

## Clarity the Key in Contracts

Clarity in property contracts is crucial, as is illustrated by a recent decision of the Court of Appeal.

The case concerned a property deal in which planning permission had to be obtained. The contracts for such deals are often conditional on the granting of planning permission. In this case, however, the scenario was somewhat different. The buyer wished to turn the property being purchased into flats, which required the permission of a third party on account of a covenant on the property that existed because it was in a conservation area.

The vendor agreed to meet the cost of obtaining the release of the covenant, which was estimated not to exceed £12,000. The third party rather oddly refused to release the covenant until planning permission for the development had been received. The buyer decided to purchase the buildings (at a cost of £862,000) before planning permission was granted.

The way the contract was drafted was far from clear and it did not anticipate the actual circumstances. As a result, a term would have to be implied into it to deal with the position as it transpired in fact. The buyer claimed that it should receive a discount on the purchase price for the estimated cost of obtaining the release of the covenant. The vendor claimed that no discount was payable, on the basis that, at the time of sale, the covenant had not been released. In court, the judge did not support either interpretation of the contract, so the dispute wound up in the Court of Appeal. There, LJ Arden commented that, "If the agreement is susceptible of an interpretation which will make it enforceable and effective, the Court will prefer that interpretation to any interpretation which would result in its being void. The Court will also prefer an interpretation which produces a result which the parties are likely to have agreed over an improbable result."

The Court concluded that the appropriate discount must be "an amount which is reasonably required for the purpose of obtaining a release or variation of the applicable restrictive covenants such as would enable the Development...to take place."

What is slightly surprising is that this dispute ended up in the Court of Appeal at all, with both sides meeting their costs – likely to be several times the sum under dispute.

The more variables there are in a contract, the more important it is that it is clearly drafted. For advice on all property and contract matters, contact John Burrowes on 01743 248148.

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