

EVEBRIEF

Legal & Parliamentary

Volume 34(17) 17 December 2012

01	Government	21	Leasehold Reform
02	Local Government	22	Tort
06	Landlord & Tenant	24	Energy
12	Planning	25	Environment
17	Rating	27	London Assembly Government
19	Housing	29	General

CONTRACT TERMS AND EVEBRIEF'S FUTURE



Tony Chase
Editor

We report at items 06 and 09 the decisions of the courts in two contrasting cases involving disputes as to the meaning of terms in a contract. They follow the established position which often seems not to be fully understood by one or both of the parties to such disputes. The Court of Appeal made it clear in *Daejan Properties v Campbell* (item 06) that express terms should be read literally, whatever the view of the parties as to whether they are sensible or reasonable, unless there is a clear error and the correction needed is equally clear.

In *Arnold v Britton* (item 09) the parties were in dispute as to the meaning of a term which was evidently unclear or ambiguous; the court held that in such cases the correct approach is to consider the apparent purpose of the term and the background to it and then decide what it means and how it operates.

We are currently undertaking a complete review of Evebrief, including its style and content and readers' 'likes and dislikes'. If you receive Evebrief by direct email you will have been asked in the email to let us have your views in a short questionnaire; we would be very grateful if you would assist us in this exercise so that we can try to ensure that Evebrief continues to be as interesting and relevant as possible to all those who receive it.

Finally, the Editorial team wish all readers a happy and peaceful Christmas and New Year.



GERALDEVE

GOVERNMENT

01 Government Report

Decentralisation: An assessment of progress

The Government is committed to decentralising its powers, believing that this is the way forward for creating the conditions that are needed in order to achieve sustainable growth, better public services and a stronger society. This report by the Rt Hon Greg Clark MP assesses how 12 government departments are decentralising power and puts forward his personal recommendations for the next steps. It makes the case for decentralisation based on the guide to decentralisation and the Localism Bill which was published in December 2010 and the final chapter sets out three sets of policy recommendations:

- i. ongoing assessment of departmental progress on decentralisation;
- ii. proposals for the next wave of decentralising reforms; and
- iii. a strategy for the support services provided centrally to local people and institutions.

<https://www.gov.uk/government/publications/decentralisation-an-assessment-of-progress>

LOCAL GOVERNMENT

02 Statutory Instrument

SI2012/2964 The Council Tax (Prescribed Classes of Dwellings) (England) (Amendment) Regulations 2012

This Order, which comes into force on 01.04.13, amends the 2003 Regulations. Section 11(2) of the Local Government Finance Act 1992 ("the Act") makes provision for empty homes discounts of 50% while s11A of the Act makes special provision for England in relation to the empty homes discounts, providing for these to be reduced for certain classes of dwelling prescribed by the Sec of State. Section 11B of the Act makes provision for an empty homes premium to be charged in relation to such classes of long term empty dwelling as billing authorities choose, subject to exceptions prescribed by the Sec of State. These Regulations prescribe one additional class of dwelling for the purposes of s11A of the Act and two further classes of dwelling for the purposes of s11B.

<http://www.legislation.gov.uk/uksi/2012/2964/contents/made>

03 Statutory Instrument

SI 2012/2965 The Council Tax (Exempt Dwellings) (England) (Amendment) Order 2012

This Order, which also comes into force on 01.04.13, amends the 1992 Order which exempts certain classes of dwellings so that they are not liable for council tax. Classes A and C are removed from the Order so that they are no longer exempt from council tax. Class A covered for a 12 month period empty homes requiring or undergoing major repair work or structural alteration, or having undergone either if less than six months had elapsed since the works were substantially completed. Class C covered empty homes for a six month period or less.

<http://www.legislation.gov.uk/uksi/2012/2965/contents/made>

04 CLG Statistical Release

Local Authority Council Taxbase 2012 in England

This release provides revised information relating to the local authority council tax based on the VOA Valuation List as at 10.09.12 and 12.09.11. The information is derived from Council Tax Base and Council Tax Base (Supplementary) forms submitted by all 326 billing authorities in England.

- In England there were 22.4 million dwellings liable for council tax as at 10.09.12, 1% more than in 2011 and 3% more than in 2008.
- The number of dwellings on the valuation list that are exempt from council tax has increased by 2% compared with 2011.
- 7.7 million dwellings were entitled to a discount as a result of being occupied by single adults, representing 33% of all dwellings.
- There was a net reduction of 20,000, or 7%, in the number of long term empty dwellings between 2011 and 2012.

