



## Hewitsons' Real Estate LEGAL UPDATE

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### One Gate Too Many



[Barbara Judkins](#)  
Solicitor

Barbara Judkins a Real Estate Litigation Solicitor in our Disputes Resolution Group has considered the recent High Court judgment concerning how far (if at all) three gates constituted an interference with a right of way.

The article will be of interest to those exercising rights of way over land they don't own and conversely owners of land subject to rights of way. The former will wish to monitor any change to ensure their rights are not infringed and the later will wish to ensure the retention of all photographic and documentary records regarding the location and extent of the right of way so its extent is clear.

For further information, please see the article [One Gate Too Many](#) or contact Barbara Judkins on 01223 447432 or [click here](#) to email her.

## July is Scam Awareness Month



[Patricia Kempson](#)  
Partner

Property fraud is on the increase and the fraudsters are becoming ever more sophisticated. Fraudsters impersonate property owners and attempt to sell or raise finance on their property. You are at higher risk of being a victim if you fall into one of the following categories:

- Your property is let or empty
- There is no mortgage secured against the property
- The title to the property is unregistered at the Land Registry
- You live/are registered overseas

There are however a couple of simple steps you can take that will reduce the risk of your becoming a victim.

First make sure that your details held by the Land Registry are up to date. If for example you now let a property that you previously occupied make sure that the address recorded in the proprietors register at the Land Registry is your current one.

In addition the Land Registry provide a Property Alert service. The Land Registry will notify you of any applications they receive affecting properties you have asked them to monitor. You can ask them to monitor up to 10 properties by signing up at [www.gov.uk/property-alert](http://www.gov.uk/property-alert)

For further information on any property related matters contact Trish Kempson on 01604 463352 or [click here](#) to email Trish.

## Meaning of residential curtilage clarified by High Court



[Deborah Sharples](#)  
Partner

The Planning Court has recently considered the meaning of 'residential curtilage'.

The land in question was in common ownership with a dwelling house and had a Lawful Development Certificate confirming that it could be used for purposes incidental to the enjoyment of the dwelling house, but it was physically separated from the rest of the land by hedges and fencing. A planning inspector decided that it was not part of the residential curtilage of the dwelling house because of the physical separation. The judge upheld the decision, saying that that the function of the land, whilst being relevant to the question of curtilage, was not determinative.

This case will be of interest to anyone considering exercising permitted development rights on land associated with a residential dwelling or wanting to establish whether a structure is listed by virtue of being within the curtilage of a listed building. It demonstrates that the use and function of land alone is not enough to determine whether it is curtilage.

For more information please contact Deborah Sharples on 01223 532757 or [click here](#) to email Deborah.

## Court of Appeal Confirms Scope of Presumption in Favour of Sustainable Development



[Gemma Dudley](#)  
Senior Associate

In the recent case of *East Staffordshire Borough Council v Barwood Land II LLP*, the Court of Appeal has confirmed that the benefit of the presumption in favour of sustainable development contained in the National Planning Policy Framework ("the NPPF") can only apply where the development plan is absent, silent or out of date (such as where there is an absence of a 5 year supply of housing) as set out in paragraph 14. This was contrary to the decision of the High Court in *Wycharon District Council v SSCLG & Crown House Developments Ltd* last year where it was held that there was a general presumption in favour of sustainable development within the guidance in the NPPF and that it was not confined to the circumstances set out in paragraph 14 of the NPPF.

For further advice on planning matters please contact Gemma Dudley on 01223 532747 or [click here](#) to email Gemma.

## Court to the rescue where drafting goes wrong



[Bela Zavery](#)  
Senior Associate

A recent case has highlighted the need for careful drafting when dealing with the sale of multiple plots at different times. Bela Zavery considers in her article "[What is retained land?](#)" the problems that were created when the definition of "retained land" did not include land that the parties had intended would be subject to a restrictive covenant.

For more information please contact Bela Zavery on 020 7400 5032 or [click here](#) to email her.



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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