

Planning for the future

The healthcare sector is proving to be relatively robust, despite the recession. As the number of people who require specialist care increases year on year, the legal and planning issues surrounding specialist care homes become ever more important. Recently the high court reached a decision based on planning law that will be of interest to both operators and those living near care homes.

The court had to decide whether planning permission was required to change the type of care provided in a property. First of all some background on planning law:

- Planning permission is usually required for a change of use.
- The 1987 Use Classes Order specifies various classes of use, and changing use within that class will not be a breach of planning law, and can save you from enforcement action.

However, there are times when the position is not quite so straightforward. Sometimes a condition on the planning permission attempts to limit the ability to change use within a particular class.

In this case the court decision turned on the definition of the planning condition.

The planning condition stated "the premises shall only be used for a nursing home and for no other purpose, including any other purpose in Class C2 of the Schedule of the Town and County Planning Use Classes Order 1987".

The definition of **Class C2** is:

"Use for the provision of residential accommodation and care to people in need of care. Use as a hospital or nursing home. Use as a residential school, college or training centre". It does not include normal dwelling houses.

In this case a property was used as a nursing home for the elderly for four years ending in 2002. After that a specialist mental health services provider bought the property and patients were admitted. The change in use led to some doors being locked, use of psychiatrists and a security fence and CCTV cameras. The local authority issued enforcement notices, but the owners appealed and an inquiry was held.

The planning inspector decided the owners were right and no planning permission was required, on appeal the High Court came to the same decision.

The High Court decided that the 1987 Use Classes Order was intended to group similar uses together, and not to distinguish different purposes within them. The Use Classes Order was intended to simplify the planning position, and it was therefore unnecessary to decide if a particular use was for a hospital, a nursing home or a residential care home provided that it could be described as one or more of them. The uses were so similar for planning purposes that a change between them would not require planning permission, and if the Use Classes Order was to be read differently Parliament should have defined matters more accurately.

Therefore, despite the wording of the planning condition at face value, the change from nursing home to residential care home did not require planning permission.

Crutes has a specialist health care team, and the commercial property unit has dealt with the purchase, letting, development and funding of nursing homes in the private sector, together with representing primary care trusts and doctors in surgery developments in both the public and the private sector.

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COMMERCIAL PROPERTY NEWSLETTER ISSUE ONE 2009

SERVICES: for Businesses and Professionals

Equity Release Or Capital Punishment

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In these difficult economic times, more and more businesses find themselves struggling to obtain bank funding and raise capital. Sale and leaseback is a method by which businesses can seek to raise money from assets. One of the most common is to sell the freehold of the property you trade from, and take a lease back from your new landlord.

Realisation of Capital

Traditionally sale and leaseback arrangements have been used to return capital to shareholders but, as businesses find it increasingly difficult to obtain bank finance, sale and leaseback provides an opportunity to raise

However, on the downside, the cost of lease payments will increase the operational gearing of the business and may have an impact on taxation. In addition, unless the capital injection is wisely invested, the long-term costs will outweigh the short-term gain.

purposes of covering short-term expenses such as general operating costs or payment of dividends, the increased cost of payments under the lease may prove too great in the mid-term and the business may fail, leaving the investor with a tenantless property.

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much needed operating capital or to reduce business debt.

The perceived importance of owning freehold commercial property rather than leasehold property has diminished over recent years and, in many cases, leasehold arrangements can be more beneficial as they allow a greater degree of flexibility as businesses develop.

The leases that are granted in sale and leaseback transactions are often more favourable to the former freeholder than leases available on the open market and, accordingly, businesses often retain a high level of operational control over the premises.

Investment Opportunity

With property prices continuing to fall, the potential capital yield from property sales has, inevitably, reduced. This may, however, have the effect of tempting more investors towards the use of sale and leaseback arrangements as there is greater potential for their newly acquired properties to increase in value. Any potential investors must undertake thorough due diligence of the potential tenant business as the return on investment is dependant on the continuing ability of the tenant to keep up payments under the lease. It may, for example, be prudent to enquire as to the intended use of the realised capital. Where a business is intending on entering into a sale and leaseback arrangement for the

It is important, from the point of view of a potential investor, that the capital raised by the sale and leaseback is reinvested in the business with a view to expansion as this will give the business a greater chance of success. This will also benefit the business in the long-term

With some of the country's largest companies engaging in sale and leaseback transactions – including Tesco who are in the middle of a programme of sale and leaseback transactions that will yield a release of some £5bn of capital from the group's property portfolio – and reluctance of banks to lend money, businesses are continuing to look for alternative methods of funding.

