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**Are You a Pandemic Home Worker? Do You Need Planning Permission?**

Vast numbers of people have been prompted by the COVID-19 pandemic to take up working or running businesses from home – but do they need planning permission for a change of use? The High Court addressed that burning issue in the case of a personal trainer who fitted out part of a timber outbuilding in his garden as a gym for his clients.

The man argued that the business use of the outbuilding was ancillary to his use of a dwelling and that no planning permission was required. However, the local authority twice rejected his applications for a certificate of lawful use. Despite arming himself with an expert acoustics report and testimony from neighbours, his appeals against the refusals were rejected by planning inspectors.

The inspector who dismissed his most recent appeal noted that the training sessions appeared to be well controlled. She pointed out, however, that noise was not the only factor to be taken into account. The comings and goings of at least four or five clients a day down a narrow passageway could also be a disturbance to neighbours, particularly in a tight-knit residential area.

Paying visitors to the outbuilding would be clearly visible from the rear windows and gardens of neighbouring homes. As a matter of fact and degree, the inspector found that business use on such a scale was neither trivial nor incidental to the enjoyment of a dwelling. It resulted in an overall change to the property's use and character for which planning permission was required.

Dismissing the man's challenge to that outcome, the Court rejected arguments that visual disturbance to neighbours was an immaterial factor that the inspector should not have taken into account. Arguments that she failed to give adequate and intelligible reasons for her decision also fell on fallow ground.

It is important to seek planning advice before making alterations or additions to your property. Contact us for guidance.

**Partner Note**

R on the Application of Sage v Secretary of State for Housing, Communities and Local Government [2021] EWHC 2885 (Admin)

**Cowboy Builders Can Expect Stern Punishment – Court of Appeal Ruling**

Cowboy builders who rip off householders are a well-known blight on society. As a Court of Appeal ruling showed, however, judges are well abreast of their activities and culprits can expect severe punishment, up to and including imprisonment.

The case concerned a man who approached a total of 16 homeowners, offering to carry out repair or refurbishment work. In some cases, he took money in advance but never started work. In others, he began jobs but the work was invariably unfinished and performed to a very poor standard. He was said to owe close to £50,000 to householders from whom he had extorted money.

After the local authority for the affected area launched proceedings, a judge ordered him to provide financial redress to his victims and to desist from any similar conduct in the future. The council sought his committal to prison for contempt of court on the basis that he had breached that order. Following a hearing, which he did not attend, a judge sentenced him to a nine-month jail term.

In dismissing his appeal against that outcome, the Court noted that he had, in similar circumstances, previously received a six-month sentence in respect of proceedings brought by the Office of Fair Trading. That punishment, however, had little or no deterrent effect. The more recent nine-month term was entirely justified and fell well within the reasonable band of sentencing decisions.

The man asserted that he had physical and mental health problems and had recently tested positive for COVID-19. The Court noted that it remained open to him to seek discharge or variation of his sentence on the basis that he was medically unfit to go to prison. Such a contention would, however, need to be supported by appropriate documentation or other evidence.

If you feel you have been the victim of a rogue builder, you may have a right to redress. For expert advice, contact <<CONTACT DETAILS>>.

**Partner Note**

The Royal Borough of Kingston Upon Thames v Slater [2021] EWCA Civ 1479

**Defiant Father Who Abducted Autistic Son Jailed for Contempt of Court**

Family proceedings can be extremely emotive and those involved may be tempted to defy court orders with which they disagree. A father who prompted a nationwide manhunt after going on the run with his autistic son discovered, however, that the price of disobedience can include loss of liberty.

After long and painful proceedings between the boy's parents, a judge ordered that he should live with his mother. The father was to have supervised contact with him twice a week. The mother encouraged the paternal relationship and was fully supportive of her son having contact with his father.

During a contact visit, however, the father went missing with the boy. The abduction triggered extensive press publicity aimed at finding the youngster, and the police conducted a week-long search before finally tracking them down to a flat in Scotland. Proceedings were subsequently brought against the father, seeking his committal to prison for contempt of court.

The father accepted that he had breached the contact order and that he had planned the abduction in advance. He said that he was traumatised, having been involved in very difficult family proceedings for three years, and felt that he was being removed from his son's life. He said that he had made a huge mistake and that he always intended to return his son before the start of the next school term.

Ruling on the case, the High Court noted that the abduction was premeditated and that, in order to evade detection, the father purposely did not answer his phone and took steps to ensure that he disappeared digitally. He must have known that the police were searching for him. He gave no thought to the impact of the boy's disappearance on his mother.

The abduction had a traumatic effect on his vulnerable son. On his return to her, his mother had never seen him so distressed. Press interest in the abduction had left an indelible mark on the internet and the story would never disappear. The mother continued to suffer anxiety and occasional panic attacks.

The father feared that the abduction would compromise his future contact with his son and his professed apology to the Court was more of an expression of sorrow for himself. He had a history of refusing to listen to others or to accept that the mother and family professionals might know better than him what was best for his son. The Court imposed a four-month prison sentence.

