

March 2007

HILL DICKINSON

Commercial Property Newsletter

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OFFICIAL LAWYERS
EUROPEAN CAPITAL OF CULTURE

Welcome

Welcome to the first commercial property newsletter of 2007, which we hope you will enjoy.

Hill Dickinson's property team continues to grow and we are delighted to report that over the last few months we have recruited several highly experienced practitioners to the team.

Alaisdhair MacPhie, partner, has joined our Manchester office from Ricksons, where he was head of property. He brings with him 30 years of experience in the commercial property sector, with particular expertise in the automotive, property development and leisure sectors, as well as niche areas such as pharmaceuticals and charities.

John Holmes, a leading planning expert with a national reputation, has joined our Liverpool team from Pannones as an associate, strengthening the firm's planning expertise and specialist environmental capabilities. John also has 30 years' experience and worked for several local authorities as well as the Environment Agency as a senior legal advisor before entering private practice in 1999. John has contributed an article to the newsletter and this can be found on pages 6-7.

These appointments to the commercial property team follow the arrival of Alistair Johnson as a partner from Halliwells in the autumn. Alistair specialises in property finance and commercial and residential development.

The property litigation team has also been bolstered by the recent arrival of Matthew Forrest, a property litigation and dispute management specialist.

And all this is on top of the recent merger with Hill Taylor Dickinson announced in the last edition, which has given us a London-based property team led by Richard Taylor, a highly experienced and respected commercial property solicitor.

We are pleased to be able to continue to attract high calibre, high profile legal experts to the team. These latest additions will complement our current property expertise while enhancing the service offered to clients.

Pamela Jones & David Swaffield
Joint Heads of Commercial Property

Guest Article: Compulsory Purchase

This quarter's Guest Article has been contributed by Paul Moran, Managing Partner of Mason Owen & Partners, property consultants.

The last ten to fifteen years have seen increasing emphasis on regeneration and redevelopment in many towns and cities across the country. Everywhere you go there is evidence of this type of activity going on, with Liverpool and Manchester leading the way in the North West.

One of the difficulties facing any developer is the ability to assemble a site for redevelopment. Many years can be spent persuading property owners to sell but all the hard work can be undone by an owner who spots a ransom opportunity, or who simply does not wish to become involved. It is usually true to say that the more property interests there are to acquire, the more problems there will be.

Compulsory Purchase powers were originally made available to Central and Local Government agencies to facilitate projects which were seen to be in the public good. Thirty to forty years ago the main use for these powers was to enable public projects such as slum clearance schemes or new roads, motorways and airports.

In recent years there has been a major expansion in the number of schemes where Local Authorities work in partnership with the private sector to bring about redevelopment or regeneration. The 42 acre, £500 million Paradise Scheme in Liverpool is an example of such a Partnership. The City Council has used its Compulsory Purchase powers to assemble the site, while Grosvenor has supplied the money and the expertise to bring the scheme to fruition. Nobody denies that the scheme will be good for the city of Liverpool.

It is not only large schemes that benefit from this partnership approach. Many small, highly focussed schemes, which may only involve a relatively small number of interests, are now being facilitated by the use of Compulsory Purchase powers, and many small developers who would never have dreamed of being able to make use of such a partnership are now finding it working to their advantage.



The flip side of this particular coin is that many more property owners are finding themselves facing the prospect of losing their property as a result of Compulsory Purchase action. For many owners (and many of their advisors!) it can be an intimidating prospect.

It is important to remember that the service of a Compulsory Purchase Order should not be seen as the end of the world. Affected parties can object to the application for powers, and if they do a Public Local Inquiry must be held. There may be a temptation to think that these things are a foregone conclusion, but take heart from a recent case in Liverpool where a single residential occupier succeeded in quashing an important Compulsory Purchase Order because she identified a defect in the Order documentation.

Once an Order is confirmed, and a property is taken, claimants are entitled to receive compensation. The aim of the legislation is to put claimants in the same position after dispossession as they were in before it happened, in so far as payment of a cash sum can do this. It is accepted that the impact can be traumatic and costly, but claimants are entitled to receive an advance payment of compensation, which would have to be based on estimates of costs and charges, of up to 90% of the acquiring authority's estimate of compensation. This can be of significant help in keeping overdraft charges down and oiling the wheels of any relocation.

