



Property e-alert

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CASES

FORD AND ANOTHER V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT AND ANOTHER

Citation: [2007] EWHC 252 (Admin)

Hearing date: 19 February 2007

Court: Queen's Bench Division (Administrative Court)

Judge: George Bartlett QC

Relevant legislation: Town and Country Planning Act 1990, s 288

Summary: *Town and Country Planning—Appeal to Minister against refusal of planning permission—Challenge to decision of inspector*

The claimants owned a farm which contained a large free range poultry unit, a specialist pig unit and some store cattle. They were granted planning permission for a manager's dwelling in 1986. That permission contained a standard agricultural occupancy condition which limited the extent of the occupation of that dwelling. Some years later, the claimants applied for planning permission to erect an agricultural worker's dwelling at their farm. That application was refused by the local planning authority. The claimants appealed to the Secretary of State. An inspector appointed by the Secretary of State dismissed the appeal. The inspector stated that the proposal to build a second permanent dwelling on the farm was contrary to the relevant policy contained in the local plan, which restricted the development of dwellings in the open countryside to cases where 'exceptional circumstances' existed. The inspector further stated that the proposal had failed to satisfy the tests set out in the relevant planning policy statement. He specifically found that there was 'no long-term essential need' for the proposed dwelling. The claimants applied for judicial review against the inspector's decision, pursuant to s 288 of the Town and Country Planning Act 1990. The claimants submitted, *inter alia*, that the inspector had misinterpreted or misapplied the relevant policy, and had accordingly, erred in law in dismissing the planning appeal.

The application would be dismissed.

Case annotations in other services: *Ford and another v Secretary of State for Communities and Local Government and another* [2007] All ER (D) 219 (Feb), [2007] EWHC 252 (Admin)



DONCASTER METROPOLITAN BOROUGH COUNCIL V FIRST SECRETARY OF STATE AND OTHERS

Citation: BLD 2002070675

Hearing date: 19 February 2007

Court: Queen's Bench Division (Administrative Court)

Judge: George Bartlett QC sitting as a deputy High Court judge

Relevant legislation: Town and Country Planning Act 1990, s 288

Summary: *Town and country planning—Permission for development—Temporary permission*

The claimant local planning authority refused the second defendant and other gypsies planning permission to occupy land in the green belt as a caravan site. The Secretary of State's planning inspector allowed their appeal against that decision. She was of the opinion that alternative affordable, acceptable and suitable sites were a long way off in time and that there was a significant unmet need for gypsy sites, and refused to grant temporary permission for three years. However, she granted personal planning permission subject to conditions, including a condition in the form of the relevant model condition requiring the restoration of the site once it had ceased to be occupied by the named individuals.

The authority applied under s 288 of the Town and Country Planning Act 1990 to quash that decision. It argued, *inter alia*, that the inspector had applied too high a threshold for the granting of temporary planning permission by referring to affordable, acceptable and suitable alternative sites becoming available in the period under consideration, whereas para 45 of Circular 1/06 simply referred to a 'reasonable expectation' that alternative sites would become available. It also contended that the site restoration condition was unenforceable because all the occupants would have left the site at the time it applied. The application would be dismissed.

Case annotations in other services: *Doncaster Metropolitan Borough Council v First Secretary of State and others* [2007] All ER (D) 218 (Feb)



R (ON THE APPLICATION OF JONES AND ANOTHER) V SWANSEA CITY AND COUNTY COUNCIL

Citation: [2007] EWHC 213 (Admin)

Hearing date: 15 February 2007

Court: Queen's Bench Division (Administrative Court)

Judge: Wyn Williams J

Summary: *Town and country planning—Permission for development—Material consideration*

The claimants' neighbours submitted an application for planning permission for a single storey rear extension, first floor front extension and single storey front/side extension to their home. The claimants objected to the proposal in so far as it related to the first floor front extension on the basis, *inter alia*, that it contravened the guidelines on the minimum distance between windows issued by the defendant local planning authority. One of the authority's officers prepared a report. The relevant committee of the authority considered the application for permission and approved it. The claimants applied for judicial review, seeking an order quashing the grant of planning permission. Following the grant of permission to apply for judicial review, the authority considered the application afresh. The attention of the planning committee was drawn to the fact that the distance between one of the windows in the proposed extension and an existing window in the claimants' house was less than the recommended minimum guideline. A site visit also took place. The authority confirmed its earlier decision to grant planning permission.

The court ruled:

In the circumstances of the case, it was clear that on the first consideration of the matter a factor which had been potentially relevant to the decision, namely that the distance between an existing window and a proposed window was less than the guideline minimum, had not been considered by the planning committee before it had approved the planning application. There was a real possibility of a different outcome if the committee had considered that factor. It followed that the claimants' ground of challenge was made out. However, the reappraisal undertaken by the claimant constituted a compelling reason why relief should not be granted in the context of the case. In that regard it was of particular importance that the members of the committee had decided to view the building themselves. In that way, they had been in the best possible position to be informed of the substance of the claimants' objection.

Bolton Metropolitan Borough Council v Secretary of State for the Environment (1990) 61 P and CR 343 considered.

Case annotations in other services: *R (on the application of Jones and another) v Swansea City and County Council* [2007] All ER (D) 191 (Feb), [2007] EWHC 213 (Admin)



THE DULWICH ESTATE V BAPTISTE**Citation:** [2007] All ER (D) 194 (Feb)**Hearing date:** 15 February 2007**Court:** Chancery Division**Judge:** Jonathan Crow QC sitting as a deputy judge of the High Court**Relevant legislation:** Leasehold Reform Act 1967**Summary:** *Arbitration—Award—Appeal*

The applicant was the freehold owner of a property on an estate, which was subject to a management scheme originally approved by the High Court pursuant to the Leasehold Reform Act 1967. Pursuant to that scheme, under cl 3A no material alteration to the external appearance of the property was allowed without prior written approval of the estate manager. There was a control mechanism within the scheme which provided that such approval could not be unreasonably withheld. The applicant applied for planning permission to build a loft conversion on his property. The respondent, who was the estate manager of the property, refused approval on the basis that approval would have caused more than a trivial prejudice to the interests of the estate. Pursuant to the arbitration clause in the scheme, the applicant referred the matter to arbitration. The arbitrator in finding for the applicant, found that the beneficiaries of the management scheme would not have been disadvantaged if the proposals had been allowed. The respondent applied to the court for, *inter alia*, relief on appeal from the arbitrator's decision. The appeal would be allowed.

