

EVEBRIEF

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ENERGY PERFORMANCE CERTIFICATE REQUIREMENTS



Gemma Dow
Editor

We report at items 14 and 26 of this edition on the changes, effective from 9 January 2013, to the Energy Performance of Building Regulations. Buildings are responsible for almost 40% of the UK's energy and carbon emissions and, as part of the Government's continued remit to improve such performance, the new Regulations introduce changes to requirements in respect of Energy Performance Certificates (EPCs).

Commercial premises which currently have an EPC will now be required to display this publicly, and this requirement will apply to all non-dwellings of over 500 sq m which are frequently visited by the public; however, businesses will not be forced to obtain an EPC if one is not already available.

The new Regulations also relate to Display Energy Certificates (DECs) which previously needed to be displayed in buildings of over 1,000 sq m occupied by a public authority and visited frequently by the public. This requirement has been extended to buildings larger than 500 sq m and by 9 July 2015 will be further extended to include all such buildings larger than 250 sq m.

The new Regulations replace all former regulations relating to EPCs and DECs, air conditioning inspections and enforcement, for both commercial and residential properties. Importantly though some buildings are now exempt from the energy performance requirements – including places of worship or buildings used for religious activities, protected and listed buildings, buildings where compliance would unacceptably alter character or appearance, small stand-alone buildings and short term lettings of residential buildings.

Our Partner Michael Robinson, whose contact details are provided at the end of this edition, will be pleased to provide further advice.

A handwritten signature in black ink that reads "Gemma Dow".



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LANDLORD & TENANT

01 High Court

Whether landlord's refusal of consent to subletting unreasonable – whether claimant parting with possession in breach of covenant

*ANSA LOGISTICS LTD V TOWERBEG LTD
(2012) PLSCS 276 – Decision given 18.12.12

Facts: The claimant, AL, who leased 42 acres of land in Liverpool for the purpose of storing motor vehicles, permitted a third party to occupy the site “under licence agreements to be agreed”. AL subsequently wished to sublet the land to the third party but T, the landlord, withheld consent. AL contended that the refusal of consent was unreasonable. T denied this, issued a forfeiture notice and entered a claim for possession against both AL and the third party, alleging an earlier breach of covenant by AL in allowing the third party into possession without its consent.

Point of dispute: Whether AL should be granted a declaration that T's refusal of consent to the subletting was unreasonable. AL and the third party denied any breach of covenant but they maintained that if there had been any breach it had been waived by T's acceptance of rent with knowledge of the breach.

Held: AL's claim was allowed.

- i. A covenant forbidding parting with possession is not broken by a lessee who in law retains possession even though he allows a third party to use and occupy the premises. Possession and occupation are separate legal concepts. The test for possession, which contrasts with mere occupation, is the right of the person in occupation to exclude others, including the tenant from the premises. In this case the third party only had a right to occupy the premises as AL's licensee and there was no intention from either party that AL should be excluded from them. At the date of the forfeiture notice AL continued to have responsibilities on the site and had not wholly ousted itself from possession. Accordingly, AL had not breached the covenant against parting with possession.
- ii. The issue of waiver did not arise. However, because T had no reason to suppose that AL had ousted itself altogether from possession of the site it could not be said to have waived any breach.
- iii. On the facts, even if there had been a breach, the court would have granted relief from forfeiture.
- iv. The burden was on T to show that the refusal of consent was reasonable (s1(6)(c) Landlord and Tenant Act 1988). In this case even if T had had good reason to believe that AL had parted with possession to the third party, that would not have been a reasonable basis for refusing to give consent.

