

## Foot Anstey 'Move Forward'

**Foot Anstey has announced the launch of a new volume conveyancing team specialising in residential conveyancing. "Move Forward" will be led by Alastair Hargreaves, an Associate with the firm.**

Foot Anstey sees changes in residential conveyancing ranging from the introduction of the Home Information Packs and electronic conveyancing through HM Land Registry as an important opportunity.

John Westwell, Head of Property at Foot Anstey commented:-

"We have been delighted with the success of our New Homes Team which has a projected turnover in its first year of around £1M. The New Homes Team already looks after clients from across the UK, who are purchasing newly built homes, ensuring they benefit from our specialist knowledge of development sites. Feedback from our clients has been strong, they are appreciative of a quality service for a highly competitive fee. Move Forward provides a new and parallel service for our clients. A volume conveyancing team has been set up to deal with the conveyancing needs of all types of property except of course new build, which is handled exclusively by the New Homes Team."

"Quality is an important issue here. Keenly priced volume conveyancing isn't new but an advanced IT-led, solicitor service is." said John Westwell.

"Our clients need a choice - the traditional residential conveyancing service or Move Forward." says Alastair Hargreaves. "Move Forward will offer highly competitive rates as clients will benefit from the convenience of text messaging, e-mail and internet access to their files as distinct from the traditional service where clients generally prefer a more tailored service."

Foot Anstey plans to expand the service later in the year by offering a new Will making service to its clients.

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## Foot Anstey moves to Wellington House

It is almost a year since we merged with Alms & Young in Somerset, and in that time the number of staff working in our Taunton office has more than doubled from 30 to over 65. This growth was the catalyst for our recent move to larger offices at Wellington House in Queen Street.

Mark Lewis, who is Chairman of the firm and Head of the commercial team in Taunton said "This move is proof of the success of the merger for both our clients and staff. Our new office lets us offer personal, business and legal aid advice in more spacious and comfortable surroundings which are still conveniently located in the town centre."

"Our growth in staff numbers and the expansion of the services we now offer clients is in direct response to the demand in Somerset and our success in attracting teams of lawyers from other firms. We can advise on all areas of business, property and planning law as well as giving personal advice in the areas of wills, tax planning, family law and clinical negligence."

"We are committed to being the premier law firm in the South West and see our future in supporting our clients in Somerset, Devon and Cornwall."



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# Planning Gain Supplement

**As part of its radical shake up of the planning process, the Government is proposing to introduce a new tax on the increase in land values resulting from the grant of planning permissions. This is in response to Kate Barker's report on the supply of housing in the UK which suggests that the Government should share in the development gains accruing to the landowners for the benefit of the wider community.**

No indication of the rate at which the new tax, or Planning Gain Supplement (PGS), will be charged has been given other than that it will be "modest", but many industry commentators speculate that a standard rate of 20 per cent might be applied. The Government must avoid discouraging development by setting a rate that is too high. The Government is considering a lower rate of tax for brownfield sites as an incentive for regeneration.

It is suggested that the PGS, which may apply from 2008, will be levied upon the granting of detailed planning permission or on the commencement of the development. It is envisaged that the developer will trigger the liability to pay the tax by serving a notice prior to commencing the development, identifying itself as the liable party. If it fails to serve the notice the Local Authority will be able to serve a Stop Notice or to take alternative enforcement action against the developer.

However, while the developer will normally be responsible for paying the PGS, it will normally pass the cost back to the landowner by negotiating a lower purchase price. Therefore, on the face of it, this could result in a double tax charge to the landowner, although the Government is considering allowing a tax deduction against Capital Gain Tax.

In her report, Kate Barker also recommends that if a PGS is introduced, that the scope of Section 106 Agreements should be restricted so Local Authorities should no longer be able to extract development gain other than for the purpose of "direct impact mitigation" and for the provision of affordable housing.

Instead, it is suggested that a proportion of the PGS, which will be collected centrally, should be given back to the Local Authorities so that communities can benefit directly from the windfalls generated by planning permissions. These funds would then be used for infrastructure improvements, including the provision of education, healthcare, leisure facilities etc. The balance of the revenue would be used centrally for strategic community development, public services and more social

housing. Accordingly, PGS revenues will exceed those currently generated by Section 106 Agreements, but Local Authorities will be concerned to ensure that areas with high land values do not get disproportionately high contributions in comparison to less well off parts of the country where land values are lower.

Further, since the mechanism for allocating the funds has not yet been published, some Local Authorities will be anxious to learn what control they will have over the allocation of funds.

In turn, developers will want clarity over the transitional rules as early as possible, particularly given the long development period for some larger planning schemes. It may be that we will see a rush of smaller planning applications (rather than one large application) being submitted for larger sites to get the permissions through prior to the implementation of the PGS.

