EVEBRIEF

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BUSINESS RATES AND BOUNDARIES

We report at item 11 of this edition of Evebrief on changes to the operation of the Small Business Rate Relief (SBRR) Scheme which will come into effect on 01 April 2012. The Localism Act 2011 removed the requirement for an application form to be submitted in order to obtain SBRR and the Government has now amended the regulations so that all occupied properties with Rateable Values below the specified thresholds will have the small multiplier applied to their rates bills. Previously the small multiplier was only used if the business itself qualified for SBRR, which excluded multi-site occupiers.

Whilst the costs of this change and the extension of the enhanced SBRR scheme are funded centrally, the core costs of SBRR are met by a supplement paid by properties above the RV threshold. The supplement has been 0.7p in recent years but is to be increased to 0.8p from April, the consequence of which is that rate bills for many will increase by even more than last September's peak RPI of 5.6%.

Unusually, we also report three cases, at items 18, 19 and 20, all concerned with boundary disputes. All three turn on their particular facts and circumstances, but the decision in Acco Properties (item 20) contains a useful summary of the relevant issues and tests in such cases.

Tony Chase
Editor

GERALDEVE

LOCALISM

01 Statutory Instrument

SI 2012/57 The Localism Act 2011 (Commencement No 2 and Transitional and Saving Provision) Order 2012

This Order brought into force on 15.01.12 a range of provisions of the Localism Act 2011 including the abolition of London Development Agency and the transfer of its property.

http://www.legislation.gov.uk/uksi/2012/57/contents/made

LANDLORD & TENANT

02 Upper Tribunal (Lands Chamber)

Service charges – major works – consultation requirements – ss20 and 20ZA of the Landlord and Tenant Act 1985 – prejudice to respondent leaseholders

* STENAU PROPERTIES LTD V LEEK
(2012) PLSCS 18 – Decision given 12.12.11

Facts: SP, the appellant, was the landlord of a block of flats while L and others, the respondents, were the long leaseholders of the individual flats. SP carried out major works to the block and admitted that it had failed to comply with the statutory consultation requirements under s20 of the 1985 Act. L contended that SP could only recover £250 per flat pursuant to para 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003, unless SP could succeed in an application for dispensation under s20ZA.

Point of dispute: Whether SP's appeal would be allowed against the LVT's ruling dismissing its application for dispensation from the consultation requirements. SP contended that dispensation should not be refused unless the failure to consult had caused some major prejudice to the leaseholders, and that the LVT had not considered whether this had occurred.

Held: The appeal was dismissed. Although the LVT had not specifically set out what prejudice had been caused to L, it had nonetheless considered the issue of prejudice. A loss of opportunity to make further representations and to have them considered could of itself amount to significant prejudice. Where there had been a substantial breach it might be reasonable to assume prejudice. Even if the end result of a properly conducted consultation might have resulted in the same conclusion for the tenants, it would have been of real value to them to have been able to participate in the decision-making process, and depriving them of this opportunity meant that they had suffered prejudice.

03 High Court

Exercise of break clause

* AVOCET INDUSTRIAL ESTATES LLP V MEROL LTD
(2012) PLSCS 11 – Decision given 19.12.11

Facts: The claimant, AIE, was the landlord and the defendant, M, the tenant, under a ten-year lease of two units on an industrial estate. M was obliged to pay service charges and under clause 14.1 of the lease, failure to pay any sum under the lease by the due date would result in a liability to pay "default interest" from the due date until the date of actual payment. M's obligations under the lease were guaranteed by its parent company. Until late 2007, M made payments to AIE by cheque, but in an email in October 2007 AIE complained that its payments were persistently late and requested that a standing order be set up. This did not happen, but from April 2008 M's parent company made payments under the lease by BACS transfer. In March 2010, M purported to break the lease pursuant to an earlier notice. AIE asserted that M had failed to comply with the lease conditions for an effective break because: (i) a sum equal to six months rent had to be paid – AIE contended that it had to be in receipt of cleared funds for this by the break date, such that a cheque, hand delivered the day before, did not suffice; and (ii) all sums due under the lease had to have been paid – AIE alleged that M still owed outstanding sums of default interest on the break date.

