Can we stop him having his Airbnb guests use the right of way?



Richie Rees
Chartered legal executive
Thrings

A I am afraid the simple answer is 'it depends'. Your ability to challenge the actions of your neighbour will hinge on the extent of the right of way. You will first need to establish the extent to which the neighbour can use the right of way in law, and then consider whether the actual use by his guests goes beyond it.

You say that your neighbour is obliged to

contribute to the maintenance of the access, which suggests there is a written agreement. If defined in writing, your neighbour would benefit from an express right of way.

Even if there is no written agreement, rights of way can be implied or obtained by a long-term user over time through prescription or under the doctrine of lost modern grant, based on continued use for 20 years, so those possibilities would also need investigating.

Express rights of way are most commonly recorded in deeds at the time of creation. It may, for example, be a narrow right, limited to access only by your neighbour on foot; or it could permit use of the right of way to the land for all purposes and at all times.

While express rights may on the face of it provide certainty, a dispute can still arise on the interpretation of the words used, or the physical extent of the right of way.

Definition of right of way

For example, often the width of the right of way may not be defined; or it may not be clear if the right is limited to the landowner or a particular use. Where wording is open to interpretation, evidence of the circumstances surrounding its creation may assist or undermine an interpretation.

If the holiday lets are a recent development that post-dates the creation of your neighbour's right of way, it may be possible to argue that it was never intended to permit access for guests, or to multiple holiday lets, depending on when the holiday lets were built. This could be considered an intensification of use.

Assuming an express right exists, you need advice on whether your neighbour's actions are permissible. Does use by the guests fall outside the scope of the right? If so, how often is it happening and do you have evidence of it?

Potential grounds for claims

Proving that the guests are acting beyond the scope of the right may enable you to bring a claim for an injunction, stopping future use.

You may also be able to claim damages.

However, be aware that if you try to stop the guests using the right of way, your neighbour may similarly seek to bring a claim against you for "substantial interference". They could seek an injunction against you, and also claim for damages arising from your actions.

These permutations show that your first action should be to consider obtaining legal advice on the nature and scope of the right of way. That would enable you to consider the merits of taking steps to stop your neighbour's guests, and the risks posed by your neighbour's potential response.

Knowing the strength of your case is key before you can sensibly embark upon productive settlement discussions with your neighbour and your tenant. ■

How do we prove holiday use is no longer viable?

Q How do you prove that the permitted use of a building is no longer viable? We have a holiday cottage which is a small converted farm building. It is now within the recently changed development boundary of the village. The planning permission for its use as a granny annexe/holiday let was granted in 2017, with conditions limiting occupancy to a family member (granny annexe use) or 56 days a year to anyone else (holiday let use). The Local Planning Authority (LPA) agrees that the original reasons for attaching the conditions are no longer relevant but will not remove the conditions as it wishes the cottage to be kept as tourist accommodation even though it can be used as a granny annexe or simply left empty. The LPA wants evidence that is no longer viable as holiday accommodation but will not say exactly what it requires. I have contacted the LPA several times, made a planning application and appealed and it is still not clear to me.



Nicola Palfrey
Senior rural surveyor,
Carter Jonas

to your main house. If this is so, it would preclude you from selling the annexe independently.

A planning consultant will be able to look into this and advise on your specific circumstances.

Back to your question – in order to prove that the holiday let use is no longer viable, you will need to get a viability assessment carried out and provide this to the LPA.

This will determine what the occupancy rate is to make the holiday let a viable project, and then you will need to supply evidence that this rate is not achievable. This should be based on occupancy over the past few years, as well as current demand.

Following the lockdown, holiday accommodation was allowed to reopen from 4 July, and since then our leisure team has found that holiday letting operators have confirmed that the 'staycation' is having a resurgence.

Many people are understandably worried about going abroad due both to the travel involved and the risk of having to quarantine on their return. These factors and the weather have meant that such businesses have been able to increase prices and have enjoyed packed schedules.

My advice would be to capitalise on this strong market for this year and next and look to get your viability assessment carried out when the trend moves back towards holiday-ing abroad.

You will need to have the report produced independently so that they are impartial to the planning application and are purely assessing the business/project.

This is also normally confidential due to the level of financial information required, and therefore not available to be viewed on the LPA website.

A You haven't specified the reason for wanting to have the restrictions lifted, but it's worth noting that there is the possibility that there is a Section 106 agreement in place linking the annexe



The 'staycation' is having a resurgence this year

DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue and *FW* 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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