



"Celebrating 25 years"

CASES

Aftermath of trespass – case

[Chedington Events Ltd v Brake & Anor \[2023\] EWHC 2804 \(Ch\) \(10 November 2023\)](#) (BAILII link). Another case in the Brake litigation. A follow up to [Axnoller Events Ltd v Brake & Anor \[2022\] EWHC 365 \(Ch\) \(25 February 2022\)](#) (BAILII link) (Axnoller Events Ltd became Chedington Events Ltd), in which an order for possession was granted on the basis that the defendants were trespassers, to assess the damages for mesne profits. Various points on the proceedings. As to the claim itself includes – para 43 on - the question of when the defendants gave vacant possession including in para 47 "There is no rule that a trespassing occupier's liability for mesne profits continues until the occupier actually notifies the owner that the occupier has left the premises: *Merton LBC v Jones* [2008] EWCA Civ 660 (BAILII link), [23]-[28] . It is instead simply a question of fact as to exactly when the occupier gave up possession to the owner." Para 95 on – law on mesne profits in some detail. Some criticism of judgment in *Wigan Borough Council v Scullindale Global Ltd* [2021] EWHC 779 (Ch) (BAILII link). Para 113 – irrelevance of actions of a parent company. Para 114 on – interest on the mesne profits.

Land registration - case

[South Tees Development Corporation & Anor v PD Teesport Ltd & Anor \[2023\] EWHC 2229 \(Ch\) \(01 September 2023\)](#) (BAILII link). About requested amendments to pleadings regarding the application of section 29 and schedule 3, paragraph 3, of the Land Registration Act 2002 to a claim for rights of way. Little discussion of the law on this, rather about whether the amendments should be granted.

Flat service charges - case

[Adriatic Land 5 Ltd v Long Leaseholders at Hippersley Point \(Landlord and Tenant - Service Charges - Building Safety Act 2022\) \[2023\] UKUT 271 \(LC\) \(Decision 13 November 2023\)](#) (BAILII link). Two main issues a) should a dispensation from the consultation requirements in Section 20 of the Landlord and Tenant Act 1985 have been granted with a condition that the landlord should not be entitled to recover its costs of the Dispensation Application from the tenants. Para 54 on – relevant case law. Held the FTT in general had power to impose such a condition but should not have done in this case. b) Para 90 on - whether the Costs were, in any event, covered by paragraph 9 of Schedule 8 to the Building Safety Act 2022 ("the 2022 Act"), so that no service charge was payable in respect of such costs by any leaseholder whose lease was a qualifying lease, within the meaning of Section 119 of the 2022 Act. Held that "as from 28th June 2022, no service charge is payable in respect of Qualifying Services, regardless of when the costs of those Qualifying Services were incurred, and regardless of when the relevant service charge actually became due for payment."

Comment – Tanfield Chambers [Hippersley – an important point - Tanfield Chambers](#) About approval in para 155 of *Waite & others v Kedai Limited* [2023] UKFTT (PC) (RP) (9 August 2023) re 2-4 Leigham Court Road, London SW16 2PG LON/00AY/HYI/2022/0005 & 0016 [Combined Decision Remediation Order 2-4 Leigham Court Road FINAL.pdf](#) (publishing.service.gov.uk) about sections 116 to 125 of Part 5 of the BSA 2022 constituting a self-contained code.

Interpretation of a contract - case

[The Burke Partnership v The Body Shop International Ltd \[2023\] EWHC 2897 \(Ch\) \(16 November 2023\)](#) (BAILII link). Whether some franchise agreements provided for an initial period of five-years with one, single five-year extension or for repeated five-year extensions and whether the franchisor could terminate on reasonable notice? Para 66 on - Construction before implication. Para 77 on - the proper approach to the construction of contracts including the distillation in *ABC Electrification Ltd v Network Rail Infrastructure Ltd* [2020] EWCA Civ 1645. Para 91 on - Implication of terms: principles. Refers to summary in *Yoo Design Services Limited v Iliv Realty PTE Limited* [2021] EWCA Civ 560 by Carr LJ at [47]-[51]. Also mentions cases particularly about termination.