<https://www.gov.uk/government/publications/council-taxbase-2012-in-england>

05 CLG Responses to Consultation

Localising support for Council Tax: funding arrangements

This document summarises views received in response to the localising support for Council Tax funding arrangements consultation which was held between May and July 2012, and confirms the government's approach. It also provides an update on wider aspects of the funding arrangements for local Council Tax support schemes.

<https://www.gov.uk/government/consultations/localising-support-for-council-tax-funding-arrangements>

LANDLORD & TENANT

06 Court of Appeal

Service charge – construction of lease

**DAEJAN PROPERTIES LTD V CAMPBELL
(2012) PLSCS 250 – Decision given 20.11.12

Facts: The appellant, C, was the long leaseholder of a third and fourth floor maisonette in a Georgian house in London W1. The respondent, DJL, her landlord, held a long lease of the entire property which included a disused basement, doctor's waiting rooms on the ground and first floors and another flat on the second floor. The lease required C to pay to the lessor two-fifths of the expenses that it incurred in performing a covenant "To keep the roof and outside walls of the premises in good repair". Between 2005 and 2006 DJL carried out substantial renovation works to the house and contended that C was liable to pay for two fifths (40%) of its expenses in repairing the whole house, including the flat roofs over the basement and ground-floor extensions, while C argued that she was only liable to pay 40% of the costs relating to the main roof and external walls of the maisonette.

Point of dispute: Whether C's appeal would be allowed against the ruling of the court below, which granted a declaration that the use of the word "premises" in the relevant clause of the lease had been a mistake and that it should be construed as if the word "house" had been used instead.

Held: The appeal was allowed. The court should give effect to the strict terms of a contract; if it did not say what the parties had intended, the correct course was an action for rectification. There had to be a clear mistake in the document, and in order to decide whether this was the case the court could look beyond the document itself and consider the background or context – it had to be clear both that something had gone wrong in the language of the document and what a reasonable person would have understood the parties to have meant. Applying this test there were no grounds for reading the word "premises" in the relevant clause of C's lease as if it said "house". It would have been too onerous to expect the lessee of the maisonette to pay two fifths of the costs of repair of the entire building as the maisonette only represented 29.2% of the entire floor area of the house and, furthermore, when construing a lease there was no presumption that the service charge provisions would enable the landlord to recover all of its expenditure. The lease should be construed as meaning what it said.

07 High Court

Acquisition by tenants of reversionary interest – notice under s27 of Landlord and Tenant Act 1987

*ARROWGAME LTD V WILDSMITH
(2012) PLSCS 255 – Decision given 22.11.12

Facts: The respondents were the long lessees of 11 out of 12 flats in a block and a company incorporated by them for the purposes of acquiring the reversionary interest in the property. The headlessee was the appellant company, A, which bought the head lease in 1993. Initially the property was managed by a professional firm, but later on by G, who owned the lease of the remaining flat. In 2006 the LVT appointed a property manager under Part II of the Landlord and Tenant Act 1987 and subsequently the respondents served a notice on A under s27 of the Landlord and Tenant Act 1987 of their intention to apply to the court for an acquisition order under Part III of the Act. They contended that the appointment of a manager had not resolved problems they had experienced with G, and that A, who was represented by G, had failed to co-operate with the manager.

Point of dispute: Whether A's appeal would be allowed against the decision of the judge in the court below who granted the acquisition order.

Held: The appeal was dismissed.

- i. The notice had to state the reasons why the applicants contended it was an appropriate case for an acquisition order, but it did not have to say which of the conditions under s29(2) or (3) was being relied upon as the foundation for invoking the court's jurisdiction.
- ii. S27(2)(d) envisaged that, where the matters relied upon for the purpose of establishing the grounds for making an order were capable of remedy, the landlord should also be required to take steps to remedy them and given a reasonable time in which to do so.
- iii. In this case the s27 notice set out a number of complaints in sufficient detail for G and A to be able to address them. The notice was valid and there was no basis for interfering with the exercise of judicial discretion to make the acquisition order.



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08 High Court

Assessment of damages for trespass

*EATON MANSIONS (WESTMINSTER) LTD V STINGER COMPANIA DE INVERSION SA (2012) PLSCS 258 – Decision given 27.11.12

Facts: The claimant, EMW, was the headlessee of a substantial mansion block of flats in central London. The defendant, SCI, who was the underlessee of two flats in the block, installed air-conditioning units on the roof of the building in June 2007. At first instance, and on appeal, it was held that the presence of the air-conditioning units on the roof was a trespass.

Point of dispute: How damages for the trespass should be assessed. EMW sought restitutionary damages, compensatory damages and mesne profits for the period of the trespass. It also claimed aggravated and exemplary damages.

Held: The claim was allowed in part and damages of £6,000 awarded.

