The Bristol and Cardiff Planning, Environmental and Property Webinar

12 November 2020

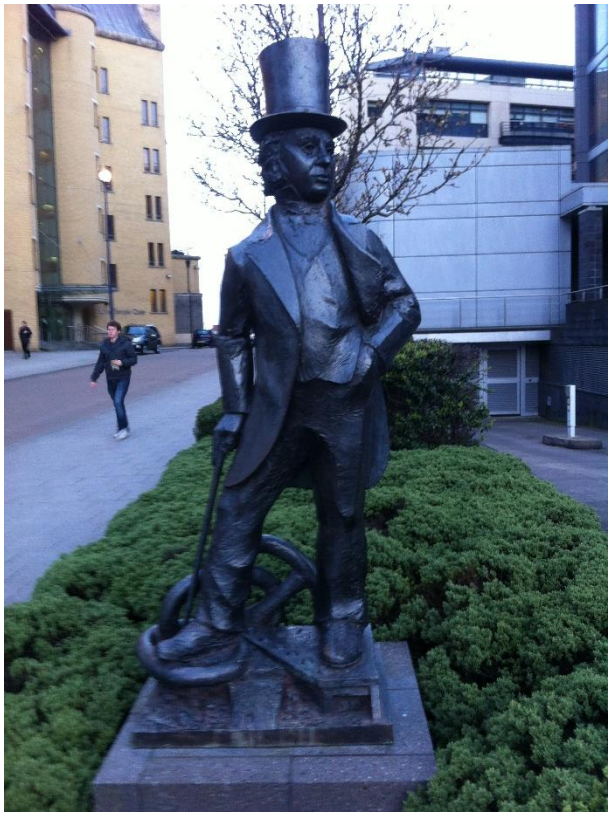
Starting shortly….

Richard Harwood OBE QC

David Sawtell

Gethin Thomas

Bristol and Cardiff webinar



Glad to be sort of here

Please use the Q&A box for questions

Change of use

STATUTORY INSTRUMENTS

2020 No. 757

TOWN AND COUNTRY PLANNING, ENGLAND

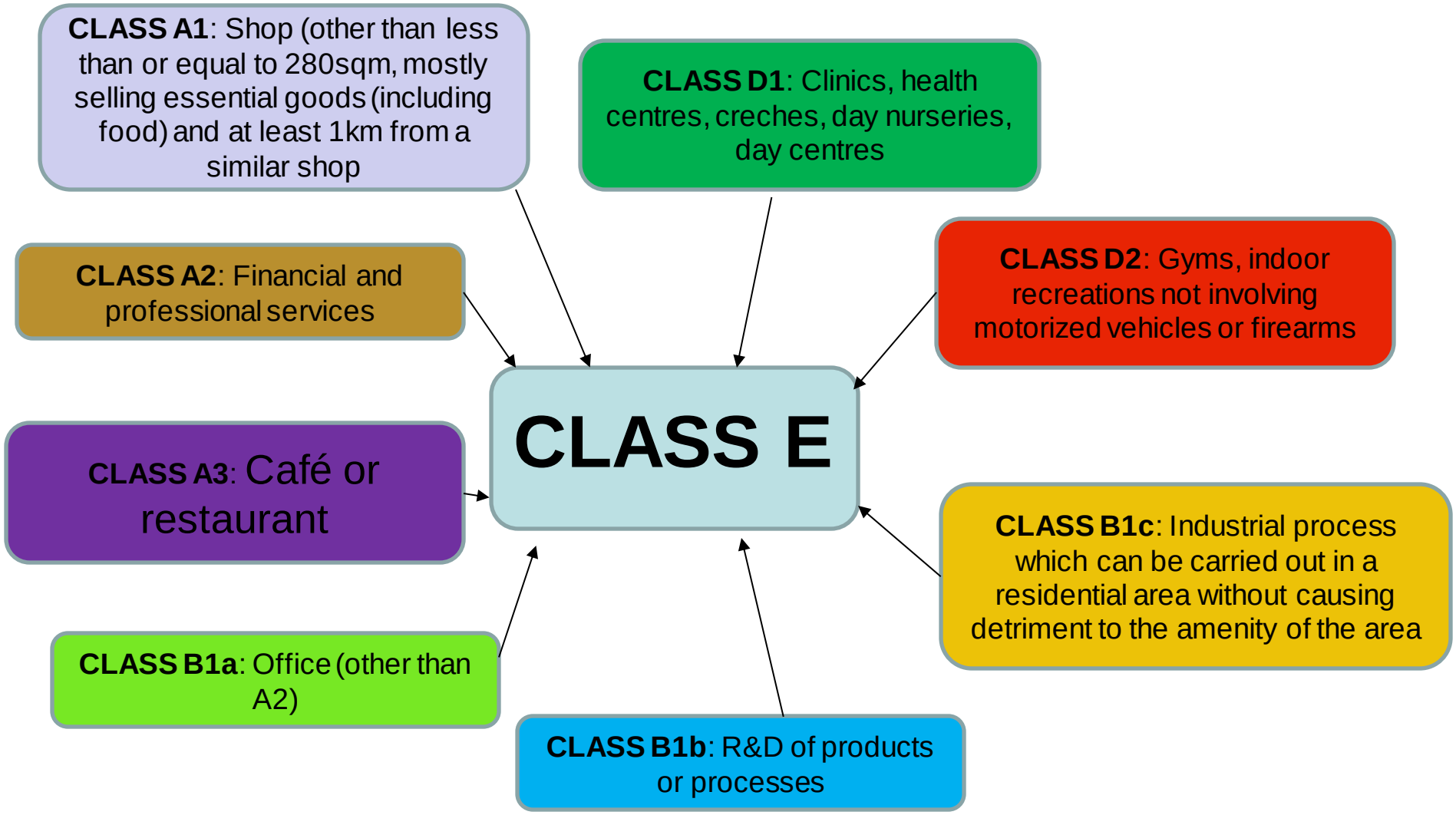
The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

