

Local Authority Newsbites

Updating you on local authority issues



Welcome to our April edition of *Newsbites*. Election fever is in the air but the tide of local government news continues unabated. In this edition we highlight a number of interesting cases on issues such as adverse possession and retrospective planning permissions. We also look at issues surrounding Community Infrastructure Levy, and the serving of blight notices as well as some helpful and timely guidance on purdah periods.

We are very interested to hear from you about other topics we could or should be covering in this update. If you have any comments or suggestions then please contact [Benjamin Smith](#) or e-mail LAlaw@mills-reeve.com.

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New regulator for social housing

The Housing and Regeneration Act 2008 set up the [Tenant Services Authority](#), the independent regulator for affordable housing. The authority replaces the Housing Corporation and assumed its full powers of regulation on 1 April 2010. It has published six national standards designed to improve the quality of rented accommodation and the service which landlords of social housing provide to their tenants. Local authority landlords and housing associations are subject to the authority's regulatory role. It has powers of enforcement where a landlord is not meeting the requirements in the national standards. These include powers to levy fines on a landlord or to order it to pay compensation to a tenant. In extreme cases the authority can compel a failing landlord to transfer housing stock to a new landlord who can provide the services to tenants and quality of housing set out in the national standards.



Provision of double glazing

It is commonplace for landlords of blocks of flats to repair the structure, exterior and common areas and facilities of the block and to charge the costs to the tenants. As a general rule a landlord which carries out improvements cannot recover the cost from tenants who have agreed to pay for the cost of repairs. It is often difficult to tell whether works are repairs or improvements. This was an issue in *Craighead v (1) Homes for Islington Ltd and (2) London Borough of Islington* (2010) Upper Tribunal of the Lands Chamber. The case concerned a local authority landlord which had created a management company to run and maintain the authority's housing stock. This was in response to the government's



Please [click here to read the case.](#)

"Decent Homes Programme". The management company replaced single glazed windows in a council block with double glazed windows. Under the terms of the flat leases the tenants had to pay the landlord the costs it incurred in repairing the block. The landlord claimed the cost of installing the new windows. In response, the tenants refused to pay on the basis that the new windows amounted to an improvement and not a repair. The Lands Chamber reviewed the case law and concluded that the new windows did not amount to an improvement and fell within the repairing covenant.

Blight notices

In certain instances owners of properties can serve a notice under the Town and Country Planning Act on a local authority requiring it to purchase the property or to pay compensation. This happens where proposed development damages the value of a property. The property must be "blighted" and the owner must show they have tried unsuccessfully to sell the property or they could only have done so at a much reduced level. There are similar provisions under part I of the Land Compensation Act 1973 where new public works such as highways damage the value of a property.

To serve a blight notice in respect of a property its rateable value must be below a certain limit. As from 1 April 2010 Town and Country Planning (Blight Provisions) (England) Order 2010 increases the limit from £29,200 to £34,800.



To read the order, click [here](#)

Retention and defects

A local authority as employer under a building contract may wish to retain a percentage (usually three per cent or five per cent) of certified payments to the building contractor to incentivise the contractor to finish the works and remedy any defects. The standard form building contracts all create a right for the employer to hold such retention.

Retention is released in two halves. The first half is released on practical completion. The JCT and NEC forms deal with the release of the second half in subtly different ways.

JCT provides for a fixed period after practical completion (usually six months or a year) during which time the contractor must rectify any defects notified to it (the Defects Liability Period or DLP). At the end of the DLP, if, but only if, all of the notified defects have been rectified a "certificate of making good defects" is issued. The issue of the certificate of making good defects triggers the release of the second half of the retention.

NEC3 also provides for a fixed period for the rectification of defects, ending on the "defects date", which is usually six months or a year after the completion date. At or shortly after the defects date, a "Defects Certificate" is issued which sets out any defects which the contractor has not corrected. The issue of the Defects Certificate triggers the release of the second half of retention. If there are outstanding defects noted on the Defects Certificate, the employer must serve a withholding notice in order to continue to hold the retention until all notified defects are rectified.

If you have any queries about this article please contact [Alexandra Price](#), in our construction and engineering team on 01223 222513.



