Rugby, Restrictions and the "Rec"

February 17, 2022

This advisory discusses the recent decision by the Court of Appeal in the matter of *Bath Rugby Ltd. v Greenwood and others*, ruling that a restrictive covenant over land was unenforceable as it failed to properly identify the land with the benefit of the restriction.

Background

Bath Rugby, a tenant of recreation ground commonly known as the "Rec", operated a rugby club on the Rec. The title to the Rec was subject to a restrictive covenant contained in a conveyance dated 6 April 1922, under which the original purchaser covenanted, for itself and its successors, that nothing should be erected, built or done on the Rec "*which may be or grow to be a nuisance or prejudicially affect the adjoining premises or neighbourhood*."

Having occupied the Rec for over 100 years, Bath Rugby wished to redevelop its long-term home with a new, larger stadium and additional retail and commercial outlets.

Ordinarily, where a property is subject to such a historic restrictive covenant, a developer may look to the protection of title insurance against the risk of the restriction being enforced. However, the high public profile of both the location and Bath Rugby itself, together with the volume of the objections made by local residents (presumably non-rugby fans (!)) meant that Bath Rugby instead sought a declaration pursuant to section 84(2) of the Law of Property Act 1925 that the restrictive covenant was unenforceable, on the ground that the covenant did not sufficiently identify either the party or the land that was entitled to enforce the benefit of the restriction.

Decision

In October 2020, the High Court held that the covenant **was** enforceable on the basis that the covenant had been annexed to "*adjoining land or the neighbourhood*" as referred to in the 1922 conveyance. This meant that it could be interpreted as a reference to "buildings and land of the vendor … adjoining or near to" the Rec.

However, in a decision made by the Court of Appeal in 2021, it decided instead that there must be a sufficient indication of the land intended to benefit from the restrictive covenant, either expressly or by necessary implication. Crucially, it held that the words "*adjoining land or the neighbourhood*" were neither sufficient nor could be interpreted in the artificial way the High Court did.

As such, the benefit of the restrictive covenant had not been annexed sufficiently to the land and, therefore, no one could now enforce the covenant.

Conclusion

This case is interesting not just for fans of Bath Rugby, but for developers who previously have been prevented by a restriction affecting potential development land, where the land benefiting from the restriction was not clearly identifiable. It is also a lesson that when disposing of land to developers, any new restrictions should be carefully drafted.

Queries

This is an explanatory reference note produced for reference only. It should not be treated as legal advice on any specific situations. For more information, please contact your Katten lawyer or the following:

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