

Your Neighbour's Land

The Access to Neighbouring Land Act 1992

Introduction

In 1993 legislation was introduced which may be of assistance to property occupiers - both residential and commercial.

Before 31 January 1993, it was not possible to require a neighbouring property owner to permit access to their land in order to effect repairs to one's own adjoining property.

Definitions

The Act defines the land of a person wanting access as the "dominant land", the land to be entered as "the servient land" and the court order as an "access order".

What the Act Says

The Access to Neighbouring Land Act 1992 allows a court to grant a temporary right of access to another person's land for the purpose of carrying out basic preservation work, i.e. work necessary to protect repair or maintain (but not improve) the applicant's property. (This does not permit access, for example, solely to make development on the dominant land possible or easier).

The fact that repairs etc. would be substantially more expensive to carry out without access is not a sufficient ground for an order to be made. The work must either be impossible or substantially more difficult to carry out without access. The court must refuse an access

order where it is satisfied that the respondent or any other person would suffer interference with, or disturbance of, his land to such a degree that it would be unreasonable to make the order.

An application can be made by the owner of the dominant land, or a tenant who is under an obligation to repair, or by owners or occupiers of part of the dominant land.

Terms of an Access Order

Section two sets out the basis of an order. It is to specify:

- The works that may be carried out.
- The area of the servient land that is to be entered.
- The date of entry or period during which entry is permitted.

The order can impose conditions to avoid or restrict loss, damage, or injury, or "inconvenience or loss of privacy". The order can also include terms as to compensation for loss, damage or injury and for "any substantial loss or privacy or other substantial inconvenience". The court can also order payment "for the privilege of entering the servient land" (unless the works are to residential land). Any such payment or "consideration" is to reflect the likely financial advantage to the person obtaining the order.

The Act provides under section 4 that orders can be protected as land charges or as notices on the Land Registry title. Subject to registration the access order will be binding not only on the respondent but also on successors in title.

How can Warners Help?

If you think that this legislation may be of assistance to you, either as an individual or in a business capacity, please contact one of the specialist lawyers and they will be able to determine whether you have a case that is worth pursuing.

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