



Property and Planning Law Bulletin Issue 26

In this edition we look at:

- Court of Appeal upholds decision in *K/S Victoria Street v House of Fraser (Stores Management) Ltd* [2010] which supports the decision in *Good Harvest Partnership LLP v Centaur Services Ltd* [2010]
- Government announces up to 21 new Enterprise Zones
- Changes to simplify and speed up the planning process
- Localism Bill Update

Court of Appeal upholds decision in K/S Victoria Street v House of Fraser (Stores Management) Ltd [2010]

Our 25 June 2010 edition of the Property Bulletin contained an article about the circumstances in which authorised guarantee agreements are permitted and examples of guarantees which go beyond the scope of the provisions contained in the Landlord and Tenant (Covenants) Act 1995.

A sub-guarantee arises where the tenant's guarantor guarantees not only the tenant's obligation under the lease, but also the tenant's liability under any AGA it may enter into. The update in our 6 September 2010 edition explained that the Act did not clarify whether the tenant's guarantor can be made to provide continuing security, either by way of direct contractual guarantee or a sub-guarantee, and that this distinction was the subject matter of the appeal of *Good Harvest*.

In the case of *Good Harvest*, the High Court held that only the tenant could give a guarantee for an assignee, and that the guarantee must be



in the form of an authorised guarantee agreement. The guarantee given by the tenant's guarantor in the form of an AGA for the assignee was void by virtue of the anti-avoidance provisions of Section 25 of the 1995 Act.

As explained in our update in our 3 December 2010 edition, there has been recent support for the Good Harvest decision. In Victoria Street, the High Court held that an agreement that required the tenant's guarantor to guarantee the assignee's obligations, at such time as the lease was assigned, was void under Section 25 of the 1995 Act. Permission was given to appeal to the Court of Appeal.

The Court of Appeal has upheld the decision in Good Harvest. The Court held:

- Any obligation that is imposed in advance on the tenant's guarantor, to guarantee the obligations of the immediate assignee, will be void.
- Sub-guarantees are valid, that is the tenant's guarantor may guarantee the performance by the tenant of its obligations under an AGA.
- A tenant's guarantor cannot volunteer to act as guarantor for the immediate assignee.
- The tenant's guarantor can act as guarantor for subsequent assignees, but not the immediate assignee.

Landlords who wish to accommodate prospective tenants by offering a relaxed intra group assignment regime can no longer require a repeated guarantee and run the risk of their capital investment being damaged.

This is welcome news for tenants. Landlords should carefully consider the alienation provisions not only at the drafting stage of new leases but also those contained in its existing leases. Landlords should avoid alienation provisions that are void and are unenforceable, and should also avoid imposing obligations that go beyond the scope of the Act to minimise the risk of a claim to damages.

Government announces up to 21 new Enterprise Zones

The government has announced that up to 21 new Enterprise Zones will be established where economic growth will be encouraged through a mixture of financial incentives and a more relaxed planning regime.

The benefits applicable to all Enterprise Zones are:

- A full 100% business rate discount over a 5 year period worth up to £275,000
- All business rates growth within the Enterprise Zone will be retained and shared by the local authorities for at least 25 years
- Simplified planning regime
- Superfast broadband

From the year 2012, enhanced first year capital allowances on plant and machinery will be available in designated areas.

Changes to simplify and speed up the planning process.

The Department for Communities and Local Government has recently launched a consultation on further proposals to simplify and speed up the planning system.

In last month's Bulletin we discussed the new National Planning Policy Framework which is to replace the current raft of national policy guidance and statements. It is intended to make national planning policy simpler and clearer.

A new concept coined "the Planning Guarantee" is now proposed to speed up the planning process. In short, the Planning Guarantee if introduced, would establish a clear time limit (12 months) within which planning applications should be determined by Local Planning Authorities, and also within which appeals should be resolved by the Planning Inspectorate. Many applications will be decided much more quickly than this, but it is intended that the more complex applications should not drag on for more than twelve months.



The Government is undertaking a consultation until the end of August to inform the final shape of this new concept.

There are already statutory time limits in place for determination of planning applications (8 weeks for standard applications and 13 weeks for major applications). These would remain unchanged, but in addition no planning application should take longer than one year to reach a decision. The consequences of not meeting that one year time limit are not yet clear, and the Government proposes to consult in the autumn on specific measures which will apply when the deadline is not met. Could it be intended that planning permission would be granted by default if no decision is issued within the 12 month timeframe? The contents of the next consultation will be of great interest.

Notably, the 12 month timeframe would not include periods when the progress of the application is outside of the control of the local planning authority – for example, time spent in pre-application discussions or waiting for the submission of extra information. One obvious consequence may therefore be that local planning authorities are forced at the outset to be tougher when deciding whether or not to ‘validate’ an application – that is, to ensure they have all the information that they may need in order to determine the application before they accept it as being ‘valid’ and before the time starts ticking.

The Government is also consulting on the information that parties consider necessary in order to determine planning applications. Again, this is aimed at simplifying and speeding up the process, by reducing the information that needs to be submitted with a planning application where that information may be of marginal relevance. This may be good news for applicants, but residents and third parties would want to ensure sufficient information is provided with applications to enable them to assess the impacts of a proposal on their interests without the need for professional review of reports.

The Government was inviting comments until the end of August on the level of information considered necessary to determine planning applications. It then intends to undertake a detailed consultation in the autumn. If you would like to make representations on the detailed consultation please contact the Planning team at Blandy and Blandy.

Localism Bill Update

The Bill's progress continues apace, with amendments now being considered. We understand that the definition of 'concealment' (in terms of concealment of a planning breach for the purposes of enforcement action) may well be amended, so that mere "inaction" would not amount to concealment. We will provide an update on the amendments and the Bill's progress in future issues of the Bulletin.

Many of the provisions of the Bill require the enactment of secondary legislation in order for the powers to be exercisable. To this end, the Government is consulting on proposed amendments to the regulations governing the process of preparation of local development plans (Town and Country Planning (Local Development) (England) Regulations 2004).

The Localism Bill provisions relevant to plan preparation include:

- The duty to co-operate
- Process for adoption of plans (and role of Inspectors who examine plans)
- Ability to withdraw plans before adopted
- Local Development Schemes, and removing the need to submit these to the Secretary of State
- Publication of monitoring reports

The amendments to the regulations would enable these new duties and processes to be carried out.

Further details are available at www.communities.gov.uk, and comments must be made by 7 October 2011.



Blandy & Blandy LLP does not assume legal responsibility for the accuracy of any particular statement contained in this bulletin. In the case of specific problems we recommend that professional advice be sought.

Contact us

We hope you found this edition of interest. If you would like to discuss any of the matters raised in more detail or if you have any other property related queries, please contact the following:

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