It is absolutely essential to bear in mind that the claimant has a duty to mitigate his or her loss, and also that the onus is on the claimant to prove that a loss has been suffered.

A detailed explanation of what can be claimed in compensation is beyond the scope of this article, but a basic summary is set out below:

1. The value of a claimant's property interest, plus
2. (a) Reimbursement of reasonable costs incurred as a direct and natural consequence of relocating to alternative premises, including temporary and permanent loss of profits OR
(b) If relocation is not possible, the value of the business which is extinguished

(but note that a claimant must be able to demonstrate why relocation has not been possible. A claimant would normally be expected to relocate. An automatic entitlement to compensation based on extinguishment only exists in respect of business owners aged 60 or over)
3. Reimbursement of reasonable legal and surveyors' fees incurred in negotiating the claim and finalising the legal formalities of the compulsory acquisition
4. In addition, statutory loss payments are also available



Negotiations regarding compensation can be protracted, but there is recourse to the Lands Tribunal if agreement cannot be reached. It is important to remember that any reference to the Tribunal must be made before the sixth anniversary of possession being taken.

In many situations, authorities and developers will offer to negotiate in advance of an Order being made. This suits them as it speeds things up. It may suit some claimants, but any such negotiations should be on exactly the same basis as if the Order had been made, and an undertaking to pay compensation in accordance with the statutory framework should be obtained before negotiations commence.

Compulsory Purchase situations can be stressful, but if handled properly, the overall financial impact can be kept to a minimum, and there may even be long term benefits to be obtained from a relocation.

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Hill Dickinson in Court of Appeal Success

Property Litigation expert, Rachel Watkin of Hill Dickinson LLP Solicitors in Chester, has recently achieved Court of Appeal success on behalf of her clients, Trevor Williams and Rita Hibbitt.

Mr Williams and Miss Hibbitt are the owners of a property by the river on Sandy Lane in Chester. They purchased their property in 1975 and since that time have accessed it via a plot of land situated to the North. They initially used what has become known as “the secondary route” to access their property on foot, as had their predecessor in title, and then subsequently commenced driving to their property via a slightly different track known as “the primary route”.



The case was complicated due to the fact that Mr Williams’ boathouse stood on part of the land which he occupied under the terms of a commercial lease.

Mr Williams’ lease was renewed in 1990, at which point it was made clear that part of the land over which the primary route ran was subject to the tenancy. Also, it was stated within the Lease that Mr Williams was to “*take all reasonable steps to prevent...the acquisition of any easement over the premises...*”.

In 2003, the land was purchased from Chester City Council by the respondent development company who applied for planning permission.

The proposed development involved developing the land subject to the right of way and would have resulted in the complete obstruction of any access to 20 Sandy Lane.

Proceedings were initially brought against Mr Williams under the Landlord and Tenant Act 1954. These were settled upon Rachel Watkin advising Mr Williams to agree to vacate the land upon which the boathouse stood as soon as planning permission was granted. However, at the same time, proceedings were commenced in the High Court for a declaration confirming that Mr Williams and Miss Hibbitt had obtained a right of way by prescription along both the primary and secondary routes.

Unfortunately, at first instance, although the Trial Judge accepted that Miss Hibbitt and Mr Williams had used the track as claimed for more than 20 years uninterrupted, he believed that there had been an absence of the necessary acquiescence by the freehold owner, Chester City Council. He did not accept that the Council had the knowledge, either actual or constructive, which was essential for the acquisition of an easement. Further, in respect of the secondary route, the Trial Judge found that this had been abandoned.

Upon the advice of Hill Dickinson, Mr Williams and Miss Hibbitt appealed to the Court of Appeal. The Appeal was allowed.

Lord Justice Chadwick found that where the user predated the grant of a tenancy, provided that the freeholder had the requisite knowledge at or before the date of the grant, it was immaterial whether the terms of the tenancy were such that the owner of the freehold could take steps to prevent the user as the land owner could have taken the necessary steps prior to the grant. If the owner then grants a tenancy on terms which prevent them from taking action in the future, it could be said that they have properly acquiesced.

Lord Justice Chadwick accepted that the Council had knowledge, as a copy of a letter dated May 1984 from Miss Hibbitt clearly stating that she believed she had acquired an easement had been forwarded to them and this was not challenged.

