Thomas Eggar

Propertylaw

October 2006

Welcome to Property Law.

In this edition we report on the enforceability of restrictive covenants and look at how landlords can obstruct a tenant's attempts to break their lease. We also focus on new legislation that has been introduced by the government to protect public rights of way from drivers of 4X4s, quad bikes and motor bikes.

With your help we would like to make the Property Law even better and have included a questionnaire so you can give us your thoughts on how we can improve the newsletter. Please complete the survey and send this back to us using the pre-paid envelope supplied – you could win a case of wine for your efforts!

If you would like advice on any aspect of commercial property law, please contact:

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Countdown to drawdown!

Many major developments involve project finance, often from one of the big high street lenders. The involvement of a funding bank means that the bank's interests and requirements have to be taken on board. Failure to produce construction documentation which is acceptable to the bank frequently causes cash flow problems and delays to the progress of the works – this can be very unsettling for the project team. In this article we look at how developers can speed up the loan application process.

The funding bank will normally set out the conditions that have to be satisfied before the bank will advance the loan (conditions precedent) in a facility letter. Careful planning is needed to ensure that the construction documentation is in a form which will be acceptable to the bank (sometimes referred to as 'bankability'). The bank's solicitors and monitoring surveyor will want to review and approve the construction documentation. It therefore pays dividends to plan, from an early stage, so that the documentation is in a format which is likely to be acceptable.

Here are some tips to help ensure the 'bankability' of the construction package from the outset:

1 Provide for contractor collateral warranties in the building contract

A bank will invariably require a collateral warranty from the building contractor. The contractor's collateral warranty will often be an important condition precedent to the initial drawdown. You need to ensure that the appropriate amendments are made to standard form building contracts which include providing for suitably worded collateral warranties.

2 Beware of using unamended standard form collateral warranties

Standard form collateral warranties published by the British Property Federation (BPF), the Construction Industry Council (CIC) or the Joint Contracts Tribunal (JCT) are commonly suggested for use. These forms are generally endorsed by bodies representing contractors, clients, professionals and their insurers, but not financial institutions. These standard forms will rarely be acceptable to a bank without amendment.

3 Provide step in rights in the bank's collateral warranties

This is an additional requirement in collateral warranties in favour of a bank, from contractors and professionals. The bank will require the option of 'stepping into' the borrower's shoes under the building contract or appointment if there is a default under the loan agreement or if the relevant contract is to be terminated.

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"...landowners who have been relying on vehicular public right of way to access their property may find that these rights have been extinguished..."

Could public rights of way be under threat?

Over the last few years our public rights of way have been increasingly suffering as a result of use from amongst others 4x4s, quad bikes and motor bikes. In response to this the Government has brought in new legislation to restrict the use of public rights of way by mechanically propelled vehicles (MPVs). However, the new legislation will not only affect the recreational motor bikers, but will also impact on other users such as home owners who rely on public rights of way to access their property.

What is a public right of way?

A public right of way is a defined route, for example public footpaths, bridleways and highways maintainable at the public's expense over which the public at large have a right to pass and re-pass.

The records

To ensure that public rights of way are identified and not lost through neglect, County Councils and the majority of London Boroughs are under a duty to keep a record of existing public rights of way in their area. A public right of way will be recorded on a definitive map and includes a statement indicating whether the right of way is a footpath, bridleway, carriageway, including a byway open to all traffic, or a road used as a public footpath (now classified as a 'restricted byway' as of 2 May 2006).

How are public rights of way created?

Most commonly, a public right of way is created by statute (for example public highways maintainable at the public expense) or by dedication and acceptance. Dedication and acceptance is where a landowner sets aside a piece of land for use by the public in perpetuity and the public accept this dedication by exercising those rights over the land.

It is not necessary, however, for a landowner specifically to dedicate a piece of land as a public right of way. Dedication and acceptance can also be implied or presumed. If a route has been used by the public for 20 years without interruption, a right of way will usually be created unless the landowner can show that there was no intention to dedicate the land for use by the public at large. There are many thousands of kilometres of land that have become public rights of way by presumed dedication and acceptance.

