Commercial Property ~ April 2023

**Commercial Property Titles ~** **April 2023**

A Mothballed Power Station is Still a Power Station – Business Rates Ruling

Compulsory Purchase – What Happens if a Landowner's Identity is Unknown?

Housing Developer Succeeds in Fight to De-Register Part of Village Green

Plan to Redevelop Debenhams Department Store Receives High Court Boost

Some Love Dedicated Cycle Lanes, Others Hate Them – High Court Ruling

**A Mothballed Power Station is Still a Power Station – Business Rates Ruling**

Commercial and industrial premises are often mothballed to await improvements in the market – but what effect does that have on business rates liabilities? The issue was addressed by the Upper Tribunal (UT) in a guideline case concerning a gas-fired power station.

The facility, which had a rateable value of £5,340,000, was mothballed for more than two years. Its owner contended that, during that period, its rateable value should be reduced by 90 per cent. Its plea that the relevant rating list should be amended accordingly did not, however, find favour with either a local authority valuation officer or the Valuation Tribunal for England.

Challenging that outcome, the owner contended that the facility's mode or category of occupation (MCO) had, during the relevant period, changed from that of a power station to that of a power station subject to long-term preservation. It further argued that the facility should be valued on the basis that, whilst mothballed, it was incapable of beneficial occupation as a power station.

In rejecting the appeal, the UT acknowledged that the power station was mothballed for a considerable period and that it required 14 months of re-commissioning work – at a cost of £9 million – before it could be reopened. However, there was never any intention to permanently close the facility with a view to its demolition or conversion to another use. The mothballing works were entirely reversible and arose from an economic decision to shut down the facility until the market improved.

Pithily observing that a power station is a power station, the UT found that there was no difference of kind between the use of a power station and that of a power station under long-term preservation. The period of mothballing did not establish a distinct or separate MCO. A staffing presence was maintained throughout and the power station was at all times capable of being beneficially occupied as such.

We can advise you on any aspect of commercial property law, including business rates. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*SSE PLC. v Moore (Valuation Officer) [2023] UKUT 24 (LC)*

**Compulsory Purchase – What Happens if a Landowner's Identity is Unknown?**

Many nationally important infrastructure projects would simply not get off the drawing board were public authorities not equipped with the power to compulsorily purchase private land for the public benefit. When it comes to paying compensation, however, what happens if the owner of relevant land cannot be identified?

The Upper Tribunal (UT) addressed that question in the context of a local authority's compulsory acquisition of land to make way for an airport relief road. Although all notification and publicity requirements had been met, the owners of five parcels of land that had been made the subject of a compulsory purchase order (CPO) had not come forward and their identities remained a mystery.

Giving guidance on the issue at the council's request, the UT noted that, after a CPO is confirmed, Section 5 of the Compulsory Purchase Act 1965 requires acquiring authorities to serve a notice to treat – an invitation to participate in negotiating the amount of compensation – on all those with an interest in the land acquired.

That requirement is, however, subject to an important qualification: there is no duty on an acquiring authority to serve notices to treat on persons with an interest in the land whose identity cannot be discerned after making diligent inquiry.

The inclusion of that qualification is, the UT noted, hardly surprising: if persons with an interest in relevant land have not come forward during the CPO confirmation process, despite all required steps having been diligently taken to bring the matter to their attention, an invitation to participate in negotiation would be an empty gesture.

Appropriate compensation in respect of the five parcels had already been assessed. The UT declared that the council was entitled to pay the money into the Court Funds Office. Thereafter, it would lawfully acquire absolute title to the parcels, the smallest of which measured only one square metre, by executing unilateral deed polls.

Our expert lawyers can advise you on any matters relating to compulsory purchase orders. Contact us for guidance.

**Partner Note**

*The Metropolitan Borough Council of Stockport v Unknown Owners [2023] UKUT 53 (LC)*

**Housing Developer Succeeds in Fight to De-Register Part of Village Green**

It is a comfort to many people that town or village greens are immune from being built upon. However, as a High Court case showed, land may be stripped of that protected status if appropriate replacement plots are offered by developers.

The case concerned a 33,000-square-metre patch of land that was registered as part of a village green in 2008 on the basis that it had, for well over 20 years, been used for lawful sports and pastimes by a significant number of a specific neighbourhood's inhabitants.

With a view to nature conservation, it was carefully maintained and improved by local volunteers for a decade thereafter until its owner, a housing developer, purported to withdraw public access for that purpose. In seeking the patch's de-registration as a village green, the developer offered in exchange an adjoining 36,000-square-metre replacement plot.

In upholding the developer's application, a planning inspector noted the strength of understandable local opposition to the proposal. He acknowledged that the replacement plot was further away from some neighbourhood homes and was different in character from the disputed patch. Having visited the latter, however, he noted that it had, since 2018, become somewhat overgrown.

Describing the patch as arguably the least attractive part of the overall village green, he found that the replacement plot would be more accessible for some people and would offer the potential for a wider range of activities. Noting the developer's landscape improvement proposals, he found that the land exchange was unlikely to have any adverse effect with regard to nature conservation.