The Judge’s decision in respect of the abandoned secondary route was also overturned on the basis that a right of way is not lost merely by non-user and the necessary intention to abandon had not been proved in this case.

Commenting on the case, Rachel said: “Although I felt quite positive after the hearing before the Court of Appeal, I was extremely relieved to receive the Judgment as you can never be absolutely certain. The Judgment found for our clients on all counts.

“I am extremely pleased for both clients. They have preserved not only the value of their property but also their way of life. I am extremely proud of them both for having the belief they had in their case and, of course, their legal team to see this matter through. Miss Hibbitt has been resolute and determined throughout and, as a result, has been rewarded for her efforts.”

Occupation and Renewal of Business Tenancies

Section 23 Landlord and Tenant Act 1954 provides that the rights to renew and the entitlement to statutory compensation contained in Part 2 of the Landlord and Tenant Act 1954 apply to “any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes”.

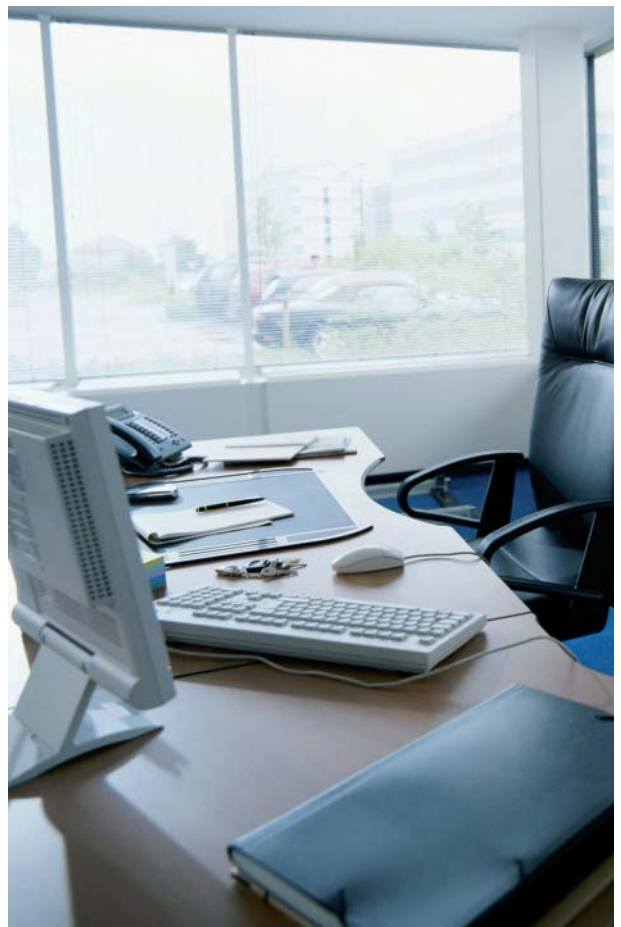
The recent decision in the Court of Appeal in Pointon York Group Plc -v- Poulton [2006] EWCA Civ 1001; [2006] 38 EG192 sheds light on what is meant by “occupied for the purposes of a business”.

Pointon had a lease of offices in Leicester for a term expiring on 23 June 2005, which also included the right to use 7 car parking spaces. It had in turn sub-let the premises for a term ending on 20 June 2005, i.e. three days before the expiry of its own lease, although it did not assign the benefit of the car parking spaces to the sub-tenant, but continued to make use of them itself.

At the beginning of 2005, some six months before the lease and the underlease were due to expire, Pointon decided that it wanted to reoccupy the premises when the sub-tenant vacated and made known this intention to its landlord, Poulton.

The sub-tenant duly vacated on 21 June 2005, but by the time Pointon’s lease expired two days later, Pointon had not installed any equipment or begun trading from the premises. It had inspected the property when the sub-tenant vacated and was in the process of organising the necessary cabling and other fitting out works required for its business. On 24 June 2005, the day after the expiry of Pointon’s lease, Poulton changed the locks and clamped Pointon’s cars in the parking spaces, on the basis that as at the date of expiry of the lease, the tenant was not occupying the premises for the purposes of a business carried on by it.

Pointon argued that it did not need to be physically present and all that was required to satisfy Section 23 of the 1954 Act was that the premises were being used in relation to its business and were not occupied by any other party or used for a non-business purpose. Poulton argued that a tenant who has not yet started to trade from the premises cannot be said to be in business occupation.



