

BEING NEIGHBOURLY...

By **Graham Kinnear**

At a recent event I was speaking at, I was asked about the rights of property owners who are impacted by the actions, or lack thereof, of their neighbours and whether there is a right to access a neighbour's land to deal with any such matters.

The starting point is that entering your neighbour's property without their permission is trespassing; however, there are a number of circumstances where access to their land or action to items on their land are permissible.

The most common situation is that regarding overhanging tree branches, something which could affect a good number of you at one of your investment properties.

It is generally considered that a tree belongs to the person upon whose land it has originally grown. Even if the roots have now spread under your property, the tree still belongs to the landowner where the tree was originally planted. Consequently, if it is a fruit-bearing tree and some delicious looking apples overhang your land then it would still be an offence under the Theft Act to take them!

With overhanging branches you are permitted to cut them back to the boundary position provided the tree is not subject to a tree preservation order. Your neighbour is entitled to request what you have cut down given that it is their tree. If the tree sheds its leaves over your garden in the autumn, you are not entitled to require the neighbour to come and sweep them up. This position alters if the tree is causing significant damage to guttering

and the like, in which case this could arguably constitute a legal nuisance and hence allow you to demand that your neighbour take corrective action.

With regards to tree roots, you are entitled to dig up and remove any roots which have encroached upon your land. If you are planning to do this, it is advisable to speak with your neighbour as it may be that professional arboricultural advice is required to safeguard the tree and any closely positioned buildings. Typically, it is the owner of the tree who would pay for any professional fees, either from their own pocket or as part of a claim under an insurance policy.

Similar questions are often asked of me with regards to fencing. The position here is that the owner of a fence is not legally obliged to fix or replace fencing unless it is causing a safety issue. Accordingly, if you find yourself in a position where your neighbour refuses to replace their damaged fence, a final option may be to erect your own fence inboard of theirs and therefore wholly on your land.

Finally on the topic of gardens, you should be aware that it is not illegal for your neighbour to have Japanese Knotweed on their property. The issue comes only when it encroaches the neighbour's land. At that stage it could constitute a private nuisance and be actionable in the courts.

Aside from garden issues, another common issue where property owners can be impacted by the actions of neighbours are where construction works are

planned. Such scenarios are largely dealt with under the Party Wall etc Act 1996, Section 8 of which provides for elements of controlled access to a neighbour's land in order to construct a new wall on the boundary or such other work, provided it is in pursuance of that Act. Failure to comply and permit access could lead to a fine. This piece of legislation also deals with the common issue of one owner wishing to project foundations under the land of a neighbour. Where professional advice is required in this regard, it is again typical that the owner wishing to undertake the work pays the bills of any appointed party wall surveyors.

For less invasive construction works there is the Access to Neighbouring Land Act 1992, which affords property owners the ability to access their neighbour's land, where necessary, to undertake works of repair and maintenance to their property. In such circumstances, a claim would be initiated in the County Court for an access order which requires the neighbour to grant access for a specified purpose. You should be aware that this legislation does not allow for access to construct anything new, only to maintain and repair something existing. Such applications are typically successful provided it can be demonstrated that the work cannot be carried out or would be very difficult to carry out without access to the neighbouring land.

Whilst the vast majority of issues are, I am sure, dealt with amicably and informally between neighbours, it is helpful for property investors to be aware that there is some legislation that deals with these types of circumstances in the event that discussion and negotiation do not prove fruitful.

As always, I am happy to assist YPN readers and can be contacted on 01843 583000 or graham@grahamkinnear.com

