



Property and Planning Law Bulletin Issue 21

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Renovations can be a nuisance

A recent case decided in the Technology and Construction Court has awarded significant damages to neighbours affected by the disruption of sporadic and ad hoc construction work over a period of four years. The neighbours were deprived of their right to the quiet enjoyment of the property not only due to the works but also due to the fact that builders could see into their garden and their bathroom. In addition their party wall was affected and poorly fixed scaffolding was banging on their property.

The award totalled £75,000 for nuisance with a further £21,800 for other matters which included harassment and repairs. The neighbours did not succeed in all areas failing in part on aspects in relation to their claim for personal injury.



In the current climate renovations are not unexpected with small developers wanting to ensure their asset sells for the best possible price, if at all. However, the TCC recognised that whilst commercial necessity was a factor to consider it cannot be applied to works that could have been completed within one year but actually took four years.

This case does not present any new legal principles but it does illustrate how nuisance can be created by renovation works which, on the face of it may not seem so bad. However, it is always advisable to notify any affected parties as to the works that are being carried out and to ensure that you have complied with the relevant provisions of the Party Wall Act and the Access to Neighbouring Land Act to avoid unnecessary disputes.

For more information please contact Lauren Hales

Adverse Possession: Failure to serve counter notice

The Court of Appeal held, in the case of *Baxter v Mannion* [2001] EWCA Civ 120 that the failure by Mr Mannion to serve a counter-notice on Mr Baxter's application for registration of title by adverse possession was not fatal as Mr Baxter had incorrectly claimed to have been in adverse possession of the land.

Mr Baxter's application to the Land Registry was, at first sight, legitimate. Upon receipt of the application the Land Registry notified Mr Mannion of the application. Mr Mannion was advised that should he wish to object or give counter-notice he should do so no later than 12:00 noon on the 65th working day after the date of the notice. In the event Mr Mannion failed to provide a counter notice before the deadline, however, he eventually instructed solicitors to seek an extension of time, some four months after the deadline.

The Land Registry was unable to provide an extension and, in any event, Mr Baxter had already been registered as proprietor. Mr Mannion filed an application for rectification of the register.

Under Schedule 4 to the LRA 2002 alterations can be ordered by the Court or made by the registrar to correct a mistake.

At adjudication it was found that Mr Baxter had not actually been in adverse possession because he had not been in exclusive possession for ten years nor had he had the necessary intention to exclude the world at large. Mr Baxter

appealed the decision of the adjudicator.

The Court of Appeal held that under paragraph 1(1) of Schedule 6(1) to the LRA 2002 a person is required to have been in adverse possession of the land, before making an application. As it was found that Mr Baxter Had not been in adverse possession it followed that he was not entitled to apply.

Therefore, should a registered proprietor fail to serve a counter notice in time, in response to a claim for adverse possession, the register can be rectified if the adverse possessor has not actually adversely possessed the land. Clearly, this will only be applicable in certain situations and registered proprietors should always respond to an application for adverse possession by serving a counter notice within the time limit provided

A Review of Misrepresentation & Undue Influence

In the Case of Royal Bank of Scotland PLC v Etridge it was said that undue influence arises where a relationship of “trust and confidence, reliance, dependence or vulnerability on the one hand, and ascendancy, domination or control on the other”.

It is established law that the victim of undue influence has a right to have a guarantee or charge set aside if proven that the arrangement was entered into as a result of undue influence.

The House of Lords in Barclays Bank Ltd v O’Brien recognised that a lender, taking a guarantee or charge from a wife, will not be aware of any undue influence. Under the doctrine of constructive notice the House of Lords held that in certain circumstances a lender would be ‘put on inquiry’ and would have constructive notice that a wife might require the guarantee or charge to be set aside. In the Etridge case the House of Lords held that a lender is put on notice in every case where the relationship between guarantor and debtor is non commercial. In addition, guidelines for future transactions were established so that a lender could avoid being fixed with this constructive notice.

Similarly, the victim of an innocent misrepresentation is able to rescind a contract which they had entered into on the basis of the misrepresentation.



The Court of Appeal, in *Royal Bank of Scotland v Chandra and another*, held that a husband's over-optimistic assessment of a business venture did not amount to misrepresentation towards his wife who had sought to rely upon the misrepresentation to have a guarantee she had given of certain liabilities of that venture set aside.