The Court found for the tenant, relying on an earlier case (Bacchiocchi -v- The Academic Agency (1998)), in which it was held that permanent occupation was not required for a tenant to be in business occupation; and also held that Pointon’s involvement in supervising the sub-tenant’s remedial works upon expiry of the underlease and providing for its own resumption of occupation was sufficiently incidental to its business to qualify as business occupation anyway.

More surprisingly, the Court of Appeal held that the use of the parking spaces by Pointon was sufficient to bring the tenant within the protection of the Landlord and Tenant Act 1954. Although the parking spaces were not demised by the lease, they were capable of occupation and the Court of Appeal held that the Act applied not just to the actual premises let to the tenant but to all the rights granted under the lease.

Although it did not need to, the Court of Appeal went on to say that even if it had decided that the tenant was not in occupation of the offices, its use of the parking spaces would have been sufficient for its tenancy to remain protected by the Act.

The decision in this case will be of interest to tenants who wish to resume occupation of business premises and seek protection of the Act, in circumstances where they have granted an underlease expiring a few days prior to the expiry of their lease.

It has also raised a more wide ranging point, since it determined that the protection of the Act could be relied upon merely on the basis of the exercise of rights under a lease, albeit involving some element of occupation.

Housing Delivery and Market Demand

PPS3 and changes to the planning system

November saw the issue of Planning Policy Statement 3: Housing (PPS3), resulting in major part from recommendations contained in the Barker Report on Housing Strategy published in March 2004.

PPS3 replaces PPG 3, which in itself caused consternation in 2000 when the concept of sequential allocation of housing sites by local planning authorities was introduced, and seeks to do many things – the highly publicised objective of providing better designed, high quality housing for example, providing affordable housing where it is needed – but more importantly to provide a link between allocating housing sites and local demand.

The key thrust is in the detail of the PPS, Local Authorities will now have to (some did, some didn't) assess and demonstrate the extent to which existing Local Plans identify and maintain a rolling 5 year supply of deliverable land for housing in connection with planning applications throughout the projected lifetime of their Local Development Documents (15 years).

The objective now is to provide a flexible supply of housing land responsive to local market demand.

A planning system more responsive to market conditions?

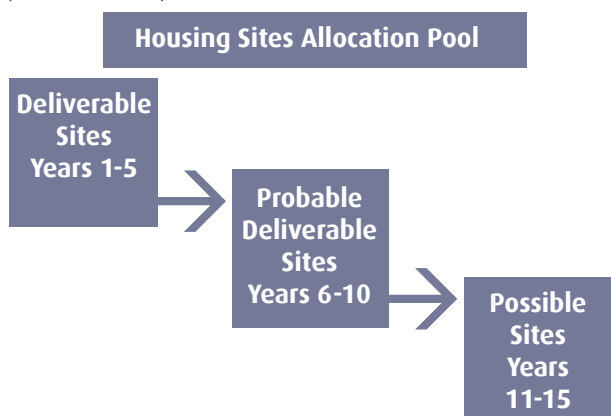
The Government looks to Local Planning Authorities to ensure that there is sufficient suitable land within their areas to deliver their allocated housing allocation, (this level is determined by Regional Spatial Strategy, what was known as RPG). This involves identifying "broad locations and specific sites" to enable a continuous delivery of housing for 15 years.

Drawing on market information, local authorities are now required to identify specific deliverable sites to deliver housing within years 1-5 of adoption of their Local Development Documents.

Further sites should be identified for years 6-10 and where possible years 11-15.

Once these sites are identified, local authorities are required to manage their delivery through monitoring and the drawing on the allocated sites to meet the 5 year supply which will be reviewed and updated regularly.

In effect allocated housing sites will now be graded as to possible delivery times.



What is meant by "Deliverable"?

PPS3 defines a site to be "deliverable" if it is:

- Available i.e. ready now
- Suitable i.e. in a suitable location for development and would contribute to the creation of sustainable mixed communities
- Achievable i.e. there are reasonable prospects of housing being built on the site within 5 years

What happens if...?

An application is submitted for a site which is not in the relevant 5 year supply allocation, for example a site identified in years 6-10 but permission sought in years 1-5.

