

## Wayleaves Compensation and Impact on Value Newcastle Jurys Inn 28.11.17

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 **Is there a difference between a Wayleave and an Easement?** 

- ▶ Like Wayleaves, an Easement or Deed of Grant appropriates providers with the legal rights to access and maintain their cabling and infrastructure on private land.
- ▶ An Easement secures **permanent access** whereas a Wayleave is usually a **temporary agreement**.
- ▶ An Easement (also known as Deed of Grant) provides similar access rights o Wayleaves for installing and maintaining infrastructure equipment, but for a **one-off payment** and it provides **permanent access**.
- ▶ An Easement can also be registered at the Land Registry in order to ensure that future owners of the land adhere to it.

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 **Is there a difference between a Wayleave and an Easement?** 

- ▶ Landowners can request for a previously agreed Wayleave to be renegotiated and changed to an Easement agreement but not the reverse.
- ▶ An example would be electricity poles or pylons.
- ▶ **Change of ownership** – If the Utility company does not have a wayleave agreement with you then you may be able to claim up to 6 years' worth of backdated annual payments in one lump sum, and then continue to receive an annual payment.

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 **What is a Wayleave?** 

- ▶ A Wayleave is a **legally binding** agreement between a land or property owner and someone like Telecoms, Utilities or Fibre providers that grants access for the installation and subsequent maintenance or management of network cabling and equipment over or under land.
- ▶ Utilities normally try to negotiate these wayleaves but they can resort to **Statutory powers**.
- ▶ Easements will normally be required for gas pipes and water mains if dealing with someone like Norther Gas Networks or Northumbria Water.

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 **Working cross border in Scotland?** 

- ▶ Scotland also has Wayleaves like England and Wales.
- ▶ But remember they **do not** have Easements but have Servitudes.
- ▶ Compensation is paid in a similar way for damages but not for the actual Servitude..

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 **Statutory Wayleaves** 

- ▶ A Statutory Wayleave grants the provider the right to access land and install their equipment without the concurrence of the landowner.
- ▶ A Statutory Wayleave can also be know as a Necessary Wayleave.
- ▶ Most providers will try to negotiate a Voluntary Wayleave but if an agreement is not met, providers can often proceed with the install under the Code Power Operating Licence and impose Compulsory Purchase or Vesting Orders.

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 **Utilities** 

- ▶ It is a statutory right which gives the licence holder the power to install their equipment on, over or under private land to keep it there and to have access to that land for the purposes of inspecting, maintaining, repairing or removing the equipment.

A Utility will generally attempt to negotiate a Voluntary Wayleave with landowners but, in cases where no agreement can be reached, they may opt for Statutory or Necessary Wayleave

- ▶ An electricity company such as Northern Electric would be permitted to do under the terms of their Transmission Owner licence

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 **Rights of Utilities** 

- ▶ A Wayleave is a means of providing rights for a company to install and retain their cabling or piping across private land in return for annual payments to the landowner. A Wayleave is normally a temporary arrangement and does not automatically transfer to a new owner or occupier.
- ▶ Annual Wayleave payments made directly by utility companies, for development projects, normally amount to no more than a few pounds in value. These standard payments are calculated from base figures agreed with various national land authorities.
- ▶ However, for underground work and for continuous access, companies normally seek an Easement. Water and Gas network operators also prefer Easement agreements and not Wayleaves.

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 **Rights of Utilities** 

- ▶ Independent regulatory bodies were set up by the Government to regulate the energy, water and communication markets as they opened up to competition. Each market has its own set of regulations but the general responsibilities of all regulators are to encourage competition, promote value for money and protect people's rights and safe access to the products. Regulators also monitor and report on each utility company's service performance.
- ▶ **Ofgem** (Office of the Gas and Electric Markets) [www.ofgem.co.uk](http://www.ofgem.co.uk)
- ▶ **Ofwat** (Office of Water) [www.ofwat.gov.uk](http://www.ofwat.gov.uk)
- ▶ **Ofcom** (Office of Communications) [www.ofcom.org.uk](http://www.ofcom.org.uk)
- ▶ **Note:** Regulators no longer get directly involved in disputes between companies and customers. Each market has separate organisations that act as ombudsmen.

