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“Bridging the Gap”:

Property Pointers for Planners

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The recording may be accessed [here](#).

Scenario A

- A cancer charity owns a hospice and surrounding gardens
- The land benefits from restrictive covenants preventing the development of and use of adjoining land
- A developer obtains planning permission and, despite the restrictive covenants, has proceeded with the development which includes a number of affordable houses as required by the section 106 obligations
- The charity refuses to release the covenant
- After completing the development, the developer applies to the Upper Tribunal seeking modification of the restrictive covenants

Poll questions:

Is the developer likely to succeed in its modification application? Yes/no

Scenario B

- A owns an old office block in the City of London
- B owns a neighbouring development site and has planning permission for a new residential block of student accommodation
- A's surveyors have advised it that the top 2 floors of the new development would infringe the light enjoyed by the office block for over 20 years
- However, the planning decision expressly states that the development would not be objectionable on the ground of infringement of light because A's building has been and continues to be used for commercial purposes
- A did not object to the planning permission
- B has commenced the works for the development

Poll questions:

Is A likely to succeed in getting a mandatory injunction? Yes/no

Scenario C

- A owns a car wash and an adjoining lane which runs along the back of a row of terraced houses.
- A has the benefit of planning permission to redevelop the land which involves building over the lane and has just started work.
- B is an owner of one of the terraced houses and has come forward claiming (i) that part of the development encroaches onto its garden and (ii) that he has a right of way over the access. B relies on a 1970s transfer of his house which includes the grant of rights of way “if any” over the lane. In the alternative, B relies on an easement acquired by prescription.
- B did not object to the grant of planning permission.
- There is an old shed across the back of B’s garden which would have made access to the lane from the house impossible.

Poll questions:

The developer is faced with these claims after planning permission has been granted. Can he safely proceed with the development regardless? Yes/no

Scenario D

- A local authority grants planning permission for a residential development scheme
- The same local authority is also the beneficiary of a restrictive covenant that restricts the use of the land to industrial use only
- The planning permission, if implemented, would breach the covenant
- The developer makes an application under s.84 for discharge/modification of the restrictive covenant on the basis that it impedes a reasonable use of the land
- Can the local authority resist the application despite having granted planning permission for that scheme? How strong are its prospects of doing so?
- What about if at the time the planning permission was granted there was a need for housing, but by the time the s.84 application is made there is no longer the same need for housing?

Poll questions:

Is B likely to succeed in blocking the development? Yes/no

Thank you for listening

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