

“ Plain speaking legal advice ”

Intention to dedicate land as a highway

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Landowners have received some welcome clarification from the House of Lords on when use of a way can lead to land becoming a public highway.

The presumption is that use of a way for 20 years will lead to land becoming a public highway. The landowner can rebut this by demonstrating that he did not intend to dedicate the land as a public highway. The problem is knowing what steps the landowner must take to demonstrate this intention. Can the landowner simply say that he never had any such intention? Does the landowner have to take some physical steps to establish he did not intend to dedicate the land?

The House of Lords in two test cases has helped with the interpretation by making the point that landowners must communicate clearly to people using their land as a way that no public right of way exists. The facts in one case were that the landowner had objected to the use of his land by trespassers by writing, within the 20-year period, to the council to complain. With the second case the landowner had granted a tenancy and the tenant had been under an obligation to prevent footpaths being created over the land. The House of Lords felt that neither landowner had sufficiently communicated the desire not to dedicate.

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These cases make it plain that landowners need to ensure that if people are using their land as a way then more direct action must be taken such as the erection of notices or barriers to stipulate that there is no public right of way over the land.

If you wish to discuss this matter in relation to your own particular circumstances, then please contact a member of the Property team on 01276 686222

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