



# Hewitsons Real Estate

LEGAL UPDATE

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## An Italian rope trick?

Bella Italia Restaurants entered into an agreement for lease for a retail property to be constructed in Colchester. During construction and before the lease was completed the reversionary interest was transferred from the original contracting parties to Ropemaker Properties limited. Bella purported to rescind the agreement on the grounds that it was entitled to refuse to accept a lease, since Ropemaker was not the original contracting party under the agreement.

The court looked at the detailed drafting of the agreement. Some of the contractual provisions were expressed as being personal to the original parties but the obligation to grant the lease was not. Conversely nowhere in the agreement did it say that references to the “landlord” should include successors in title. The court however, concluded that it could not have been the intention that all the obligations in the lease were intended to be personal otherwise there would have been no need for specific clauses stating that other obligations were personal. Accordingly, Bella had not successfully rescinded the agreement and were contractually obliged to take a new lease from Ropemaker.

The case is a reminder that contractual obligations need to be clear. If it is intended that contractual obligations are personal then the contract should say so expressly. For further information please contact Patricia Kempson on 01604 463352 or [click here](#) to email Trish.



## Domestic Septic Tanks - more time to comply

Whilst new domestic septic tanks (installed since 1 January 2015) cannot discharge to surface water older tanks have enjoyed an exemption as long as they didn't cause pollution. This exemption from the Environmental Agency (EA) was set to end on 1 January 2020. However, with the deadline fast approaching the EA revised their guidance in October 2019, effectively extending the exemption to at least October 2020.

For further information click the link to read Karen Luxton-Walsh's article [Domestic Septic Tanks – more time to comply](#). Karen works in our planning and environmental team and gained over 15 years' experience as an environmental engineer prior to pursuing a career in the law. Her previous experience included a wide range of planning and environmental work focussed on assessing and balancing the impacts of development. You can also contact Karen on 01223 532733 or [click here](#) to email her.

[Read full article here](#)



## Upper Tribunal has jurisdiction to amend Planning Restriction

A recent s84 of the Law of Property Act 1925 application in the Upper Tribunal successfully modified a planning restriction on the ground that it did not secure any practical benefit of "substantial value or advantage". The restriction was contained in a s52 agreement from 1984. It prevented the building of "any permanent buildings or structures" on the land in question. Section 52 of the Town and Country Planning Act (TCPA) 1971 has now been repealed and replaced by s106 of TCPA 1990. The Upper Tribunal held that it had jurisdiction to modify and discharge planning restrictions entered into on or before 25 October 1991 under s52 of the old 1971 legislation. Applications can only be made to modify or discharge restrictions (not positive obligations) and the Upper Tribunal made it clear it did not have jurisdiction to modify restrictions imposed in planning agreements entered later under s106 TCPA 1990. The case does illustrate, that there are circumstances where an application to the Upper Tribunal can successfully be made to challenge restrictions imposed under planning agreements.

For further information on the different ways the impact of restrictions on land can be challenged or reduced contact Claire Howard- Amos on 01604 463323 or [click here](#) to email Claire.

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## Tools of the trade: Commercial lease rent deposits

Commercial landlords will often require a rent deposit from an ingoing tenant in order that their investment is protected. Susanne Hinde (a partner in our Cambridge Real Estate department) provides a guide to the considerations that commercial landlords should take into account when negotiating the rent deposit terms. Please [click the link](#) to read more.

[Read full article here](#)

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