02 Upper Tribunal: Lands Chamber

Reasonableness of service charge – respondent only tenant required to contribute to works as long leaseholder of flat under right-to-buy legislation

*HACKNEY LONDON BOROUGH COUNCIL V AKHONDI
(2012) PLSCS 273 – Decision given 10.12.12

Facts: A, the respondent, was the long leaseholder of a flat in East London which she had bought under the statutory right-to-buy scheme. The flat was one of five in a modern three-storey block owned by HLBC. Under the terms of her lease A was required to pay a service charge, but the other tenants, who had not bought long leases, had no service charge responsibilities. HLBC carried out various works to the building, firstly the replacement of the electronic door entry system, for which they charged A £5,000 out of the £17,077 cost, and, secondly, an expensive programme of refurbishment works carried out under HLBC's “Decent Homes” scheme for which A was invoiced £26,628 out of a total cost of £96,668. Before the works were commenced HLBC had consulted tenants in accordance with the statutory consultation requirements and a borough-wide framework agreement for works and it had served notices on A under s20 of the Landlord and Tenant Act 1985. A applied to the Leasehold Valuation Tribunal (LVT) under s27A of the 1985 Act to challenge the reasonableness of the two service charge demands.

Point of dispute: Whether HLBC's appeal would be allowed against the ruling of the LVT that the sums charged had been unreasonable. The LVT considered it relevant that although many of the works under the Decent Homes scheme were carried out with the benefit of grants, A had to face two large bills in the space of a short period of time without a grant. It concluded that her liability should be reduced to £15,553.

Held: The appeal was allowed. In reaching its decision the LVT had failed to adhere to the following three principles:

- i. its decision must be reached on the basis of the evidence before it;
- ii. it should refrain from reaching a conclusion on the basis of evidence that had not been exposed to the parties for comment; and
- iii. it should give reasons for its decision.

The LVT had made arbitrary reductions with inadequate reasons. With regard to the works carried out under the framework agreement the correct consultation procedures had been followed and the LVT's assumption that the works could have been carried out at a lesser cost was unexplained. The LVT appeared to have taken the view that HLBC should have ensured that lower costs were incurred because A was a right-to-buy lessee, but that matter did not affect the issue which the LVT had to decide, namely whether the cost of the works was reasonably incurred. On the evidence it was reasonable for HLBC to carry out the works and to do so under the framework agreement. It could recover from A the amount demanded for the door entry system and £19,743 for the other works.

PLANNING

03 Administrative Court

Appeal against enforcement notice requiring demolition of building constructed in breach of planning permission on basis that breach could be remedied by alteration

*WILLIAMS V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2012) All ER (D) 55 (Dec) – Decision given 04.12.12

Facts: In 2006 the claimant, W, was granted planning permission to convert and change the use of a barn but in 2008 the LPA wrote to him asking him to cease construction works immediately as the building was not being built in accordance with the approved plans. Early the following year W's application for planning permission for the building he had constructed was refused and he was served with an enforcement notice requiring the building to be demolished.

Point of dispute: Whether W's appeal should be allowed against the decision of the inspector appointed by the Sec of State who dismissed W's appeal against the enforcement notice. W's argument was that he should be permitted to alter the building rather than being required to demolish it.

Held: W's appeal was allowed. The statutory objective of enforcement action was to remedy all breaches of planning control. The best method of doing this was to alter non-conforming characteristics of the development so that the building as a whole complied with the terms of the planning permission that had been granted. The range of remedial action that could be altered was wide and demolition was a last resort. The inspector had not provided good reasons for his finding that demolition was the only appropriate method of remedying the breaches that had occurred in this case, while his finding that the remedy of altering the building to make it conform with the terms of the 2006 permission was neither available nor appropriate was wrong.

04 Administrative Court

Appeal against enforcement notice requiring demolition of new buildings

*HANCOCK V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2012) All ER (D) 107 (Dec) – Decision given 13.12.12

Facts: The appellant, H, had conditional planning permission, granted in 1993, to use a piece of land for a "mixed use of agricultural contractors and the storage, repair, maintenance, servicing and hire of motor vehicles". In 2008 H demolished four of the original buildings on the land and replaced them with four new ones for which he applied for retrospective planning permission. This was refused and H appealed against both that decision, and against an enforcement notice requiring demolition of the new buildings.

Point of dispute: Whether H's appeal would be allowed against the inspector's dismissal of his appeals. The inspector gave various reasons for his decision including: (i) that the development of the new buildings was inappropriate development in the Green Belt; (ii) although H had not departed from the approved uses on the land, this did not justify the development; and (iii) remedying the breach of planning control could only be achieved by the requirements in the enforcement notice.