Made	*20th July 2020*
Laid before Parliament	*21st July 2020*
Coming into force	*1st September 2020*

The Secretary of State, in exercise of the powers conferred by sections 55(2)(f), and 333(2A) and (7) of the Town and Country Planning Act 1990(**1**), ("the 1990 Act") makes the following Regulations.

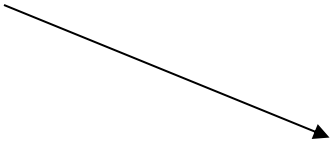
Radical revolution?

‘Commercial, business and service’



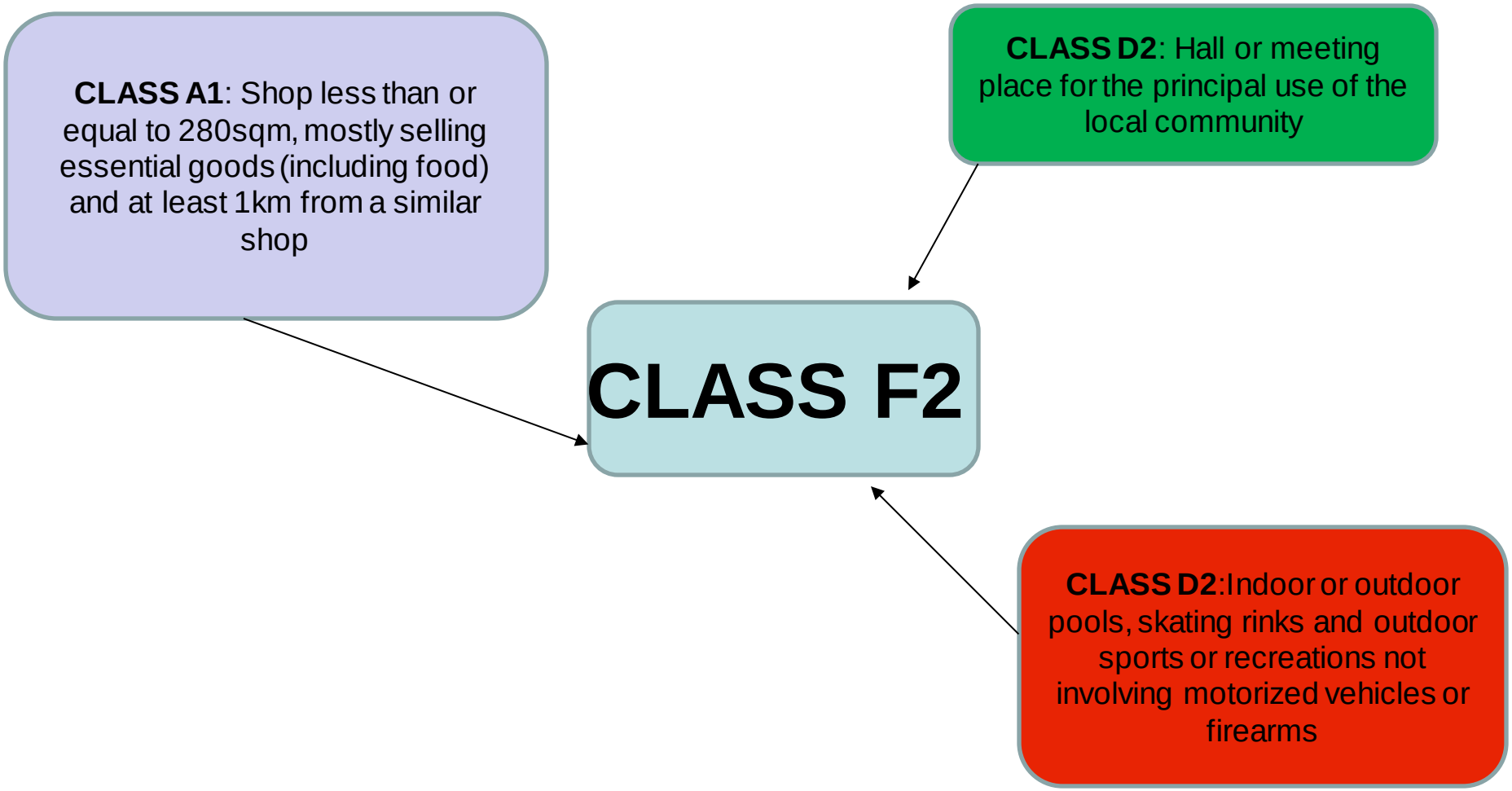
‘Learning and non-residential institutions’

CLASS D1: Schools, non residential education and training centres, museums, public libraries, public halls, exhibition halls, places of worship, law courts



CLASS F1

‘Local community’



Implications

- From 1 September 2020 to 31 July 2021, permitted development rights enabling a change of use will continue to be applied based on the existing use classes, as they existed on 31 August 2020.
- Aim is deregulation.
- Potentially wide ranging secondary/indirect impact on other processes, such as valuation.
- Impact on local planning polices.