Furthermore, the ability of developers to carry out minimal works to keep a permission alive will be restricted as the commencement of the development will trigger the payment of the tax, and developers and Local Authorities will lose some of their flexibility to stagger financial contributions throughout the project.

It is intended that the PGS will apply to all planning permissions, be they commercial or residential, except home improvements. The Government may consider thresholds to exclude small scale improvements to commercial properties, but generally it is against adding complexity. One might suggest, however, that there must be a case for exemptions for charities, RSL's and public bodies, as is the case with many other taxes.

Until the Government publishes further details of the proposals, the proposed PGS is likely to cause concern and uncertainty and all parties interested in development are encouraged to take note of any further announcements.

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# Flood Risk

**The end of February brought threats of a hosepipe ban in the South East...and also marked the closure of the Government's consultation period on Planning Policy Statement (PPS) 25: "Development and Flood Risk". So, is the new Statement awash with bright ideas or does it pour cold water on low-lying development?**

## What is it for?

The existing guidance on development and flood risk (PPG 25) was published in July 2001. The stated aim of this proposed revision is to update PPG 25, to "focus on national planning policy and to provide clarity on what is required at regional and local levels". Advice on practical implementation of the policy is to be published in an accompanying "Good Practice Guide".

## What are the key changes?

The Environment Agency is to become a Statutory Consultee for all planning applications involving development in flood risk areas.

Where the Local Planning Authority is minded to approve a planning application, for major development against a sustained Environment Agency objection on flood risk grounds, the application will be referred to the regional Government Office to consider whether it should be "called in" for consideration by the Deputy Prime Minister. A "sequential test" is to be applied at all levels of the planning process.

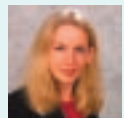
The starting point for this test will be the flood zones shown on maps produced by the Environment Agency, which indicate the probability of flooding: the zones range from 1 ("low probability") to 3 ("high probability"). The aim is to steer all new development to flood zone 1. Where this is not possible, there is a requirement to demonstrate that there are no reasonable options available in a lower risk category.

## What are the implications?

The new Statement is, in large part, the Government's response to concerns about flooding raised by bodies such as the Association of British Insurers, who have requested stronger planning controls to help ensure that new residential development is preferably built in low-risk areas. The consultation draft certainly sharpens the Environment Agency's teeth, but also increases the potential for delay and complication to applications that are "called in" due to its objections. Where recommended, site specific flood risk assessments will need to be submitted alongside planning applications.

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# A Rainbow for Landlords

**There may be a rainbow on the horizon for commercial landlords approaching the uncertainty of the end of a lease and a potential dilapidations claim against their tenants.**

Under section 18 of the Landlord and Tenant Act 1927 (Section 18), the level of damages that a landlord can recover from a tenant for a breach of covenant or agreement to keep or put the premises in repair at the end of a lease is limited to the amount by which the value of the freehold in the premises is diminished by the tenant's breaches of covenant.

Where property prices are generally on the rise, landlord's often face significant difficulties as a result of Section 18. If a landlord is able to re-let a property at a higher rent, there could be little or no reduction in the value of the freehold and the landlord may be unable to recover notable damages.

If a landlord is concerned that they may be adversely affected by the Section 18 limitation they can take action to avoid potential difficulties by taking legal advice before the lease expires, ideally within the final 3 years of the term. There are then two possible avenues which may assist.

## Rainbow Estates and Specific Performance

The case of *Rainbow Estates Limited -v- Tokenhold* ('Rainbow Estates'), presents one alternative to landlords in circumstances where the landlord has particular reasons for wanting the premises put in repair rather than claiming damages.

In the case of *Rainbow Estates* the claimant was a freeholder of a listed building occupied by two tenants. At the hearing, the question arose of whether the court could grant an order for Specific Performance in relation to the tenant's repairing covenant. The remedy of Specific Performance requires the tenant to put the property in the condition required under the terms of the lease. In *Rainbow Estates*, the court held that, in the appropriate circumstances, an order for specific performance

of tenant's repairing covenants could be made where it was just and equitable to make the order and damages were an inadequate remedy.

The court in *Rainbow Estates* stressed that caution should be exercised when considering this remedy. However, this presents one potential option for landlords who are awake to the problems arising from the Section 18.

## Jervis v Harris Clause

As an alternative to the use of specific performance and where the particular circumstances required for the granting of this remedy do not apply, the case of *Jervis v Harris* ('Jervis') may also assist.

In the *Jervis* case the Courts confirmed that where a lease includes a clause allowing the landlord to enter the property to carry out works during the term, the landlord can serve notice on the tenant requiring works to be completed within a stated period, commonly two to three months. If the tenant fails to carry out the required works, the landlord can take action to do so and can recover the cost from the tenant. The landlord can then pursue these costs as a debt which is unaffected by the limitations imposed by Section 18 which only applies for claim for damages.