- i. SCI had made no profit from the presence of the units so restitutionary damages were not appropriate.
- ii. The appropriate measure for assessing damages in this case was the negotiating damages model. This would represent the sum that EMW might reasonably have demanded from SCI in June 2007 as a quid pro quo for permitting the continuation of the breach of covenant or other invasion of right. Such damages are compensatory in nature and can be appropriate to a temporary trespass case.
- iii. Alternative solutions and available to SCI could not be brought into the equation if their effect would have been to eliminate the trespass.
- iv. In this case the subject matter of the hypothetical negotiations was a temporary licence to have the trespassing air-conditioning lawfully in place on the roof for a specified period. On the evidence the parties would have negotiated £6,000 for a temporary licence and this was the sum that should be awarded as damages. There was no scope for an award of mesne profits.
- v. Aggravated damages were awarded when a claimant had suffered distress or injury to feelings. This was not appropriate to a corporation.
- vi. In this case, SCI's conduct had not been sufficiently outrageous to justify the punitive and last resort award of exemplary damages.

09 High Court

Construction of lease regarding service charge provisions

*ARNOLD V BRITTON (2012) PLSCS 264 – Decision given 03.12.12

Facts: The appellant, A, was the landlord of leisure park near Swansea on which 91 chalets had been constructed. The respondents were various lessees of some of the chalets under 25 long leases. Clause 3(2) of each of the leases referred to the service charge payable in respect of each chalet increasing by 10% per annum. After a period of some years the parties entered into a dispute about the meaning and effect of the service charge provisions. A sought a declaration that the respondents were obliged to pay a fixed sum of £90 in the first year of the term and thereafter a fixed sum which rose at the rate of 10% per annum. He also sought a declaration that these sums were not a "service charge" within the meaning of s18 of the Landlord and Tenant Act 1985 (and so not governed by its provisions), because the clause provided for a fixed charge rather than one which varied with the cost of relevant services. The respondents argued that each version of clause 3(2) provided for a variable service charge, with a cap of £90 in the first year of the term and thereafter a cap which rose at the rate of 10% per annum.

Point of dispute: Whether the A's appeal would be allowed against the ruling of the county court judge in favour of the respondents.

Held: The appeal was allowed. The matter had to be considered in accordance with the general principles which governed the construction of commercial documents – the wording of the charging provision had to be examined in its context and against all the admissible background and in the light of the apparent commercial purpose of the clause. A clause which allowed a lessor to recover an initial fixed sum adjusted for inflation served an obvious commercial purpose and, to be consistent with general principles which governed the construction of commercial documents, the clause could not be construed in any other way than to A's advantage. Accordingly, the relevant clause in each case did not provide for the payment of a service charge as defined in s18(1) of the 1985 Act.

10 Upper Tribunal Lands Chamber

Breach of covenant – payment of costs

*MERCIA INVESTMENT PROPERTIES LTD V NORTHWAY
(2012) PLSCS 257 – Decision given 20.11.12

Facts: The respondent, N, took an assignment of a lease, the terms of which required her to give notice of the assignment and pay a registration fee to the appellant landlord, MIP. Six months later MIP's managing agent wrote to her stating that she was in breach of covenant and asking her to admit the breach. N sent a notice of assignment and the fee to the agent; MIP banked the cheque and the amount was deducted from N's bank account. MIP then applied to the LVT under s168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that there had been a breach of covenant, but N contended that the breach had been rectified by the sending of the notice and cheque and remedied when MIP had presented the cheque to the bank. N submitted that the application should be dismissed as being vexatious and an abuse of process and that MIP should be ordered to pay her costs.

Point of dispute: Whether MIP's appeal would be allowed against the LVT's ruling that MIP should pay N's costs. MIP argued that once the LVT had determined that the application was not frivolous or vexatious it had no power to award costs since the test under para 10(2)(b) of Schedule 12 to the 2002 Act was not met; moreover, even if the application had been vexatious, any award of costs would have been limited to £500 by virtue of para 10(3)(a) as the LVT had no power to make the award it did, which was effectively an unlimited costs order for unspecified costs.

Held: The appeal was allowed and the LVT's costs order was quashed. The LVT should not have made an award of costs in N's favour in circumstances where, although it had found MIP's conduct to be not far short of vexatious or an abuse of process, it had not found it actually to be so. The order was also unlawful as it was made without reference to the £500 limit imposed by para 10(3)(a).

11 RICS Publication

Guide to Lease-end dilapidations in commercial property

This guide to "dilapidations" – breaches of lease covenants that relate to the condition of the property and the process of remedying those breaches – is concerned with breaches by the tenant and the remedies available to the landlord at the end of the lease term.

