

Tom Weekes KC

Dodging Tenant User Covenants

- The principles of contractual interpretation.
- Competition law.
- Section 84(1) of the Law of Property Act 1925.

CLN (Copenhagen) Southern Ltd v Tunbridge Wells BC [2005]
LLR 282, Neuberger LJ [51]:

“While deprecating the notion that one should construe a covenant in an artificially narrow way simply because it is restrictive of the use to which an owner can put his property, I am of the view that a restrained, rather than a generous, interpretation of such a covenant is normally appropriate”.

- Active voice: “T shall not use”.
- Passive voice: “The demised premises shall not be used”.

Roadside Group Ltd v Zara Commercial Ltd [2010] EWHC 1950 (Ch)

- Tenant covenant:
- “Not to use the demises premises...for the parking of motor vehicles for sale on any forecourt...”



Section 3(5) of the Landlord and Tenant (Covenants) Act 1995:

“Any landlord or tenant covenant of a tenancy which is restrictive of the user of land shall, as well as being capable of enforcement against an assignee, be capable of being enforced against any other person who is the owner or occupier of any demised premises to which the covenant relates, even though there is no express provision in the tenancy to that effect.”

Chapter I of the Competition Act 1998:

- Object or effect is the “prevention, restriction or distortion of competition”.
- Has an appreciable impact on competition.
- Does not fall within any of the exemptions designed to protect agreements that can be justified in the public interest.





Martin Retail Group Ltd v Crawley BC [2014] L&TR 17

Proposed prohibition on:

- “...the sale of alcohol, grocery [and] convenience goods.”



HHJ Dight:

“The essence of the [Council’s] case on this point is that a number of different retailers is better than a single supermarket because it affords a choice between different sources of goods, from independent sustainable smaller businesses and enables new traders to enter the market when otherwise they might not.

In my judgment the defendant fails at this first hurdle. I am not satisfied that, as a matter of fact, the distribution of goods is improved or economic progress promoted through the existence of a number of different retailers rather than via a supermarket or a number of similar retailers.”

Sub-section (12):

“Where a term of more than forty years is created in land...this section shall, after the expiration of twenty-five years of the term, apply to restrictions, affecting such leasehold land in like manner as it would have applied had the land been freehold.”

Berkeley Square Investments Ltd v Berkeley Square Holdings Ltd

“...the demised premise shall be used only as offices...”.



Section 84(1), ground (aa):

- The covenant would impede “some reasonable user”.
- In impeding that user, the covenant “does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them”.
- Money will be an adequate compensation for the loss and damage (if any) which any such person will suffer from the discharge or modification.



Questions & Answers

Thank you for listening

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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