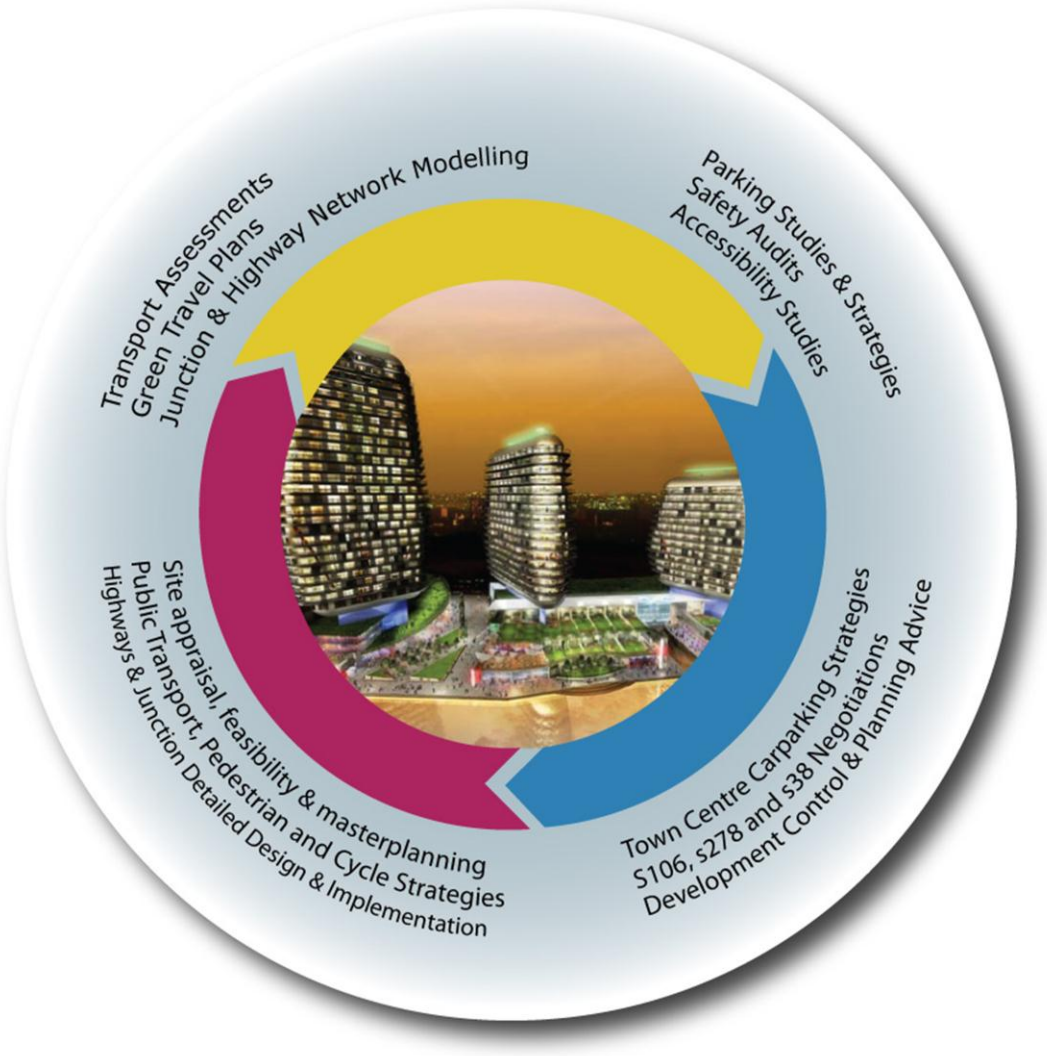

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LANDOWNERS ... EVERY LITTLE HELPS?

Owners of land used by the public will be aware of their duties to protect individuals who use that land from harm (even where they have not been invited onto the land). If they fail to take adequate steps to do this and someone is injured while on the land, the landowner could be subject to a claim under the Occupiers Liability Act 1957 (the "1957 Act").

