EVEBRIEF

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NEIGHBOURHOOD PLANNING BILL AND DRAFT 2017 RATING LIST

In this edition of Evebrief we report on the new Neighbourhood Planning Bill at item 07. The Bill had been postponed by Parliament before the recess; on its return, the establishment of the National Infrastructure Commission was removed from the Bill and the unpopular plans to privatise the Land Registry have also been put on hold. We will have to see if either of these will return in a future incarnation. As the name suggests, the Bill amends the neighbourhood planning process in an attempt to streamline the process and also restricts the use of pre-commencement planning conditions. Part 2 of the Bill amends the compulsory purchase process and powers with the aim of clarifying the framework for compensation and allowing temporary possession of land. It will be interesting to see if this new Bill achieves the Government's aim of speeding up the delivery of new homes.

And finally… the new 2017 Rateable Value Draft List assessments have been published by the Valuation Office Agency, along with a government consultation on the transitional scheme that will limit increases and decreases in rateable values between lists – see item 16. Whilst we are writing separately to our rating clients and other contacts, readers can follow this link to our dedicated website which provides an overview of what this could mean for your business: **http://mybusinessrates.com/**

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LANDLORD & TENANT

01 Upper Tribunal: Lands Chamber

Landlord and Tenant Act 1985 – Service charge – consultation on major works – s20 – which parties required to be consulted

*LESSEES OF FOUNDLING COURT AND O'DONNELL COURT V CAMDEN LONDON BOROUGH COUNCIL
[2016] PLSCS 233 – Decision given 10.08.16

Facts: The applicants were long leaseholders in the Brunswick Centre, a complex of shops, flats, offices and car parks in central London. Their immediate landlord was CLBC ("the first respondent") which held a long headlease of parts of the centre to whom the applicants were required to pay service charges under the terms of their leases, while the first respondent was liable under the terms of its headlease to pay a service charge to the freeholder of the centre ("the second respondent"). In 2005 the second respondent carried out major works to the centre having carried out a consultation exercise with the first respondent pursuant to s20 of the Landlord and Tenant Act 1985. The applicants were not formally consulted although the first respondent forwarded copies of the notices to them and passed on their responses to the second respondent. The works were not carried out well which meant that remedial works were required.

Point of dispute: The applicants sought a determination under s27A of the 1985 Act of the extent to which they were liable to contribute through the service charge to the cost of the 2005 major works. One of the issues was whether the leaseholders' service charge liability might be limited by reason of a lack of statutory consultation over the works. This in turn raised the issue of whether the statutory obligation to consult before carrying out major works or entering into "qualifying long term agreements" fell on the freeholder or on the first respondent as intermediate landlord.

Held: The issues were determined accordingly.

i. The costs incurred by the freeholder in this case exceeded the appropriate amount which meant that the consultation requirements applied to them. If those requirements had not been either satisfied or dispensed with each individual tenant's contribution would be limited to £250.

ii. The person who was obliged to carry out the consultation was the landlord who intended to carry out the work. In this case that was the second respondent.

iii. Under the terms of the Service Charges (Consultation Requirements) (England) Regulations 2003, the second respondent was required to give a consultation notice to each tenant of a dwelling and to any recognised tenants' association. Where a dwelling was sublet the expression "tenant" included a subtenant. It did not matter that there was no direct relationship of landlord and tenant between that person and the person who intended to carry out the works. To find otherwise would frustrate the purpose of the consultation regime as those people who ultimately had to pay for the works would be deprived of the opportunity to be consulted on their extent and the appointment of the contractor.

iv. Any practical difficulties for a superior landlord in knowing whom to consult could be overcome by addressing a consultation notice addressed to "the leaseholder" to each flat in the building, or by asking the intermediate landlord to provide the relevant information, or by applying for dispensation from the consultation requirements on suitable terms.

02 Central London County Court

Break clause – whether validly exercised – whether vacant possession given

*SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT V SOUTH ESSEX COLLEGE OF FURTHER AND HIGHER EDUCATION
[2016] PLSCS 249 – Decision given 28.07.16

Facts: The claimant Sec of State was the landlord and the defendant, SEC, the tenant of commercial premises for a term of 11 years to September 2016. SEC provided educational services from the premises and had erected partitioning in order to provide a server room and six teaching rooms. In 2012 SEC purported to terminate the tenancy pursuant to a notice it had served to exercise a break clause in the lease, but it did not hand over keys, door codes or alarm codes, the internal partitioning remained in place and various chattels were left on the premises including computer screens, student files, photocopiers, cabling, wiring and trunking related to IT equipment and a telephone system.

