Commercial Property ~ October 2023

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**High Court Quashes Planning Consent for Large Crematorium with an Ocean View**

Commercial developers should be aware that the hard-fought process of obtaining planning permission for controversial projects may only be a preliminary skirmish in a longer war. The point was powerfully made by a High Court ruling which put proposals for a large-scale crematorium in a scenic coastal location back to square one.

The crematorium, if built on a 5.8-hectare rural site overlooking the Atlantic Ocean, would be one of the largest in the UK. The proposal was the subject of fierce local controversy but the local authority resolved to grant planning permission on the strength of a planning officer's report. Whilst acknowledging that it was a finely balanced case, the report advised that the benefits of the proposal outweighed any identified harm.

Amongst other things, the developer contended that the area's increasing population would place pressure on its existing crematoria. Environmental and other benefits would arise from reduced travel times to the new facility. Local objectors, however, put forward numerous grounds of opposition and asserted that the sheer scale of the proposed facility created a risk that it would become an unviable white elephant.

After two local residents launched proceedings, the Court found that the planning officer's report gave a seriously misleading overall impression of the evidence concerning the project's viability. The risk that the crematorium might not be fully used – or even built to the full extent permitted, or at all – needed to be spelt out. The local parish council had raised concerns that the permission was capable of being used as a foot in the door for some other form of development.

The report's analysis of a key local planning policy was also inadequate. That policy stated that business developments in rural locations would only be permitted if they were of appropriate scale or if there was an overriding need for them. The report's advice in respect of the transport benefits of the proposal was significantly misleading and it expressed no clear conclusion as to whether the proposal complied with certain landscape and environmental protection policies. The planning permission was quashed.

We can advise you on all aspects of planning law. Contact **<<CONTACT DETAILS>>** for advice.

**Partner Note**

*Watton and Another v The Cornwall Council [2023] EWHC 2436 (Admin)*

**'Humanitarian' Landlord Fails in Novel Banning Order Appeal**

Landlords who neglect their legal obligations to the point of criminality can be hit with banning orders that are likely to put them out of business. In a case of importance to property professionals, the Upper Tribunal (UT) for the first time considered an appeal against one such order.

The case concerned a woman who had been a landlord for over 30 years and owned 29 rental properties, many of them houses in multiple occupation. She specialised in letting to tenants who might otherwise find it difficult to obtain rented homes, including homeless, vulnerable or marginalised individuals. There was no reason to doubt that her motives in letting property were humanitarian rather than commercial.

However, the local authority had for a number of years been concerned about the quality of her management of her portfolio and had taken progressively more serious enforcement action against her. She ultimately pleaded guilty to eight offences in relation to three of her properties.

All but one of the offences related to contraventions of the Management of Houses in Multiple Occupation (England) Regulations 2006. Two of them concerned an absence of fire doors and most of the others related to individual items of disrepair or poor standards of maintenance or cleanliness. Although, when viewed individually, her offences were not of the most serious type, she was fined a total of £22,000.

After the council launched further proceedings, magistrates imposed a banning order under the Housing and Planning Act 2016. The order forbade her, for a period of five years, from letting housing or engaging in letting agency or property management work. She was given six months in which either to end her existing tenancies or to dispose of tenanted properties. Her appeal against the order was subsequently rejected by the First-tier Tribunal (FTT).

In dismissing her challenge to that outcome, the UT noted that this was the first occasion on which it had considered an appeal against a banning order. It found no error of law in the FTT's assessment of the seriousness of her offending. Also rejected was her argument that the magistrates had no power to ban her from continuing to manage properties which she had previously let and where the tenancies or licences were continuing.

For legal guidance on landlord and tenant matters, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Knapp v Bristol City Council [2023] UKUT 118 (LC)*

**Quarry Owner Hit Hard in the Pocket for Causing Noise and Dust Nuisance**

Some industrial processes simply cannot be carried on without producing noise and dust. As a High Court ruling showed, however, commercial property owners may be required to pay a high price if their activities enter the realms of nuisance.

When a couple purchased their rural home, one of the attractions was a nearby lake. The water feature, however, was in fact a disused quarry for which unconditional planning permission had been granted more than 30 years previously. The lake was subsequently drained and stone quarrying work was recommenced.

The couple said that a quarry blast had caused cracks to appear in their property. Heavy traffic moving to and from the site passed along a roadway about 75 metres from their home. Noise and dust emanating from the site prevented them from watching TV, conversing, socialising or relaxing in their garden.

After they launched proceedings, the Court found that 45 per cent of the cracks were caused by the blast. The couple had, due to the quarrying operations, been exposed to excessive noise and dust for a period of four years. In all three respects, the quarry's owner had committed an actionable nuisance.