These reforms are intended to give businesses greater freedom to change use so that they can adjust more quickly, and with more planning certainty, to changing demands and circumstances. The aim of the reforms is to support vibrant, mixed use high streets and town centres that will attract people and allow local businesses to thrive.

Taking back (some) control…?

- **Conditions?**
- **Role of local policies?**
- **Article 4 directions?**

Future reforms and the GPDO

- Transitional provisions
  - The statutory instrument also makes transitional and savings provision with respect to other related planning legislation: the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596)
  - Apply from 1 September 2020 to July 2021

Future reforms and the GPDO

- What to expect?
  - *'…we also propose to legislate to widen and change the nature of permitted development, so that it enables popular and replicable forms of development to be approved easily and quickly, helping to support 'gentle intensification' of our towns and cities, but in accordance with important design principles. There is a long history – in this country and elsewhere – of 'pattern books' being used to articulate standard building types, options and associated rules (such as heights and set-backs). They have helped to deliver some of our most popular and successful places, and in a way which makes it relatively easy for smaller development companies to enter the market. We want to revive this tradition, in areas suitable for development (Renewal areas), by allowing the pre-approval of popular and replicable designs through permitted development. The benefits are much more than fast delivery of proven popular designs – it will foster innovation and support industrialisation of housebuilding, enabling modern methods of construction to be developed and deployed at scale.'*

    Planning Policy White Paper 2020

In other news…

The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020

– These amended regulations introduce a new Class A into the GPDO – 'New dwellinghouses on detached blocks of flats' – which grants the right to extend purpose built blocks of flats upwards by two additional storeys. The blocks of flats must consist of three storeys or more before the extension and cannot have a total height of 30 metres or more with the additional two storeys.

In other news…

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020/755

– Brings the enlargement of a dwellinghouse by the construction of new storeys on top of the highest existing storey of the dwellinghouse within permitted development for the purposes of the GDPO.

The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020/756

– Class ZA allows for the demolition of a single detached building in existence on 12 March 2020 that was used for office, research and development or industrial processes, or a free-standing purpose-built block of flats, and its replacement by an individual detached block of flats or a single detached dwellinghouse within the footprint of the old building.

- Challenge to:
  - The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020/755;
  - The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020/756;
  - (The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020/757
- Grounds: (i) Failed to carry out a SEA, (ii) PSED, (iii) Failure to take account of consultation responses and other material considerations
- Heard on 14 October 2020.

Planning law in Wales

Hillside Parks Ltd v Snowdonia National Park Authority [2020] EWCA Civ 1440

Hillside Parks Ltd v Snowdonia National Park Authority [2020] EWCA Civ 1440

- Planning permission was granted by Merioneth County Council, which was at that time the local planning authority, in 1967, for the development of 401 dwellings, across 28.89 acres of land at Balkan Hill, Aberdyfi.
- Building of the first two houses began on 29 March 1967, but the approved location was found to be the site of an old quarry. Planning permission was applied for the houses as built and granted on 4 April 1967. Further planning permissions for departures from the Master Plan were granted between 1967 and 1974.
- A dispute arose between the parties in January 1985, which led to proceedings being issued in the High Court. Gwynedd County Council denied that the 1967 permission was still valid.

Hillside Parks Ltd v Snowdonia National Park Authority [2020] EWCA Civ 1440

- Judgment was given by Drake J on 9 July 1987 and an order was made granting four declarations to the following effect:

1. First, the full planning permission of 10 January 1967 was lawfully granted.
2. Secondly, the 1967 permission was a "full permission which could be implemented in its entirety without the need to obtain any further planning permission or planning approval of details".
3. Thirdly, "the development permitted by the January 1967 Permission has begun; and that it may lawfully be completed at any time in the future".
4. The fourth declaration concerned the satisfaction of the condition attached to the 1967 permission.

Hillside Parks Ltd v Snowdonia National Park Authority [2020] EWCA Civ 1440

- The decision of the House of Lords in *Sage* has placed greater emphasis on the need for a planning permission to be construed as a whole. It has now become clearer than it was before 2003 that a planning permission needs to be implemented in full. A "holistic approach" is required [65]
- Endorsed *Singh v Secretary of State for Communities and Local Government and Another [*2010] EWHC 1621 (Admin) , in particular at paras. 19-20, where Sage was cited: reflecting the holistic structure of the planning regime, for a development to be lawful it must be carried out "fully in accordance with any final permission under which it is done" [67]

Hillside Parks Ltd v Snowdonia National Park Authority [2020] EWCA Civ 1440

- The *Lucas* exception did not apply to the instant case. *Lucas* was a highly exceptional case.
- It was conceivable that a particular planning permission granted permission for the development to take place in a series of independent acts, each of which was separately permitted. However, that was unlikely to be the correct construction of a modern planning permission for the development of a large housing estate where there would be requirements concerning highways, landscaping and so on, which were all part of the overall scheme.
- It was doubtful whether a developer could lawfully pick and choose different parts of the development to be implemented.

