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**Buying Property 'Off Plan' Can Be Risky – Always Seek Professional Advice**

The handsome returns often made by investors who buy properties 'off plan' have to be balanced against the risks involved and that is why such purchases should never be hazarded without first taking professional advice. In a case on point, numerous buyers ended up severely out of pocket after a developer went bust.

The developer had purchased two empty plots of land on which it intended to build student accommodation blocks. Units in the prospective developments were sold to mainly overseas buyers, almost all of whom paid reservation fees and substantial deposits. Neither block was built, however, before the developer went into administration and subsequently creditors' voluntary liquidation.

Under judicial guidance throughout, the company's liquidators set about realising its assets so they could be distributed to the buyers and other creditors. Their task was complicated by, amongst other things, difficulties in serving documents on foreign buyers. The plots were eventually sold for just over £900,000.

In giving directions as to how that sum should be distributed, the High Court ruled that about £150,000 of the sale proceeds should be paid to the liquidators in respect of costs and expenses that were incurred in selling the properties. The buyers had undoubtedly benefited from the liquidators' hard work in that respect. The Court noted with regret that, even before those costs and expenses were deducted, there was not enough money in the pot to reimburse the buyers the full amount of their deposits.

Always seek expert legal advice before committing to a commercial property investment. Our specialist lawyers can help.

**Partner Note**

Campbell and Another v The Purchasers of Flats at 47 Clarence Street and 44 Conduit Street, Leicester [2021] EWHC 2807 (Ch)

**Council Pays Price for Falling Short of Five-Year Housing Land Supply Target**

Local authorities that do not have in hand a five-year supply of deliverable sites for new homes are likely to have residential developments that they consider harmful foisted upon them. Exactly that happened in a High Court case concerning a proposal to build up to 50 new homes on the outskirts of a rural village.

Outline planning permission for the project was refused by the local council, but was granted after the would-be developers appealed to a planning inspector. She took that course despite finding that the development would conflict with local planning policy and cause some harm both to an area of outstanding natural beauty and to the locale's character and appearance.

The inspector found that the proposal would bring significant benefits, not least in providing much-needed affordable homes. However, the decisive factor was her finding that the council's current deliverable supply of housing land would only last 1.82 years. She viewed that figure as deeply concerning when compared to the five-year supply target enshrined in the National Planning Policy Framework.

In dismissing the council's challenge to that outcome, the Court rejected arguments that, when calculating future housing land supply, the inspector was obliged to take into account that, in the preceding nine years, the council had exceeded its housing targets by more than 1,000 homes. In removing that past over-provision from the equation, she was entitled to take the view that residential sites that had already been developed could not be viewed as deliverable.

The Court stopped short of finding that a past over-supply of housing can never be taken into account. Even had the inspector done so, however, the council's supply of deliverable housing land would still have fallen narrowly short of the five-year target. Given her concern about the trajectory of the council's ongoing supply of residential development sites, the inspector's exercise of her planning judgment could not be characterised as irrational.

**Partner Note**

R on the Application of Tewkesbury Borough Council v Secretary of State for Housing, Communities and Local Government [2021] EWHC 2782 (Admin)

**High Court Steps In to Unwind Former Friends' Joint Property Venture**

Friends who go into business together sadly often forget that personal relationships do not always stand the test of time. Trust alone does not provide a firm foundation for such ventures and, as a High Court ruling showed, legal formality at the outset should never be dispensed with.

The case concerned two married couples who entered into a joint buy-to-let property venture. When they fell out, a dispute developed as to how the venture was to be wound up. The disagreement focused on four properties. After they entered into mediation, a settlement agreement was reached.

The settlement resolved issues concerning each couple's respective shares in the properties. It also provided for the appointment of a chartered surveyor to conduct independent valuations. With the objective of achieving a clean break, it sought to create mechanisms by which various properties would be sold or interests in them transferred between the couples.

One couple, however, asserted that the surveyor's valuations were flawed. Further obstacles remained in the path of winding up the venture in that the couples could not agree on the correct interpretation of the settlement agreement. Proceedings were eventually launched with a view to achieving a final resolution.