Point of dispute: Whether AIE's claim, that M had not effectively broken the lease, would be allowed. M contended that it had because: (i) there was an implied agreement, established by course of conduct, that AIE would accept cheques in payment of sums due; and (ii) no liability to pay default interest arose until such sums were demanded by AIE.

Held: AIE's claim was allowed.

i. A cheque was not legal currency, but the course of dealings between the parties indicated that AIE had not insisted on a tender of currency for sums due under the lease but had agreed to accept cheques. To bring to an end a landlord's implied agreement to accept cheques he would have to give timely notice. AIE's October 2007 email did not amount to such a notice, as it was more of a complaint about lateness of payments, and AIE's acceptance of a system of BACS transfers did not show that it had abandoned its implied agreement to accept cheques.

ii. On the true construction of the lease, however, M's liability to pay default interest on late payments was not conditional on AIE making a demand for such interest. It was unlikely that there was any practical difficulty in M knowing how much default interest it had to pay, even without a demand from AIE, as it accrued from day to day and fell due for payment from day to day as it accrued. This meant that at the break date M owed default interest and it had not validly broken the lease.

04 Administrative Court

Appeal against rent increase on assured periodic tenancy – whether rent assessment committee erred in using house let on assured shorthold tenancy as a comparable

* PIMLOTT V VARCITY ACCOMMODATION LTD
(2012) PLSCS 17 – Decision given 17.01.12

Facts: P, who occupied premises under an assured periodic tenancy, was notified by the then landlords that the rent was to increase from £347 per calendar month (pcm) to £550 pcm. The notice was referred to the rent assessment committee (RAC) who determined the rent at £495 pcm.

Point of dispute: Whether P's appeal against the RAC's determination would be allowed. P argued that the RAC had erred by taking as the starting point a rent for a comparable house let under an assured shorthold tenancy. Secondly, that it had failed to take into account that the local authority had served notices on VA, the respondent, requiring it to make improvements to the premises, and thirdly, that it had failed to disregard improvements which she herself had carried out. Finally, P contended that it had not taken into account the degeneration of the locality of the premises.

Held: The appeal was dismissed. The statutory provisions relating to the assessment of rent by an RAC in respect of an assured periodic tenancy under Chapter 1 of the Housing Act 1988 (s14) and an assured shorthold tenancy under Chapter 2 (s22) were markedly different. Under s14 the RAC had not acted unlawfully by taking into account the rent which a comparable property let under an assured shorthold tenancy might be expected to command in the open market when assessing the rent to be paid in respect of the existing assured periodic tenancy. In any event, P had not suffered an unfavourable outcome as there was nothing to suggest that the rent assessed by the committee was too high. It had taken into account the state of the premises and disregarded the tenant's improvements and it could not be said that it had failed to have regard to the degeneration of the locality.

05 Upper Tribunal Lands Chamber

Service charge – management charge

* PALLEY V CAMDEN LONDON BOROUGH COUNCIL
(2012) PLSCS 16 – Decision given 12.12.11

Facts: The appellant, P, was the tenant of two flats in different blocks owned by the defendant council (CLBC). The leases provided that the tenant was liable to pay a service charge and also the landlords' management charges for the estate "in an amount equal to 10% of all other items included in the service charge". C applied to the LVT for a determination as to his liability for the service charges claimed. He contended that some of the items being charged for by CLBC as part of the service charge were management expenses eg the costs of a call centre set up to deal with tenants' complaints about lifts, "support services" and "payment and analysis", and that these should be included within the 10% figure for management charges.

Point of dispute: Whether P's appeal would be allowed against the LVT's determination that CLBC could charge a 10% management fee on all the other heads of service charge and that there had not been any element of double counting. The LVT rejected P's argument that the 10% management charge was not a separate item, but operated as a cap on the total amount of management costs that could be recovered.

Held: The appeal was dismissed. The definitions of "service charge" in P's leases had the effect of distinguishing between the management of the estate and buildings on the one hand, and the carrying out of the landlord's other obligations towards the demised property on the other. Management costs were incurred "in connection with" carrying out the landlords' obligations and providing services under the leases. The management charge for the estate and buildings was another specific item and was limited to 10% of the charges for the other service charge items.

