Quarterly Real Estate Disputes Update

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March 2025

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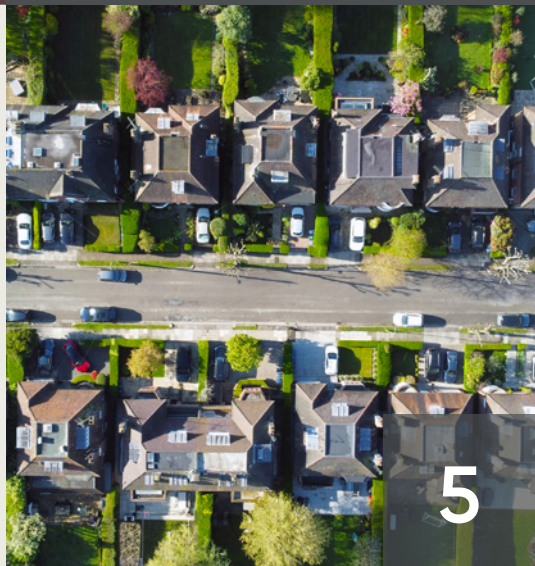
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Case 1: Handston Investments Limited v Abri Group Limited

The court refused to grant an interim injunction to pause construction that would significantly interfere with a neighbour's rights to light. Instead, the Court ordered an expedited trial.

What was it about?

- Handston owned a fully-let commercial building that had enjoyed an uninterrupted passage of light for over 20 years, thus acquiring rights to light by prescription.
- Abri purchased the neighbouring land in December 2023 with planning permission to construct a four-storey block of affordable flats that would interfere with Handston's rights to light.
- Shortly before construction work began, Abri's surveyors contacted Handston to offer a compensation payment for the significant loss of light that would be caused to Handston's building. Handston tried, unsuccessfully, to persuade Abri to redesign the scheme instead.
- Concerned that Abri were progressing the works regardless, Handston issued proceedings for an interim injunction to halt further development pending a final determination by the court of the appropriate remedy for the rights to light infringement.

What did the court say?

- The Court accepted there was a serious issue to be tried (which could ultimately result in a permanent injunction being awarded).
- The Court decided that it wasn't necessary to halt construction in the interim as Handston could be compensated financially for the loss suffered in the period up to the date of the expedited final trial.
- Relying on the *Midtown* case, the Court considered there were good prospects that damages, rather than a final injunction, would be an adequate final remedy. In any event, Abri offered an undertaking not to rely on any additional building works when resisting a final injunction.

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I decide the case on the basis that I am satisfied that in all the circumstances of this particular case damages will be an adequate remedy.

[2024] EWHC 3523 (ChD) [20]

Why is it important?

- The Court helpfully set out why the balance of convenience would, in any event, have come down against the grant of an interim injunction, citing: the delay in issuing proceedings; the public interest weighing in favour of the affordable housing; and the fact that there was no material complaint about the development from Handston's tenant.
- However, it is important to remember that these were factors considered in the context of an interim injunction hearing and does not necessarily mean that the developer would have been successful in defending a permanent injunction at trial.

Case 2: Beeches Capital v Hunt & Ors

The Upper Tribunal ("UT") granted the modification of a restrictive covenant, which prevented the erection of non-agricultural buildings, to allow a rural business and enterprise hub to be built.

What was it about?

- A 1959 restrictive covenant prohibited the erection of non-agricultural buildings on Beeches Farm.
- Beeches Capital (as owner of Beeches Farm) applied for the modification/ discharge of this covenant under section 84 of the Law of Property Act 1925, to allow it to implement a planning permission to demolish the former agricultural buildings and redevelop as a rural business and enterprise hub ("Proposed Scheme").
- The owners of the neighbouring property Drayton Holloway, which had the benefit of the covenant, objected. They claimed the Proposed Scheme would result in a loss of amenity arising from a loss of privacy and tranquillity; it would create light pollution; and it would lead to an intensification of business use within an agricultural area.

What did the court say?

- The UT compared the impact of the Proposed Scheme (which would breach the covenant) with the impact of a separate conversion scheme that the applicant could implement (which did not breach the covenant).
- When comparing the two schemes, the UT held that the covenant did not secure to the neighbour any practical benefits of substantial advantage and that the neighbour's marginal loss of amenity could be adequately compensated in money, in the sum of £15,000.
- The UT therefore modified the covenant to allow the Proposed Scheme, subject to Beeches Capital complying with the planning conditions attached to the permission.

Why is it important?

- The UT are willing to modify covenants even in cases where a loss of amenity (albeit marginal) can be shown. In this case, the UT balanced the competing interests of the parties by allowing a narrow modification, limited to a particular planning consent and conditions.

