

Windsor-Clive, Earl of Plymouth and others v Rees and another [2019] EWHC 1008 (Ch)

A widely drafted landlord's reservation of a right of entry was given a narrow interpretation by the court.

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Facts

A farm was let under two agricultural tenancy agreements dating back to the 1960s.

In one of the tenancy agreements, a right was reserved for the landlord (L) as follows:

"Right for the Landlord.....to enter on any part of the Farm lands and premises at all reasonable times for all reasonable purposes."

In the other tenancy agreement, a right was reserved for L as follows:

"the Landlord may at any time and at all times during the said tenancy enter upon the said premises.....for the purpose of inspecting the same or for making roads sewers or drains or for any other purpose connected with his estate."

The farm was part of a site intended for a new garden city outside of Cardiff and applications for outline planning permission had been made for an area including the farm.

L applied for an injunction preventing the tenant (T) from interfering with L's rights of access. L wanted to undertake a number of surveys from the farm, including a bat habitat survey.

Issue

Did the widely worded reservations in the two tenancy agreements allow for wide rights of access for surveys, inspections and investigations related to the proposed redevelopment of the land?

Decision

The phrase "all reasonable purposes" in the first reservation had to be interpreted in the context of a landlord and tenant relationship and did not extend to all reasonable purposes that a landlord may have in mind. It should be construed as a right of entry for inspection and observation purposes, but did not extend to activities which could cause damage to the land or involve cordoning off part of the land or significant interference with the operation of the farm. Digging excavations, sinking boreholes and erecting structures all fell outside of the scope of the reservation.

Similarly, the second reservation did not provide a wider right for L. In particular, the phrase "for any other purpose connected with his estate" referred to activities to be carried out on L's adjoining land.

Points to note/consider

1. Similar reservations to those used in the two tenancy agreements here are fairly typical of agricultural tenancies (particular older ones that pre-date the Agricultural Tenancies Act 1995) and this case could well be cited as a precedent in the future by farming tenants who want to make life awkward for a prospective developer.
2. This case is a useful illustration of how a court will interpret a landlord's reservation in a lease. In particular, a court will strive to preserve the validity of an exception or reservation but will interpret it as restrictively as is necessary to avoid a derogation from grant

or a breach of the covenant for quiet enjoyment. If it is not possible to construe an exception or reservation in a manner consistent with this 'irreducible minimum', it will be struck down. In particular, a widely drafted landlord's exception or reservation will not give a landlord 'carte blanche' to ride roughshod over a tenant's rights.

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