

Democracy direct 14 August 2017

DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT

Further results published from government’s fire testing programme

The third in the government’s series of fire safety tests of cladding and insulation combinations has been completed by the BRE.

<https://www.gov.uk/government/news/further-results-published-from-governments-fire-testing-programme>

Advice for building owners: large-scale wall system test 3

Advice for building owners on the large-scale wall system test with ACM cladding with a fire retardant polyethylene filler with PIR foam insulation.

<https://www.gov.uk/government/publications/advice-for-building-owners-large-scale-wall-system-test-3>

Help to Buy equity loan

Government remains committed to the Help to Buy equity loan scheme to 2021

So speculative commentators should now know that ‘reviewing’ does not mean ‘terminating’.

<https://www.gov.uk/government/news/help-to-buy-equity-loan>

CABINET OFFICE

Civil service ‘hub’ to bring growth to Cardiff

The UK Government has today shown its commitment to delivering growth across the UK by signing a 25 year lease at the Central Square development, Cardiff.

This announcement comes weeks after a new lease was signed in Edinburgh, further demonstrating the UK Government’s commitment to building a strong Civil Service outside London.

The deal is part of the Government Hubs Programme which will transform the way the Civil Service works by accommodating several government departments in one building, across the country. The programme will deliver over a billion pounds of savings to the taxpayer, free up land for housing and reduce government buildings from 800 to around 200 by 2022.

<https://www.gov.uk/government/news/civil-service-hub-to-bring-growth-to-cardiff>

Open standards for government

The UK government is selecting a set of open standards for use in government technology. The aim is to apply these consistently across government bodies, making our services better for users.

The profiles listed here include the open standards that have been chosen after a period of peer review and public comment through the [Standards Hub.](http://standards.data.gov.uk/)

Updated.

<https://www.gov.uk/government/publications/open-standards-for-government>

DEPARTMENT FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

Independent review to ensure energy is affordable for households and businesses

An independent review into the cost of energy led by Professor Dieter Helm CBE will recommend ways to keep energy prices as low as possible as part of the Industrial Strategy, Business and Energy Secretary Greg Clark announced today. (6 Aug)

<https://www.gov.uk/government/news/independent-review-to-ensure-energy-is-affordable-for-households-and-businesses>

DEPARTMENT FOR DIGITAL, CULTURE, MEDIA AND SPORT

New fines for essential service operators with poor cyber security

Organisations who fail to implement effective cyber security measures could be fined as much as £17 million or 4 per cent of global turnover, as part of plans to make Britain’s essential networks and infrastructure safe, secure and resilient against the risk of future cyber attacks.

<https://www.gov.uk/government/news/new-fines-for-essential-service-operators-with-poor-cyber-security>

Link to the consultation

Some LAs may come within the definition of a service operator.

<https://www.gov.uk/government/consultations/consultation-on-the-security-of-network-and-information-systems-directive>

Government to strengthen UK data protection law

In a [statement of intent](https://www.gov.uk/government/consultations/general-data-protection-regulation-call-for-views) the Government has committed to updating and strengthening data protection laws through a new Data Protection Bill. It will provide everyone with the confidence that their data will be managed securely and safely. Research shows that more than 80 per cent of people feel that they do not have complete control over their data online.

The Data Protection Bill will:

* Make it simpler to withdraw consent for the use of personal data
* Allow people to ask for their personal data held by companies to be erased
* Enable parents and guardians to give consent for their child’s data to be used
* Require ‘explicit’ consent to be necessary for processing sensitive personal data
* Expand the definition of ‘personal data’ to include IP addresses, internet cookies and DNA
* Update and strengthen data protection law to reflect the changing nature and scope of the digital economy
* Make it easier and free for individuals to require an organisation to disclose the personal data it holds on them
* Make it easier for customers to move data between service providers

New criminal offences will be created to deter organisations from either intentionally or recklessly creating situations where someone could be identified from anonymised data.

