



## Hewitsons' Real Estate LEGAL UPDATE

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### Did the bank act unreasonably?



Sarah Baron  
Solicitor

This was the question the court had to decide in a recent case. The borrower had debts of €5.9 million, which was secured by way of mortgage over a property of the borrower's in France, which was worth around €4 million.

The borrower wished to sell the property and received an offer in excess of €4 million, which was in line with valuations for the property at the time. The loan agreement said that on a sale of the property the bank was required to provide their consent, which was not to be unreasonably withheld.

The bank refused their consent to the sale unless the borrower provided alternative security for the shortfall between the value of the loan and the value of the property. The sale fell through and the borrower argued the bank had acted unreasonably. The bank argued that the issue was wider than just the sale price of the property and that the court should consider the creditor/debtor relationship.

The court looked at the background and purpose of the provision in the loan agreement to decide whether the bank's decision was one that a reasonable man could have taken. It was noted that when the loan was agreed, the bank had known the property did not provide enough security for the whole debt.

The court therefore decided that the bank had acted unreasonably in its refusal. The purpose of the provision in the loan agreement was to preserve the bank's rights, not increase them by trying to obtain additional security for the outstanding debt.

For further information please contact Sarah Baron on 01223 461155 or [click here](#) to email

Sarah.

### Plugging the Gap: Entire Agreement Clauses



Lauren Coote  
Solicitor

Lauren Coote is a solicitor in our Real Estate Litigation team. She recently qualified after training with the firm and being named by The Cambridgeshire & District Law Society as Trainee Lawyer of the Year 2018.

In her article **Plugging the Gap: Entire Agreement Clauses**, she discusses a recent case in which the Court of Appeal implied a term into a lease that the Landlord was to ensure the electricity supply *'is safe and the subject of a current Electrical Safety Certificate'*. This was despite the lease containing an "entire agreement" clause.

To read Lauren's article please [click here](#).

### A House or Flats?



Barbara Judkins  
Solicitor

Barbara Judkins in her article "*A House or Flats?*" considers a recent case in which a property owner applied to the Upper Tribunal to modify a restrictive covenant. The restrictive covenant provided that no more than two private dwelling houses could be erected on the land whilst the property owner wanted to erect a two storey building consisting of six two-bedroomed apartments with roof and basement accommodation and underground parking.

The owner /applicant was successful in her application and Barbara's article provides useful background as to why this was the case. [Click here](#) to read further.

### New Regulations on Pre-Commencement Conditions Published



The Neighbourhood Planning Act 2017 introduced a prohibition on the grant of planning permission subject to a pre-commencement condition without the written agreement of the applicant to the terms of the condition except in prescribed circumstances. This prohibition will come into force on 1 October 2018. This is at the same time as the recently published Town and Country Planning (Pre-commencement Conditions) Regulations 2018.

These regulations which provide that the written agreement of the applicant to the terms of a pre-commencement condition is not required if the local planning authority (or the Secretary of State as the case may be) has given notice in

Gemma Dudley  
Senior Associate

writing to the applicant that they intend to impose the condition and the applicant does not respond within 10 working days. The Government hopes that this will alleviate the unnecessary costs and delays to development caused by the inappropriate use of planning conditions.

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

### Timing is everything when opting to tax (OTT)



Carolynn Davies  
Senior Associate

A recent First Tier decision serves to remind us of the importance of the timing of the decision to opt to tax (OTT). In this case three out of four recent acquisitions were held not to qualify as "transfers of going concerns" (TOGCs) as the OTT occurred too late. This meant that the purchase price attracted VAT which had not been anticipated.

Carolynn Davies in her article "[Timing is everything when opting to tax \(OTT\)](#)" considers the issue in more detail. Click the link above for further information.



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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