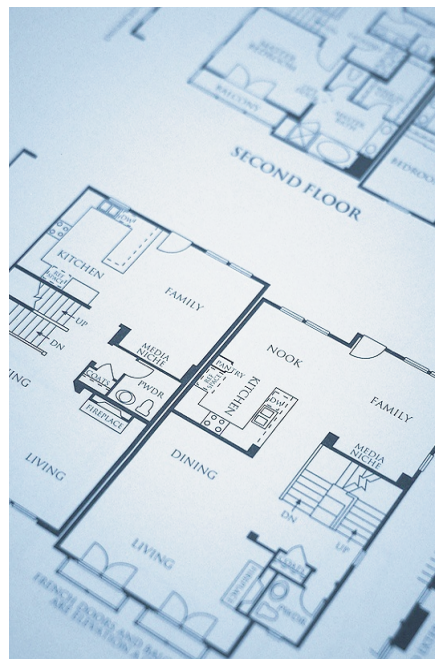


Temporary Planning Permissions

If you are a prospective tenant and the premises you are acquiring has an existing temporary planning permission (or you need to apply for one in order to carry out your proposed use), what happens when that temporary planning permission expires?

To give an example, in 2005, planning permission was granted to use a building as offices falling within class B1 of the **Town and Country Planning (Use Classes) Order 1987 (SI 1987/764) (UCO 1987)**. The building was used for B1 use as soon as **planning permission** was granted. **Temporary planning permission** has now been granted to use the building as a pre-school nursery (*class D1, UCO 1987*). A condition imposed on the planning permission requires the nursery use to discontinue on 31 March 2014,



unless planning permission has been granted for its retention.

Failing which, on 1 April 2014 the planning permission for the building will revert to offices falling within class B1 of the UCO 1987.

Material change of use

Under the **Town and Country Planning Act 1990 (TCPA 1990)**, planning permission is required for the carrying out on land of any development (*section 57(1), TCPA 1990*). Development is

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PROPERTY

defined as the "carrying out of building, engineering, mining or other operations in, on, over or under the land or the making of any material change in the use of any buildings or other land" (*section 55(1), TCPA 1990*). As a result, planning permission must be obtained if there is a **material change of use** of any buildings or land. The TCPA 1990 does not define "**material change of use**". Materiality is therefore determined by "fact and degree" in each case.

A change of use from a pre-school nursery (*class D1, UCO 1987*) to offices (*class B1, UCO 1987*) would normally be a material change of use requiring **planning permission**.

However, where planning permission is given for a limited period, planning permission is not required at the end of the period for the resumption of the use for which the land was "normally used" before the **temporary planning permission** was granted (*section 57(2), TCPA 1990*).

In determining what is, or was, the normal use of the land, you ignore the temporary planning use granted and the use reverts to its former **lawful status**. In this case, offices falling within class B1 of the UCO 1987.

Why are temporary planning permissions granted?

Local planning authorities (LPAs) usually grant temporary planning permission if the:

- Proposed structure or use is of a temporary nature and the LPA want the ability to remove the structure or require the use to stop when no longer required; or
- The LPA is unsure about the impact of the use on the land and wants to give the development a 'trial run'.

The LPA should not normally grant a second temporary planning permission. The initial trial period should be long enough to establish whether or not a permanent permission is acceptable.

A landlord may be attracted to apply (or allow a new tenant to apply) for a temporary planning permission where it has empty premises that it wants to let but has been unable to do so.

Points to watch out for:

Where a tenant needs to apply for a **temporary planning permission** in order to use the building for a specific use, the landlord's consent will normally be required under the terms of the lease. If the tenant is not already occupying the building, any agreement for the lease must be conditional on planning permission being granted.

If the permission is not only temporary but personal to the tenant occupying the building, it must be personal to the actual tenant *company* occupying the building and not the individual directors of that company. The

landlord will be concerned that if the permission is personal to the directors, and they are not the tenant under the **lease**, it might imply that the directors had an underlease or a right to occupy the building. A landlord's concern is that they must be able to obtain vacant possession when the lease expires or is forfeited for **breach of covenant**.

From a tenant's point of view, if the planning permission granted is personal to the directors, the landlord may insist on an underlease to them or where the lease had not been granted, a lease in the names of the directors – which would create considerable **personal liabilities**. The whole point of having a company tenant is to limit that liability. (Also, if the permission is in the company's name, it makes it easier to sell the business with the planning permission, albeit a temporary one.)

However, LPAs may insist on the temporary planning permission being personal to the directors. This needs to be established early in the transaction so that there are no surprises later on that could add to costs or delay in the transaction.

2011 Autumn Statement: implications for SMEs

This checklist highlights the key implications from the 2011 Autumn Statement for small and medium-sized enterprises (SMEs).

Extension of small business rate relief

The Government has announced that it will extend the current **small business rate relief holiday** for a further six months from 1 October 2012. This gives full relief for eligible small businesses occupying property in England with a rateable value of up to £6,000 and tapering relief for businesses with a higher rateable value up to £12,000.

Business rate deferral scheme 2012/13

All businesses in England will be given the ability to defer 60% of the **Retail Price Index** based increase in their 2012/13 business rate bills. The deferred amount is to be repaid equally over the following two years.

