

# Drones - Keep them out of my air space

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**Recently this firm handed its office lease back to its landlord, who had commissioned a drone survey of our hard-to-get-to roof to see how dilapidated it was. A voice in my head said, 'that's our air space, and you need our consent to fly your drone in it'. It was an interesting thought.**

In a landowner versus drone operator situation, the former can draw on the principle that the air space in the vertical column above his land is his to such height as is necessary for the ordinary use and enjoyment of his property. Entering that air space is a trespass and exposes the trespasser to a claim for damages and injunctive relief.

So, for example, it is commonplace for developers to negotiate a licence to enable the jibs of their cranes to go through the air space of an adjoining property owner to preclude a claim for trespass and the possibility of an injunction to impede building progress. A developer has to invest a lot before starting a building project and is unlikely to take a chance.

The stakes are usually much lower for someone interested in collecting images by a camera fitted to a drone. The imagery results are impressive, with drone cameras that can hover and zoom in for close up results. A surveyor or journalist may be more gung ho about just going ahead with a one-off trespass. A one-off infringement is unlikely to generate litigation, save in egregious cases.

A landowner aggrieved by a drone flying through his air space can potentially claim under many heads. It is not only the law on trespass that may yield a claim; there is the tort of a private nuisance, the rights to data protection in the collected images, and claims for breach of privacy and confidentiality depending on the circumstances.

Does this mean that investors in drone technology should give up in the face of powerful, long-held vested interests in land? History shows that landowners have to yield to advances in technology in the end. One can go back to the 19th century when the landed gentry fought the railways, to the 20th century when governments would compulsorily buy land needed for urban expansion and roadway infrastructure, and more recently to the imposition of telecommunication legislation which has transferred rooftop property rights to telecoms operators. The public interest generally prevails.

Some prescient commentators see a future distribution system where online sellers have district hubs or vertiports (on the top of buildings) where drones collect goods for transportation via air traffic channels to our homes. Of course, if the establishment of such systems is in the public interest, legislation will likely restrict private property rights, which may stand in the way of 'progress'. But it should not be beyond the wit of those who rule us to preserve most of the private property rights mentioned above, and compromise is often the way forward.

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