SPRING
NEWSLETTER 2015

dynesolicitors
SPECIALISTS IN REGULATORY LAW

WELCOME TO OUR SPRING NEWSLETTER

So what have Dyne Solicitors been up to since our last newsletter?

Well … we have spoken at events held at the NEC and at the Palace of Westminster, we've organised transport seminars involving the DVSA, acted in cases of such importance that they are due to be heard in the Court of Appeal and we've recently been shortlisted for some awards.

John Dyne and Jared Dunbar were pleased to attend and speak at an event held at the Palace of Westminster in March with the BSA. A number of MP's were in attendance alongside representatives from the Department for Transport.

DSL has also been involved in high level meetings with the Department of Transport and the Under Secretary of State at the Department for Transport on behalf of two trade associations in relation to proposed legislation changes.

In September, DSL was pleased to have the Environmental Agency attend our offices as the guest speaker for our quarterly consultancies meeting, to talk about the Industrial Emissions Directive (IED).

In February, Jared gave a presentation at the UK Concrete Show at the NEC on the forthcoming legislation changes affecting the mobile batching plant sector.

Also in February, DSL held a transport seminar in its Bangor offices where speakers included Jared Dunbar, DVSA and Tachodisc, amongst others. The event was very well attended and there was a lot of positive feedback. Similar events will be run again in the near future.

We've also been shortlisted for the Liverpool Law Society 2015 Legal Awards and are involved in the launch of Legal Alliance Wales.

Hugh Megarrell, Commercial Director

DYNE SOLICITORS SHORTLISTED FOR REGULATORY LAW FIRM OF THE YEAR AND JARED DUNBAR SHORTLISTED FOR JUNIOR LAWYER OF THE YEAR

Liverpool Law Society has announced the shortlisted nominees for the 2015 Legal Awards. The aim of the 2015 Awards is to recognise and celebrate the achievements of the Society's member law firms and individuals who have shown excellence in innovation or service, or made outstanding contribution to legal services.

Liverpool Law Society announced that the competition was fierce this year, with more firms taking part than ever before and a large number of submissions being received from a record number of member firms and individuals.

The judges have made their decision and we are delighted that Dyne Solicitors has been shortlisted for the Regulatory Law Award. We are also thrilled that Jared Dunbar has been shortlisted for the Junior Lawyer or the Year Award.

The winner of each award will be announced at the black tie Legal Awards Ceremony on Friday, 15th May 2015 at the Crowne Plaza Hotel, Liverpool City Centre. John Dyne said *"This is a great achievement for the Practice and Jared Dunbar and a reward for all the hard work and effort that is put in."*

PLANNING AND ENVIRONMENTAL ISSUES IN ROAD TRANSPORT

Environmental and planning issues go hand in hand with running a transport operation: from obtaining planning permission, control of emissions, and dealing with possible land contamination or fuel or other spillages. Company directors, officers and managers need to know how to avoid civil and possible criminal sanctions.

All businesses have dealings with banks, and banks like to lend on clean, uncontaminated sites with good title. If you are planning to borrow money using land as security, a thorough investigation of environmental and historic use is recommended even if the land is supposed to be "green field". Any potential problems can be discovered before the bank raises them. If you are considering buying land to use as a depot or warehouse, you need to be sure you have (or can get) planning permission to do so. There may be access issues you need to resolve, or a public footpath may cross the site. Forewarned is forearmed, so work done on environmental investigations in advance is never wasted.

During a site's day to day operations, undue noise or emissions can lead to complaints from neighbours, resulting in enforcement action being taken by the local authority for statutory nuisance or a civil claim in nuisance. Good practice on site will help to prevent this and avoid a breach of existing planning conditions.

Should the worst happen, and a claim, enforcement action or prosecution arise, expert advice must be taken immediately, before time limits kick in for appeals, or other challenges.

Environmental issues may also arise as a result of the actions by neighbours. Proposed developments may have an adverse effect on your operations (e.g. a planning application for housing, or "clean technology" proposals in close proximity) or other development which might release contamination onto your land. All issues need to be considered. Occasionally, land used for your operations may be subject to actual or threatened compulsory purchase by a public body, and you need to develop a strategy to fight the proposal or maximise your compensation entitlement.

If you are at all concerned about anything which might be classed as "environmental", or relates to planning, highways or compulsory purchase, please contact our offices.

IS THE ENGLAND AND WALES CRIMINAL SYSTEM FIT FOR PURPOSE IN ENVIRONMENTAL CASES?