The Town and Country Planning (Major Residential Development)(Notification)(Wales) Direction 2020

The Town and Country Planning (Major Residential Development)(Notification)(Wales) Direction 2020

- The 2020 Direction requires local planning authorities when dealing with applications for planning permission made on or after 15 January 2020 to refer those applications to the Welsh Ministers where they are minded to grant planning permission for residential development of 10 or more residential units, or residential development on 0.5 hectares or more of land, which is not in accordance with one or more provisions of the development plan in force.
- Where a local planning authority is required to give such notification to the Welsh Ministers, the authority must not grant planning permission on the application until the expiry of the period of 21 days beginning with the date which the Welsh Ministers tell the authority in writing is the date upon which they received information specified in the Direction.

Property law - review

Property law - review

- Restrictive covenants, the public interest, planning and cynicism: *Alexander Devine Children's Cancer Trust v Housing Solutions Ltd* [2020] UKSC 45

- Proprietary estoppel update

Alexander Devine Children's Cancer Trust v Housing Solutions Ltd [2020] UKSC 45

Berkshire's Children's Hospice Service

Restrictive covenants

- Private law property right
- Can be used to protect positive obligations (e.g. overage agreements)
- Section 84 of the Law of Property Act 1925 provides a regime for the discharge or modification

‘Contrary to public interest’

Section 84(1)(aa): “the continued existence thereof would impede some reasonable user of the land for public or private purposes or, as the case may be, would unless modified so impede such user”

Section 84(1A)(b), by impeding some reasonable user, that restriction “is contrary to the public interest”

Alexander Devine Children's Cancer Trust: the facts

- Green Belt land
- Conveyance dated 31 July 1972
- Protected an overage obligation (expired)

Alexander Devine Children's Cancer Trust: the facts

"1. No building structure or other erection of whatsoever nature shall be built erected or placed on [the application land].

2. The [application land] shall not be used for any purposes whatsoever other than as an open space for the parking of motor vehicles."

Alexander Devine Children's Cancer Trust: the facts

- Barty Smith inherits the land with the benefit of the covenant, makes gift of land adjacent to the Trust for the construction of a hospice
- Millgate Developments Ltd acquires the encumbered land. Aware of the restrictive covenants, and could have identifies those with the benefit of the covenants

Alexander Devine Children's Cancer Trust: the facts

- July 2013 – applies for planning permission to build affordable housing units on the land (linked to application to build housing units for commercial sale)

Alexander Devine Children's Cancer Trust: the facts

- March 2014 – planning permission for the development conditional on provision of affordable housing
- Even though inappropriate for Green Belt and contrary to the development plan, special circumstances justified grant of permission
- Section 106 agreement – has to transfer the units to an affordable housing provider

Alexander Devine Children's Cancer Trust: the facts

- Millgate could have chosen to lay out its development of the affordable housing site so as to honour the restrictive covenant
- Would have obtained planning permission

Alexander Devine Children's Cancer Trust: the facts

- 1 July 2014 – Millgate begin clearing the site
- 30 August 2014 – Barty Smith becomes aware of the development

Alexander Devine Children's Cancer Trust: the facts

- 26 September 2014 – Barty Smith writes to Millgate to object to development
- Millgate continue to build the houses
- 10 July 2015 – development complete, including 13 housing units on the encumbered land
- 22 May 2015 – Millgate agree to sell development to Housing Solutions
- 20 July 2015 – Millgate applies to Upper Tribunal

Alexander Devine Children's Cancer Trust: the facts

- September 2015 – construction of the hospice begins
- Subsequently, the housing units are occupied by tenants

Alexander Devine Children's Cancer Trust: first instance

- Upper Tribunal ([2016] UKUT 515 (LC)): held that restrictive covenants should be modified under s.84 to permit the occupation and use of the land
- Orders Millgate to pay £150,000 as compensation to the Trust
- Trust appeals

Alexander Devine Children's Cancer Trust: Court of Appeal

- Court of Appeal allows appeal ([2018] EWCA Civ 2679)
- Sales LJ (now Lord Sales) gives only substantive judgment

Alexander Devine Children's Cancer Trust: Court of Appeal

- Goes to Supreme Court – Lord Burrows gives only judgment

Contrary to the public interest

- Focus more narrowly on the impeding of the reasonable user of the land
- Ask whether that impediment, by continuation of the restrictive covenant, is contrary to the public interest
- Question of conduct of the applicant is irrelevant at this stage
- Conduct relevant when it comes to discretion

“Cynical breach”

- Deliberately committing a breach of the restrictive covenant with a view to making profit from so doing (cf. Peter Birks)
- BUT – did the Upper Tribunal make an error of law?
- Important factor that it is a specialist tribunal

“Cynical breach”

- Omitted to deal with two factors

1) Could have submitted an alternative plan
2) Created the state of affairs (i.e. the waste of housing units) in the first place by way of a deliberate breach

Just deserts?

"The result—the likely demolition of the affordable houses—sounds a warning to those who think that covenants, and those that enjoy their benefit, are just interfering busy bodies who are standing in the way of progress. It also makes it clear that "proprietary" obligations are exactly that and not to be disregarded when they are inconvenient."

