



“Celebrating 20 years”

CASES

Action in respect of liability on a mortgage on a property in the EU - case

[Lawrenson & Anor v Credit Immobilier De France Developpement \(Re Council Regulation \(EC\) No. 44/2001\) \[2023\] EWHC 1378 \(KB\) \(09 June 2023\)](#) (BAILII link). A borrower owed money under mortgage on a property in France and the lender wanted to take enforcement action in England. The mortgage was an “authentic instrument” as it was a notarial deed which could be enforced directly by the creditor without a court judgment. The judgment is relevant to the position for EU judgments or authentic instruments made up to 31st December 2020 both where Judgments Regulation (EC) No. 44/2001 and the recast Judgments Regulation (EU) No. 1215/2012 apply. Article 66(2) of the latter provided that the former, earlier version, shall continue to apply to authentic instruments executed before 10 January 2015.

Mobile homes - case

[Dean & Ors v Mitchell & Anor \[2023\] EWHC 1479 \(KB\) \(15 June 2023\)](#) (BAILII link).

- a) Does a caravan site which does not have a site licence qualify as a "protected site" as defined so that caravans parked on the site might benefit from the provisions on security of tenure. Yes, Para 7 on – detailed discussion.
- b) Whether there was disproportionate interference with Article 8 rights under the Human Rights Act 1998. Para 68 on.

Liability for construction defects- case

[URS Corporation Ltd v BDW Trading Ltd \[2023\] EWCA Civ 772 \(03 July 2023\)](#) (BAILII link). “With 11 files of authorities, ranging from the well-known (*Pirelli, Murphy*) to the obscure (*Tozer Kemsley*), and disputes concerning scope of duty, accrual of the cause of action in tort, contribution and the Defective Premises Act 1972 ("DPA"), this appeal had all the hallmarks of a three-day examination in construction law. However, with the assistance of leading counsel on both sides, and the teams that they led, the issues were swiftly identified and then efficiently debated. Perhaps the most important concerned the date of the accrual of a cause of action in tort against designers of a defective building, in circumstances where the defect caused no immediate physical damage. Did the cause of action accrue when the building was completed to the defective design, or when the developers discovered that the buildings were structurally defective?”

Forgive me for not attempting a brief summary. The main judgment is 220 paragraphs long with much discussion of the law and I suspect there will be many articles.

Comment. In [Lexology New judgment on building Safety Act and defects claims: Court of Appeal provides important guidance on defects claims in the context of the building Safety Act](#) From Addleshaw Goddard LLP.

Keating Chambers [URS Corporation Ltd v BDW Trading Ltd - Keating Chambers](#)

Flat service charges - case

[Yambasu v London Borough of Southwark \(Landlord and Tenant - Service Charges - Consultation requirements for qualifying long-term agreements\) \[2023\] UKUT 152 \(LC\) \(05 July 2023\)](#) (BAILII link). a) Para 14 on -whether the Service Charges (Consultation Requirements) (England) Regulations 2003 were complied with regarding a consultation about major works to be carried out under a qualifying long-term agreement.

b) apportionment of the total cost. Para 23 on – what did the lease’s “a fair proportion” of the landlord’s costs mean. The FTT held there was issue estoppel from an earlier decision that apportionment should be on the basis of “bed-weighting” rather than per unit although “far from clear whether on this application we would have reached the same finding”.

c) para 36 on - the reasonableness of the charges for the major works. The costs were for a district central heating system and discussed whether the lessee could opt out. “The respondent’s reasons for rejecting the request to disconnect, ... , were sound: that the disconnection of one residents places a greater burden on the others, and that there would in fact be more work needed to make disconnection possible, which of course residents would have to pay for.”

Planning - case

[Widdington Parish Council, R \(On the Application Of\) v Uttlesford District Council \[2023\] EWHC 1709 \(Admin\) \(07 July 2023\)](#) (BAILII link). Judicial review of a decision to grant planning permission. Points discussed include Para 30 – the law on fall-back positions. Para 60 on – the law on the impact on heritage assets. Para 104 on - consistency with previous decisions. Para 122 guidance on use of s.31(2A) of the Senior Courts Act 1981. Para 25 on – “the court's approach to planning decisions” including officers’ reports. Typical observations.

