

Home Information Packs (HIPs) update

In yet another twist in the Government's plans to speed up the conveyancing process, the Government has now announced that Energy Performance Certificates (EPCs) and Home Information Packs (HIPs) will now be implemented from 1 August 2007 rather than 1 June 2007 as originally planned.

Furthermore, HIPs and EPCs will be phased in from 1 August 2007, starting with the sale of homes with four or more bedrooms, although people will be able to market their home for sale as soon as they have commissioned a HIP

rather than having to wait until they have actually received it.

Will these unpopular reforms ever come into play? We shall just have to wait and see!

Unmarried co-ownership - the Presumptions

In the recent case of *Stack v Dowden* [2007] the House of Lords considered the familiar question of how property is held when an unmarried couple both contribute financially to buy a house together. They concluded that they are entitled to joint and equal beneficial interests in the property unless a clear contrary intention can be shown.

The burden to show that the couple intended their beneficial interests to be different is on the person seeking to prove it. The court will examine the parties' shared intentions with respect to the house, and these intentions will be considered in the context of the couple's whole course of conduct in relation to the house.

The court can determine relative beneficial interests from the evidence available, but there is no equivalent power, as in divorce, to reallocate property. As a result, when cohabiting couples split up or other co-owners fall out,

costly and lengthy legal battles can follow, often resulting in the co-owners spending more money on legal costs than the sums about which they are arguing.

So what are we to learn from this?

It is vital that purchasing parties' intentions are correctly recorded either on the form of Transfer Deed, or in a separate declaration of trust – failing which you are in the hands of the court.

Our specialist property experts are on hand and here to help.

The Living Together Team

A growing number of people live together. For some this is in contemplation of marriage or a civil partnership, for others, purchasing a home with family and or friends is the only way to gain a foothold on the increasingly expensive housing ladder.

Sharing property with someone other than your spouse can give rise to complicated problems in the event of a relationship breakdown. The Foot Anstey Living Together Team is a panel of experts dedicated and qualified in this specialist area.

In order to try and prevent problems and help you plan for the future, we can advise on, and draft, cohabitation agreements, pre-nuptial and pre-civil partnership agreements, and declarations of trust, which set out your intentions and help to regulate your finances and/or property if your relationship goes wrong.

If you are already having difficulties, members of the team can advise you on your legal rights and either action or defend contested court proceedings on your behalf. We also advise and assist on issues surrounding children, wills and inheritance tax planning.

Team members are located across the Exeter, Taunton and Plymouth offices.

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Commercial Property ▶ Planning, Environment and Land Use ▶ Property Litigation

Government Commission set to seize power from local councils

A major proposal of the recently published 'Planning for a Sustainable Future' White Paper is the creation of an Infrastructure Planning Commission.



The proposal is a direct response to the length of time taken for schemes such as Terminal 5 at Heathrow, major energy schemes such as nuclear power stations and wind farms, and major housing developments, to get through the planning system. This length of time is argued as causing major expense - money that could perhaps be saved with a speedier decision making process.

The Commission of selected experts would be guided by national policy, but would essentially take some major decision making powers away from local councils and the Secretary of State. Democratic decision making has its flaws, one of them being the length of the decision making process, but is a basic tenet of decisions affecting people and communities.

Will communities lose out?

A roving commission of experts may ignore local people who are affected by a proposed development as it is suggested that there will be no right to be heard. The reason stated is that people objecting and the lengthy inquiry process are often the problems in holding up the development that economically benefits the nation. This is certainly one interpretation; another being that economic benefits don't always provide wide ranging national benefits, and even if they did, should environmental and social concerns outweigh them?

I am sure that slightly quicker decisions may be reached, but I question whether this benefit is worth undermining peoples' rights to be heard and the whole democratic decision making process.

As Ebenezer Scrooge found out, economic benefits shouldn't take an overly prominent role in ones life. The overall tone of this White Paper, as illustrated by this proposal, amongst others, errs on the side of economic benefits over environmental and social factors with no guarantees that decisions will be any better, just quicker.

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To preserve, but not necessarily to enhance...

The recent High Court decision in *Chandler v S of S Communities and Local Government* has clarified the statutory requirement that development within a Conservation Area should preserve or enhance its existing character. The decision also sheds some helpful light on the interpretation of Development Plans in the context of existing legislation.



