

Crane Oversail and Access Agreements

In order to build a development it is quite often necessary to either oversail neighbours with a tower crane or to place scaffold on their land in order to build or maintain an elevation.

The Common Law position:

There is no automatic right to access over neighbouring land. Doing so without permission will almost certainly constitute trespass. The legal position was clearly highlighted in the case of *John Trenberth-v-National Westminster Bank Ltd 1979* where an injunction was granted for the removal of scaffolding erected to undertake repair works.

Repair work:

The above case clearly demonstrated a need for legislation that could deal with repairs to existing buildings where access was being denied. In 1992 the Access to Neighbouring Land Act came into force. However, it is a notoriously 'clunky' piece of legislation which is infrequently used, can be expensive and only involves repair works, not new construction.

What is the procedure for accessing land or air space?

Unless your work is in pursuance of the Party Wall etc Act 1996 (we publish similar guidance on this Act), or there is either an implied right of access or an express right in the property deeds, the only solution is to approach the neighbour and ask for access. With regard to implied access it would be wise to liaise with your solicitor before taking access because a right of way (for example) does not necessarily mean a right to take access or oversail.

How is access agreed?

Except in small and non-contentious cases, the usual course is to employ a consultant to approach the neighbour and discuss the likely terms for access. If this is done early or during the planning process, this gives us a stronger negotiating position because we can state that an amendment to the design is possible should the neighbour ask for unreasonable terms and premium.



But my crane is not carrying a load over my neighbour?

It was established in *Brewhouse Dev'ts-v-Berkeley Hse Dev'ts 1987* that a crane which is unauthorised to oversail is trespassing

even when it is not carrying loads over the neighbouring site and/or when it is only trespassing when it is on "free slew". This was a reversal of the previous position which took a more lenient view where damage was seen as unlikely.

Further considerations:

- Consider consulting us early with regard to access. The earlier we can assess the scheme, and perhaps approach neighbours, the more options we can explore with regard to the design and negotiations.
- Access agreements should be in writing to avoid later confusion or retraction. It is always sensible to undertake a schedule of condition and append this to the agreement so both sides have a record of any existing defects before access is taken.
- Although the cost of a "luffing" jib crane may be more expensive than a fixed jib crane it can avoid over-sailing neighbours and can also strengthen our negotiating position with regards to neighbouring properties if they are aware that it is an option we could employ.
- If your crane is over-sailing important sites or key infrastructure (such as a railway) you may be asked to "de-rate" your crane. This typically means that the maximum load is reduced by a percentage of its maximum to reduce the chance of collapse or damage.
- It is relatively common for reciprocal agreements to be requested when a neighbour agrees access. This information is typically registered on the title documentation which can be obtained from the Land Registry's "find a property" section of their website. We can also assist with negotiating such agreements for both sides.
- Sometimes you will need to consider both freehold and leasehold interests in the agreement – especially if the demise is not limited to the upper levels of the building or includes outside space.
- There are a number of other key considerations which we would be pleased to assist you with should you require them.

Tel (South) 0207 033 3757

Tel (Midlands/North) 01636 653 055

info@mesbuildingsolutions.co.uk

www.mesbuildingsolutions.co.uk