Point of dispute: Whether to allow the Sec of State's claim that vacant possession had not been given at the break date because: (i) SEC had not demonstrated any objective intention to give vacant possession; (ii) it had continued to make use of the premises by storing items there; and (iii) the presence of those items represented a substantial impediment to, or interference with, a substantial part of the premises.

Held: The claim was allowed.

i. The conditions of break clauses had to be complied with strictly.

ii. In this case the terms of the lease required the tenant to give vacant possession of the whole of the premises at the break date. There were two tests: (i) whether, from an objective point of view, the tenant had manifested a clear intention to effect a termination of the lease; and (ii) whether the landlord, if it so wished, could have occupied the premises without difficulty or objection at the break date.

iii. The reference in the break clause in question to vacant possession of the "whole" of the premises did not import any different test.

iv. SEC had not given vacant possession of the premises on the break date. There had been no objective manifestation by SEC of an intention to effect a termination of the lease; SEC had appeared to abandon the premises rather than deliver them up. It was relevant that there had been no correspondence between the parties saying that SEC was giving up possession, no handover meeting and no delivery of keys or codes.

v. SEC was continuing to make use of the premises after the expiry of the break notice as it was continuing to store files and a photocopier in them.

vi. Before the Sec of State could make use of the premises, works would have to be done to remove partitions and cabling, and the items which SEC had left behind would have to be removed. The premises had not been left in a state in which the Sec of State could, if it wanted, occupy them without difficulty or objection.

If you require advice on landlord & tenant issues, contact Graham Foster on Tel. +44 (0)20 7653 6832 gfoster@geraldeve.com

PLANNING

03 Court of Appeal

Lawfulness of decision to grant planning permission for extensive development in AONB – para 116 of NPPF– whether adequate reasons for decision given

*R (ON THE APPLICATION OF CPRE KENT) V DOVER DISTRICT COUNCIL
[2016] PLSCS 248 – Decision given 14.09.16

Facts: In 2013 the respondent council, DDC, resolved to allow an application for planning permission for an extensive development on two sites on the edge of Dover. Part of the site of the proposed development, which included residential units, a retirement village, a hotel and a conference centre, was an Area of Outstanding Natural Beauty (AONB) and a further part was to be built on the site of some dilapidated fortifications which were a scheduled monument. The proposal included converting part of these fortifications into a visitor centre and museum. Although a report by DDC's planning officers recognised that long-term irreversible harm would be caused to the AONB were permission to be granted and recommended a lower-density development, the planning committee resolved to approve the original application. The only reasons given for this decision were contained in the minutes of the planning committee meeting which referred to the benefits of the development for regeneration and investment in Dover and the restoration of heritage assets; the view was also expressed that those benefits outweighed the harm to the AONB which could be minimised with effective screening. The Environmental Impact Regulations applied to the case, but DDC did not produce the required statement containing the main reasons and considerations on which its decision was based.

Point of dispute: Whether to allow CPRE's appeal against the decision of the court below not to grant its application for judicial review of the decision to grant planning permission. CPRE argued that DDC had failed properly to apply the requirements of para 116 of the NPPF in relation to development in an AONB and had given inadequate reasons for the decision.

Held: The appeal was allowed.

i. The planning officers' report did refer extensively to para 116 of the NPPF, but CPRE's real case was that DDC had failed to give legally adequate reasons for their decision.

ii. A local planning authority that was going to authorise a development which would inflict substantial harm on an AONB had to give substantial reasons for doing so. Under paras 115 and 116 of the NPPF, AONBs enjoyed the highest status of protection in relation to landscape and scenic beauty.

iii. It was also relevant the DDC's planning committee had departed from the recommendations in the officers' report and that none of the documents produced complied with DDC's statutory duty to give reasons, as imposed by the EIA regulations.

iv. The reasons contained in the minutes of DDC's planning committee meeting were legally inadequate. A statutory statement of reasons made under the EIA Regulations would have been required to grapple with the issue of harm much more closely than was disclosed by the minutes, and this was the least that was required given the strictures of para 116 of the NPPF.

04 Planning Court

Lawful development certificate for shooting school – whether certificate wrongly identifying scale of breach

*R (ON THE APPLICATION OF FLINT) V SOUTH GLOUCESTERSHIRE DISTRICT COUNCIL [2016] PLSCS 245 – Decision given 02.09.16

Facts: The claimant, F, owned woodland and a field adjoining their house near Chipping Sodbury. In 1984 F obtained planning permission to run a shooting school from the wood, the plans accompanying the permission showing a small defined area in the centre of the wood. The conditions included a restriction on hours of operation from 10am to 4pm Tuesday to Saturday and the maximum number of people who could receive instruction at any one time was two. In 1985 permission was granted for the erection of a tower from which to launch clay pigeons. In 2013 F granted a lease of the land to a company which continued to operate the school. In 2015 the company applied to SGC for a certificate that its use of the land for the shooting school in breach of the conditions was lawful since it had been going on for more than ten years. SGC issued a certificate covering most of the wood and the field in breach of planning conditions, limiting the hours of operation and the number of persons being instructed at any one time.

