

Court of Appeal clarifies meaning of "practical completion"

A Court of Appeal decision has provided authoritative guidance as to when "practical completion" of construction works will be achieved. The existence of patent defects which are more than trifling will be sufficient to prevent "practical completion" and the intended purpose of the works is of relevance only in determining whether such defects are trifling. This considerably narrows the approach adopted by the TCC at first instance which allowed greater scope to consider the significance of individual defects and their effect on the intended purpose of the works.

Mears Ltd v Costplan Services (South East) Ltd: a recap

Mears entered into an agreement for lease with Plymouth (Notte Street) Limited (the "Developer") to take a 21 year lease of two blocks of student accommodation to be constructed in Plymouth. The Developer engaged a contractor to build the blocks under a JCT Design and Build contract and appointed Costplan as its Employer's Agent.

The building of the blocks was delayed by almost a year and Mears alleged there were a number of defects in the works. Most notably, Mears claimed that around 50 of the student rooms constructed had been built more than 3% smaller than specified in the agreement for lease.

In this context, a dispute arose between the parties as to whether practical completion of the works had occurred. Among other things, Mears sought a declaration that practical completion could not be achieved whilst there were known defects which were "material or substantial". The TCC declined this declaration and adopted a more flexible approach: defects which were not "de minimis" (i.e. trifling) may or may not prevent practical completion "depending on the nature and extent of [them] and the intended purpose of the building". For a more detailed summary of the TCC's decision, please click [here](#).

The Court of Appeal

Mears appealed on a number of issues. In relation to practical completion, the Court of Appeal made a comprehensive review of the authorities and adopted a narrower approach than the TCC. In the Court of Appeal's judgment, the central question was whether a defect was "de minimis" or trifling. If it was, it would not prevent practical completion. If it wasn't, practical completion could not be certified. In this respect, the court described Mears proposed declaration that practical completion could not be achieved whilst there were material and substantial defects as "relatively uncontroversial" (although the court still declined the declaration for other reasons).

In reaching this decision, the court cast doubt on previous cases which had indicated a potentially broader approach (and others which were even stricter).

The court also provided helpful guidance more generally as follows:

- Practical completion is itself difficult to define and there are no hard and fast rules.
- The existence of a latent defect will not prevent practical completion.
- It makes no difference whether a defect involves an item of work not yet completed or one that has been completed but is defective.
- The existence of patent defects will be sufficient to prevent practical completion, save where they are trifling in nature.
- The ability to use the works as intended may be a factor in considering whether a patent defect is trifling in nature (for example, in this case the fact that the rooms were 3% smaller did not prevent the rooms from being used as student accommodation). However, such an ability does not necessarily mean that the works are practically complete.
- The mere fact that a defect is irremediable does not mean the works are not practically complete. The question remains whether the defect is trifling in nature.

Conclusions and implications

This is an important Court of Appeal decision which provides significant clarity as to the meaning of practical completion where that term is left undefined in the context of construction works (as is the case with the majority of standard form documents). Whilst practical completion remains “easier to recognise than define”, the Court of Appeal has set the bar at a much higher level than the original TCC decision. Any defects must be “trifling” if practical completion is to be certified. Significant defects cannot be discounted on the basis that they do not prevent the works from being used for their intended purpose.

References:

[Mears v Costplan Services \(South East\) Limited](#) [2018] EWHC 3363 (TCC).

[Mears Ltd v Costplan Services \(South East\) Ltd](#) [2019] EWCA Civ 502.

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