<https://www.gov.uk/government/news/government-to-strengthen-uk-data-protection-law>

DEPARTMENT FOR EDUCATION

Direction: Waseem Yaqub barred from managing independent schools

Justine Greening, the Secretary of State for Education, finds Waseem Yaqub unsuitable to take part in the management of an independent school (including an academy or free school) [under section 128 of the Education and Skills Act 2008](http://www.legislation.gov.uk/ukpga/2008/25/section/128).

The barring decision also has the effect of disqualifying the person from being a governor at a local-authority-maintained school.

A useful reminder of this power.

<https://www.gov.uk/government/publications/direction-waseem-yaqub-barred-from-managing-independent-schools>

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Consultation outcome

Local authority environmental regulation fees and charges 2017

We received 43 responses to this consultation.

The revised charging schemes for both the [LAPPC (Part B)](https://www.gov.uk/government/publications/permits-for-solvent-emission-fees-and-charges-for-applications) and [LA-IPPC schemes (Part A2)](https://www.gov.uk/government/publications/permits-for-waste-incineration-fees-and-charges-for-applications) have been published.

<https://www.gov.uk/government/consultations/local-authority-environmental-regulation-fees-and-charges-2017>

FOOD STANDARDS AGENCY

Food incidents: advice for local authorities

The European Commission's Rapid Alert System for Food and Feed (RASFF) allows authorities to exchange information about measures taken when responding to serious risks detected in relation to food or feed.

<https://www.food.gov.uk/enforcement/enforcework/report>

Publications

The FSA produces a wide range of publications for the public and the food industry.

A reminder of the FSA’s publications, which could provide a helpful starting point for research.

<https://www.food.gov.uk/about-us/publications>

LOCAL GOVERNMENT AND SOCIAL CARE OMBUDSMAN

Man banned from visiting relative in her care home without proper assessment

The Ombudsman’s investigation into the man’s complaint found the council did not carry out a risk assessment or ask the mother’s wishes before banning him, took several years to review the restriction and then failed to tell the care home it had lifted the ban.

<http://www.lgo.org.uk/information-centre/news/2017/aug/man-banned-from-visiting-relative-in-her-care-home-without-proper-assessment>

LAW SOCIETY

Planning and environmental legislation update - August 2017

<https://www.lawsociety.org.uk/news/stories/planning-and-environmental-legislation-update-august-2017/>

LOCAL GOVERNMENT ASSOCIATION

Delivering local solutions for public library services

Written for all councillors who have an interest in supporting the development of public library services, this guide will take you through the how and why of transformation in your area. Whether you are a portfolio holder with responsibility for libraries and wider cultural services, or a ward councillor who has campaigned tirelessly to keep a local library open in a period of cost-cutting and rationalisation, it will set out ways in which you can ensure your library service excels and meets the needs of your communities.

<https://www.local.gov.uk/delivering-local-solutions-public-library-services>

Preventing drug related deaths

<https://www.local.gov.uk/preventing-drug-related-deaths>

Councillor workbook: being an effective ward councillor

<https://www.local.gov.uk/councillor-workbook-being-effective-ward-councillor>

Worth dipping into these useful guides for councillors. And drawing them to your councillors’ attention.

CASES

Court of Appeal

[London Borough of Southwark & Anor v Transport for London [2017] EWCA Civ 1220 (04 August 2017)](http://www.bailii.org/ew/cases/EWCA/Civ/2017/1220.html)

When the Greater London Authority was created, it assumed responsibility for certain highways in the Greater London area. To this end, Transport for London (TfL), a body responsible to the Mayor of London, was made the highway authority for highways designated by the Secretary of State as "GLA roads". In order to give effect to this, the Secretary of State by statutory instrument transferred from the council of the relevant London borough to TfL "in relation to each GLA road … the highway, in so far as it is vested in the former highway authority".

The issue on this appeal is whether the effect of that provision was to transfer to TfL the entire interest of the relevant council in the land on which the highway ran (in so far as not already appropriated to some other use) or only the surface of the highway and sufficient sub-soil (normally called the two top spits) as is necessary for the maintenance of the surface.