Held: H's appeal was dismissed.

- i. The terms of an enforcement notice should not go beyond what was necessary to remedy the breach of planning control complained of and should ensure that existing lawful uses are preserved. H was wrong to rely on the 1993 permission as being the basis for his right to have some buildings on the land. That permission had granted planning permission for operational development, not for any buildings. The existence of the 1993 permission had not prevented enforcement action to remove any buildings that had been erected in breach of planning control.
- ii. The requirements of the enforcement notice had been sufficiently specific.

05 Administrative Court

Local residents' objection to grant of planning permission for wind turbine – whether planning inspector correctly determining application in accordance with development plan

*JARRETT V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2012) PLSCS 278 – Decision given 19.12.12

Facts: Planning permission was granted on appeal for the erection of a wind turbine on an 18 metre high monopole mast in the Shropshire countryside. Although he found that there would be harm to the landscape character and an adverse effect on the outlook of neighbouring residents (who had objected to the application) contrary to policy CS17 of the Shropshire Core Strategy, the inspector referred to policies CS6 and CS8 of the Shropshire Local Development Framework Adopted Core Strategy and concluded that on balance the harm to the character and quality of the countryside and to the views of neighbouring occupants would not be so significant as to outweigh the turbine's contribution to renewable energy provision and consequent mitigation of the adverse effects of climate change.

Point of dispute: Whether the claimants' application for an order quashing the decision to grant planning permission for the turbine would be allowed. They argued that the inspector had not correctly applied the provisions of the development plan since Policy CS8 only supported development where it had no significant adverse impact on environmental assets, and, since the inspector had found such adverse impact, he could not rationally have concluded that the policy supported the development.



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Held: The application was granted. A decision maker exercising powers under the Town and Country Planning Act 1990 had to have regard to the development plan and was under a duty to determine the application in accordance with the plan unless material considerations indicated otherwise. The inspector had concluded that the proposed development was contrary to the aims of CS17 which meant that its effects on the environment were significant and must be taken into account. Accordingly the inspector had no basis for stating that the development complied with Policy CS8 when, on the basis of his findings, it clearly did not because of the significant adverse environmental effects that it would have.

06 Government Guidance

Community Infrastructure Levy guidance

This guidance, published on 14.12.12, sets out the main procedures that local authorities need to follow when introducing and operating the Community Infrastructure Levy. The guidance has been issued by the Sec of State under s221 of the Planning Act 2008 and replaces the "Community Infrastructure Levy Guidance: charge setting and charging schedules procedure" published in March 2010.

<https://www.gov.uk/government/publications/community-infrastructure-levy-guidance>

07 Statutory Instrument

SSI 2012/3109 The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 3) Order 2012

This order, which comes into force on 31.01.13, amends Article 4 of the 2010 Order which sets out the requirements for outline planning applications and reserved matters. Article 4 provides that where layout is a reserved matter the application must state the approximate location of buildings, routes and open spaces and where scale is a reserved matter the application must state the upper and lower limit for the height, width and length of each building. The effect of the amendment is to remove the requirement to provide these details at the outline stage where layout and scale have been reserved.

<http://www.legislation.gov.uk/ukxi/2012/3109/contents/made>

08 Independent Report

External review of government planning practice guidance

This report sets out the conclusions and recommendations of the review led by Lord Matthew Taylor in October 2012 into the existing 7,000 plus pages of Government Planning Practice guidance.

The report makes recommendations as to the scope and form of practice guidance that should be provided in future by government to support effective planning, what new or updated practice guidance should be published, with clear priorities, and what guidance should be cancelled.

<https://www.gov.uk/government/publications/external-review-of-government-planning-practice-guidance>

09 CLG Consultation

Changes to Temporary Stop Notices (TSNs) Deadline for Responses: 13.02.13

This consultation concerns the proposal to revoke SI 2005/2006 of the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005. Currently, the use of them is restricted on unauthorised sites where a caravan is used as a main residence and Councils are discouraged from serving such notices where it may be beneficial to do so.

