

Summer 2017

Allan Janes

solicitors



LEGAL REVIEW

Your quarterly bulletin on legal news & views from Allan Janes Solicitors

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Noise is not the only form of disturbance – High Court ruling

Disturbance can take many forms and noise is just one of them. Planners made that point in heeding the concerns of residents of a quiet cul-de-sac and scotching plans for a 30-flat supported living development on the edge of a seaside town.

The would-be developers wished to demolish a two-storey house in the cul-de-sac in order to provide an access route to the development site. However, outline planning consent was refused by the local authority and that decision was later confirmed by a central government planning inspector.

The latter found that, although noise endured by the owners of nearby properties would not be significantly increased, the disturbance to their lives would be unacceptable. The development would lead to a substantial increase in traffic passing through the cul-de-sac, interfering with residents' peace and tranquillity.

In rejecting the developers' challenge to that ruling, the High Court found that the inspector had made no error of law and that the reasons he gave for his decision were intelligible. The cul-de-sac was a quiet enclave of seven homes and the inspector was entitled to find that the increase in traffic levels and pedestrian movements arising from 30 new flats would cause a significant disturbance.



If plans are submitted for a development near you that will adversely affect you or your property, we can assist you to fight the granting of permission.

Contact our property specialists, Peter Collier on email: peter.collier@allanjan.es.com or Nick Morrison on email: nick.morrison@allanjan.es.com.

Early action normally brings the best results.

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Tax penalties avoided for those affected by IT glitch



With HM Revenue and Customs (HMRC) pressing ahead with plans to make 'customers' deal with them only digitally, it is good to see that when a system issue with the EE network meant that some of the company's customers were unable to access the HMRC website on 31 January (the last day on which a tax return may be filed without incurring a penalty), they agreed to allow an extension to those affected.

The glitch meant that a confirmatory text message needed to log in was not received by many customers and, after pressure from professional advisers, HMRC made the concession.

Definitive plan decides boundary dispute

Boundary disputes are commonplace and, unless skilfully mediated, can often spiral out of control, ending up in legal action the cost of which far exceeds the value of the land under dispute.

One of the more important principles in such disputes is often a difficult one for the property owners to take on board, and that is that the subjective beliefs of the owners as to where the boundary lies is evidence which is not normally admissible, although their ongoing behaviour as regards its location can be in point. It is the conveyance of the property that determines the boundary, and in particular the presence of a plan provided for the definition of the property (as opposed to one which is merely for identification purposes).

This is important because the topography of a site may change over the years, but what matters is the state of the boundary when the conveyance occurred, unless the boundary has subsequently been changed by agreement of the property owners. In that case, the agreement will bind future purchasers of the properties concerned.

And so it was that when two academics ended up in court with their neighbours over the boundary between their properties, which had been the subject of dispute for some years, the judge based his decision largely on an examination of the plans identifying the properties concerned used in a conveyance.



Once he had concluded that there was no passing of legal title from one side to the other as a result of adverse possession ('squatters' rights'), he was able to conclude that the boundaries had not changed since the relevant conveyance.

If you have any issue regarding the correct boundary with neighbouring land, or a neighbour is occupying your land, we can assist you in seeking a speedy resolution without the need for expensive legal proceedings. Please contact Clive Hitchen on email: clive.hitchen@allanjanes.com for advice.

Long-term partner entitled to survivor's benefits

In a decision that could have significant ramifications for pension scheme managers, the Supreme Court has ruled that the long-time partner of a deceased man is entitled to a survivor's allowance from his local government pension scheme, despite not having been nominated to receive the benefit by the deceased.

The man died two days after the couple, who had been together for a decade, became engaged. He left no will.

The scheme rules require that unmarried members of the scheme must nominate their partners in order for them to be eligible for a survivor's pension. No such requirement is present with regard to spouses and civil partners. The surviving partner, who otherwise satisfied the scheme's conditions, argued that this stipulation was incompatible with Article 14 of the European Convention on Human Rights, which guarantees the right to 'peaceful enjoyment of possessions'...in this case, the rights under the scheme.

The ruling was specific to the Northern Ireland local government pension scheme as those in the rest of the UK do not have the 'opt-in' requirement. However, it remains to be seen what impact it may have on other pension schemes which have similar rules.

Additionally, in some cases there may be room for argument over the length and permanency of the

relationship needed to qualify for the survivor's pension, although there is established law in other areas which can help.

The real message of this case is that if there is a procedure to follow which can avoid legal action being necessary, it is best to act appropriately.

Similarly, making sure you have a valid will at all times is sensible: even if your estate is small, administration is much easier when there is a will.

For advice on all Private Client matters, contact Alex Stanier on alex.stanier@allanjanes.com or call 01494 521301.



The Apprenticeship Levy – are you ready?

On 6 April 2017, the way in which apprenticeships in England are funded changed. Some employers are required to pay a new apprenticeship levy, and there are changes to the funding for apprenticeship training for all employers.

