# maples teesdale

# Legal alert

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## PUBLIC LAW OF NO RELEVANCE IN COMMERCIAL LAND TRANSACTION DISPUTE WITH LOCAL AUTHORITY

The recent Court of Appeal case of Dudley Muslim Association v Dudley Metropolitan Council [2015] EWCA Civ 112 is a reminder that if a local authority enters into a commercial land transaction it is entitled to behave just like any other private contracting party, even though, as a matter of public law, it is obliged to exercise any of its statutory powers in a fair and reasonable manner.

In this case, Dudley Muslim Association bought from Dudley Metropolitan Council a derelict site on which it wished to build a mosque and community centre. As the site was in a prominent position and the Council did not want it to remain derelict for too long the Association agreed to transfer the site back to the Council if the work had not been completed within a specified period.

The Association then applied for planning permission for the development.  The Council, in its statutory capacity of planning authority, turned down the planning application (despite a recommendation of approval from the planning officer).  Although permission was eventually granted, the deadline for completion of the development was missed and the Council duly requested the re-transfer.

The Association invoked the public law principles of legitimate expectation and abuse of power.  It said that the re-transfer would breach the Association's legitimate expectation that the Council would extend the deadline, having regard to delays caused by the Council as planning authority.  Moreover, the Council was abusing its power by unfairly insisting on its strict contractual rights.

The Court disagreed with the Association.  The public law principles of legitimate expectation and abuse of power do not apply to the (private) law of contract.  The Council's power to insist on the re-transfer arose from its contractual rights, not from its statutory public functions.  The Council was therefore entitled to enforce the strict terms of the contract, harsh though they may seem.