



## Hewitsons' Real Estate LEGAL UPDATE

September 2017

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### Was an owner required to execute s106 agreement?



[Claire Howard-Amos](#)  
Legal Director

In a recent case the question of whether it was reasonable to require the owner to execute a s106 agreement requiring a £1.75 million pound contribution was litigated. The seller had sold a site in Wandsworth to Greenland for just under £136 million. The sale agreement provided that the seller (Minerva) was under an obligation to obtain an enhanced permission for extra floors and subject to it obtaining that permission it would be entitled to overage.

The sale agreement imposed a tight time scale and was also subject to obtaining Greenlands approval of the revised planning application. Minerva asked for that consent which wasn't forthcoming in the time scale but made the application in any event. The planning permission would have been granted but wasn't as Greenland refused to sign the s106 agreement that was ancillary to it. Minerva successfully sued Greenland for its lost overage.

The court held that Greenland had been unreasonable in refusing to execute the s106 as the obligations to be

imposed were proportionately no more onerous than the original terms. For further information on this or other commercial property matters please contact Claire Howard-Amos on 01604 463323 or [click here](#) to email Claire.

### **How genuine does a Landlord's intention have to be to resist renewal under the 1954 act**



[Susanne Hinde](#)  
Partner

Where a tenant occupies business premises it has a right to a new lease under the security of tenure provisions in the Landlord and Tenant Act 1954. A landlord can oppose the grant of a new lease to a tenant on a number of grounds one of which is that it intends to redevelop the premises and cannot reasonably do so with the tenant in occupation.

In a recent case a Landlord opposed the renewal of a business tenancy on this ground although it was apparent that the works that had been planned had been specifically designed to prevent the tenant from renewing its tenancy. The tenant argued that the landlord's intention was not genuine.

The High Court held that in order to establish the ground the Landlord's intention must be fixed, settled and unconditional. The court was not concerned with motive but was happy that in this case the evidence demonstrated that the intention to do the works was genuine if only to ensure that the tenant could not renew.

For further information on this case and other related security of tenure issues please contact Susanne Hinde on 01223 532728 or [click here](#) to email Susanne.

### **Can a Right of Way be used to access an ancillary garage**



[David Wells](#)

The general rule relating to rights of way is that they only benefit the land for which they are granted. A right of way will not grant rights to access additional or neighbouring land even if the same path/drive/road is used. However, if such a right is only used to access an area ancillary to the original benefiting land then it can be allowed.

In a recent case a right of way was blocked intermittently by the neighbour loading and unloading his van. When the grantee objected (on the basis he could not access his garage to park his car) a dispute

Partner

arose. The neighbour claimed that the right of way that had been granted did not benefit the land on which the garage had been built and therefore the grantee had no right to pass and park his car. The High Court held that the right of way could be used to gain access to the garage for parking as this was ancillary to the use and occupation of the main house.

The case law in this area is difficult to interpret and whether or not the grantee can claim an extension of the rights will depend on the specific wording of the grant and facts. It is an area on which the Law Commission has proposed reform in order that the law could be clarified.

For further advice on issues relating to easements please contact David Wells on 01908 247030 or [click here](#) to email David.

### **Independent review in light of Grenfell Tower**



[Lorna Carter](#)  
Senior Associate

The government has called for evidence as part of its independent review of Building regulations and Fire safety in light of the tragedy earlier this year at Grenfell Tower. The review will look at the effectiveness of current building and fire safety regulations and also consider the related compliance and enforcement issues. The government has indicated that the review's priority is to ensure that there is a robust regulatory system in the future in order that residents who live in multi-occupancy high rise residential buildings feel and are safe.

The call for evidence closes on 13th October 2017 and any responses should be submitted to [this](#) email address.

For further information please contact Lorna Carter on 01223 523729 or [click here](#) to email Lorna.

### **The livelihood condition requirement for succession rights in agricultural tenancies**



[Anna Gora](#)  
Senior Solicitor

In a recent case the Upper Tribunal have considered the "livelihood condition" that must be satisfied on an application for succession of an agricultural holdings tenancy on retirement. The general rule is that all tenancies of agricultural holdings granted prior to 12 July 1984 carry with them succession rights and that, on the death or retirement of the tenant, an eligible person may apply for succession. Although a right to succeed to the tenancy of an agricultural holding on the death of the tenant was introduced it was only later that provisions were introduced allowing a tenant who was elderly or sick to retire and nominate a person as his successor.

Anna Gora considers in her article *The Livelihood Condition Requirement in Agricultural Tenancies Confirmed by the Upper Tribunal* the meticulous and helpful decision of the Tribunal in clarifying the time for satisfying the livelihood condition test. Please [click here](#) to read the article or contact Anna by emailing her [here](#).

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### **Northampton Planning Breakfast Seminar - 16 November 2017**

07:30am - 09:30am

At this breakfast seminar the Planning Team will provide an update on the implementation of the Housing and Planning Act 2016 and the progress of the Neighbourhood Planning Bill together with a round up new case law, legislative and policy changes relating to housing and planning.

For further information on this seminar, and to reserve yourself a space, please contact our events team at [events@hewitsons.com](mailto: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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