Case annotations in other services: *The Dulwich Estate v Baptiste* [2007] All ER (D) 194 (Feb)

**PALFREY V WILSON AND ANOTHER****Citation:** [2007] EWCA Civ 94**Hearing date:** 15 February 2007**Court:** Court of Appeal, Civil Division**Judge:** Tuckey, Arden and Lawrence Collins LJJ**Relevant legislation:** Limitation Act 1980 ss 15(1); 17**Summary:** *Limitation of action—Land—Adverse possession*

The claimant's house was built on land conveyed to him by a brewery in 1985. The eastern boundary of the land was defined by the line of what had been the back wall of a stable block. The defendants' house lay to the east of the wall. A dispute arose between the parties as to the ownership of the wall. The claimant commenced proceedings against the defendants in the county court. The judge found that the wall belonged to the defendants, either because they had paper title to it or because title had been acquired by adverse possession. The claimant appealed. He challenged the judge's findings of primary fact, and submitted that they did not meet the five conditions required to establish a claim of adverse possession, namely (i) having possession (ii) which had to be exclusive (iii) and dispossessed the paper owner (iv) with the intention to possess (v) adversely in the sense of ss 15(1) and 17 of the Limitation Act 1980 and paras 1 and 8(1) of Sch 1 to the Act. The appeal would be dismissed.

Case annotations in other services: *Palfrey v Wilson and another* [2007] All ER (D) 179 (Feb)



TAMARES (VINCENT SQUARE) LTD V FAIRPOINT PROPERTIES (VINCENT SQUARE) LTD**Citation:** [2007] All ER (D) 103 (Feb)**Hearing date:** 8 February 2007**Court:** Chancery Division**Judge:** Gabriel Moss QC sitting as a deputy judge of the High Court**Summary:** *Easement—Light—Interference with light*

Following a judgment in which the court held that the defendant was liable to the claimant for infringing a right to light to two windows which illuminated stairs within the claimant's building, but declined to grant an injunction, the question of assessment of damages in lieu thereof fell to be determined. Expert reports were obtained in relation to, *inter alia*, the changes that would be needed in respect of the defendant's development if the claimant's right to light was not to be infringed. The claimant's expert report estimated profits on the relevant part of the development to be £163,000, whereas the defendant's expert report estimated £186,000. An issue arose as to the appropriate assessment of damages in respect of the loss of the right to prevent the infringement.

The court ruled:

The overall principle was that the court had to attempt to find what would be a 'fair' result of a hypothetical negotiation between the parties. The context, including the nature and seriousness of the breach had to be kept in mind. The right to prevent a development (or part) gave the owner of the right a significant bargaining position. The owner of the right with such a bargaining position would normally be expected to receive some part of the likely profit from the development (or relevant party). If there was no evidence of the likely size of the profit, the court could do its best by awarding a suitable multiple of the damages for loss of amenity. If there was evidence of the likely size of the profit, the court ought normally to award a sum which took into account a fair percentage of the profit. The size of the award ought not in any event to be so large that the development (or relevant part) would not have taken place had such a sum been payable.

After arriving at a figure which took into consideration all the above and any other relevant factors, the court needed to consider whether the 'deal feels right'. In the instant case, the parties as hypothetical reasonable commercial people would have taken the halfway point between the two figures given by the expert valuer for loss based on the rival right to light experts' reports, namely £174,500. They would then have agreed *prima facie* at a one-third split of that profit at £58,166. However, taking into account the context of the relatively modest nature of the infringement of the light in the instant case and the need not to have a sum which would put the defendants off the relevant part of the development in that context, they would have reduced that calculation to £50,000 as a 'fair' result. Then it was necessary to ask the question 'Does the deal feel right?'. It was substantially more than any sum available for the loss of amenity, but in terms of the price of avoiding an injunction for infringing the claimant's rights, it did feel 'right'. A figure above £50,000 in the instant case would not feel right, even if justifiable by the relevant criteria.

Case annotations in other services: *Tamares (Vincent Square) Ltd v Fairpoint Properties (Vincent Square) Ltd* [2007] All ER (D) 103 (Feb)



RENNIE V WESTBURY HOMES (HOLDINGS) LTD**Citation:** [2007] EWHC 164 (Ch)**Hearing date:** 7 February 2007**Court:** Chancery Division**Judge:** Henderson J**Summary:** *Option—Exercise—Notice—Extension of notice period*

The claimant and his late wife were the joint owners of a farm (the land) and agricultural land (the property). They entered into negotiations with the defendant, a company whose business included the identification and acquisition of land suitable for house building and the development of such land. The negotiations culminated in an option agreement dated 17 September 1992, by which the claimant and his wife granted the defendant the option to purchase the property upon the terms and conditions therein set out, provided that the option should first have been validly exercised. Clause 9.1 provided for extension of the option period: 'At any time during the last year of the option period (meaning the period of 10 years referred to in clause 1.1.9) the intending purchaser may by notice in writing served upon the intending vendor require such period to be extended by five years and upon service of such notice and payment to the intending vendor of the additional sum of twenty thousand pounds (£20,000) this agreement shall be construed as if the option period was 15 years'. It was common ground that the option period expired at midnight on 16 September 2002.

By letter dated 12 September 2002, the defendant's solicitors wrote to the claimant's solicitors in the following terms: 'We shall very shortly be placed in funds for the extension of the option for a further five years upon payment of £20,000 by Westbury (clause 9.1 of the option agreement refers). We presume that payment should be made to your good selves. Please could you let us [have] your bank account details so that we can organise a chaps transfer. The payment arrangements will be handled by our Mr Herbert at our Birmingham office... It would be appreciated if you could please fax your bank account details through to our Birmingham office.'