<http://www.rics.org/uk/knowledge/more-services/guides-advice/guide-to-lease-end-dilapidations-in-commercial-property/>

PLANNING

12 Statutory Instrument

SI 2012/2920 The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012

These Regulations, which came into force on 22.11.12, consolidate and amend the 1989 Regulations and subsequent amending instruments, so far as they apply to England. They provide for the payment of fees to Ipas in connection with applications for planning permission for development, for approval of reserved matters under an outline permission or for advertisement consents. They also apply to fees for planning permission applications deemed to have been made by virtue of s177 of the Town and Country Planning Act 1990, in connection with an appeal against an enforcement notice; in connection with a certificate for lawful use or development or a certificate of appropriate alternative development under s17 of the Land Compensation Act 1961; and in connection with site visits and for fees to be paid to the Sec of State in respect of applications for urgent Crown development. The most important changes are as follows:

- All fees are increased by approximately 15%;
- These Regulations will remain in force for seven years;
- All fees in respect of deemed applications will now be paid to the Ipa;
- The fees for urgent Crown development applications will be paid to the Sec of State;
- Fees in respect of an application for a certificate of appropriate alternative development will be payable to Ipas; and
- The Sec of State is to review the operation and effect of these Regulations and publish a report within five years.

<http://www.legislation.gov.uk/uksi/2012/2920/contents/made>

13 Statutory Instrument

SI 2012/2975 The Community Infrastructure Levy (Amendment) Regulations 2012

These Regulations, which amend the 2010 Regulations, came into force on 29.11.12. For our commentary on the changes which have been made, see Evebrief Volume 34(15), item 6, when we reported on the draft Regulations.

<http://www.legislation.gov.uk/uksi/2012/2975/contents/made>



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14 CLG Consultation

Nationally significant infrastructure planning: expanding and improving the 'one-stop shop' approach for consents
Deadline for Comments: 07.01.13

This consultation seeks views on proposals to expand and improve the "one-stop shop" approach for (non-planning) consents for the planning regime for nationally significant infrastructure projects, and in particular on the following proposals:

- To establish new arrangements to improve coordination and communication between the Planning Inspectorate, applicants and other consenting bodies so as to make the overall consents process more efficient;
- To amend secondary legislation so as to streamline the list of consents which are outside the development consent process; and
- To amend secondary legislation to update and streamline the list of prescribed consultees in the development consent process. It is also proposed to redefine the term "relevant" in order to exclude mandatory consultation of certain bodies that are responsible for areas that are more distant from the development site.

<https://www.gov.uk/government/consultations/nationally-significant-infrastructure-planning-expanding-and-improving-the-one-stop-shop-approach-for-consents>

15 CLG Consultation

Nationally significant infrastructure planning: extending the regime to business and commercial projects
Deadline for Comments: 07.01.13

The Growth and Infrastructure Bill has introduced a power to bring new business and commercial projects within the nationally significant infrastructure planning regime. This consultation seeks views on the secondary legislation which will be needed to support that, in particular the types of business and commercial projects to be prescribed in the regulations.

<https://www.gov.uk/government/consultations/nationally-significant-infrastructure-planning-extending-the-regime-to-business-and-commercial-projects>

16 CLG Statistical Release

Local authority green belt statistics for England: 2011 to 2012

- It is estimated that in 2011/12 the extent of the designated Green Belt in England is 1,639,410 hectares, representing 13% of England's land area.
- Since 2010/11 the extent of the Green Belt has reduced by 130 hectares, mainly because three authorities have adopted new plans in which the boundaries of the Green Belt have been changed.
- The amount of land in the Green Belt has increased since the statistics were first compiled in 1997.

<https://www.gov.uk/government/publications/local-authority-green-belt-statistics-for-england-2011-to-2012>

RATING

17 CLG Statistical Release

National non-domestic rates collected by local authorities in England 2011-12

This release, which supersedes the release issued on 15.08.12, provides updated information on national non-domestic rates and associated information for the financial year 2011-12 and changes over previous years.

- The net rate yield (after allowances and reliefs) increased by 9.1% to £21 billion in 2011-12.
- The contribution to the pool (net rate yield after allowances for collection costs including losses) also increased by 9.2% to £20.7 billion.
- Since 2007-08 the contribution to the pool from the local lists has increased by £3.5 billion or 21%.
- London accounts for 29% of the contribution, although it has only 15% of the population.