The judgment provides a review of the distinction between a situation where a guarantee is procured by undue influence and one which has been procured by misrepresentation. Undue influence involves an abuse of a relationship of trust and confidence i.e. a husband exercising control over his wife to procure her consent to the guarantee. Misrepresentation, on the other hand, occurs when a false statement is made which the wife in the relationship of trust has relied on.

The decision also confirmed that both instances can give rise to grounds for having that guarantee set aside.

As there was found to be no misrepresentation or undue influence it was not necessary for the Court to decide whether RBS should have followed the *Etridge* guidelines.

Update on Stamp Duty Land Tax

From 6 April 2011 the new top rate of Stamp Duty Land Tax on acquisitions of land which is entirely residential property will rise to 5%. The rate will apply where the chargeable consideration exceeds £1 million.

The Localism Bill: Pre-Application Consultation

Under the present system, local planning authorities are required to prepare a Statement of Community Involvement which sets out their policy for involving communities in the preparation of local planning documents and for consulting the public on planning applications. In addition for some projects developers are required to prepare a Statement of Community Engagement setting out how they have engaged the community in formulating their planning applicatio

Clause 102 of The Localism Bill 2010 seeks to strengthen the requirements for pre-application consultation by developers. It is proposed that when submitting applications for permission for 'very large' projects, the applicant will need to show they have undertaken consultation with the local community and explain what regard has been given to those views in finalising their application.

This proposal is to be achieved by including a new clause 61W into the Town and Country planning Act 1990, which would require that the applicant must publicise the proposed application in a manner likely to bring it to the attention of a majority of people who live at or occupy premises in the vicinity of the affected land. Under a new clause 61X the applicant must then 'have regard' to any responses when deciding on the final form of their application. There is also scope under the proposed clause 61Y for a development order to be made specifying details of how consultation should be carried out.

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At this stage it is not clear which applications this new requirement would apply to. The Department of Communities and Local Government has recently undertaken a consultation to obtain public views on which proposals should be covered by the new requirement. When formulating the Bill, the Government assessed the impact of the proposal if it was to apply to:

- Residential developments of 200 or more new residential units, or (where the number of residential units to be constructed is not specified) with a site area of four hectares or more;
- Any non-residential developments providing 10,000 square metres or more of new floorspace, or with a site area of two hectares or more.

It may therefore be that developments of this nature are in future subject to this new requirement to carry out pre-application consultation. It remains to be seen whether the existing statutory consultation undertaken by the Council once the application is lodged will continue unchanged. It is also unclear whether the Council would have a power to refuse to validate an application if the pre application consultation requirements were not met.

The Localism Bill has recently proceeded through Committee stage and a report will now be prepared before it goes to its third reading in the House of Commons.



DCLG propose a new type of 'Affordable Housing' in PPS3

The Department for Communities and Local Government is proposing changes to the definition of 'affordable housing' in Planning Policy Statement 3: Planning for Housing.

Local Authorities are required to assess and set the affordable housing requirements for their area. When obtaining planning permission developers of land are often required to provide either on-site or off-site affordable housing, or a sum towards provision of the same by the Local Authority.

'Affordable Housing' in this sense is not simply housing which is affordable – rather, it refers to specific arrangements referred to as 'social rented housing' (run by local authorities and registered social landlords) and 'intermediate housing' (housing which is offered below market price such as by way of shared ownership schemes). 'Affordable housing' is offered only to eligible households who meet certain criteria and whose needs are not met on the open market.

It is proposed that the definition of 'affordable housing' in PPS3 will be widened to include a new type of arrangement - 'affordable rented housing'. Such housing will be allocated to people who are currently eligible for social rented housing and rent will be up to a maximum 80 percent of market rent. Tenancies must be for a minimum of two years but there is no maximum term. The proposed changes to PPS3 would mean that these type of arrangements will be able to be taken into account in the planning process as satisfying the need to provide affordable housing.

Further details are available from the DCLG website. The consultation is open for 8 weeks, rather than the usual 12, closing on 11 April 2011.

Blandy & Blandy LLP does not assume legal responsibility for the accuracy of any particular statement contained in this bulletin. In the case of specific problems we recommend that professional advice be sought.

Contact us

We hope you found this edition of interest. If you would like to discuss any of the matters raised in more detail or if you have any other property related queries, please contact the following:

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