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STANDARD EASEMENTS MAY BE INADEQUATE

When property does not abut the public highway, the traditional arrangement is to obtain a right of way from the intervening owner so full access rights are available. It is now apparent that the acquisition of a standard easement by the landowner may well be insufficient to deal with the needs of a development.

When property is being developed, access will be needed for vehicles and plant which will be different in nature from the normal access and egress of occupiers of the property once developed. Rights beyond those “for reasonable use of the land” may be needed. Pedestrian and vehicular access “at all times and for all purposes” alone will not be enough. It is also necessary to have rights of passage for services, drainage cables, etc. While it may be common to find all these properly catered for, there remains a potential problem.

Recent case

In *William Old International Ltd v Arya* [2009] EWHC 599 (Ch); [2009] 17 E.G. 103 (C.S.), a developer acquired a site with a view to constructing an office building. The seller granted the developer an express right of way along a prescribed route of the land he retained for provision of services. The seller subsequently sold the burdened land (subject to the right of way) to new owners.

The developer proposed to implement the development and made arrangements for the electricity company to access the route to lay their cables. The electricity company pointed out it had no statutory obligation to lay cables over a route which was not in the ownership of the developer. Although they could apply for a wayleave from the Secretary of State under the Electricity Act 1989, they preferred to adopt the approach of obtaining a specific deed of grant of an easement.

This is where the trouble lay. The developer was not in a position to grant a deed of right for passage of services as he only had rights of way himself (and no actual ownership of the route). The new owner of the burdened land was not prepared to enter into a new deed of grant, except as part of a settlement of an outstanding dispute. The developer claimed the new owner was obliged (by virtue of being subject to the right of way), to grant an easement to the electricity company.

H.H. Judge Pelling Q.C. (sitting as a deputy judge in the Chancery Division) *held* that the grant of an easement does not carry any obligation upon the grantor to grant additional (or confirmatory) deeds of easement in favour of nominees of the beneficiary of the grant—even if their use is only for the purposes allowed for in the original grant. The owner of the burdened land cannot object to the easement being used; but he does not have any positive obligation to assist and grant new legal rights.

Are there alternatives?

The developer might potentially have sold a small parcel of land on the development site to the electricity company. The sale could have included rights of way as the property as a

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