<https://www.gov.uk/government/publications/national-non-domestic-rates-collected-by-local-authorities-in-england-2011-12-update>

18 CLG Policy Statement

Business rates retention: policy statement

Following consultation the Government's proposals for business rates retention were published in December 2011 at the same time as the Local Government Finance Bill, which became an Act in November 2012 and brought the reforms into effect. This policy statement confirms the Government's policy decisions in key areas ahead of the provisional Local Government Finance Settlement which will constitute the Government's formal response to the July 2012 consultation on detailed implementation. The following key issues are addressed:

- Strengthening of the incentive levy so that a higher proportion of business rates generated locally will be retained locally;
- Limiting risk – Authorities are guaranteed 92.5% of their original baseline funding under the scheme;
- Establishment of start-up funding assessments and baseline funding levels – The Government is confirming the approach set out in the technical consultation with changes in three areas to respond to consultees' views;
- Volatility and appeals – The Government is confirming its proposals to supplement the support provided to authorities experiencing business rates volatility through the general safety net with a downward adjustment to the estimated business rates aggregate to ensure that it provides a realistic assessment of authorities' 2013–14 business rates. There will also be a further downward adjustment to the estimated business rates aggregate in order to provide for the impact of future appeals losses;
- Proportionate shares – The Government is moving from a calculation based on five years worth of historical data (2007/08 – 2011/12) to a calculation based on two years worth of data (2010/11 – 2011/12). This approach balances the need to smooth the effects of volatility with the benefits of using the most recent data available;
- Pooling – The Government is simplifying the arrangement for designating a pool and the operation of a pool once established;
- Major precepting authorities – The Government's proposals for sharing business rates between billing authorities and any major precepting authorities in their area are that 20% will go to county councils, 2% to single-purpose fire and rescue authorities and 40% to the Greater London Authority; and
- Mandatory and discretionary reliefs – Any changes in the cost of existing mandatory and discretionary reliefs between resets will be shared 50:50 between central and local government, in line with the general principle of the rates retention scheme that both risks and rewards should be shared. No change will be made to the mandatory rate reliefs which eligible ratepayers, such as charities, receive.

<https://www.gov.uk/government/publications/business-rates-retention-policy-statement>

HOUSING

19 CLG Supplementary Guidance

Homelessness changes in the Localism Act 2011: supplementary guidance

The Localism Act 2011 has amended the way in which the duty on local authorities to secure accommodation under s193(2) of the Housing Act 1996 can be brought to an end with an offer of suitable accommodation in the private rented sector. Local authorities can now bring their homelessness duty to an end with a private rented sector offer, without the applicant's consent. This supplementary guidance explains how these changes, which have been brought in under ss148 and 149 of the Localism Act, are to work and actions that should be taken by local authorities as a consequence. The guidance, which supplements parts of the 'Homelessness Code of Guidance for Local Authorities' published in July 2006, also explains the requirements of the Homelessness (Suitability of Accommodation) (England) Order 2012 which requires local authorities to put in place arrangements to ensure that the private rented sector offers accommodation that is suitable.

<https://www.gov.uk/government/publications/homelessness-changes-in-the-localism-act-2011-supplementary-guidance>

20 HCA Statistics

November Housing Market Bulletin 2012

The Housing Market Bulletin provides up to date information on the housing market, the economy and the housebuilding industry. It contains details of house price changes from the top house price indices including Nationwide, Halifax, the Land Registry and RICS, housing market forecasts, housing starts and completions, mortgage trends and information on the economy overall. Key trends reported include the following:

- House prices are falling gradually across most of the UK, although they are continuing to rise in London; and
- Following three consecutive quarters of recession, the GDP rate has begun to increase. Inflation is rising, and although unemployment continues to fall it is still high compared to the long term average.

<http://www.homesandcommunities.co.uk/ourwork/market-context>



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LEASEHOLD REFORM

21 Upper Tribunal: Lands Chamber

Enfranchisement of house converted into flats – appropriate method of valuing freehold reversion

**WESTMACOTT V ACKERMAN (2012) PLSCS 254 – Decision given 20.11.12

Facts: The respondent leaseholders sought to acquire from the appellant freeholders the freehold of two houses in the West Cliff area of Bournemouth. Both properties had been converted into flats with nine flats in the larger property and three in the smaller. Two of the flats in the larger property were used by the respondents as a single unit. The LVT valued the freehold reversions at £945,000 and £445,000 respectively at the valuation date in March 2008.

Point of dispute: Whether the appellants' appeal against the LVT's valuations would be allowed. They contended that the correct approach to valuation was to aggregate the long lease values of the individual flats, on the assumption that they were in the condition required under the relevant legislation. The leaseholders argued that the properties should be valued on the "investment" basis, by capitalising the passing rents, plus the potential rents from the flats that they occupied, at 8%–8.5% on gross income, or 6% net, with a reduction of 15% to reflect the depressed state of the property market at the valuation date. The appellants argued that there was no need for such a reduction since the valuation was premised on the sale of a reversion, not a sale with vacant possession on the valuation date.

