
Housebuilder Top Tip: Buyer beware - the dangers of Overriding Interests

Published 25 February 2020

Overriding interests are third party property rights that can bind a purchaser of land, even though such rights are not noted on the register of title. There are various categories of overriding interests that are listed in statute, one of the most significant being **overriding easements**. This means that you could acquire a site and then discover that it's subject to legal rights in favour of a third party which weren't shown on the title.

If a legal easement was created before 2003, a third party can establish a successful claim for an overriding easement that binds a purchaser if either leg of the below statutory test is satisfied at the time of the disposal:

- (1) the easement was obvious on a reasonably careful inspection of the property; and
- (2) the easement was outside of the actual knowledge of the purchaser.

If the test cannot be satisfied, an overriding easement can still be established if the third party is able to demonstrate that the easement had been exercised for a period of one year prior to the disposal.

Consequently, it is paramount that thorough site inspections are carried out, with photographs and a record kept of the date of each inspection. This could very well rebut the unusual exception to the above statutory test. It is also important that appropriate enquiries are raised with the landowners in respect of any issues detected on the site, especially in respect of any adjoining properties where the risk of overriding easements is particularly high. Ultimately, this is a reminder that the register of title is not conclusive and due to this unusual concept of overriding interests existing in English law, it is essential that thorough due diligence is carried out on the site. DAC Beachcroft is always happy to inspect an acquisition site with you and help you try to identify these hazards.

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