PROPERTY LAW UPDATE
MARCH 2018

Sceptic Tank

Property Update

Speaker: Richard Snape
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3 CPD Points
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DJB is entirely focused on real estate.

Covering commercial property, planning and other related areas we have one of the most experienced teams of solicitors in the country with a total of over 800 years’ PQE. DJB does not use paralegals to undertake legal work.

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“Calm, professional and very friendly – a pleasure to work with”

“Rate everyone we have dealt with as being first class”

“Very professional, quick to respond and good at keeping the client informed.”

“Clients feel protected to the greatest extent.”
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SEPTIC TANKS

As of 6 April 2010 Consent to Discharge is being phased out, to be replaced by the need for a Discharge Permit or Exemption from the Environment Agency. By 1 January 2012 all septic tanks will need to be registered, no matter how old. New tanks which are fully compliant with modern Building Regulations will be registered as being exempt. In August 2011 it was announced that the registration of small septic tanks would be reviewed in England. Registration for an exemption may occur, but will not be necessary by 1 January 2011.

The provisions will still come into force on 1 January 2012 in Wales however.

On 18 December 2011 the Environment Agency clarified the rules in relation to registration of septic tanks. In England, registration will be required by no later than the end of December 2012. There are two exceptions to this where registration should occur by 1 January 2012, i.e. where there is a discharge of more than 2m³ a day or where the discharge is within a Zone 1 ground water protection zone. The Environment Agency will advise over the telephone whether the latter is the case. In Wales registration should occur as soon as possible, but the Environment Agency will accept registrations until 30 June 2012. The Welsh Assembly intends to send leaflets to anyone with a septic tank. In England and Wales the cost of a discharge permit is temporarily set at £125.

The Environment Agency announced on 6 June that they were still consulting on the registration of small septic tanks and there will be no obligations in the immediate future.

**Note:** Regardless of registration, maintenance records should be kept in relation to the tank and TA6 Enquiries ask for these to be provided to the buyer.

**Note:** That implementation of these provisions in England was put on hold in August 2011. However, they came into force in Wales on 1 January 2012.

**Note:** On 6 June 2013 the Environment Agency announced that small septic tank registration would not be required in the immediate future, although larger tanks and those in water protection zone areas should have been registered already.

On 9th October 2014 the Environment Agency announced results of their consultation and draft regulations will be produced for implementation on 1st January 2015. As of 1st January 2015 large septic tanks discharging more than 2m³ of waste a day will need to be registered with a discharge permit costing £125. Small tanks will not need to be registered with an exemption but will need a discharge permit if in a zone 1 water protection zone area or within 50m of a drinking supply or if the discharge is above the low water mark. Tanks in areas of outstanding natural beauty will now not need to be registered. None registration is a criminal offence although the Environment Agency intend to be lenient and educate property owners rather than prosecute.
The provisions came into force in England on 1st January 2015. New tanks in designated areas will need to be registered and obtain a permit but not existing tanks. The number of designated areas has been reduced. Larger tanks will still require a permit.

The above provisions are contained in the General Binding Rules. In addition, if a septic tank eventually flows into a water course as opposed to a drainage field, this must be replaced on a sale of the property and by January 2020 at the latest. A treatment plant will not need to be replaced.
S1 LANDLORD AND TENANT ACT 1988

The Landlord and Tenant Act 1927 gave rise to a practical problem, i.e. that landlords when asked to give consent to an assignment would not reply to any written request either at all, or within a reasonable period of time. The tenant was, therefore, unsure whether consent was being withheld or not.

To meet this difficulty, the Landlord and Tenant Act 1988 was passed. By s1, when a landlord is asked in writing for consent pursuant to a qualified covenant against assignment, sub-letting or parting with possession, he is required:

(1) to give consent (unless it is reasonable not to) within a reasonable time, and to give written notice to the tenant of his decision, also within a reasonable time, specifying any conditions attached to consent; or

(2) if consent is refused, the reasons for refusal (within a reasonable time).

These provisions effectively shift the burden on to the landlord either to give a reasonably swift, unequivocal consent, or to give precise reasons for withholding consent, which the tenant can either challenge, if he consider them unreasonable, or accept. If the landlord fails to comply with s1 the tenant may sue for damages in tort: s1 should not be forgotten and should always be discussed in conjunction with s19 above.

