Hewitsons Real Estate

LEGAL UPDATE

April 2020

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Hewitsons' Covid-19 Advice

To read James Simpsons recent article on the new measures the government has introduced to protect commercial tenants click here. Hewitsons are continuing to advise all their clients whether trustees, developers, charities, companies or individuals on all aspects of the implications of the current global pandemic. Whether that be property or employment issues, tactics for business survival or individual estate planning. If you or your business require legal assistance see our Covid-19 Advice by clicking here and there will be a colleague who can help. This newsletter, however, focuses on other none Covid-19 developments in commercial property that have recently taken place.

Long leaseholders attempt to modify a restrictive covenant

Case insight – *Edgware Road (2015) Ltd v The Church Commissioners for England*

A recent decision from the Upper Tribunal sheds light on the approach taken when leaseholders (who qualify under the Law of Property Act 1925) make an application for a covenant to be modified or discharged. Leaseholders who qualify must have a lease with a term longer than 40 years, with at least 25 years having expired on the lease term.

The applicant had obtained planning permission for development of the leasehold property into a 'pod hotel'. A restrictive covenant in the lease restricted use of the 1st and 2nd floors of the

property to “offices only”. The property (on the Hyde Park Estate) was managed by The Church Commissioners for England, who were also the freehold proprietors of the property.

This application to modify or discharge the covenant was made under section 84(1) LPA 1925. The Church Commissioners objected on the basis that any relaxation would negatively impact upon their long-term strategy in respect of the management of the estate. If this application were granted, the Church Commissioners would find it difficult to grant long leases of the properties on the estate as they would be unable to be sure that the covenants in the leases would be enforced throughout the term.

The application was dismissed by the Upper Tribunal who agreed with the Church Commissioners. This case highlights both, the ability for certain leaseholders to apply for a modification or discharge of a restrictive covenant and the considerations made and view taken by the Upper Tribunal in those circumstances.

For further information contact Sophia Papworth on 01223 532701 or click here to email Sophia.

Changes set for Stamp Duty Land Tax payable by overseas investors

It was announced in last month’s Budget that from 1 April 2021 a 2% Stamp Duty Land Tax (SDLT) surcharge will apply to buyers of homes in England and Northern Ireland who are resident outside the country regardless of nationality. Its aim is to help first time buyers and those seeking to move up the ladder by controlling house price inflation and to raise circa £105 million a year which the government will put towards tackling homelessness in the country by building circa 6,000 homes.

As Covid-19 has taught us, much can happen between now and then. To see details of the current proposals click here or contact Alexandra Meesham on 020 7400 5026 or click here to email her.

Rights of light are protected to even poorly lit buildings

In a recent judgment, the court decided that a party that had completed a development which substantially infringed upon another’s right of light could be required to remove it, regardless of whether the building was poorly lit before the development.

The claimant proved that the reduction in light to certain rooms at the property it rented resulted in reduced rental income for those rooms, and the judge therefore awarded damages and declared that it would be appropriate for the defendant to demolish part of its development to protect the claimant’s right of light.

The case decided that an injunction may require demolition of a part of a completed development if such a remedy is necessary to protect a right of light.

For advice on commercial property issues please contact Ceri Riddell on 01223 532753 or click here to email her.

De-registration of commons – the meaning of “curtilage” in the Commons Act 2006

The Commons Act 2006 (“the 2006 Act”) enables by application the de-registration of land where it was provisionally registered as common land under the Commons Registration Act 1965 (“the 1965 Act”) and since such date the land has at all times been, and still is, covered by a building or within the curtilage of a building. But what does ‘curtilage’ mean within such context? The High Court in *Hampshire County Council v Secretary of State for Environment, Food and Rural Affairs & Ors* [2020] EWHC 959 (Admin) has recently provided some useful guidance. Find out more here.

Landlord Wins Case to Prevent Tenants’ Right to Buy Freehold

In one of the first cases decided via video link-up the landlord’s appeal against a group of tenants’ application to enfranchise was successfully upheld. The Leasehold Reform Act 1967 introduced the right for the owners of leasehold houses to call for their landlord to sell the freehold to them in exchange for payment of a compensatory premium. Although the tenants had succeeded at the property tribunal the landlord appealed. It successfully argued that not all the houses were in fact single dwellings and therefore the leaseholders were not entitled to acquire the freeholds under the Leasehold Reform Act 1967.

To read further click here or contact Simon Cooper on 01223 447410 or click here to email him.

The Lessons of Poste Hotel Ltd v Tracey Anne Cousins

This is a case of competing rights and whether a right to park in front of an hotel laundry can interfere with a right of way to get to that hotel. Ultimately it didn’t as the right of way had been in use longer than the right to park. However, it illustrates the problems experienced by business needing access over third party land used by others. It also demonstrates how landowners who own an accessway can find themselves in the middle of a dispute not of their making.

As is often the case with litigation of this kind it is suspected that neither party was satisfied by the result. It does highlight the need for vigilance in preventing people acquiring rights that can disrupt a landowner’s use. Consideration should be given where parking is an issue to putting up signs saying, “No Parking”, writing letters asking people not to park (to prevent the assertion there was no challenge to the parking) or (where the parking space is owned) granting a parking licence which can be easily terminated when access is needed.

To read the full article by James Frankland please click here.

This Legal Update is produced by Hewitsons LLP 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 appropriate specialist team at Hewitsons in respect of any information contained in this legal update that affects any matter with which you may be concerned. While the articles and opinions expressed in this publication are summations of current general legal matters the firm can take no responsibility for their application to specific situations in which specialist advice is required.

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