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**Assessing Development Potential is Not Just Crystal Ball Gazing**

Development potential is often a critical factor when it comes to calculating amounts of compensation payable to landowners whose property is compulsorily acquired to make way for public infrastructure projects. As an Upper Tribunal (UT) ruling made plain, assessments of such potential are not merely a matter of crystal ball gazing.

The case concerned a substantial office building on the proposed route of the HS2 railway line that was compulsorily acquired by the Department for Transport (DfT). A consortium of entities holding freehold or leasehold interests in the site duly sought compensation under the Land Compensation Act 1961.

The consortium obtained a certificate of appropriate alternative development (CAAD) from the local authority to the effect that, but for the acquisition, planning consent would have been granted for a mixed-use development of the site, including 116 homes in a tower block of up to 19 storeys. Faced with the prospect of having to pay compensation on that basis, the DfT appealed to the UT.

Ruling on the matter, the UT acknowledged the huge unmet need for housing in the area and the significance of brownfield sites in meeting it. Residential development had been permitted on numerous other sites formerly in office or industrial use. In upholding the appeal, however, the UT noted that the site was in a strategic industrial location, as designated in the local development plan.

The UT accepted the DfT's case that residential development of the site would not have been permitted and that any building erected on it would have been restricted to between eight and 10 storeys. Apart from retail and catering units on the ground floor, any such building would have been restricted to a mix of industrial and office uses. The CAAD was cancelled and replaced with a fresh certificate that reflected the UT's findings. The outcome of the case was likely to greatly reduce the amount of compensation payable by the DfT.

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

**Partner Note**

*Secretary of State for Transport v Bleep UK PLC and Others [2022] UKUT 331 (LC)*

**Business Interruption Insurance Disputes – Is Arbitration Obligatory?**

Many commercial property occupiers whose businesses were interrupted during the COVID-19 pandemic remain in dispute with their insurers regarding to what extent, if any, they were covered against such losses. In an important ruling, the High Court found that there was no obligation to refer one such dispute to arbitration.

Two companies that owned and operated numerous restaurants and bars claimed on their business interruption policy after they were required to close their premises during the first lockdown. The policy covered losses caused by interruption of, or interference with, business arising from the occurrence of a notifiable disease within a 25-mile radius of relevant premises. The policy, however, specified a maximum indemnity period of three months.

Insurers accepted that they were liable to the meet the claim and paid out more than £2 million. The companies, however, subsequently made further claims, for in excess of £4 million, in respect of losses arising from later government interventions, which imposed reduced opening hours and the second lockdown.

In asserting that their further claims were not caught by the three-month indemnity period, the companies contended that every separate occurrence of COVID-19 within 25 miles of each of their premises gave rise to a separate claim under the policy. The insurers took a contrary view, insisting that only one indemnity period applied and that they had satisfied their obligations under the policy.

After the companies launched court proceedings, the insurers applied for the action to be stayed in favour of arbitration. They pointed to an arbitration clause in the policy, in a commonly used form, which required any disputes concerning amounts to be paid out under the policy to be referred to arbitration.

In refusing to stay the proceedings, the Court found that the dispute encompassed not only a difference of opinion as to amounts to be paid out under the policy, but also a disagreement as to whether the insurers were liable to satisfy any part of the further claims. There was thus no contractual obligation to engage in arbitration and the companies were entitled to pursue their case in court.

**Partner Note**

*DC Bars Ltd and Another v QIC Europe Ltd [2023] EWHC 245 (Comm)*

**Converting Offices to Flats – Substandard Works Will Not Be Tolerated**

Amidst waning demand for office space and an ever-increasing need for more new homes, a plethora of commercial buildings are being reassigned for residential use. However, as a High Court case showed, planners are on the alert to ensure that conversion works are carried out to a satisfactory standard.

The case concerned an office block on an industrial estate that had been partially demolished and extended to provide 109 flats. Although the local planning authority (LPA) had previously granted prior approval for the building's change of use, it took the view that the works carried out involved a breach of planning control.

A planning officer's report advised that the presence of residential flats in an area designated for employment uses compromised the operation of some businesses on the estate. It went on to express the view that some of the flats were highly deficient in amenities, standards and quality, offering very poor and substandard living accommodation to current and future occupiers.

The report acknowledged that residents of the flats – who numbered about 200 – would suffer disruption, and possibly distress, if required to vacate their homes. However, in recommending that enforcement action be taken, it emphasised the public interest in ensuring appropriate land use and upholding the integrity of the planning system. It was in residents' interests to ensure that they did not continue to occupy substandard accommodation.

