

To whom it may concern  
Maidstone Borough Council,  
Maidstone House  
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**Date:** 29 January 2025  
**Your ref:**  
**Our ref:** ThorntA/175442.000150  
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Dear Maidstone Borough Council

**Our client: Catesby Strategic Land Limited**  
**Re: Proposed Residential Development on Land at Moat Road, Headcorn**  
**Planning Inspectorate Reference: APP/U2235/W/24/3351435**  
**Maidstone Borough Council Reference: 23/504471/OUT**

We are instructed by Catesby Strategic Land Limited in respect of the proposed residential development on Land at Moat Road, Headcorn specifically as regards the right of way between the proposed development site ('the Site') and Mill Bank.

Our client has provided us with a copy of the Proof of Evidence of David Roberts I.Eng.FIHE, FCIHT on behalf of Maidstone Borough Council dealing with Highway and Transport Matters. We are instructed to respond to certain matters raised within the Proof of Evidence as regards use of the right of way.

### **Nature of right granted**

The Site benefits from a right of way over a track situated over adjoining land, leading to the A274 ('Black Mill Farm Track'). This right of way was reserved within a Conveyance dated 2 December 1986 ('the Conveyance'). The track is referred to in the Conveyance as Black Mill Farm Track. The ownership of Black Mill Farm Track is contained within title K62173 ('the Track Land').

The right has been granted in wide terms: for use at all times, for all purposes and with or without vehicles.

Accordingly, it follows that Black Mill Farm Track can be used at all times, for all purposes and with or without vehicles and to the extent that its physical state will for the time being allow.

### **Rights of Repair and Improvement**

It is inherent in any right of way (subject to explicit indication to the contrary, which does not arise here) that the owner of the benefiting land is entitled to enter the servient land to effect repairs and maintenance.

The works undertaken under the implied right must be works that accommodate the right granted and they must be undertaken in a reasonable manner.

The position for this track can be summarised as follows:

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- (1) the benefiting owner may enter the servient land for the purpose of making the grant of the right of way effective viz. to construct a way which is suitable for the right granted to them;
- (2) once the way exists, the servient owner is under no obligation to maintain or repair it;
- (3) similarly, the benefiting owner has no obligation to maintain or repair the way;
- (4) the servient owner (who owns the land over which the way passes) can maintain and repair the way, if they so choose;
- (5) the benefiting owner (in whose interest it is that the way be kept in good repair) is entitled to maintain and repair the way and, if they wish the way to be kept in repair, must themselves bear the cost
- (6) the benefiting owner has a right to enter the servient owner's land for such purpose but only to do necessary work in a reasonable manner

The inherent right to undertake maintenance works includes the right to attend to such works as are necessary, which includes the right to cut back overgrown vegetation and overhanging branches to the extent necessary to ensure that the vegetation and branches do not interfere with the use of the right of way.

The inherent ancillary rights discussed above can extend to a right to carry out improvement works. The improvement works need to accommodate the right granted, such as altering the surface so as to build a made road. Such improvement works are permitted provided that they do not cause any undue interference with the use of the land by the servient owner or by any others with legal rights to use it (but not informal unauthorised use).

If, as is the case in this instance, the right of way is granted for all purposes then the benefiting owner may improve it to make it available for a purpose not in contemplation at the time of the grant. Whilst improvement works should only be to the extent reasonably necessary for the enjoyment of the right of way, the right to carry out improvement works is not limited to the minimum standard required to make the grant effective. If works are required by a Local Planning Authority to make a route safe, it is highly likely that such works will be considered to be reasonably necessary.

An example of where a benefiting owner has been able to improve a right of way is the case of *Owners of Strataplan 58754 v Anderson (1990) 9 B.P.R. 97*, in which the benefiting owner was entitled to install lighting that was considered reasonably necessary to enable the way to be used safely and conveniently. The extent of the ancillary right to undertake improvements has to be determined in the light of the particular circumstances of the grant; it is not limited to the minimum standard to make the grant effective but by the same token, the improvement must be such as to be reasonably necessary to accommodate the grant and it should not increase the burden on the servient owner or else unduly interfere with the use of the servient land by others.

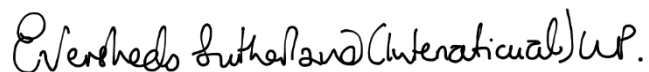
In view of the above, the assertion at paragraph 4.7 of the Proof of Evidence that "*a right of access does not include any rights to change the ...surface condition of the route...*" is not accepted as an accurate reflection of the legal position.

As explained above, the right does inherently carry with it a right to alter the surface to the extent necessary to make the grant effective as from time to time and subject to it not causing any undue interference with the use of the land by the servient owner or by any others with the rights to use it.

As regards the rights of others, we understand that other landowners may also enjoy the benefit of a right of way along the track. A right of way does not though inherently carry with it a right to also park on the track, as that is inconsistent with the right to pass and re-pass along it.

To the extent that others do park on the track, causing interference with the ability to use the right of way, on the face of it that amounts to an unlawful interference with the private laws right. Those with the benefit of the right of way could take direct action to prevent such unlawful interference.

Yours sincerely



**Eversheds Sutherland (International) LLP**