The application will not necessarily be refused for the sole reason of prematurity. If the other allocated sites are on target for delivery then it is more likely to be refused on the basis of undermining policy objectives. The intent in some part, is to prevent a situation arising such as existed in Lancashire, Cheshire and parts of Merseyside when authorities granted a large number of permissions in a relatively short period of time which would have, without moratoria, resulted in an over supply of the set housing provision.

No 5 year housing supply of deliverable sites?

Where this happens or the Local Planning Authority has not carried out its review then applications for deliverable sites should be considered "favourably". In other words first come first served.

The crystal ball breaks...

...and who knows what will happen to the housing market in years 6-10. Could an allocation be lost?

If, for example, the housing market takes a downturn it may be that a developer wishes to land bank until a more favourable time and bring forward an alternative site. Changes in market conditions will mean that it is possible that a site's position in the allocation order can change. The ever present risk being that a more sustainable site could come forward to replace it. Local Authorities cannot force sites to be developed but they can make sites incapable of development for a period of time.

The situation would be different if permission had already been given and not implemented for market reasons. The PPS makes the position clear: "There is no presumption that planning permission should be granted because of a previous approval, particularly if the original permission did not deliver the policy objectives of this PPS". Renewal of any extant permission is also highly unlikely.

When does all this happen?

Unlike PPG3 which came into effect on publication and caused hurried allocation reviews and loss of allocations PPS3 will become a material consideration for planning applications from 1 April 2007. Local Planning Authorities will however be reviewing allocations prior to then.

Lots more questions, what else is there?

Hill Dickinson provides specialised advice on all areas of the planning process from strategic planning right through to inquiries and enforcement issues. We also advise on land assembly using the compulsory purchase powers contained in the Planning Acts. For further information as to how we may be able to help you contact John Holmes, 0151 239 5808.

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New Company Disclosure Regulations for websites and email

In case you have not seen the flyer produced by Hill Dickinson's Company Commercial Division, we would remind you that under new regulations effective as from 1 January 2007 companies and LLPs (and possibly individual directors) could be rendered liable to fines unless the following information (in legible characters) is included on all websites, electronic communications (which includes faxes, emails and business text messages) and order forms:

- full corporate name
- place of registration
- registered number
- registered office address

This reflects the information already required on business letters and is in addition to existing additional disclosure requirements. For websites, the specified information need not appear on every page but it is recommended to be included in the "Legal Information" or "About Us" section.

For further information or advice please contact Ian Vicary in the Company Commercial Division on 0151 243 2368 or by email: ian.vicary@hilldickinson.com

January 2007

HILL DICKINSON

NEW COMPANY DISCLOSURE REGULATIONS FOR WEBSITES AND EMAIL

UNDER NEW REGULATIONS THAT CAME INTO FORCE ON 1 JANUARY 2007, ALL COMPANIES AND LLPs MUST INCLUDE THE INFORMATION BELOW, SET OUT IN LEGIBLE CHARACTERS, ON THEIR WEBSITES, ELECTRONIC COMMUNICATIONS AND ORDER FORMS, OR RISK A FINE.

- Full corporate name
- Place of registration
- Registered number
- Registered office address

Electronic communications include faxes, emails and text messages if sent in a business context.

For websites, the specified information does not need to appear on every page but it is recommended to be included in the "Legal Information" or "About Us" section.

Such information is already required in business letters and order forms.

The penalty for failure to comply with these new regulations could render the company - and possibly individual directors - liable to a fine.

The additional disclosure requirements of the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) and the Consumer Protection (Distance Selling) Regulations 2002 (SI 2002/2334) are not affected. These cover email addresses, membership details of any trade or professional association and VAT numbers, with specific provisions concerning trading names and for sales to consumers.

Checklist - does the following contain the requisite information?

- Stationery, order forms and websites ✓
- Emails and fax templates ✓
- Any other third party websites under the company's control e.g. trade directories ✓

These changes are introduced by The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 (SI 2006/3429) and are part of the programme to reform company law under the Companies Act 2006 - the largest piece of UK legislation to date.



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Newsflash

Letters of Intent – Recent Caselaw

A letter of intent is often used by developers to enable a contractor to commence limited works on site prior to the execution of the formal contracts whilst not creating any legal liability for the future works should the building contract not be concluded. Nick Warrington of the construction division reviews a number of cases from 2006 which have highlighted the risks to consultants, developers and contractors in using letters of intent.

