

Claim Case Study: Access all Areas



Establishing the validity of a right of access used for a long period of time could have been a significant block for one of First Title's clients; but decisive action helped clear the way.

A client of First Title bought a property in Hampshire with access off a gravel track. The previous owner of the property had written to the council advising them that when he purchased the property he had received assurances from the then owner that access to the property from the track had been established as far back as 1976 and had been unchallenged since. His request to the council, therefore, was that these access rights be acknowledged.

However, the council contacted First Title's client advising that they did not accept that a right of way had been established over the gravel track. The council requested that the client formalise the situation so that they may sell the property with a clean title. If this could not be agreed, the council threatened to physically restrict the client's use of the track.

On initial review, it appeared the track was unregistered so First Title challenged the council's legal right to restrict the use of the track – the council registered the track shortly after.

Despite providing abundant evidence – through numerous statutory declarations – to support the fact that access to the property had been gained via the track for over 40 years and that a right by prescription had arisen, the council refused to accept the position.

The council then erected wooden poles directly in front of the track exit to block access. It was a clear indication of the council's intent to prevent the client from exercising a legal right of way if the position was not regularised to their satisfaction.

First Title's solution was to instruct panel solicitors to negotiate with the council to resolve the situation. The settlement involved First Title securing a Deed of Easement in favour of the client which was registered against their title at Land Registry, thereby resolving the issue to the satisfaction of the client.

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