This consultation seeks to improve Council powers to tackle unauthorised development. The proposals would give local Councils greater freedom to make a decision on the basis of local circumstances and on whether serving TSNs in respect of caravans used as main residences is appropriate. It will remain for local councils to consider the consequences of taking enforcement action and whether the action is necessary and proportionate in the circumstances.

<https://www.gov.uk/government/consultations/changes-to-temporary-stop-notices-consultation>

10 CLG Consultation

Review of planning practice guidance Deadline for Comments: 15.02.13

This consultation seeks views on the Report of the Review Group into planning practice guidance (see item 08 above).

<https://www.gov.uk/government/consultations/review-of-planning-practice-guidance>

11 Government Guidance

Guidance for local planning authorities on implementing planning requirements of the EU Waste Framework Directive (2008/98/EC)

The Waste Framework Directive (2008/98/EC) provides an overarching legislative framework for the management of waste across Europe. This guidance note provides advice on the measures required by local planning authorities to ensure compliance with the directive. Although it is aimed primarily at waste planning authorities, it also highlights the main legal and policy provisions which are of relevance to all planning authorities, and the action that they are expected to take to assist them in ensuring compliance with the directive.

<https://www.gov.uk/government/publications/guidance-for-local-planning-authorities-on-implementing-planning-requirements-of-the-eu-waste-framework-directive-2008-98-ec>

12 Government Response to consultation

Streamlining information requirements for planning applications

This is the Government response to the consultation on proposals to reduce information requirements for planning applications. The consultation, which was carried out between 03.07.12 and 11.09.12, included proposals to change secondary legislation on information requirements for outline planning applications and a requirement that local authorities update their local lists of information requirements at least every two years. There are also proposed changes to the standard planning application form.

<https://www.gov.uk/government/consultations/streamlining-information-requirements-for-planning-applications>

RATING

13 CLG Publication

Business rates retention and the local government finance settlement: A plain English guide

This guide explains the changes to the business rates and what the proposals mean for councils, local residents, businesses, charities, developers, and the police, and fire and rescue authorities.

<https://www.gov.uk/government/publications/business-rates-retention-and-the-local-government-finance-settlement-a-plain-english-guide>

CONSTRUCTION

14 Statutory Instrument

SI 2013/3118 The Energy Performance of Buildings (England and Wales) Regulations 2012

These regulations, which came into force on 09.01.13, consolidate the 2007 Regulations and also enact new requirements in Directive 2010/31/EU – the recast Directive. The EPB Directive lays down requirements regarding energy performance certificates, display of certificates in large public buildings and regular inspection of air-conditioning systems.

<http://www.legislation.gov.uk/uksi/2012/3118/contents/made>

The Government has published guidance on the changes (item 26 below.)

15 Circular

The Building Act 1984, Building (Amendment) Regulations 2012: Circular 02/2012

The purpose of this Circular is to:

- Draw attention to these amendments and explain the changes they make to the Building Regulations 2010, the Building (Approved Inspectors etc.) Regulations 2010, the Building (Local Authority Charges) Regulations 2010 and various Local Acts listed in Annex D to this Circular;
- Explain the transitional provisions;
- Announce the approval and publication of new Approved Documents K, P and Regulation 7;
- Announce the amendments to other Approved Documents; and
- Announce the authorisation of new and extended competent person schemes

This Circular does not give advice on the technical requirements of Part K, Part P or Regulation 7 as these are matters covered by Approved Documents.

<https://www.gov.uk/government/publications/the-building-act-1984-building-amendment-regulations-2012-circular-02-2012>



16 CLG Report

Research and Analysis – Building Regulations Part L: proposals for consequential improvements in existing homes – report of focus groups

The Department for Communities and Local Government (CLG) commissioned AECOM to research and examine the views of small businesses (gas safe engineers, competent persons, small builders and small architects) and building control officers on proposed changes to Part L of the building regulations for consequential improvements in existing homes. This report details the findings of the four focus groups. The proposals are part of the package of changes to the building regulations that were published for consultation in January 2012.