The Court of Appeal, in reversing the Judge’s decision below, confirms the usual view of highway lawyers that title in a highway is normally (but not always) limited to the highway surface and the land immediately above and below to meet the needs of the highway, and therefore any subsequent vesting, by reason of local government reorganisation etc, will normally only vest that portion of title and no more.

Admin Court

[Baroness Cuberlege of Newick & Anor v Secrtary of State for Communities And Local Government & Anor [2017] EWHC 2057 (Admin) (04 August 2017)](http://www.bailii.org/ew/cases/EWHC/Admin/2017/2057.html)

An application to quash a decision of the Sec of State is successful on two grounds, the Sec of state having conceded the first ground to the effect he had failed to have regard to a finding in an earlier decision.

[The Midcounties Co-Operative Ltd, R (On the Application Of) v Forest of Dean District Council [2017] EWHC 2056 (Admin) (04 August 2017)](http://www.bailii.org/ew/cases/EWHC/Admin/2017/2056.html)

A case exposing the risks of planning decisions being made by full council, particularly where the decision goes against officer advice. Planning lawyers and MOs should consider at what stage and in what way they might assist their council meeting making a decision that would resist challenge.

[Verdin (t/a the Darnhall Estate) v The Secretary of State for Communities and Local Government & Ors [2017] EWHC 2079 (Admin) (10 August 2017)](http://www.bailii.org/ew/cases/EWHC/Admin/2017/2079.html)

The Court upholds an appeal from the developer challenging the decision of the S of S to refuse planning permission, on appeal, in respect of which an Inspector had recommended approval. The three successful grounds of appeal (out of 12) were that the S of S rejected 3 proposals for planning conditions to be attached without good reason.

In light of the inference that there appeared to be political lobbying of the S of S, maybe the message in the case above might also apply to the Department’s lawyers!

QBD

[Dacorum Borough Council v Bucknall (aka Acheampong) [2017] EWHC 2094 (QB) (10 August 2017)](http://www.bailii.org/ew/cases/EWHC/QB/2017/2094.html)

Does the temporary housing of a homeless person amount to occupation ‘as a dwelling’ pursuant to the Protection from Eviction Act after the LA subsequently accepts the housing duty? The appeal before The Hon Mr Justice Popplewell against the county court judgement was successful in holding, in the circumstances of this case, in the affirmative.

Family Division

[X (A Child) (No 4) [2017] EWHC 2084 (Fam) (07 August 2017)](http://www.bailii.org/ew/cases/EWHC/Fam/2017/2084.html)

The sequel to last week’s outspoken comments from Sir James Munby in this case. Probably as a result of his comments, the NHS has found a place for X.

‘Conscious of the dangers of falling into the fallacious trap of *post hoc ergo propter hoc*, I cannot escape the powerful feeling that, but for my judgment, the steps subsequently taken would have been neither as effective nor as speedily effective as appears to have been the case. This, however, is not a matter for congratulation; on the contrary, it is, of itself, yet further cause for concern. The provision of the care that someone like X needs should not be dependent upon judicial involvement, nor should someone like X be privileged just because her case comes before a very senior judge. I emphasise this because a mass of informed, if anecdotal, opinion indicates that X's is not an isolated case and that there are far too many young women in similar predicaments. How are they to be protected?’

Family Court

[J (A Child : Care Proceedings : Apportionment of Experts' fees) [2017] EWFC B49 (8 August 2017)](http://www.bailii.org/ew/cases/EWFC/OJ/2017/B49.html)

How should fees of expert witnesses be apportioned between the parties, particularly where the parents clearly cannot pay them? And what to do when the hourly rate exceeds the Chancellor’s maximum?

Court of Protection

[DM v Y City Council [2017] EWCOP 13 (15 June 2017)](http://www.bailii.org/ew/cases/EWCOP/2017/13.html)

A deprivation of liberty case involving an ‘abstinent alcoholic’ in a care home which does not allow the consumption of alcohol.