The defendant relied upon that letter as having constituted a valid notice pursuant to cl 9.1 of the option agreement. The claimant's solicitors alleged that the option had not been validly renewed, and sought to return the £20,000 by enclosing a cheque for that amount. The claimant issued a claim form seeking a declaration that the option agreement had ceased and determined. The issue arose whether the option agreement had been validly extended. The claimant contended that the letter of 12 September 2002 was not a valid notice pursuant to cl 9.1 of the option agreement.

The claim would be dismissed.

Case annotations in other services: *Rennie v Westbury Homes (Holdings) Ltd* [2007] All ER (D) 86 (Feb)

**LAND AND DEVELOPMENT LTD V FIRST SECRETARY OF STATE AND OTHERS****Citation:** [2007] All ER (D) 78 (Feb)**Hearing Date:** 6 February 2007**Court:** Queen's Bench Division (Administrative Court)**Judge:** Judge Mole sitting as a judge of the High Court**Relevant legislation:** Town and Country Planning Act 1990 s288

Summary: *Town and country planning—Appeal to Secretary of State against refusal of permission for development—Secretary of State not accepting inspector's recommendation*

The claimant successfully challenged two decisions of the Secretary of State dismissing its appeal against the refusal to grant it outline planning permission. The site in question was close to a mere that was of international importance for nature conservation, and permission was sought, *inter alia*, for housing and the restoration of an existing building to employment use, conditions to which would preserve the mere. A third public inquiry took place. The Secretary of State's inspector concluded, *inter alia*, that, on balance, the proposed development did not conflict with the development plan and that the benefits of preserving the mere and of decontaminating the site were decisive, having regard to the risk of damage to the mere should planning permission not be granted. The inspector recommended that planning permission should be granted. The Secretary of State was of the opinion that the site was unsustainable for housing development in terms of location and accessibility and, consequently, disagreed that the proposal would not conflict with the development plan. He accepted that the mere was an important site and that the risk of further harm to it if planning permission was not granted had to be given considerable weight. However, the Secretary of State concluded that the potential harm to the mere, even when considered with other matters in favour of the proposed development, such as the re-use of previously developed land, could not outweigh the conflict with planning policy and the harm caused by the use of an unsustainable site for housing. The Secretary of State refused to grant permission and the claimant applied to quash that decision under s 288 of the Town and Country Planning Act 1990. The application would be dismissed.

Case annotations in other services: *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 2 All ER 636



R (ON THE APPLICATION OF WILSON) V WYCHAVON DISTRICT COUNCIL AND ANOTHER

Citation: [2007] EWCA Civ 52

Hearing date: 6 February 2007

Court: Court of Appeal, Civil Division

Judge: Sir Antony Clarke MR, Moses and Richards LJ

Relevant legislation: Town and Country Planning Act 1990, s 183(4); Planning and Compensation Act 1991

Summary: *Town and country planning—Development—Material change of use*

The claimant was a Romany gypsy. She and her extended family moved onto land that had been acquired by members of the family some months previously. Without planning permission, they developed the land and began using it as a residential caravan site. A planning application was lodged. Two enforcement and two stop notices were issued by the defendant local planning authority. Permission to apply for judicial review of that decision was granted. The judicial review claim was dismissed by consent. Permission was granted for a claim for a declaration that s 183(4) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, was incompatible with art 14 of the European Convention on Human Rights, since it provided that a stop notice would not prevent the use of any building as a dwelling house, but did not provide the same protection to those dwelling in a caravan, and therefore had a disproportionate effect on Romany gypsies and Irish travellers. The judge found, *inter alia*, that the provision was not incompatible with art 14 of the Convention. The claimant appealed.

She submitted, *inter alia*, that the legislature's area of discretion in the instant case was at best very small, since it was a case of racial discrimination that came very close to direct discrimination. She argued that the extent to which serious harm was caused by any unauthorised development would depend upon all the circumstances, and there could be no assumption that the stationing of residential caravans on land would either cause serious harm or would be more likely to do so than development to which the dwelling house exception applied. She also sought to rely on the provision adopted in relation to temporary stop notices, whereby residential caravans enjoyed the same exemption as dwelling-houses, save where the local planning authority considered that the risk of harm to a compelling public interest was so serious as to outweigh the benefit to the occupier of the caravan. She argued that it demonstrated the feasibility and desirability of a more nuanced approach and proved the lack of justification for the total removal of the exemption in the case of full stop notices. The appeal would be dismissed.

Case annotations in other services: *R (on the application of Wilson) v Wychavon District Council and another* [2007] All ER (D) 79 (Feb)



M&M (LAND) LTD V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT AND ANOTHER

Citation: [2007] All ER (D) 55 (Feb)

Hearing date: 5 February 2007

Court: Queen's Bench Division (Administrative Court)

Judge: Mole J

Relevant legislation: Town and Country Planning Act 1990, s288

Summary: *Town and Country Planning—Development—Permitted development*

The claimant company purchased a site to which a certificate of lawful use as a 'scrap yard' had previously been granted. The claimant formed the view that even though the use of the site as a scrap yard had been 'low key' at the time of the purchase, the certificate would ensure the lawfulness of that use continued. Notwithstanding that, the claimant applied to the second defendant local planning authority for planning permission for the redevelopment of the scrap yard. In essence, the claimant sought to demolish an existing building on the site, and to erect a new building in its place. It further sought an upgrade of the existing hard standing. The authority refused permission and the claimant appealed to the first defendant Secretary of State.

An inspector appointed by Secretary of State decided that the use of the site had effectively been abandoned at a point in time after the certificate had been issued to the site's former owner, but before the claimant had purchased the site. As a result, he concluded that the proposed development, for which planning permission was sought, would conflict with the objectives of the relevant planning policies and accordingly dismissed the appeal. The claimant applied for judicial review pursuant to s 288 of the Town and Country Planning Act 1990 for the inspector's decision to be quashed. The claimant submitted, *inter alia*, that it had not been possible in law to abandon the use of land which had received the blessing of a certificate of lawful use, given s 191 of the 1990 Act. The application would be dismissed.