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Modification to permit a carefully specified scheme with 17 conditions attached is a measured step which neither precludes, nor sets a precedent for, any future applications on this land or other parcels of land at Beeches Farm which are subject to the restriction.

[2024] UKUT 414 (LC) [70]

Case 3: Iya Patarkatsishvili and Yevhen Hunyak v William Woodward-Fisher

A sale contract of a high-value residential property in London was reversed because the seller had given false replies about the extent of a moth infestation.

What was it about?

- A couple bought a £32.5m mansion in London, only to discover it was infested with moths. They claimed that despite installing 400 moth traps, they had to kill 10-35 moths per day, and even found moths on their toothbrushes, towels and wine glasses.
- Although it was caused by woollen insultation installed by the seller, he had stated in replies to enquiries that he was not aware of any 'vermin infestation', no relevant reports existed, and he was not aware of any relevant defects. The buyers argued that those statements were untruthful and amounted to fraudulent misrepresentations which unfairly induced them to buy the moth-infested mansion. They brought a claim to rescind (i.e. cancel and reverse) the sale contract.
- The seller denied any misrepresentations. He claimed that he did not consider there to be a moth problem and had not read any of the pest control company's reports (which were not 'reports' in his view). He argued that moths were not 'vermin', the buyers hadn't relied on the replies to enquiries (which were read by their agent) and it was too late for the buyer to rescind over 7 months after they became aware of the potential claim.

What did the court say?

- The court found that the seller had provided replies which he either knew were false or acted recklessly. The buyers had relied on those replies, which induced them to buy the house. Moths were vermin, and pest control reports were, in fact, 'reports'. The delay of 7.5 months was not excessive.
- Accordingly, the buyers were entitled to 'rescind' the contract. The property was transferred back to the seller, subject to a 'lien' (effectively a mortgage) for the full £32.5m purchase price (less an allowance for 5 years' occupation) plus interest of around £4.7m.
- The buyers were also awarded damages for additional costs incurred.

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Why is it important?

- This is a cautionary tale about the importance of answering replies to enquires carefully and accurately. The general principle of 'buyer beware' still exists, and sellers are not obliged to answer enquiries, but if they do, they must be honest.
- Misrepresentations can lead to significant financial liabilities and the risk that the sale contract is reversed.
- The claim has taken around 5 years and cost millions of pounds in legal fees. Buyers should carry out their own due diligence, as even where a misrepresentation claim exists, it is not an easy or quick remedy to pursue.

What a seller does have to do is provide honest answers to pre-contract enquiries, if they answer them at all.

[2025] EWHC 265 (Ch) [319]

Case 4: Khan v D'Aubigny

Documents that the landlord was required by statute to serve on the tenant before serving a section 21 notice were deemed served under the notice provisions of the AST.

What was it about?

- Mrs D'Aubigny occupied her flat under an assured shorthold tenancy (AST) from February 2018.
- In March 2020, her landlord (the Khans) attempted to recover possession of the flat by serving a notice under section 21 of the Housing Act 1988.
- Under various statutory regulations, a landlord of premises let under an AST cannot serve a section 21 notice unless they have served a valid EPC, Gas Safety Record and "How to Rent" checklist on the tenant.
- Mrs D'Aubigny received the section 21 notice, but claimed not to have received the three documents above. She therefore challenged the validity of the section 21 notice.
- The Khans' solicitors had sent the documents to Mrs D'Aubigny by first class post and recorded delivery. The Khans argued the documents were validly served, relying on section 7 of the Interpretation Act 1978, the notice provisions of the AST and a common law presumption.

What did the court say?

- Section 7 of the Interpretation Act 1978 provides that documents **authorised or required to be served by post** are deemed served if properly addressed, pre-paid and posted (unless the contrary is proved). In this case, neither the Housing Act 1988 nor the relevant regulations expressly refer to service of the relevant documents **by post**. They do not prohibit service by post, but they do not "authorise" or "require" it. Section 7 therefore did not apply.
- But the Court found that the documents were validly served under the notice provisions of the AST, even though the relevant documents were prescribed by statute and regulations and not the AST itself.
- The Court also found that the Khans could rely on the common law presumption that a correctly addressed letter sent in the post is presumed to reach its destination, unless proved otherwise (which was not the case here).

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Why is it important?

- When seeking to rely on deeming provisions in a statute or lease, it is important to carefully consider the nature of the document required to be served and the reason for service, to determine whether the deeming provisions can apply.
- In this case, the court took a broad interpretation of what constitutes a "notice" i.e. a written notification to a recipient, that has a formal purpose, and in this case, in connection with their relationship of landlord and tenant.
- This could also work the other way: the notice requirements/provisions in a lease could extend to a "notice" not expressly prescribed by a lease.