Point of dispute: Whether to grant F's application for judicial review of the decision to grant the certificate. F argued that SGC had used the wrong test to define what land had been used for the school over a continuous ten-year period and there was insufficient evidence to include the field. They also argued that the certificate should have identified the scale of the breach by reference to the number of persons receiving instruction at any one time and type of cartridge used.

Held: The application was dismissed.

i. Where there was a single main purpose of the occupier's use of land to which secondary activities were secondary or ancillary, the whole unit of occupation had to be considered as a single planning unit. It was important to be precise in defining in the certificate the use that was found to be lawful. The appropriate level of detail would vary from case to case and was a matter of judgment for the decision maker based on the evidence.

ii. In the present case, the planning officer had to consider the evidence of shooting over the whole area of the site plan over the ten-year period. From some of the shooting positions fire was directed over the field and those traps had been in position for more than ten years. He had made a number of site visits and was entitled to conclude that there were no grounds to define a small area of lawfulness within what appeared to be a large, but legitimate, planning unit. The certificate precisely and lawfully identified the area to which it related by reference to the site plan.

iii. The decision not to include any restriction on numbers of participants or cartridge type was not irrational.

05 Administrative Court

Judicial review of decision of lpa to grant planning permission for erection of school on metropolitan open land – para 74 NPPF – application dismissed

*STRYJAK V HOUNSLOW LONDON BOROUGH COUNCIL
[2016] PLSCS – Decision given 06.07.16

Facts: The defendant lpa, HLBC, granted planning permission for the erection of a new free school which would cover both primary and secondary education with ancillary parking, sports pitches and a multi-use games area, on metropolitan open land (MOL) in Isleworth, West London. On the site there was a private sports ground which had not been used for some years, but the site had been used by the public for recreational purposes. The planning officer's report concluded that, given the need for more school places in the area and the retention of much of the site as open space, very special circumstances had been demonstrated to justify the proposed development.

Point of dispute: Whether to allow S's application for judicial review of the decision to grant permission for the development. S argued that the planning committee had not been given the information that it needed to enable it to reach a proper decision and that there had been a breach of para 74 of the NPPF. This, S contended, was because the requirements for building on a site occupied by open space, sports and recreational buildings and land had been met since they would not be replaced by equivalent provision – about one quarter of an existing open sporting area would no longer be available.

Held: The application was dismissed.

i. As the development was on MOL it was necessary to show that there were very special circumstances justifying the development which was contrary to the requirements of the local plan and was inappropriate in the MOL. In that respect it equated essentially to green belt development and so there was a requirement to exclude any other reasonable alternative site. There was clearly a need for local school places and that was not an unreasonable consideration. The local authority was exercising a judgment and was entitled to form its own view, provided that it was properly informed as to whether there were very special circumstances to justify planning permission being granted in the MOL. S's arguments were based on facts and he had not identified any error of law in HLBC's approach or the planning officer's report.

ii. The NPPF was not intended to be a rigid document and a failure to comply with the words of a particular paragraph would not be fatal to an application for planning permission. The general framework had to be borne in mind and the individual circumstances of a particular case had to be considered in deciding whether a particular development was appropriate or not. S's approach to the consideration of the NPPF requirements was not appropriate and the para 74 point was unarguable.

06 Planning Court

Grant of outline planning permission for residential development – judicial review on grounds of loss of open space – application granted

*R (ON THE APPLICATION OF WILKINSON) V SOUTH HAMS DISTRICT COUNCIL
[2016] PLSCS 257 – Decision given 26.07.16

Facts: SHDC granted planning permission to a housing association for a residential development on a site which previously had bungalows on it. One of the residents, W, opposed the new development. The loss of the communal green had been raised as one of the key issues in considering whether or not to grant permission. In the planning officer's report it was stated that since the existing gardens and landscaped areas were privately owned, the loss of open space was an adverse impact which could be afforded only limited weight in the balance.