Ruling on the case, the Court rejected arguments that the jointly instructed surveyor had departed from his brief. His valuations were binding on both couples. On a true interpretation of the settlement agreement, one couple was bound to assign to the other a beneficial interest in one of the properties. They were also obliged to cooperate in the open market sale of the other three properties.

In making orders of specific performance to give effect to its interpretation of the settlement agreement, the Court noted that a firm response was needed to bring about some degree of finality to a hard-fought dispute between former friends.

Our specialist lawyers can advise you on any matters relating to joint property transactions. For expert advice, contact <<CONTACT DETAILS>>.

**Partner Note**

Hewavisenti and Another v Wickramsinghe and Another [2021] EWHC 2045 (Ch)

**Is Your Lease Under Threat of Forfeiture? Don't Delay Consulting a Solicitor**

Tenants who fail to pay their rent on time place themselves in real danger of having their leases forfeited. As a Court of Appeal ruling showed, that risk exists no matter how small the arrears and no matter how short the delay in payment may be.

The case concerned mixed commercial and residential premises that were held on a 20-year lease. By mistake, the rent paid by the tenants for one quarter was £500 short of what it should have been. The landlords' response was to forfeit the lease by instructing bailiffs to take possession of the premises by peaceful re-entry.

The rent arrears were paid four days later, but the tenants delayed five and a half months before applying for relief from forfeiture. By that time, the landlords had re-let the premises. Whilst commenting that it appeared very harsh to forfeit a lease that had 10 years left to run over such a modest sum in arrears, a County Court judge refused to grant the tenants relief, principally on grounds of delay. That decision was, however, subsequently reversed by a more senior judge.

Upholding the landlords' challenge to that outcome, the Court of Appeal noted that the longer a tenant leaves it before seeking relief from forfeiture, the less likely it is that their application will succeed. The re-letting of the premises was relevant to the exercise of judicial discretion and the mere fact that the tenants had made their application within six months did not mean that they should be treated as having acted with reasonable promptitude. The County Court judge had made no error of law in refusing relief and her decision was restored.

Contact us for expert advice on any matters concerning landlord and tenant law.

**Partner Note**

Keshwala and Another v Bhalsod and Another [2021] EWCA Civ 492

**Private Property Rights v Telecommunications Infrastructure Needs**

One reason why the rooves of many tall buildings positively bristle with aerials is that private property rights sometimes have to take second place to the overriding need for a modern telecommunications network. As one case showed, however, property owners are not obliged to just sit back and allow telecommunications infrastructure to be foisted upon them.

An infrastructure company wished to have access to the roof of a tall commercial building so that surveyors could assess its suitability as a site for telecommunications apparatus. The building's long leaseholder was willing to grant access in principle, but objected to the company's proposal to perform invasive works, including drilling holes and cutting the roof covering in order to discern its underlying structure.

After a negotiated resolution could not be reached, the company referred the matter to the Upper Tribunal (UT). It urged the UT to exercise its power under Paragraph 26 of the Electronic Communications Code to impose an interim agreement on the leaseholder that would permit the works to proceed.

The leaseholder asserted that the building was for various reasons unsuitable as a location for telecommunications equipment. It accepted that the company had a good arguable case that an agreement should be imposed enabling surveyors to access the roof. In resisting the proposed invasive works, however, it pointed out, amongst other things, that the roof was coated with a proprietary material that would be very difficult to reinstate if pierced or damaged.

Ruling on the matter, the UT noted that any owner of a valuable, high-quality building might be understandably reluctant to allow contractors over whom it has no authority or control to interfere with its structure. The leaseholder had legitimate concerns that the company was seeking unrestricted rights to do undefined works, constrained only by the purpose for which they would be undertaken.

The UT declined to impose an agreement authorising invasive works on the roof at this stage. Once a non-invasive survey had been carried out, it would be open to the company to return to the UT and seek further rights, if considered necessary. The UT expressed the hope that the dispute could be resolved by agreement and that a further reference would not be required.

We can advise you on any matters relating to commercial property law. Contact us for guidance.

**Partner Note**

Cornerstone Telecommunications Infrastructure Ltd v St Martin's Property Investments Ltd and Another [2021] UKUT 262 (LC)

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