The case of Cunningham -v- Collett and Farmer [2006] EWHC 1771 (TCC) included a claim of negligence by the employer against its appointed firm of architects for advising to enter into a letter of intent. The Court expressed concern at the widespread use of letters of intent because the parties involved forget the importance of getting the contract document signed and then, when a dispute arises, in the absence of a full contract the result is confusion and acrimony.

Judge Coulson set out the circumstances in which a letter of intent can be appropriate as:

- the contract workscope and the price are either agreed or there is a clear mechanism in place for such workscope and price to be agreed;
- the contract terms are (or are very likely to be) agreed;
- the start and finish dates and the contract programme are broadly agreed;
- there are good reasons to start work in advance of the finalisation of all the contract documents.

The case is an apt reminder that letters of intent should not be used without careful consideration and, where suggested by consultants, that they have properly advised the developer of the risks associated with their use.

The case of ERDC Group -v- Brunel University [2006] EWHC 687 (TCC) considered ERDC's entitlement to payment and Brunel's rights of putting right and completing works where the majority of the works had been carried out under letters of intent issued by Brunel. During the period covered by these letters ERDC made applications for payment based on the Contract Sum Analysis included in the draft contract and in accordance with JCT valuation rules. When Brunel presented a contract for execution ERDC refused to sign and said it would only continue with the works if valued on a quantum meruit basis. Instead the parties agreed that ERDC should leave site before the works were completed. ERDC claimed there was no contract and that it was entitled to payment on a costs plus basis. Brunel counterclaimed that it was entitled to the costs of putting right or completing some of ERDC's works.

The Court held that in the periods covered by the letters of intent the parties had a clear intention to create legal relations, there was no uncertainty preventing each letter being a contract (with each letter superseding the previous one) and therefore each letter was a limited contract pending conclusion of the full contract of works. Accordingly, the work carried out in the period covered by the letters was to be valued as if carried out under the contract contemplated by the last letter, not on a quantum meruit basis.



Brunel had accepted that the work done after the expiry of the letters of intent was to be valued on a quantum meruit basis but submitted that the assessment should be based on the ERDC tender rates and prices and not on the costs plus basis contended by ERDC.

In considering the counterclaim the Court held that when valuing ERDC's works the benefit of the works to Brunel had to be assessed overall. This meant that works not completed or not to standard and which affected the overall works would have to be reflected in the valuation. However, the Court also held that the value of ERDC's work could not be reduced to the extent that it became a negative value.

The case of Skanska Rashleigh Weatherfoil -v- Somerfield Stores Limited [2006] EWCA Civ 1732 concerned the interpretation of a letter of intent. In August 2000 Somerfield sent Skanska an appointment letter marked 'subject to contract' enclosing a draft facilities management agreement ("FMA"). The letter stated "whilst we are negotiating the terms of the agreement, you will provide the services under the terms of the contract..." The period of the temporary agreement was extended and then Skanska continued to provide services beyond this point. A dispute then arose about payment.

The Court of Appeal held that to interpret the contract required giving the words of the August letter their natural or primary meaning and construing them in their overall context. The Court held that the draft FMA was incorporated into the August letter and only the terms in the FMA that were inconsistent with the August letter were not incorporated into the temporary agreement.

Whilst the main issue of this case was the interpretation of the terms of the August letter, it serves as an example of the importance of correct drafting of letters of intent.

The above cases demonstrate some of the practical risks of using letters of intent, including the risk that the letter does not limit liability to the extent envisaged, is not appropriate in the circumstances, if not carefully drafted can create uncertainty as to the terms of the agreement and may in some circumstances allow work to be valued using a contractual mechanism rather than quantum meruit. All these risks can affect developers, consultants and contractors and all should therefore take care when drafting and using these documents.

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Recovering Unpaid Rent

Landlords faced with a non-paying tenant usually have three types of action available to recover unpaid rent:

1. Distress
2. Proceedings in the County Court or High Court
3. Bankruptcy (individuals) or Winding Up (companies)

1. Distress

The ancient right of Distress allows a landlord (or a bailiff on his behalf) to enter the rented premises and seize chattels to the value of the debt.

