

PRESS RELEASE

- 1 On 29 October 2014 Hoyl Group Limited, the tenant of the residential basement flat in the Council's municipal building at North Lodge, Cromer, sued the Council over disputed access issues in relation to the building.
- 2 The Council had little option but to defend Hoyl's claims. Among other things, Hoyl were claiming:
 - (1) The right to access the basement flat through the main entrance of the Council's municipal building for the remaining 90 odd years of Hoyl's lease. The adverse impact of such a right on the value of the building, its security, and its marketability, would have been profound.
 - (2) Alternatively full private access rights over the public garden to the rear of North Lodge. The Council were under a duty to preserve the public garden as a public amenity.
- 3 Hoyl's efforts to establish an internal access through the building, or alternative full access rights over the garden, failed at trial. They also abandoned other claims on the day of the trial.
- 4 However, the judge found that he was entitled to require the Council to provide an alternative access to the basement flat via a side wall, a remedy which had not been specifically sought by Hoyl in its claim. The judge did so on the basis of an "estoppel" based on the fact that the Council had encouraged a belief by Hoyl that they would be allowed an alternative access to the basement flat. Originally, it was Hoyl's intention that the flat should be accessed via the car park. After entering into the lease they changed their plans.
- 5 In spite of the fact that Hoyl failed in many aspects of its claim, and the fact that the Council had, many months prior to trial, offered to grant the side access that was ultimately ordered by the trial judge (albeit on a payment of a contribution by Hoyl to the Council's wasted costs for dealing with many aspects of the claim) the judge nonetheless ordered the Council to pay all of Hoyl's trial costs.

- 6 The Council appealed the trial judge's finding in relation to the estoppel, among other things, on the basis that Hoyl had not been encouraged to believe that they were entitled to an alternative access. In particular, the work ultimately carried out by Hoyl in relation to the basement flat (which was done before the licence for alterations was signed and therefore in breach of the lease) included a "viable and practicable" access via the car park.

- 7 The Council are disappointed with the outcome of the appeal. Nonetheless, it is important to note that the Court of Appeal have not overruled the trial judge's decision in relation to the internal staircase and the issue of private access over the garden, and the Council's property rights in relation to these matters have been preserved. The integrity of the public open space is retained for the people of Cromer and the value of the council's property is safeguarded, as is the security of the businesses whose rents make a significant contribution to the town's annual budget.