Problems have occurred because use by a non-mechanically propelled vehicle of a route for 20 years, or dedication by a landowner for such use, gives rise to a public right of way for all vehicles. We are, therefore, seeing cases where public rights of way created in the times of horse-drawn carriages are now being used by quad bikes and other recreational vehicles, for which purpose the land is often unsuitable.

New provisions to the Natural Environment and Rural Communities Act 2006 came into force during May 2006 to restrict the use of public rights of way to MPVs and limit the creation of further public vehicular rights of way. A summary of the legislation is as follows:

Existing public rights of way

A public right of way noted on the definitive map and statement as 'a road used as a public footpath' has now been re-classified as a 'restricted byway' (by virtue of Section 47 of the Countryside and Rights of Way Act 2000). A restricted byway is a public right of way for people on foot, on horseback or leading a horse or on vehicles, other than MPVs.

Furthermore, use of a restrictive byway by a MPV is a criminal offence except in certain circumstances, such as landowners who rely on use of public rights of way by MPVs in order to access their property.

Exceptions to the legislation

With the exception of some London Boroughs the new legislation removes existing public rights of way for MPV's unless they are recorded on the definitive map and provided they are not classified as either a footpath, bridleway or restricted byway. There are a number of exceptions to this, such as public highways maintainable at the public expense and routes specifically created for use by MPVs. There are also exceptions for roads that were used by MPVs prior to 1 December 1930, existing applications to record public rights of way for MPVs on the definitive map and routes which have mainly been used lawfully by MPVs for a period of 5 years prior to 2 May 2006.

As a result of these changes, landowners who have been relying on vehicular public right of way to access their property may find that these rights have been extinguished as they may not be recorded on the definitive map and statement. In these cases, they will acquire a private vehicular right of way to access their property. The legislation is not helpful in defining what kind of right of way may be created. Until it becomes clear, it would be advisable to attempt to register the right with the Land Registry.

Restriction on the creation of future public rights of way for MPVs

The legislation goes further in restricting the creation of new public rights of way for MPVs. It is no longer possible to create a new public right of way for MPVs by implied or presumed dedication. New public rights of way for MPVs can only be created by statue or on terms which expressly provide for it to be a right of way for such vehicles. Developments in particular may be affected by this, as it may not be enough that the developer clearly intends to dedicate an estate road as a public highway and it is being used as such. A written or at least oral statement stating that the road is for use by MPVs may be required to ensure that a public vehicular right of way is created.

Conclusion

The new legislation has been introduced to protect our country lanes and tracks from being damaged by motor bikes, quad bikes and four wheel drive vehicles. This protection has had some unexpected consequences, however, as landowners may find that they no longer have the right to access their property using MPVs via public rights of way, What they have instead is a private right which may need to be registered. It will be some time before we see what impact this new legislation will have.

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Focus on private landlords

Landlords and managing agents who manage and grant Assured Shorthold Tenancies will be affected by provisions in the Housing Act 2004 relating to tenancy deposit schemes (TDS), the implementation of which has been delayed.

The purpose of introducing a TDS is to safeguard such deposits from being misappropriated and provide an effective method of resolving disputes which often arise at the end of tenancies when landlords are reluctant to release deposits. It is hoped that the proposals will put an end to the previous abuses where landlords have held onto deposits on the pretext that the tenant has been in default or for some other spurious reason.

The government's aim is for independent scheme administrators to manage TDSs and for such to be self-financing. The proposals envisage two alternative types of schemes known as the custodial scheme and the insurance based scheme. The landlord is obliged to ensure that he complies with the requirements of the scheme within 14 days of receiving the deposit and informs the tenant within that period.

Custodial scheme

The proposal for a custodial scheme requires the landlord to make payment of a sum of money representing the deposit into a designated account held by a scheme administrator who will charge a fee for the service.

