

Boundaries, Highways, Bridleways and Commons

Boundaries

Registration of title has been compulsory in England and Wales since 1990. Where title land is registered, its extent can be shown by reference to the public Land Registry maps. The Land Registry maps are available on line through a number of information channels.

Land Registry plans do not give the precise position of the boundaries. However, in practice, they are generally sufficient and are accepted.

In cases of previously unregistered title, an obligation to establish the boundaries and register title will arise upon a purchase and on the grant of a lease for a term of more than 7 years.

In many areas of the country which are predominately arable and where stock is not kept, fences are unnecessary. Boundaries may be indicated by drainage ditches or some feature which is not obvious. For example, low concrete posts up to 100 metres apart may mark the ends of a straight boundary line.

Where there are rivers on a farm, there is a general presumption that the boundary goes along the middle of the stream. Rivers can be valuable in their own right. There may be separate rights ownership of fisheries either in common or exclusively. It can happen that the river bed is still owned by the lord of the manor even though the land on the bank belongs to the farmer.

Where land adjoins a public roadway the grass verge will usually be situate between the land and the surfaced carriageway. Ownership can be important in terms of liability. For example trees may fall and cause damage and weeds may spread. The general rule is that in the absence of evidence to the contrary, where lands adjoin a public or private track, the land owner owns up to the middle of the track. Where the way is maintained at public expense, the surfaces vest in the Highway Authority (the Council) There are

exceptions which may apply due to the history of particular locations. The position may be changed under local customs.

When land is sub-divided, there will usually be an obligation to provide and maintain boundary divisions. There is a general obligation on land owners to prevent their animals straying onto the highway and causing an accident. A land owner must take reasonable steps to prevent his livestock escaping. In some areas, there is a custom to fence.

Many hedgerows are now protected under regulations made under Environmental legislation. These can include internal and boundary hedges. The legislation provide that hedges of a defined length, usually 20 metres, may not be removed or cut without prior notice to the local authority who can object on grounds such as historic or scientific interest.

Highways, roads and bridleways

Ways are usually classified as carriageways, bridleways or footpaths. They may be public or private. A highway (which would be termed a “public road” in Ireland) allows free use by members of the public at large. Certain routes may be restricted to use under local custom e.g. ways to a local church.

Major public highways such as motorways and trunk roads are normally constructed by and invested in the local highway authority such as the County Council. A highway is maintained at public expense as either an ancient road before 1830 (when the Highways Act commenced) or by being subsequently specifically adopted by the Highway Authority. It can be important for the viability of a farm to know if the access route is maintained at public expense. This will mean the Highway Authority is responsible for resurfacing and filling in pot holes.

Tracks and lanes may be bridleways or footpaths. A bridleway can be used for horses and bicycles and will usually have gates or cattle grids. Generally a landowner does not

have legal responsibility for maintenance of the surface of a bridleway or footpath although he must not break them up.

A difficult issue which can often arise relates to roads used as public paths. These may have been converted into restrictive bye-ways by legislation so that they can only be used on foot, horseback or by non mechanically propelled vehicles. On the other hand, if a way is classified as a bye-way open to all traffic, it can be used by motorised vehicles even if it is not surfaced.

Under the Access to the Countryside legislation, footpaths and bridleways are registered and this is conclusive proof of the existence of a public right of way. Non-registration does not mean there is no public right of way. As in Ireland, public rights can be acquired by 20 years continuous use or by dedication to the public. In order to avoid uncertainty it is now provided by law that all public footpaths and bridleways which were in existence before 1949 which are not registered by 2026 will be automatically extinguished. Until then, the possibility of unregistered footpaths and bridleways must be considered.

Under Access to the Countryside legislation, it is possible for a landowner and a local authority to agree and register paths for a fixed period. A landowner may also lodge a declaration as to what routes are recognised as public rights of way. This protects the landowner against new rights of way being created across the land by virtue of deemed dedication.

Private rights of way are established in much the same way as in Ireland. They may be provided for by a deed or by 20 years continuous use. It is difficult to bind future owners to contribute to maintenance of roadways other than via creation of leasehold mechanisms which are difficult to enforce in practice. In practice, most matters are resolved by common sense and certain other techniques.

Services and Easements

In urban areas in England, there are comprehensive maps showing the location of water pipes and mains. Many pipes laid in less recent times would not be documented. Generally, the legality of the pipes being in place is cured by the fact that they were laid under statutory powers by Councils and predecessor bodies. Farms are often served by private pipes running from the mains.

Rights arising from private water sources should ideally be established as easements. There may be complications of shared expenses. It is common to have licences granted under Water legislation instead of a Deed of Grant.

A water abstraction licence is normally required to extract water from bore holes or rivers. This is not usually required for purely domestic use. Farmers will need water abstraction licences for non domestic use.

Drainage can be a contentious issue on account of pollution. Slurry from cow sheds and effluent from silage clamps can cause serious harm if they flow into a river. Under certain circumstances, a discharge licence will be required from the Environmental agency.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.