

English case shows a right of way can be expanded beyond its original purpose

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In a recent judgment, the High Court of England and Wales found that a right of way is not necessarily restricted to the purpose for which it was originally granted. While the Jersey Royal Court is not bound to follow precedent case law (whether decided in Jersey or in another jurisdiction) this case may nevertheless prove persuasive in Jersey. The judgment is a useful reminder that the granting of any right must be drafted extremely carefully with consideration not only to the use at that time but also to potential uses in the future.

On 4 April 2023 the High Court in Zoe Claire Bucknell v Alchemy Estates (Holywell) Limited [2023] EWHC 683 (Ch) was asked to consider whether two new uses of a right of way over a driveway were within the scope of the easement granted and whether such uses were excessive. The High Court ruled that the right of way was not restricted to the purpose for which it was originally granted. Additionally, the use of the right of way to facilitate the construction of two residential properties and the subsequent domestic use of the driveway by the new homeowners was neither excessive nor a nuisance.

Background

In 1972 a right of way over a driveway on the servient owner's farmhouse had been granted to connect the dominant owner's yard to the public highway. The right of way was drafted very broadly as a 'right of way at all times and for all purposes with or without animals and vehicles'.

Owners of other neighbouring land also had the right to use the driveway in order to access the highway from their residential properties.

At the time of the grant, the owner of the yard was primarily using the driveway for agricultural purposes but such use ended in 1990 after which time the owners of the yard made limited use of the driveway.

In 2014, the farmhouse was sold to the claimant, and in 2018, the defendant purchased the yard. The defendant obtained planning permission to construct two residential properties on the yard in 2020. The claimant subsequently filed a claim alleging excessive use of the right of way over the driveway as a result of the construction work and intended future use of the driveway for residential purposes. The High Court had to decide if the right of way was restricted to the agricultural purposes for which it was originally granted and if the new use of the driveway by the defendant was excessive.

High Court judgment

The High Court ruled in favour of the defendant so the claim failed. The court held that the right of way was binding on the claimant and was not restricted to agricultural use. The defendant's use of the driveway to allow for the construction and occupation of the houses was within the scope of the easement granted. The court concluded that a right of way should not be restricted to such uses as were reasonably required at the date of the grant. However, the land in question needs to be able to physically accommodate any new use (which it could in this case).

As for excessive use and nuisance, the court ruled that the use of the driveway for construction works and for residential purposes was neither excessive nor a nuisance. Regarding the residential use, the fact that other neighbours had the benefit of the same right of way to access their homes worked in the defendant's favour, as this showed that agricultural use of the driveway was not the only type of use contemplated.

In respect of the use of the driveway to allow for the construction works, the court explained that it should be expected that buildings need demolishing and reconstructing every now and then. Such use was not excessive as it was for a limited time only and the driveway could easily accommodate the construction vehicles.

Conclusion

This English law case highlights that a broadly drafted right of way may continue to apply even if the purpose for which it is required changes over time, provided the land in question is physically capable of accommodating the new uses. It also shows that the use of a right of way for construction purposes is unlikely to be considered excessive if the work is short-term.

In Jersey, the leading case on the issue, known as *aggravation* is that of *Colesberg Hotel v Alton Hotel* where the Royal Court similarly concluded that a widely drafted right of way could be used by additional residential units to those in situ at the time of grant. A right "for all purposes" was held to be potentially limitless albeit the Jersey Court did stress that it will give consideration as to whether the increased or altered use is more inconvenient and/or onerous (*civiliter*).

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in the future.

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