Point of dispute: Whether to grant W's application for judicial review of the SHDC's decision to grant permission for the development. W contended that the officer's report and therefore the planning committee had failed properly to consider the loss of open space. Policy DP8 of the local development plan (ldp) and para 74 of the NPPF gave open space a particular status in planning terms. Since the proposed development would breach the ldp in terms of reducing open space, s38(6) of the Planning and Compulsory Purchase Act 2004 required the lpa to refuse the planning application unless material considerations indicated otherwise.

Held: The application was granted. The open space issue had possibly not been approached in the correct, lawful way since the officer's report did not hint at the loss of open space being a breach of the development plan. The members of the committee had been misled and did not appreciate that a breach of Policy DP8 was involved. This was a material error since the open space matter was a "key" issue and it could not be said with any confidence that the members of the committee would have arrived at the same result if the error had not been made. The application would be remitted to the SHDC for reconsideration.

07 Bill

Neighbourhood Planning Bill

This bill was released on 07.09.16. Previously known as the Neighbourhood Planning and Infrastructure Bill, it was scheduled to be released before Parliament's summer recess but progress was delayed by the Cabinet reshuffle and the appointment of a new Housing and Planning Minister.

- The Bill aims to speed up and streamline the neighbourhood planning process by simplifying how plans can be revised when local circumstances change and to ensure that they come into force soon after they are approved by the local community. It is hoped that this will help speed up the delivery of new homes.
- Precommencement planning conditions, which have to be acted upon before work on new developments can commence, are only to be used when strictly necessary, although heritage and environmental safeguards must remain in place. An explanatory note released with the Bill states that any precommencement conditions must be agreed with the applicant in writing.
- Part 2 of the Bill contains provisions relating to compulsory purchase. The key ones are as follows:

  i. Temporary possession – those with the power to acquire land will have power to take temporary possession of it for purposes connected with a particular CPO scheme.

  ii. Interest rates on unpaid compensation – the current interest rate is 0%. The Bill allows the Treasury to specify a different rate of interest on unpaid compensation, provided that a claim has been made. The rate is likely to be between 4% and 8% above base rate.

  iii. Calculation of market value – these provisions seek to clarify the "no-scheme world" principles of compensation which have been derived over time from practice and case law. If the parties cannot agree they can apply to the Upper Tribunal to define the scheme.

  iv. Abolishment of the controversial "Bishopsgate principle" whereby compensation for business tenants who hold leases outside the security of the Landlord & Tenant Act 1954 is calculated on the assumption that the tenancy will come to an end on the earliest date that it could under the terms of the lease. Instead, regard is to be had as to how long the tenancy would have continued had there been no compulsory purchase.

  v. Time limit for confirmation notices – there will now be a statutory time limit of six weeks for an acquiring authority to issue notices confirming the CPO and bringing into effect.

  vi. GLA and TfL: joint acquisition of land – either body will now be able to compulsorily acquire all the land needed for a combined transport and regeneration or housing scheme on behalf of the other.

- The establishment of a National Infrastructure Commission, which would have created a statutory body to provide the Government with expert, independent advice on infrastructure issues and accompanying economic growth, has been dropped from the Bill.
- Privatisation of the Land Registry has also been put on hold.

There are two current consultations on the provisions in the Bill relating to the neighbourhood planning and the use of planning conditions. (See items 13 and 14 below).

http://services.parliament.uk/bills/2016-17/neighbourhoodplanning/documents.html

08 CLG publication

Neighbourhood Planning Bill: overarching documents

- European Convention on Human Rights memorandum
- Delegated Powers memorandum
- Compulsory purchase letter: important information for property investors

The two memoranda address issues arising under the European Convention on Human Rights and Delegated Powers in relation to the Neighbourhood Planning Bill. The compulsory purchase letter contains important information for investors in land which may be suitable for regeneration or redevelopment in the vicinity of new transport infrastructure as a result of measures on compulsory purchase reform in the Neighbourhood Planning Bill.

https://www.gov.uk/government/publications/neighbourhood-planning-bill-overarching-documents

09 Statutory Instrument

SI 2016/873 The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016

The Localism Act 2011 provided a statutory regime for neighbourhood planning through amendments to the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 with further amendments being made by the Housing and Planning Act 2016. The Neighbourhood Planning (General) Regulations 2012, as amended by the Neighbourhood Planning (General) (Amendment) Regulations 2015, make provision in relation to the neighbourhood planning regime and w.e.f. 01.10.16 these Regulations make further amendments to the 2012 regulations.

http://www.legislation.gov.uk/uksi/2016/873/contents/made

10 Statutory Instrument

SI 2016/934 The Neighbourhood Planning (Referendums) (Amendment) Regulations 2016

