



Hewitsons' Real Estate LEGAL UPDATE

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High Court decision provides guidance in relation to viability assessments



Gemma Dudley
Senior Associate

The recent case of *Parkhurst Road Limited v Secretary of State for Communities and Local Government [2018] EWHC 991 (Admin)* has considered the appropriate land cost to be allowed for in determining the viability of a development of 96 residential units in Islington.

The Council's policy required developments to provide the "maximum reasonable amount of affordable housing" in the context of an overall target of 50%, whereas the applicant was proposing just 10% provision on the grounds that the scheme would otherwise not be viable. The Council sought to argue that the developer's benchmark land value, largely based on the price they paid for the site, was excessive since it did not properly reflect the policy requirement to maximise the affordable housing component on each scheme, in the context of the Council's 50% target.

The Court upheld the Inspector's decision that viability assessments need to reflect relevant policy requirements and planning obligations when arriving at benchmark land values and that the developer's approach had failed to give adequate effect to policy requirements for affordable housing. This decision emphasises the importance of factoring planning

policy requirements into the price paid for land, rather than simply relying upon a viability assessment to discount those obligations at a later date.

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

Field used by trespassers can be an asset of community value



Emma Bowman
Solicitor

Emma Bowman, a solicitor in our Planning Team, has considered whether unlawful use can prevent a property being listed as an asset of community value. A recent Court of Appeal case provides an example of the perils of failing to control public access to undeveloped land. For further information please see her article *Field used by trespassers can be an asset of community value* by clicking [here](#).

Court of Appeal clarifies meaning of 'isolated homes in the countryside'

In another recent case the Court of Appeal has clarified the approach to be taken by local planning authorities when interpreting paragraph 55 of the National Planning Policy Framework, which says that new isolated homes in the countryside should be avoided unless there are special circumstances.

In refusing planning permission for two new bungalows in a village, the LPA reasoned that the key question was whether the development was close to services and facilities. The Court of Appeal upheld the decision at appeal to grant permission. 'Isolated home' should be given its ordinary meaning of being physically separate or remote from a settlement. It is a matter of fact and planning judgment for the decision maker. There were a number of other dwellings close to the development site and it was in a recognisable (if small) village.

The Court's judgment is helpful as it clarifies that a broad approach should be taken to interpreting paragraph 55 and it should not be read too restrictively. It may improve the likelihood of planning permission being granted for new homes in the countryside, even if they are outside the LPA's designated settlement boundaries.

For further information on either of these cases or other planning related queries please contact Emma on 01223 532717 or click [here](#) to email Emma.

The Importance of Clear Conditions in Tenant Break Clauses



Emily Ray
Solicitor

The Tenant occupied offices in London under a 25 year lease granted in 1999, at a rent of over £4 million per annum. The lease contained an option to break at the end of the 20th year conditional on vacant possession and rent being paid up to date. The Landlord argued that the break clause was also conditional on the Tenant reinstating the property to the original layout, however the Tenant argued that this was a contractual requirement on vacating the property not a condition of the break clause.

The High Court agreed with the tenant and held that the reinstatement of the property was not a condition of exercising the break clause. Although the clause could have been read to coincide with the Landlord's argument, the lack of clarity was a key point in the court's decision and this is a lesson that all parties can learn from. In this instance the Landlord had provided the wording and therefore the burden was on the landlord to make crucial conditions sufficiently clear. In reality drafting has already become more specific in recent years, for example tenants are taking steps to ensure that any squatters who take occupation of a building once the tenant has left will not prevent the tenant from giving vacant possession. It is likely that this case will make parties even more careful to provide clarity, although the court has given the Landlord leave to appeal the decision.

Emily Ray is a solicitor in our Cambridge Commercial Property team. To contact Emily call 01223 447402 or click [here](#) to email her.

Court of Appeal considers whether an adjacent landowner is liable for over grown vegetation



Misbah Ashraf
Plot Sales Assistant

Our sense of judgement and visibility can be decreased by fast growing vegetation whilst driving a vehicle. If an accident is subsequently caused who is liable? This question was raised in a recent Court of Appeal case.

A driver, who left a minor road to join an A-road, collided with a cyclist (who suffered serious injuries). The driver's visibility was impaired by heavy vegetation growing on land adjacent to the junction. The driver claimed he could see for only 18 metres, whereas national safety standards for new roads require a sightline of 122 metres.

The question before the Court was whether a duty of care

was owed to road users in respect of vegetation growing on land adjacent to the highway. The Court concluded that no such duty of care exists: drivers are required to take the highway network as they find it and the junction was no more dangerous than hundreds of other throughout the country. The Court reasoned that making adjacent owners liable would cause a huge amount of additional cost for little practical benefit.

Over grown trees on adjacent land can create an issue for all road users however, the courts choose not to make the landowner liable for the accident. The decision however, may well have been different if the vegetation had spread onto the highway itself. It is therefore, important for landowners to ensure that vegetation does not spread beyond their lands boundaries.

For further information contact Misbah Ashraf in our Milton Keynes Office. You can contact Misbah on 01908 247032 or click [here](#) to email her.

The Importance of Complying with Service Clauses



Nadeem Khan
Senior Associate

The recent case of *Ropemaker Properties Ltd v Bella Italia Restaurants Ltd* highlights the importance of complying exactly with all terms of an agreement concerning the service of notices.

In this case, the tenant's failure to comply with a service clause rendered invalid their notice to terminate an agreement for lease. The relevant clause had required them to serve the notice on both the landlord as well as the tenant's own guarantor. Since the notice had in fact only been served on the landlord, the court held that the tenant had failed to terminate the agreement. Therefore, the landlord was later able to make the agreement unconditional and the tenant was required to complete the lease.

It may seem unnecessary that the clause required the tenant formally to serve notice on its own guarantor, but it was held that parties to an agreement must comply with all terms of service clauses regardless of whether or not they have a clear purpose or benefit. The guarantor in this case happened to be another company within the tenant's group, and the tenant argued that the guarantor had effectively received notice during a joint board meeting. This argument was rejected by the court.

In light of this decision, steps should always be taken to ensure that notices are validly served in accordance with all terms of an agreement. For further information please contact

Nadeem Khan on 0207 400 5034 or click [here](#) to email Nadeem.



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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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