Our family law experts are experienced in dealing with sensitive cases like this. Contact us for advice.

**Partner Note**

In the Matter of an Application for the Committal to Prison of Ian Malone [2021] EWHC 2723 (Fam)

**Determined DIY Builders Score Important Victory Over HMRC**

You may understandably feel overawed by the might of the tax authorities but, with the law on your side, the balance of power is far more even than you might think. In a case on point, a couple struck an important blow for the cohort of determined people who set about building their own homes.

The couple demolished a wooden bungalow on their land and embarked on an epic project to construct a new home for themselves. They lived in a caravan whilst the work was ongoing. Although the man, a jobbing builder, had for five years devoted his weekends and holidays to working on the project, it remained incomplete.

They availed themselves of the DIY Builder Scheme, which enables those who build their own homes to reclaim VAT on construction materials, and HM Revenue and Customs (HMRC) duly repaid them £5,182. However, when they made a further claim under the scheme, it was roundly rejected.

HMRC asserted that, on a true interpretation of Section 35 of the Value Added Tax Act 1994, DIY builders can only make a single claim for repayment of VAT in respect of any one building. They contended that such claims can only be made in a three-month window following a building's completion. According to HMRC, the earlier VAT repayment should not have been made as the couple's home was incomplete.

In challenging HMRC's stance, the couple pointed out that self-build projects often take years. Most self-builders only ever build one house and would be discouraged from doing so if they were barred from making periodical reclaims of VAT whilst works are in progress. It cannot have been Parliament's intention to expose self-builders to the hardship of only being able to make one repayment claim, post completion.

Upholding the couple's appeal, the First-tier Tribunal (FTT) fundamentally disagreed with HMRC's interpretation of Section 35. On a proper reading of the provision, it did permit more than one repayment claim to be made under the scheme. There was also no statutory requirement that evidence of a building's completion must be provided before a repayment claim can be accepted.

Insofar as the Value Added Tax Regulations 1995 were incompatible with the FTT's interpretation of the statutory provisions, they were unlawful, having been made in excess of power. The FTT concluded that the Regulations went entirely too far in restricting self-builders to making a single repayment claim only after a building is completed. The three-month post-completion deadline represented not a window, but an outer limit during which valid repayment claims can be made.

If you are embroiled in a dispute with the tax authorities, we can ensure you are expertly advised and represented.

**Partner Note**

Ellis and Another v The Commissioners for Her Majesty's Revenue and Customs [2021] UKFTT 343 (TC)

**High Court Clamps Down on Standardised Online Divorce Petitions**

The advent of so-called 'no fault' divorce is on the horizon but, until then, a great many divorce petitions will continue to be issued on the basis of unreasonable behaviour by one party or the other. As a High Court ruling underlined, the requirement to prove such behaviour is no empty formality.

The case concerned 28 divorce petitions that had been passed to the Court for consideration after a judge noticed that, in each case, the particulars of alleged unreasonable behaviour were couched in word-for-word identical terms. All the petitions had been drafted and filed by an online divorce advisory service.

Ruling on the matter, the Court noted that no fault divorce will for the first time become available when the Divorce, Dissolution and Separation Act 2020 comes into force in April 2022. In the meantime, however, the law was absolutely clear that the irretrievable breakdown of a marriage must be proved by evidence.

A director of the service apologised profusely to the Court for the use of standardised wording. He explained that the wording had been sent to petitioners who were asked if there was any part of the draft statement with which they disagreed. He believed that that practice was acceptable. However, it was tolerably clear that not one of the 28 petitioners had made any amendments to the standardised statements.

The Court observed that this was not a correct way to proceed. The petitioners were required to state their own particulars and to give a true account of the unreasonable behaviour alleged. It was not possible that 28 absolutely identical statements could all be true. In those circumstances, there was no alternative but to dismiss all of the petitions.

The Court considered referring the case to the Director of Public Prosecutions on the basis that the use of standardised statements could potentially amount to the crime of perverting the course of justice. Given the director's apology and explanation, however, the Court decided not to take that course. In the event of repetition, the Court warned that it would have no hesitation in making a referral.

If you are divorcing, a number of issues may arise on which sound legal advice is essential. Our specialist team can assist you.

**Partner Note**

The Marriage of Celine-Shelby and Yorston and 27 Other Related Cases [2021] EWFC 80

**High Court Scotches Plans for 'Lavish' New Home in Open Countryside**

It is a fundamental tenet of planning policy that developments should not harm an area's character and appearance. In a prime example of that policy in operation, the High Court scotched a proposal to erect a large and lavish new home on part of a landed country estate.

The applicant for permission proposed demolition of two dilapidated cottages and their replacement with a two-storey, four-bedroom home on open grassland nearby. The house was to be fitted with raised chimney stacks, Georgian-style windows and a Doric-style entrance complete with a Renaissance-type baluster and gable.

In refusing planning consent for the project, however, the local authority emphasised the intrinsic value of the area's rural character. Harm caused by the development, it said, would be exacerbated by the lavish character and scale of the house, which would little resemble the simple cottages that it was intended to replace.

