

What rights do I have to access services that cross a neighbour's land?

Insights - 14/05/2018

Virtually all properties these days are linked to a complex network of services, such as the island electricity grid, the water network, drains, gas and telecommunications, and in many cases, the services that reach your house cross neighbouring private land. How can you be sure that your neighbour cannot prevent your continued use of those services?

The basic position is that no-one has rights to use services crossing someone else's land unless there is a clear entitlement to do so. There are various ways that such an entitlement can be obtained but firstly you need to work out whether the services in question are private services or mains services under the control of the relevant utility body.

Private Services

For private services (i.e. services not controlled by a utility body), an express right can be granted in a conveyance or agreement registered at the Greffe.

In the absence of an express right, rights might exist in the following ways:

- Under the Access to Neighbouring Land (Guernsey) Law, 2016, a landowner has the right to use services crossing someone else's land that were in place on or before 1 May 2017, the date that the law came into force
- Under an old customary law doctrine, a landowner has, in certain circumstances, the right to use services in someone else's land if the two areas of land used to be in the same ownership and the services were in place before the ownership was divided.

The trouble with these two alternative methods of gaining rights is that it is often hard to prove that such rights exist. Services are buried underground and it can be hard to show when they were first installed or which services were in place at a particular time.

Mains Services

For services under the control of a utility body or company, rights can exist under a private agreement registered at the Greffe (often called a "wayleave" agreement) or they can exist under laws relating to the particular type of service. In the vast majority of cases, the utility company will enter into wayleave agreements with the landowners affected.

For example:

- Guernsey Water generally need the agreement of a landowner to install new water mains, but have rights of access to private land to carry out works to water mains already in place or to replace them
- The three telecoms companies operating on the island have the ability to install new telecoms infrastructure on private land. As a matter of practice, however, they would seek the agreement of the landowner affected by entering into a wayleave agreement
- Guernsey Electricity Limited have similar rights but again their practice would be to seek the agreement of the landowner affected.
- The States have various powers to construct public sewers on private land and to "adopt" private sewers (i.e. convert them to public use) and have powers to enter private land to carry out necessary inspection and work to public sewers

.If you would like to discuss the above or any other Guernsey property matter, contact Ogier in Guernsey's property team at +44 1481 721672 or email gsy@ogierproperty.com.

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Meet the Author



Piers Dereham

Senior Associate

Guernsey

E: piers.dereham@ogier.com

T: [+44 1481 752343](tel:+441481752343)

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