Case annotations in other services: *M & M (Land) Ltd v Secretary of State for Communities and Local Government and another* [2007] All ER (D) 55 (Feb)



CHAPLIN AND OTHERS V HICKS DEVELOPMENTS LTD**Citation:** [2007] EWHC 141 (Ch)**Hearing date:** 5 February 2007**Court:** Chancery Division**Judge:** Briggs J**Summary:** *Limitation of action—Land—Adverse possession*

The property of the first and second claimant (the claimants) consisted of a dwelling house and surrounding land roughly triangular in shape with a driveway running from the northern apex of the triangle in a north-west direction for a little less than 200m to a junction with Cutbush Lane. The disputed strip of land was approximately two metres wide and adjoined the driveway immediately to the south-west of it. Prior to 1983, the strip formed the north-eastern section of a large property known as the Red House. Between 1983 and 1986, the defendant company carried out a residential development on that property, which included the construction of a row of nine detached dwelling houses with gardens abutting the strip. Following the sale of those dwelling houses, the defendant remained until June 2003 the registered proprietor of the strip itself, until selling that part of it lying behind 9 Red House Close (one of those dwelling houses). The owners of 9 Red House Close, subsequently transferred it to another family. That part of the original fence lying behind 9 Red House Close, was removed and replaced with fencing enclosing the adjacent part of the strip as an extension of the garden to that property. Following the removal of that part of the original fence, the claimants applied to be registered as proprietors of the disputed strip of land, upon the basis that they had by 1998, acquired title to it by adverse possession from its then registered proprietor, the defendant. In June 2006, the deputy land registry adjudicator gave effect to the claimants' application. The defendant appealed.

The defendant's case was that: (i) the adjudicator had failed to address issues of fact as to the nature and extent of the activities of the claimants on the strip alleged by them to have constituted sufficient acts of possession thereof for the purpose of their claim, with the consequence that his conclusion that they had acquired title by adverse possession rested on no satisfactory factual base, and (ii) the adjudicator's conclusion that the claimants' possession of the strip had not been with the permission of the defendant was based upon a mistake of law, and that, on the facts which he found, and additional facts which he should have found, the proper conclusion was that such occupation of the strip as there was by the claimants occurred with the implied permission of the defendant. The appeal would be dismissed.

Case annotations in other services: *Chaplin and others v Hicks Developments Ltd* [2007] All ER (D) 57 (Feb)

**HG CONSTRUCTION LTD V ASHWELL HOMES (EAST ANGLIA) LTD****Citation:** [2007] EWHC 144 (TCC)**Hearing date:** 1 February 2007**Court:** Queen's Bench Division (Technology and Construction Court)**Judge:** Ramsey J**Summary:** *Building contract—Adjudication—Award*

The defendant engaged the claimant contractor on the JCT standard form of contract with contractor's design (1998 edn). Clause 39A.7.1 of the contract provided that 'the decision of the adjudicator shall be binding on the parties until the dispute or difference is finally determined by arbitration, or by legal proceedings, or by an agreement in writing between the parties, made after the decision of the adjudicator has been given.'

Completion of the works was delayed and the defendant maintained that it was entitled to liquidated and ascertained damages (LADs). It referred the question of the enforceability and validity of the contractual terms that dealt with LADs and the adjudicator concluded that those provisions were valid and enforceable. The claimant subsequently referred a dispute to a different adjudicator in which it contended that LADs were incapable of being calculated in the instant case. The second adjudicator agreed, and determined that the claimant should be repaid the LADs withheld by the defendant following the decision of the first adjudicator. The defendant did not repay that sum and the claimant brought proceedings to enforce the latter award. It applied for summary judgment.

The court ruled:

Having regard to previous authority on the effect of the equivalent provisions of the Scheme for Construction Contracts, the effect of cl 39A.7.1 was that parties could not seek a further decision by an adjudicator on a dispute or difference if that dispute or difference had already been the subject of a decision by an adjudicator. As a matter of practice, an adjudicator should consider (based either on an objection raised by one of the parties or on his own volition) whether he was being asked to decide a matter on which there was already a binding decision by another adjudicator. If so, he should decline to decide that matter, or, if that was the only matter before him, he should resign. The extent to which a decision or dispute was binding depended on an analysis of the terms, scope and extent of the dispute or difference referred to adjudication and the terms, scope and extent of the adjudicator's decision. The approach in both cases was to ask whether the dispute or the decision was the same or substantially the same as the later dispute or decision as a matter of fact and degree.

Disputes or differences encompassed a wide range of factual and legal issues. If there had to be a complete identity of factual and legal issues then the ability to 're-adjudicate' what was in substance substantially the same dispute or difference would deprive cl 39A.7.1 of its intended purpose, namely to provide a limit to serial adjudication.

In all the circumstances, the dispute referred to the second adjudicator was substantially the same as that which had been referred to the first adjudicator. Accordingly, the claimant was not entitled to summary judgment.

Case annotations in other services: *HG Construction Ltd v Ashwell Homes (East Anglia) Ltd* [2007] All ER (D) 210 (Feb)

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STATUTORY INSTRUMENTS

CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2007

Number: SI 2007/320

Enabling power: Health and Safety at Work Act 1974

Commencement: 6 April 2007

Summary: This revokes and replaces the Construction (Design and Management) Regulations 1994 (SI 1994/3140) (Parts 2 and 3) and revokes and re-enacts, with modifications, the Construction (Health, Safety and Welfare) Regulations 1996 (SI 1996/1592) (Part 4).



HOUSING ACT 2004 (COMMENCEMENT NO 4) (WALES) ORDER 2007**Number:** SI 2007/305**Enabling power:** Housing Act 2004**Commencement:** 6 April 2007**Summary:** This brings sections 212 to 215 of the Act, (relating to Tenancy Deposit Schemes) into force.

