



Developing in the new normal

Covering the latest topics, aimed at registered providers, developers, investors and contractors

4 October 2023

Panellists: Harinder Dhillon, Henna Khan and Victoria Ball

Agenda

1. **Title Issues and Practical Tips on Title Matters, including boundaries – Harinder Dhillon**
2. **R (Day) v Shropshire Council- Henna Khan**
3. **NHBC Insolvency Cover- Victoria Ball**



Title Issues and practical tips on Title Issues

Harinder Dhillon



Agenda

1. Plan and boundary issues and 'Approved Estate Plans'
2. Title Restrictions and 'self-certifying'
3. Using DocuSign with caution

Plan Issues and 'Approved Estate Plans'

- Land Registry operate a 'general boundaries' rule
 - Boundaries may not always reflect what's on the ground.
 - Discrepancies can exist and can be exacerbated when development plans are produced.
 - This can cause problems on plot sales.
- You can apply for an 'Approved Estate Plan' at the Land Registry
 - Means that sales of plots can proceed without an official copy of the developer's title plan, and you can make applications and carry out priority searches by referring to the plot number on an approved estate plan rather than supplying a plan with each application.
 - Speedier negotiations between the developer and purchaser on individual plot sales.
 - Plot purchaser's solicitors are increasingly asking for this.

Applying for an 'Approved Estate Plan'

1. Prepare a Land Registry 'compliant' Estate Plan showing the final site layout
 - drawn accurately to a stated scale
 - shows its orientation (for example, a north point)
 - sufficient detail to be identified on the Ordnance Survey map
 - clarifies its general location by showing roads, road junctions or other landmarks
 - based on a scale of metric measurement
 - not marked as “for identification only” or similar wording and not endorsed “Do not scale from this drawing”
 - includes a bar scale
 - shows extent of the plot with a red line boundary around the demise. Parking spaces included in the demise but which are away from the plot must be separately identifiable on the plot plan.
 - plan must show any utility easements or communal facilities or shared accessways or bin stores, etc, referred to in Transfer or Lease
2. Send the Estate Plan to the Land Registry
 - Single plan showing all plots (not separate plans)
 - Apply via Gov.UK website
3. Land Registry approves the Estate Plan and you have an 'Approved Estate Plan'

Title Restrictions

- Title restrictions require a certificate or consent from the benefitting party.
- Without a certificate or consent from the benefitting party, you are unable to complete registration.
- This is the case even where transactions are 'permitted disposals', as well as where a deed of covenant is required.
- Benefitting parties will push for restrictions for which they must be contacted, and only they can provide a certificate or consent. This creates issues when such third parties are unresponsive or slow to respond. Your registration may be slowed down.
- Restrictions can be drafted so that any conveyancer can 'self-certify' they've been complied with, so long as the necessary deed of covenant has been given, or so long as the transaction is a 'permitted disposal'. Thus mitigating delay, and avoiding having to go to a third party for consent.

DocuSign – points to note

- DocuSign used widely as a method of execution
- Land Registry accept documents executed by DocuSign. It requires a 'certificate' to be completed by the conveyancer.
- A word of caution:
 - Unlike with physical documents, electronic documents cannot be manuscript amended before completion; instead, the incorrect document must be withdrawn and re-signed.
 - If completion has occurred, for any material amendments, these cannot be done in manuscript. A deed of variation or rectification would be required.
- You may wish to consider if DocuSign is appropriate. It may be better to use the mercury method, or old fashioned wet-ink execution
- 'e-sealing' may not be acceptable to the Land Registry, or under the company's constitution.

R (Day) v Shropshire Council 2023

UKSC

Henna Khan



Facts of the case and Judgement

- Shrewsbury Town Council sold a piece of open land to a developer, with neither party being aware that the land was subject to a statutory trust in favour of the public.
- Shrewsbury Town Council had originally held the land but subject to a statutory trust for recreational purposes under Section 10 of the Open Spaces Act 1910.
- Following the sale of the land, Shropshire Council granted planning permission to the purchasing developer to build houses on the land.
- Appealed on Judicial Review by members of the public.
- Challenged in the Supreme Court who unanimously ruled in favour of the planning permission being quashed.

The Principle of "Caveat Emptor" (Buyer Beware)

- Public rights hiding in open spaces, especially rural sites.
- Latin phrase in English property law, which is 'Caveat Emptor', which most people refer to as the principle of "Buyer Beware".
- The onus is on a buyer of a property to investigate it before purchasing it (or before it becomes contractually obliged to purchase the property).
- This rule applies regardless of property type and irrespective of who is selling the property, including public bodies.

What steps can Buyers take now?

- Thorough due diligence on the history of the land to be undertaken.
- Buyers or their solicitors to raise additional enquiries on the existence of any statutory public trusts.
- Due diligence not just limited to dealing with local authority sellers but from sellers generally.
- Contractual obligations, encumbrances and warranties.
- Actual knowledge or ought reasonably to be aware of.

NHBC Insolvency Cover

Victoria Ball



NHBC Insolvency Cover

- What is it?
- Common issues/shortfalls:
 - Expiry: falls away on completion
 - Attaches to completion of the home itself – not the works as a whole
 - Limits on costs recoverable to reasonable amount that NHBC would have paid to complete the home
 - Definition of insolvency = late trigger
 - Overall % cap on cover
- Deposits? Enhanced cover – not universally available
- Would advise procured as *additional* layer of protection to PCG or Performance Bond

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