However, the Government's recent draft Tribunals Courts & Enforcement Bill proposes to abolish this remedy in relation to commercial premises. This abolition is not intended to apply to residential premises or those let or occupied as a dwelling.

The new regime is to be entitled "Commercial Rent Arrears Recovery" (CRAR) and it will apply to rents, VAT on rents and interest payable on such sums. However, it does not encompass other charges such as service charges and insurance premiums even if reserved as additional rents.

Regulations to be introduced will set a minimum amount of unpaid rent and CRAR will only be available where the unpaid rent is equal to or more than this minimum amount. Tenants will be entitled to warning notices before an enforcement agent can take possession of their goods and the applicable notice period to the tenant will also be set by the Regulations.

The value of the goods seized should also not exceed the value of the debt unless goods of a lower value are not available. Finally, the new Act will also include an anti-avoidance provision to prevent landlords from contracting with tenants outside of the new regime.

2. County or High Court Proceedings

Debt recovery proceedings can be notoriously slow to be concluded where the debt is disputed and the matter requires a final hearing. However, if the debt owed is less than £5,000 the small claims track will ensure the matter is heard sooner. However, generally in small claims each party usually bears its own costs and only where the Court considers a party to have acted unreasonably during the proceedings will it award more than the normal fixed costs and disbursements.

One method of avoiding the time it takes to proceed to a final hearing is by way of an application for Summary Judgment on the grounds that the tenant does not have a real prospect of successfully defending the claim and there is no other good reason why the matter should proceed to trial. A further advantage of this tactic is that fixed costs can be awarded by the Court which would not be awarded at a final small claims hearing.

However, even if Judgment is obtained against the tenant for the unpaid rent, enforcement action will need to be taken if the tenant fails to pay the Judgment debt. Furthermore, if he or she has little or no assets against which a Judgment can be enforced, then the Judgment may ultimately prove worthless.

3. (a) Bankruptcy

This is the most draconian method of enforcement available to recover monies owed from an individual and it can also be the most expensive. It also may not procure payment. If a bankrupt does have assets, then the Official Receiver nominates a Trustee to realise those assets. However, usually we would seek to take this decision out of the hands of the Official Receiver and appoint our own specialist Insolvency Practitioner to act as Trustee.

It can take some considerable time from the granting of a Bankruptcy Order to the realisation of the debtor's assets and payment to creditors. Indeed, merely because you have presented the Petition does not afford you any preferential treatment. Out of the bankrupt's estate, secured creditors will receive payment first and thereafter unsecured creditors are all ranked equally. However, the Petitioning Creditor's legal costs rank before the unsecured creditors.

Prior to issuing a Bankruptcy Petition, it is necessary to firstly personally serve a Statutory Demand upon the debtor. Provided the demand is not disputed and 21 days elapse since the date of service without payment having been made, then a Petition can be issued.

3. (b) Winding Up

Where rent remains unpaid from a limited company a letter can be written, putting it on notice of an intention to issue a Winding Up Petition. Alternatively it could be served with a Statutory Demand. A limited company has no defence to a Statutory Demand served upon them unless the debt is disputed.

Once served, the debtor company, like an individual, has 21 days to pay the Demand and 18 days to apply to the Court to set it aside. If the debtor company does neither, a Winding Up Petition can be issued and presented. The current issue fee and Official Receiver's deposit total £845.00 and the total cost of obtaining a Winding Up Order would normally be in the region of £2000.00 exclusive of VAT but inclusive of disbursements.

Whilst not strictly speaking a means of recovering unpaid rent, a landlord may also consider forfeiture of a defaulting tenant's lease and proposed reforms in this area will be the subject of an article in the next edition.

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About Hill Dickinson

Hill Dickinson offers a comprehensive range of legal services from offices in Liverpool, Manchester, London and Chester, and its associated firm Hill Dickinson International has offices in London and Greece. The firm has 143 partners and a complement of more than 900 staff.

Hill Dickinson is a major force in insurance and is well respected in the company and commercial arena. The firm's marine expertise is internationally renowned and it has one of the largest marine practices in the UK following a merger with Hill Taylor Dickinson on 1 November 2006. The firm has an award winning property practice and is widely regarded as a leader in the fields of commercial litigation, employment, intellectual property, NHS clinical/health related litigation and private client.

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