Held: The appeal was dismissed. The appellants' suggested method of valuation was incorrect; the valuation should be based on a freehold sale with vacant possession on the valuation date, assuming market conditions as they were at that time. Market conditions in March 2008 would have impacted on value in two ways: (i) the likely purchaser would have negotiated a bulk discount; and (ii) the addition to the market of 12 flats for sale when demand was limited would have had a negative impact on the prices obtainable. Two separate deductions should be made for these factors. The respondents' argument that the properties should be valued on the investment basis was correct; consideration of comparable transactions led to the conclusion that their adopted yields were appropriate. There was no reason to depart from their valuations, which were consistent with market evidence, just because they fell within a wide range of relativities indicated by the published data. The appellants should pay £466,300 and £231,400 for the freehold interests in the two properties.

TORT

22 Surveyor's negligence

Court of Session Outer House

*PHIMISTER V DM HALL LLP (2012) PLSCS 256 – Decision given 26.10.12

Facts: The pursuer, P, instructed the defender, DMH, a firm of surveyors, to value a property in Aberdeenshire in connection with his application for a residential mortgage to fund his proposed purchase of the property for £240,000. The estate agent's sales particulars stated that the property was a 1.12 acre plot and represented a fantastic development opportunity. DMH valued it at £230,000 and noted in its report that the site was understood to extend to approximately 1.12 acres, although in fact the site was only 0.66 acres.

Point of dispute: Whether P could succeed in his claim for negligence against DMH. P argued that DMH had been negligent in not checking the area of the property and, because it turned out to be much smaller than he had thought, his opportunities for developing the site were severely restricted. DMH contended that its duty in preparing a valuation for a residential mortgage was no greater in scope than that owed to a lender and was confined to assessing the adequacy of the security. The inaccurate site measurements made no difference to a valuation for residential purposes and it argued that P had requested only a residential valuation and had not told them about the possibility of developing the site commercially.

Held: P's claim was dismissed. P had not alleged that DMH had negligently misrepresented the area of the site and it was quite clear that the figure of 1.12 acres had been lifted from the sales particulars. It would not have been obvious from a site visit that the area of the property was in fact much smaller, and the statement that the property afforded a "fantastic development opportunity" clearly referred to the opportunity of refurbishing the existing buildings. In the circumstances DMH was only required to value the property for residential purposes and was not required to assess its value as a commercial development venture. On a residential mortgage valuation the main value lay in the buildings, not the size of the plot.

COMPULSORY PURCHASE

23 Country Land and Business Association (CLA) Paper

Fair Play: CLA vision for reform of the compulsory purchase system

This report calls for a total reform of the compulsory purchase system which it perceives as being inequitable and unfair and fails to address the losses suffered by those whose property is taken. The CLA argues that a reformed system should include the following key provisions:

- a duty of care with an enforceable code of practice adopted by acquirers;
- a property purchase guarantee scheme to deal effectively with blight;
- the duty to take only the minimum amount of land permanently required and to return any land that becomes surplus at any time; and
- compensation on the “equivalent reinstatement” basis to be extended to include essential housing and other buildings.

http://www.cla.org.uk/News_and_Press/Latest_Releases/Compulsory_Purchase/Compulsory_Purchase/1012246.htm/

ENERGY

24 CLG Publication

Code for Sustainable Homes and Energy Performance of Buildings data

This publication contains cumulative and quarterly data for England, Wales and Northern Ireland up to the end of September 2012, including numbers of post construction stage certificates and design stage certificates issued, information about star ratings at post construction stage and average energy efficiency (SAP) ratings.

<https://www.gov.uk/government/publications/code-for-sustainable-homes-and-energy-performance-of-buildings-data-england-wales-and-northern-ireland-up-to-end-of-september-2012>

ENVIRONMENT

25 CLG Consultation

Strategic Environmental Assessment of the Revocation of the West Midlands Regional Strategy Deadline for Comments: 24.01.13

This consultation is concerned with the likely significant environmental effects of the revocation of the West Midlands Regional Spatial Strategy and Regional Economic Strategy. It succeeds the previous Environmental Report for the revocation of the West Midlands Regional Strategy which was consulted on between October 2011 and January 2012.