It seems that the parties cannot contract out of s1, but it is possible that the landlord could require an indemnity, e.g. against a guarantor against potential liability.

In the few cases which discuss the subject, a reasonable time for the purpose of replying to a request for assignment or sub-letting is enough time to allow the landlord to check the creditworthiness and suitability of the proposed assignee. Thus, in Midland Bank v Chart Enterprises [1990] 44 EG 8, the landlord was successfully sued on not replying to the tenant’s request after three months. In Kened LTD v Connie Investments Ltd [1997] 04 EG 141 assignment was subject to a satisfactory replacement surety being found. The Court of Appeal found for the tenant. The landlord was not entitled to particulars of the assignment but was only concerned with the character and identity of the assignee. Moreover, an objectively suitable surety should have been accepted by the landlord.

Finally, the fact that the landlord had not notified the tenant of a reason for refusal suggested that it was not in his mind at the time of refusal. There was consequently a breach of s1 by the landlord.

Dong Bang Minerva Ltd v Davina Ltd [1996] 31 EG 87, CA

The Court of Appeal have confirmed that the landlord could not withhold consent to assignment by requiring an undertaking as to costs which were estimated as being unreasonably high.
In assignment the cost of the license to assign was unreasonable, did not affect the other conditions as to contractual allowed the tenant to assign without consent. In spite of this the landlord was entitled to £350 an circumstances tenants had sent the request to the wrong address. He was also acting reasonably in the landlord No be anything charge was anything reasons.

In Norwich Union Life Insurance Society v Shopmoor Ltd [1998] 3 AllER 681, the court made it clear that the landlord must decide any information required to make his decision and then put the questions clearly and precisely to the tenant. Where the landlord had not asked the tenant about the financial standing of the proposed assignee, he could not subsequently use the lack of information as a reason for refusing consent.

This has been taken further in Footwear Corporation Ltd v Amplitude Properties Ltd [1998] 25 EG 171. The landlord could not refuse consent to a sub-letting for reasons he had intimated to the tenant in a telephone conversation but were not given in writing. The Court said that the policy behind the 1988 Act is that a landlord who has not given his reasons for refusing consent in writing within a reasonable time cannot afterwards justify his refusal by putting reasons forward which he had in his mind but had not sufficiently notified the tenant of.

Note: That the case also said that there was no blanket rate that if profits were not 3 times rental, consent to a sub-letting could be refused. In relation to an assignment, post Landlord and Tenant (Covenants) Act 1995, there could be an absolute condition here.

In NCR v Riverland Properties the court said that lack of creditworthiness of a sub-tenant was a good reason for refusal of consent as if the head lease were disclaimed the sub-tenant would become the immediate tenant.

In Proxima GR Properties v Dr T D McGhee [2014] UKUT 0059 (LC) the Tribunal held that under s1 of the Landlord and Tenant Act 1988 the landlord had to show that the charge for a notice of assignment was reasonable. Moreover the response must be given in a reasonable time. If a landlord tried to charge an unreasonable amount for a notice of assignment then the tenant would not have to pay anything as the landlord would be deemed to have given their consent. In this case £90 was held to be reasonable.

No 1 West India Quay (Residential) Ltd v East Tower Apartments [2018] EWCA Civ 250 here the landlord had responded to a request for an assignment within a reasonable time as originally the tenants had sent the request to the wrong address. He was also acting reasonably in the circumstances in requiring guarantors and also a surveyor to inspect the premises. However, requiring an undertaking as to costs of £1,250 + VAT amounted to an unreasonable refusal of consent which allowed the tenant to assign without consent. In spite of this the landlord was entitled to £350 contractual costs. In February 2018 the Court of Appeal heard this case and decided that the fact that the cost of the license to assign was unreasonable, did not affect the other conditions as to assignment relating to the need for a survey and guarantors. This overrides decisions going back to Footwear Corporation Ltd v Amplitude Properties Ltd [1998].

In Singh v Dhanji [2014] AllER(D) 131 the landlord refused consent to an assignment of a 15 year lease unless alleged breaches arising out of refurbishment work were remedied. It was held that breaches
were not proven but even if they were they would be minor and would not be a good reason for refusing consent.
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- The notes will be displayed in the table on this page along with notes from previous seminars
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