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BY POST AND BY EMAIL : guy@dlqi.co.uk

Date: 21 November 2022

Our ref: 4398/

Direct tel: 0121 212 8039

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dawn.reynolds@gateleylegal.com

Dear All

Our clients: [REDACTED]

Property: [REDACTED] (“the Property”)

We act for [REDACTED] the freehold owners of the Property in relation to their claims in respect of rights of way, established by long user, over part of the land known as The Queens, High Street, Selborne, Alton registered at the Land Registry with title number HP448282 (“The Queens”).

We understand that you are the current owner of The Queens.

This letter is being sent to you in accordance with the Practice Direction on Pre-action Conduct and Protocols (the Pre-action PD) contained in the Civil Procedure Rules (CPR). In particular, we refer you to paragraphs 13 to 16 of the Pre-action PD concerning the court's powers to impose sanctions for failing to comply with its provisions. Ignoring this letter may lead to our client commencing proceedings against you and may increase your liability for costs.

If you have any questions in relation to this letter we recommend that you take independent legal advice.

The Right of Way

You will be aware that the main access to the Property is over a driveway which runs from Huckers Lane to the front of Property (“the Driveway”) which forms part of The Queens and that there is an express right of way granted over the Driveway pursuant to a deed dated 17 January 1994 made between [REDACTED] (“the 1994 Deed”). The Deed replaced a deed entered into by the same parties dated 20 August 1993 (“the 1993 Deed”).

The Driveway widens to an area in front of the Property which is larger than the 15 foot right of way granted by the 1994 Deed. This area is almost triangular in shape and we will refer to it as “the triangular area of land”. It is marked green for identification purposes only on the enclosed plan. Our

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clients and previous owners of the Property have used the triangular area of land on foot and to turn and manoeuvre vehicles in front of the Property.

We have obtained evidence from previous owners of the Property and have established that the triangular area of land has been used as part of the access to the Property and has been used in such a way for a period of 20 years.

Both [REDACTED] have confirmed that during their ownership of the Property between 1993 and 2011, they used the triangular area of land for access on foot and with vehicles as did their visitors to the Property.

The triangular area of land was used in addition to the Driveway and also in conjunction with access over the car park which forms part of The Queens. Please see below for further information relating to this access.

[REDACTED] have agreed to provide statements of truth detailing the use in support of our clients' application for a prescriptive right of way over the triangular area of land.

From 2011 to 2015, [REDACTED] owned the Property and he has also provided evidence which confirms that he and his visitors to the Property used the triangular area of land on foot and with vehicles. [REDACTED] has agreed to provide a statement of truth setting out his use of the triangular area of land in support of our clients' application for a prescriptive right of way.

From the time our clients acquired the Property in 2015, they have continued to use the triangular area of land as part of the access to the Property and of course, they will provide this evidence in support of their application.

Since 1993 the Right of Way has been exercised without force, without secrecy and without consent for more than 20 years. Therefore, we have advised our clients that the Property has acquired a prescriptive easement over the triangular area of land under the doctrine of lost modern grant ("the Right of Way").

We are instructed to make an application to the Land Registry for the registration of the Right of Way against the registered titles of the Property and The Queens.

Interference with the right of way.

Our clients and their predecessors in title have enjoyed and exercised the right of way without obstruction or challenge. However, recently our clients have become aware of an intention by you to interfere with the exercise of the Right of Way by carrying out landscaping and the planting of hedges.

We have been passed a copy of your email to our clients of 14 November 2022 timed at 16.05 which attached two drawings showing options for landscaping which obstructed the triangular area of land. Both of the proposed options will cause a substantial interference with the Right of Way as it will not be possible to practically and substantially exercise the Right of Way over the triangular area of land as conveniently as before or at all. This will constitute a private nuisance for which our clients will have an actionable claim against you.

We are mindful that you are intending to commence the proposed landscaping in the near future. Accordingly, in absence of an appropriate and formal undertaking from you, we are instructed to apply to the court for a declaration and prohibitive injunction. This is contrary to our clients' preferences, but it is absolutely essential to preserve the exercise of the Right of Way and protect the amenity of the Property.

Therefore, we request a formal undertaking from you by 4 pm on Thursday 24 November 2022, failing which proceedings will be issued without further reference to you, any such proceedings will include an element for recovery of costs and losses.

Undertaking

If you are minded to comply with our clients' request then we shall require you to appoint legal representation and to provide the following undertaking:

- (a) To desist from commencing any work which would interfere (at all) with the exercise of the right of way,
- (b) To confirm that full and unfettered and unobstructed access will continue to be afford over the right of way.

The Queens Car Park Right of Way

Our clients, [REDACTED] have all confirmed that in addition to the access to the Property via the Driveway and the triangular area of land, the Property has benefited from an additional right of way on foot and with vehicles over the car park which forms part of The Queens ("the Car Park Right of Way").

The Car Park Right of Way was used across the car park in the location coloured yellow on the enclosed photograph. The Car Park Right of Way was used in conjunction with the triangular area of land to provide access to both the Property and Whites Cottage to and from High Street.

The Car Park Right of Way was used by the [REDACTED] from 1993 until 2011 and then by [REDACTED] from 2011 to 2015 and then by our clients from 2015 until 2017 when a fence was erected by you which prevented access to the right of way. The approximate position of the fence is marked blue on the enclosed plan.

The right has been exercised without force, without secrecy and without consent for at least 20 years before the fence was erected. Therefore, a right of way by long user had been established.

Our clients require that you remove the fence erected across the Car Park Right of Way as this is a substantial interference and prevents the use of the Car Park Right of Way. **We require the fence to be removed by 4pm on 8 December.** If you do not remove the fence and reinstate access to the Car Park Right of Way, we are instructed to apply to court for a mandatory injunction forcing you to remove the fence. Any such proceedings will include an element for recovery of costs and losses.

We are instructed to make an application to the Land Registry in relation to the Car Park Right of Way. This application will be supported by evidence from our clients, [REDACTED].

Relevant documents

We enclose copies of the following documents that are relevant to this matter:

1. Office Copy Entries relating to the Property and The Queens
2. Deed of Easement dated 17 January 1994
3. Plan

This is not purported to be an exhaustive list of documents relevant to this matter. Please confirm that you will take proper and appropriate steps to ensure no relevant documents, including electronic documents, that are in your control, are altered, lost, destroyed or disposed of pursuant to paragraph 7 of CPR Practice Direction 31B.

Action required

1. **Please provide the undertaking requested**
2. **Please arrange removal of the fence within the stated deadline.**

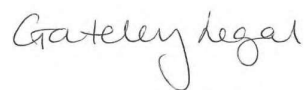
In the absence of the action requested, we are instructed to issue and serve proceedings without further notice in private nuisance and to seek an order for an injunction from the court ordering you not to substantially interfere with the Right of Way and/or proceedings for a mandatory injunction for the removal of the fence. Both of these actions will include a claim for damages, interest and costs.

Our client reserves all its rights, including the right to commence proceedings against you (without further reference to you) should that prove necessary.

As set out above, ignoring this letter may lead to our client starting proceedings against and may increase your liability for costs.

Please ensure that all future correspondence is addressed to us.

Yours faithfully

A handwritten signature in cursive script that reads "Gateley Legal".

Gateley Legal