

Corporate Property Services - The A-Z of effective Property Management

This is the seventh in a series of alphabetical property management tips and reminders aimed at Corporate Occupiers with operational and non-operational/surplus properties.

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rants of Easements & Wayleaves

What is the difference between a wayleave and an easement?

A wayleave is a consent granted by express or implied contractual licence for a third party to use land for a specified purpose such as the laying or installation and maintenance of infrastructure on or over another party's land. No interest in land is created and the wayleave is capable of termination albeit that there are provisions by which electricity companies, for example, may refer the matter to a Wayleave Hearing.

In contrast an easement is a right capable of registration on title and granted by deed, binding the land over which the right runs and the land benefitting from that right. The right may be permanent or granted for a specified term. Either way it cannot be terminated or varied except by express agreement, merger of the land interests or abandonment.

Do land owners have to grant easements to Utility Companies?

Utility Companies benefit from statutory compulsory purchase powers to compulsorily create easement rights. Land owners have very limited ability to resist such proposals or influence the terms. As a result easements may potentially result that have no regard to the future development potential of the site.

However, Utility Companies prefer to avoid enforcing their statutory powers and voluntarily agreeing an easement will therefore usually result in slightly less restrictive terms for the land owner e.g. in an easement route which will be least detrimental and in negotiating 'lift and shift' provisions (though usually at the land owners cost) to protect future development potential.

Land owners need also to differentiate between situations where the Utility Company is creating easement rights and where a neighbouring owner is trying to do so in order to provide utility services to their own land. Unless the neighbouring owner can persuade the relevant utility to exercise rights on their behalf, they will not be able to take advantage of the statutes.

What financial recompense is likely?

Where Utility Companies have statutory powers, compensation is generally limited to the loss in value of the retained land. Occasionally, however, there are circumstances where ransom value can be established despite the exercise of statutory powers.

Where a land owner needs to create rights across another party's land but isn't able to persuade the Utility Companies to exercise their statutory powers it will be open to the parties to agree payment on a commercial basis. The common approach is for the parties to take account of the benefits released as a result of the grant of the rights. The benefits may include the ability of the beneficiary to release development potential as a result of the grant of the easement or alternatively the resultant cost savings relative to alternative routes. In addition it is likely that the burden of "lift and shift" provisions would be placed on the beneficiary rather than the grantor of the rights.

Rapleys Special Projects and CPS teams have substantial experience of dealing with Wayleaves and Easements. Relevant Case Studies can be viewed on our website, under Compulsory Purchase & Compensation. For further details, please call 0870 777 6292 or contact one of our nationwide specialists directly, as below:

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