Landlords' disposals and the [Landlord and Tenant Act 1987](#) - case

[FSV Freeholders Ltd v SGL 1 Ltd \[2023\] EWCA Civ 1318 \(14 November 2023\)](#) (BAILII link). whether two sets of offer notices upon qualifying tenants in respect of 5 blocks of flats being sold together complied with the requirements of section 5 and 5A Landlord and Tenant Act 1987. A notice was served for one flat another for three together while one had no tenants. Para 19 on -the legislation. Para 36 on – discussion and conclusions including reference to statutory construction. Terms of the notice should relate to the transaction as far as it relates to the particular property rather than the whole transaction.

Brief Comment - Gatehouse Chambers [Court of Appeal success for John de Waal KC and Gemma de Cordova in a case concerning a landlord's compliance with the obligation to serve offer notices pursuant to section 5 of the Landlord and Tenant Act 1987 and the correct interpretation of section 5A where section 5\(3\) applies – FSV Freeholders Limited v SGL 1 Limited \[2023\] EWCA Civ 1318 | Gatehouse Chambers \(\[gatehouselaw.co.uk\]\(https://gatehouselaw.co.uk\)\)](#)

Assets of Community Value - case

[Dragonfly Architectural Services Ltd v Brighton & Hove City Council \[2023\] UKFTT 946 \(GRC\) \(06 November 2023\)](#) (BAILII link). About a pub in Brighton. Para 11 on – relevant legislation. Para 18 – Held nomination valid as contained the necessary information and there is no prescribed form. Para 24 - open until the pandemic meant that qualified as used in the “recent past” for the purposes of section 88(2)(a). Para 25 - use as a “drinking man’s boozier”, with the occasional game of darts meant “its value to the community’s social wellbeing lay in the oasis of calm it provided away from “spaces for creative activity” and the like” Para 27 on – whether it was “realistic to think that there is a time in the next five years when there could be non-ancillary use of the pub that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community?” Yes although “the prospects are slim”.

Comment – Cornerstone Barristers [Tribunal upholds Council’s decision to include ‘drinking man’s boozier’ on list of assets of community value | Cornerstone Barristers](#)

Planning - case

[Bramley Solar Farm Residents Group v Secretary of State for Levelling Up, Housing And Communities & Ors \[2023\] EWHC 2842 \(Admin\) \(15 November 2023\)](#) (BAILII link). A challenge to a grant of planning permission on appeal. Para 2 – briefly an unincorporated association has status. Issues included para 39 on – how amendments to the scheme originally applied for should be treated. Para 70 on – requirements for a valid consultation. Para 97 on – where both an original and an amended scheme how to be dealt with at an enquiry. Para 128 on - “valued landscapes” in the NPPF. Para 162 on - alternative sites.

Planning - case

[NRS Saredon Aggregates Ltd v Secretary of State for Levelling Up, Housing and Communities & Anor \[2023\] EWHC 2795 \(Admin\) \(16 November 2023\)](#) (BAILII link).). A challenge to a refusal of planning permission on appeal for a quarry. Whether the Inspector erred in law in the approach to the weight to be attached to biodiversity net gain and whether the Inspector failed to comply with his duty pursuant to section 70(2) of the 1990 Act and section 38(6) of the Planning and Compulsory Purchase Act 2004 to make his determination in accordance with the applicable development plan in the absence of material considerations to the contrary.

Flat service charges – case

Lacy v Homeselect Finance [2023] UKUT 231 (LC) No case report seen. 2 articles found. About the validity of service charge demands that had been paid. Held that *estoppel by convention* on the basis that the leaseholder had accepted the payment mechanism (paying more than required under the lease) and so was estopped from protesting that the service charges were not made in accordance with the lease. However this did not affect the rights in Landlord and Tenant Act 1985 regarding consultation.

