



Appropriation (s237) – A useful tool for developers?

Section 237 of the Town and Country Planning Act 1990 may be seen as the solution to the problem of third party rights preventing development. It gives statutory authority for the carrying out or maintenance of any building or work on land which has been acquired or appropriated by a local authority for planning purposes, even if this interferes with an interest or right or breaches a contractual restriction on the use of the land.

Where it applies, s.237 turns the right to claim an injunction to prevent interference with easements (such as rights of light or of way) or advantages (such as restrictive covenants) into a right to damages to compensate for that interference. Even better, to damages assessed on the basis of the injury to the person whose rights are infringed - diminution in the value of their land - rather than on a loss of bargaining position or share of the profit, which might be considerably higher.

However s.237 is not a cheap or quick fix and will not always be able to save the day. For example, s.237 does not authorise interference with the rights of way etc for the benefit of apparatus belonging to a statutory undertaker or rights conferred on a telecommunications code operator. It can, however, be used where certain conditions are satisfied:

Conditions

- The local authority has to acquire an interest in the land, whether by CPO or voluntary transfer.
- It must have been acquired or appropriated for planning purposes as defined in s.246 of TCPA 1990 i.e. improvement of economic wellbeing of the area for wider public interest, not just to allow a sale off for development.
- There must be works of building or maintenance on land by the local authority or someone “deriving title under” the local authority and these works must relate to the planning purpose for which the land was appropriated and be authorised by planning consent.

- It must be shown it is necessary and proportionate to exercise the power after negotiations to acquire or release the right have failed. It's a last resort, not an alternative to opening negotiations with those benefiting from the easement or covenant for a release.

Practical issues

- The local authority has to be prepared to use these powers- and acquire land if necessary- to assist the developer to defeat private rights.
- The developer will almost certainly have to indemnify the local authority against all costs incurred and the compensation payable.
- Use of s.237 can be challenged by judicial review.

However, in the right circumstances, s.237 can be used effectively to prevent third parties holding up or preventing development on public sector land.

If you would like any further information or would like advice on a development matter, please call us on +44 (0) 117 939 2000 and ask to speak to a member of the Real Estate Development team, or contact your usual lawyer at Burgess Salmon.

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