R (Oxfordshire & Buckinghamshire NHS Foundation Trust & Oxford Radcliffe Hospitals NHS Trusts) v Oxfordshire County Council

The case of *R (Oxfordshire and Buckinghamshire NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trusts) v Oxfordshire County Council* has clarified three points of law regarding the registration of recreational greens, with one of the three points having clear ramifications for the estate management



practices for owners of large open spaces.

The most significant consequence of the decision of this case is in respect of erecting notices to exclude people from using a large open space. In the present case a sign stating "No public right of way" was insufficient to prevent members of the public from acquiring rights to use the Warneford Meadow as a recreational green.

Landowners need to be very specific in the rights they are trying to prevent others from acquiring. Although the landowner did not realise that a right to use an area of open space as an open space could be acquired, the landowner tried to argue that a prohibition against public rights of way would be sufficient to prevent the recreational rights. The Judge found that this sort of prohibition was ineffective in preventing the acquisitions of a right to use an open space as a recreational green. Therefore landowners should now take steps to ensure that their notices cover the full spectrum of rights that can be obtained from long use.

The case also decided that the requirement that a predominant number of users had to come from one locality no longer applied. This case highlighted that rights to use an area as green could be acquired by a significant number of inhabitants using the space from a number of different localities. Previously a significant portion of users needed to come from one locality. This has had the effect of meaning a wider number of users can be taken into account making it easier to reach the threshold required to register a green. Finally, the case found that where the rights are established for one locality these can be subsequently enjoyed by users from another locality. The Judge highlighted the impracticality of a landowner excluding users from outside the locality that had acquired the rights.

Unlike the first point these last two points will be significant when a party is seeking to register rights and landowners are seeking to fend off their application.

Purdah period

With elections fast approaching, many councils have now entered the purdah period. New guidance has been produced by the Association of Council Secretaries and Solicitors (ACSeS) which is designed to assist councils in understanding what can and can't be done during the period to the run up to the general and local elections.

The purdah period is 25 working days before polling day and so for the purposes of the local elections on 6 May started on 29 March 2010.

Local Government Lawyer has published an [article](#) outlining the main highlights.



For the full guidance from ACSeS please [click here](#).

Claim to title to a highway by adverse possession

R on the application of Smith v The Land Registry and Cambridgeshire County Council (2010) Court of Appeal

The Court of Appeal has dismissed a claim to title by adverse possession of part of a public highway. The court concluded there was no rule at common law or in statute which supported an argument that a squatter could adversely possess a highway and thereby extinguish public rights over the highway. In addition, abandonment or lack of use by the public does not extinguish the rights. A person seeking to extinguish public rights must use one of the methods set out in the Highways Act 1980.

The most that could happen would be for the squatter to acquire title but subject to the rights of the public to use the highway. However, this could only apply in the case of a highway not maintainable at public expense. Where the highway authority is under a duty to maintain the highway, the effect of section 263 Highways Act is to prevent the squatter obtaining.



Retrospective planning permissions and environmental assessments

R on the application of Ardagh Glass v Chester City Council (2010) Court of Appeal

The Court of Appeal held it is possible to make an application for retrospective planning permission for a development which requires an environmental assessment. The applicant must of course include an assessment with its application.

Applications for certain types of development must include an environmental assessment setting out the environmental impact of the proposal. The main statutory source is Town and Country Planning (Environmental Impact Assessment) (England and Wales) 1999.

Section 73(A) Town and Country Planning Act 1990 empowers local authorities to grant planning permission retrospectively.



Please click [here](#) to read the case.

Community Infrastructure Levy

Parliament has passed the [regulations](#) (The Community Infrastructure Levy Regulations 2010) which introduce the levy on 6 April 2010. Before a local authority can charge the levy, it must write a charging policy. To do this it must follow the statutory process in the regulations. This will take time so it will be about three years before local authorities begin to implement the levy. There is also the uncertainty regarding whether a Conservative government would alter the levy.



The Department of Communities and Local Government has published a [guide](#).

Online training on members conduct

Ever wondered if there was a more cost effective way of delivering conduct training to your elected members?

We have put together an online training programme to help you. For a demonstration please follow this link:

www.intran3.com/mills-reeve/la
password: laelearning

For more information please click [here](#).

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