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 **Rights of Utilities** 

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- ▶ **Ofgem** (Office of the Gas and Electric Markets) [www.ofgem.co.uk](http://www.ofgem.co.uk)
- ▶ Ofgem's main responsibilities are to promote competition in the supply market of these two industries and protect consumers. Ofgem also regulates the monopoly companies that own and operate the UK's gas and electricity networks such as EDF Energy Network and Southern Gas Networks.
- ▶ They also regulate the UK's four transmission companies responsible for putting the gas and electricity into the various network systems. (In England and Wales this is National Grid for both fuels).

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 **Rights of Utilities** 

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- ▶ **Ofwat** (Office of Water) [www.ofwat.gov.uk](http://www.ofwat.gov.uk)
- ▶ Ofwat regulates the water and sewerage industry in England and Wales. Similar to Ofgem it encourages competition, promotes value for money for customers and monitors the supply companies' service performance.
- ▶ There are no separate network operators to be regulated, as the piping infrastructure is looked after by the various water companies.

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 **Rights of Utilities** 

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- ▶ **Ofcom** (Office of Communications) [www.ofcom.org.uk](http://www.ofcom.org.uk)
- ▶ Ofcom regulates the UK's broadcasting, telecommunications and wireless communications sectors. Ofcom's role in relation to telecommunications is to regulate the standards of service provided by the various telephone and cable supply companies as well as the operation of Openreach BT, the UK's national telephone network provider.

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 **Legal Acts Utilities** 

- ▶ **Electricity Act 1989**
- ▶ Section 10 provides two methods to obtain rights:
- ▶ Compulsory acquisition
- ▶ Acquisition of wayleaves
- ▶ The grant of a wayleave involves no outright acquisition of land and Schedule 4 provides for compensation.

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 **Legal Acts Utilities** 

- ▶ **Water Industry Act 1991**
- ▶ Mainly used for Easements in the case of pipelines.
- ▶ The references to a power to carry out pipe-laying works on private land are references to any of the powers conferred by virtue of sections 159, 161(2) and 163 of this Act.
- ▶ 2(1) If the value of any interest in any relevant land is depreciated by virtue of the exercise, by any relevant undertaker, of any power to carry out pipe-laying works on private land, the person entitled to that interest shall be entitled to compensation from the undertaker of an amount equal to the amount of the depreciation.

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 **Legal Acts Utilities** 

- ▶ (2) Where the person entitled to an interest in any relevant land sustains loss or damage which—
- ▶ (a) is attributable to the exercise by any relevant undertaker of any power to carry out pipe-laying works on private land;
- ▶ (b) does not consist in depreciation of the value of that interest; and
- ▶ (c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 155 of this Act,
- ▶ he shall be entitled to compensation from the undertaker in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.
- ▶ (3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to the exercise by any relevant undertaker, of any power to carry out pipe-laying works on private land, the undertaker shall

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 **Shared Trenching** 

- ▶ **Utilityserve – managing utility connections for property developers**
- ▶ <http://www.utilityserve.co.uk/index.php>
- ▶ **Shared trenching - There are many advantages to be gained from using multi-service trenching :-**
  - ▶ Less ground disturbance
  - ▶ Fewer site visits by contactors
  - ▶ Work with one multi-skilled team
  - ▶ Overall cost savings
  - ▶ Reduce periods of road opening notices
  - ▶ Trenches must be dug to NJUG (National Joint Utility Group) standards, including the positioning of each service pipe or cable and the order in which they are laid. It therefore helps if the contractor(s) carrying out the work is multi-skilled and experienced in working with all types of service supplies.