<https://www.gov.uk/government/publications/building-regulations-part-l-proposals-for-consequential-improvements-in-existing-homes-report-of-focus-groups>

17 CLG – Summary of Responses to Consultation

Building regulations: access statements, security, changing places toilet and Regulation 7

This consultation, the first section of the 2012 building regulations consultation exercise, was carried out between 31.01.12 and 27.04.12. It set out the detailed proposals on parts A, B, C, K, M and N, access statements, security, changing places toilet and Regulation 7.

Section 1 provided an overview of the consultation package as a whole as well as proposals on a number of areas including:

- replacing the currently referenced standards in part A (structure) with the new British Standards based on Eurocodes;
- aligning the existing guidance in Approved Document C (site preparation and resistance to contaminants and moisture) with the most up-to-date radon maps to ensure the safety provisions are targeted appropriately;
- clarifying the guidance on access statements in Approved Document M (access to and use of buildings);
- rationalising the guidance supporting parts M, K and N (access, protection from falling, collision and impact and glazing respectively) to remove unnecessary costs on business;
- making minor changes to the technical guidance in Approved Document B (fire safety) to resolve practical problems in the application of requirement B2 (internal fire spread (linings));
- setting out the intention to take forward the repeal of the fire protection provisions in the Local Acts; and
- setting out the non-regulatory approach proposed in relation to domestic security and changing places toilets.

<https://www.gov.uk/government/consultations/building-regulations-access-statements-security-changing-places-toilets-and-regulation-7>

18 CLG – Summary of Responses to Consultation

Building regulations: conservation of fuel and power

This consultation, the second section of the 2012 building regulations consultation exercise, was carried out between 31.01.12 and 27.04.12. It set out the detailed proposals on part L of the building regulations and included proposals for tighter carbon dioxide emission standards for new homes and non-domestic buildings, plus tighter performance standards for works to existing buildings.

<https://www.gov.uk/government/consultations/building-regulations-conservation-of-fuel-and-power>

19 CLG – Summary of Responses to Consultation

Building regulations: electrical safety

This consultation, the third section of the 2012 building regulations consultation exercise, was carried out between 31.01.12 and 27.04.12. It set out detailed proposals on part P and included proposals to reduce costs associated with the provisions governing electrical safety in the home whilst not undermining safety benefits.

<https://www.gov.uk/government/consultations/building-regulations-electrical-safety>

20 CLG – Summary of Responses to Consultation

Building regulations: the building control system

This consultation, the fourth section of the 2012 building regulations consultation exercise, was carried out between 31.01.12 and 27.04.12. It set out detailed proposals on the building control system and included proposals on:

- improving local authority building control processes;
- improving private sector approved inspector arrangements, including removing the warranty link rule;
- strengthening enforcement;
- extending the competent person self-certification schemes framework and introducing specialist third-party certification schemes; and
- introducing “appointed persons” to act as compliance co-ordinators on construction sites.

<https://www.gov.uk/government/consultations/building-regulations-the-building-control-system>

21 Final Impact Assessment

Consolidation and simplification of Parts M, K and N of the building regulations

This final impact assessment sets out proposed changes to part K (protection from collision falling and impact), part M (access to and use of buildings) and part N (glazing) of the building regulations and provides analysis of the associated costs and benefits. The proposals are not intended to make changes to technical requirements but are intended to simplify compliance and reduce confusion and complexity for industry.

<https://www.gov.uk/government/publications/consolidation-and-simplification-of-parts-m-k-and-n-of-the-building-regulations>

22 Final Impact Assessment

Building regulations Part P: electrical safety in dwellings

This final impact assessment sets out the proposed changes to part P of the building regulations and provides an analysis of the associated costs and benefits. The aim of the proposal is to reduce the bureaucracy and cost burdens that part P imposes on installers, building control bodies and consumers, without undermining the improvements to electrical safety, installer competence and the quality of electrical installation work arising from the introduction of part P in 2005.