Planning - case

[The Llandaff North Residents' Association, R \(On the Application Of\) v Cardiff Council \[2023\] EWHC 1731 \(Admin\) \(10 July 2023\)](#) (BAILII link). About the grant of planning permission for a pumping station and a linked condition in an outline planning permission for house building requiring a hydraulic modelling assessment (HMA). Para 14 on – law on what is a “project” under Article 2(1) of EU Directive 2011/92/EU which is equivalent to “development” under the Town and Country Planning (Environmental Impact Assessment) (Wales) Regulations 2017 (the EIA Regulations). Para 21 on – the law on granting planning permission for substantial residential development to connect with a sewage network which was not adequate to bear the additional load,

News item - Local Government Lawyer

[Welsh council defeats legal challenge from residents over sewage pumping station decision](#) Jul 13, 2023

Comment Cornerstone Barristers = [Necessary infrastructure - not necessarily the same project | Cornerstone Barristers](#)

Planning - case

[Plant, R \(On the Application Of\) v London Borough Of Lambeth \[2023\] EWCA Civ 809 \(11 July 2023\)](#) (BAILII link). Mr Plant (nominative determinism?) argued that felling of some trees in connection with a development was in breach of the Lambeth Local Plan. The Court therefore had to interpret the plan. “This case turns on the proper interpretation of a single policy in the development plan. No legal novelty arises.”

News item - Local Government Lawyer [Court of Appeal dismisses tree preservation policies challenge to housing estate redevelopment](#) Jul 13, 2023

Planning - case

[Davis, R \(On the Application Of\) v Oxford City Council \[2023\] EWHC 1737 \(Admin\) \(11 July 2023\)](#) (BAILII link). A failed challenge to two grants of planning permission for housing estates. Para 62 on – the “principles on which the Planning Court will act” Typical observations. Paras 7(b), 8 and 66 on - Article 40(3)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595) which requires “a copy (which may be photographic or in electronic form) of any planning obligation or section 278 agreement proposed or entered into in connection with the application “ to be available for inspection. Para 119 on – offered obligations and material considerations

Mortgages - case

[Seculink Ltd v Salih \[2023\] EWHC 1706 \(KB\) \(11 July 2023\)](#) (BAILII link). About the rejection of the arguments that provision for payment of interest on default (12% per month compounded) was unenforceable as a penalty (ii) and there was an unfair relationship within the meaning of ss.140A-D Consumer Credit Act 1974 as amended. Discusses the approach to be taken and a retrial ordered.

Forfeiture of residential leases - case

[Keith v Benka & Anor \[2023\] EWCA Civ 821 \(13 July 2023\)](#) (BAILII link). Whether an application for forfeiture should be struck out because of a long delay because the County Court had referred the matter to the FTT for a decision under section 168 of the Commonhold and Leasehold Reform Act 2002 but had not taken the steps required for the matter to proceed. Despite this, was there abuse of process by the landlord in not pressing the matter? Para 28 on – the law in some detail. Held unanimously with reluctance not an abuse.

STATUTORY INSTRUMENTS

[The Building Safety \(Responsible Actors Scheme and Prohibitions\) Regulations 2023](#) 2023 No. 753. “These regulations establish the Responsible Actors Scheme (“the scheme”) and the prohibitions under the Act. They identify certain developers who are eligible to become members of the scheme, and, as a condition of membership, require such developers to enter into and comply with a contract with the Secretary of State for Levelling Up, Housing and Communities under which they are to, among other things, remediate relevant residential buildings for which they are responsible at their own expense and reimburse to the government amounts paid out by government remediation funds to remediate buildings for which they are responsible.”

Comment in Lexology [Developers pushed further on remediation by the Responsible Actors Scheme](#) From Browne Jacobson LLP

ARTICLES

Articles in Lexology

[No need to work in a live/work unit](#) From Taylor Wessing. Discussion of [AHGR Lyd v Kane-Laverack & Anor \[2023\] EWCA Civ 428 \(21 April 2023\)](#) (BAILII link).

[Service charge under the Building Safety Act 2022: when do leaseholders pay?](#) From Taylor Wessing.