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**FEATURES****RISE IN COHABITING COUPLES SPLITTING PROPERTY ASSETS**

On 5 February, the House of Lords started hearing the case of *Stack v Dowden*, in which the appellant is claiming a 50/50 share in the house. The property in Willesden Green, north London, was owned as joint tenants by Barry Stack and Debra Dowden for half of their 20-year cohabitation. When the couple had bought this house, they had not made a declaration of trust, setting out in what proportion the property was owned. The Court of Appeal had held, however, that a 65 per cent share of the property should go to Debra Dowden, the higher earner who had funded the majority of the initial property purchase from an account in her name.

"The law regarding property rights is very clear," says divorce specialist Andrew Perryman of Moore & Blatch. "Maintenance and pension rights may change following on from the Law Commission's report last year, but I think this case will reinforce the current position on property." So, as with other cases where there is no explicit trust stating ownership shares, the court would seek the existence of an implicit trust. Contributions to capital repayments of the mortgage and work on extending the property would be the sort of evidence the five Law Lords would look for. Perryman accepts that even this area can be complicated in practice. He says: "You can't include things like buying furniture. It has to be putting down money for an extension or knocking walls down. It's a fairly grey area, though. Some judges see some areas as worthy which other judges would not."

At the end of the day, he believes that a case like this will be decided on a mathematical calculation reflecting the contributions made to the capital value by both parties. "It can get very difficult when people cohabit for 20 years and buy and sell eight houses. You have to chase the proceeds of the sales all the way through the chain." He says that for every seven or eight divorce and separation cases, there is one of a similar nature to *Stack v Dowden* where there is a dispute over the ownership shares or whether the house should be sold at all. "It's becoming more common as more people cohabit," he says.

He does not believe that either case law or statute law will change in this aspect of property law. "The property laws are as good as they can be," he says. But he regularly advises people starting to cohabit about the issue. To a property owner in a cohabiting couple, he advises: "Don't let your partner pay the mortgage, let them pay the gas or electricity bill instead." This would mean that the partner would be making contributions to day-to-day living but would not be setting up a future claim for themselves on the capital in the property. The *Stack v Dowden* hearing is expected to last four days with a judgment due later in the spring.

(12/2/07)

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PLANNING REGULATION SIDE-STEPPED FOR SAVILE ROW DEVELOPMENT

Section 106 of the Town and Country Planning Act 1990 (s106) allows land owners to enter into 'planning obligations' either unilaterally or by agreement with the council as local planning authority. Most planning obligations are by agreement and are referred to as section 106 agreements.

Planning obligations must relate to a specific area of land that is identified on a plan or map attaching to the obligation. They are usually, but not always, used to make sure that a planning permission is carried out satisfactorily.

The original s106 specified 7,000 sq ft of the redeveloped building at 30-32 Savile Row must be preserved for bespoke tailoring accommodation and of this only 14 per cent could be used for retail.

Westminster council has agreed to extend the retail space to 33 per cent and Pollen Estate, who own around 50 per cent of the properties on the Row including the building in question, will compensate for the loss of tailoring accommodation by providing alternative space at 10 Savile Row.

Michael Gallimore, a planning partner at Lovells, explains that s106 agreements can be altered, modified or discharged at any time by agreement with the local planning authority. "It is perfectly lawful to change an agreement because a s106 agreement is in the nature of a contract so parties to the agreement can agree variations."

However, he adds, "it is not particularly usual because once an agreement is entered into it is usually followed, but there is no reason at all in propriety or legality why it shouldn't be done, provided there are proper planning reasons or a planning rationale underlying the change".

Gallimore points out that a change in planning policy or a change in use is an adequate reason to alter the s106. Traditionally, bespoke tailors on the Row required more room to be used as a workspace and the space required for retail is kept to a minimum.

Following the formation of the Savile Row Strategic Group – which includes representatives for land owners, tenants and the council – a commitment to ensure Savile Row remains prosperous has seen a widening of the tenant mix to include high quality complementary retail uses alongside bespoke tailoring. This allowed for the selection of the preferred tenants – tailor/retailers Oswald Boateng and Timothy Everest – who require additional retailing space to carry out the functions of their business.

Because the alteration has to be agreed by all parties and is controlled by the council there is little that can be done in preparation for the alteration of a s106 agreement says Gallimore, although a raft of applications for s106 alterations are not expected as the result of this decision.

Gallimore explains that although a s106 can be renegotiated at anytime, the legislation also offers a formal route for an application to the local authority for alteration which comes into play five years after the agreement is entered into. The benefit of using this method, Gallimore adds, is that "if refused you have a right of appeal".

(30/1/07)

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ARTICLES

PLANNING GAIN SUPPLEMENT

Journal: *Tax Journal*

Citation: Issue 873, 11

Issue date: 19 February 2007

Authors: Bo Kehinde & Elizabeth Bird

Summary: The article summarises the new PGS proposals and asks whether the proposed new tax could now be deemed workable.

[Subscriptions](#)



CONSTRUING COVENANT CHAOS

Journal: *New Law Journal*

Citation: 157 NLJ 206

Issue date: 9 February 2007

Author: Andrew Francis

Summary: This examines whose consent is required under a freehold restrictive covenant, how the use of different words can cause problems of interpretation and the court decisions that have created more uncertainty.

[Subscriptions](#)



JUST HOT AIR?

Journal: *New Law Journal*

Citation: 157 NLJ 197

Issue date: 9 February 2007

Author: Stuart Pemble

Summary: The article examines the government's goal for carbon-neutral new homes by 2016 and the regulations that will be progressively tightened over the next 10 years.

[Subscriptions](#)



HOME COMFORTS

Journal: *Taxation*

Citation: 1 February 2007, 119

Issue date: 1 February 2007

Author: Mike Truman

Summary: Mike Truman looks at the new guidance that has been issued on the use of home for business purposes and the expenses that can be apportioned and methods of apportionment.

[Subscriptions](#)



SDLT THREE YEARS ON

Journal: *Tax Journal*

Citation: Issue 870, 5

Issue date: 29 January 2007

Author: Gordon Keenay

Summary: This article reviews the semi-mature tax against expectations and examines where SDLT will go next.