The levy applies to all UK employers across all sectors, although different arrangements apply for how apprenticeship funding will operate in Scotland, Wales and Northern Ireland. The levy is set at a rate of 0.5% of an employer's wage bill, excluding other payments such as benefits in kind, and will be collected by HM Revenue and Customs via the PAYE system. Employers will receive an annual allowance of

£15,000 to be offset against the levy payment. The effect of this allowance is that the levy is only payable by employers with wage bills in excess of £3,000,000 (estimated as fewer than 2% of employers). Those with a lower wage bill will not pay anything.

The Government has published guidance explaining how the levy will work and the principles on which apprenticeship funding will operate from 1 May 2017. The guidance is aimed at all employers, not just those who will pay the apprenticeship levy.

The introduction of the levy will not affect the way in which training for apprentices who started an apprenticeship programme before 1



May 2017 is funded. Employers will need to carry on funding training for these apprentices under the terms and conditions that were in place at the time the apprenticeship commenced.

Bereavement Allowance simplification

In a simplification of the benefits system, the Government is replacing the current 'three-tier' system of bereavement benefits with a reformed benefit, Bereavement Support Payment.

The change is being introduced as part of the reform of pensions legislation and the payment will be available for anyone suffering the death of a spouse or civil partner. The new benefit replaces a complex system comprising a

bereavement payment and allowance, and a further allowance for those with children.

The payment will be £3,500 for those with minor children and £2,500 for those without. An additional payment of £350 or £100 respectively will be made for 18 months following the death. Payments will be tax free and not taken into account for the calculation of means-tested benefits.

Solicitor evidence crucial in proving Will valid

A recent case shows the importance of involving a solicitor in the preparation of a will, especially where it is considered that an attempt to invalidate it on the grounds of lack of mental capacity may be made.

It involved an elderly man who changed his will when he was 81 years old. His earlier will, made when he was 76, gave his business interests to his son, who also stood to inherit a quarter of his estate, the balance of his estate being left to other relatives.

However, fearful that his son would fritter away his share of the inheritance, the man changed his will so that his son stood to inherit his business only.

When he died, his son challenged the later will.

The critical evidence in the case was that given by the man's solicitor, who had no doubt that he had full mental capacity ('was of sound mind') at the time the second will was drawn up and so was capable of making a will that was both understood by him and reflected his wishes. The court ruled that the new will should stand.

Solicitors are trained to ensure that they satisfy themselves to the maximum extent possible that anyone who instructs them



to draft a will understands the effect of the will and is acting under their own volition, not under the undue influence of anyone else.

To ensure that your estate passes to those you choose and to minimise any chance of a successful legal challenge, contact Alex Stanier on email: alex.stanier@allanjan.es.com for advice.

Ignore the planners at your peril

A landlord who decided to go ahead with a property development after the planners had turned it down ended up significantly worse off after he was successfully prosecuted.

Having had his application to turn his existing property into nine flats rejected, the landlord decided to let the property out as multiple occupancy units in breach of planning permission. He was eventually served with an enforcement notice by the local council, which he ignored. As well as the letting being a breach of planning law, some of the rooms let were illegally substandard in size.

Eight years later, he was found guilty of various planning offences, with the result that his criminal profits were the subject of a confiscation order for more than £550,000 and he was ordered to pay a fine of £65,000 and £80,000 in costs. If the confiscation order is not satisfied within three months, the landlord faces a jail term of more than five years.

The temptation to ignore planning decisions and proceed regardless is not one which normally has anything to



recommend it. It can lead, as in this case, to dire consequences. Generally, property owners who engage on a reasonable basis with the local planning authorities have the best chance of being successful.

For information on what to do – and what not to do – as regards any planning or property development issue, contact Peter Collier on email: peter.collier@allanjan.es.com.

Tender non-compliance can prove fatal

It is normal for larger contracts to be put out to tender and, given how prevalent the practice is, it is surprising that failures to meet the tender specifications – which are often highly detailed and very specific – are as common as they are, especially where this results in the rejection of the tender documents.

A recent Scottish case shows how important it is to get the procedures right. It involved a council which issued a fairly complex tender specification for three tranches of demolition work. A demolition contractor submitted a tender application for the work that omitted some financial information on two of the parts and had other non-compliances.

The tender application was rejected. The demolition contractor, facing a serious potential loss of business,

made good the deficiencies the day it was informed its tender had been rejected for incompleteness of information.

The council declined to accept the revisions and closed the tender process. The demolition contractor went to court to force the council to reopen it.

The court refused to intervene. The council's decision had not been unreasonable or disproportionate.

The effects of failing to follow tender requirements precisely can be severe. We can advise you on the legal aspects of tenders and public sector procurement. Contact Iwan Emanuel on email: iwan.emmanuel@allanjan.es.com for advice.

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