



Hewitsons Real Estate

LEGAL UPDATE

Absolute Client Focus

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Ready, Able and Willing?



Graeme Sampson
Partner

In a recent High Court case the court held that a Seller of an office block (to be converted into flats) was entitled to rescind the contract for the sale after the Buyer failed to complete having been served with notice to complete. The Buyer sought to argue that the Seller could not rely on its notice to complete as it was not itself "ready, able and willing" to complete.

The Court considered whether the Seller was in fact ready, willing and able to complete despite having not procured assignments of copyright of plans in favour of the buyer (a contract requirement) and not allowing the Buyer access to the site beyond the original completion date. The case also raised the issue of proceeding with transactions without secure funding arrangements in place. For further details on the facts of the case please click [Was the Seller Ready, Able and Willing?](#)

Failure to comply with CIL Regulations costs self-builder dearly



Emma Bowman
Solicitor

The importance of rigidly following the Community Infrastructure Levy (CIL) Regulations has been highlighted by a recent High Court decision.

A self-builder obtained planning permission for a detached house, on which the CIL was assessed at £36,861. To benefit from the self-build housing exemption from CIL he had to send a commencement notice to Shropshire Council before the date the development was started. He did notify the Council by email when the works were due to commence, but did not follow the strict requirements for notices set out in the CIL Regulations. The Council did not accept the email as a CIL commencement notice and the High Court agreed with the Council. The self-builder lost the benefit of the exemption and had to pay the full amount of the CIL and a £2,500 surcharge for commencing development without submitting a commencement notice.

The CIL Regulations set out a specific process which must be strictly complied with in order to benefit from an exemption. The costs of not doing so can be very high. The government is currently consulting on changes to the CIL regime which, if implemented, would cap the penalty for a late commencement notice at the lower of £2,500 or 20% of the CIL which would have been chargeable. It has however decided against introducing a grace period for submitting a commencement notice.

For further advice in relation to planning matters please contact Emma Bowman or one of Hewitsons planning team on 01223 532717 or [click here](#) to email Emma.

Government announces measures on electrical safety requirements in the private rented sector



Tim Middleton
Partner

On 29 January 2019, the government announced tough new measures relating to mandatory electrical inspections for private rented accommodation in England. The government proposes to introduce legislation that will require private residential landlords to undertake safety checks of electrical installations in their properties once every five years. These inspections will have to be carried out by qualified and competent inspectors although guidance on what will be the minimum level of such qualifications and competence is awaited. Penalties have also not been set out however, there are likely to be a range of sanctions, with local authorities being given discretion to decide which is most appropriate in each case.

This announcement follows a government consultation on the recommendations of the Private Rented Sector Electrical Safety Working Group and reflects the government's commitment to drive up standards in the private rented sector.

For advice on residential lettings please contact Tim Middleton on 01223 461155 or email Tim by [clicking here](#).

What makes a village a village not a hamlet?



Gemma Dudley
Senior Associate

The Planning Inspectorate has considered what constitutes a "village" for the purposes of paragraph 145 e) of the National Planning Policy Framework (NPPF) in the context of a planning appeal in relation to an application for the construction of two dwellings in the green belt. Whilst the NPPF provides that the construction of new buildings should be regarded as inappropriate in the green belt, paragraph 145 e) provides for an exemption for limited infilling in villages.

The Inspector considered the Oxford Dictionary definition of "village", which is "a group of houses and associated buildings, larger than a hamlet and smaller than a town, situated in a rural area". It defines a hamlet as "a small settlement, generally one smaller than a village, and strictly (in Britain) one without a Church". It was determined that the appeal site, which was among a group of 18 residential dwellings known collectively as Ridgeway with no church, fell within a hamlet and not a village and therefore the exemption in paragraph 145 e) did not apply and the appeal was dismissed.

For more information, please contact Gemma Dudley on 01223 532747 or [click here](#) to email Gemma.

Make sure you get it in Writing



Patricia Kempson
Partner

The claim in a recent case arose in relation to whether the occupants of commercial premises had a right to a tenancy. The claimants argued that they were the lawful tenant of the premises pursuant either to a 10-year oral lease or a periodic tenancy. In either scenario, it was contended that the tenancy was a business tenancy, subject to and protected by security of tenure.

The court struck out the claim to a 10-year oral lease. It reasoned that leases of land for more than three years are void for the purpose of creating a legal estate unless made by deed. In addition, in order for there to be a valid contract relating to land, such a contract is required to be in writing in a document setting out all the terms which this was not.

However, the court found that the claimants had an arguable case for a periodic tenancy. The occupant had been in exclusive possession since 2012 paying rent, pursuant to quarterly demands. It is well established that a periodic tenancy may be created by inference where a person

occupies land with consent and rent is demanded and paid by reference to a particular time period. Accordingly, the court held that this claim should proceed to trial.

Notwithstanding this slight glimmer of hope no doubt the tenant has learnt the importance of ensuring that you "get it in writing". For further advice on matters relating to Landlord and Tenant law please contact Patricia Kempson on 01604 463352 or [click here](#) to email Trish.



This Bulletin is produced by Hewitsons for clients and contacts of the firm to provide them with a useful summary of recent cases, journal reports, developments in the law and dates to be aware of. It is not a definitive statement of the law in any area.

Advice should be sought from a solicitor in the Real Estate Team at Hewitsons in respect of any information contained in this bulletin that affects any matter with which you may be concerned.

Hewitsons offers a full real estate service which includes expertise in property acquisition and disposal, planning, construction, environmental issues, development and property management. This Bulletin will help to keep those involved in property up to date with the latest developments.

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