W.e.f. 01.10.16 these Regulations amend the 2012 Regulations which make provision for the conduct of referendums held in accordance with paras 14 and 15 of Schedule 4B to the Town and Country Planning Act 1990 in relation to the question of whether a neighbourhood development plan, neighbourhood development order or a community right to build order should be made in relation to a neighbourhood area in England. A new Regulation 2A is inserted into the 2012 Regulations which prescribes the date by which a referendum must be held. This is 56 days from the day after a local planning authority publishes their decision that a referendum must be held, although a longer period of 84 days is allowed where a business referendum is also required, where the referendum area comprises any part of the area of two or more relevant councils, or where the relevant council is not the local planning authority.

http://www.legislation.gov.uk/uksi/2016/934/contents/made

11 Statutory Instrument

SI 2016/955 The Town and Country Planning (Section 62A Applications) (Hearings) (Amendment) Rules 2016

W.e.f. 21.10.16 these Rules amend the 2013 Rules following the inclusion of applications for non-major development within the categories of application which may be made directly to the Sec of State, rather than a local planning authority, when that planning authority is subject to a designation under s62A of the Town and Country Planning Act 1990. The detailed provisions for this are made in the Town and Country Planning (Section 62A Applications) (Amendment) Regulations 2016. These Rules provide that the Sec of State must give no less than 5 working days' notice of a hearing to be held before a person appointed by the Sec of State in respect of an application for non-major development.

http://www.legislation.gov.uk/uksi/2016/955/contents/made

12 CLG Consultation outcome

Neighbourhood planning: Government response to consultation – chapter 5

In February 2016 the Government launched a technical consultation on implementation of planning changes. Chapter 5 included proposals to make it easier for residents and businesses to produce a neighbourhood plan or a neighbourhood development order. The consultation closed on 15.04.16 and this document summarises the responses that were received.

https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation

13 CLG Consultation

Technical consultation on implementation of neighbourhood planning provisions in the Neighbourhood Planning Bill
Deadline for comments: 19.10.16

This consultation seeks views on detailed regulations to implement the neighbourhood planning provisions in the Neighbourhood Planning Bill. It is proposed that these would cover the following:

- the detailed procedures for modifying neighbourhood plans and Orders;
- the examination of a neighbourhood plan proposal where a neighbourhood area has been modified and a neighbourhood plan has already been made in relation to that area; and
- requirement for lpas to review their Statements of Community Involvement at regular intervals.

https://www.gov.uk/government/consultations/implementation-of-neighbourhood-planning-provisions-in-the-neighbourhood-planning-bill

14 CLG Consultation

Improving the use of planning conditions
Deadline for comments: 02.11.16

Unnecessary and unreasonable planning conditions can prevent development from starting until the local planning authority has approved certain details. The Government considers that there is an urgent need to address the inappropriate use of "pre-commencement" conditions and is proposing to introduce measures in the Neighbourhood Planning Bill to ensure that these conditions can only be used with the agreement of the applicant. It is also proposed to introduce a power in the Bill to prohibit the use of other types of planning conditions which do not meet the tests in the NPPF.

https://www.gov.uk/government/consultations/improving-the-use-of-planning-conditions

15 CLG Statistics

Planning applications in England: April to June 2016

This release presents National Statistics on authorities that undertake district and county level planning activities in England. Between April and June 2016 district level planning authorities in England:–

- received 132,000 applications for planning permission, up 7% on the corresponding quarter of 2015;
- granted 100,900 decisions, 6% more than the same quarter in 2015; this is the equivalent of 88% of decision, unchanged from the same quarter in 2015;
- decided 83% of major applications within 13 weeks, up from 79% a year earlier; and
- granted 12,200 residential applications, 8% more than a year earlier.

In the year ending June 2016 district level planning authorities:

- granted 378,200 decisions, up 4% on the year ending June 2015; and
- granted 47,600 residential decisions on residential developments, 6,000 for major developments and 41,600 for minor ones – both these figures are 6% higher than the year ending June 2015.

https://www.gov.uk/government/statistics/planning-applications-in-england-april-to-june-2016

If you require advice on planning & development issues, contact Hugh Bullock on Tel. +44 (0)20 7333 6302 hbullock@geraldeve.com

RATING

16 CLG Consultation

Business rates revaluation 2017
Deadline for Comments: 26.10.16

Although many ratepayers will only see a small change in their rates bill at the 2017 revaluation, the change for some properties will be much more significant, both upwards and downwards. In order to phase in these changes there will be transitional arrangements. The aim is to support ratepayers by allowing them time to adjust to their new rates bills. Those ratepayers facing increases will see their bill capped each year at a set percentage increase due to the revaluation. As with the 2010 transitional arrangements, the caps on increases and reductions will be calculated before the large property and London supplements. Changes in business rates bills for reasons unconnected to the revaluation are outside the transitional arrangements. The transitional relief scheme will benefit London ratepayers the most, with over 140,000 properties benefiting from relief worth almost £1bn over the life of the scheme.

