

hot property

Welcome to the July edition of *Hot Property*. Following the election it is a time of change and, particularly on the town and country planning front, barely a day passes without a significant change taking place. It will be interesting in time to review how much effect the changes have had. We have some particularly interesting articles in this edition and if you have any queries on any of the articles please do feel free to contact the author.

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The new localism agenda: the impact on development

Hardly a day goes by without another announcement from the new Coalition Government: the abolition of an old policy, the demise of another quango, the creation of a new organisation or a new delivery vehicle to drive forward economic growth.

June's emergency budget brought with it the formal announcement of the abolition of the regional development agencies (RDAs) outside of London and the proposal to replace them with local enterprise partnerships (LEPs). The RDAs have been instrumental in the success of many regeneration projects, providing funding and facilitating coordination of interested parties to deliver a wide range of developments. So it is to be hoped that the new LEPs will fulfil the Government's aspirations for them as partnerships of local authorities working with local businesses to lead local economic development. They will be tasked with coordinating public and private investment in planning and housing, local transport and infrastructure. Of course, public funding remains in scarce and ever-diminishing supply, but a £1 billion regional growth fund will be available to help areas at risk from public spending cuts. The Government is looking to the private sector to fill the gap.



For further information contact [Christine de Ferrars Green](#)

Earlier this month the Commission for Architecture and the Built Environment (CABE), which advises the Government, published [guidance](#) on the approach to large-scale urban design which supports the "local" approach to planning.

Another recent announcement on the localism agenda was the housing minister's proposal to legislate for the creation of local housing trusts. To read Christine's longer article on local housing trusts, click [here](#).

We will have to wait for the publication of the forthcoming White Paper on sub-national economic growth and the supporting draft legislation in the form of a Decentralisation and Localism Bill for further information.

Localism v climate change?

As Christine has noted, our new Government is keeping itself busy putting into action its plans for a "radical reboot" of the planning system.

The recent revocation of regional strategies and the anticipated abolition of the legal basis for such strategies in the future means that regional housing targets are no more - it is now down to local communities to decide how much development is appropriate. It will be interesting to see how this "localism" squares with the Government's climate change agenda. Local communities are almost certain to want to protect their green belts but a large percentage of "sustainable" sites will be on the edges of towns and cities and so are likely to be within the green belt.

It seems that the abolition of regional targets is being seen by many as good news, but it does risk threatening many housing projects which can no longer rely on the need to meet targets imposed at regional level. And what happens to more strategic development such as waste management sites or windfarms? The lack of a strategic level of planning is likely to be felt more here: drumming up local support for housing is one thing, but doing so for waste management plants is arguably quite another. This is perhaps an unintended consequence of removing housing figures.

Proposals for business rate and council tax incentives may give developers some comfort that the localism agenda does not necessarily equal a "NIMBY" culture, but there is no doubt that public support will be even more important in the new system than it is now.

It is almost inevitable that by the time these articles are published, something new will have emerged from Whitehall. If you are interested in finding out more or working with us in following the localism agenda debate and its repercussions for your business, please do get in touch with your usual contact at Mills & Reeve, or Christine de Ferrars Green or Beverley Firth. You can also follow our reaction to the news on our [planning law blog](#).



For further information contact [Caroline Bywater](#)

CRC and the landlord and tenant relationship

Owners of tenanted property should be aware of the potential impact of the Carbon Reduction Commitment (CRC) Energy Efficiency Scheme on the value of their investments.

Property owners need to ask themselves a number of questions and make decisions now on how they approach CRC. Likewise, tenants need to be alive to the issues so that they do not find themselves unfairly treated. To read Dominic's longer article, click [here](#).



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Wake-up call?

It's taken three editions and a recession for the property industry to finally wake up to the British Property Federation's Code for Leasing Business Premises. Why is the time finally right?

