



Hewitsons' Real Estate LEGAL UPDATE

February 2018

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Can an easement be diverted via the "back door"?



Natalie Minott
Partner

Natalie Minott considers the case of *Lea v Ward* in her article [Can an easement be diverted via the "back door"?](#) In this case the judge held that the provision of an alternative route with suitable modifications and the payment of damages could be equally convenient to the right of way originally granted. At no point in the judgment is it suggested that a subsisting right can be extinguished by the provision of an alternative route, nor is it suggested that a land owner has the right to unilaterally alter the route of an easement. Rather the case takes a practical approach to settling disputes regarding rights of way. For further information on this case please read Natalie's article by [clicking here](#).

Inspector determines that Community Infrastructure Levy payable on unlawful development



Gemma Dudley
Senior Associate

A Planning Inspector has determined on an appeal that a development can be liable for Community Infrastructure Levy (CIL), notwithstanding that it has been commenced unlawfully. The case concerned a development that had been begun without compliance with a condition concerning noise protection, which the developer contended was a condition precedent that prevented lawful implementation of the planning permission. The Inspector held that the trigger for CIL is the carrying out of a material operation, and that there is nothing in the CIL Regulations which requires the commencement to be lawful, meaning that CIL would still be payable.

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

When is unreasonable, reasonable?



Christopher Duffy
Solicitor

The Court of Appeal in No.1 West India Quay (Residential) Ltd v East Tower Apartments Ltd [2018] EWCA Civ 250, considered whether a Landlord lawfully refused consent to the assignment of a long residential lease, where one of the three reasons for refusal had been held to be unreasonable.

The Tenant decided to sell numerous apartments and applied to the Landlord for consent to assign. The Tenant successfully obtained Landlord's consent to assign eight leases. However, in subsequent applications for consent, the Landlord sought to impose additional conditions. The Tenant refused to comply with those conditions and consequently the Landlord refused consent to the assignment.

The High Court held that this "bad reason" for refusing consent outweighed the two "good reasons". On appeal the only point under discussion was whether the Landlord had acted lawfully in refusing consent on a mixture of reasonable and unreasonable grounds. The Court concluded that the Landlord's decision to refuse consent was reasonable. Lewison LJ said:

"The theme running through all these cases is that if the decision would have been the same without reliance on the bad reason, then the decision (looked at overall) is good".

The Court of Appeal's decision will no doubt be welcomed by landlords. A landlord is required to specify its reasons for withholding consent, its duty is to prove that the overall decision was reasonable. One bad reason will not strip the other, good, reasons of meaning or effect, in the context of the decision as a whole.

For further information contact Christopher Duffy on 0207 7400 5039 or [click here](#) to email Christopher.

Party Wall Pitfalls: Serving Notice by E-mail



Lauren Coote
Solicitor

In a recent case the Court of Appeal had to consider when and whether a notice served by email was validly served. In her article **Party Wall Pitfalls: Serving Notice by E-mail** Lauren Coote considers the background to their decision that ruled that despite the Party Walls Act 1996 making no explicit reference to email as being a valid form of service it was accepted as sufficient in this case. [Click here](#) to read further.

Spring Seminar Series - Real Estate



Hewitsons' Real Estate Team are pleased to present a series of practical updates on recent legislation and case law affecting the commercial property market. Topics covered will include the new Electronic Communications Code and energy efficiency regulations as well as an analysis of common lease clauses. At each event there will be an opportunity for you to share ideas and network over refreshments.

There is no charge to attend and the long standing series has been widely recognised as an ideal opportunity for education, debate and information exchange for the benefit of businesses and other organisations.

All seminars start with a light breakfast which will be served at 7:30am, followed by a legal briefing from specialist members of Hewitsons starting at 8:00am.

Northampton - 15th May 2018
Cambridge - 5th June 2018
Milton Keynes - 13th June 2018

To reserve a space please contact our events team at events@hewitsons.com

Due to venue capacity places are limited. To avoid disappointment early acceptances are recommended.



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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