The two options being consulted on for the transitional arrangements for the 2017 revaluation are as follows:

- Option 1 would offer the same level of support, in percentage terms, to small and medium properties facing increases as was provided at the 2005 and 2010 revaluations. A third band would provide a different level of support to the largest ratepayers with rateable values over £100,000. The relief would be funded by 2 sets of caps on reductions (as in 2005 and 2010).
- Option 2 would allow medium properties that stand to gain from the revaluation see their reductions come through more quickly than under Option 1, but in order to pay for this there would be less relief for larger properties which in year one would only be capped at increases above 45%, rather than 33% in Option 1. Under this option medium properties would see the reduction in their bill capped at 10% rather than the 4.1% proposed under Option 1. The Government has indicated that Option 2 is its preferred option.

https://www.gov.uk/government/consultations/business-rates-revaluation-2017

17 Valuation Office Agency Statistical Release

Non-domestic Rating: High-level Estimates of Change in Rateable value of Rating Lists, England and Wales, 2017 Revaluation

This statistical release summarises the changes in rateable value that will result from the 2017 draft list that was published on 30.09.16. These statistics show total rateable value in England increasing by 10.6%, while in Wales it will reduce by 2.9%. The changes differed by region: rateable value in the North-East, North-West and Yorkshire & Humber will fall marginally; in London it will rise by 22.8%.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555980/Revaluation_summary_28092016.pdf

18 2017 Revaluation – Draft List

Valuation Office Agency publish 2017 Business Rates Revaluation Draft List

The draft valuations for April 2017 Revaluation were published on 30.09.16. These will take effect from 01.04.17. The draft figures and valuations are available here:

https://www.gov.uk/correct-your-business-rates

If you require advice on rating issues, contact Jerry Schurder on Tel. +44 (0)20 7333 6324 jschurder@geraldeve.com

LEASEHOLD REFORM

19 Central London County Court

Leasehold enfranchisement – whether counter-notice under s21 of the Leasehold Reform, Housing and Urban Development Act 1993 sent by email was valid

*COWTHORPE ROAD 1–1A FREEHOLD LTD V WAHEDALLY (AS EXECUTOR OF AHAMADALLY) [2016] 2016 247 – Decision given 16.02.16

Facts: The tenants of a property in London SW8 sought to exercise their right of collective enfranchisement under s13 of the Leasehold Reform Housing and Urban Development Act 1993 and nominated the claimant as the nominated purchaser. The defendant purported to serve a counter-notice via his solicitors. Paragraph 10 of the notice stated that the address at which notices might be given to the nominee purchaser was c/o Comptons Solicitors LLP. The date for responding to the notice by giving a counter-notice under s21 of the 1993 Act was 15.06.13, a Saturday. The covering letter with the notice stated "We do not accept service by email". The defendant purported to serve a counter-notice by attaching a PDF file containing a scanned copy of the signed counter-notice to an email which was sent on Friday 14.06.13, by placing it through the solicitors' letter box on Saturday 15.06.13 and by first-class post. It was agreed that the notice which was sent by post arrived on 17.06.13.

Point of dispute: Whether to grant the claimant a vesting order in the terms proposed in the initial notice on the grounds that the defendant's counter-notice had not been served in time.

Held: The claimant's application was granted.

i. The notice had to be given in writing under s99 of the 1993 Act. This indicated that the document might be sent by post which indicated that a hard rather than a digital version of the document was contemplated. An electronic document could not be signed with an original signature and this notice predated subsequent changes to the Act relating to this. The email did not amount to writing for the purposes of the 1993 Act.

ii. The specific address given for service was a postal address. Service by email could not be valid service. The time limits contained in the 1993 Act for service of notices were a crucial part of the process.

iii. The defendant could not discharge the burden of proving good service because it could not prove that the physical document had been received by the intended recipient by 15.06.13.

iv. The court had no power to extend the time for service of the counter-notice.