## Conclusion

When approaching the final 3 years of a lease landlords would be wise to consider whether the constraints imposed by Section 18 are likely to have an adverse affect on a claim for terminal dilapidations. Taking legal advice at this early state may result in significant savings in the long run.

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## Owning a leasehold home

Recently I received a letter from a client who, following retirement, moved from the freehold family home to a flat by the sea. He reminded me of the 'lecture' I had given him about moving from a freehold to a leasehold property and the differences he should expect. As Chairman of the Management Company he is constantly surprised at the lack of understanding of new flat owners and the apparent absence of advice from their solicitors. This article is intended to alert flat buyers to the issues and to the questions they should be asking their solicitor.

### Who is most likely to buy a Leasehold flat?

Typically the first time buyer, the retired and, increasingly, the 'buy to let' landlord.

### What are the main differences?

Freehold owners are responsible for maintenance and repair of their property and can decide when and if to carry out works and to what standard. With a lease, repair and maintenance of the structure is almost always the responsibility of the landlord or management company.

### What are the advantages and disadvantages?

Many will wish to be relieved of the upkeep of a garden and dealing with tradesmen and builders to organise external repairs and decorations as these will all be done by an efficient landlord or management company and the tenant only has to pay his share of the cost. However, the tenant loses flexibility and

personal choice. Increasingly, flats are occupied not by the leaseholder but by short-term tenants who may not have the same consideration for the property as an owner-occupier.

Where the freehold is owned by a third party and not by the tenants themselves there can be disputes with the landlord as to the necessity for and cost of works. Although there have been an increasing number of laws providing protection for tenants, it requires someone with real determination and the financial means to mount a challenge and even then there is no guarantee of success.

### What are the different leasehold arrangements?

The simplest form is where the freehold is owned by the landlord and each tenant holds a lease from the landlord. In many cases a company owned exclusively by the tenants holds the freehold. Tenants then often describe their flats as being freehold which is inaccurate. The management company which they own is a separate legal body and each individual still holds a lease from that company. Although this arrangement provides protection against the worst examples of exploitation, it still means that the element of personal choice is lost.

In some cases the landlord retains the freehold but a separate company exists to carry out the management. However, that company will not have any interest in the land and a tenant will need a covenant by the landlord that he will carry out the management company functions if

the company fails to do so.

### Special Cases

I have not mentioned here special arrangements which exist for retirement flats. In some cases this may simply require that at least one occupant be aged 50 or more, arising from a planning condition. However, in the case of retirement complexes providing some form of service to the tenants there is often a provision that a tenant wishing to sell must first offer it to the landlord or give the landlord selling rights. A percentage of the sale price can also become payable to the landlord.

### Summary

This is not an argument for or against buying a leasehold flat. However, it is essential that a buyer understands not only the fundamental difference compared with a freehold property but also just how the flat he proposes buying fits into the system taking into account the factors mentioned above.

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## Seminar Listings

Have you ever been to one of our seminars?  
If not - why don't you give it a try?

Our regular seminars will update you on the latest legal developments within your area of business. Not only can you claim CPD points if you are a professional, but you will also have the opportunity to chat informally with our lawyers and network with our other guests.

### Planning Club (7.45 - 9.45am)

Tuesday 16th May - 21 Derry's Cross, Plymouth  
Thursday 18th May - Senate Court, Exeter  
Tuesday 23rd May - Alverton Manor, Truro (to be confirmed)  
Thursday 25th May - Wellington House, Taunton

### Charities Seminar- (4.00 - 6.00pm)

Wednesday 21st June - 21 Derry's Cross, Plymouth

### Employment Seminar (3.30 - 5.30pm)

Wednesday 3rd May - 21 Derry's Cross, Plymouth

Thursday 4th May - Senate Court, Exeter  
Tuesday 9th May - Wellington House, Taunton  
Thursday 11th May - Alverton Manor, Truro (to be confirmed)

### Commercial Property Seminar (5.30 - 7.30pm)

Tuesday 6th June - 21 Derry's Cross, Plymouth  
Thursday 8th June - Holiday Inn, Taunton (to be confirmed)  
Tuesday 13th June - Alverton Manor, Truro (to be confirmed)  
Thursday 15th June - Senate Court, Exeter

We also send out **free** newsletters on a variety of topics. To sign up for a **free** newsletter or for further information on any of our events please visit our website at [www.foot-ansteys.co.uk](http://www.foot-ansteys.co.uk) or email us at [info@foot-ansteys.co.uk](mailto:info@foot-ansteys.co.uk)

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