<https://www.gov.uk/government/publications/building-regulations-part-p-electrical-safety-in-dwellings>

23 Final Impact Assessment

Simplifying the provisions of Part B2 of the building regulations

This final impact assessment sets out the proposed changes to the provisions of requirement B2 of the building regulations relating to internal fire spread (linings). These changes are intended to reduce the burden of these provisions on thermoplastic lighting diffusers and decorative wall coverings whilst maintaining adequate levels of safety.

<https://www.gov.uk/government/publications/simplifying-the-provisions-of-part-b2-of-the-building-regulations>

24 Final Impact Assessment

The Building, Approved Inspectors and Charges (Amendment) Regulations 2012: authorisation of new extended competent person schemes

This final impact assessment sets out the costs to authorise one new competent person scheme operator for an existing type of work, and the extension of scope for seven existing competent person scheme operators to cover both existing types of work and three new types of work.

<https://www.gov.uk/government/publications/the-building-approved-inspectors-and-charges-amendment-regulations-2012-authorisation-of-new-extended-competent-person-schemes>

25 Final Impact Assessment

Evaluating access statement requirements in Part M of the building regulations and minor technical amendments to Part M of the building regulations

This final impact assessment sets out proposed changes to the way in which applicants demonstrate compliance with part M (Access to and use of buildings) of the Building Regulations and provides an analysis of associated costs and benefits.

<https://www.gov.uk/government/publications/evaluating-access-statement-requirements-in-part-m-of-the-building-regulations-and-minor-technical-amendments-to-part-m-of-the-building-regulations>

26 Government Publication

Recast of the Energy Performance of Buildings Directive

This publication relates to the changes made by the new Regulations reported at item 14 above. The Energy Performance of Buildings Directive is an EU measure designed to tackle climate change by reducing the amount of carbon produced by buildings. The requirements of the Directive were implemented on a phased basis by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007.

Key requirements were:

- energy performance certificate to be produced on the sale, rent or construction of a building;
- display energy certificate to be produced and displayed in large public buildings; and
- air conditioning equipment above a certain size to be inspected regularly.



Changes have been made to the regulations, to transpose the requirements of a recast of the Energy Performance of Buildings Directive in England and Wales. The main requirements were introduced on 09.01.13 and are summarised below:

- property advertisements to include details of energy performance certificate rating where available;
- it is no longer a requirement to attach the front page of the energy performance certificate to written material;
- extension of current requirement for a display energy certificate in large public buildings, to public buildings above 500 sq m. Unlike buildings larger than 1,000 sq m, display energy certificates for smaller public buildings will be valid for ten years; and
- energy performance certificate to be displayed in commercial premises larger than 500 sq m where one has been previously issued.

The guidance documents have been revised to reflect the changes and can be viewed via the links available at this gov.uk website, the link to which is shown below. The new regulations consolidate all existing regulations which have been revoked. They are available at legislation.gov.uk.

<https://www.gov.uk/government/publications/improving-the-energy-efficiency-of-our-buildings>

27 CLG Research

Further economic and analytical support for proposals to amend the building regulations in 2013

CLG commissioned EC Harris to provide economic and analytical information to support evaluation work being carried out by the department on changes to the building regulations due to come into force in 2013. The research provided information for the Impact Assessments on potential changes to the building regulations being brought forward in 2013. It also looked into the impact of other possible changes to the building regulations that are not currently being taken forward.

<https://www.gov.uk/government/publications/further-economic-and-analytical-support-for-proposals-to-amend-the-building-regulations-in-2013>

LONDON

28 Statutory Instrument

SI 2012/3084 The London Thames Gateway Development Corporation (Transfer of Property, Rights and Liabilities) (Greater London Authority) (No. 2) Order 2012

W.e.f. 22.01.13 this order transfers to the Greater London Authority any residual property, rights and liabilities of the London Thames Gateway Development Corporation. It is proposed that the Corporation will be dissolved on 28.02.13.

