Hewitsons Real Estate

LEGAL UPDATE

Absolute Client Focus

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Permitted Development Rights for Farm Buildings Extended

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Solicitor

Permitted development rights to convert agricultural buildings to residential dwellings under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 have been extended with effect from 6 April 2018. The previous rights, in force since 2015, allowed for a maximum floorspace of 450 sq m to be converted, with a maximum of 3 new dwellings allowed on an agricultural unit.

The changes increase both the floorspace that can be developed and the maximum number of dwellings. It is now possible to create up to 5 smaller dwellings, provided that each is less than 100 sq m, or up to three larger dwellings with a maximum total floorspace of 465 sq m, or a mixture of the two. However, there can be no more than 5 dwellings in total.

The rights are subject to various conditions, including that the site must have been used solely for agricultural use either on 20 March 2013 or, if a building was not in use on that date, when it was last in use. The prior approval of the Local

Planning Authority is required before the rights can be used.

Permitted development rights remain a valuable tool for farmers with redundant agricultural buildings. However, professional advice should be sought to ensure that the conversion work falls within the scope of the rights permitted by the legislation.

For further information please contact Emma Bowman on 01223 532717 or click here to email her.

Know your greens – Japanese Knotweed

Susanne Hinde
Partner

Most landowners will by now have heard of the invasive plant known as Japanese knotweed. This is the invasive plant which grows and spreads quickly through underground roots or rhizomes. It can break through tarmac and foundations, adversely affecting the integrity of buildings. The presence of Japanese Knotweed makes affected property difficult to mortgage, develop or sell. Treatment is expensive and takes time.

Three judges in the Court of Appeal have recently upheld an earlier court decision that two homeowners in south Wales were entitled to damages because Japanese Knotweed had spread from land owned by Network Rail to the land beneath their homes.

The Court did confirm that claims in nuisance for a reduction in value of land will not succeed, but the mere presence of the plant even without any damage being caused could give rise to a claim in actionable nuisance. This will be of great concern to landowners, particularly those who own marginal areas including embankments, small landlocked areas, riverbanks and the like. Landowners need to be vigilant particularly in the summer months in order to identify potential problems.

For further information contact Susanne Hinde, a partner in our Cambridge Real Estate Department. To email Susanne click here or call 01223 532728.

Overage Agreements – the events that trigger overage need careful consideration

Alexandra Messham
Solicitor

An overage obligation requires the buyer to make a further payment to the seller, representing a share of the increased value of the property after the occurrence of an agreed trigger event. In this case a developer was required to pay overage if prior approval to convert office space into 60 residential units was obtained during the overage period. This trigger event occurred and prior approval was obtained, however it was not possible for the units to be constructed as they would have breached building regulations. The developer argued that the overage payment was not due as such prior approval had no value unless the residential units were capable of being built.

The Court of Appeal rejected the developer's argument. Unfortunately, the developer had to make an overage payment, despite not being able to develop the property in the intended way. Developers need to take extra care going forward to ensure that they do not find themselves with a similar issue. It is important to consider the timings of the trigger events so that it is the actual implementation of the planning permission or the actual disposal of the completed residential units that triggers overage rather than an event that by itself may not result in an increase in the value of the property.

For further information contact Alexandra Meesham a solicitor in our London team on 0207 400 5026 or click here to email Alexandra.

Court of Appeal confirms wide approach to interpretation of setting of heritage assets

Gemma Dudley
Senior Associate

Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires planning decision makers to have special regard to the desirability of preserving listed buildings and their setting. In a recent Court of Appeal decision, this was considered in terms of the impact of a proposed development on the setting of the Grade I listed Kedleston Hall.

It had been argued that the development site was part of the setting of the Hall because it had formed part of the estate and had been managed historically as an economic and social entity. The Court of Appeal confirmed that the setting of heritage assets "*is not necessarily confined to visual or physical impact*", and those other considerations are potentially relevant. It was determined that the Inspector that had determined the appeal had recognised the relevance of historical, social and economic considerations to the setting of the listed building, to the impact of the proposed development upon that setting and its impact on the

"significance" of the listed building and his conclusions were unassailable.

For further information contact Gemma Dudley on 01223 532747 or click here to email Gemma.

Unambiguous RPI rent review clause

Sarah Baron
Solicitor

The court ruled on the interpretation of a rent review clause in a lease which provided for the rent to be reviewed by reference to the Retail Prices Index ("RPI").

The parties to the lease executed a new lease to commence on the expiry of the initial lease and signed a memorandum that the rent was to be £1.2 million a year. When the rent was reviewed under the new lease in line with RPI the figure of £1.2 million was used as the figure for the "Initial Rent". However, the tenant argued that the "Initial Rent" should be that which was payable under the old lease immediately prior to expiry (i.e. £965,000). The tenant argued that the rent review clause in the renewal lease contained an obvious error that a reasonable commercial tenant would never have agreed to.

The court decided that the rent review clause was not ambiguous. The definition of "Initial Rent" was clear. The court would not interfere and must apply what had been drafted. The court would not depart from the clear language of the contract (particularly where the contract had been professionally drafted), on the basis that a contract term was unusual for a party to have agreed, or that it had worked out badly.

The case is a reminder to ensure the formulae used in an RPI calculation produces the expected result. Worked examples of the formulae can be useful to flush out any errors and can be annexed to a document to avoid potential disagreements.

For further information contact Sarah Baron on 01223 461155 or click here to email Sarah.

with the latest developments.