



Briefing Note: The Road to Nowhere

Developers who encounter landowners trying to hold them to ransom over access, will be pleased about a recent Court decision. In **Hamilton v Nairn**, the Judge reinforced the status quo that where a verge is part of a public road, the consent of the verge's owner is not required for improvement works to permit development.

Background

Mr & Mrs Hamilton ran a cattery and livery stable and, due to a proposed compulsory purchase order for the new Aberdeen ring road, needed to find new premises.

Finding new premises, they obtained planning permission from Aberdeen City Council to build a cattery, livery stables, house and car parking facilities on their land. The Council's road's authority also granted them consent to improve the junction from their land at Tillyoch onto the nearest public road, Culter House Road. The current access is by a well-trodden country track.

Mr Nairn, the Hamilton's next-door neighbour, who was objecting to the proposed development, refused permission for vehicular access across the verge of the road. He also refused permission for work to widen and improve the junction.

Mr Nairn had, in May 2009, purchased the entire strip of land from the edge of Culter House Road to the edge of Tillyoch. The proposed access from Tillyoch to the main road crosses that land. Mr Nairn's case was very simple - he owns the verge at that point and, therefore, has an exclusive right to use the property as he pleases, including the right to prevent anyone else from using it.

After a series of aggressive acts towards them, the Hamiltons sought confirmation from the Court that they were legally entitled to carry out improvement works to the junction and to obtain access to their own land over the area owned by Mr Nairn.

The crux of their argument was that Culter House Road, a public road within the meaning of the Roads (Scotland) Act 1984, includes the verge either side of the road. The definition of "public road", they put to the court, included the "road's verge".

In the Act "Road" means any way...over which there is a public right of passage". That means that if it **is** a road, then there is a public right of passage over the whole road, including any part of the road.

At the outset, Mr Nairn disputed that his land formed part of the verge. However, during the case he agreed that his strip of land was indeed part of the verge, and so part of the public road.

Notwithstanding this set back, Mr Nairn continued to fight the Hamilton's action on the grounds that just because Culter House Road was listed as a public road, that did not automatically grant a public right of way over the verge. He argued that sort of right would have to be established under common law.

In his summing up, the Judge reaffirmed that a public road comes with a public right of passage over the **whole** of that road, including any verges and ditches owned by private landlords. On this definition, the Hamiltons won their case, allowing them to continue with the development.

Practical Implications

The Court has clarified what is included in a “public road” for the purposes of the 1984 Act and the rights of owners of land which forms part of a public road.

Any ownership rights a landowner has over those strips of land cannot be exercised in contradiction to the general public’s right of passage or the road authority’s obligation to maintain public roads granted under the Act.

Although welcomed by developers, this ruling will certainly disappoint some landowners. No longer will they be able to spoil a development and hold developers to ransom by acquiring crucial strips of land.

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