

Crane & Scaffold Oversail Licences – The Facts

TALUS's Building Surveyors provide professional advice in relation to the creation and agreement of crane and scaffold oversail licences between a Building Owner and an Adjoining Owner.



Crane and scaffold oversail licences are essentially an agreement between two respective landowners, agreeing to the trespass of plant and equipment over or onto the dominant land. However, although simplistic in summary, this generates strong feelings amongst respective land owners and is a significant 'risk' to any construction project.

This fact sheet provides a resume of the law surrounding trespass and nuisance and the services offered by Talus.

Introduction

The construction process of new build or refurbishment works to all types of premises typically requires the erection and use of a tower crane and/or scaffolding. When erected near to adjoining buildings/land, there is a real risk that the crane jib or boom will oversail the Adjoining Owners' land in day to day use or during the erection and completion of the crane itself. In addition, the positioning of the scaffolding at a boundary may, in the same instance, oversail an Adjoining Owner's land.

The oversail of any object onto an Adjoining Owner's property is deemed a trespass and governed by the law of property. To mitigate the trespass, it is essential to obtain the permission, express or implied, of the possessor(s).

This permission is defined as a licence and Talus is able to provide professional advice in respect of the creation and agreement of licences.

What is Trespass?

Trespass can be defined as the unlawful entry or interference on an Adjoining Owner's land that restricts the proper use and enjoyment. It is widely acknowledged by the Courts that naivety does not act as a sufficient defence of trespass.

Trespass can occur in a number of ways including:

1. Intrusions on the surface of the land:

A person wrongly sets foot on the land, pulls down or destroys anything permanently fixed to the land or places anything to it or on it. (Please refer to Figures A & B)

2. Intrusions beneath the surface of the land:

A person wrongly sets foot beneath the land, excavates or removes anything permanently fixed beneath the land or places anything to it or on it beneath the land.

3. Intrusions above the surface of the land:

A person wrongly places an overhanging object or passes objects through the airspace of the land (Please refer to Figures A, B & C).

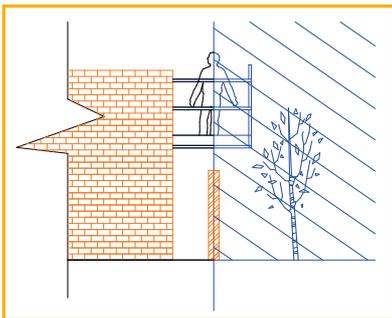


Figure A - Cross Section of a Scaffold Oversail



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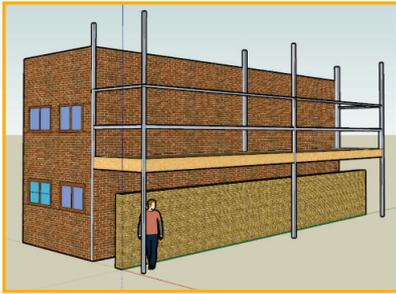
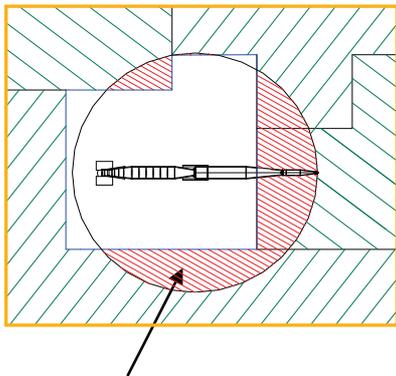


Figure B - Isometric View of a Scaffold Oversail



Red hatch identifies the airspace of the adjoining owners that is intruded upon.

Figure C - Plan View of a Crane Oversail

The latter classification of trespass (intrusion of airspace) is the most common occurrence of trespass that Building Owners and Adjoining Owners are likely to face. These are represented graphically by Figures A-C that highlight typical instances where such trespass may occur.

In these examples, it is important to note that the landowner's rights of airspace only extend to such a height that is necessary for the ordinary enjoyment of the land and structures on it. The remit of this law therefore does not extend to satellites or aircraft as these pass in excess of several thousand metres above land.

What is Nuisance?