Additional enterprise zones approved

Enterprise zones will be approved for:

- Two areas centred on BAE sites affected by significant redundancies announced in September 2011:
 - Warton in Lancashire; and
 - Brough in Humberside.
- An extension of the existing enterprise zone in the North East LEP area, to include the Port of Blyth.

These will be added to the existing list of 22 enterprise zones.

Enhanced capital allowances in some enterprise zones

100% first year **capital allowances** will apply to expenditure on plant and machinery (between April 2012 and March 2017) by businesses located in the enterprise zones in each of the following LEP areas:

- Black Country;
- Humber;
- Liverpool;
- North Eastern;
- Sheffield; and
- Tees Valley.

There will be a cap of EUR125 million for each project. Businesses claiming the 100% capital allowances gain a cash flow advantage because the cost of the plant and machinery can be offset against tax in the first year, rather than in instalments over that year and subsequent years.

Seed Enterprise Investment Scheme

The Government will introduce a new scheme (**Seed Enterprise Investment Scheme (SEIS)**) from April 2012 to encourage investment in new start-up companies. SEIS will provide:

- Income tax relief of 50% for individuals who invest in shares in qualifying companies, with an annual investment limit of £100,000.
- **Capital gains tax exemptions** on gains realised on disposals of assets in 2012/13 and invested through SEIS in that year.

There will be a cumulative investment limit of £150,000 for the start-up company, whose total

assets, before investment, must be below £200,000.

Changes to the Enterprise Investment Scheme

The **Enterprise Investment Scheme (EIS)** has been around for many years and seeks to encourage equity investment in new and small high-risk trading companies. Taxpayers can benefit from:

- **Income tax relief** of 30% on qualifying investments (subject to an annual investment limit, which is currently £500,000 but is due to increase to £1 million from April 2012).
- Exemption from **capital gains tax** on disposal of EIS shares.
- Unlimited **deferral relief** from capital gains tax where gains (including gains on shares) are reinvested in eligible shares.

The Government has announced that it will:

- Simplify the existing EIS rules by relaxing the connected person rules and the definition of shares that qualify for relief.
- Introduce a new restriction to exclude companies set up solely to access EIS relief.
- Exclude the acquisition of shares in another company.
- Include receipt of feed-in-tariffs within the list of excluded activities.

In addition, the restriction that prevents venture capital trusts investing more than £1 million in a qualifying company will be removed.

Joint Ownership

It is important to understand the potential consequences for cohabiting unmarried couples owning property as **joint tenants** in light of the recent case of *Jones v Kernott (2011) UKSC 53*.

Ms J and Mr K owned the legal and beneficial title to a property jointly, which means that neither party was entitled to a distinct or separate proportion of that interest (ie half and half) and each one owned all of it.

On the death of one party, **The Law of Survivorship** would therefore have applied so that the whole of the property would automatically pass to the survivor. Had they owned it as **tenants in common**, then they would each have owned a separate and distinct share in the property (ie each owning their respective percentage), which they would have been free to deal with as they chose, subject to the other party's rights of occupation.

Ms J and Mr K shared the costs of acquisition, extensions, mortgage payments and utility bills. In due course, the relationship ended and Mr K moved out, at which time Ms J took on all responsibility for the property and its running costs.

After 12 years' separation, Mr K severed the joint tenancy so that it became a tenancy in common and attempted to claim a half share in the property. He ended up being awarded only a 10% share of the property – the Court deciding what the parties "intentions" were as to their ownership of the property. It is here that it is relevant to note the difference between "imputed" intentions and "inferred" intentions. In this case, the **County Court** decided that although the parties accepted that at the time of their separation they each had an equal beneficial interest in the property, this changed after Mr K moved out of the property. The Court decided that Ms J was entitled to 90% of the value of the property on the

basis that this was fair and just and could be "inferred" from the "evidence" available.

Mr K appealed the decision and lost the appeal in the **High Court** on the basis that the conduct of the parties following the breakdown of their relationship showed that their intentions had changed to those from the beginning of their relationship. Mr K then appealed to the **Court of Appeal**, where his appeal was allowed.

The **Supreme Court** unanimously reversed the Court of Appeal's decision and held that Mr K only owned 10% of the beneficial interest in the property. It is interesting to note, however, that the Supreme Court, whilst reversing the Court of Appeal's decision, nevertheless came to the same conclusion with regard to the value of Mr K's share in the property. This arose from the Supreme Court's judgment that the parties' intentions could not be inferred on the evidence available but that it was fair to impute that intention to the parties.

It should therefore be borne in mind when dealing with property ownership that whilst there is legislation to govern the position where married couples split up, the position of co-habitees is governed by general property law principles.

The lack of any statutory provisions makes it necessary for the courts to deal with these cases by adapting old principles to new situations. **Co-habiting couples** should therefore always be fully advised as to the consequences of owning property as joint tenants and the fact that the joint tenancy can be severed at any time, thereby converting it to a tenancy in common as well as the advisability of entering into declaration of trust when owning as tenants in common. This case illustrates the ongoing difficulties that can arise where **unmarried couples separate** and there is no clear agreement as to ownership of their property interests.

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