Hewitsons' Agriculture, Food & Rural Business
LEGAL UPDATE

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Assets ceasing to be Assets of Community Value

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In a recent case in the First-tier Tribunal, a judge decided that allotment land listed as an asset of community value ("ACV") under the Localism Act 2011 should be de-listed to allow for its use as part of a housing development.

The owner of the allotment land also owned all the surrounding land, and had obtained planning permission for a large housing development. The allotment holders' licence was terminated, and a 5-year licence was granted to a developer. The landowner provided evidence that it would not be practical or safe to allow access to the allotments during the development.

Although the tribunal did not dispute that the allotment land had been correctly listed as an ACV in 2016, the Act states that land is to be removed from the council's list of ACV after 5 years. Because there was no realistic prospect of the land continuing to be used for the social interests of the community for the remainder of the 5-year period, the tribunal ordered that the allotment site was de-listed by the council.

This case demonstrates that the ACV regime only offers limited restrictions on disposal of land by owners, and that if changing circumstances lead to the land no longer meeting the requirements for an ACV, it can be de-listed.

For more information, please contact Gemma Dudley.

The importance of signage

Denise Wilkinson
Partner

In *TW Logistics €"v- Essex County Council* (as the registering authority on an application to remove the land from the Register), the importance of signage in preventing a claim for land use as a Town and Village Green (TVG) was highlighted. Signs are to be sited so as to be unmissable. If they indicate permission for access is given but could be withdrawn there should be evidence that the owner occasionally exercised that discretion and denied access.

The area in question was land on the quayside; part of a port that was fenced by the operators (a reminder that a TVG does not have to be 'green' at all!). The area had been used for dog walking, crabbing, diving into the water, swan feeding and painting (amongst other activities). Here, whilst there were signs, they were not on the boundaries of the relevant area; and there was no evidence that the general public who used the area were ever excluded by the owner. Accordingly TW Logistics failed with its claim that the land should be removed from the TVG register.

For more information, please contact Denise Wilkinson.

Importance of checking addresses when serving notices to quit

Stephanie Dennis
Senior Solicitor

The recent case of *Grimes v Trustees of the Essex Farmers and Union Hunt* provided an important reminder on using correct addresses when serving notices.

The Landlord served a notice to quit on the tenant of an agricultural holding, Mr Grimes, at the address specified in the Particulars of the tenancy agreement. The tenancy stated "*either party may serve any notice on the other at the address given in the Particulars or such other address as has previously been notified in writing*". The question was whether the Trustees were still able to serve notice upon the address in the Particulars even though they had notification that Mr Grimes had moved house some six years earlier.

The Landlord argued a literal interpretation of the clause meant that notice could be served at either the address in the Particulars or such other address as had been notified to the Landlord. However the Court held the clause must be construed as part of the whole tenancy and with regard to the intention of the parties at the time the tenancy was entered into. The Court found that it was highly unlikely that the parties would have intended the Landlord to be able to serve notice on an old address once notified of Mr Grimes' new address. Therefore the notice was invalid.

Whilst the decision is not surprising it is an important reminder for those preparing and receiving notices to quit to check the address upon which it is served.

For more information on agricultural tenancies, please contact Stephanie Dennis.

The new Electronic Communications Code

Vishaal Bhuttae
Solicitor

With the passing of the Digital Economy Act 2017, a new Electronic Communications Code has been approved and will come into force on a date to be approved by regulations. Until then, the Code set out in the Telecommunications Act 1984 (as amended) shall remain in force.

The Code relates to telecommunications masts and other such apparatus installed in, on or over land. When the new Code comes into force the key changes are as follows:

Termination procedure. Under the old Code, before a landowner was able to start proceedings to resume possession it had to serve a 28 day notice requiring the removal of the apparatus. The Operator could then be able serve a counter-notice, which would protect the Operator from being required to remove the apparatus unless the landowner obtained a court order.

Under the new Code the landowner must give at least 18 months notice and must state the ground on which it proposes to bring the agreement to an end.

The main grounds to terminate are:

the agreement ought to come to an end as a result of substantial breaches by the Operator of its obligations or persistent delays in paying rent;
the landowner intends to redevelop all or part of the land to which the agreement relates, or any neighbouring land, and could not reasonably do so unless the agreement comes to an end.

Security of Tenure. Under the old Code landowners were advised to exclude mast leases from the security of tenure provisions of the 1954 Act. The Operator would still have rights under the Code but the exclusion was to prevent the Operators having two layers of protection. The new Code provides that Operators will not have the protection of the 1954 Act but will benefit from the restrictions on termination contained within the new Code.

Rents. As with the old Code, the Courts have power to impose a telecommunications agreement on a landowner. If they do the Government's view was that the rent should represent a fair value for the use of the land, but, it should not as a matter of principle include a share of the economic value created by the high public demand for telecoms services.

In the new Code, the rent will be based on the market value of the land but disregarding the fact the site will be used for electronic communications and assuming there is more than one site that can be used; seemingly removing the fact the Operator may be a special purchaser and any ransom value.

Site Sharing. It is intended that Operators will have automatic rights to upgrade and share equipment, without prior agreement or payment to landowners. The reasoning behind this is that it will enable Operators to quickly update their networks when new technology becomes available. Despite some leases placing restrictions on adding to the equipment already installed on the site,

Operators will now be permitted to make small changes without incurring any additional charges. The effect is that it is likely to stop landowners from charging a premium for sites shared by multiple operators.

Not retrospective. The new Code will only apply to arrangements signed and completed after the law has come into effect and therefore will not apply retrospectively.

The stated aim of the proposed changes is to strike a better balance between the interests of landowners, Operators and the public. However, the changes would appear to favour Operators. Going forward, landowners should bare in mind that Operators will be negotiating new leases from a stronger bargaining position.

For more information on telecommunications and the new code, please contact Vishaal Bhuttae.
