

## The purpose of a right of way

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### What do the words mean?

One of the most frequent legal questions that arises when deciding whether a piece of land can be developed is whether the rights of way to it will be sufficient to allow construction and then use of the development. The problem is often that the title documents do not show any right of way and the developer will have to rely on implied rights or evidence of long use ("prescription").

But even if the registered title or deeds do contain express rights of way, what do the words mean and will they allow the rights to be used for the development?

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What was intended in a conveyance, transfer or other document which includes the grant of a right of way will be interpreted like any other contract. What the parties actually thought when they entered into it does not matter. Their "intention" is to be interpreted only from the words of the document as a whole and against the background circumstances which would have been known at the time. This also means that any decided court case depends on its own facts – that particular document and those particular circumstances – and may not apply to another case.

Cases will provide guidance, though, and a recent case shows the court avoiding too restrictive an interpretation of an express right of way.

### *Davill v Pull*

Mr Davill owned three plots of land off Bunny Lane, Keyworth, Nottinghamshire on which he had intended and started to build three houses. The plots were approached from the south up a track which crossed other similar plots owned by Mr Pull and Ms Sanderson who also had rights of way to their plots.

The rights had been granted when terraced cottages had been conveyed, each with its own separate plot, described as a "piece of garden ground". These plots had evidently been intended at the time (1919-21) as an extra amenity for each cottage in addition to its coalhouse and earth closet, and rights to a communal well and drying area.

The right of way to the plots was described as a right "to use for all reasonable and usual purposes". One might have thought that description of the right was wide enough.

But, argued Mr Pull and Ms Sanderson, that meant all reasonable and usual purposes for use of the plots as "garden ground", not for Mr Davill's intended residential or development use and they persuaded the judge at first instance to agree. (This was in spite of the fact they

were, apparently, using their own plots for stabling horses; while this might be “somewhat curmudgeonly”, the court said it was only “concerned with rights, not attitudes”).)

So, with one house already completed, Mr Davill went to the Court of Appeal who found in his favour. There was no issue, in this case, that the use for houses would be “excessive”. The fact that, in 1919, the expectation may have been that the owners of the cottages would use their plots as gardens or possibly allotments ancillary to the cottages was not relevant; there was no such restriction in the document. The words “all reasonable and usual purposes” did not limit the use of the way to that extent.

If the phrase had been for “all...purposes”, there would have been no limitation. While adding the words “reasonable and usual” introduced some qualification they did not relate to any particular use of the plot. The reference to the plot in the original conveyance as “garden ground” was descriptive only and it included no restriction to such a use. Provided the use of the plot from time to time was “reasonable and usual”, the right of way would support it. The building and use for

houses in accordance with planning permission would be “reasonable and usual”.

A case on its own facts, no doubt, but it is an indication that the courts will not impose restrictions on rights of way which, taken in their context, are not contained in the document.

Mr Davill is probably now completing his development though, as the case started at the end of 2006, he might have missed the top of the market. If, as the judgment suggests, the conveyances are the same, Mr Pull and Ms Sanderson could take comfort that, when they have done with them for horses, the track should be able to be used for any “reasonable and usual” development on their own plots.

*Davill v Pull & another* [2009] EWCA Civ 1309

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