

Welcome to the January 2016 Property Newsletter.

AWB Charlesworth Solicitors have a team of experienced Lawyers who solely specialise in Residential Property, Commercial Property and Agricultural Law. In this Issue we focus on three main topics including; requests made to access your land, why to request rent deposits from tenants and the rules regarding chattels and fixtures.

Agricultural Landowners

*'On my land? On my
terms!'*



Your land may be important to others because it is in a perfect position for situating apparatus or for connecting services to adjacent land with development potential.

If a company approaches you with a request to place equipment such as a telecoms mast, wind turbine, sewers, water pipes, cables or other apparatus on or through your land, speak to a specialist property lawyer before allowing access or agreeing to any terms.

Landowners are often under the misapprehension that it

will be straightforward to negotiate amendments to an agreement after work has started - this is not the case.

Documentation from utility companies or service providers is often in a standard format and the opportunity to make substantial amendments is limited. It is important that you seek professional advice at the outset: whilst the promise of a lump sum and/or a yearly rent can be appealing, there may be restrictions applied to the future use of your land.

5,000 Reasons to Request a Rent Deposit from Commercial Tenants



Recent changes mean that the minimum figure for which a statutory demand can be served on an individual debtor is £5,000. This is an increase from £750 .

This has potentially significant consequences for commercial landlords. Previously landlords were often able to use the statutory demand method as a swift way of obtaining payment of relatively minor arrears from difficult tenants without need to take action through the courts.

Now landlords may be forced to take action for arrears through the county courts in respect of sums under £5,000. This has risks in terms of the time that such action can take, the cost of so doing and the uncertainty that is inherent in such actions when it comes to recovering the costs of taking such action.

As a result the advice of our property solicitors is that now more than ever it is important to obtain a rent deposit from tenants both on new leases and assignments. This provides an accessible

fund that can be utilised for minor instances of arrears. It is prudent to ask for a minimum of £5,000 if possible given the changes outlined in this article although commercial realities may mean that on leases with an annual rent under £20,000 this is not possible.

Another alternative is to seek to utilise the Commercial Rent Arrears Recovery (CRAR) process. This is only effective for recovering rent. It does not assist with service charge arrears or any other sums due under the lease such as insurance rent. The intention of CRAR is to provide a smoother process of recovering rent arrears other than through the courts.

Our specialist Property and Litigation solicitors in Skipton, Keighley and Bradford are happy to advise in relation to negotiation of rent deposit deeds for commercial leases and on pursuing tenants for arrears be it through the courts or by means of CRAR.

Court of Appeal confirms rules regarding Chattels and Fixtures

“A Fixture is an item that is attached to the land and immovable. It shall form part of the land.”

“A Chattel is an item even if attached to the land is removable It shall not form part of the land.”

The recent case of *Spielplatz vs Pearsons* required the court to consider whether a holiday chalet counted as a chattel (i.e. a loose moveable item) or a fixture (i.e. integral to the land and forming part of it). Who constructed the chalet was not of importance here as if something has become part of the land it then forms part of the property that is let under the lease.

The claimant owned a naturist resort. The resort was divided into plots and leases of the bare plots were granted to various tenants. Some left them as vacant land whereas others built structures on them. In this case the Tenant built a chalet. Initially the Tenant used the chalet as a holiday home but eventually came to live in it full time as their permanent residence.

The Landlord served notice on the Tenant under the terms of the lease to terminate. The issue of whether the chalet was a fixture was important as if it was then the Landlord should have given notice in accordance with the protections under the Housing Act 1988 notwithstanding the terms of the lease.

The act would have placed a more onerous obligation on the Landlord.

The law on the distinction between fixtures and chattels is well established. The test relates to the ‘degree of annexation’ of the item to the premises. In simple terms one test that has been used is if you turned a property upside down the items that would fall out are chattels and those that wouldn’t are fixtures. In more specific terms it has been held that where an item could not be removed without demolishing it, it was a consideration of high importance in determining whether an item is a fixture or not. This allows for items that have to be bolted down for safety but can then be unbolted and removed.

In this case perhaps unsurprisingly the Court of Appeal in applying the tests found (through expert evidence) that to remove the chalet would be to demolish it. Consequently it was a fixture and the Tenant had the protection of the Housing Act 1988.

It is important in light of the above which really only reaffirmed the law as it stands to be sure of what is and what is not a fixture. Otherwise this could have unwanted and unforeseen consequences when it comes to lease termination and repairing obligations and also in taxation treatment as chattels and fixtures are treated differently for the purposes of Stamp Duty Land Tax and other taxes.



AWB Charlesworth Solicitors aim to make life easier for you. Our team will provide you with expert legal advice for your personal life and your business presented clearly and efficiently. Each with their own specialist skills, our lawyers provide friendly local support backed by skilled expertise in a comprehensive range of legal services.

- ◆ Property Leases
- ◆ Agricultural Holdings Act Tenancies
- ◆ Property Agreements
- ◆ Conveyancing
- ◆ General Agricultural Matters
- ◆ Farm Sales and Purchases
- ◆ Property Disputes
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