Martin Dixon, 'A smorgasbord', [2019] 1 The Conveyancer and Property Lawyer 1-3

The effect of planning

"43. *The grant of planning permission does not generally have any impact upon private property rights. It is a decision taken regarding what development of a particular site can be regarded as acceptable in planning terms, with reference to the public interest*." (Sales LJ, Court of Appeal)

The effect of planning

"13. … *it is unlikely that the local planning authority would have viewed it as its role to use its planning powers to ensure compliance with those covenants. Its concern was to ensure that the requisite number of affordable housing units should be provided …*" (Sales LJ, Court of Appeal)

The effect of planning

- *Shephard v Turner* [2006] EWCA Civ 8; [2006] 2 P&CR 28 at [58] *per* Carnwath LJ

- *Creebray Ltd v Deninson and another* [2020] UKUT 262 (LC)

The narrow 'public interest' test

- *In re Collins' Application* (1975) 30 P & CR 527, 531: *"In my view for an application to succeed on the ground of public interest it must be shown that that interest is so important and immediate as to justify the serious interference with private rights and the sanctity of contract ."*
- Lord Burrows did not disturb this analysis

No comment on remedies

Read more

- https://www.39essex.com/land-use-conflict-supreme-court-rules-on-the-discharge-of-restrictive-covenants-alexander-devine-childrens-cancer-trust-v-housing-solutions-ltd-2020-uksc-45/

Proprietary estoppel in 2020

Promises to keep?

Habberfield v Habberfield [2019] EWCA Civ 890; 22 ITELR 96:

- Lewison LJ quoted the Robert Frost's poem, '*Stopping by Woods on a Snowy Evening*':

'The woods are lovely, dark and deep,

But I have promises to keep.'

Promises to keep?

"[33] Underpinning the whole doctrine of proprietary estoppel is the idea that promises should be kept. We were not shown any case in which the rejection of an offer meant that the claimant, who had kept her side of the bargain, received nothing."

Significance

- Businesses run by families (*Gillett v Holt* [2001] Ch 210 and *Thorner v Major* [2009] UKHL 18; [2009] 1 WLR 776)
- Assertion of an easement against a local authority (*Joyce v Epsom and Ewell BC* [2012] EWCA Civ 1398, or *Crabb v Arun DC* [1976] Ch 179)
- Development agreement for payment on the grant of planning permission (*Yeoman's Row Management Ltd v Cobbe* [2008] UKHL 55; [2008] 1 WLR 1752)
- Dispute arising from an invalid option to renew a lease (*Taylor Fashions Ltd v Liverpool Victoria Trustees Co Ltd, Old and Campbell Ltd v Liverpool Victoria Friendly Society* [1982] QB 133

Mohammed v Gomez [2019] UKPC 46; 22 ITELR 652

"[26]…*once one has moved beyond claims based on specific contractual rights, there may be no clear division between the nature and quality of any alleged verbal assurances, and the conduct of the respective parties in response. Depending on the factual context acquiescence may be seen as one aspect of assurance.*"

Guest v Guest [2020] EWCA Civ, 387, [2020] 1 WLR 3480

a) An assurance of sufficient clarity
b) Reliance by the claimant on that assurance;
c) Detriment to the claimant in consequence of his reasonable reliance

(cf Lewison LJ in *Davies v Davies* [2016] EWCA Civ 463, [2016] 2 P & CR 10 at [38])

Guest v Guest [2020] EWCA Civ, 387, [2020] 1 WLR 3480

Crabb v Arun District Council [1976] Ch 179, 192–193, Scarman LJ:

"In such a case I think it is now settled law that the court, having analysed and assessed the conduct and relationship of the parties, has to answer three questions. First, is there an equity established? Secondly, what is the extent of the equity if one is established? And, thirdly, what is the relief appropriate to satisfy the equity?"

Guest v Guest [2020] EWCA Civ, 387, [2020] 1 WLR 3480

- Submitted – the trial judge had not asked himself what the extent of the equity was
- There was no clear promise or commitment to pass on any particular interest
- Court will therefore regard the extent of the equity as limited to undoing what has taken place

Guest v Guest [2020] EWCA Civ, 387, [2020] 1 WLR 3480

[75]

"*the courts have asked, in a first stage, whether an equity arises, and then, in a second stage, how the equity is to be satisfied in order to do justice. There is no intermediate stage in which one seeks to define or quantify the precise extent of the equity which arises*."