Please note subscribers can go to [LexisNexis Butterworths](#) for further details about all the above articles. Non-subscribers can sign up for a [free trial](#) of the online service.



PRESS RELEASES AND CONSULTATIONS

MINISTER CONFIRMS: HIPs TO BEGIN ON 1 JUNE 2007

Issuing department: The Law Society

Issue date: 16 February

Summary: The Law Society met the Housing Minister on 12 February, and confirmed the government's intention to launch HIPs on 1 June 2007. The Society has vigorously opposed the HIPs proposals in the Housing Act and has continued to voice concerns over the concept and implementation of HIPs. Many practitioners were uncertain whether HIPs would become a reality when the government announced the Home Condition Report would not be mandatory. It's now clear that HIPs will happen, so it's vital to prepare your practices to offer HIPs.

The Law Society must support practitioners to compete in the HIPs market and retain their key role in the conveyancing process. The Society is working with SearchFlow to provide practitioners with a high quality HIP. The pack will include revised, HIP-compliant Law Society TransAction Protocols. SearchFlow are contacting solicitors who have registered, with information and training. The Law Society will shortly send out a marketing toolkit so that you can promote solicitor-prepared HIPs to clients and agents and will also be launching a press and advertising campaign to highlight the benefits of a Law Society HIP prepared by a regulated professional. Research shows that the public prefer solicitors as providers of HIPs.

[Register for the Law Society HIP Details](#)



CODE OF CONDUCT UPDATE

Issuing department: Solicitors Regulation Authority

Issue date: 25 January

Summary: On 25 January, the Law Society Council approved the Solicitors' Code of Conduct, which will replace the current rules of professional conduct. The new code is now with the Department for Constitutional Affairs and the Master of the Rolls. It will come into force three months after it receives their final approval. You can download the Solicitors' Code of Conduct – rule by rule – from the Solicitors Regulation Authority website (www.sra.org.uk).

[Details](#)



CHANGE OF STATIONERY

Issuing department: The Law Society

Issue date: 26 February

Summary: Solicitors will be familiar with the requirement to have the words "Regulated by the Law Society" on their firm's note paper. They should also be aware that the profession is now regulated by the Solicitors Regulation Authority. The Secretary of State for Constitutional Affairs is expected in the near future to adopt the new Solicitors' Code of Conduct. This will require solicitors to include the words "Regulated by the Solicitors Regulation Authority" in place of "Regulated by the Law Society" on their note paper.

Once the new code has been adopted, transitional arrangements for the change will be announced. It is anticipated that, subject to approval, the new code will come into force in June or July, and that firms will be allowed to use either statement for a few months both before and after the new code comes into force. In the meantime, the Solicitors Regulation Authority advises solicitors to avoid ordering large quantities of stationery referring to the Law Society. Until the transitional arrangements are announced, they should continue to refer to being "Regulated by the Law Society".



LAW SOCIETY CAMPAIGNS AGAINST MONEY LAUNDERING REGULATIONS

LAW SOCIETY LAUNCHES CAMPAIGN TO PROTECT SOLICITORS

Issuing department: Law Society

Issue date: 26 February

Summary: According to the Law Society, the government's draft money laundering regulations could impose significant extra costs on solicitors for compliance, reduce the competitiveness of UK firms due to gold-plating of the EU directive, and put even conscientious solicitors at risk of conviction and imprisonment. How will the draft regulations affect probate solicitors? The definition of beneficial interest, as currently drafted, has no meaning in a common law jurisdiction and is completely unworkable for UK practitioners. Solicitors face real problems ascertaining which beneficiaries of trusts to conduct customer due diligence on.

[Support the campaign](#)

[Tell the Law Society how this will affect you](#)

[Details](#)



NEW TENANCY DEPOSIT PROTECTION LEAFLETS FOR LANDLORDS AND TENANTS

Issuing department: Communities and Local Government

Issue date: 28 February

Summary: A publicity campaign has begun explaining how Tenancy Deposit Protection (TDP) will benefit private tenants and landlords in ethnic minorities. TDP comes into force on 6 April 2007 and will require landlords and agents to protect deposits in a government-authorised scheme. TDP will apply to all assured shorthold tenancies (ASTs) in England and Wales where the landlord takes a deposit. The vast majority of tenancies are ASTs. The landlord will be able to choose between two types of scheme – custodial or insurance-based.

[Details](#)



ADVICE FOR PLANNERS ON MANAGING FLOOD RISK

Issuing department: Communities and Local Government

Issue date: 19 February

Summary: A draft guide has been published to help planners better understand how planning policy should be used to manage flood risk, as climate change continues to impact on traditional weather patterns. The “living draft” of a *Practice Guide Companion to Planning Policy Statement 25 (PPS25)* will act as a consultation document as well as an interim support document for planners on applying PPS25 policy and seeks to help create consistency in how PPS25 is implemented across the country.

[Details](#)



LAND REGISTRY CONSULTATION ON E-CONVEYANCING

Issuing department: Land Registry

Issue date: 9 February

Summary: Land Registry has announced the start of the first of two important consultations on e-conveyancing. The initial consultation, from Monday 12 February until **21 May**, invites feedback on two main areas; the proposed Network Access Rules, part of the secondary legislation required for e-conveyancing, and Electronic Communications rules required for electronic contracts. Estate agents, conveyancers and solicitors are being asked to give their comments on the two areas of the fourteen-week consultation. The second consultation, due to start later in the year, will discuss the process of e-conveyancing.

[Details](#)



ONLINE CERTIFICATE TAKES THE HASSLE OUT OF STAMP DUTY LAND TAX

Issuing department: HM Revenue & Customs

Issue date: 5 February

Summary: Practitioners who submit stamp duty land tax (SDLT) returns electronically are benefiting from an enhancement to HM Revenue & Customs' (HMRC) online service. They now get their SDLT certificates (SDLT5) electronically by return, without having to wait for paper copies to be sent by post.