If you require advice on leasehold reform issues, contact Julian Clark on Tel. +44 (0)20 7333 6361 jclark@geraldeve.com

COMPULSORY PURCHASE

20 Government Response to Consultation

Further Reform of the Compulsory Purchase system

This is a summary of the responses that were received to this consultation which ran from 21.03.16 until 15.05.16, including the Government's response and its proposed actions.

https://www.gov.uk/government/consultations/further-reform-of-the-compulsory-purchase-system

If you require advice on compensation & compulsory purchase issues, contact Tony Chase on Tel. +44 (0)20 7333 6282 tchase@geraldeve.com

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REAL PROPERTY

21 Upper Tribunal Lands Chamber

Modification or discharge of restrictive covenants – building scheme – application land designated as a close for use of all residents – planning permission granted for erection of two private houses – whether appropriate for covenants to be modified

*RE SURANA'S APPLICATION
[2016] PLSCS 251 – Decision given 30.08.16

Facts: The applicant applied under s84(1) of the Law of Property Act 1925 to modify restrictive covenants which affected a parcel of land in Cobham, Surrey. The application land was in a substantial residential estate which had been laid out and made subject to schemes of mutual covenants by its original owner. It was an undeveloped piece of land, one of two which had been designated in the original building scheme as "closes" that were intended to be retained and maintained by the estate company with access to residents for recreation. In practice, the application land had not been used for that purpose for over sixty years and had been used exclusively by the owners of a neighbouring house on the estate. The applicant obtained planning permission to construct two houses on the land and applied to modify the covenants so as to enable the proposed development to proceed.

Point of dispute: Whether the application to modify the covenants should be granted. The applicant contended that, as the application land had not been used for its original purpose for over sixty years, the covenants should be treated as either obsolete or having been released by agreement. The owners of other houses on the estate objected, arguing that if the covenants were modified they should be compensated.

Held: The application was granted.

i. The purpose of the covenants had to be ascertained from their language, read in the context of the building scheme as a whole. Their purpose was to ensure that the closes were kept as green spaces and the covenants continued to perform this job. It did not follow from a prolonged period of non-use that the rights of access for the use of the application land for public recreation had necessarily been abandoned. Abandonment was not to be lightly inferred. Given that the covenants against building on closes and greenways in the estate had regularly been relied on, it was not justifiable to disregard them.

ii. In the present case the restrictions secured no practical benefits to the objectors by preventing the residential development of the application land. The overall scheme of covenants would not be jeopardised by allowing the current application. It was the selling off of land which was designated for road, greenway or close to private owners that would destabilise the scheme of covenants.

iii. The tribunal had to reach a conclusion on visual amenity which was a subjective matter. The key determinant of the character and amenity of the estate was the system of greenways on either side of the roads, rather than the presence of undeveloped closes which had in the main been appropriated to private use and were enclosed by hedges. The proposed development of the application land was in keeping with the style and appearance of the estate, it would not lead to a material increase in traffic, nor would there be a substantial adverse effect arising from the normal residential activities likely to take place.

iv. In this case money would in principle be capable of providing adequate compensation for loss of amenity or other disadvantage to those benefiting from the covenants. However, on the evidence, the objectors would not suffer any loss or disadvantage giving rise to such compensation. There were no reasons why the court should not exercise its discretion to grant the application to modify the covenants.

v. The court ordered that the existing tall hedge screening the application land should be retained in order to ensure that the amenity of those with the benefit of the covenants was not adversely affected.

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TORT

22 Court of Appeal

Right to light – parties owning adjoining properties – erection of external metal staircase – judge granting mandatory injunction

*OTTERCROFT LTD V SCANDIA CARE LTD
[2016] PLSCS 243 – Decision given 06.07.16

Facts: The respondent and the appellants owned adjoining properties in High Wycombe. The first appellant was a company controlled by the second appellant. The appellants, who proposed to redevelop their property, including the erection of an external metal fire escape staircase, commenced the works without serving notice under the Party Wall etc. Act 1996. The respondent began proceedings to restrain these works which, it said, interfered with its right to light. Notwithstanding the giving of undertakings, the appellants went ahead and installed the staircase which obstructed the respondent's window.

Point of dispute: Whether to allow the appellants' appeal against the decision of the judge at first instance who had granted an injunction requiring the removal of the staircase on the basis that it infringed the respondent's right to light and that the appellants had acted in breach of undertakings without notice or planning permission. The appellants argued that the judge had been wrong to: (i) grant a mandatory injunction rather than award damages; and (ii) hold the second appellant personally liable.

Held: The appeal was dismissed.

i. The judge had conducted a balancing exercise to determine whether to grant an injunction as opposed to awarding damages and had considered the factors that weighed for and against the grant of an injunction. He had been entitled to take into account the appellants' behaviour before the commencement of the action as well as the breach of the undertakings. The staircase could be altered to overcome the light issue at a fairly low cost. Injunctions were necessary where a defendant had acted in a high-handed manner attempting to evade the court's jurisdiction.

ii. The second appellant was the director and company secretary of the appellant company and his wife was the only other director. There was no evidence that the first appellant did anything other than what the second appellant wanted it to do. The judge had been entitled to find that the second appellant had been personally instrumental in pushing the plans through and was therefore liable on his own account.