Insurance based scheme

Under the insurance based scheme the landlord retains the deposit and is obliged to pay an insurance premium to a designated third party, also known as a scheme administrator. The insurance protects against the landlord losing or misappropriating the deposit. If there is a dispute between the landlord and tenant the monies must be paid over to the scheme administrator.

Position at the end of the tenancy

The tenant will make an application to the landlord or scheme administrator at the end of the tenancy. If there is agreement between the landlord and tenant, the deposit is returned with accrued interest. If there is disagreement then the deposit is only returned after the dispute has been resolved.

Dispute resolution

The schemes are obliged to make available alternative dispute resolution mechanisms to enable the parties to try to resolve disputes without resort to court. It is not clear at present how such services will be provided but a number of County Courts already provide a mediation service. If the dispute cannot be resolved by mediation, the parties can ask for the courts to intervene.

Non compliance

If the landlord fails to comply with its duties concerning deposits the Act enables the court to order that deposits are paid in to an appropriate scheme or for the landlord to take up the insurance related scheme. If the court makes an order then the landlord will also be ordered to pay a penalty to the tenant amounting to three times the value of the deposit. Also, if a deposit has not been dealt with under the Act, the landlord is unable to serve a Section 21 Notice and regain possession of the premises until he has complied with the requirements of the Act.

Landlords and managing agents will need to be fully acquainted with the new requirements when they come into effect. At present, the date for implementation has been delayed. Whilst the government are fully committed to the scheme, the primary legislation may require amendment first.

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"For most developers the search for the Holy Grail has long since subsided..."

Restrictive covenants - are they enforceable?

Restrictive covenants can pose serious problems for developers but two recent cases may offer some assistance in cases where the usual safeguard of restrictive covenant indemnity insurance is not available.

As any developer will be all too aware, the chances of identifying a potential development site that is not subject to restrictive covenants which are potentially prejudicial to that site's development are rare indeed. Given the emphasis in planning terms upon infill development in existing residential areas, finding a site for infill development which is not burdened by such covenants would be akin to discovering the 'Holy Grail'.

For most developers the search for the Holy Grail has long since subsided and obtaining restrictive covenant indemnity insurance is now accepted as a routine part of the acquisition of a site, and a cost factor is built into the budget for most developments. Indemnity insurance is widely available at competitive premiums with the only significant remaining area of difficulty being building scheme covenants which are still viewed by many insurers as representing a risk too far and can therefore scupper the most promising development.

Notwithstanding the availability of restrictive covenant indemnity insurance, it remains essential when faced with a property that is subject to restrictive covenants (that are potentially prejudicial to the proposed development) to consider whether the covenant remains enforceable. If so, it is important to consider further whether any action can be taken to have the covenant modified; this is of particular importance for a property which is affected by building scheme covenants rendering it uninsurable.

Two cases decided by the courts this year, *Small (Hugh) v Oliver & Saunders (Developments) Limited* and *Shephard v Turner*, may provide help for the development which appears to be blighted by restrictive covenants.

Is the covenant enforceable?

The essential ingredients for the creation of a binding restrictive covenant are well grounded in case law and space restricts the ability to deal with those in this article.

When it comes to deciding whether a covenant is now enforceable one particular question which has exercised the courts in recent years is whether the benefit of the covenant has passed to the person now seeking to enforce it. If it has not, then the covenant will not be enforceable. The first of the two cases decided this year, the High Court case of *Small (Hugh) v Oliver & Saunders (Developments) Limited*, contains a useful summary of the means by which the benefit of a covenant can be passed to the person seeking to enforce it. In simple terms, the benefit can pass by express assignment, by a building scheme arrangement, or by statutory annexation.

Express assignment of the benefit of the covenant to the claimant, is the most simple of these methods and will usually encounter little difficulty in enforcing a covenant if existence of an express assignment can be shown to exist.

Building scheme covenants are those covenants which are imposed upon a number of properties by a common vendor, usually upon a new development, and are expressed to benefit all owners of the properties which are subjected to the covenants.