[Details](#)



SEMINARS, CONFERENCES AND EVENTS

HOME INFORMATION PACKS: REGIONAL SEMINARS

Date: from 12 April

CPD: 2 hours

Cost: from £45 + VAT

Summary: The Housing Minister has unequivocally confirmed the government's intention to launch mandatory Home Information Packs (HIPs) on 1 June 2007. HIPs will pose many challenges for conveyancing solicitors, but they will also present new opportunities. It is vital to prepare now.

These early evening seminars are critical to the future success of all residential conveyancers throughout England and Wales. Speakers at these events are Michael Garson and Denis Cameron.

Key issues to be discussed will include:

- up-to-date summary on the latest developments;
- presentation and benefits of the Law Society HIP;
- details of a new marketing toolkit for solicitors;
- revised HIP-compliant TransAction protocols;
- Energy Performance Certificates; and
- the role of solicitors in pack preparation.

We recommend that you invite a local estate agent as your guest, so that they understand the benefits of using a local solicitor to obtain a HIP.

Location	Date	Speaker
York	Thursday, 12 April	Denis Cameron
London	Monday, 16 April	Denis Cameron
Preston	Tuesday, 17 April	Denis Cameron
Brighton	Wednesday, 18 April	Denis Cameron
Nottingham	Thursday, 19 April	Denis Cameron
Winchester	Tuesday, 24 April	Michael Garson
Cambridge	Wednesday, 25 April	Michael Garson
Maidstone	Thursday, 3 May	Michael Garson
Cardiff	Wednesday, 9 May	Michael Garson
Stoke-on-Trent	Thursday, 10 May	Denis Cameron
Birmingham	Thursday, 10 May	Michael Garson
Carlisle	Thursday, 17 May	Denis Cameron
Oxford	Thursday, 17 May	Michael Garson
Newcastle	Tuesday, 22 May	Denis Cameron
Hereford	Thursday, 24 May	Michael Garson
Doncaster	Tuesday, 29 May	Denis Cameron
Plymouth	Wednesday, 30 May	Michael Garson
Chester	Thursday, 31 May	Denis Cameron
London	Thursday, 31 May	Michael Garson

[Details/online booking](#)



BUTTERWORTHS COMMERCIAL PROPERTY LAW 2007

Date: 27 March 2007

Location: London

Cost: £549 (+ VAT)

CPD: up to 5.33 hours

Summary: The essential guide to all the latest and upcoming developments in commercial property law. Butterworths Commercial Property Law will address the practical impact of the most important developments of 2006 and look forward to the notable upcoming changes of 2007

[Details](#)



EPEC 2007 – EXECUTIVE PROPERTY EXHIBITION AND CONFERENCE

Date: 19-20 May 2007

Venue: ExCel, London

Summary: The EPEC is a leading UK and International Exhibition and Conference focused exclusively on executive property and associated services. Michael Garson, Chair of the Property Section Executive Committee and Managing Partner at Kagan Moss and Co, will speak from 12-12.30pm on Saturday, 19 May. There are more than 100 exhibitors and in excess of 5,000 visitors are expected, ranging from potential purchasers to individuals requiring design, management and legal services.

[Details](#)



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LAW SOCIETY PUBLISHING NOTICE OF CHANGE OF BOOK DISTRIBUTOR

Please note that since **1 March 2007** Law Society Publishing has a new distributor, Prolog. To place orders, please now contact: The Law Society, PO Box 99, Sudbury Suffolk CO10 2SN (telephone 0870 850 1422, fax 01787 313 995 or email lawsociety@prolog.uk.com).

If you have an account with Marston Book Services Ltd, orders may still be placed with Prolog using your existing account details. You will be issued with a new account number when you place your first order through Prolog (it will be visible on your invoice documentation).

Section members receive a 20 per cent discount of all related Law Society publishing titles (excluding directories). Please quote "Property Section" when requesting a 20 per cent discount when ordering.

HOME INFORMATION PACKS: A GUIDE TO THE NEW LAW

Publisher: Law Society publishing (20 per cent off for Section members)

Summary: This book is designed for solicitors and property professionals who need to understand the legal issues and practical implications so that they can prepare their practices and remain competitive in a changing marketplace. It provides an authoritative commentary to Part 5 of the Housing Act 2004 and subsidiary regulations and gives an informed and clear analysis of the content of HIPs, collation and accuracy of information for the packs, enforcement and sanctions, possible solutions for breaches and proposals for a "dry run" and transitional provisions.



REAL ESTATE INVESTMENT TRUSTS: A GLOBAL ANALYSIS

Publisher: Globe Law and Business

Discount: 20 per cent discount by entering the discount code LSREIT07

Summary: This hardback covers REITs and significant property funds in 12 jurisdictions. Written by specialists in this field, each chapter sets out the rules and regulations governing REITs, their tax treatment and how they contrast with other property funds in the jurisdiction. Each chapter adopts the same format for ease of reference, covering key concepts such as tax, investor limitations, distribution requirements, gearing, conversion charge, treatment of offshore investors and related issues.

[Details](#)



HUTTON & MCKIE ON STAMP DUTY LAND TAX 2006–07: 3RD EDITION

Publisher: CCH

Summary: This new edition enables the practitioner to identify areas of opportunity for the client, providing practical guidance on best practice in compliance and tax planning. Now forming part of a brand-new tax annuals series, the guide is also available as a subscription service in CD-ROM and online formats. In this way you can choose the format that best suits your working style and office environment.

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HOUSING: THE NEW LAW – A PRACTICAL GUIDE TO THE HOUSING ACT 2004

Price: £80 (15 per cent discount to Section members)

ISBN: 9781405712392

Publication date: April 2007

Summary: A comprehensive narrative guide to the Housing Act 2004 providing detailed analysis and commentary on the Act and its impact on practice. This new book takes account of the enormous volume of regulations and guidance issued in 2006 and 2007 under the Act. It is impossible to advise properly without considering these. Written with a practical focus, it ensures practitioners can provide clients with the best advice on the implications of the Act and can advise on common pitfalls to watch out for. This is a key text for all practitioners who have to apply the legislation. It uses examples, flow charts and summaries to demonstrate the implications of the Act in a digestible format.

