

E: Briefing - Property Matters

In this issue:

- Right of access & parking
- Occupation & types of land use
- Housing Association in VAT win

If we can help with any of the issues in this E-Briefing then please get in touch on the number or email addresses below.



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As with all our E-Briefings, the topics covered reflect what our clients have asked us to cover and other relevant topics.

- Your place and your parking space - what are your rights.
- If you wanted to apply change the way your property you often need planning permission unless you have exceeded the statutory limitation period when you just have to make an application to the court. Before you do this though, just check your facts and your eligibility.
- In a recent case, a Housing Association beat the Tax man in a claim regarding unpaid VAT. Here we will look at the facts of the case in brief.

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Tenancy Management Master class

Effectively dealing with Hate Crime & Domestic Violence

Community Engagement & Good Neighbourhood Agreements

Does Right of Access Mean Right to Park?

A case dealing with the parking rights relating to three adjoined houses (all part of a development of older agricultural buildings) has been decided by the Court of Appeal, before Lord Justice Waller, Lady Justice Arden and Lord Justice Moore-Brick.

The dispute arose between the claimant and defendant in connection with the parking of vehicles, often a contentious issue between neighbours. The case concerned the issue of whether an express right to park two vehicles at a property implied further rights to park additional vehicles. This also has implications for developers of similar properties, such as barn conversions.

The claimants lived in a property originally owned by the defendants. When the defendants sold the property, the transfer provided for parking at the claimants property of two private vehicles on designated land, over which both the claimant and the defendant had a common right of access. The issue was whether other cars could be driven along and parked there by the claimant's visitors.

The Court of Appeal stated, when allowing the appeal against a decision of Judge Collins in Central London County Court that "An express right to park two vehicles at a property did not imply a further right to park additional vehicles." The case produced (in the Judge words) "a snowstorm of incidents and issues" relating to the right of the owners of one of the houses to park on land adjacent to the properties and in space in the lane serving them.

The Court concluded, for the right to park to be implied by a right of vehicular access, the test to be applied is whether, having regards to the circumstances at the time of the transfer by both the parties, whether it would be a 'reasonable necessary use' of the green land to use it for stationing vehicles for the duration of the user's visit to the property. The ability to park must be 'reasonably necessary' for the exercise or enjoyment of the land being accessed. It is not sufficient that the right to park is desirable. The Judge referred to the case of *Cannon v Villars* where the right to pass and repass to access the business premises included the right to stop, to unload and load. Parking must be necessary to make proper use of the accessed land. In other words, there is no automatic right to park even if there is a right of vehicular access to a piece of land.

Does Right of Access Mean Right to Park? cont...

In her conclusion, LJ Arden commented that, “there is a common misunderstanding that an Englishman’s home is his castle in the sense that he can build walls, put up gates and do other acts on his land whenever he chooses, and without regard for his neighbours... While it is often true that a person can do what he wants on his own land, it is not always so. The law expects neighbours to show some give and take towards each other... Parties to other boundary disputes and their advisers should also, at all times, have this point firmly at the forefront of their minds, and seek to resolve their disputes accordingly, and without resort to complex and expensive litigation.”

Parking rights are very important in practice, and the Judge’s analysis has important implications for many owners of houses and flats who later find that they do not have adequate parking rights. If you are considering buying land where there may be issues over access, parking or use of adjoining land, it is important to make sure that your legal rights are clear in the relevant documentation.

If you are considering buying land where there may be issues over access, parking or use of adjoining land, it is important to make sure that your legal rights are clear in the relevant documentation. Contact Stephen Daniels or Elaine Davies for advice on property purchases and sales.

Elaine Davies, Solicitor

Planning & Occupation of Property

When a property is used in contravention of planning law for a period of ten years (four years when it relates to an unauthorised structure or an unauthorised use as a dwelling), the owner of the property concerned can apply for a certificate of lawful use to legitimise the new use, which is known as a CLUED, governed by section 191 of the Town and Country Planning Act 1990.

