

## W.24 – ACCESS TO NEIGHBOURING LAND

- 24.1 Access to Neighbouring Land Act 1992
- 24.2 Party Walls Act 1996

The text of the book mentions statutory rights of access to neighbouring land briefly (see paragraphs 24.12.5 and 24.12.6). Here the same rights are covered in more detail.

### 24.1 Access to Neighbouring Land Act 1992

In the absence of an easement giving access, in the past there has been no right for someone (A) to gain access to neighbouring premises in order to enable the carrying out of maintenance work to A's own premises. Thus, if one bought an estate in premises which were built right up to the boundary of the land concerned, it was essential to check that express rights had been provided in order to allow access to neighbouring property for the purpose of pointing brickwork, repairing windows or doing any other work which could only be carried out from the neighbour's premises. This was no problem where due care had been taken by those building premises which extended right to the boundaries of their land but in some cases caused undesirable problems. It was, of course, always possible to enter the neighbour's property with the neighbour's permission (by licence). However, should such permission be refused, even if such refusal were unreasonable, nothing could be done. A limited change in the law was made by the Access to Neighbouring Land Act 1992.

#### 24.1.1 Access orders

Although the 1992 Act does allow access in certain cases in order to carry out works which are 'reasonably necessary for the preservation of the whole or any part of the dominant land', it does *not* create a form of statutory easement. It does not give rise to a new interest in land but merely gives a right to access, which right can be enforced against certain persons concerned with the 'servient' land. Nor is the right one to which the person seeking access has an immediate claim: the right only arises where a court makes an access order in favour of an applicant. An order can only be made where the works are reasonably necessary to preserve land and where they cannot be carried out, or would be substantially more difficult to carry out, without the access (s. 1(2)).

Even where these requirements can be established, an order will not be made where the court concludes that it would be unreasonable to make an order due to the degree of interference caused to the neighbour's use or enjoyment of the land or due to any hardship which would be caused to the neighbour or anyone in occupation of the 'servient' land. Nonetheless, this rule will allow access for a wide number of works to be carried out: for example, clearing drains and sewers, repairing buildings or any part of a building, replacing windows, felling trees and so on. The Act does not restrict the type of works for which an access order may be sought; all that matters is that the works should be *reasonably necessary* for the preservation of the land, though certain types of work ('basic preservation works') are taken to be reasonably necessary (s. 1(4)).

Where an order under the Act is granted it may include conditions as to the days on and times at which work may be done and may include a wide range of other provisions (for example, specifying who must carry out the work and providing for payment to be made for any damage caused to the 'servient' land) (s. 2(4)). Where the premises to which the work is to be carried out do not comprise residential land, the court may require a 'fair and reasonable' payment to be made for the right of access (s. 2(5)).

#### 24.1.2 Who is bound by an order?

One problem with the access order is that it only has effect to require the respondent(s) to the application to allow the applicant the necessary access in order to carry out work. As you are already aware, it is perfectly possible for a number of different persons to have co-terminous rights to one piece of land and this means that the applicant must try to ensure that he or she joins as respondents to the action all persons who might have a right to prevent access being given to the neighbouring land. This might give rise to difficulties if, for example,

the current occupant of the neighbouring land is a licensee (without exclusive possession) or if the portion of the land to which access is sought is subject to third-party rights (for example, a right of way in favour of another neighbour which would be interrupted by the access conferred by the order). However, once an order is made, it will be binding on anyone acquiring an estate or interest from or under the respondent(s) after the making of the order. Accordingly, whilst the order does not confer an interest in land it does create a right which, to an extent, runs to bind later acquirers and thus has some of the characteristics of an interest in land. Accordingly, the 1992 Act provides for the registration of orders made under it and any such right may, and should, be protected by entry of a notice in the case of registered land (s. 5(2)) or, in the case of unregistered land, by registration of the order as a 'writ or order affecting land' (s. 5(1)).

## **24.2 Party Walls Act 1996**

A further limited but important reform has been made by the Party Walls Act 1996 which gives certain special rights in relation to 'party walls' and 'party structures'. Party walls are walls which either separate buildings in different ownership or which are part of a building and which stand on lands in different ownership. The commonest examples are likely to be the central walls which separate the properties in semi-detached or terraced houses. Party structures are things like floor partitions or other structures which separate buildings or parts of buildings which are approached by separate staircases or separate entrances.

The Act gives the owner of a building right to enter the adjoining building to carry out certain works to party walls or party structures. The works covered are matters such as repairing or rebuilding walls or even demolition. However, the Act contains protection for the owner of the adjoining premises by requiring the person doing the works to safeguard the position of the adjoining owner, to provide adequate weatherproofing if the adjoining owner's property becomes exposed, and to pay compensation. Generally, no action under the Act may be taken unless notice has first been served on the adjoining owner. In practice, the parties will usually enter into a very detailed "Party Walls Agreement" which will specify things like hours and days of entry and particular protections to be afforded to the land entered and/or its occupiers and owners.

These rights are quite complex and it is necessary to check their precise parameters before assuming that any particular works can be carried out. However, in appropriate cases they will solve some of the problems which arise from the law relating to easements and they are in addition to the rights available under the Access to Neighbouring Land Act 1992.