The owner was, by virtue of the extant planning consent, permitted to engage in quarrying operations on the site. However, he could only do so insofar as he did not create a nuisance. The interference with the couple's lives was very significant. Noise levels were high and continuous. The nuisance had a serious and detrimental impact on their use and enjoyment of their home.

The couple were awarded £63,268 in compensation. That was made up of £13,268 for the physical damage to their home and £50,000 in respect of noise and dust nuisance. An injunction was also issued against the owner requiring him to take numerous steps to abate the nuisance.

Those steps included the purchase of quieter plant and equipment, the fitting of noise mitigation devices to all machinery and the relocation of noisy processes away from the couple's home. Dust was required to be damped down, decibel limits were imposed and restrictions were placed on lorry movements and the quarry's operating hours.

Contact us for advice on commercial property nuisance claims.

**Partner Note**

*Drennan and Another v Walsh [2023] NICh 6*

**Retail Tenant Forced to Relocate Receives Compensation for Permanent Loss of Profit**

When retail premises are compulsorily purchased by public authorities and forced to relocate, to what extent should compensation be paid for any resulting permanent loss of profit? The Upper Tribunal (UT) considered that issue in a guideline case.

Leasehold premises occupied by a national chain of jewellers were compulsorily acquired by a local authority as part of a town centre regeneration scheme. The tenant relocated its store to a nearby shopping centre where the overheads were substantially higher. The council nevertheless disputed its entitlement to compensation in respect of permanent loss of profits.

Ruling on the matter, the UT noted that the original store was on a prominent corner plot which benefited from high footfall. The tenant said that the store owed much of its resounding success to the fact that its occupational costs were less than half those of an equivalent unit in the shopping centre and that there was not much difference in their turnovers.

The UT found that there was no equivalent alternative premises to which the tenant could have relocated in lieu of the shopping centre. The new store was superior to its predecessor but it did not represent such good value for money, in that its profit margin was adversely affected by increased property overheads. That reduction in profit was directly attributable to the store's relocation.

Responsibility for the new store's reduced footfall and net sales could not be laid at the door of the compulsory purchase and relocation. However, the end result of the enforced move was that the tenant achieved a lower turnover at more expensive premises and had sustained a permanent loss of profit. It was thus entitled to compensation calculated by reference to the increased overhead costs.

The UT assessed the tenant's compensation in respect of permanent loss of profit at £318,469. That sum took account of relief from business rates and a rent-free period granted during the COVID-19 pandemic. Compensation in respect of relocation costs and professional fees was agreed and the tenant's temporary loss of profits arising from the relocation was calculated at £184,045. The tenant's total award came to £647,510.

We can advise you on all aspects of commercial property law, including compulsory purchase orders. Contact **<<CONTACT DETAILS>>** for advice.

**Partner Note**

*Warren James (Jewellers) Ltd v Watford Borough Council* *[2023] UKUT 153 (LC)*

**Stamp Duty – When is a House So Derelict That it Ceases to Be a Dwelling?**

What state of dereliction does a house have to reach before it can be viewed as not suitable for use as a dwelling for the purposes of Stamp Duty Land Tax (SDLT)? A tax tribunal gave guidance on that issue in a case of importance to the legion of property developers engaged in domestic property renovations.

A house that had been empty for some time following the death of its owner was purchased by a company with a view to refurbishing it for resale. The company asserted that it was in such poor condition that it was not suitable for use as a dwelling, within the meaning of the Finance Act 2003.

On that basis, it argued that SDLT was payable at the lower, non-residential rate and applied for a £12,350 tax rebate. After HM Revenue and Customs refused the application, the company appealed.

Ruling on the matter, the First-tier Tribunal (FTT) noted that the ceiling of the house's kitchen had partially collapsed, apparently due to a leaking water pipe. Rotten joists meant that parts of the property could not be safely accessed. Dangerous wiring had to be entirely replaced, together with the obsolete heating system.

On the other hand, the rotten joists had been swiftly replaced at relatively low cost, the stairs remained usable and the damage affected less than half of the property's overall floor area. The building, including the roof, at all times remained fundamentally sound and no part of it required demolition.

The FTT acknowledged that there are cases in which a property may be so derelict as to render it unsuitable for use as a dwelling for SDLT purposes. Asbestos may, for example, be extensively present or there may be structural defects, or missing elements of essential fabric, that render a property uninhabitable.

Dismissing the appeal, however, the FTT emphasised that such cases are relatively few and far between. The critical question is not whether a property is immediately habitable or ready for occupation, but whether it is suitable for residential use. The house in question, whilst parts of it were in a state of disrepair, contained all the required facilities for living. On the evidence, the company had not taken a non-residential building and made it into a dwelling.

For expert guidance relating to Stamp Duty disputes, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Henderson Acquisitions Ltd v The Commissioners for His Majesty's Revenue and Customs [2023] UKFTT 739 (TC)*

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