The answer is our criminal system would be if the regulators acted proportionately and didn't bring inappropriate cases to Court. Environmental offences are strict liability offences meaning an act or omission giving rise to a breach of environmental legislation does not require knowledge of the offence or a deliberate intention to commit the offence or indeed any negligence on the part of the defendant.

In cases where environmental offences are committed the regulator can bring proceedings under Proceeds of Crime Act for the purposes of recovery of any criminal benefit arising out of the offence. The use of proceeds of crime makes perfect sense when dealing with criminals whose operations could not be regarded as legitimate – I am thinking of the criminal fraternity here not legitimate waste operators.

Why does proceeds of crime have any bearing or relevance with a legitimate business which may have breached a regulation, notwithstanding an otherwise good regulatory record? How is it right or fair that a Company that successfully defends proceedings brought against it can no longer recover its costs? How is it right or fair that an undertaking (whatever the entity), once convicted can be faced with a regulator suggesting that just because the company pleaded not guilty it showed no contrition or remorse, and so the logic follows it is not fit to hold a permit or a waste carriers registration?

It is neither right nor fair but this is the way our Environmental Laws are being enforced in England and Wales. The fault lies fairly and squarely with the regulator, not necessarily in terms of the decision to prosecute, but in terms of the zealous determination to destroy the operator once convicted. The only way to bring about change is to draw this to the attention of your local MP so that the issue can be raised in Parliament. Given the absence of any means of costs recovery through the Courts for an innocent company, and the likelihood that even an innocent individual will only recover 40% of their costs outlay, assuming ineligible for legal aid, the case is made for ensuring businesses protect themselves by taking out a decent legal Indemnity Insurance policy to cover regulatory risks.

For further advice on Environmental Law, please contact John Dyne on 01829 773100.

DYNE SOLICITORS LIMITED RECOGNISED AGAIN IN LEGAL 500 2014

Dyne Solicitors Limited announces that it has again been recognised in the prestigious Legal 500 listings. It has been recognised, in particular, for its work in transport law.

The Legal 500 series of guides reviews the strengths of law firms in over 90 countries in Europe, the Middle East, Asia, North and South America, and the Caribbean.

The Legal 500 is described as the definitive guide to the capabilities of legal practices across the UK. It is an independent guide and firms are recommended on merit after extensive research based upon interviews with clients, referrers and barristers, as well as mystery shopper exercises.

The recognition has come about as a result of the hard work the firm has put and success it has achieved in representing transport operators throughout the UK and Ireland.

PLANNING PERMISSION UNCHAINED?

One of the most frequent questions clients ask us as planning lawyers is – do I need to apply for planning permission to do this? The answer is increasingly "No", as the Government continues its' policy of extending the range of "Permitted Development" rights, begun in 2010.

These rights are contained in a statutory Instrument known in planning circles as the General Permitted Development Order 1995, and basically automatically grants planning permission for certain minor types of development, including changes of use, without the need to apply for permission. Certain types of development are subject to a requirement to first notify the local planning authority (LPA) of your intention, and ask whether prior approval will be required for certain aspects of the development, but this is not usually as onerous as having to actually apply for permission.

On 15 April 2015 the 1995 Order is replaced with a new consolidating 2015 Order, and at the same time the chains of the planning system are further loosened to give certain new types of permitted development rights for the first time:

- Conversion of retail (shop) premises to restaurants and cafes
- Conversion of a shop or betting office to use for financial or professional services
- Conversion of a shop to assembly or leisure use, eg. cinema, concert hall, gym, swimming pool
- Conversion of casinos/ amusement arcades or storage and distribution premises to a dwelling
- Temporary use of a building or land for film-making
- Installation of solar PV panels with a capacity of up to 1 megawatt on commercial buildings
- Shops can now incorporate "click and collect" facilities and larger loading bays
- Buildings used for waste facilities can now be extended within certain limits

A number of the above new rights are subject to the "prior approval" regime described above, but if you need more detailed advice on whether you need to apply for planning permission contact Lewis Denton on 01829 773110 or 07974 412505.

EARLY ACTION IS THE KEY WHEN TRANSPORT COMPLIANCE PROBLEMS ARISE

In the recent case of Hunterstrong Engineering Ltd t/a Northover Heavy Logistics and others, the Upper Tribunal reminded operators of the benefits of being proactive when issues arise.

Operators should have systems in place to prevent problems from occurring but, if problems do occur, then operators should instigate a thorough investigation immediately with the aim of determining the root cause of the problem. They should then implement new systems to prevent a similar instance from happening again. These systems should be monitored and audited regularly to ensure they are working correctly.