Senior Courts Costs Office

[RNB v London Borough of Newham [2017] EWHC B15 (Costs) (04 August 2017)](http://www.bailii.org/ew/cases/EWHC/Costs/2017/B15.html)

This judgment addresses the following issue which arose during the course of the detailed assessment of the Claimant's costs payable by the Defendant, pursuant to a Consent Order dated 4 January 2017: where the hourly expense rate claimed for costs incurred before the date of a Costs Management Order ("CMO") are reduced on detailed assessment ("the incurred costs") to what extent, if at all, should that reduction be reflected in the costs agreed between the parties or approved by the court for costs incurred after that date in the Claimant's costs budget ("the budgeted costs")?

First-tier Tribunal (General Regulatory Chamber)

[Jeffrey Levy v Information Commissioner (Dismissed : Freedom of Information Act 2000) [2017] UKFTT 2016\_0284 (GRC) (04 August 2017)](http://www.bailii.org/uk/cases/UKFTT/GRC/2017/2016_0284.html)

The Tribunal upholds an IC decision that a request was ‘manifestly unreasonable’, justifying the exception in EIR regulation 12(4)(b), in a case where the LA leaned over backwards to respond to continuing requests in circumstances where the applicant clearly disagreed with the LA’s decisions and was not going to be convinced otherwise.

Planning Inspectorate

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/636720/fps_x1355_7_4m_final_od.pdf>

The planning inspector declines to confirm an order made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 in respect of paths crossing land held under the Public Open Spaces Act 1906 on the basis that use by the public under POA cannot of itself qualify as use ‘as of right’ for the purposes of establishing a highway.

Thanks to our member in Durham for drawing attention to this decision.

Another important reminder that LA lawyers should not overlook old law which continues to be applicable to LAs. The property and trust implications of the 1906 Act remain relevant today.

ARTICLES

LGA to explore local government mutual to reduce cost of insurance

The Local Government Association has called on local authorities to become founding members of a local government mutual aimed at reducing the amount councils spend on insurance.

This has, of course, been done before; Municipal Mutual was founded by a group of local authorities in 1903.

[http://localgovernmentlawyer.co.uk/index.php?option=com\_content&view=article&id=31953%3Alga-to-explore-local-government-mutual-to-reduce-cost-of-insurance&catid](http://localgovernmentlawyer.co.uk/index.php?option=com_content&view=article&id=31953%3Alga-to-explore-local-government-mutual-to-reduce-cost-of-insurance&catid=56&Itemid=24&gator_td=KV7jKAJweBx8IRN4JMiAccJvzMy%2fr08gxHqWKikI%2buD0VcSwDVDNQo4edGSHA3L4jz2uLFzdW98Ibq4SWqDKpZs0HGfW6SDVtntad8wqNOFtFpI2V6zFWxoYGPxkXKpzMIxcDNW3OYzhTxEXpEBAYCW79UdzNLKOkydVjxShJfgBCqq38qIioXJumTAJr%2fyyZKkbxlbOETvsIe%2bfxF1pDaeCZugOW%2f7HhttiETvEFGhig%2b7XQFtmtaeBOSIC4pNmb3XhpGkfDj1Zz8Gt9uIPKw%3d%3d)

Openness in public procurement – a worthy cause facing new challenges

The establishment of more open public procurement systems, that is, procurement systems which offer foreign suppliers access to the award of public contracts on the basis of no less favourable terms than to domestic suppliers, constitutes an essential part of attempts to liberalise further global trade. Openness in public procurement is important in that it leads to greater and more effective competition in the award of public contracts, thereby encouraging innovation, delivering better value for money and ultimately, contributing to long-term economic development. However, like global trade liberalisation more generally, it has been facing a number of challenges recently.

<http://www.eversheds-sutherland.com/global/en/what/articles/index.page?ArticleID=en/Public_Procurement/openness-in-public-procurement-030817>

(To open links in blue, put the cursor on the link and either (1) press and hold the ctrl button and left click, or (2) put the curser on the link and right click, then press ‘open hyperlink’).

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