[Excessive use of rights of way - how much is too much?](#) From Taylor Wessing. Discussion of [Bucknell v Alchemy Estates \(Holywell\) Ltd \[2023\] EWHC 683 \(Ch\) \(04 April 2023\)](#) (BAILII link).

[Where stating "conclusive" does not make it so](#) From Stevens & Bolton LLP. Discussion of [Sara & Hossein Asset Holdings Ltd v Blacks Outdoor Retail Ltd \[2023\] UKSC 2 \(18 January 2023\)](#) (BAILII link).

[Brexit prompts withdrawal of UK tax relief for European charities and European agricultural land](#) From Wedlake Bell.

[Achieving Net Zero - Regulation of District and Communal Heating and Cooling and Impact on the Real Estate Sector](#) From Bryan Cave Leighton Paisner LLP.

[New judgment on building Safety Act and defects claims: Court of Appeal provides important guidance on defects claims in the context of the building Safety Act](#) From Addleshaw Goddard LLP.

[You've been served with a freezing order. What are your options?](#) From Quinn Emanuel. A detailed article citing cases.

[Property Digital Rights - A New Revenue Stream in a Digital World](#) From RPC. Article appeared in the Estates Gazette 17th June. About the display of digital content on, or in connection with, properties. Partly aimed at promoting a privately owned register.

[Avondale Park Ltd v Miss Delaney's Nursery Schools Ltd - Avoiding the Pitfalls of Implied Periodic Tenancies](#) From Squire Patton Boggs. Discussion of [Avondale Park Ltd v Miss Delaney's Nursery Schools Ltd \[2023\] EWCA Civ 641 \(07 June 2023\)](#) (BAILII link).

[Communal heating systems: a green energy solution or a major problem?](#) From Anthony Gold. Discusses various aspects including disadvantages.

Article - NearlyLegal blog

[Contractual costs in the Tribunal & County Court, with a guest appearance.](#) Author: Giles Peaker. Discussion of an FTT decision *Crescent Trustees Limited v Behjat*. [Flat 3, 155/163 Balham Hill, SW12 9DJ: LON/00BJ/LSC/2021/0168 \(Costs\)](#) “a very interesting decision on contractual costs”.

The Times 'Bricks & Mortar' 14b.7.2023

'Ask the Expert' / 'Legal Q&A' [What happens if I lose my house deeds?](#) Mainly about the situation regarding registered land.

OTHER

From the Land Registry

[HM Land Registry: local land charges search results](#) "How search results will look for local authorities in the local land charges service.

Updated 11 July 2023. "Added the search result for Caerphilly County Borough Council."

Land Registry Practice Guides - changes

[Overseas entities \(PG78\)](#) Updated 10 July 2023. "We have updated practice guide 78 to include section 3.6.4, setting out our requirements for adding an overseas entity ID to the register as a standalone application by a means other than the Digital Registration Service (DRS), bulk applications or Business Gateway connected software."

From the Valuation Office Agency

14 July 2023— Blog post

[How home improvements affect your Council Tax band - Valuation Office Agency \(blog.gov.uk\)](#)

"We cannot change the Council Tax band of a property that has been improved until it is sold, or there is a general revaluation of all domestic properties". ... "Instead, we give the property an improvement indicator."

"Improvement indicators show that major structural changes have been made to a property. This includes things like adding an extension or carrying out large-scale renovation work. We don't consider redecorating to be a major change.

If we've added an improvement indicator to your home, it will be shown on the property information for your address when you [search your postcode online](#)."

If acting on a purchase, should one do this? Or suggest the client does?

From HMRC

Updates: Stamp Duty Land Tax Manual

12 July 2023

[Variation of leases: increasing rent in the first five years](#)

"Clarified the term that should be used on the SDLT1 when filing to reflect the variation of a lease to increase rent after the first five years of the term."

Spouse's statutory legacy.

This is increasing on the 26th July from £270,000 to £322,000.

House of Commons Library Research Briefing

Not conveyancing but may be of interest as an overview of the current position.

Financial provision when a relationship ends. Published Thursday, 13 July, 2023

Outline

<https://commonslibrary.parliament.uk/research-briefings/sn05655>

More detailed

[SN05655.pdf \(parliament.uk\)](#)