Statutory annexation is the most common method by which the benefit of a covenant passes and it has been the subject of two high profile cases. The first was the 1980 case of Federated Homes which decided that even if a covenant did not appear from the document creating it to benefit future owners, Section 78 of the Law of Property Act 1925 would assist and annex the benefit of the covenant to the land intended by the original vendor to be benefited, in the absence of a contrary indication, and thus enable the covenant to be enforced by the current owner of that land. The scope of the Federated Homes case was somewhat limited by the more recent Crest Nicholson case decided in 2004 and which clarified the position by confirming that for Section 78 to assist, it must still be possible from the document imposing the covenant (if necessary with the aid of external evidence) to identify the land which was intended to benefit from the covenant. In the Crest Nicholson case the claimant failed in her efforts to enforce the covenant because the land intended to benefit could not be identified.

In the *Small v Oliver & Saunders* case the court found that the benefit of the covenant did pass to the land of the claimant by statutory annexation as there was a clear indication of the land intended to benefit in the original document. The

facts of the case make interesting reading as the developer was seeking to use the property as a means of access to a larger development. The property was subject to a covenant restricting the use of the property to a private residence and the court found that use as an access breached this covenant. The claimant was seeking an injunction which the court declined to grant as to do so would in its view be oppressive. The outcome of the case was therefore that the claimant received damages for the breach of covenant but because his was one of forty eight properties which also had the benefit of the covenant the claimant was only entitled to damages of £3,270, being one forty eighth of the total damages to which all claimants together would have been entitled.

Can the covenant be modified?

It will not be every case in which faced with a clear breach of covenant the court declines to grant an injunction or awards modest damages and if so the question which next arises is what, if anything, can be done to save a situation where there are enforceable covenants which have been breached and where an injunction is the most likely remedy? The second of the cases mentioned at the outset of this article, the Court of Appeal case of *Shephard v Turner*, is a case in question.

The Shephard case deals primarily with an appeal by the aggrieved next door neighbour against a decision by the Lands Tribunal to modify the covenant in question, thus permitting the development which would otherwise have been in breach of the covenant. The Lands Tribunal are given the power, under Section 84 of the Law of Property Act 1925, to modify or discharge restrictive covenants where the original purpose of the covenant has over time become inappropriate. Section 84 sets out a number of grounds for an application to the Lands Tribunal but the most commonly used is Section 84(1)(aa) which permits the Tribunal to act where the covenant impedes a reasonable use of land, provided that the covenant does not secure continuing practical benefits of substantial value or is contrary to the public interest, and where monetary compensation will be an adequate remedy.

In the Shephard case the developer owned a large plot of land at the end of a cul de sac. The claimant was a neighbouring owner. The developer's plot was subject to two restrictive covenants, the first restricting the use of the plot to a private dwelling house, and the second being a covenant against causing any nuisance or annoyance to neighbouring owners. The developer obtained planning permission to build a second house on the plot. There was no argument in this case as to the enforceability of covenants and the claimant sought and obtained an injunction preventing the construction of the second house in breach of the covenant. It was, however, made clear that the developer would seek to have the covenant modified by the Lands Tribunal and the court suspended the injunction pending the decision of the Lands Tribunal. The developer applied to the Lands Tribunal under Section 84(1)(aa) for modification of the covenant which was successful with the Tribunal deciding that use of the plot to construct the second house was reasonable and that the practical benefit to the claimant's land of the restrictive covenant would not be significantly reduced by the construction of the second house. The Tribunal awarded compensation to the claimant ranging from £200 to £700 for modifications imposed. The aggrieved claimant's appeal to the Court of Appeal found nothing incorrect in the decision of the Tribunal and dismissed the appeal.

