

update

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Finers Stephens Innocent

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Finers Stephens Innocent LLP
179 Great Portland St
London W1W 5LS

T: +44 (0)20 7323 4000
F: +44 (0)20 7580 7069

fsilaw.com

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“we’ll dice up the property market’s legal issues and give you just the nuggets that you need to know”

next time...
New Fire Regulations.
How are they working?

Welcome to the first edition of Soundbite

hot seat



We're labouring under the impression that you are too busy to read great tomes of legal opinion and that you'd prefer bite size chunks on important property information. Enter Soundbite, a bi-monthly publication.

We'll dice up the legal issues and give you just the nuggets that you need to know. If there's anything you would like us to cover, contact me – I'd be happy to hear from you.

Each edition will also include a Guest Editor – sharing their moans and groans or appreciation about the goings on in the industry. For my part it seems that it's been quite a summer for those of us involved in the property market – the Government's u-turn on the inclusion of Home Condition Reports in Home Information Packs has seen many, including the *Estates Gazette*, predicting that the Planning Gain Supplement (Development Land Tax by another name) will be shelved in favour of a much more workable roof tax.

A new approach to legislation appears to be at the heart of the problem. Traditionally proposals would be debated and then thoroughly tried and tested before being publicly announced. Now, at best, proposals are trialled in closely

controlled focus areas (an astonishingly small number of residential transactions in the West Country in the case of HIPs, for example) and are then announced as confirmed measures without having been subjected to detailed industry analysis. The industry makes its view on the workability (or not) of the idea known, but against a resolute response from Government has no choice but to start gearing up for the changes as proposed. And then, when the true difficulties and/or economic consequences of an ill thought out proposal become apparent, a dramatic (but not necessarily express – see the obfuscation that still surrounds PGS) u-turn is made. The consequences to the affected industry of this approach can be significant, witness the havoc caused by the Government's volte-face on the private pension plan changes.

As the 4,500 people who had begun (in light of clear Government assurances) to train to become Home Inspectors will aver, it is no way to legislate.

Martin Smith, Head of Property

Direct Phone: +44(0)20 7344 5596
msmith@fsilaw.com

Second bite of the cherry



Environmental Impact Assessments

When considering the purchase of a property with outline consent, purchasers need to note the recent ruling of the European Court of Justice where it was held that an Environmental Impact Assessment (EIA) should be carried out at the reserved matters stage, if it is likely that a development project, at that point, will have significant effects on the environment by virtue of its nature, location or size.

This decision is significant for both developers and local authorities in situations where an EIA was not carried out but ought to have been, at the outline stage or if matters with regard to the development have changed since an EIA was carried out. Purchasers should exercise particular caution where there has been a long gap between the grant of the outline permission and the submission of reserved matters. The requirement for an EIA will be a significant drain on expenses and cause delay in a system that already has its problems with efficacy. Local planning authorities may well be hesitant when dealing with reserved matters applications following this ruling, for fear of third party challenges.

Quite how planning authorities will address what developments needs to be assessed in phased developments, where some phases have already been implemented and subsequent phases require reserved matters approval, remains to be seen. Although Interim Guidance has been issued by the Department for Communities and Local Government, it failed to address this particular point. An amendment of the EIA Regulations and final guidance is expected after the final determination of the case by the House of Lords who will hopefully not sidestep this issue.

Jacqueline Backhaus, Head of Planning
Direct Phone: +44(0)20 7344 5522
jbackhaus@fsilaw.com

Jacqueline has broad experience in all planning matters. Her experience covers negotiating planning applications, handling appeals on a wide variety of development schemes, dealing with strategic land use planning and negotiating complex planning, highways and related agreements.

Landlords freed from containment



Majorstake Limited v Monty Curtis

An important Court of Appeal decision for landlords of residential flats and developers generally. Under the Leasehold Reform, Housing and Urban Development Act 1993, landlords may only oppose a flat owner's application for a lease extension where the landlord intends to carry out substantial construction work on the whole or a substantial part of 'any premises in which the flat is contained'. The landlord intended to create a duplex apartment by combining the subject flat with a flat below it. The tenant argued that the expression referred to an existing recognisable unit, such as a whole floor of the building, which contains the flat in question and that combining two flats alone did not satisfy that criteria.

The Court of Appeal disagreed, finding that there was nothing in the policy or language of the Act that indicated that a part of a building that comprised two adjacent flats could not constitute premises in which each was contained. While the concept of containment of the flat was an essential element, the expression 'any premises' was very general.

The decision gives some flexibility to landlords considering flat developments. Had the tenant prevailed, the future ability of landlords to develop residential flats would have been seriously curtailed.

William Lawrence, Head of Property Litigation
Direct Phone: +44(0)20 7344 5615
wlawrence@fsilaw.com

William specialises in all aspects of property litigation. His practice covers both commercial and residential landlord and tenant disputes, as well as wider real estate property disputes between landowners.

A cautionary tale



Yeomans Row Management Limited v Cobbe

Proprietary estoppels can arise where a landowner allows a third party to believe it will become entitled to a claim to the land, and the third party acts on that belief to its detriment with the landowner's knowledge. Here, a developer who spent some considerable time and money securing valuable planning consent for a site in the absence of any written agreement was found to be entitled to half the increase in value – some £5–6 million.

Two things are important to note: first of all proprietary estoppel can sidestep the usual requirement that a contract relating to an interest in land can only be made in writing. Secondly, and more alarmingly, *obiter dicta* in the Court of Appeal judgement suggests that in certain circumstances this form of relief could apply even where the parties operated expressly 'subject to contract'. The moral is clear, you can't tell a gentleman by his handshake – put it in writing!

Mark Johnstone, Partner
Direct Phone: +44 (0)20 7344 5311
mjohnstone@fsilaw.co.uk

Mark specialises in all aspects of commercial property with particular focus on development work (both residential and commercial) including advising on planning and environmental law issues.