In Harvey (Jonathan) v Plymouth City Council [2010] EWCA Civ 860, the Court of Appeal recently ruled that the Council was not liable for injuries sustained by a drunken student under the Act. Notwithstanding this outcome, landowners should treat the decision with a degree of caution and should remain aware of issues affecting land which may need to be addressed in order to safeguard against potential injury claims from authorised or unauthorised visitors.

It is useful to note though that the *Plymouth* case is a useful reminder that while a landowner still has obligations, an injured party's ability to make a claim will be influenced by his own conduct on the land - either by virtue of the condition he is in when using it, or how he goes about making use of the land and whether his use is within the range of permitted uses allowed by the landowner. The reasoning behind this decision can perhaps best be summed up by a quotation from a 1920s case: "*when you invite a person into your house to use the staircase, you do not invite him to slide down the banisters.*"

Background

The area of land in question in the *Plymouth* case was a small strip of shrub and grass land adjacent to a Tesco car park. Separating this land and the car park was a small chain link fence which had fallen into disrepair - in particular, the chain link fence had been pushed down to about a foot from the ground. Beyond this was a sharp drop of approximately 5.5m onto the car park below.

The land had previously been occupied by Tesco under a licence from the Council however, the licence had lapsed some time prior to the incident which meant that possession of the land had at the relevant time reverted to the Council. Unusually, the Council was unaware that the licence had lapsed and of its consequent duty to maintain the land. There was also some evidence to suggest that the area was used informally by local youths as a place to congregate.

The Claimant in this case was Mr Harvey, a 21 year old university student who had been out drinking with friends. It was late at night and he ran over the shrub and grass strip, tripped over the chain link fence and fell head first into the car park below. He suffered serious head injuries as a result of the fall.

Mr Harvey issued a claim for substantial compensation against the Council under 1957 Act.

Decision

When the claim was first heard in the High Court, the Council was found to be liable. However, this decision was reversed by the Court of Appeal.

The Court determined that although the Claimant had not received any express invitation to be on the land, there was an implied general licence to use the land for recreational activity (as indicated by the historic use of the area as a gathering place for local youths).

While this implied licence allowed the Claimant to be on the land, it was considered that he had exceeded the scope of his implied permission by behaving in a drunken and reckless manner.

In reaching its decision, the Court of Appeal referred to the quotation referred to above from a 1920s case. In other words, just

because an individual is permitted to use land for one purpose, this does not mean that a duty of care is owed to that individual by a landowner regardless of what he does. The duty under the 1957 Act does not extend beyond the scope of the activities for which the licence has expressly or impliedly been given.

A change in the duty of care owed by landowners?

Although undoubtedly encouraging news for landowners, in practice this case does not actually operate to limit the duty of care owed by landowners to visitors on their property. Had the incident occurred in daylight; had the Claimant been sober; or had his behaviour been within the scope of activities permitted by the implied licence, it is possible that the Court of Appeal would have reached a different verdict.

In reaching its decision, the Court of Appeal gave great weight to the Claimant's drunken state at the time the injuries were sustained. Establishing just how drunk a person needs to be in order to go beyond an "acceptable" level is likely to be subjective and not easily measurable. Landowners should therefore be wary of placing too much reliance on this case when seeking to defend actions brought by claimants who were under the influence of drink or drugs at the time any injuries were sustained.

The case is however a reminder that courts are conscious of not wishing to force duties upon unwilling hosts.

In order to limit the risk of exposure to actions under the Act, landowners should be mindful of the following:

- Be aware of exactly what land is in your possession and control;
- Be sure to maintain properly any fences or other protective barriers adjacent to potential hazards such as sheer drops or dangerous equipment; and
- Although an injured party's own actions will be taken into account when considering issues of liability and contributory negligence, avoid placing too much reliance on this and, wherever possible, take reasonable steps to avoid such incidents occurring in the first place.

This bulletin summarises complicated issues and should not be relied upon in relation to specific matters. You are advised to take legal advice on particular problems and we will be happy to assist. For further information please contact: Martin Edwards, Partner & Head of Real Estate Disputes or Michael Lawrence Partner, Real Estate Disputes as detailed below.

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