Recently the owner of a cottage in the Chilterns did just that, he applied for a certificate in regard to the removal of an agricultural occupancy condition. The planning permission for the cottage was granted in 1962, subject to a condition, known as “the occupancy condition” which stated “the occupation of the [cottage] shall be limited to persons employed or last employed locally in agriculture, as defined in section 119(1) of the Town and Country Planning Act 1947, or in forestry, and the dependants of such persons.” This was a condition which, in rather simplistic terms, requires the property to be occupied by someone who is engaged in agriculture. Removal of an agricultural use condition adds greatly to the value of a rural property, as it can then be sold to people other than agricultural workers – for example, commuters or those looking for a second home.

The property owner probably thought there would be no problem with the application. However, Rabinder Singh QC, sitting as a deputy High Court Judge held that an application for a certificate of lawfulness in respect of a breach of an agricultural occupancy condition must fail. If the breach is not subsisting at the date of the application, even where a previous breach of the same condition had acquired immunity from enforcement action pursuant to the Town and Country Planning Act 1968 and subsequent legislation.

Meaning for such an application to be successful, the applicant must show that there has been ten years’ of continuous use up to the date of the application. On the date the application, the cottage was not occupied thereby, the Judge rejected the Claimant’s argument that once a breach of condition had acquired immunity from enforcement action then, like an immune use of land, the breach of condition could only lose its immunity by reason of a further material change of use, abandonment or change in the planning unit. Since there was no breach of the planning condition when it was unoccupied, the certificate of lawful use could not be granted: there had not been ‘continuous use’ in breach of the planning regulations for the requisite period.

This case shows how important it is to understand the conditions applicable to planning law and to abide by them.

Stephen Daniels, Solicitor

Housing Association Wins Over VAT Claim

Sometimes, you have to gaze on in awe at just how far the authorities will go in pursuing lost causes when it comes to tax. The High Court has handed down a judgment in a VAT recovery case that is of interest to housing associations, registered social landlords and other charities that fund, design and build social housing projects.

The difficulties faced by construction and developer firms as a result of the recession may result in projects being developed 'in house' rather than relying on external developers. However, going 'in house' can have an adverse effect on the ability to recover VAT on costs incurred in the course of the development.

In a recent case before Mr Justice Sales, a housing association, which is a registered social landlord, was taken to task over a claim to recover input VAT. The supply of registered social housing is an exempt supply, which means that the input VAT paid by a housing association cannot be reclaimed. An exempt supply is thus unattractive because either the business has to bear the cost of that VAT itself or pass it on to the persons receiving the onward supply. This would mean higher rents, which is seldom desirable as tenants would not be able to support the extra cost.

As a result the association decided to use a more tax efficient structure, and set up its own development company, to carry out development projects (which are not VAT exempt) and it was registered for VAT. The association then transferred to the subsidiary the benefit of its development projects. Because the transfer was a taxable supply, the association claimed the recovery of the input VAT relating to the projects transferred.

HM Revenue and Customs took a dim view of this and succeeded in persuading the VAT Tribunal that the input tax should be 'blocked', since it was related to the exempt supply of social housing. Unsurprisingly, the housing association appealed the decision.

The High Court rejected HM Revenue approach and agreed with the housing association's argument that the input tax which was reclaimed was directly related to the taxable supply of development and not to the wider supply of social housing. It was therefore recoverable.

The moral of the story is that if you are sure you are right, don't give up. This ruling is an important confirmation that housing associations and other charities who have paid or are paying VAT on unfinished housing projects may still be able to find more tax-efficient ways to avoid VAT and possibly to reclaim VAT. Property tax and VAT can be complicated and HM Revenue and Customs often make challenges on tenuous grounds to tax treatments adopted.

Stephen Daniels, Solicitor

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What we are looking for:

- *Best practice*
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Send articles and suggested topics to neil.whitehead@whiteheadsols.co.uk.

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