In this series of articles, we aim to highlight 3 of the most interesting cases in our field decided in the past month. This month: interim relief pending the hearing of an application for relief from forfeiture on the grounds a CVA is proposed; modification of a restrictive covenant; and the latest Upper Tribunal decision about the Electronic Communications Code.

AUGUST 2025

Hobbycraft Trading Limited v Ropemaker Properties Limited, County Court, 6 August 2025

Summary

The Court granted an interim injunction requiring a landlord who had forfeited a lease because a CVA was proposed to allow the tenant to use the property pending the determination of its claim for relief.

Under the terms of the CVA, the tenant was proposing to meet its obligations to this landlord in full, save that payments would be made monthly rather than quarterly. The tenant was offering to abide by those terms if allowed to resume possession pending the hearing of its application for relief.

It was common ground that:

(a) The tenant would not be entitled to damages in respect of its losses during the period between the forfeiture and the grant of relief if successful;
(b) The tenant would have to pay the rent and outgoings in respect of this period, if successful in its claim to relief, even if not allowed into possession in the meantime; and
(c) If the tenant was successful in its application for relief, it would be entitled to possession as against any new tenant put in by the landlord in the meantime, provided that it had registered a notice to protect its pending claim at Land Registry before the new tenant took out a priority search.

The Judge determined that:

1. ordinary American Cyanamid principles applied even though it was common ground that the forfeiture had been lawful;
2. there was a serious question to be tried on the tenant's application for relief: it was not possible to conclude at an interim hearing that the tenant was insolvent, and relief was discretionary.
3. Damages would not be an adequate remedy for the tenant, because it had no entitlement to damages.

4. The wider balance of convenience favoured the grant of an interim injunction; the fact that the tenant's cross-undertaking in damages might be of limited value was not a reason not to grant the injunction in these circumstances: the landlord would be getting the rent and other sums due under the lease in the interim period, and it was unrealistic to suppose that the landlord would effect a new letting in the circumstances.
5. The costs should be reserved.

Why it's important

Although these applications turn on their facts, the approach taken by the DDJ in this case may well be enlightening for others with similar cases.

Hassan v Heath [2025] UKUT 242 (LC)

Summary

The Upper Tribunal partially allowed an application for modification of restrictive covenants, on the ground contained in s.84(1)(aa) Law of Property Act 1925.

The applicants were the owners of a house between the objector's house and the street. Their land was subject to a covenant prohibiting alteration of the elevation. They wished to construct an extension involving works at both ground and roof level, as well as alterations to doors and windows.

The Upper Tribunal allowed the application for modification in respect of the works to the ground, but not in respect of the works to the roof. In coming to that conclusion, it had regard to the following:

1. The proposed use of the applicants' land was reasonable: their reason for carrying out the works was to construct an additional bedroom to help cater for their son, who had high support needs
2. The objector made significant use of his conservatory, from which the works to the roof would have an overbearing aspect. Accordingly, being able to prevent those works did secure a practical benefit of substantial advantage to the objector, even though they would not result in any diminution in the value of his property.
3. However, the position was much more nuanced with respect to the ground floor works, which were of far more limited impact; there was no practical benefit of substantial advantage to the objector in being able to prevent that use of the applicants' land.
4. The fact that the applicants had bought the property in the knowledge of the restriction (although they had not fully

appreciated its force as a result of the advice they were given) and that the property was too small for their needs would not prevent the Tribunal from modifying the covenant to allow the ground floor works to proceed.

5. Although the applicants had begun the works in breach, the Tribunal accepted that they had been naïve, and had adhered to an injunction preventing further works. The breach was therefore not a cynical one in the sense described in ***Alexander Devine Children's Cancer Trust v Housing Solutions Ltd*** [2020] UKSC 45.
6. It would be disproportionate to leave the parties open to a further round of litigation in the County Court about whether the works to date should be removed in light of the breach of covenant.

Why it's important

This is an interesting example of how the Upper Tribunal may choose to exercise its discretion in a case with factors pointing in different directions. In particular, it illustrates the distinction between 'substantial value' (which was assessed in economic terms) and 'substantial advantage', as well as the Tribunal's approach to determining whether or not a breach is cynical.

On Tower UK Limited v AP Wireless II (UK) Limited [2025] UKUT 280 (LC)

Summary

The Upper Tribunal dismissed an appeal and refused permission to cross-appeal in a telecommunications case.

At first instance, the First-tier Tribunal had determined numerous terms of a template lease, which was to be the renewal lease (adapted as required) for a number of sites on which the operator was the appellant and the respondent was the site provider.

One of the disputes between the parties involved the terms on which the operator would be able to share the sites with other operators. The FTT had determined that it could share the 'Property and the Rights' with those who were already on the sites, but – in a departure from previous decisions of the Upper Tribunal - that new sharers would be restricted to sharing the 'Installation'. Part of the FTT's reasoning had been focused on the Product Security and Telecommunications Infrastructure Act 2022, which established sharing as a code right.

The UT allowed the appeal, finding that the FTT had misconstrued the 2022 Act, and as a result, had imposed overly restrictive sharing terms. There is nothing in

the 2022 Act which prevents the Tribunal from imposing an agreement which contains rights which are not code rights in addition to code rights.

The UT also refused permission to cross-appeal on other terms, finding that (a) the site provider should be involved in matters of wayleaves and conduits over other land as a consequence of its business model as a site aggregator; and (b) the appellant should not be required to covenant not to object to any planning application made by or on behalf of the respondent: paragraph 23 of the Code requires that loss and damage caused by the exercise of code rights be minimised; any loss or damage caused by the operator objecting to planning applications was a separate matter.

Why it's important

This case is significant for its clarification of the changes introduced by the 2022 Act. The Tribunal was clear that the PSTI did not either restrict or render unnecessary the ability for code agreements to make provision for the sharing of 'Rights' as well as electronic communications equipment, enabling, for example, the placing of cabinets and cables. This will be positively received by infrastructure providers in particular.

However, the Tribunal expressly chose not to resolve a question as to whether or not the application for permission to cross-appeal was in time (in view of the appellant's concession that an extension, if necessary, should be granted). This question, namely whether such an application should be made with comments on grounds of appeal or with the respondent's notice in the appeal itself, remains open for determination in another case.

STEPHANIE TOZER K.C.

FERN SCHOFIELD