

Residential ACT NOW



SUMMER 2009



IN BRIEF

REPOSSESSIONS UP, REPORT MORTGAGE LENDERS

The Council of Mortgage Lenders has reported recently that repossessions for 2008 were up more than 50 per cent compared with 2007, with more than 40,000 homes repossessed. It also stated that repossessions in 2009 were expected to exceed 75,000.

E-CONVEYANCING UPDATE

The much-vaunted 'e-conveyancing' project is making slow progress. 2009 should see electronic transfers between banks and Land Registry and this will be extended to conveyancers in 2010. Full electronic transfer of title to property is still some years away.

A guide to residential property law from



WHISKERS LLP
SOLICITORS & NOTARIES

ACCESSING COMMON LAND



Under the Countryside and Rights of Way Act 2000, there is a general right of access to 'access land'. Access land is land that is specifically accessible to the public under an enactment or land which is not 'excepted land'.

The main categories of excepted land are:

- land used for a park, aerodrome or golf course;
- land used as a park or garden;
- land within 20 metres of a dwelling or a permanent building used for housing livestock;

- land used for livestock or for training racehorses;
- land covered by pens for the temporary detention of livestock; and
- land covered by buildings or the curtilage of such land.

The maps showing access land do not identify excepted land, so the exception to the right of access by the public must be enforced by the landowner.

If you have a problem involving rights of access to land, we will be pleased to advise you.

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POSSESSION ALONE NOT ENOUGH FOR OWNERSHIP

Two recent cases have confirmed that obtaining legal title to a property by adverse possession ('squatters' rights') does not depend solely on occupying the property exclusively for your own benefit, without opposition, for the required period of time.

In the first case, a traveller sought to obtain legal title to an area of verge, which was part of the public highway but on which he had lived for several

years. His claim failed because obstruction of the highway is a criminal offence.

In the second case, a man occupied a garage exclusively after a 'squat' was legitimised by adverse possession and a tenants' organisation set up. He was prevented from obtaining title to the garage, however, because he had encouraged the tenants' association to believe that the garage would be part of the communal property.



If your land is being informally occupied by others, they may seek to obtain legal title to it. Contact us for advice on how to protect your property rights.

PLANNING PERMISSION IS ONLY PART OF THE STORY

If you are considering building an extension to your property, you may think that it is simply a matter of getting planning permission and finding a builder. A recent case shows, however, how important covenants affecting property can be in determining whether developments of any kind can go ahead.

The case involved an upmarket housing estate near Reading, with properties adjacent to the Thames. One of the homeowners wanted to build a three storey extension to his property that would have partially obscured the view of the river for some of his neighbours.

The neighbours objected to the planning application. Property owners have a general right to light, but there is no general right in law to a view. The planning inspector's opinion was that whilst there would be some loss of view for one household, this did not result in a material diminution in living standards. The planning application was granted on appeal.

The objectors then used a different line of attack, relying on a covenant prohibiting owners from

doing anything which would constitute a 'nuisance or annoyance' to the other owners on the estate. One owner in particular argued that he put great store on his river views, which would be greatly curtailed by the extension. Also, the windows in one aspect of the development would interfere with his privacy. Other owners gave evidence that their views of the river would be partially obscured.

In objective terms, the obstruction of the view was minor.

However, the judge, who visited the estate and had the benefit of seeing computer-generated evidence, decided that 'reasonable people, having regard to the ordinary use of their houses for pleasurable enjoyment' would regard the three storey red brick extension as an annoyance within the meaning of the covenant.

If you are concerned about the effect that a planned development in your neighbourhood may have on you, contact us for advice. There may be more than one way to obtain the desired result.

EASEMENTS – CONTEXT IMPORTANT

A property owner recently won a court order preventing customers of a bar from crossing his land despite there being an easement in favour of the owner of the bar.

The reason? The easement was granted in 1921, when the use of the access across the land was different. The circumstances under which it was given no longer applied.



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