

Interpreting contracts in the digital age



The way of doing things has been transformed by the digital economy. So much is now done online, from ordering food, buying goods, submitting tax returns, reading the news – the list is endless. The reality of the world in which we live impacts on the way that contractual provisions are interpreted, as was demonstrated by a recent [court decision](#) in Scotland.

A developer had agreed to buy a site from a local council. The contract for sale and purchase was conditional on certain matters. It also contained an obligation on the developer to ‘submit’ a planning application by a specified date. The contract went on to provide that if the planning application had not been submitted by that date, either party would be entitled to rescind the contract.

The deadline was 11.59 pm on 22 November 2017. The developer endeavoured to ‘submit’ its planning application on 20 November. To do so, it used the online planning portal. The portal guides an applicant through the necessary steps. It calculates the likely fee but warns that the fee is an approximation and is subject to verification by the relevant planning authority. It then gives four options for payment – credit/debit card, cheque, departmental charge code or telephone. The developer opted for cheque and subsequently sent it. The cheque was received after the 22 November date and the local council, as seller, purported to exercise its right to rescind the contract.

The question for the court, therefore, was: had the developer ‘submitted’ its planning application despite not paying the application fee until after the deadline? Yes, said the court, it had successfully submitted its application. The portal was a device of the planning authority’s own making. It was how it encouraged applications to be made. The system expressly provides that an application can be submitted without the fee having been paid: the portal stating that “*The method of payment you select here will be applied once you have submitted the application.*” Following use of the portal an automated email was sent to the applicant saying that



the application had been successfully submitted. The judge concluded:

“... in my opinion it makes commercial common sense in this digital age for the pursuer to use the Planning Authority’s online submission system and comply with the provisions of that system. That system provided that an application is successfully submitted prior to payment of the fee by cheque.”

If the seller had wanted to be more precise as to what the developer had to do, it could of course have been so. The lesson here is that in drafting procedural requirements, have regard to what steps actually have to be carried out in practice. Do not assume that language that may have been appropriate to a paper-based world will continue to work in a digital environment.

How we can help

From developers, investors and contractors to high net worth individuals, our construction lawyers provide a wealth of expertise and ensure construction contracts are well drafted and watertight. We can also assist with construction disputes. To find out more, please contact our [construction team](#).