



Resolving conflicts between public and private interests in land

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**Reid Hospital
Landscape Improvements**
address

Overall Site Plan

DRAFT - NOT FOR CONSTRUCTION

Project: Reid Hospital Landscape Improvements
Address: address

Overall Site Plan

Scale: 1" = 50'-0"

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Multiple Property Rights in the Same Parcel of Land

- According to Sax (1971) 'property is an interdependent network of competing uses'
- Katz's (2008, p278) view is that ownership requires not that others keep out so much as that they' fall in line with the agenda the owner has set' and that owners are in a special position to set the agenda for a resource.
- Singer (2000, p61) writes of the conflicting values of freedom and security which property claims invoke and says that we must ask ourselves:

which set of rules will produce results that best satisfy human needs and desires and that best promote a free society that treats its members with fairness, respect, justice and common decency.

Is the public interest best served by upholding the sanctity of contracts or by adopting a more relativist view of relationships between neighbours ?

In the leading judgment of the *Alexander Devine* case Lord Burrows (paragraph 64) stated that generally

it is in the public interest that contracts should be honoured and not breached and that property rights should be upheld and protected

In *Colls v Home and Colonial Stores Ltd.* (1904) Lord MacNaghten (at para 193) asserted that,

there is quite as much oppression on the part of those who invoke the assistance of the Court to protect some ancient lights, which they have never before considered of any great value, as there is on the part of those who are improving the neighbourhood by the erection of buildings that must necessarily to some extent interfere with the light of adjoining premises.

The Problem

- One property owner is seeking to develop their land
- Planning consent has been granted or expected
- Neighbouring property owner(s) have property rights (such as easements and covenants) which would be infringed by proposed development
- The developer has sought to negotiate/taken other steps to deal with the rights
- If the developer goes ahead with the scheme they run the risk of an injunction being awarded requiring the demolition of work or stopping construction

An example – Chelsea Football Club



RepublicWorld (2020)

Chelsea Football Club – Stamford Bridge Stadium

- In 2017 Chelsea FC was granted planning permission to redevelop stadium to create capacity for 60,000 spectators
- The Club's advisors identified approximately 50 property owners whose properties would experience a significant loss of light and started negotiating with the affected landowners
- One of the affected owners successfully applied to the High Court for an injunction – this prohibited the club from implementing the planning permission
- The Local Authority believed that there were substantial public benefits in allowing the development to proceed

The Solution?

- Section 203 Housing and Planning Act 2016 allows local authorities and their successors in title to override private property interests
- Rather than being able to obtain an injunction neighbouring rightsholders just have a right to compensation based on the depreciation in value of their land

Chelsea FC and S203 HPA 2016

- The Council resolved to acquire a leasehold interest in part of the stadium and to subsequently lease it back to the Club
- This would have the effect of making the football club a successor in title to the Council
- Section 203 HPA 2016 would apply to the scheme and the injunction would no longer apply

Critique of the acquisition-transfer back technique used to trigger s203

- Law Commission (2015, para 7.59) described these schemes as ‘expensive and convoluted’ and ‘artificial and complex’
- Lack of transparency
- Power is similar to compulsory purchase without the checks and balances – no statutory obligations to notify or consult
- Identifying the public interest – deliberative democracy
- Article 6 ECHR Right to a fair hearing
- Fair compensation?
Bingham MR in *Wrotham Park Settled Estates v Hertsmere Borough Council* (1993) at pp17-18
‘less than perfect compensation’

Judicial Scrutiny of S203 (and its predecessor provisions)

- No successful challenges to the validity of decisions by local authorities to enter into such schemes
- *Derwent Holdings Ltd (R on the application of) v Trafford Borough Council (2009)*
- *R v Leeds City Council, ex parte Leeds Industrial Co-operative Society Ltd (1996)*

Conclusions

- How far does the Overriding Power protect rightsholders legitimate expectations?
- How does it help us to determine what outcome would best serve society as a whole?
- Should local authorities be given the power to override servitudes?
- Reform of existing power

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