[Details](#)



ROSS: COMMERCIAL LEASES

Price: £239.00 (mainwork, 15 per cent discount for Section members)

ISBN: 9780406896193

Summary: Widely acknowledged as the market leading loose-leaf in the commercial property field, it provides the complete commercial lease service, it includes the relevant cases, materials, precedents and guidance for whatever type of commercial lease you may face.

Updated twice a year, the loose-leaf format guarantees up-to-date legislation, case law and current practice. Contents include: drafting and negotiating leases; non-drafting steps; taxation; the parcels; rights; exceptions and reservations; before the covenants; rent review; the tenant's covenants; repairing covenants; contaminated land; landlord's covenants; insurance; service charges; provisos; underleases; renewal of business leases; after the lease has been agreed; precedents; Statutory and other materials, including the Landlord and Tenant Act 1954, the Arbitration Act 1996, and the Report of the ABI Working Party on the Landlord and Tenant (Covenants) Act 1995; as well as the tenant's checklist.

[Details about no-obligation trial](#)



BUTTERWORTHS PROPERTY LAW HANDBOOK: 7TH EDITION

Price: £72 (15 per cent discount for Section members)

ISBN: 9781405725378

Publication date: November 2007

Summary: Butterworths Property Law Handbook provides an invaluable collection of statutory materials for property law practitioners in a single compact volume. Major statutory reforms have occurred in this complex area of law and this new edition has been brought right up-to-date to take account of these. The Handbook is invaluable for solicitors and barristers who specialise in commercial property, landlord and tenant law, or residential conveyancing. It is also an ideal text for local councils, housing associations, property developers and surveyors.

[Details](#)



BUTTERWORTHS RESIDENTIAL LANDLORD AND TENANT HANDBOOK: 4TH EDITION

Price: £65 (15 per cent discount for Section members)

ISBN: 9781405725415

Publication date: July 2007

Summary: The fourth edition of the Butterworths Residential Landlord and Tenant Handbook incorporates major legislative developments which have occurred since the previous edition, including the Housing Act 2004 and the secondary legislation accompanying it.

[Details](#)



BUTTERWORTHS BUSINESS LANDLORD AND TENANT HANDBOOK: 4TH EDITION

Price: £76 (15 per cent discount for Section members)

ISBN: 9781405725903

Publication date: September 2007

Summary: The new edition of this invaluable handbook incorporates all the changes to legislation since the previous edition, including the Disability Discrimination Act 2005, the Planning and Compulsory Purchase Act 2004, and the New Use Classes Order 2005. Compact and easy to use, it is an important reference tool for all practitioners advising on business and agricultural tenancies and will also be of use to surveyors and estate managers.

[Details](#)



HILL AND REDMAN'S LAW OF LANDLORD AND TENANT

Price: £540 (15 per cent discount for Section members)

ISBN: 9780406998163

Summary: It is the comprehensive reference source on this area and covers everything from general common law rules to business tenancies and from private and public sector housing to agricultural tenancies. The information is logically divided into eight divisions, each containing narrative guidance, statutes and statutory instruments. The seventh division contains a comprehensive selection of precedents and addresses, in detail, the key issues involved in the drafting of leases. Offering authoritative guidance from specialist authors, it ensures that the busy practitioner keeps abreast of changes in the law and is able to give informed and reliable advice to clients. It comprises six loose-leaf volumes, tables and index binder, with four updating issues per year and a bi-monthly bulletin.

[Details](#)



BUTTERWORTHS PROPERTY LAW SERVICE

Price: £303 (15 per cent discount for Section members)

ISBN: 9780406996510

Summary: Provides a comprehensive source of reference on conveyancing with step-by-step guidance on each stage of a conveyancing transaction, stating the relevant law and supplying practical advice, the text of the relevant materials and documents, and all the necessary precedents. The publication comprises two loose-leaf volumes and approximately three service issues per year. A bi-monthly bulletin provides information on the latest cases, discussion on any recent legislation and provides valuable notes on practice.

[Details](#)



CLAIMS TO THE POSSESSION OF LAND

Price: £196 (15 per cent discount for Section members)

ISBN: 9780754506782

Summary: Sets out and explains the law and procedure of each type of possession claim. With nearly 300 comprehensive forms and precedents, which are readily adaptable for a whole range of cases, it provides a complete and thorough exposition of this complex subject. It offers up-to-date information on a regular basis to property and litigation lawyers, property managers, landlords, tenants and other occupiers. Claims to the Possession of Land is the primary and portable reference work for every type of possession action – both for those seeking possession and those resisting it.

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CASE IN POINT – CONTRACT ADMINISTRATION

Code: 16419

Price: £27.50

Summary: Contract administration has generated a large and important body of case law and whether you are a contractor, client or contract administrator it is extremely important that you understand what it means. This new Case in Point book provides a practical, comprehensive and up-to-date guide to case law relating to all aspects of construction contract administration. Providing clear and concise analysis of the key legal principles governing this area of work it is an essential reference.

[Details](#)



CASE IN POINT – BUILDING DEFECTS

Code: 9949

Price: £27.50

Summary: A concise, case-based guide to all aspects of defects in buildings, for those practitioners who need to understand the law and practice in their everyday work. This guide deals comprehensively and concisely with a number of key issues.

[Details](#)



A PRACTICAL APPROACH TO HOUSING LAW

Code: 10019

Price: £41.95

Summary: This book provides a unique combination of the law and practice of housing law. It provides a detailed yet accessible analysis of the most important areas of housing law that practitioners currently encounter. The context of each topic is considered, as well as the lawyer's role, case strategies, legal funding and client care issues. Useful source and precedent materials are included.

[Details](#)



MULTI-TENANTED BUILDINGS 2007

Code: 11561

Price: £94

Summary: The potential for confusion over rights and responsibilities in multi-tenanted buildings is an ongoing issue for many organisations across the UK. With the introduction of new legislation covering fire safety, security, energy management and disability access to name but a few, establishing who is responsible for what in a multi-tenanted building is a concern for both landlord and tenant alike.

[Details](#)

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