



Hewitsons' Real Estate LEGAL UPDATE

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In this Issue

- An implied responsibility for planning?
- Can you Extend Your Property Upwards or Downwards
- First Digital Mortgage Signed by borrower and Registered at HM Land Registry
- School reverters: a reminder of a trap for the unwary

An implied responsibility for planning?



Lorna Carter
Legal Director

The Court of Appeal has recently been asked to consider whose responsibility it was to obtain the appropriate planning consents in relation to the conversion of two adjoining houses in Kensington into one. Lorna Carter, a Legal Director in our construction team, considers the case in her article [An implied responsibility for planning?](#) in which the Court of Appeal concluded that it was the responsibility of the Employer. Click the link above for further details.

Can you Extend Your Property Upwards or Downwards



David Wells
Partner

With the shortage of sites both commercial and residential landowners are increasingly considering extending their sites upwards or downwards. There is a general presumption in relation to freehold property that the airspace above a property is included in the demise and the subsoil below.

However, if the property in question is leasehold the extent of the demise will depend on the wording of a lease. In a recent case an airspace lease was granted to a developer only for the developer to discover that the airspace lease was granted subject to the existing building lease and therefore was of no practical use to it. In another case where a long leaseholder wished to extend their maisonette downwards the court held that the subsoil was not included in the demise so they were unable to do so. The court in that case was keen to distinguish the authorities used concerning the demise of airspace from that of subsoil. In relation to whether subsoil could be presumed to be included; as it plays a crucial role in supporting the building above this presumption did not automatically apply.

If proposing to develop land either upwards or downwards it is essential that the legal constraints are fully understood.

For further information please contact David Wells in our Milton Keynes office on 01908 247030 or email David by [clicking here](#). Alternatively you can contact Kate Church in our Cambridge office on 01223 461155 or [click here](#) to email Kate.

First Digital Mortgage Signed by borrower and Registered at HM Land Registry



Tim Middleton
Partner

HM Land Registry's plans to transform the conveyancing market took a small but significant step forward in April, with the registration of the first digital mortgage. The Land Registry's objective is to simplify the purchase of land by the use of technology so that registrations become instantaneous, where possible, and this represents an important step along that path.

The digitalisation of mortgages enables borrowers to use a "sign your mortgage deed" service (underpinned by the gov.uk verify platform) in order to digitally sign the deed online instead of applying pen to paper. This first step is part of the Land Registry's ambition to become the world's leading land registry for speed, simplicity and an open approach to data.

There is, however, still a long way to go for Land Registry to achieve its goal. Presently it is still dealing with a backlog of

"standard" applications and this innovation will not immediately help to speed up what can be a frustratingly slow process. Nevertheless, such ambition is to be welcomed and it will be interesting to see how quickly this new service becomes more generally available.

For further information please contact Tim Middleton on 01223 461155 or [click here](#) to email Tim.

School reverters: a reminder of a trap for the unwary



Patricia Kempson
Partner

A school sited on land donated in 1914 for the purpose of forming it was closed in February 2007. The heirs of the donor claimed that under 1841 legislation this closure triggered the statutory right of reverter. Under the subsequent Reverter of Sites Act 1987 this meant that the proceeds of sale would be held in trust for them. The judge had to consider whether the school site had ceased to be used for its intended purpose or whether the fact that the proceeds of the subsequent sale were used to fund the relocation of the school was enough to deny the claimants claim. In this case the court held that sale of the site was a continued use of it for the purpose of the school and so the claim failed.

Old school sites are subject to some very old statutes which were passed to encourage the public to donate land for the education of poor persons. Care must be taken to ensure when developing, disposing or acquiring such sites the correct legal structures are in place.

Patricia Kempson is a commercial property lawyer who provides expert legal support to Hewitsons Academies & MAT team led by Chris Knight. For further information please contact Patricia Kempson on 01604 463352 or [click here](#) to email Patricia.



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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Reg No: OC334689