Those businesses who own freehold property, or other valuable assets, may wish to unlock some of the capital of those assets and sale and leaseback provides a method of achieving this.

Crutes' business services unit has advised on several sale and leaseback deals recently and can therefore provide specialist knowledge to ensure future sale and leasebacks go through smoothly.



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Are you prepared... for another British Summer?

Gareth Williams, Climate Change Adaption Advisor with Business in the Community explains:

On a day to day basis wind, rain, snow or sun may just be a mild distraction or annoyance, but when it comes to severe weather they can have a significant impact on your business activities. To what degree depends on successful planning and risk management.

The flooding last September in Northumberland was another costly reminder to the business community that actions are required now to prepare better for the occurrence of a severe weather event. With over 100 businesses flooded, the need for businesses to become more resilient to such events is clearly apparent. Most businesses affected required significant time and expenditure in order to get back on their feet, and if statistics are to be believed many may never fully recover or will ultimately cease trading. However if a business had taken their flood risk seriously, they could have been trading again within a matter of a few weeks.

The occurrence of heavy snowfall this winter was a harsh reminder how vulnerable companies are to severe weather. Whether the issue is staffing levels at a local level or wider national supply chain problems, effects on transportation networks can have a crippling effect on your ability to do business.

Many simple actions can be taken to improve a company's resilience to severe weather as well as increasing their ability to respond and recover after an event. Ensuring premises are well maintained, developing a business continuity plan, checking adequate insurance cover, taking out business interruption insurance and assessing the possible impacts of severe weather on operations are all examples of basic actions that should be taken.

Flooding

There has been a major flood every year in the UK for the past decade: this risk is predicted to increase in future years. If your business is located in a flood plain, it has been estimated that you are twice as likely to flood as have a fire. However although fire procedures are a mandatory requirement, most companies at risk do not have a flood procedure. Many actions can be taken to improve your resilience and resistance to flooding.

- Ensure you have assessed your flood risk and taken steps to reduce the risk.
- Are you aware if your employees live in a flood risk area?
- Is your main supplier or customer at flood risk?
- If at flood risk, ensure you have a flood plan.

Visit www.environment-agency.gov.uk to find out if you are in a flood risk area. If there is any risk of flooding, download their template for a flood plan and sign up to the free Floodline service – call 0845 9881188.

However it is worth mentioning flooding may not just come from rivers. Surface water flooding caused by sudden intense rainfall coupled with ineffective drainage or blockages, may present a serious risk to your business especially if your premises are located on a large area of impermeable ground (for example an industrial estate). To reduce this risk, check regularly to ensure local drains are not blocked with debris.

Property

Pro-active maintenance can pay significant dividends regarding resilience to severe weather.

- Ensure your property is regularly checked and adequately maintained.
- Catalogue your high value assets (including photos) and ensure they are insured for the correct value.
- If your property is at flood risk, where possible move critical assets from the ground floor (or as high off the floor), including paper archives, central IT and communications equipment.
- Make sure your electronic data is backed up regularly.
- Implement a reliable and effective archive system (both electronic & paper), either from a third party or an internal procedure. Whenever possible ensure the archives are stored off site.

People

If you experienced problems with staff attendance during severe weather, flexible working arrangements may help reduce the impact this can have on your business. Measures include home working and having more flexible working hours. Visit www.workwiseuk.org for further details.

Travel

Research carried out by the Highways Agency revealed that 50% of road users would continue with a journey after hearing a severe weather warning. If employees travel regularly on company business, have you thought of the implications if they were injured on company business? Ensure you have a severe weather driving procedure to reduce this risk.

Research has also identified that around a third of road users do not carry out any checks on their vehicles before heading out on a long journey, ensure your vehicles are regularly checked for road worthiness.

Utilities

Unlike domestic customers, water companies have no legal requirement to supply companies with water in the event of shortages – you may find yourself without water. In the event of a widespread severe weather event, supplies may be lost.

- Have you thought of the implications to your business if you had water restrictions or your supply was cut off?
- What would be the implications to your business if you lost your electricity supply?
- Can essential operations run off a UPS or a generator?

Suppliers

A useful task to reduce your risk from supplier delays is to investigate having a reciprocal agreement with key suppliers, to ensure co-operation in the event of a major

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incident happening to either party. These include: cancelling, delaying or changing delivery address. To reduce your risk if something happened to your main supplier, where possible ensure all critical goods and services can be sourced from an alternative.

Supply Chain

Ensuring you have a sufficient buffer stock reduces your risk in the event of the supply chain breaking down.

Advice

Taking detailed legal advice when leasing or buying property can help to minimise the risk of unexpected costs later.

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