



Hewitsons' Real Estate LEGAL UPDATE

New Year 2018

In this Issue

- Supreme Court limits damages for negligent valuation
- Updated Guidance published on EPCs
- New Telecoms Code Now in force
- Land used for grazing horses can be brownfield land
- The Duty to Give Reasons for Controversial Planning Permissions Confirmed

Supreme Court limits damages for negligent valuation



Anna Gora
Senior Solicitor

The Supreme Court has recently considered the proper approach to be taken in assessing the quantum of damages in a professional negligence case. A lender had advanced funds based on a valuer's negligent valuation of a property, which was offered as security for the loan. Anna Gora has considered the judgment and concludes that the decision will provide welcome clarification on the correct approach to the assessment of damages.

For further information please see Anna's article by clicking the following link [Supreme Court limits damages for negligent valuation](#) or to contact Anna [click here](#).

Updated Guidance published on EPCs



Sarah Humble
Associate

Now we have reached 2018 the implementation date for Minimum Energy Efficiency Standard (MEES) is imminent. From April, MEES could prevent landlords from letting properties with EPC ratings which fall below E.

The Department for Communities and Local Government has recently published updated guidance on Energy Performance Certificates (EPC) and whether they are required for listed buildings or buildings within a conservation area on sale or letting.

The updated guidance confirms that an EPC will not be required in relation to buildings protected as part of a designated environment or special architectural/historical merit insofar as "compliance with minimum energy performance requirements would unacceptably alter their character or appearance." This can include listed buildings and other buildings within a conservation area whether or not they are listed.

In order to assess whether an EPC is required for such a building, building owners will need to take a view as to whether the character or appearance of their building would be "unacceptably altered" by works that would be recommended in the EPC.

Although this further guidance is welcome there is still a large amount of uncertainty as to when and whether an EPC will be required. There will no doubt be differences of opinions on what are and are not unacceptable works to historic and listed buildings.

For further information on MEES and the updated guidance please contact Sarah Humble on 01223 532704 or to contact Sarah click [here](#).

New Telecoms Code Now in force



David Wells
Partner

On the 28th December the new Electronics Communication Code came into force replacing the old code which was famously described by a senior judge as "one of the least coherent and thought through pieces of legislation on the statute books."

The main changes are:

- An automatic right for operators to upgrade and share equipment with other operators along with an automatic right to assign new agreements.
- Removal of dual security of tenure regimes for leases not contracted out of the Landlord and Tenant Act 1954.

- New statutory method for calculating rents and compensation for landowners which removes any ransom value in the calculation. This is likely to result in lower rental levels.
- Longer, two stage termination and removal of equipment procedure, with termination of rights based on statutory grounds only (including redevelopment).

It remains to be seen the extent to which the new Electronics Communication Code improves practice in this area.

For further information please contact David Wells on 01908 247030 or click [here](#) to contact David.

Land used for grazing horses can be brownfield land



Emma Bowman
Solicitor

Outline planning permission for 14 houses has been granted on appeal on a site comprising horse grazing land, stables, hardstanding and a manege.

The National Planning Policy Framework defines previously developed land ('brownfield land') as land which is or was occupied by a permanent structure, including the curtilage of the developed land. The inspector concluded that the whole site should be considered brownfield land.

Although the site was located outside the village settlement boundary, the NPPF encourages the effective use of brownfield land. The inspector attached significant weight to this policy in allowing the appeal, finding that the development would support the vitality of the rural community and local services as well as generally boosting housing.

This decision will be of interest to rural landowners considering development on horse grazing land associated with a building. For further information please contact Emma Bowman on 01223 532717 or to email Emma click [here](#).

The Duty to Give Reasons for Controversial Planning Permissions Confirmed



Deborah Sharples
Partner

At a breakfast seminar in May I talked about the duty of a local authority to give reasons when its committee grants permission for the development against the recommendation of officers. The Supreme Court has now addressed these issues in Dover DC v Campaign to Protect Rural England (Kent) [2017] UKSC 79.

The Court made it clear that whilst there is no general common law duty to give reasons for a decision to grant planning permission, fairness may in certain circumstances require reasons to be given, even where there is no statutory duty to provide them. There is likely to be significant legitimate interest in such decisions and giving reasons is essential to enable the Court to review the legality of the decision and to ensure that justice is not only done but is seen to be done.

The requirement will typically arise at common law where permission has been granted in the face of substantial public opposition and against the advice of officers, for projects which involve major departures from the development plan, or from other policies of recognised importance.

The Court held that it is not unduly onerous to require members of a planning committee to provide reasons for their decision so far as those reasons could not be gleaned from the documents available as part of the planning application. Indeed, it does seem reasonable that members should understand and be able to articulate the reasons for reaching their decision.

The reasons given, by reference to all of the information available, should not leave "genuine doubt ... as to what (it) has decided and why".

It would be wise for Local Planning Authorities, in all but the most straightforward of cases where a planning committee grants planning permission contrary to officer advice to set out separate written reasons for its decision.

For further information please contact Deborah Sharples on 01223 532757 or [click here](#) to email Deborah.



Advice should be sought from a solicitor in the Real Estate Team at Hewitsons in respect of any information contained in this bulletin that affects any matter with which you may be concerned.

Hewitsons offers a full real estate service which includes expertise in property acquisition and disposal, planning, construction, environmental issues, development and property management. This Bulletin will help to keep those involved in property up to date with the latest developments.

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