<http://www.legislation.gov.uk/uksi/2012/3084/contents/made>

29 London Assembly Government Consultation

London Planning Statement Deadline for Comments: 08.02.13

This draft London Plan supplementary planning guidance is intended to fill the gap left by the Government's revocation of the former Government Office for London Circular 1/2008 by pulling together information about the Mayor's role in the London Planning system. The Statement:

- sets out general principles of fundamental importance to the planning system in London;
- explains the Mayor's role in London's planning system, both in preparing strategic housing policy through his spatial development strategy (the London Plan) and in taking planning decisions on strategic developments;
- highlights the issues the Mayor considers to be particular priorities for the London planning system; and
- sets out the Mayor's intended programme of planning-related work for the next four years.

<http://www.london.gov.uk/publication/london-planning-statement>

GENERAL

30 Court of Appeal

Limitation Act 1980 – whether claim on solicitors’ bill of costs time barred – whether solicitors’ claim for professional fees a debt or other liquidated pecuniary claim within meaning of s29(5) Limitation Act 1980

*PHILLIPS & CO (A FIRM) V BATH HOUSING CO-OPERATIVE LTD (2012) PLSCS 271 – Decision given 11.12.12

Facts: The appellants, BHC, a housing association, instructed P, a firm of solicitors to act for them in connection with the repossession of a flat. The work was completed by the end of 2003, but as no fee had been agreed in advance, P was entitled to recover a reasonable amount for the work done and BHC could have the bill assessed by the court. In September 2004, P wrote to BHC informing it of the amount due, but BHC contested this in a letter sent later that month. No further action was taken until September 2010 when P brought proceedings against BHC claiming £52,000 in professional fees plus interest. BHC contended that the claim was time-barred under the Limitation Act 1980 since P had not brought its claim within six years of the work being done. P argued that BHC’s September 2004 letter amounted to an acknowledgment of its claim, within s29(5) of the 1980 Act, which meant that time started running again from the date of that letter.

Point of dispute: Whether BHC’s appeal would be allowed against the ruling of the judge in the court below that P’s claim fell within the scope of s29(5) and that BHC’s September 2004 letter was an acknowledgment for that purpose.

Held: The appeal was dismissed.

- i. A solicitors’ claim for costs, billed but not yet fixed by assessment or agreement, was a “debt or other liquidated pecuniary claim” within the meaning of s29(5) of the Limitation Act 1980. It was a claim in debt in the nature of a quantum meruit, although it was not quantified until it was either assessed by the court, agreed by the client, or the subject of a judgment. Most liquidated claims would be for a debt while unliquidated claims were normally in damages. P’s claim was “liquidated” for the purposes of s29(5), notwithstanding that it was not yet quantified: as it was a quantum meruit claim for a “reasonable sum” it was sufficiently certain for its amount to be ascertainable.
- ii. BHC had acknowledged P’s claim. Its letter did not dispute the fact that something was payable, although the sum was contested. Accordingly, P’s proceedings were not time-barred.

31 Court of Appeal

Appeal against party wall award – whether time ran from date of posting of award or date of actual or deemed receipt – application of s7 of Interpretation Act 1927

**FREETOWN LTD V ASSETHOLD LTD (2012) PLSCS 274 – Decision given 14.12.12

Facts: A party wall dispute arose between the parties who owned adjoining properties. Each party appointed a surveyor and a third surveyor was then selected to make an award pursuant to s10(1) of the Party Wall etc Act 1996. His award was sent to the appellant by post, who sought to appeal it in the county court. The respondent applied to strike out the appeal on the ground that it had not been lodged within 14 days of the date of the award, as required by s10(17).

Point of dispute: Whether time ran from the date when the award was posted or the date when it was received or deemed to be received. The High Court judge upheld the county court’s ruling that on a proper construction of s15 of the 1996 Act, a surveyor’s award is served when it is put into the post. The judge, who was bound by the Court of Appeal’s 2003 decision in *Webber (Transport) Ltd v Railtrack plc*, considered that the provisions of s15 showed a “contrary intention” so as to exclude the application of s7 of the Interpretation Act 1927, under which service would otherwise have occurred on receipt or deemed receipt.