Click [here](#) to read an article that Chloe has co-authored with Annette Fairburn, an associate director in the commercial lease consultancy team at the Birmingham office of Colliers International.



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Break with care

This recent case highlights the importance of correctly serving break notices.

AHC Westlink took a lease from Hexstone Holdings which contained an option for the tenant to break the lease on 31 October 2009. AHC Westlink had been purchased by Stobart Group Ltd in August 2007. The break notice sent to the landlord was signed "for and on behalf of Eddie Stobart Limited". The landlord contended that AHC Westlink remained the tenant as there had been no assignment to Eddie Stobart Limited and that the notice should have come from AHC Westlink. The Court agreed that the notice had not originated from AHC Westlink and therefore was not valid. The Court also rejected AHC Westlink's argument that the notice had been given by Eddie Stobart Limited as agent for AHC Westlink.

The lesson in this case is that parent companies should ensure that any notices served on a landlord originate from the tenant company. Likewise, where the landlord has an option to break the lease, the break notice should originate from the landlord company and not the landlord's parent company.

Hexstone Holdings Ltd v AHC Westlink Ltd



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Bombs on our doorstep?

Barely a day goes by without reference to improvised explosive devices (IEDs) causing havoc to British Forces deployed overseas.

Yet, here on our doorstep, devices lie undiscovered in our fields, gardens, building sites and roadways, a legacy of our forefathers stemming predominantly from the Second World War.

To find out more, click [here](#) to read Jonathan's longer article.



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The Great Escape: a warning about VAT

A few weeks ago, a company called Grenane Properties Limited had a very lucky escape in a VAT case. It is a salutary warning about the dangers of accidentally making an option to tax over property.

Grenane was set up to acquire and develop property. One of its directors was also a partner in the firm of accountants instructed to look after Grenane's VAT affairs. Because of a series of miscommunications, not only was Grenane registered for VAT, but an option to tax was



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also mistakenly submitted to HMRC (having been signed by the director/accountant partner without his reviewing the papers in any detail).

Grenane sold the relevant property (without charging VAT) to a company which was not registered for VAT. Following a subsequent inspection, HMRC assessed Grenane to VAT on the disposal of the property, asserting that the option to tax was valid and that VAT should have been charged. Grenane appealed this decision, claiming that it never really intended to make the option to tax and that notifying it to HMRC was a mistake.

It is for the taxpayer to show that, on the balance of probabilities, an option to tax which has been notified to HMRC is invalid. Fortunately for Grenane, and thanks in large part to two particularly "compelling witnesses", the Tribunal was persuaded that Grenane had effectively "sleepwalked" into filling in the VAT forms and sending them to HMRC. The Tribunal accepted that Grenane had no real intention of making an option to tax, and doing so would have made no commercial sense in the context of this particular transaction. As a result the option to tax notified to HMRC was invalid.

Had HMRC won the case, Grenane's simple mistake would have cost over £660,000!

Abatement and set-off in construction contracts

What is the difference between abatement and set-off in the context of construction contract disputes?

Where sums are independently certified, for the legal principles of set-off or abatement to have any chance of success, an employer must issue a valid withholding notice within the time frame prescribed by the building contract (or failing that as prescribed by the Housing Grants, Construction and Regeneration Act 1996).

Picture this: a contractor makes a claim against its employer, for unpaid invoices, in respect of works done under a building contract but the employer withholds payment on the basis of a counterclaim for defects arising under the same contract.

Abatement attempts to reduce the amount claimed on the basis that the building is worth less than has been claimed, perhaps because the works are defective or have not been done. It is worth noting that, according to recent case law, abatement may not be used when avoiding the payment of fees for professional services such as an architect.

Set-off allows the employer to deduct from sums otherwise due to the contractor, such as the cost of rectification of the defects.

Subject to the issue of a valid withholding notice, the employer can be entitled to withhold payment on either of these principles.

Ultimately such a dispute may well be decided by a court.



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