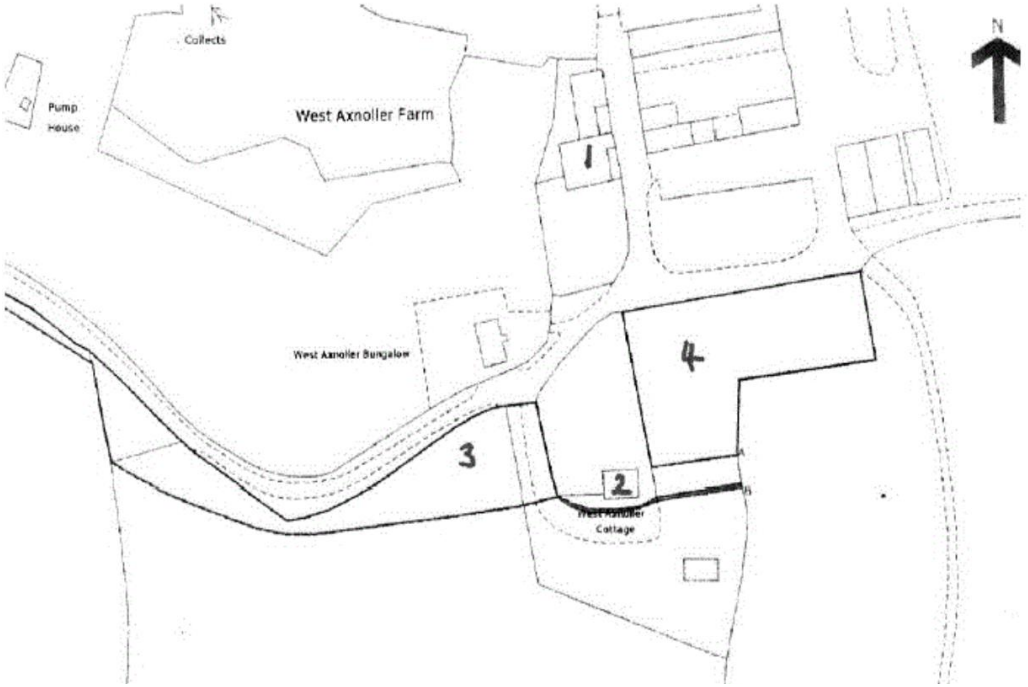
…

"*One could instead have asked a single question: what is necessary to avoid an unconscionable result?*"

Brake v Swift [2020] EWHC 1810 (Ch), [2020] 4 WLR 113

West Axnoller Farm, Beaminster, Dorset

Brake v Swift [2020] EWHC 1810 (Ch), [2020] 4 WLR 113



Brake v Swift [2020] EWHC 1810 (Ch), [2020] 4 WLR 113

- Claim by discharged bankrupts for interest in land to be revested in them under section 283A(2) of the Insolvency Act 1986
- Thorough analysis of section 283A by HHJ Matthews sitting as a High Court judge

Brake v Swift [2020] EWHC 1810 (Ch), [2020] 4 WLR 113

- Claim by discharged bankrupts for interest in land to be revested in them under section 283A(2) of the Insolvency Act 1986
- Bankrupts claimed an equitable interest by way of a proprietary estoppel in a cottage
- Thorough analysis of section 283A by HHJ Matthews sitting as a High Court judge

Brake v Swift [2020] EWHC 1810 (Ch), [2020] 4 WLR 113

- Section applies where "*property comprised in the bankrupt's estate consists of an interest in a dwelling-house which at the date of the bankruptcy was the sole or principal residence of*" the bankrupt / spouse / former spouse
- After end of 3 years beginning with date of bankruptcy, the interest will "*vest in the bankrupt*"
- Does not apply if interest realised by trustee, trustee applies for order for sale / possession

Brake v Swift [2020] EWHC 1810 (Ch), [2020] 4 WLR 113

- 2012: the Brakes claimed in interest by way of an equity arising by proprietary estoppel in a property known as West Axnoller Cottage (claim stayed and remains unvindicated)
- 2015: adjudicated bankrupt
- 2019: commenced proceedings against their trustee in bankruptcy, Duncan Swift for declaration that the interest in the cottage re-vested in them

Brake v Swift [2020] EWHC 1810 (Ch), [2020] 4 WLR 113

Dispute: was the cottage partnership property? Or was it the beneficial property of the Brakes?

2019: Mr Swift entered into a transaction with the liquidators of the partnership in relation to the cottage, to acquire the liquidators' rights in it. Chedington entered into back to back transactions with Mr Swift in order to acquire those rights

Acquired by a company, Chedington Court Estate Ltd

Brake v Swift [2020] EWHC 1810 (Ch), [2020] 4 WLR 113

"*152 The proprietary estoppel equity has the single most important characteristic of a property right or interest, that is, that it binds third parties. It also takes effect from the point in time at which all the elements of the right are complete, even though the court has not at that stage adjudicated upon it*."

…

"*154 In my judgment there can be no doubt that a proprietary estoppel equity is a property interest for the purposes of the general law of property*."

Brake v Swift [2020] EWHC 1810 (Ch), [2020] 4 WLR 113

- A proprietary estoppel equity is property for the purposes of falling into the bankrupt estate under section 283 of the Insolvency Act 1986
- Was it their principal residence? No – it was the main house
- Claim for the declaration failed

London Borough of Brent v Johnson [2020] EWHC 2526 (Ch)

- Harlesden Peoples Community Council - Community Centre in the London Borough of Brent
- D1 had identified a site for the project
- The local council supported the project, purchased the site
- Purchase price for the property was paid for by money received from a number of grants and the local council

London Borough of Brent v Johnson [2020] EWHC 2526 (Ch)

- 2017 - the claimant decided to sell part of the site to fund the redevelopment of a newly enhanced leisure and community facility
- Claimant applied for a restriction to be entered on the Land Register against the title, brought proceedings for a declaration

London Borough of Brent v Johnson [2020] EWHC 2526 (Ch)

- Held – no locus to bring the application as claimant did not have sufficient interest
- Mr Michael Green QC (sitting as a Deputy Judge of the Chancery Division) went on to consider the different claims, including the proprietary estoppel claim

London Borough of Brent v Johnson [2020] EWHC 2526 (Ch)

- Proprietary estoppel could have arisen if the claimant had made representations to J/HPCC that they would enjoy some right or benefit over the property, and the claimant had then subsequently denied the defendants that benefit

London Borough of Brent v Johnson [2020] EWHC 2526 (Ch)

- Representations that the defendants alleged the claimant had made to them about the property were too vague, had no credibility and had not been supported by the documentary evidence
- Any representations the claimant had made about the property being held *'for the benefit of the community'* had not amounted to a representation that the property had been held on trust for the defendants