These two cases show that even in cases where for whatever reason indemnity insurance is not available, the consequences to the developer of carrying out development in breach of a covenant are not always disastrous. It will remain the position that in the vast majority of cases, developers, when faced with restrictive covenants, will be prepared to incur the cost of an indemnity insurance policy premium for peace of mind and in order to avoid the delay and uncertainty of litigation. In those cases where a policy is not available there may still be light at the end of the tunnel in the guise of the Lands Tribunal or the level of damages awarded to the beneficiaries of the covenant.

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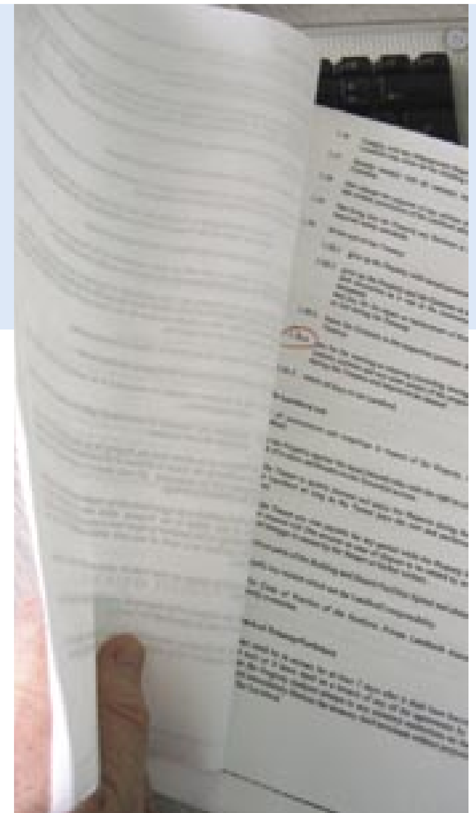

Break clauses in business leases

It is common to find leases containing break clauses that operate in favour of the tenant given any opportunity to end the lease term early, subject to giving written notice. Whilst the wording of break clauses is often quite straightforward they are sometimes drafted so as to be conditional upon the tenant complying with certain requirements.

This need for compliance can make the break clauses conditional and if the tenant does not comply with those conditions the break clause can be ineffective. The recent case of *Fitzroy House Epworth Street (No 1) Limited v Financial Times Limited* highlighted the need for the tenant to take care when exercising a break clause.

The tenant occupied Castle House under a 16 year lease which was granted on 1st April 1994. The tenant had a break clause that it could operate on the tenth anniversary on 1st April 2004. The rent for the office building was £595,000.

The wording of the break clause is quite typical and it required the tenant as a condition of operating the break clause to have 'materially complied' with all of the tenant's obligations up to the break date.

The tenant acted in a very prudent fashion and appointed surveyors to advise on compliance with the obligations in the lease some time prior to the break date. The surveyors prepared a schedule of dilapidations and invited the landlord to participate in the process of assessing the dilapidations. The landlord declined to get involved. By 1 April 2004 when the tenant had vacated the premises, over £1,000,000 had been spent on decorations, repairs and renovations to the building. The landlord was not satisfied that the tenant had 'materially complied' with all of its obligations and applied to court for a declaration to that effect. The landlord relied on his own surveyor's schedule of dilapidations which valued the works the landlord claimed as outstanding at over £200,000. The tenant's surveyors upon receipt of the landlord's schedule advised the tenant to admit some minor breaches amounting to just over £14,000, but argued that these breaches were not 'material' and that the break clause was effective. In the first instance the Judge found in favour of the tenant and the landlord appealed. The lower court assessed the value of the tenant's breaches which did not exceed £20,000. This figure was not disputed on appeal and the Court of Appeal looked at the effect of the outstanding repairs on the landlord's ability to re-let or sell the property. Evidence was received from a lettings expert and this showed that the effect of these outstanding repairs would enable an incoming tenant to validly argue for an additional nine days rent free (approximately £15,000). The Court of Appeal held that when considering the question of materiality by reference to a landlord's ability to re-let or sell the property without delay or additional costs, these breaches by the tenant were not material and that the tenant had validly broken the lease using the break clause.

