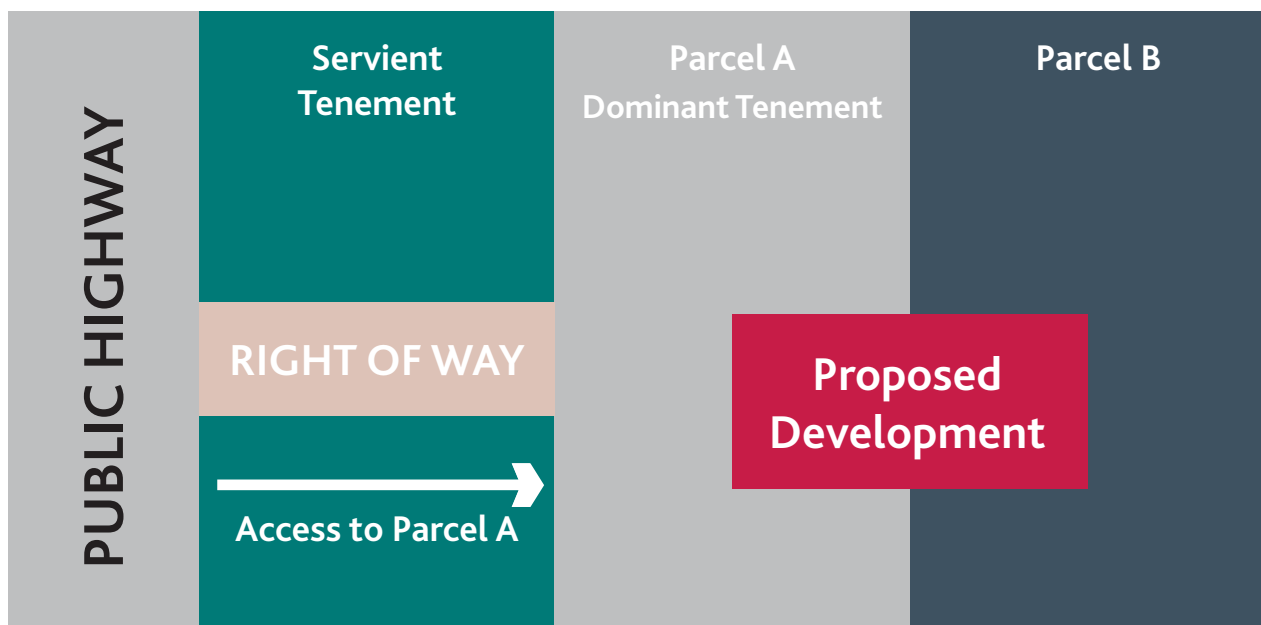


Understanding Easements and Rights of Way for Your New Development

So, you have found the perfect development site, shown in the below plan.

The site consists of two parcels of land (Parcel A and Parcel B).

Parcel A benefits from a right of way from the highway across the green land (the servient land), but Parcel B does not.



This won't be a problem though because, as owner of both Parcel A and Parcel B, surely you can simply use Parcel A's right of way to access Parcel B? Unfortunately, it is not that simple.

WHY?

The principle that a right of way benefitting one parcel of land cannot be used to access another parcel of land (which does not benefit from the same right) was outlined in the 1904 Court of Appeal case *Harris v Flower*. The reasoning behind this rule is to protect the owner of servient land from potential future burdens due to expanded or increased use by the party who benefits from the right.

However, there are exceptions and nuances to this rule. For instance, if the use of Parcel B is considered ancillary or secondary to use of the Parcel A, use of Parcel A's right to access Parcel B might be allowed. This was demonstrated in the 1867 case of *Williams v James*, where the court allowed the use of a right of way only benefitting one parcel to transport hay grown on both parcels, considering it reasonable.

More recent cases have refined this understanding. In the 2017 Court of Appeal case *Gore v Naheed*, the use of a right of way originally granted only to access a house also to access a subsequently built garage was allowed, the court emphasising that the use to access the garage was ancillary to the primary purpose.

SO, IS ALL LOST?

Not necessarily.

If you find that this situation applies, it is vital to bear in mind the following factors:

- **Purpose of Use:** The right of way should primarily serve the dominant land (Parcel A). Ancillary uses might be permitted but require careful consideration and may feed into the development's layout for example.
- **Wording of the Grant:** The original deed's wording is critical. It should clearly define the extent of the right of way.
- **Physical Layout:** The layout of the parcels should support the additional use without overburdening the servient land.

You may wish to seek title indemnity insurance to cover the lack of right of way to Parcel B. Alternatively, you may be able to negotiate an extension of the right of way with the servient landowner to extend to Parcel B.

It is important to note that these options are mutually exclusive, as contacting the landowner (and alerting them to the issue) could trigger a ransom position and is likely to preclude the availability of indemnity insurance.

This area of law is complex and can be highly nuanced, turning on the specific facts.

If you are unsure about the rights of way in relation to a proposed development or if you think a situation similar to the above applies, please contact a member of our team, and we will be delighted to assist.

If you would like to discuss the contents of this briefing further, please contact:



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This note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead, it is intended to act as a brief introductory view of some of the legal considerations relevant to the subject in question.