<https://www.gov.uk/government/consultations/strategic-environmental-assessment-about-revoking-the-west-midlands-regional-strategy-environmental-report>

26 CLG Consultation

Strategic environmental assessment about revoking the South West regional strategy: environmental report Deadline for Comments: 01.02.13

This report concerns the likely significant environmental effects of revocation of the South West regional planning guidance and the regional economic strategy. It succeeds the previous environmental report which was consulted on between October 2011 and January 2012, and is intended to provide an up-to-date comprehensive assessment of the environmental effects of the revocation of the South West Regional planning guidance and the regional economic strategy without the need to refer back to the previous environmental report.

<https://www.gov.uk/government/consultations/strategic-environmental-assessment-about-revoking-the-south-west-regional-strategy-environmental-report>



LONDON ASSEMBLY GOVERNMENT

27 London Assembly Government Publication

London's Economic Outlook: Autumn 2012 – The GLA's medium-term planning projections

GLA Economics' 21st London forecast indicates that:

- London's Gross Value Added (GVA) growth rate should be 0.9% in 2012, increasing to 1.8% in 2013 and 2.4% in 2014;
- London is likely to see a rise in employment in 2012, 2013 and 2014; and
- London household income and spending will probably increase slowly over the forecast period.

<http://www.london.gov.uk/publication/london%E2%80%99s-economic-outlook-autumn-2012>

28 London Assembly Government Publication

London Housing Market Report, Q3 2012

This report summarises key trends in London's housing market including prices, affordability, repossessions and new housing construction. Where possible, comparisons have been made between trends in London and the rest of the country. The key points are as follows:

- Economic growth has fallen to 0% in London but unemployment remains at 9%;
- The amount of new mortgage lending is still low;
- Average house prices in London have risen by 5.2% over the last year – the highest growth rate of any English region;
- Average prices of new homes in London have risen by 3% over the last year while prices of other homes have risen by 6%;
- London house prices rose quite slowly during the last quarter, but it is expected that prices will continue to rise over the next three months;
- Monthly sales of homes remain volatile and at well-below pre-recession levels;
- Average private rents for all housing types in London rose during the last year;
- The number of orders for both social and private landlord possession has risen in the last year; and
- Housing supply indicators remain volatile, with new orders and completions up but new starts down in the last quarter.

<http://www.london.gov.uk/publication/london-housing-market-report-q3-2012>

GENERAL

29 Statutory Instrument

SI 2012/2884 The Land Charges (Amendment) Rules 2012

These Rules, which come into force on 17.12.12, amend the 1974 Rules, which make detailed provision for the keeping of the registers relating to unregistered land in England and Wales, and the procedures for registration and searches in the Land Charges Department. These registers are required to be kept by the registrar of HM Land Registry under the Land Charges Act 1972. The principal amendments are:

- the addition of references to "unitary authority area";
- revocation of the rule which required a statutory declaration to accompany most applications that are not made by a practising solicitor;
- any land charges application and its result can now be delivered electronically or by other means, subject to certain conditions;
- the addition of a definition of "conveyancer" for the purpose of land charges prescribed forms; and
- substitution of a new Form K9 (application for the rectification of an entry in the Land Charges Register).

<http://www.legislation.gov.uk/uksi/2012/2884/contents/made>

30 Statutory Instrument

SI 2012/2910 The Land Charges Fees (Amendment) Rules 2012

These Rules which also come into force on 17.12.12, amend the 1990 Rules ("the Fees Rules") in consequence of the amendments made to the Land Charges Rules 1974 by SI 2012/2884 (see item 29 above). The Land Charges Rules, as amended, distinguish between applications made, and priority notices given, by post, document exchange or delivered by hand from those made or given by any other means of communication. The changes to the Fees Rules take account of this distinction and make certain changes regarding the payment of fees.

<http://www.legislation.gov.uk/uksi/2012/2910/contents/made>

31 Transport for London (TfL) Publication

TfL Draft Business Plan

The Mayor has set out a range of major new transport initiatives for London. The draft business plan includes the following proposals:

- Doubling of planned spending on London's roads, including a high level of investment in cycling;
- Spending £300 million on transport infrastructure in areas of London where development in homes and jobs is needed;
- Improving the accessibility of the transport network to users;
- Improving the range of information available to passengers;
- Reducing delays on the Underground;
- Upgrading deep Tube lines (Piccadilly, Central, Bakerloo and Waterloo & City lines);
- Securing future funding;
- New schemes, including upgrading the Northern line, the introduction of air-conditioned trains on the Circle, Hammersmith & City and District lines, Tramlink platform improvement works at Wimbledon, the introduction of cycle highways and contributing to the completion of Crossrail, due to open in 2018; and
- Making London's transport network more environmentally friendly and energy efficient.

<http://www.tfl.gov.uk/corporate/media/newscentre/26396.aspx>



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Evebrief has been established for more than 30 years. It is a summary of the latest statutory and legal cases affecting the property industry and is widely regarded in the industry as the most comprehensive document of its type.