There has been much debate in early case law on whether intrusion into airspace was an actual trespass or a legal nuisance. This distinction is particularly important, as a successful claim for nuisance requires proof that the Adjoining Owner has suffered damage as a result of the intruding object. It is therefore a wrong, arising from unreasonable or unlawful use of property to the annoyance or damage of another Adjoining Owner. An obvious example would be the damage of a neighbour's landscaping caused by builder's materials falling from the Contractor's site.

The law of trespass does not require this proof, only requiring proof that the object has entered the airspace of the Adjoining Owner's land.

What is a Licence?

As described above, it has been demonstrated that encroaching upon an adjoining owner's land will result in an act of trespass in tort law. In order to legally avoid this breach, the building owner (or Contractor) is required to obtain consent via a vehicle known as a licence.

The contents of the licence may include but not be limited to:

- The parties to the agreement and ownership details;
- The specification for the duration and time of the trespass;
- The drawings identifying the location of trespass;
- Undertakings to show that the object(s) creating intrusion meet the necessary statutory requirements;
- Undertakings to show that no loads are transported through the adjoining owner's(s') land;
- An indemnity from the Contractor stating that it is responsible for all claims arising out of the intrusion;
- Confirmation that the Contractor will pay all fees and costs relating to the agreement;
- The provision made for a compensation payment to be made to the Adjoining Owner.



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Negotiating a Licence

The Contractor has no legal right to erect structures overhanging or passing over an Adjoining Owner's land. In this respect, compensation is offered to the Adjoining Owner as a means of receiving the necessary consents.

The value of compensation is inherently difficult to advise upon. Different Adjoining Owners will require varying monetary amounts, dependent upon the effect that the intruding structure has upon their proper use and enjoyment of their land.

For example, the positioning of a scaffold tower within an Adjoining Owner's land that occupies two car parking spaces will inadvertently aggravate this enjoyment and, therefore, be the amount of money required to find alternative parking.

However, some Adjoining Owners will grant permission for use of the airspace either for no compensation or merely adequate insurance cover against damage to their property.

The Services Rendered

The following services can be undertaken by Talus in respect of crane and scaffold oversail licences (this is not a restrictive list).

Assessment of Trespass

Scrutiny of the Building Owner's proposals to determine whether a licence or agreement is required. We carefully consider the intended works and assess whether works can be conducted without oversailing a crane or scaffolding. The use of limiters is also discussed as well as SMEE systems.

Creation of Licences

Liaison between the respective Adjoining Owners and the Building Owner to agree a licence for a specified duration. This requires co-ordination of method statements, drawings, associated insurances, etc, with each individual owner.

Schedules of Condition

Preparation of schedules of condition, schedules of record photographs and/or video schedules (mpeg files) to provide pre-construction building records.

Programme Advice

Assessment of the proposed works to ascertain programme impact for compliance with the law, advice on the provision of design information and preparation of MS Project programmes as required.



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Experience

Talus's experience in scaffold and crane oversail licences has developed over many years' of appointment.

Clients of James Hopkins have included:

- Ability Group
- AXA Real Estate Investment Management
- Barratt Homes
- Berkeley Homes
- Buckingham Securities Ltd
- Foxtons Ltd
- Genesis Housing Group
- The Guinness Trust
- Hyde Housing Group
- Laing Homes SW Thames
- London Borough of Southwark
- Metropolitan Housing Trust
- The Moran Group
- Notting Hill Housing Trust
- Octavia Housing and Care
- One Housing Group
- Peabody Trust
- Pirin Plc
- Presentation Housing Association
- Rydon Construction Ltd
- Servite Houses/Veridian
- Simons Developments Ltd
- Targetfollow Group Ltd
- The Thornsett Group
- William Davis Ltd

Why You Should Use Talus

Qualified and experienced personnel

Depth and range of experience in all aspects of construction

Repeat order work from Clients demonstrates the high quality of our service

Wide experience on all types of projects

Expertise in fast-track agreement of licences to facilitate design + build procurement programmes

Quality assurance procedures

Extensive resources available

Highly respected by a wide range of Clients

Continual research and development of the service

We can also provide advice in relation to the party wall matters under the Party Wall etc. Act, 1996

Extensive experience of acting as Building Owner's and Adjoining Owner's Surveyor on a large number of party wall commissions