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PROPERTY LAW BULLETIN

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CASE LAW UPDATE

BUSINESS TENANCIES

Landlords sought to rely on s.30(1)(f) (demolition/reconstruction) Landlord and Tenant Act 1954 to resist an application for a new tenancy. They were unsuccessful. The only buildings on the site (other than a small stone shed) had been erected by the tenant, and the tenant was obliged to remove them on termination pursuant to the terms of the lease. If the tenant complied with its obligations there would be nothing left on the site in respect of which the landlords could have an intention to demolish. As to the stone shed, the landlords had not demonstrated that they would require possession of the holding to demolish it. **Wessex Reserve Forces & Cadets Association v White & anor** [1st December 2005] CA; [2005] 49 EG 89 (CS).

The landlord appealed from a finding that it did not satisfy s.30(1)(f) LTA 1954 (demolition/reconstruction) so as to oppose successfully the tenant's application for the grant of a new tenancy. The court below had found that the landlord did not have the necessary intention, the plans to redevelop having been modified on various occasions. The Court of Appeal held that provided that the evidence at trial established the necessary intention, it would not matter that there had been one or more different intentions beforehand. There had to be a reasonable prospect of obtaining planning permission. The landlord's surveyor thought it likely that permission would be granted and the judge was wrong to reject this view and to rely on his own view to the contrary. The likely cost of the development was well within the usual spend of the landlord's investors and so no further funding or borrowing would be required. Architects and builders had been identified for the project. The only conclusion at which the judge could properly have arrived was that the landlord did have a fixed and settled desire to implement the proposed development and that there was a reasonable prospect of obtaining the necessary planning permission. In fact planning permission had subsequently been granted and the Court of Appeal was entitled to take this into account. The Court of Appeal approved the judgment of Laws LJ in **Gatwick Parking Services v Sargent** [2000] 2 EGLR 45, where it was said that the hurdle to be surmounted under s.30(1)(f) or (g) is by no means a high one. The landlord does not have to

show on balance of probabilities that planning permission will be granted, simply that there is a real rather than a fanciful chance. **Dogan v Semali Investments Ltd** [2005] EWCA Civ 1036; [2005] 50 EG 92.

FORFEITURE

A s.146 notice served in respect of a long lease of residential premises was invalid because it had wrongly overstated the amount of arrears owed. Accordingly it did not fairly or correctly state what the tenant was required to do to remedy the breach. In addition, the notice was invalid as it failed to include a summary of the tenant's rights and obligations as required by paragraph 4(1) of schedule 11 Commonhold and Leasehold Reform Act 2002, although this had later been remedied by service of a further notice including the summary. The notice was not invalidated by s.168 CLRA 2002, which states that a notice may not be served until a breach has been admitted or determined by a court or tribunal. The notice had been served in September 2003 and s.168 had not come into force until 28th February 2005. As the s.146 notice was invalid, the cost of serving the notice, being £211.50, was not reasonably incurred and so was not recoverable from the tenant. **Haveli Limited v Glass** [4th January 2006] Lands Tribunal; P.R. Francis FRICS; transcript available on www.bailii.org.

HOUSING

The Court of Appeal considered the circumstances in which a suspended order for possession should be made. The tenant held a secure tenancy under the Housing Act 1985. One of her children had persistently engaged in anti-social behaviour, had been made the subject of an ASBO, and had failed to respond to supervision following a criminal conviction. It was held that the discretion to suspend a possession order was unfettered, save that it had to be judicially exercised bearing in mind all of the circumstances of the case. If the behaviour of a tenant or another member of the household was bad enough to justify an ASBO, that would be strong evidence that the tenant had forfeited entitlement to retain possession. There would have to be a sound basis for hope that the anti-social behaviour would cease before the order would be suspended. Genuine remorse by the offender would provide some basis for that hope. The court had to weigh up the competing interests of the landlord, the tenant, the neighbours, and the wider public, taking into account the scarcity of public housing stock and Article 8 ECHR. It was not realistic to expect that the child's behaviour would improve and the tenant had failed to control him or to exhibit remorse or understand her parental responsibility. The order would not be suspended. **Manchester City Council v Higgins** [2005] EWCA Civ 1423; [14th December 2005] TLR; [2005] 48 EG 222 (CS).

LEASEHOLD ENFRANCHISEMENT

The appellant sought to exercise the right of collective enfranchisement as nominee purchaser for various tenants. An initial notice had been served pursuant to s.13 LRHUDA 1993, specifying a price of £210. The s.21 counter-notice had specified a price of £130,000. The appellant sought to argue that the counter-notice was invalid for specifying an unrealistically high price. The respondent landlord's surveyor agreed that the figure was £20,000 more than could be justified. The Court of Appeal held that the **Cadogan v Morris**

test did not apply to the landlord's notice. The landlord was free to specify any price at all in the s.21 notice by way of counter-proposal. This was, in part, because the figure in the counter-notice cannot be used as a default purchase figure in the way that the figure in an initial notice can (in the absence of a counter-notice). The court cautioned that the same construction would not necessarily apply to other statutory notices: each case would depend upon the statute. It was noted that there were unresolved issues as to the precise nature of the *Cadogan* test. **9 Cornwall Crescent London Ltd v Kensington and Chelsea Royal London Borough Council** [2005] EWCA Civ 324; [2005] 4 All ER 1207.