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Abbreviations

The following abbreviations are used in evebrief:

BLD	Lexis Nexis Butterworths (internal abbreviation)
EG	Estates Gazette
EGLR	Estates Gazette Law Reports
EWCA	England & Wales Court of Appeal
EWHC	England & Wales High Court
P&CR	Property, Planning and Compensation Reports
PLSCS	Property Law Service Case Summaries

The star system

Cases are marked with one, two or three stars as follows:

- *** Essential reading on the point of law or valuation with which the case is concerned, because it adds to, or clarifies or changes, the law.
- ** Noteworthy case which does not significantly alter the law or which relates to a relatively obscure point.
- * Interesting but non-essential reading.

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EVEBRIEF

Legal & Parliamentary

Volume 34(17) 17 December 2012

- 01 Scotland – Landlord & Tenant
- 02 Scotland – Government
- 04 Wales – Planning
- 06 Wales – General

SCOTLAND

LANDLORD & TENANT

- 01 Statutory Instrument
-

SSI 2012/329 The Rent (Scotland) Act 1984 (Premiums) Regulations 2012

These Regulations, which came into force on 30.01.12, clarify that payments made under a green deal plan (energy efficiency improvements) are not a premium for the purpose of s82 of the Rent (Scotland) Act 1984, which made it an offence to charge or receive any premium or make any loan a condition of the grant, renewal or continuance of a protected tenancy.

<http://www.legislation.gov.uk/ssi/2012/329/contents/made>

LOCAL GOVERNMENT

- 02 Scottish Assembly Government Report
-

Council Tax on Long-Term Unoccupied Properties – Consultation Analysis Report

This report summarises the responses to the Scottish Government's consultation document, Council Tax on Long-Term Unoccupied Homes. The consultation ran between 16.07.12 and 05.10.12 and sought views on the draft Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations, Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations and Council Tax (Exempt Dwellings) (Scotland) Amendment Order.

<http://www.scotland.gov.uk/Publications/2012/11/5103>



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03 Act

Local Government Finance (Unoccupied Properties etc.) (Scotland) Act 2012

This Act, which received Royal Assent on 05.12.12 and predominantly came into force on that day, will:

- cut empty property non-domestic rates relief from a maximum of 50% to a maximum of 10% for commercial properties, after a phasing in period of three months;
- enable the Scottish Government to bring forward regulations to allow Scottish local authorities to increase council tax charges on certain long-term empty homes; and
- abolish the requirement on the Scottish government to pay Housing Support Grant, currently only paid to the Shetland Islands Council.

<http://www.legislation.gov.uk/asp/2012/11/contents/enacted>

WALES

PLANNING

04 Welsh Government Consultation

Non-material Amendments to Planning Permissions Deadline for Comments: 15.03.13

This consultation sets out proposals for the introduction of an application process for making non-material changes to existing planning permissions. The aim of these proposals is to:

- provide a legal basis for making changes;
- provide a more flexible and responsive planning system for applicants who need to make changes as the design and development process of a scheme proceeds;
- provide more certainty and transparency about the procedure and process for making non-material changes to permissions; and
- provide a more consistent approach to such applications.

<http://new.wales.gov.uk/consultations/planning/non-material-amendments/?jsessionid=E16A7072BCF62619D6BEFE4EB89325A6?lang=en>

05 Welsh Government Consultation

Local Authority Environmental Permitting Fees and Charges Deadline for Comments: 20.01.13

The Environmental Permitting Regulations 2010 allow for fees and charges to be set for Local Air Pollution Prevention and Control (LAPPC) and Local Air Integrated Pollution Prevention and Control (LA-IPPC) at levels that enable local authorities to recover the costs of implementing the system. This consultation relating to LAPPC and LA-IPPC fees and charges in Wales will be of interest to Welsh businesses who hold these permits.

<http://new.wales.gov.uk/consultations/environmentandcountryside/feesandcharges/?jsessionid=E16A7072BCF62619D6BEFE4EB89325A6?lang=en>

GENERAL

06 White Paper – Consultation on proposals for a Sustainable Development Bill

A Sustainable Wales: Better Choices for a Better Future Deadline for Responses: 04.03.13

The Government of Wales Act put sustainable development at the heart of devolution and the Programme for Government reinforces its importance as the core principle in Wales' development path. The Welsh Government is committed to bringing forward legislation which would make sustainable development central to public service in Wales and this White Paper sets out the way in which it is proposed to deliver this commitment.

<http://new.wales.gov.uk/consultations/sustainabledevelopment/sdwhitepaper/?lang=en>