



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: two cases regarding options (one, about perpetuities, involving both of us; the other, about s 28 of the Landlord and Tenant Act 1954, involving James Andrew-Tipler), and a long and important decision about statutory trusts for public recreation (in which Jonathan Karas KC and Caroline Shea KC were involved).

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Crest Nicholson Regeneration Ltd v Calvert [2026] EWHC 531 (Ch)

Summary

The High Court considered whether an option was void for perpetuity.

By an agreement made in 2002, the parties had entered into an initial option for a 21-year period, which contained an option to call for a 'lease', which would itself contain a further option to buy the freehold. This structure was intended to take advantage of the exception to the rule against perpetuities contained in s.9(1) of the Perpetuities and Accumulations Act 1964, which disapplies the rule against perpetuities from options to acquire the reversion to a lease.

The Court determined that:

1. The 'lease' was in fact a licence, because the parties had (objectively) agreed that the landowner should be able to remain in occupation throughout. Prima facie, therefore, the second option was void for perpetuity because a contingent interest in it arose when the agreement was made in 2002.
2. However, the notice to call for the 'lease' had been served after the Perpetuities and Accumulations Act 2009 (which disapplies the perpetuity period for all options) came into force. That meant that the second option was not void for perpetuity.

Why it's important

This decision suggests that the scope of the 2009 Act is likely to be somewhat different than has previously been understood. It gives rise to the possibility that an option granted before the 2009 Act came into force could be freed from the shackles of the rule against perpetuities if any further instrument relating to the option can now be created before the option becomes void for perpetuities. And the same would appear to apply to any other type of contingent interest to which the



rule against perpetuities applies, even if it was created after the 2009 Act came into force.

Permission to appeal to the Court of Appeal has been granted. The appeal is likely to clarify how the 2009 Act works. There is also an issue about whether it is possible for parties to an option to agree to add small parcels of land into the option by way of a variation, or whether that inevitably results in a fresh option in relation to those additional areas. .

All England Lawn Tennis Ground Ltd v Save Wimbledon Park Ltd [2026] EWHC 628 (Ch)

Summary

The High Court determined that land was not subject to a statutory trust for the purposes of public recreation.

The case concerned the proposed expansion of the All England Land Tennis Club into part of Wimbledon Park known as “the Golf Course Land”. The claimant sought declaratory relief to the effect that the development would be permissible. The defendant, a protest group, argued that the land was subject to a statutory trust under s.164 Public Health Act 1875 giving the public rights of recreation which would be incompatible with the proposed development.

The Court found that the development was permissible. Since before the land in question had first been acquired by the Wimbledon Corporation, it had been leased to a golf club and used as a private golf course, not for the purposes of public recreation. Accordingly, on the evidence, it had never been appropriated to that purpose. That had not been altered by reform to local government legislation in the 1960s. Accordingly, the land had never been subject to a statutory trust. Furthermore, even if it had, as the land had never been used for public recreation, a statutory trust had not yet come into being. Accordingly, there were no public rights capable of amounting to an overriding interest when the Claimant bought the land.

Why it's important

This is a high profile case, the substantive result of which will doubtless be of interest to many, but the judgment also contains a wealth of detail for practitioners dealing with statutory protection of open spaces, including as to the test for appropriation, the interrelationship of statutory trusts with land registration, and the treatment of larger pieces of land.



Park Cakes Limited v Caterpillar Property Limited (Leeds County Court, 20 March 2026)

Summary

The County Court determined that a tenant's option to renew contained in a lease was not an agreement for a future tenancy of the holding within the meaning of s 28, such as to take the lease outside Part II of the Landlord and Tenant Act 1954.

The claimant was the tenant under two leases of commercial premises. Each lease contained a tenant's option to call for a further lease of the premises on fulfilment of certain conditions. The defendant landlord argued that the option constituted an agreement for a future tenancy under s.28 of the Act, so that the claimant did not have any statutory protection.

The judge rejected this argument, reasoning that there would only be an agreement for the grant of a future tenancy within the meaning of s 28 once the option had been exercised, not when it was granted.

Why it's important

Although this is a County Court decision and therefore not binding authority, the point at issue was a novel one, and will be of significance to all parties to business leases which contain contractual options to renew. As the judge stated, if parties wish to ensure that their contractual machinery takes precedence over the statutory renewal mechanism, they should agree to contract out of the Act under s.38A – if this decision is followed, the mere grant of the option will not displace the statutory means of renewal.

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