> **In the case of the tenancy agreement, therefore, I consider that a notice would include anything in writing by which the Khans or Mrs D'Aubigny formally notified the other of something in their capacity as landlords and tenant respectively.**
>
> [2025] EWCA Civ 11 [60]

Case 5: Stiaan van Zyl and Tersia van Zyl v Peter James Walker-Smith

A couple who removed a shared hedge and replaced it with a fence, without their neighbour's agreement, are found to have committed trespass, and are ordered to pay damages and costs.

What was it about?

- A dispute arose between leasehold neighbours concerning the boundary between their gardens at 34 and 36 Albany Crescent, Claygate, Surrey.
- Whilst the owner of No.34 was not residing in the property, and without his agreement, the owners of No.36 removed the hedge that separated the properties and replaced it with a fence. In doing so, they laid claim to all the land on which the hedge had been standing, plus a trifle more. The land involved was small, but the relative size of the gardens led the dispute to become of great significance.
- Unable to find a resolution, the owner of No.34 sought a declaration from the court that the hedge (prior to it being removed) marked the boundary.

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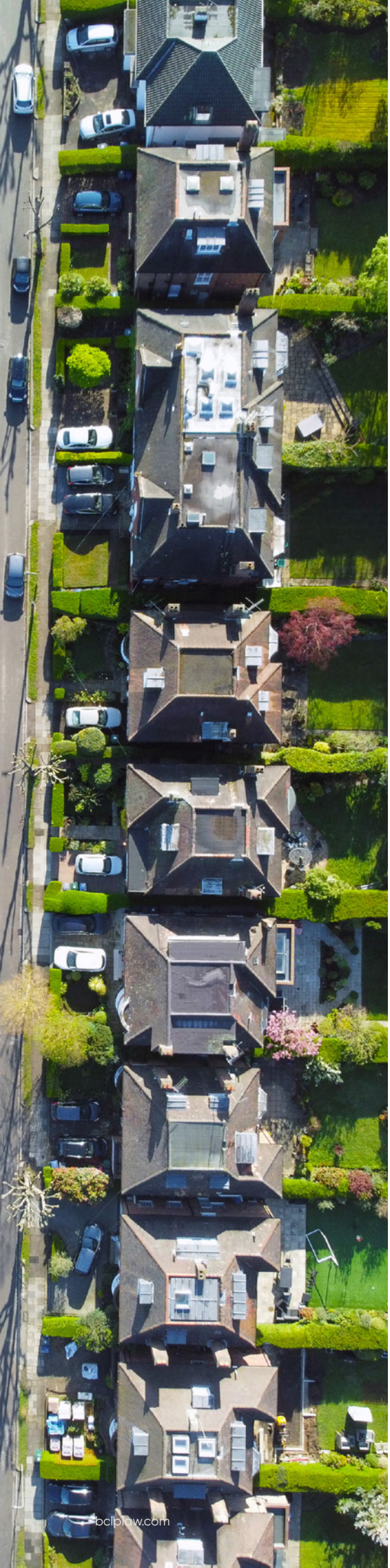

What did the court say?

- In reaching its conclusion, the court first identified the preeminent document, being the instrument that created the boundary; that was the No.34 lease, which was a transfer of part out of the wider plot, and predated the No.36 lease.
- The court then construed the preeminent document as a whole, starting with the words that demised the property. It also used a lease plan marked '*for identification purposes only*' as an aid to construction, noting that such words indicated that the plan did not precisely define boundaries. This can be contrasted to a plan that '*more particularly delineates*', which takes precedence over the words of the document.
- Physical features existing at the time of the preeminent document are also admissible evidence and should be used as an aid to construction.
- The County Court agreed that the boundary ran along the line of the now removed hedge and that the actions of No.36 in removing that hedge and erecting a fence encroaching into No.34 constituted a trespass.
- It has been reported that the owners of No.36 were ordered to pay costs and damages in excess of £27,000.

Why is it important?

- The decision is a helpful reminder of the relevant factors that should be taken into account when determining where boundaries lie.
- It also serves as a cautionary tale to anyone considering replacing boundary features without their neighbour's agreement.

Thus, a plan "for identification only" is admissible as an aid to construction of (here) the No 34 Lease, but it is not, of itself, the document being construed.

[2025] EWHC 136 (Ch) [18]

Getting in touch

When you need a practical legal solution for your next business opportunity or challenge, please get in touch.

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