The LPA's response to the report was to serve a planning enforcement notice on the site's owner, requiring, amongst other things, cessation of residential use of the land and demolition of three two-storey structures used as residential accommodation.

Dismissing the owner's judicial review challenge to the notice, the Court rejected arguments that the LPA failed to have proper regard to the needs of vulnerable people and children living in the flats. It had manifestly not been established on the evidence that the notice violated residents' human right to respect for their homes and family lives. Overall, the notice was both necessary and proportionate.

The Court noted that the obligation to comply with the remedial steps required by the notice remained suspended pending the outcome of the owner's statutory appeal against it to a planning inspector under Section 174 of the Town and Country Planning Act 1990.

We can advise you on all aspects of planning law.

**Partner Note**

*R on the Application of Devonhurst Investments Ltd v Luton Borough Council [2023] EWHC 978 (Admin)*

**Proposed Demolition of Derelict Chapel Triggers Guideline High Court Ruling**

Can a local authority lawfully exercise emergency powers to demolish a dangerously derelict building in a conservation area without first obtaining planning permission? The High Court considered that issue in a case which clarified the law.

A local authority decided to exercise its powers under Section 78 of the Building Act 1984 to demolish a decaying chapel and schoolhouse it owned, which was located in a conservation area. Structural reports indicated that the building was at real risk of collapse. The council said that the structure posed a serious risk to the public and that demolition works could not be delayed.

Challenging the decision, a neighbouring landowner asserted that demolition of the building without planning permission would amount to a criminal offence. It argued that the building made a positive contribution to the conservation area and that steps short of demolition could be taken to render it structurally safe.

In finding that the council had lawfully invoked its powers under Section 78, the Court noted that the building had already started to collapse and had been assessed as posing a danger to pedestrians and adjoining properties. On the central legal issue in the case, however, the Court concluded that the exercise of Section 78 powers does not abrogate, or do away with, the need for planning permission. The landowner was granted a formal declaration to that effect.

Despite the council's argument that such a declaration would lead to delays in urgent action being taken to deal with dangerous structures, the Court found that the requirement for planning permission was in line with Parliament's intention and very far from being absurd or unreasonable.

Like any other landowner, it would be open to the council to seek to regularise the position by seeking planning permission after the event. If prosecuted, the council could deploy the statutory defence that demolition was the minimum measure required and urgently necessary in the interests of safety or health. The very existence of that defence made it unlikely that a prosecution would even be brought.

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

**Partner Note**

*R on the Application of Samuel Smith Old Brewery (Tadcaster) v Redcar and Cleveland Borough Council [2023] EWHC 878 (Admin)*

**Restricting Holiday Lets in Seaside Towns – Tribunal Ruling Shows the Way**

Residents of many holiday destinations are disturbed by the increasing impact of tourism on their communities and the quality of their lives. However, as one case showed, the law can provide an effective means of restricting the number of properties let to holidaymakers.

The case concerned a house in a leafy cul-de-sac in one of Cornwall's most popular seaside locations. Its owner wished to use it for holiday lets but encountered fierce objections from a couple who lived nearby. They pointed to a restrictive covenant contained in the property's title deeds that confined its use to that of a private dwelling house.

The owner applied to the Upper Tribunal (UT) under the Law of Property Act 1925 for the covenant to be modified so as to enable its use for holiday lets. That, he argued, represented a reasonable use of the property that would have no measurable or practical impact on the couple's enjoyment of their home. Steps would be taken to restrict use of the property to small family groups. Stag and hen parties would be banned.

Refusing the application, however, the UT noted that the presence of tourists in the cul-de-sac would increase the risk of wearisome neighbour disputes concerning noisy use of the property's pool, cooking smells from barbecues and inconsiderate parking. Although it was not right to tar all holidaymakers with the same brush, a constantly changing cast of temporary visitors would be less likely to be interested in cultivating good relations with permanent residents.

The covenant provided assurance to the couple that the quiet character of the cul-de-sac would be preserved. Permitting the property's use for what amounted to a business purpose would erode the very attributes – tranquillity, privacy and freedom from nuisance – that the covenant was designed to protect. Although the covenant dated back to 1964, it continued to provide a substantial benefit to the couple and amending it would cause them injury.

We can advise you on any matters relating to restrictive covenants and property usage. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Cook v Lambourn and Another [2022] UKUT 105 (LC)*

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