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**Crown Immunity from Planning Enforcement Action – Court of Appeal Ruling**

Planning enforcement action cannot be taken against the Crown, one of the nation's biggest landowners, without the consent of…the Crown. The Court of Appeal made that point in refusing to block use of an RAF airfield to help accommodate asylum seekers making their way across the Channel in small boats.

A local authority sought an injunction against the Home Office under Section 187B of the Town and Country Planning Act 1990 with a view to preventing the airfield's use as accommodation for up to 1,700 asylum seekers. It asserted that the proposal would amount to an unauthorised change of use, in breach of planning control. Following a hearing, however, a judge found that he had no jurisdiction to consider the matter and struck out the council's claim.

In dismissing the council's challenge to that outcome, the Court noted that Section 296 of the Act states in terms that a local planning authority 'must not take any step for the purposes of enforcement in relation to Crown land unless it has the consent of the appropriate authority' – in this case the airfield's owner, the Ministry of Defence. The application for an injunction was undoubtedly a step taken for the purposes of enforcement and was thus caught by that prohibition.

The council had criticised the government's invocation of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 as a way of getting round the need for planning permission. Class Q permits development of Crown land in order to prevent, reduce, control or mitigate the effects of an emergency. Given its decisive ruling on the jurisdictional point, however, the Court declined to express a conclusion on that issue.

**Partner Note**

*Braintree District Council v Secretary of State for the Home Department and Another [2023] EWCA Civ 727*

**Hard-Up Landlord's Rent Repayment Order Slashed – Upper Tribunal Ruling**

Any residential landlord who lets out a property without a required licence commits a criminal offence and can expect to be hit hard in the pocket. The law is not a blunt instrument, however, and the Upper Tribunal (UT) emphasised in a guideline case that the financial circumstances of any given landlord must be taken into account when fixing the amount of a rent repayment order (RRO).

The case concerned a one-bedroom flat in an area covered by a selective licensing scheme imposed under Part 3 of the Housing Act 2004. For about nine months, its owner let it to two students without obtaining a licence. She thereby committed an offence under Section 95(1) of the Act. The First-tier Tribunal subsequently issued an RRO against her, requiring her to refund to the tenants about 80 per cent of the £22,230 in rent they had paid.

In upholding her challenge to that order, the UT noted that, by Section 44 of the Housing and Planning Act 2016, a landlord's financial circumstances must be taken into account when assessing the amount of an RRO. The middle-aged landlord had, for many years, been in very poor health. She had no income from employment or self-employment, did not receive social security benefits and had no investment income. After she had to give up work, she rented out the flat, which had until then been her home, on a short-term basis in order to make ends meet.

She was not without capital resources, but her modest property portfolio, which she had acquired with a view to providing herself with a retirement pension, was heavily mortgaged. Rising interest rates meant that she derived no net income from the properties. Bereft of savings, she funded herself by drawing down rapidly dwindling capital secured on one of them. Overall, her financial position was precarious.

The UT found that her offence was very much towards the bottom end of the scale of seriousness. There was no evidence that she had deliberately sought to avoid her responsibilities. Her debilitating ill health contributed to her lack of awareness of the selective licensing scheme. She was living abroad temporarily when the scheme was introduced and, as soon as she became aware of the need for a licence, she duly applied for one. Overall, the UT found that justice would be served by reducing the RRO to £2,000, to be divided equally between the tenants.

We can assist you with matters relating to landlord and tenant law. Contact **<<CONTACT DETAILS>>** for advice.

**Partner Note**

*Daff v Gyalui and Another [2023] UKUT 134 (LC)*

**Landmark Golf Course's Status as Asset of Community Value Upheld**

When a property is registered as an asset of community value (ACV) under the Localism Act 2011 the result can be a major headache for would-be developers. However, as a case concerning the future of a much-loved former golf course showed, overturning such a registration can be an uphill struggle.

The course was almost a century old and was the work of a legendary sporting architect. It had, however, struggled financially for some years and the final blow came in the form of the COVID-19 pandemic. Following its closure, the local authority acceded to requests from local people and registered it as an ACV.

The registration meant that the course's freehold owner, which had been acquired by a property developer for £3.2 million, could not sell the land without giving notice to the council. If a community interest group came forward with the intention of putting in an alternative bid, the owner would face a six-month moratorium on any sale.

