THE PROBLEMS IN PURCHASING PROPERTY - NOT ALL IS DOOM AND GLOOM

by Tim Hart

Buying or selling a property can be a stressful process, with many issues having the potential to delay completion and, in some cases, to threaten the transaction itself. Valuations can come in below expectations; survey reports can reveal defects requiring costly remedial works; a transaction further down the chain can collapse. Not until the Friday afternoon Royal Court session, when the contract is passed, can a transacting party know that the deal is definitively done.

The conveyancing process itself can reveal issues which can threaten or delay a transaction.

Boundary irregularities are a commonly occurring issue. Sometimes it may be that part of a building or enclosure has been built on the wrong side of, or too close to, the boundary with the neighbour's property. Or a window or other opening has been established less than the required 2 feet 9 inches from the boundary. Or a boundary wall has been built along the wrong alignment.

Another common issue is the lack of properly established contractual rights, whether in relation to required rights of way over third party property or in relation to the right to run mains services across third party property. Such rights can only be created by way of contract passed before the Royal Court. So, for example, the fact that the owners of a property have been accessing that property by means of a neighbour's roadway for many years will not have created any legal right for such access, and the owner of the roadway could choose to withdraw permission at any time.

Planning and building control non-compliance is also a frequently encountered problem. It may be that works have been carried out at a property without the necessary permission or that there has been an unauthorised change of use. A relatively common occurrence is the situation where works have been carried out with the
necessary permissions in place but without the works having had a final inspection by a building control inspector for the purpose of issuing a certificate of completion.

Inheritance anomalies can also come to light, casting doubt on the vendor’s ownership of the property. Or there may have been a failure to comply with the necessary formalities when the property was conveyed at an earlier stage.

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Indeed, rare is the property that does not have some title irregularity, however minor. But what is absolutely necessary, when acting in a property purchase, is to be able to spot any such issues, examine them on a prudent and yet commercially sensible basis (not making mountains out of molehills), and advise on appropriate remedial measures. This can in some cases involve insisting on the vendor’s lawyers approaching neighbours to request their participation in the contract to ratify the encroachment or other breach or to grant missing rights. In some cases it may be appropriate to approach the authorities, for example to arrange for a building control inspector to inspect works which have not previously been ‘signed off’. In some cases, the best approach will be to obtain defective title insurance.

Experience and sound judgement is crucial in ensuring that title issues do not scupper transactions and that if any delay is caused while they are addressed, that delay is kept to a minimum. The road to completion can at times be a rocky one but a good property lawyer should be adept in spotting and circumventing obstacles.

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