In the above case, the Tribunal stated that: "Operators who can say: 'I realised that something went wrong/was not satisfactory. These are the steps which I took to put matters right. They appear to have solved the problem', will put themselves in a stronger position than those who delay or wait to be told what to do."

Those operators who do not take remedial action at the earliest opportunity are less likely to have sufficient amounts of data to be able to demonstrate that their actions are actually working. Instead operators will simply have to rely on a promise to the Traffic Commissioner that things will improve and they should not be surprised if the Traffic Commissioner has some doubts.

That said Operators should realise that it is always better to turn up at a Public Inquiry today having implemented a corrective system yesterday than to have not implemented anything at all.

For further advice on any transport law issues, contact Jared Dunbar on 01829 773 105

SHOULD A HAULIER BE REPRESENTED AT COURT?

Although the operation of a commercial vehicle on a public road presents the same potential for the commission of an offence as does the use of a private car, the fact that an offence has been committed in a commercial vehicle tends to make the offence appear to be more serious in both the eyes of the public and the courts.

Additionally, whilst more drivers of private cars are reported for speeding offences, clearly reflecting the greater number of cars using the public roads, very few car drivers are stopped to enable their vehicle to be subjected to a thorough mechanical check.

The major difference between the driver and operator of a commercial vehicle and a private motorist lies in the fact that any conviction arising out of the use of a commercial vehicle may be reported to the Traffic Commissioner and there may be further sanctions, including the loss of an Operator's licence. The action taken by the Traffic Commissioner will depend upon the nature of the offence, and, of course, the size of the penalty will be seen as a clear indicator of the perceived gravity of the incident.

The transport operator is, therefore, in a unique situation facing the possibility of a double penalty for a single offence: with the potential for the second penalty to have a far greater impact than the first.

Notwithstanding that threat, an operator can see many offences as being no more than part and parcel of the risks arising from the daily operation of commercial vehicles and, for that reason, will want to spend as little time and money on the problem as possible, but the fact that a conviction is likely to be reported should never be forgotten.

Another very real risk arises from the fact that many judges, understandably, have no knowledge either of the workings of a commercial vehicle, or of the administrative requirements of a haulage undertaking. Add to this, the fact that commercial vehicles and their drivers are always portrayed in the worst possible light and generally are blamed for any problem on the road. Unhappily many courts appear to welcome the opportunity to 'strike a blow for the public' and impose penalties that are disproportionate to the alleged offence.

It is against this background that an operator needs to decide whether or not the cost of representation in the court is likely to be justified by the result. The purpose of representation is to try to make sure that the court understands the circumstances in which the alleged offence came to be committed. In a case of overloading, for instance, whether in relation to the permitted axle weight or to the permitted train weight, the load may have been put on the vehicle many miles away from the operating centre, and it is not unknown for a customer to mis-describe the weight of a load.

Equally, the responsibility for the repair of, or for the maintenance of, a vehicle may have been contracted out to a company whose reputation was excellent even if a subsequent check by the enforcement authorities found faults.

These facts need to be explained to the court in sufficient detail to enable the court to understand the difficulties faced by the operator. It should be the job of the representative to persist with the explanation even if the court is initially hostile. It is arguable that a court appearance should be seen as an opportunity to educate both the court and the public. The fact is that the cost of representation is nearly always a justifiable expense.

For further advice on any transport law issues, contact Jared Dunbar on 01829 773 105

HITTING A BARN DOOR JUST GOT EASIER

A new permitted development right allowing farm buildings such as barns to be converted into homes without the need to apply for planning permission was introduced in April 2014. The Government's intention was to increase the supply of housing, but these barn-to–home rights are provoking growing discontent in the countryside, particularly from applicants.

Under the new rules, applicants must notify Councils to decide whether prior approval is needed for proposed barn conversions' transport, highways and noise impacts. Councils also have to decide whether there is a risk of contamination or flooding and if the site makes conversion "otherwise impractical or undesirable". However, latest Government figures show that in the final quarter of 2014 Councils refused 58% of all applications for prior approval. This high refusal rate has caused anger from property groups and concern amongst Ministers. The Country Land and Business Association (CLA) has called the situation a "scandal" and has urged Ministers to intervene.

It appears that the most common reason for Councils to refuse applications is the sustainability of the location, under the requirement to consider whether the siting is "otherwise undesirable". Lobby groups take the view that many Councils dislike the loss of control the permitted development right involves, and are using the rather ambiguous wording of the right to justify refusal.