Dismissing a local campaigner's challenge to that outcome, the Court found no flaw in the inspector's conclusion that the exchange was in the public interest. He rightly took a broad approach in treating the affected neighbourhood as comprising all local inhabitants. There was no hierarchy of importance when it came to considering the interests of residents of the specific neighbourhood and those of other inhabitants who lived further afield.

The inspector faithfully recorded the objectors' contention that they did not need the developer's permission to recommence maintenance and improvement work on the patch. He had express regard to that as a potential fall-back position. He was entitled to place weight on the fact that little such work had been carried out since 2018 and was fully alive to the nature conservation issues.

The Court acknowledged that the enjoyment and study of nature bring important public benefits. However, it was only one of several factors that the inspector had to consider. Whether or not nature conservation could itself be viewed as a lawful sport or pastime for registration purposes, it could not be prioritised over other activities commonly enjoyed on village greens.

We can advise you on all aspects of planning law.

**Partner Note**

*R on the Application of Strack v Secretary of State for the Environment, Food and Rural Affairs [2023] EWHC 655 (Admin)*

**Plan to Redevelop Debenhams Department Store Receives High Court Boost**

The nation's high streets are changing and moves are afoot to demolish many once thriving department stores and replace them with new homes. As a High Court ruling showed, however, such developments are often highly controversial.

A developer wished to knock down a former Debenhams store and construct 226 build-to-rent flats and commercial units in its place. The proposal, however, yielded 268 objection letters and planning permission was refused. The developer's bid for prior approval to demolish the building under the General Permitted Development Order (GPDO) was also rejected.

The local authority had by then resolved to extend a local conservation area so as to include the store. That decision had the effect of taking the building outside the scope of the relevant provisions of the GPDO so that it could not be demolished without express planning permission.

A planning officer's report, on which the decision was based, noted that the store was built in the 1950s by renowned Art Deco architect George Coles. It described the four-storey building as important and a landmark structure of high visual quality.

Development consultants acting for the developer submitted detailed representations in response to the conservation area's proposed extension. Amongst other things, they noted that Historic England had declined an invitation to list the store on the basis that it was comparable in quality to a very large number of other high street buildings erected in the inter- and post-war years.

However, due to an entirely accidental oversight, the representations were not taken into account before the decision was reached. The council attempted to put right the mistake by purporting to review the matter and producing a supplementary report that confirmed the conservation area's extension.

Ruling on the developer's challenge to the decision, the Court rejected arguments that the council was motivated by the improper purpose of preventing the building's demolition and redevelopment. The evidence showed no more than that the desire to save the building was 'an' impetus – rather than 'the' impetus – for extending the conservation area.

In overturning the decision, however, the Court noted that there was a clear need to provide councillors with a fair and balanced analysis of the building's architectural worth. Officers' reports to the council were misleading in that they omitted to mention the obviously material fact that Historic England had declined to list the store.

The Court also found that the council's purported review of the initial decision was not a legally satisfactory response to the fact that the representations were not considered when they should have been. There was more than a fanciful prospect of a different outcome were the decision to be taken wholly afresh.

If you are involved in a commercial property dispute with a local authority, we can assist. Contact us for advice.

**Partner Note**

*R on the Application of Future High Street Living (Staines) Ltd v Spelthorne Borough Council [2023] EWHC 688 (Admin)*

**Some Love Dedicated Cycle Lanes, Others Hate Them – High Court Ruling**

Dedicated cycle lanes on busy streets deliver environmental and air quality benefits and are, of course, good for cyclists. However, as a High Court ruling showed, there are other interest groups – not least motorists – who tend to view them as anything but a panacea.

A local authority installed temporary cycle lanes on a traffic-laden street at the height of the COVID-19 pandemic. However, in response to objections from some local businesses and the emergency services – together with a public petition that garnered more than 3,000 signatures – they were subsequently removed.

Extinction Rebellion campaigned on the issue, which sparked much national media attention and political comment. After reviewing the matter, the council decided against reinstating the cycle lanes. That decision was challenged in court by an individual resident and a local campaign group.

Rejecting their complaints, however, the Court noted that there was manifestly no statutory duty on the council to carry out a formal public consultation process before reaching its decision. It had not promised to carry out such an exercise, nor had a duty to consult arisen as a matter of established practice.

In addressing air quality, environmental and cycle safety issues, councillors were entitled to take account of their own local knowledge. The support of some larger retailers for reinstatement of the cycle lanes was not ignored. There was, overall, nothing irrational in the council's decision to conduct further research before determining what, if any, cycle lane provision should be made on the street.

**Partner Note**

*R on the Application of Better Streets for Kensington and Chelsea and Another v The Royal Borough of Kensington and Chelsea [2023] EWHC 536 (Admin)*

These articles are provided for general interest and information only. They do not constitute legal advice. Whilst every effort is made to ensure that the content accurately reflects the law in England as at the date of its transmission, no liability is accepted for any loss or damage arising from any act or omission resulting from any information contained herein.