Held: The appellant’s appeal against the High Court decision was allowed. Section 7 of the Interpretation Act 1927 provided a general statutory code regarding posting. It altered the common law rule by deeming that receipt takes place when a letter would be received in the ordinary course of the post and there is a statutory presumption that s7 applies unless a “contrary intention” appeared. There was no such contrary intention in s15 of the Party Wall etc Act 1996, either in terms of the language used in the section, nor was there any implied exclusion of s7. *Webber* was distinguished as it concerned provisions in a different statute (s23 of the Landlord and Tenant Act 1927) and there had been little consideration of s7 in that case.



32 Ministry of Justice Consultation

Judicial Review: proposals for reform
Deadline for Comments: 24.01.13

The Government is seeking views on a package of measures to stem the growth in the number of applications for judicial reviews. These proposals are in three main areas:

- reducing time limits for bringing a judicial review relating to procurement or planning;
- removing the right to an oral renewal where a judge refuses permission where there has been a prior judicial process, or where the claim was judged to be totally without merit; and
- the introduction of a new fee for an oral renewal so that the fees charged in judicial review proceedings better reflect the costs of providing the service.

The intention behind these proposed reforms is to ensure that weak and hopeless cases are filtered out at an early stage so that genuine claims can proceed quickly and efficiently to a conclusion. The Government is keen that the right balance is struck between maintaining access to justice and the rule of law on the one hand, and reducing burdens on public services and removing unnecessary obstacles to economic recovery on the other.

<https://consult.justice.gov.uk/digital-communications/judicial-review-reform>

33 Statutory Instrument

SI 2012/046 The Regional Strategy for the East of England (Revocation) Order 2012

W.e.f. 03.01.13 this order revoked the regional strategy for the East of England.

<http://www.legislation.gov.uk/uksi/2012/3046/contents/made>

34 Government Consultation

Strategic environmental assessment about revoking the North West regional strategy: environmental report
Deadline for Comments: 18.02.13

This environmental report is a consultation document on the likely significant environmental effects of revocation of the north west plan and the regional economic strategy (which together form the regional strategy).

This report succeeds the previous environmental report on the revocation of the north west regional strategy which was consulted on between October 2011 and January 2012.

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

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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

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SCOTLAND

PLANNING

- 01 Scottish Government Circular
-

Circular 3/2012: Planning Obligations and Good Neighbour Agreements

This circular details Scottish Government policy on the use of planning obligations, including unilateral obligations and good neighbour agreements made under ss75 and 75D respectively, of the Town and Country Planning (Scotland) Act 1997, as amended by the Planning etc. (Scotland) Act 2006.

<http://www.scotland.gov.uk/Publications/2012/12/1885>

RATING

- 02 Statutory Instrument
-

SSI 2012/352 The Non-Domestic Rate (Scotland) (No. 2) Order 2012

This order, which comes into force on 01.04.13, prescribes a rate of 46.2 pence in the pound as the non-domestic rate to be levied throughout Scotland in respect of the financial year 2013–14. For the financial year 2012–13 the prescribed non-domestic rate was 45 pence in the pound.

<http://www.legislation.gov.uk/ssi/2012/352/contents/made>



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03 Statutory Instrument

**SSI 2012/353 The Non-Domestic Rates (Levyng) (No. 3)
(Scotland) Regulations 2012**

These regulations come into force on 01.04.13 and provide for the general reduction in rates for a ratepayer of non-domestic subjects with RV of £18,000 or less on a sliding scale of between 25% and 100%. Secondly, they provide a formula for the additional amount payable in rates for lands and heritages whose RV is greater than £35,000.

<http://www.legislation.gov.uk/ssi/2012/353/contents/made>

HOUSING

04 Scottish Government Publication

Scottish House Condition Survey: Key Findings 2011

This report provides an overview of the state of Scotland's housing stock in 2011. Topics covered include:

- age and type of dwellings;
- access to the gas grid and fuel use;
- energy efficiency;
- fuel poverty;
- rates of disrepair; and
- compliance with the Scottish Housing Quality Standard.

<http://www.scotland.gov.uk/Publications/2012/12/4995>