The High Court went on to rule that legislation could not have been intended to limit development in a conservation area to that which “enhances” its character – and neither could the policies of the Local Plan and the Structure Plan. The judgment issued by the Court contains the telling statement that if those who adopted the Development Plan had intended to inhibit any development in a conservation area which did not positively enhance its character, then the relevant provisions in the plans “would surely have been expressed in language which made that intention clear”.

While this case concerned the wording of Structure Plans and Local Plans, the guidance it gives on interpretation of Development Plans will be equally applicable to Local Development Frameworks, and highlights the importance of carrying out a detailed consideration of the relevant policies when making, or objecting to, a planning application.

A Planning Inspector granted permission for an extension to a bungalow within a conservation area, having determined that the extension would preserve the character and appearance of the area. Neighbours who objected to the extension challenged the validity of the Inspector’s decision, on the grounds that both the Local Plan and the Structure Plan specified that new development within the area should not only “preserve”, but also “enhance”, the existing character.

The High Court considered the terms of the Listed Building Act 1990, which places a general duty on planning decision makers to pay special attention to the desirability of “preserving or enhancing” the character of conservation areas. It found that there is a clear distinction in case law between the “preservation” of a conservation area and its “enhancement”.

For guidance on making planning applications for development within conservation areas, and for further advice on the interpretation of Local Development Frameworks, you can contact:

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Site Waste Management Plans: *Have your say*

How waste produced on a construction site will be reused, recycled or disposed of could soon be the subject of a mandatory “Site Waste Management Plan”.

Such plans can, of course, be adopted voluntarily for any project, but the Department for the Environment, Food and Rural Affairs (Defra) is considering whether Site Waste Management Plans should be compulsory for all construction and engineering projects over a certain value.

Is this just another example of bureaucracy and interference?

Details of the consultation paper are available from the Defra website and responses can be emailed to: sitewaste@defra.gsi.gov.uk up until 9 July 2007.

The British Retail Consortium (BRC) to review Lease Code

The Lease Code, which was launched in March to maintain a standard on lease agreements across the industry, will be ‘checked’ by the BRC through a survey of retailers, landlords, property agents and lawyers to see how effective it has been and what can be changed to improve its effectiveness.

The BRC will use the findings to gauge how much promotion and work is still needed.

Paul Browne, head of property at the BRC, said: “This is not about bullying or shaming landlords into compliance, it is about getting a better feel for how broadly the Lease Code has been adopted.”

“Everyone in the property industry has worked extremely hard to develop this code. The job is not finished though. We must make sure it is working on the ground.”

It will be interesting, however, to see what account the review takes of what happens in practice where a lease cannot be changed because the form is determined by other related leases, such as in a shopping centre or, on an industrial estate. It will be difficult to gather evidence to assess this and thus expect that the emphasis will continue to rest on how leases are worded rather than on their content which, one might suggest, is a rather pointless exercise.

We at Foot Anstey are, of course, fully equipped to use and advise on the new code wherever appropriate, but we are ever mindful of the market trends and will adopt the use of the code with caution as it is important not to restrict the bargaining power of the parties.

Solicitors narrowly avoid negligence

In a recent case concerning the duty of care owed to a prospective landlord by his professional advisers when negotiating rents for a car park, the High Court considered the question of whether a surveyor and/or a lawyer were duty bound to provide advice as to the best rents available.

The surveyor agreed fixed rents but failed to negotiate any element of turnover rent. The surveyor was found to have been negligent in failing to address the need for a turnover rent. This was a costly mistake. In 2006, the car park revenue was in the region of £1.8 million but the rent was only £9,000.

The surveyor in question argued that the lawyer appointed to draft the lease was also negligent in that he too failed to spot the omission and advise on the need for a turnover rent. However, the court commented that the surveyor was retained to give commercial advice while the lawyer was retained to give legal advice. It fell within the expertise of the surveyor

to know that a turnover rent was appropriate. It was not within the expertise of the lawyer who was entitled to assume that the surveyor had done his job.

While some lawyers may take comfort from the decision, our team of specialist property and planning lawyers are dedicated to exploring the best possible commercial and legal solutions for you. We will discuss any areas of concern with you and with your other professional advisers before drafting the legal documents to ensure that a proposed structure for a deal is the most appropriate and we will always look to get the best deal for you.