Read more

- https://www.39essex.com/planning-environment-property-newsletter-30th-april-2020/

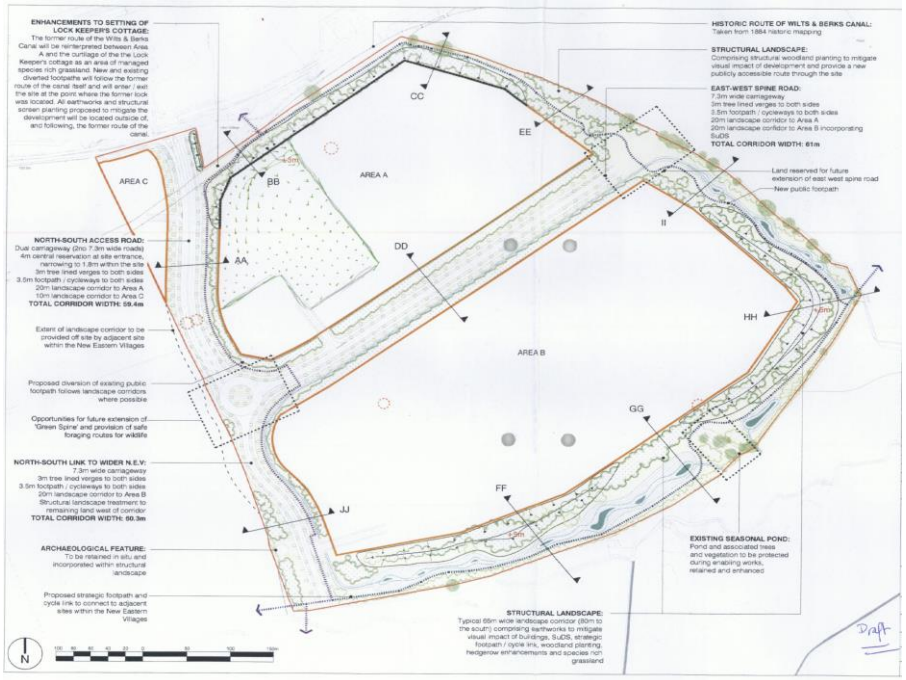
Permissions, highways and conditions

Swindon Council v SoS and D B Symmetry

Symmetry

- *Swindon v Secretary of State for Housing, Communities and Local Government & D B Symmetry* [2020] EWCA Civ 1331
- Scope of planning conditions
- Can a condition require land to be dedicated as a highway?
- Part of the New Eastern Villages

The Scheme


ENHANCEMENTS TO SETTING OF LOCK KEEPER'S COTTAGE:
The former route of the Wilts & Berks Canal will be reinterpreted between Area A and the curtilage of the the Lock Keeper's cottage as an area of managed species rich grassland. New and existing diverted footpaths will follow the former route of the canal itself and will enter / exit the site at the point where the former lock was located. All earthworks and structural screen planting proposed to mitigate the development will be located outside of, and following, the former route of the canal.
NORTH-SOUTH ACCESS ROAD:
Dual carriageway (2no 7.3m wide roads) 4m central reservation at site entrance, narrowing to 1.8m within the site
3m tree lined verges to both sides
3.5m footpath / cycleways to both sides
20m landscape corridor to Area A
10m landscape corridor to Area C
TOTAL CORRIDOR WIDTH: 59.4m
Extent of landscape corridor to be provided off site by adjacent site within the New Eastern Villages
Proposed diversion of existing public footpath follows landscape corridors where possible
Opportunities for future extension of 'Green Spine' and provision of safe foraging routes for wildlife
NORTH-SOUTH LINK TO WIDER N.E.V:
7.3m wide carriageway
3m tree lined verges to both sides
3.5m footpath / cycleways to both sides
20m landscape corridor to Area B
Structural landscape treatment to remaining land west of corridor
TOTAL CORRIDOR WIDTH: 60.3m
ARCHAEOLOGICAL FEATURE:
To be retained in situ and incorporated within structural landscape
Proposed strategic footpath and cycle link to connect to adjacent sites within the New Eastern Villages
HISTORIC ROUTE OF WILTS & BERKS CANAL:
Taken from 1884 historic mapping
STRUCTURAL LANDSCAPE:
Comprising structural woodland planting to mitigate visual impact of development and provide a new publicly accessible route through the site
EAST-WEST SPINE ROAD:
7.3m wide carriageway
3m tree lined verges to both sides
3.5m footpath / cycleways to both sides
20m landscape corridor to Area A
20m landscape corridor to Area B incorporating SuDS
TOTAL CORRIDOR WIDTH: 61m
Land reserved for future extension of east west spine road
New public footpath
EXISTING SEASONAL POND:
Pond and associated trees and vegetation to be protected during enabling works, retained and enhanced
STRUCTURAL LANDSCAPE:
Typical 65m wide landscape corridor (80m to the south) comprising earthworks to mitigate visual impact of buildings, SuDS, strategic footpath / cycle link, woodland planting, hedgerow enhancements and species rich grassland
AREA A
AREA B
AREA C
AA
BB
CC
DD
EE
FF
GG
HH
II
JJ
N

The permission

- Application documents identified the access roads as highways for interconnection with the rest of the NEV
- Condition 39:

> Roads
>
> The proposed access roads, including turning spaces and all other areas that serve a necessary highway purpose, shall be constructed in such a manner as to ensure that each unit is served by fully functional highway, the hard surfaces of which are constructed to at least basecourse level prior to occupation and bringing into use.
>
> Reason: to ensure that the development is served by an adequate means of access to the public highway in the interests of highway safety.