In subsequently rejecting the applicant's appeal against that refusal, a planning inspector agreed with the council that the proposal would harm the area's character and appearance. Although the house would be built of locally appropriate materials, the inspector commented on its significant scale and mass when compared to other properties on the estate.

Challenging that outcome, the applicant argued that the inspector failed to give sufficient weight to a planning permission granted by the council in 2008. That consent authorised demolition of the cottages and their replacement with two new residential units. Those plans were said to be indistinguishable in planning terms from the applicant's more recent proposal.

Ruling on the matter, the Court acknowledged that, in the intervening period, there had been no significant change in relevant development plan policies. The applicant had good reason to claim for her plans the same locational and highway safety benefits that applied to the 2008 proposal.

In rejecting her case, however, the judge ruled that there was no inconsistency in the inspector's decision. The 2008 permission was in outline form only and was subject to approval of detailed particulars of the replacement buildings' siting, design and external appearance. Such particulars were, in the event, never submitted for approval and the permission had long since lapsed.

The 2008 permission was of little relevance to the inspector's consideration of whether the building actually proposed by the applicant would be in keeping with the area's character and appearance. The inspector was plainly entitled to take the view that the 2008 permission offered her no assistance in resolving the main, determinative issue in the planning appeal.

For advice and guidance on any legal matters surrounding planning disputes, please contact <<CONTACT DETAILS>>.

**Partner Note**

de la Mare v Secretary of State for Housing, Communities and Local Government and Another [2021] EWHC 2724 (Admin)

**Inheritance and the Impact of Intestacy on Stepchildren – Guideline Ruling**

In an era of increasingly fluid family relationships, many children are brought up by step-parents – but what is the consequence of that social change in terms of inheritance? The High Court addressed that issue in a guideline ruling.

The case concerned a stepson who, from a young age, was brought up by his stepfather, who had no children of his own. After his mother and stepfather divorced, he continued to live with the latter. When the stepfather died without making a will, his estate passed automatically to his cousins. The stepson received nothing because he was not his stepfather's biological child.

On the basis that he was financially dependent on his stepfather, the man launched proceedings under the Inheritance (Provision for Family and Dependants) Act 1975, seeking reasonable provision from his estate. There was no dispute that he fell within the ambit of the Act in that his stepfather treated him as a member of his family.

The stepson contended that he was in substantial debt and struggling financially, in part due to the COVID-19 pandemic. He was very close to his stepfather and his financial dependency on him had continued beyond his childhood. He claimed that his stepfather had assured him prior to his death that he had executed a will in which he would be provided for.

Ruling on the matter, the Court noted that, following the divorce, the stepfather had been granted custody of his stepson. He was formally responsible for providing the stepson with a home and support until he reached the age of 21. When the stepson turned 18, he changed his surname by deed poll to that of his stepfather.

One could only speculate as to why no will was found after the stepfather's death, but the Court was satisfied that the rules relating to intestacy had operated in a manner that denied the stepson reasonable provision from the estate. Proceeding on the basis that the estate was worth £195,000, the Court ordered that the stepson should receive £55,000 of that sum.

A professionally drafted will can help to prevent contentious situations like this from happening. For advice on making sure your estate will be dealt with fairly and efficiently, contact us.

**Partner Note**

Higgins v Morgan and Others [2021] EWHC 2846 (Ch)

**Parking Obstruction of Rights of Way – The Legal Principles Explained**

The parking of cars along shared access routes is all too often a source of acrimony between neighbours. A High Court ruling provided a clear explanation of the legal principles commonly applied when resolving such disputes.

The case concerned a lane that provided access to two residential properties. The owner of one of them sought an injunction against the owners of the other restraining them from obstructing his right of way over the lane by parking vehicles along its length.

Whilst accepting that the claimant had a right to use the lane on foot, the defendants denied that he had a vehicular right of way. They asserted that they and their visitors were entitled to park along the side of the lane in single file and that such use did not conflict with the claimant's pedestrian access.

Ruling on the matter, the Court noted that the claimant's home had previously been occupied by his parents and grandparents. It was unclear who owned the lane and the claimant accepted that he had no express documentary right of way over it. However, the Court found that he and his predecessors had enjoyed unrestricted use of the lane for access purposes since at least 1953.

That use having commenced in excess of 20 years before the proceedings were lodged, the Court ruled that the claimant had established a right of way in respect of the lane, at all times and for all purposes. The defendants' parking of cars along the lane amounted to a substantial encroachment on that right of way.

The defendants failed to establish that they had, by using the lane for parking for over 20 years, acquired a legal right to do so. The Court found that, in the past, they at most had a licence to park in the lane with the permission of the claimant's predecessors. Since becoming owner of his property, the claimant had consistently disputed their entitlement to use the lane for parking.

The claimant was granted an injunction that forbade the defendants, or anyone connected with them from obstructing the lane with parked vehicles, save with his express permission. However, the Court expressed the hope that the neighbours would be able to come to terms whereby vehicles could be parked along the lane, where necessary, by arrangement with the claimant.

**Partner Note**

McAteer v Keeley and Another [2021] NICh 1

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