



## SITE ACQUISITION

Now that potential development sites are becoming scarce, would be developers must take care to ensure that the land they buy does not come with cumbersome and expensive-handicaps.

Despite warnings of an economic downturn strong development activity continues. With the increased intensity of residential and commercial development over recent years, many of the easily developable sites have been snapped up. Efficient site assembly has therefore never been of greater importance. Apart from negotiating the price and the usual planning consent matters, other issues may also require due consideration.

### What are the key issues?

#### Access

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Unless the property abuts directly onto a public highway an appropriate right of way will be needed to get in and out. This may seem self evident and easy to monitor but the prospective developer must beware. The classic error is to look at the Land Registry plans, note that the property appears to come to the edge of a highway and then presume they are correct. The plans issued by the Land Registry can be inaccurate by as much as 20 metres on the ground. To complicate matters organisations both large and small buy or reserve strips of land around development sites in hope of extracting huge amounts in payments from an interested developer. Some supermarket chains have been known to buy land and houses to kill competitor's developments. If your site is landlocked its quite possible this is not an accident. A few careful steps should help avoid this problem.

#### Traffic

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Even if you have a right of way you should not relax. The courts are reluctant to allow intensification of a right of way. For example if the original right was for light farm traffic the courts will not allow a change to heavy industrial or residential traffic.

#### Adverse Possession

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Title to the land is not always acquired by purchase or other conventional means. It can grow organically through time if a squatter occupies it as its own for 12 years without permission or protest from the paper owner.

#### Other occupiers

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If existing leases are not contracted out of the Landlord & Tenant Act 54, then the tenant will be protected by statute. This has three results. First the tenant has a right to stay indefinitely, unless the landlord can prove on of a number of statutory grounds to the courts satisfaction. These range from the naughty tenant grounds such as non payment of rent to non fault grounds such as the landlord demonstrably needing the property for his own use or for development. Second, the tenant always has a right to ask the court for a new lease at market rent. Finally if the tenant has to leave because the landlord successfully proved his ground then the tenant would be entitled to compensation at a rate of either once or twice the rateable value. Furthermore the tenant may be entitled to compensation for improvements. Negotiations with the tenant would be required for an early termination of the lease.

## Party Walls

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The Party Wall Act gives absolute rights to a building owner or developer to carry out works on his land affecting a party wall or party structure. He has rights to cut into the party structure, underpin it and inject into it and he has rights to excavate from a new independent building. There are strict rules and procedure that must be adhered to in order to avoid injunctions. Appropriate notice have to be served subject to time limits and a Party Wall Award agreed. The building owner must not cause any unnecessary inconvenience to adjoining owners. The Act covers reasonableness and the requirement to be paid compensation in certain circumstances.

## Rights of Light

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Planning authorities are becoming ever conscious of the need of daylight and sunlight to adjoining premises especially if they are residential, but sometime offices. Hence Local authorities are imposing standards and conditions within any planning permission. Rights of light are entirely separate matter from planning and every developer must consider the issue. If rights of light are overlooked they can become a serious problem later and possibly lead to injunctions or the development not being built. Usually it's the Prescription Act 1832, which is most relevant, and the developer must be aware of the prescriptive rights of light of any adjoining premises.

## Crane over sailing

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Whenever a developer wishes to erect a crane he must be mindful of the law. If a crane over sails and trespasses in the airspace of adjoining owners, then written permission for the encroachment must be obtained from all parties with an interest in the land

## Scaffolding licences

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Permission is needed for any scaffold encroachment on adjoining owner's properties unless there is a right for a developer to erect it. In the case of cranes and scaffolding trespass, formal licences need to be entered into which should cover the extent of the encroachment, indemnities given, the prevention of the loads being carried over the adjoining land and usually a payment of fees and costs.

## Restrictive covenants

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Land may have restrictive covenants preventing a certain type of use or height of the building. If you own land with a restriction and have been approached by a party seeking to remove or modify the covenant you should obtain professional advice before signing any agreement. On the other hand, if a restrictive covenant is preventing you from maximising the full potential of your land or property, we are able to assist in the negotiation of a modification or removal on your behalf.

## Archaeology

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The discovery of Archaeological remains on your land can slow or even scupper the development. There are various statutes and laws that dictate what you should do. Developers need to take on board measures to mitigate and prevent financial loss.

## Environmental factors

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These factors could be contamination; noise, dust and vibrations etc. As a matter of general law if noise materially interferes with the reasonable comfort of the neighbouring occupiers, it will constitute a nuisance. To justify a claim, an aggrieved person must however show, that a nuisance exists, and that he has suffered substantial damage (but not necessarily financial loss) as a result.

We act for both landlords and tenants.



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