Proceedings

- Subsequent developer, Symmetry, claimed the access roads did not have to be highways and so they could charge for access to the rest of the NEV
- Certificate of Lawfulness of Proposed Use or Development granted on appeal that the roads could be private only
- Quashed by Andrews J [2019] EWHC 1677 (Admin) agreeing required highways to be dedicated (without requirement for adoption or transfer to the highway authority)
- SoS did not appeal, but Symmetry's appeal allowed by Court of Appeal
- Permission to appeal submitted to Supreme Court

Court of Appeal

- Court accept that highways means public right of way
- 'Most natural' meaning is that condition 39 requires highways to be dedicated
- But condition would then be unlawful as Court bound by *Hall v Shoreham on Sea* [1964] 1 WLR 240 (CA) that planning condition cannot require highways to be dedicated (as could compulsory purchase and pay compensation instead)
- Planning obligation could require highway dedication without compensation
- Apply validation principle – a 'realistic' lawful interpretation is preferred to an unlawful interpretation
- Symmetry's interpretation was realistic

Public statues

Removing public statues

- Controls
- Planning
- Listed Buildings
- Tests

Building, fixture or chattel

- Is it:
- A building?
- Part of a building or fixed to a building?
- Outside planning/listed building control at all?

Building tests

- One approach – *Dill v SoSCLG* [2020] UKSC 20; *Skerritts of Nottingham Ltd v SoSETR (No 2) [2000] JPL 1025*
- Size
- Permanence
- Degree of annexation
- Affects whether building operations
- Or listability in own right

Fixtures

- Whether in extended listed building (s 1(5)) “any object or structure fixed to the building; (b) any object or structure within the curtilage of the building which … forms part of the land and has done so since before 1 July 1948”
- Whether part of building for alteration (planning)
- Otherwise, a chattel and not controlled

Listed buildings

- Q listed in own right – is it a building?
- Fixed or part of land for curtilage
- Whether works of demolition or alteration
- *Dill* urns. Would not be part of land, Q buildings

Non-listed building

- Alteration or demolition?
- Internal works/non-material changes
- PD for alterations
- Demolition direction exclusions
- Demolition PD rights

Conservation areas

- Relevant demolition
- Buildings over 115 m³, or
- Pre-1925 monuments or memorials to a deceased person
- Planning permission needed

Conditions

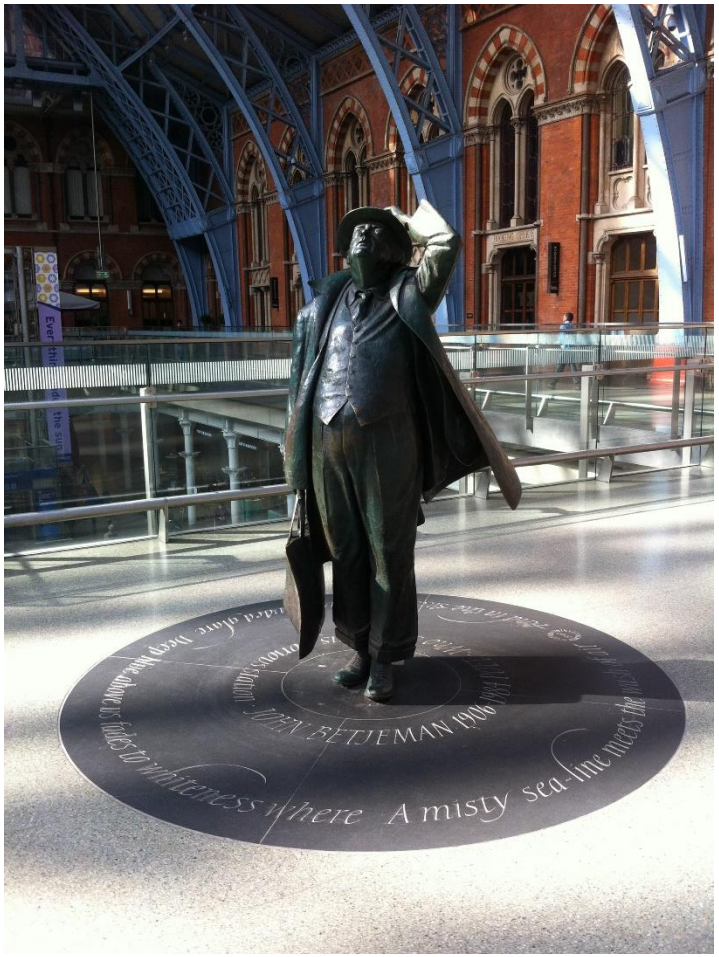
- Planning conditions on recent schemes may require art to be retained
- *Desert Quartet*, Worthing

Taking control

- Ministerial role
- Limited scope for planning permission to control
- Listed buildings still largely local
- Need for notification

Judging

- Listing/CA preservation as historic or architectural interest
- HE commemorative structures guide
- Artistic interest
- Significance of person
- Public/private location
- Public benefit



Thank you for attending

- Series of webinars presented by 39 Essex Chambers on property, construction and related areas –webinars and podcasts
- https://www.39essex.com/category/webinars/
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Thank you for listening!

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