GENERAL

23 CLG Statistics

Local Planning Authority Green Belt: England 2015/16

- The extent of the designated Green Belt in England as at 31.03.16 was estimated at 1,635,480 hectares, around 13% of the land area of England.
- Overall there was a decrease of 1,020 hectares (less than 0.1%) in the area of Green Belt between 31.03.15 and 31.03.16. In 2015/16, eight local planning authorities adopted new plans which resulted in a decrease in the overall area of Green Belt compared to 31.03.15.
- The revised area of the Green Belt in England as at 31.03.15 is estimated at 1,636,500 hectares. This slight decrease of 120 hectares on the original estimate of 1,636,620 hectares published in October 2015 is due to minor corrections in the areas of three local authorities' Green Belt boundaries.

https://www.gov.uk/government/statistics/local-authority-green-belt-statistics-for-england-2015-to-2016

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Abbreviations
The following abbreviations are used in evebrief:

BLD	Lexis Nexis Butterworths (internal abbreviation)
EG	Estates Gazette
EGLR	Estates Gazette Law Reports
EWCA	England & Wales Court of Appeal
EWHC	England & Wales High Court
P&CR	Property, Planning and Compensation Reports
PLSCS	Property Law Service Case Summaries

The star system
Cases are marked with one, two or three stars as follows:

*** Essential reading on the point of law or valuation with which the case is concerned, because it adds to, or clarifies or changes, the law.

** Noteworthy case which does not significantly alter the law or which relates to a relatively obscure point.

* Interesting but non–essential reading.

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EVEBRIEF

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SCOTLAND

PLANNING

01 Scottish Government Consultation

Consultation on proposals for regulations and policy supporting the Private Housing (Tenancies) (Scotland) Act 2016
Deadline for Comments: 26.12.16

This consultation seeks views on secondary legislation and further policy to support the new private residential tenancy. This includes the following:

- the content of prescribed notices to be used by tenants and landlords;
- the content of the Scottish Government's Recommended Model Tenancy;
- the option of serving documents electronically (if both landlord and tenant agree to this); and
- which terms should be statutory terms.

http://www.gov.scot/Publications/2016/10/8046

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HOUSING

02 Scottish Government Statistics

Housing Statistics for Scotland Quarterly Update (published 13 September 2016)

This quarterly statistical publication provides information on recent trends in:

- New building housing starts and completions by sector (up to the end of March 2016, with more up-to-date social sector information available up to the end of June 2016);
- The Affordable Housing Supply Programme (up to the end of June 2016); and
- Local authority house sales including Right To Buy (up to the end of March 2016).

http://www.gov.scot/Publications/2016/09/9460

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03 Scottish Government Statistics

Housing Statistics for Scotland 2016 – Key Trends Summary

This annual publication presents statistics on housing supply and public sector housing in Scotland up to 31.03.16, based on information collected from local authorities, housing associations and the Scottish Government affordable housing supply programme. Information is provided on new housing supply (across all sectors), public sector stock and house sales, local authority housing management (evictions, housing lists, lettings, vacant stock), local authority housing for older people and people with disabilities, Right To Buy entitlement and housing in multiple occupation.

http://www.gov.scot/Publications/2016/09/5806

WALES

RATING

04 Welsh Government Consultation

Transitional relief for small businesses affected by the 2017 non-domestic rates revaluation (Wales)
Deadline for Comments: 04.11.16

This consultation concerns transitional relief for small businesses affected by the 2017 non-domestic rates revaluation. Comments are invited on the practical application of the proposed transitional relief scheme, to support properties whose eligibility for Small Business Rates Relief will be affected by increases in their rateable value as a result of the 2017 revaluation.

https://consultations.gov.wales/consultations/transitional-relief-small-businesses-affected-2017-non-domestic-rates-revaluation

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CONSTRUCTION

05 Welsh Government Consultation

Proposals to update Approved Building Regulations Documents (A, B & C) (Wales)
Deadline for Comments: 22.12.16

This consultation seeks comments on proposed updates in the references to technical standards relating to:

- Approved Document A (structure);
- Approved Document B (fire safety); and
- Approved Document C (site preparation and resistance to contaminants and moisture).

https://consultations.gov.wales/consultations/proposals-update-approved-building-regulations-documents-b-c

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