



Hewitsons' Real Estate LEGAL UPDATE

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Whose right is it anyway?



[Barbara Judkins](#)
Solicitor

In a recent case, the Court of Appeal decided that a right of way granted for a specific property could be extended to cover neighbouring land.

The claimant, Mr Gore had bought The Granary in Pangbourne, Berkshire in 2007. The Granary benefitted from a right of way granted across a driveway by a conveyance dated 11 November 1921. Mr Gore had also bought an adjacent piece of land where his vendor had erected a garage with bedrooms above in 1994. The defendants ran a wine merchants' business. They used the driveway for unloading deliveries to their premises and also for parking. They accepted that Mr Gore had a right to access the front door of The Granary. The question was whether his right also extended to accessing the garage for the purpose of parking there given that the 1921 grant did not specifically cover the garage land.

The Court of Appeal carried out an extensive review of the case law in this area. It concluded that the right of way did cover the garage land as it was ancillary to the use and enjoyment of The Granary. The Court also upheld the injunction imposed by the trial judge whereby the loading and unloading by the defendants in excess of twenty minutes would be deemed an obstruction.

For further information see our article [Whose Right is it anyway?](#) or [click here](#) to contact Barbara Judkins

The Evolution of Cambridge



[Colin Jones](#)
Partner

The Cambridge Economy is booming and as such Cambridge is now a hub for hundreds of enterprises including household names such as Apple, Siemens and Microsoft. Colin Jones (Hewitsons managing partner) in his article [Cambridge's £37billion economy and the need for evolution](#) considers what makes Cambridge attractive to businesses today and the importance of cities evolving and adapting to meet the needs of today's "millennials".

For further information contact Colin on 01223 532731 or [click here](#) to email Colin.

Court of Appeal clarifies law relating to Certificates of Lawfulness



[Gemma Dudley](#)
Senior Associate

The recent case of the *Government of the Republic of France v the Royal Borough of Kensington and Chelsea & Others [2017]* concerned a challenge to certificates of lawfulness granted in relation to a 5 storey basement extension at 10 Kensington Palace Gardens, a listed building adjacent to the official residence of the French Ambassador.

The certificates confirmed that the balance of the works authorised by a planning permission and listed building consent could be lawfully carried out because the consents had been lawfully implemented. The Court of Appeal confirmed that it was lawful for the Council to grant such a certificate in relation to the planning permission on an application for a certificate of lawfulness of *proposed* use and development under Section 192 of the Town and Country Planning Act 1990; it was not the case that such a certificate could not certify the lawfulness of works that had already been carried out.

However, the Court held that it was not open to the Council to grant the certificate in relation to the listed building consent since Section 26H of the Listed Building Act 1990 can only be used to apply for a certificate that proposed works to a listed building would not affect its character as a building of special architectural or historic interest. The Court also held that there was no requirement for the Council to notify or

consult persons who may be affected on applications for certificates under section 192 or section 26H.

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

What is a "relevant defect"?



[Kate Harris](#)
Senior Solicitor

The Court of Appeal has rejected the appeal of a widow against a decision that the freehold owner of a building was not negligent following the death of her husband who fell down a staircase in the building and suffered brain damage. The Court held that although the staircase was steep and had no handrail this was not a "relevant defect" for the purposes of section 4(3) of the Defective Premises Act 1972 and therefore there was no liability to repair.

The staircase had been installed by a head lessee pursuant to a planning permission and to replace some pre-existing stairs. However, the staircase was steeper than the approved plans and was not equipped with a handrail which was also shown on the plans. This was also a breach of building regulations. The head lease required the head lessee to keep the building in good and substantial repair, including remedying any inherent defects. There was also a clause allowing the freeholder to enter the building to carry out any necessary works if the head lessee was in breach of its obligations. The widow claimed that the head lessee was in breach of the lease and had caused damage to the building by removing the original staircase and replacing it with a "defective" staircase. She argued that the freeholder should have exercised its powers to enter the building to rectify this breach.

The Court held that the meaning of "maintenance and repair" within section 4 of the 1972 Act did not extend to defects in a general sense but should be interpreted in accordance with the general law of landlord and tenant. The staircase never had a handrail and there had been no subsequent damage or deterioration to trigger a duty to repair. A duty to repair was not the same as a duty to make safe. Although part of a building, namely the staircase, might function inadequately it does not necessarily follow that it is in disrepair or that there was a "relevant defect" under the 1972 Act.

If you require any advice in connection with your repairing obligations under a lease or any other issues arising from this case please contact Kate Harris on 01223 532762 or [click here](#) to email Kate.

Neighbours fail to Prevent discharge of 1910 Covenant



[Sarah Humble](#)
Associate

An owner of reservoir land wished to develop it however a 1910 covenant noted on the charges register stated that the land was subject to a covenant not to do anything on the land that would be a nuisance or annoyance to "William Webb or the adjoining owners". The water company made an application to the Upper Tribunal (Lands Chamber) ("LT") to modify or discharge the covenant and a group of neighbours objected.

The UT held that none of the neighbours could show that they were entitled to the benefit of the covenant. In order for a covenant to be enforceable by successors in title of the benefiting owner, all of the following must apply:

- The covenant must touch and concern the land owned and not be personal to the original covenantee
- The land to which it relates must be identifiable and
- The benefit must have passed by annexation, assignment or by virtue of a building scheme.

In this case the original conveyance was not available and the note in the charges register could have meant that the covenant was personal. There was also no evidence as to which land had the benefit of the covenant. Finally there was nothing in the evidence presented that indicated that the benefit of the covenant had been passed by annexation, assignment or a building scheme. As this covenant related to a 1910 covenant the presumption that is implied by statute (s78 LPA 1925) that a covenant is deemed to be made by covenantees successors in title unless otherwise excluded did not apply. The neighbours were therefore unsuccessful in their application.

For further details please contact Sarah Humble on 01223 532704 or [click here](#) to contact Sarah.



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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