Article - Park Square Barristers

Service Charges: Section 27A LTA 1985 & Estoppel by Convention

[Matthew Smith on Service Charges: Section 27A LTA 1985 & Estoppel by Convention – Park Square Barristers](#) Discussion of

Article – J.B. Leitch

<https://www.jbleitch.co.uk/news-insights/case-law-comment/service-charge-whether-the-leaseholder-admitted-liability-for-service-charges-by-paying-disputed-sums-lacy-v-homeselect-finance-no-3-ltd-2023/>

STATUTORY INSTRUMENTS

[The Town and Country Planning \(Fees for Applications, Deemed Applications, Requests and Site Visits\) \(England\) \(Amendment\) Regulations 2023](#) 2023 No. 1197

These Regulations amend the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 ([S.I. 2012/2920](#)) (“the 2012 Fees Regulations”). They come into force 6th December 2023. They increase a number of fees.

ARTICLES

Articles in Lexology

[The impact of the Building Safety Act 2022 and the Levelling Up and Regeneration Act 2023 on Lease Extensions](#) From Devonshires.

[UK Upper Tribunal grants modification of restrictive covenant to heritage property](#) From Osborne Clarke. Discussion of [Kay v Cunningham & Anor \(Restrictive Covenants - Modification - building scheme - covenant not to use historic house other than as a single private residence - Law of Property Act 1925, s.84\) \[2023\] UKUT 251 \(LC\) \(24 October 2023\)](#) (BAILII link).

[Levelling-Up and Regeneration Act 2023 - disclosure of information about interests and dealings in land](#) From Dentons, About [Part 11 Information about interests and dealings in land](#) of the Act. Needs regulations to come into force.

[The Proceeds of Crime Act 2002 - A wake-up call for landlords](#) Stevens & Bolton LLP. Discussion of an order under the Proceeds of Crime Act 2002 against T&M Property Investments Ltd who were landlords of premises where the tenant ignored enforcement notices. News item <https://www.manchestereveningnews.co.uk/news/greater-manchester-news/illegal-curry-mile-shisha-bar-26873953>

About provisions in the [Economic Crime and Corporate Transparency Act 2023](#) 2023 c. 56 changing those in [Economic Crime \(Transparency and Enforcement\) Act 2022](#) 2022 c. 10. **Comment in Lexology** [Economic Crime and Transparency Bill: Closing a loophole in the overseas entities register](#) From Mishcon de Reya LLP.

[Amendments to Economic Crime \(Transparency and Enforcement\) Act 2022](#) From DAC Beachcroft

Article - Today's Conveyancer

[Buyers urged to 'be vigilant' for Japanese knotweed during winter](#)

Article - Local Government Lawyer

[Not that black and white: The use of landowner rights by planning authorities](#) November 17, 2023. Discussion of [Enterprise Hangars Ltd v Fareham Borough Council \[2023\] EWHC 2060 \(Admin\) \(10 August 2023\)](#) (BAILII link)

The Times 'Bricks & Mortar' 17.11.2023

Brief Encounter 'Ask the Expert Q&A' on [Can I be compensated if building work next door causes disturbance?](#)

OTHER

New Homes Ombudsman Service

A Guide for Customers. Updated 21 November 2023

[guidance-2-2-a-guide-for-customers.pdf \(nhos.org.uk\)](#)

House of Commons Library

[Freeholders' estate and service charges \(parliament.uk\)](#) Published Tuesday, 14 November, 2023.

From the Land Registry

[Notices under the Land Registration Rules 2003](#) Updated 16 November 2023. Notice 19 has been amended to reflect the services currently available through Business Gateway.

From the Department for Levelling Up, Housing and Communities

"Guidance updated to announce changes to the Building Safety Act 2022 on lease extensions/variations." Updated 16 November 2023.

[Remediation costs: what leaseholders do and do not have to pay](#)

[Qualifying date, qualifying lease and extent](#)