In the Judgment the court went on to set out some principles to be applied to the operation of break clauses:

1. If an absolute requirement for compliance with the lease is qualified by reference to the words 'material' or 'substantial' the materiality must be assessed by reference to the landlord's ability to re-let or sell without delay or additional expenditure

2. If the word 'reasonable' appears in the clause the test is to apply the literal definition to the facts

3. Building surveyor's evidence to assess the extent of non-compliance will be essential

4. Lettings expert evidence will be needed to assess the impact of the breach on the landlord's ability to re-let or sell without delay or additional cost

5. When assessing non-compliance the test is objective and the parties' conduct and motives are irrelevant

6. A landlord may protect his position by refusing to get involved in negotiations on the matter of whether or not the tenant has complied with his obligations

7. Where the provision in the lease is absolute, any breach, no matter how minor or trivial, will prevent the tenant from operating the break clause.

All too often the operation of a break clause is left to the last minute and undertaken by the tenant without taking advice from his solicitor and surveyor. This course of action can lead to the tenant failing to properly operate the break clause which in the vast majority of cases will be an extremely unsatisfactory outcome.

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"There are complicated rules as to how many shares may be allocated, and the freeholder should take care to make an application for shares, so as to protect its future interests..."

Right to manage from the landlord's perspective

The right to manage provisions ('RTM') contained in the Commonhold and Leasehold Reform Act 2002 ('the Act') have been in force for almost three years. In brief, the Act gives qualifying leaseholders of flats the right to acquire and exercise management rights in respect of their block through the medium of a company called an RTM Company.

The RTM is available to leaseholders regardless of the competence or track record of the existing landlord or managing agents and there is no need to prove any default. Provided the leaseholders qualify and meet various statutory requirements, there is unlikely to be any legitimate basis to defeat a claim submitted by not less than half of the leaseholders in the block. The RTM is entirely separate from the right to acquire the freehold interest in the block and it should be noted that as yet the right to enfranchise provisions of the Act are still not in force (and apparently may never be implemented), leaving intact the earlier enfranchisement provisions contained in the Leasehold Reform Housing and Urban Development Act 1993. Participating leaseholders need not be resident in the block. The main reason for claiming the RTM has been tenants' dissatisfaction with the standard of the freeholder's management arrangement.

There have been reports that many freeholders have proved obstructive during the RTM process. There have been cases where landlords have argued that the RTM company's claim did not qualify, for example on the basis that the total number of flats held by the qualifying leaseholders was less than two thirds of the total number of flats contained in the block. (Although it only needs 50% of leaseholders to participate, not less than two thirds of the block must be let on qualifying long leases). There have been arguments as to whether a basement formed part of a building when it contained some cellar rooms which happened to be used by a tenant. Other attempts to frustrate the leaseholders' right to manage include the contention that the RTM company was not validly constituted as it had not held a company meeting (rejected) and that a building which appeared to be a single block was in fact two separate blocks of flats divided by a party wall (also rejected). In that case the two buildings had been constructed as one and shared common services, and the 'party wall' amounted to little more than an architectural feature.

Landlord clients of ours were on the receiving end of an RTM claim very soon after the Act came into force. Things got off to an unsatisfactory start following service of the Notice by the leaseholders at the landlord's registered office (which was quite proper) but where the implications were unfortunately not appreciated, and as a result it was not possible to serve a Counter Notice disputing the claim (had the landlord wanted to do so), since the strict time limits for a response were not observed. In any event, the grounds for objecting to a claim are few. As far as the completion of the transfer of management is concerned, there will be no formal documentation but it is important that before handing over all the records and service charge balances (including reserve funds) held by the landlord or its agents, full details are retained and possibly an interim audit is arranged. The outgoing managers will need to ensure that this is undertaken at the cost of the lessees, recoverable through the service charge. It would be prudent to retain some monies for a period until expenditure incurred by the landlord or its agent has been billed and paid for. Note that the Leasehold Valuation Tribunal has no jurisdiction to make any directions to facilitate the transfer of management, and this will be a matter for the County Court.