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 **Compensation** 

- ▶ Most utility companies operate under various Acts of Parliament and therefore it is vital to have a good understanding of the underlying legislation. You need to know what statutory powers utility companies have or don't have when they require entry to install new apparatus repair, maintain or replace existing equipment.
- ▶ Issues need to be addressed before any access is permitted as you need to be assured that you will be fully compensated for any loss you incur. A photographic Schedule of Condition prior to entry is advised.
- ▶ If a new wayleave is created or an existing one altered, make sure the agreement is accurate and you are receiving the correct annual payments
- ▶ Negotiating the Wayleave, access routes, timing of access.

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 **Compensation** 

- ▶ Claiming for physical damage to the ground, roads or hard surface, damage to buildings or infrastructure, loss of crops, inconvenience of moving stock or cost of housing, and client's time plus any reinstatement required.
- ▶ Diary recording is essential throughout a project.
- ▶ Your client and **YOU** should keep a record of all events and time spent plus records of correspondence with the utility company.
- ▶ This can include time speaking with a client, amendments to agri-environmental stewardship scheme or BPS, additional time spent in carrying out activities on the land and many other matters.
- ▶ Don't forget there can also be Business Interruption claims.

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 **Impact on Property Values** 

- ▶ Change of use –development ?
- ▶ Lift and shift clause?
- ▶ Effect of electricity poles or pylons on property
  - ▶ - increase or decrease in value?
  - ▶ - Residential house
  - ▶ - Renewables
- ▶ The effect of power transmission lines on property values is a controversial subject. See an article written in the USA:  
<http://sds.hss.cmu.edu/risk/articles/electricpowertranslines.pdf>

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 **Case studies** 

- ▶ Gosschalks were instructed on a high profile case to seek compensation for their client Arnold White Estates from the National Grid who were represented by a major international City of London-based firm.
- ▶ A government order had prevented the diversion of a 400kv overhead line to allow for housing to be built on a 1.4 hectare plot of land south of Leighton Buzzard in Bedfordshire. However, it was the Hull law firm together with their team of expert witnesses who celebrated victory with their client following a two week court hearing before Judicial body the Upper Tribunal (Lands Chamber) in Bedford Square, London.
- ▶ Gosschalks sought compensation from the National Grid for the diminution in the value of that land which belonged to Arnold White. An expert valuer acting for the National Grid initially valued Arnold White's loss at just £250,000. But the team at Gosschalks ultimately secured damages of £5,829,477 for their client, establishing an important point of legal principle in doing so.

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### Case studies



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- ▶ [Arnold White Estates Ltd v National Grid Electricity Transmission PLC \(2013\) UKUT 005 \(LC\)](#)
- ▶ The decision was appealed by National Grid.
- ▶ On 18th February 2014, The Court of Appeal heard National Grid's appeal against the Upper Tribunal (Lands Chamber) decision to award compensation to our Arnold White Estates for losses caused by the grant of a necessary wayleave under Schedule 4 of the Electricity Act 1989.
- ▶ Compensation had been awarded in the sum of £5,829,476 by the Upper Tribunal, being the contract sum Arnold White Estates would have otherwise received under a conditional contract for the sale of its development site but for the grant of the necessary wayleave
- ▶ Full judgement at <http://www.bailii.org/ew/cases/EWCA/Civ/2014/216.html>

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### Case studies



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- ▶ **Horn v Sunderland Corporation: 1941 - ' Lord Justice Scott**
- ▶ **Land used for Horse breeding and was subject to Compulsory purchase**
- ▶ 'in a case where he really does incur a loss of money by disturbance due to the taking over and beyond the loss for which he is to be reimbursed in respect of the land taken – is entitled, because it has to do with the land, to have that element of the loss taken into the reckoning of the fair price of the land, as has been held by the Courts from a very early stage'.
- ▶ Lord Justice Scott said that the loss to the seller must be completely made up to him on the ground that unless he received a price that fully equated his pecuniary detriment the compensation would not be equivalent to the compulsory sacrifice.
- ▶ **But the compensation cannot exceed the land owners total loss e.g. where the sale price for development exceeds the agricultural value of the land plus disturbance.**

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### Contact details



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