

Reverter of Sites:

Could 19th century laws impact on 21st century developers?

With local authority budgets under pressure, disused schools, museums and libraries are being earmarked for development. But, as Martin Wilks explains, an obscure 19th century law could stop plans in their tracks.

What are rights of reverter?

During the 19th century, people were encouraged to grant land to schools, institutions promoting science, the arts and literature and for places of worship. Legislation was enacted to help with this aim, such as the School Sites Act 1841, the Literary and Scientific Institutions Act 1854 and the Places of Worship Sites Act 1873.

Under these statutes, if land was given for a specific purpose, but trustees subsequently ceased to use the land for that purpose, the donor was entitled to have the land 'revert' back to them – the so-called rights of reverter.

Following a Law Commission Report in 1981, the Reverter of Sites Act 1987 (1987 Act) made some key amendments to these rights. These were further modified by the Trusts for Land and Appointment of Trustees Act 1996. Under Section 1 of the 1987 Act, the rights of reverter under the old 19th century statutes were abolished. They were replaced with a trust in land in favour of the donor (i.e. the person(s) to whom the land would have previously reverted).

The result is that trustees hold the legal estate on trust for the donor, with a power to sell.

Any beneficiaries of the original donor's estate are entitled to the proceeds of sale if the land ceases to be used for the charitable purposes for which it was originally donated.

In addition, trustees may sell the land without consulting or identifying the donor. If it proves impossible for the trustees to find the donor, they may apply to the Charity Commission for the interest to be extinguished and for a scheme to be drawn up to use the land for other charitable purposes.

Is there still a risk?

There is an argument that the risk of a beneficiary coming forward today is relatively low. A donation under one of the old statutes would have taken place a long time ago. As a result, a potential beneficiary today may not be aware of their entitlement or even their rights. However, the development of such sites has the potential to unlock significant value.

It is not surprising, therefore, that there are companies that specialise in tracking down potential beneficiaries, as was the case in *Fraser and Fraser v. Canterbury Diocesan Board of Finance and Others* [2005] UKHL 65.

In 1866, land was conveyed to trustees under the School Sites Act 1841 (1841 Act) to be used as a school "for the education of children and adults of the labouring manufacturing and other poorer classes....And for no other purpose". Under Section 2 of the 1841 Act, if the land ceased to be used for the purposes mentioned in the 1841 Act, it would revert to the previous owners.

The school was closed in 1995 and the site sold. Fraser and Fraser claimed to be beneficiaries of the proceeds of sale under statutory trusts created by Section 1 of the 1987 Act.

It was held that the relevant statutory purpose was the education of poor persons and there was no evidence to say that the school had not been used for that purpose until it closed in 1995. As a result, the proceeds of sale fell to the descendants of the original donator of the land, as the 1987 Act required.

What are the implications of *Fraser*?

It is not only schools that are subject to this legislation. In 2011, The Financial Times reported that "Councils that hope to sell off libraries and museums to plug their deficits could be frustrated by an obscure 19th century law that requires profits to be returned to the original landowners. The future of at least 500 libraries is uncertain."

Whether or not the same result as applied to the school in *Fraser* would also apply to libraries and museums and other institutions covered by the statutes is still uncertain. It is clear, however, that developers should still consider the implications of this legislation when acquiring disused educational institutions, museums, libraries, institutions for the promotion of science, literature or the fine arts and places of worship.

Issues to consider

Although obscure, this Victorian legislation still has an impact on the way in which land originally donated for charitable purposes will be used for future generations. For a purchaser or developer, payment of the purchase price to two or more trustees will overreach the interest of the beneficiaries, but they should still raise enquiries at an early stage. This could save time and costs if it transpires that the 1987 Act applies. After all, for a trustee of land there may be no real incentive to sell if the 1987 Act applies and they are not entitled to the proceeds of the sale.

Useful Tips

- Purchase from the correct legal owners. A purchaser or developer should satisfy itself that the vendors are the successors in title of the original grantees.
- Investigate the terms of the original grant. Was it given under one of the 'reverter acts'?
- Check the history of the institution that is proposed to be sold.
- Ensure the institution has closed, or the land has ceased to be used for any of the other purposes mentioned in the relevant statute before contracts are exchanged for the purchase.
- A purchaser or developer of the land should not be concerned if the beneficiary is identified or located, as they will only be entitled to the proceeds of sale.

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