

# Legal alert

March 2017

## Signature Realty v Fortis Developments [2016] EWHC 3583 (Ch)

In 2014, Fortis Developments bought a development site in the centre of Sheffield. The site came with the benefit of planning permission for a block of student flats.

Crucially, the planning permission had not been obtained by the seller of the site. Instead, the permission had been obtained by Signature Realty Limited, a developer whose efforts to acquire the site had proved abortive.

As is usual, planning permission was granted on the condition that the development should be carried out in accordance with the drawings (produced by Signature's architects) attached to the planning application. Also as usual, the local authority posted the drawings on its website for public inspection (for the limited purposes of comparison with other schemes and for checking against the actual works completed).

Having acquired the site, Fortis commissioned its own architects to produce a fresh set of drawings that complied with the existing planning permission. Unfortunately, in producing the new drawings, Fortis's architects (so held the judge on the facts of this case) had copied parts of the drawings prepared by Signature. Fortis then used the new drawings in tendering, building and marketing the development. Since this use went beyond the limited purposes allowed through public inspection of Signature's drawings, the judge held that Fortis was in breach of copyright.

Fortis was therefore liable to pay damages (to be assessed) to Signature and its architects.

### Lessons

If you are buying a site with the benefit of planning permission, it will usually be the case that the permission will have been obtained by the seller. Although copyright in the drawings attached to the planning application is usually retained by the architects, the seller is likely to have been granted a transferable licence to use those plans in carrying out the development. You should therefore ensure that that licence is transferred to you on completion of the sale.

However, if planning permission has been obtained by someone other than the seller, you will have to consider re-engaging the original architects or, at least, paying them for a licence to use their work.

Alternatively, you could (as did Fortis in this case) commission your own architects to produce a fresh set of drawings. But you need to take great care that those new drawings are sufficiently different from the original drawings so as not to infringe copyright. Unfortunately, it then follows that you may need to go to the expense of obtaining a fresh planning permission to build in accordance with the new drawings.