However, the Government has come to the rescue of applicants. In March it updated its' online planning guidance, adding new detail on how it expects Councils and applicants to interpret the permitted development rights.

The new guidance explains how the Government expects Councils to consider whether the location and siting of an agricultural building would make it "impractical" or "undesirable" to change the use to a house. "impractical" reflects that the location and siting would "not be sensible or realistic", and "undesirable" reflects that it would be "harmful or objectionable". The guidance says "That an agricultural building is in a location where the local authority would not normally grant permission for a new dwelling is not a sufficient reason for refusing prior approval".

It remains to be seen whether this makes it more difficult for Councils to refuse applications, but in theory at least it should now be easier to hit that barn door….

If you have any questions about this contact Lewis Denton on 01829 773110 or 07974 412505.

LEGAL ALLIANCE WALES

Together with Swayne Johnson Solicitors and Knox Commercial, Dyne Solicitors have launched a consortium of qualified experts in specific business fields under the global brand of Legal Alliance Wales, LAW for short.

The aim is to join forces and provide bilingual expertise 'on the doorstep' concerning business and corporate issues and specialist advice for highways, minerals, energy, insolvency and agricultural matters. LAW will offer truly expert legal services to businesses or individuals in any sector

Through its members, LAW has offices across north Wales, from Bangor in the west to Ruthin in the east, and into the north west of England with our office in Tattenhall, Cheshire.

Swayne Johnson Solicitors Managing Director Sarah Noton said: "The prevailing thinking for many firms in North Wales is that you have to look to Chester, Liverpool or Manchester for the kind of corporate law knowledge that many believe only comes from big, city-based firms.

"We knew that between our practices we could easily match that expertise and even exceed it in many areas." Jonty Gordon, a Bangor-based Solicitor for Dyne Solicitors, added: "Given the choice, people would prefer they used a local solicitor. The time and money saved on travel is one thing, but we also know that being closer to the client, we can offer a much more 'hands-on' service. The client-solicitor relationship tends to be stronger, and that makes us more effective."

Andrea Knox, Managing Director of Knox Commercial & Insolvency has expertise beyond that of many larger firms, but admits she can be overlooked because of a perception that such skill can't be found in North Wales.

"I've worked in and then managed restructuring and insolvency departments for respected, international law firms for most of my career," she said. "But people still believe that kind of knowledge can only be found in big city practices. I learned much of my knowledge there but that knowledge has not left me just because I am now based in North Wales. The client service from me is the same but without the city overheads"

"Being local means I can build a better relationship with the client, become involved at an earlier stage when a struggling business can still be saved, be more hands-on and proactive and really make a difference in terms of a more positive outcome."

If you are interested please call 0333 444 2 888 or visit www.legalalliance.wales

IS THE GAMBLE OF NOT BEING REPRESENTED AT PUBLIC INQUIRY WORTH IT?

The Traffic Commissioners' Annual Reports 2013-14 were recently published and the data on Public Inquiries makes interesting reading.

Although the actual number of Goods Vehicle Operators Public Inquiries held has fallen from 996 in 2012-13 to 915 in 2013-14, the proportion of operators having their licences revoked at these hearing has increased by approximately 5% in the same period.

In 2013-14:

- Over 35% of Goods Vehicle operators attending Public inquiry had licences revoked.
- Over 48% of Goods Vehicle operators attending Public Inquiry had licences revoked or suspended.

This makes stark reading for those operators who think it is not worth investing in proper representation for their Public Inquiry. All too often we hear operators tell us that they'll "go on their own and see what happens." This is a risky attitude to have and one wonders whether these are the operators who end up in the 48% of operators who attend Public Inquiry and have their licences revoked or suspended.

It is important that operators prepare thoroughly for Public Inquiry and, not only make sure they take all the relevant evidence with them on the day, but make sure that evidence is presented properly to the Traffic Commissioner. It is an unfamiliar situation for most people and even the most confident and articulate of operators can become tongue-tied under the stresses of an Inquiry.

Therefore Operators should carefully consider the gamble they may be taking by attending a Public Inquiry on their own. An Operator should ask itself:

- How important is my licence to my business?
- Could my business function without a Licence?

What may appear an unnecessary cost to an operator called to Public Inquiry, that cost pales into insignificance when set against the financial cost of an unsatisfactory outcome.

For further advice on any transport law issues or to enquire about representation at a Public Inquiry, contact Jared Dunbar on 01829 773 105

THANK YOU

for taking the time to read our newsletter.
We hope you found it useful and informative.
Should you have any questions then please contact Katharine Narici on 01829 773100.

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