In challenging the registration, the owner asserted, amongst other things, that it had no intention of selling the course. There was no realistic prospect of the course reopening, or of any other community use being established on the land, within five years. No economically viable alternative proposal had been put forward and, given the high value of the land – as reflected by the price the developer had recently paid for its owner – it would not be practicable for a community interest group to raise sufficient funds to purchase it.

Dismissing the appeal, however, the First-tier Tribunal (FTT) noted that the highly rated course had long been one of the area's most famous landmarks. There was a high demand for golfing facilities in the area and, although it had been allowed to run wild since its closure, the course was highly valued as a green oasis for inner-city wildlife.

The FTT emphasised that the sole issue for it to decide was whether it was realistic to think that the course could be used within five years for any purpose that furthered the social wellbeing or interests of the local community. The establishment of such a use did not have to be likely or probable, but merely possible, in the sense of not being fanciful.

There was a risk that the developer's attempts to gain planning permission to build on the course would not bear fruit. Negotiations to lift a restrictive covenant – which confined the use of part of the land to that of a golf course and clubhouse – might also be unsuccessful. It was realistic that a lifestyle purchaser might come forward who would be willing to work with the local community to create a green space for all sorts of different social and recreational activities.

At the registration stage, it was not necessary to establish that community use of the land would make financial sense. Such uses need not be, and often are not, commercially profitable. It was important not to confuse such questions of economic viability with what community enthusiasm and innovation and a specialist investor with a large amount of capital might achieve together.

We can advise you on all aspects of planning law.

**Partner Note**

*Swinton Park Golf and Country Club 2017 Ltd v Salford City Council [2023] UKFTT 514 (GRC)*

**Members-Only Gym 'Used for Charitable Purposes' – Supreme Court Ruling**

In a decision of great importance to the charity sector, the Supreme Court has ruled that a gym run by a healthcare charity qualifies for 80 per cent relief from business rates notwithstanding that it is only open to members who pay monthly fees that might be viewed as unaffordable by those of modest means.

The registered charity, which runs hundreds of fitness and wellbeing facilities around the country, together with hospitals and medical centres, charged a standard rate of £80 a month to the gym's members. It also provided limited free services to non-members. It applied to the local authority for an 80 per cent rates reduction under Section 43 of the Local Government Finance Act 1988.

In rejecting that application, the council took the opinion that, viewed on its own, the gym was not being used for charitable purposes because the membership fees were set at a level that excluded those of modest means from enjoying its facilities. On that basis it contended that the public benefit requirement, which is an invariable condition of charitable status, was not satisfied.

In subsequently upholding the charity's challenge to that decision, a judge found that the question of whether the gym was used for charitable purposes did not have to be decided by reference to the activities carried on there, taken in isolation. The correct question was whether the charity was using the gym for the pursuit of its charitable purposes, viewed in the context of its charitable activities as a whole. The charity's entitlement to the rates reduction was later confirmed by the Court of Appeal.

Dismissing the local authority's appeal against that outcome, the Supreme Court noted that the mandatory 80 per cent rates reduction is afforded to ratepayers who are charities, or trustees for a charity, where the premises concerned are used wholly or mainly for charitable purposes.

The charity's purposes – including the advancement, promotion and maintenance of health and healthcare for the public benefit – were, as a matter of law, presumed all to be charitable in all the places where they are carried on and, viewed overall, to satisfy the public benefit requirement. The charity plainly used the gym for the direct fulfilment of its charitable purposes.

The Court acknowledged that, on the findings of the Court of Appeal, the facility was, putting it broadly, for the rich but not the poor. It noted, however, that the rich are as much a part of the section of the public benefited by the charity as are the poor. On the basis of the charity's registration, it had to be assumed that the poor were not excluded from benefit, on a view of the charity's activities in the round, even if they were excluded from use of the gym.

If you are involved in a business rates dispute related to commercial property, we can assist. Contact us for advice.

**Partner Note**

*London Borough of Merton v Nuffield Health [2023] UKSC 18*

**In Brief**

**HM Land Registry Launches New Training Hub**

A new customer training hub has been launched by HM Land Registry to bring all of its help and guidance sources together in one place for conveyancers and other legal professionals.

Along with practice guides, the hub contains links to guidance pages, webinars, videos, podcasts, checklists and flowcharts. It also signposts to a new public guidance page that caters to members of the public and aims to address the most common enquiries.

The hub can be accessed at https://www.gov.uk/guidance/hm-land-registry-training-hub

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