A full report of *Brick Farm Management Ltd v Richmond Housing Partnership Ltd* [2005] EWHC 1650 (QB), summarised in the September 2005 bulletin, has now appeared in the Estates Gazette: see [2005] 48 EG 224.

RESTRICTIVE COVENANTS

The owners of a house in Orchard Close, Ottery St Mary, Devon, wished to build a dwelling on land forming the curtilage of that house. The owners of other properties in Orchard Close objected. The Lands Tribunal allowed an application to modify a restrictive covenant under s.84 Law of Property Act 1925 so as to allow the building of the dwelling. The objectors appealed but were unsuccessful. The Tribunal had not erred in law when considering the objectors' argument that this first development was the "thin end of the wedge." Further, although there would be some disturbance during the construction of the dwelling, the Tribunal had not erred in its approach to this issue. The general purpose of s.84(aa) LPA 1925 is to facilitate the development and use of land in the public interest, having regard to the development plan and the pattern of permissions in the area. The section seeks to provide a fair balance between the needs of development in the area, public and private, and the protection of private contractual rights. "Reasonable user" referred naturally to long term use, rather than to the process of transition. The primary consideration was the value of the covenant in providing protection from the effects of ultimate use, rather than from the short-term disturbance caused by the construction project. *Shephard & ors v Turner & anor* [2006] EWCA Civ 8; [23rd January 2006]; transcript available on www.bailii.org.

SERVICE CHARGES

The Lands Tribunal rejected the landlord's appeal against a restriction on the amount recoverable as service charges in respect of works to the roof and door entry system. The landlord had failed to comply with the requirements of s.20(4)(a) and (b) Landlord and Tenant Act 1985, in that the s.20 notices served did not have attached to them details of the tenders and did not include VAT. It was clear that the reference in s.20(4) to "estimates" was a reference to a document capable of being copied, and that "copy" meant a copy of the actual document. The notices were unaccompanied by copies of the estimates and did not incorporate an accurate or complete copy of what was contained in each estimate. This was sufficient reason for upholding the decision of the LVT. In relation to the failure to include VAT, if a landlord obtained estimates which did not state whether or not they were subject to VAT it was at least doubtful that he had complied with the requirements of s.20(4)(a). Failure to refer to VAT in the notices was not a separate failure to comply with s.20(4).

Richmond Housing Partnership v (1) Smith (2) Rickman [13th January 2006] Lands Tribunal; HHJ Rich QC; transcript available on www.bailii.org.

SPECIFIC PERFORMANCE

The court ordered specific performance of an agreement for a lease between the Claimant as proposed landlord and the Defendant as proposed tenant. Safeways, the proposed tenant, had tried to resist the order on the basis that the premises (the basement and ground floor of Hulton House, 165 Fleet Street) did not fulfil the minimum area required under the lease. Under the terms of the agreement, Safeway would have been entitled not to complete if the minimum area had not been provided. The judgment contains a detailed analysis of the net internal area, which was to be ascertained in accordance with the Fifth Edition of the RICS Code of Measuring Practice. The decision itself is probably not of wider importance (except perhaps for those doing their food shopping on Fleet Street) but the reasoning process may be of some use to anyone dealing with a similar type of case. **Kilmartin SCI (Hulton House) Ltd v Safeway Stores** [2006] EWHC 60 (Ch); [27th January 2006]; transcript available on www.bailii.org.

OTHER DEVELOPMENTS

CARAVANS AND PARK HOMES

The consultation paper and response on amending the definition of a caravan have been made available on the ODPM website: www.odpm.gov.uk, and may be of interest to local authorities and those who represent caravan owners and caravan site owners. A consultation paper on revising the model standards for park homes is also available and the consultation period runs from 16th December 2005 to 13th April 2006. The model standards are good practice standards and are taken into account by local authorities when considering what if any conditions should be attached to site licences.

RESPECT ACTION PLAN: HOUSING ISSUES

In the light of **Manchester City Council v Higgins** considered above (Housing), it is worth noting some of the proposals contained in the Government's Respect Action Plan, published on 10th January 2006 (see ODPM News Release 2006/0002, which is available on the ODPM website: www.odpm.gov.uk). The proposals include cutting housing benefit to households who are evicted for anti-social behaviour and who refuse help; new temporary house closure orders temporarily sealing properties which are the constant focus of anti-social behaviour, and a 'Respect Standard' for housing management to ensure that all social landlords tackle bad behaviour and promote good behaviour. The Court of Appeal in **Moat Housing Group South Ltd v Harris & anor** [2005] EWCA Civ 287 (November 2005 bulletin) took a rather dim view of the housing association having obtained ASBIs and an ouster order against the tenant and her partner without notice. It will be interesting to see how (and if) the current proposals can be translated into workable legislation.

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