The freeholder (and anyone who is a landlord under a lease of the whole or part of the block, such as an existing Management Company) is entitled to be a member of the new RTM Company once it has completed the take-over of management. There are complicated rules as to how many shares may be allocated, and the freeholder should take care to make an application for shares, so as to protect its future interests in the block and other rights, such as the right to attend meetings.

Future management of the block will however, be in the hands of the RTM Company, which will be responsible for granting consents to sales of leases and for alterations to flats, even though such alterations might affect the structure of the block.

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4 Get consultant appointments and warranties agreed ASAP!

Designers are often appointed at an early stage, prior to finalisation of the loan documentation. The bank will expect to see formal deeds of appointment. This can take time as the professionals' insurers will want to approve them. The earlier the proposed forms are put to the professionals the better. The best way of doing this is to show the professionals the required documentation from the start.

5 Check the designers have the appropriate insurances

In the event of a substantial claim, most designers would not be worth suing without professional indemnity insurance. The level of insurance needs to be acceptable to the bank's monitoring surveyor. A number of factors need to be considered as even where a small amount of design goes wrong, there can be grave financial consequences.

6 Find out what the bank wants before initial drawdown

The bank will often impose minimum requirements before the initial tranche of funding is released. From a construction point of view this would normally include a certified copy of the building contract, a contractor's warranty and evidence of appropriate professional indemnity insurance.

You should also clarify the bank's requirements, if any, for subcontractor collateral warranties. Obtaining these can be time consuming, so where possible limit your obligation to using reasonable endeavours from pre specified subcontract packages.

It is worth investing time at an early stage to ensure the construction documents issued are 'bankable', at the same time giving the team involved the maximum advanced notice of what is required. This will allow time for any issues to be resolved at the earliest possible stage, before the planned cashflow for the project is affected.

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A secure car parking space?

The recent Court of Appeal decision in the case of Pointon York Group Plc and Poulton (2006) acts as a reminder of what constitutes 'occupation' and 'premises' for the purposes of renewal under the Landlord and Tenant Act, 1954 (the 1954 Act).

It is possible to have security of tenure under the 1954 Act and hence have renewal rights by virtue of occupation of car parking spaces for the purposes of, or in connection, with a business, even though the lease reserves the right for the Landlord to move the tenant to other car parking spaces or limit the use of the car parking spaces to specified hours. It is common in leases of, for example, multi-let offices, for a landlord to grant a right to the tenant to use car parking spaces in connection with its use of the let premises subject to such provisions.

Whether there is occupation is a matter of fact and degree. It is sufficient to occupy premises for the purposes of the 1954 Act if the tenant is using them in a manner that is consistent with the business for which the office premises (the subject of the lease) are used. A car parking space is therefore capable of being occupied even if limited to a specified period during the day.

The Court of Appeal in the Pointon Case took a pragmatic approach to the fact and degree of occupation. They have shown that they will not apply different meaning to the words in the statute in the 1954 Act unless there is clear evidence that a different meaning was in fact intended. They found that car parking spaces can be occupied and for the car parking spaces to be capable of being described as premises – they were comprised in the lease and were occupied.

As with all documents that are labelled licence or agreement if they contain the elements of a lease in the event of a dispute that is what a court will determine it to be and hence the potential of such a decision is likely to be the reverse of the landlord's intention.

Landlords should review any arrangement granting a right to use car parking spaces to see whether or not on the basis of the Pointon case in the event of dispute the arrangements could be afforded protection under the 1954 Act and all that ensues from such protection.

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The register can be accessed via the Financial Services Authority website at www.fsa.gov.uk/register. We can also provide certain further limited investment services to clients because we are members of the Law Society if those services are incidental to the professional services we have been engaged to provide. A comprehensive range of investment services and advice is provided by Thesis Asset Management plc, our associated financial services company, which is regulated by the Financial Services Authority.

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