Commercial Property ~ March 2023

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**Commercial Property Owner Charged for Non-Existent Drainage Services**

A commercial property owner who for years shelled out for drainage bills that it was never obliged to pay must be reimbursed every penny. That was the effect of an important High Court ruling in which utility companies were found to have been unjustly enriched by charging for services that were never provided.

The case concerned premises on an industrial estate. Surface water from the site discharged into a sewer that passed beneath roads on the estate and other land before arriving at an outfall into a brook. The site's owner paid the utility companies for drainage services on the assumption that the sewer was a public facility. It eventually stopped paying, however, and launched proceedings.

Ruling on the case, the Court found that the utility companies had failed to establish on the evidence that the sewer was a public, as opposed to a private, facility. It followed that they were never entitled to charge for the sewer's use and never provided the supposed services for which payment was levied.

The charges had been paid on a mistaken basis and the utility companies had been unjustly enriched by demanding and accepting payment for services to which they were not entitled. It was an aggravating feature of the case that they appeared to have raised charges during a lengthy period when their own records did not indicate that they were entitled to do so. They were ordered to reimburse the owner to the tune of over £150,000, plus interest.

We can advise you on any aspect of commercial property law, including issues surrounding utilities disputes. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Brendon International Ltd v Water Plus Ltd and Another [2022] EWHC 3321 (Ch)*

**High Court Bans Use of Town's Seafront Hotels as Hostels for Asylum Seekers**

The Home Office has a duty to house the tens of thousands of destitute migrants making their way across the Channel in small boats. However, in a head-turning decision, the High Court has banned the use of seafront hotels in a deprived town that depends heavily on tourism as hostels for asylum seekers.

The Court acknowledged the challenge faced by the Home Office and its contractors in coping with the enormous influx of asylum seekers. With immigration centres at, and beyond, bursting point, thousands of rooms in over 100 hotels nationwide had been block booked as interim accommodation for recent arrivals.

However, after getting wind of plans to move asylum seekers into one of its seafront hotels, the town's local authority successfully applied for an emergency injunction. It contended that the anticipated change of use of the hotel to that of a hostel would amount to a breach of planning control.

In extending the injunction pending a full trial of the council's claim, the Court noted a local planning policy which promotes and protects tourist uses on the seafront. The town is one of the UK's most deprived districts and tourism is of central importance to its economy, providing about 37 per cent of local jobs. Asylum seekers receive only a small amount of government financial assistance and, unlike tourists, could make no significant contribution to the local economy.

Given the strength of the council's arguments in terms of planning harm, factors in favour of continuing the injunction plainly outweighed those in favour of discharging it. The injunction forbade use of the specific hotel, and numerous others within the area covered by the tourism protection policy, as hostel accommodation.

**Partner Note**

*Great Yarmouth Borough Council v Al-Abdin and Others [2022] EWHC 3476 (KB)*

**Japanese Knotweed Victim Wins Compensation in Landmark Nuisance Case**

Landowners should sit up and take notice of the Court of Appeal's ground-breaking decision to award thousands of pounds in compensation to a property investor, the value of whose land was blighted by notoriously invasive Japanese knotweed.

The case concerned an investment property that adjoined local authority-owned land on which the pernicious weed had apparently been growing for over 50 years. Its owner sought damages from the council on the basis that the plant's relentless encroachment onto his land amounted to a nuisance.

Following two hearings, the owner succeeded in establishing that he had suffered a nuisance for a period of five years prior to the council taking steps to eradicate the weed from its land. However, he was refused compensation in respect of the blight on the value of his land arising from the infestation. His loss in that regard was found to be purely economic and thus irrecoverable.

Upholding his appeal against that outcome, the Court noted that the case raised an important point of principle. It found that, in nuisance cases, there is no legal bar on the recovery of damages to reflect pure economic loss. The owner's loss arising from the diminution in the value of his land was not, in any event, purely economic because of the physical manner in which it had been caused.

Japanese knotweed's evil reputation is such that the residual blight on the value of his property continued even after it was eradicated. The nuisance arose because of the plant's physical encroachment onto his property, interfering with his amenity and quiet enjoyment of his land. The blight was a consequence of that nuisance and he was thus entitled to be compensated in respect of the damage to his economic interests.

The council argued that the encroachment was historical and that any diminution in the value of the owner's land arose long before any nuisance was established. The Court, however, found that the council's delay in treating the infestation gave rise to a continuing loss for the owner. Until the council treated the Japanese knotweed on its land, any attempt by the owner to eradicate it from his own property would have been futile. In awarding him £4,900 in damages, the Court found that that was a reasonable sum to reflect the diminution in his property's value.

For advice relating to nuisance claims, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Davies v Bridgend County Borough Council [2023] EWCA Civ 80*

**Leasing a Flat Above Commercial Premises? Make Sure You Read This**

In a head-turning case, a flat tenant the value of whose home was reduced when the use of the commercial premises beneath him was changed from an estate agency to a bar and restaurant was awarded six-figure compensation.

After planning permission was granted in respect of the change of use, works were carried out, some of them structural, to prepare the commercial premises for their new purpose. The flat tenant was unhappy with the change, complaining of noise and fumes, and eventually sold his property for £470,000.

His damages claim hinged on provisions in his lease which permitted the landlord to carry out works on the structure of, and any development of whatever nature on, the building. Crucially, however, that entitlement was subject to a proviso that such works or development did not lead to a diminution in the value of the flat.

Upholding the flat tenant's claim, a judge found that the landlord had breached the terms of his lease and awarded him £105,000 in damages. That sum represented the difference between the price he obtained for the flat and what it would have been worth had the downstairs premises remained an estate agency.

In dismissing the landlord's challenge to that outcome, the High Court found that the judge's interpretation of the relevant lease provisions made good commercial sense. They were in the nature of a promise by the landlord not to exercise its rights in a manner that resulted in a fall in the flat's value.

Also rejected were the landlord's arguments that the provisions were only concerned with the effect of physical works to the building and that there was no breach of the lease in that the diminution in the flat's value arose from the change of use. The works involved development of the commercial premises, making physical changes to them so as to enable their use as a bar and restaurant.

Our expert lawyers can advise you on matters relating to landlord and tenant law. Contact us for advice.

**Partner Note**

*Dunward Properties Ltd v Isaac [2022] EWHC 3276 (Ch)*

**Waste Transfer Station Occupier Succeeds in Slashing Business Rates Bills**

Commercial property occupiers who are dissatisfied with the valuation put on their premises for business rates purposes can do a great deal more than just grin and bear it. In a case on point, the tenant of a waste transfer station succeeded in slashing its rates bills by more than 20 per cent.

The rateable value of the premises was initially entered in the rating list at £9,300. However, after a local authority valuation officer visited the site and noted various improvements, including the completion of a new office block and waste processing shed, that valuation was increased to £28,750. The tenant did not take that decision lying down and challenged it before the Upper Tribunal (UT).

Ruling on the matter, the UT rejected the tenant's argument that the premises should be split into two or more separate parts for valuation purposes. Although the site was subject to various sub-leases to other businesses, it was clear that the tenant had overall control and was in rateable occupation of the whole of the premises.

Turning to valuation evidence, the UT noted that there were few other properties to which the site could usefully be compared. Taking the rent paid by the tenant as its starting point, however, it reduced the premises' rateable value to £22,500. The UT noted, in particular, that the site's valuation was affected by its irregular shape, together with its narrow and shared access arrangements.

We can advise you on any aspect of commercial property law, including business rates. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Nelson Plant Hire Ltd v Bunyan (Valuation Officer) [2022] UKUT 309 (LC)*

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