

Commercial Property **ACT NOW**



A guide to commercial property law from



REAL NOT HYPOTHETICAL SITUATION THE KEY IN AGREEING DILAPIDATIONS



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IN BRIEF

INFRASTRUCTURE PLANNING COMMISSION POWERS

New guidance has been published on the powers of the new Infrastructure Planning Commission, which will determine planning policy in major infrastructure projects.

See it here:

<http://www.communities.gov.uk/publications/planningandbuilding/guidanceexaminationprocedures>

LANDLORD'S INTENTION MUST BE LONG TERM

A recent case in the Court of Appeal has created a rule of thumb that where the Landlord and Tenant Act 1954 applies, a landlord must wish to use a premises 'for its own purposes' for a period of five years to successfully deny a tenant a renewal of its lease.

When vacating premises at the end of a lease, the maximum amount of the tenant's liability for dilapidations under the dilapidations clause will be based on the difference in value of the leased property in its repaired and unrepaired states. This may be a very different amount from the figure necessary to make good the dilapidations and is a frequent source of dispute between a landlord and its tenant.

In a recent case, a 'blue-chip' tenant wished to remain in its premises, but its offers of new lease terms were rejected by its landlord and so it vacated them and found new premises. The value of the building in good repair exceeded the value in its current state by more than £100,000. However, the tenant argued that its liability under the dilapidations clause should be based on the value of the building if the tenant remained in occupation. It based its argument on the premise that it would have made the same offer to remain in

the property to a new landlord as it had made to its existing landlord and a hypothetical purchaser would have preferred to accept the tenant's offer, as this would have avoided an expensive void period. In this case, the tenant would have taken a new lease with the hypothetical purchaser when it bought the property and the diminution in value of the freehold would have been less than £50,000.

The Court of Appeal did not accept this argument. The correct valuation was that of the property as the landlord received it from the tenant at the end of the lease. There was no lease in existence then: a hypothetical agreement between the tenant and a new landlord could not be taken into account.

Negotiations between landlords and tenants can often be complicated – especially where lease renewals are concerned. We can help you in your negotiations and make sure that all statutory procedures are followed.

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IDENTICAL PLANNING APPLICATION REFUSED ON APPEAL



It is not at all uncommon for unsuccessful planning applications to be revamped and resubmitted in the hope that the planning officer will take a different view of the application the second time around.

In a recent case, this occurred and the second application was substantially identical to the first. The planning officer approved it: however, the planning officer who dealt with the second application was not aware of the first unsuccessful application.

An appeal to have the permission quashed was launched to the Court of Appeal, which agreed that the original decision should stand. It would be unfair to reverse an earlier decision if there had been no material change in the facts under consideration. To do so would render the decisions of planning officers open to a continuing threat of judicial review.

We can assist you in all planning law matters.

IN BRIEF

REASONING CRITICAL IN PLANNING DECISIONS

A building is not a conservation area. A recent case has determined that an application to create a conservation area must be made on appropriate grounds and cannot be used to achieve some other objective. In this case, the motive had been to save a particular building of historical interest from demolition when an application to have it listed had already failed.

VIRTUAL ASSIGNMENT IS NOT ASSIGNMENT

A 'virtual assignment' is a device by which a tenant effectively appoints another organisation to deal with the practical aspects of its tenancy, in effect acting as attorney for the tenant.

Since most leases contain a clause which prohibits the tenant from parting with possession of the let property without the landlord's consent, it was inevitable that eventually a case would come before the courts to deal with whether a virtual assignment breached a lease.

Last year, such a case came before the High Court, which ruled that the virtual assignment breached the covenant in the lease not to share or part with possession of the property. The Court of Appeal has now overruled that decision, considering that the virtual assignment in this case was in effect an agency agreement and that the tenant had not parted with possession of the property or shared possession of it.

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