PLANNING

06 Court of Appeal

Appeal against refusal of permission for a residential caravan site for gypsy families in area of Green Belt

* ROONEY V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) All ER (D) 141 (Jan) – Decision given 16.11.11

Facts: R's application for change of use on land in the Green Belt in Surrey in order to permit caravans housing four gypsy families to remain there was refused on appeal. In his decision letter the inspector appointed by the Sec of State found that the presence of the caravans would result in "very severe" harm to the area and that the impact on the four families who would have to vacate the site did not outweigh the negative effects of their proposals.

Point of dispute: Whether R's appeal should be allowed against the decision of the judge in the court below, who dismissed R's application under s288 of the Town and Country Planning Act 1990 to quash the inspector's decision. R's arguments were:

i. The inspector's conclusion was wrong because only a month earlier he had permitted an appeal against an initial refusal of planning permission to six gypsy families who wished to retain their caravans on another Green Belt site in Surrey ("Red Cottage"), despite finding that their proposals would constitute a "considerable" level of harm to the area. R submitted that the cases were overwhelmingly the same.

ii. The judge had erred in restricting himself to a review of the lawfulness of the inspector's decision on the proportionality of the interference with R's rights under Article 8 ECHR. The judge should, he argued, have carried out a full merits review of the proportionality issue himself.

Held: The appeal was dismissed.

i. The significant difference between this case and Red Cottage was that in the latter the inspector found that there would have been a "considerable level of harm" to the area if the caravan site were allowed, while in this case the inspector had found that the level of harm would be "very severe".

ii. In an appeal against an lpa's decision to refuse planning permission in a case which would result in an eviction, the Sec of State (or an inspector appointed by him) would conduct a full merits appeal on all of the issues, which was what had been done in this case. The inspector had decided on the issue of proportionality himself having regard to all the considerations, in particular the wider public interest; there was no need for a second merits review of this issue.

07 CLG Letter to Chief Planning Officers

Letter to Chief Planning Officers: Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011

This letter advises Chief Planning Officers of this Order, which came into force on 07.12.11. The purpose of the Order is to allow local authorities and those public bodies authorised to collect or charge the Community Infrastructure Levy, to contract out, or "outsource", their levy functions to other organisations.

http://www.communities.gov.uk/publications/planningandbuilding/lettercontractingout

Rating

08 Statutory Instrument

SI 2012/24 The Non-Domestic Rating (Collection and Enforcement) (Amendment) (England) Regulations 2012

These regulations, which come into force on 15.02.12, amend both the 1989 Local Lists and Central Lists Regulations. Billing authorities will be able to serve, in certain circumstances, a single demand notice which relates to more than one chargeable financial year, while paras (3) to (5) of Reg 2 amend the Local Lists Regulations to remove the special instalment scheme for the financial year 2012/13 – this follows the change to the level of small business rate relief between 01.10.12 and 31.03.13, as the level of relief will now be the same for the whole of the financial year 2012/13.

http://www.legislation.gov.uk/uksi/2012/24/contents/made

09 CLG Letter to Chief Finance Officers of English Billing Authorities

Business Rates Information Letter (1/2012): Amendments to Regulations

This letter provides information on the amendments to the Non-Domestic Rates Regulations made by SI 2012/24 (see item 08 above).

http://www.communities.gov.uk/publications/localgovernment/bril12012

10 Statutory Instrument

SI 2012/25 The Non-Domestic Rating (Electronic Communications) (England) Order 2012

This order, which comes into force on 15.02.12, amends the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 in relation to England. Article 2 of this order amends Reg 2 of those regulations to enable billing authorities (if they so decide) to supply certain information to ratepayers via a website rather than in hard copy. This is subject to a requirement that the billing authority must supply a hard copy of the information if requested to do so. The information that may be supplied in this way is that which a billing authority is required by Reg 3 of the Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003) to supply to a person when it serves a rate demand.

http://www.legislation.gov.uk/uksi/2012/25/contents/made

11 Statutory Instrument

SI 2012/148 The Non-Domestic Rating (Small Business Rate Relief) (England) Order 2012

This order, which comes into force on 25.02.12, gives effect to the following:

- the further six month extension (01.10.12 – 31.03.13) to the enhanced Small Business Rate Relief scheme, announced in the Autumn Statement;
- the removal of the requirement for ratepayers to submit an application form to claim the relief wef 01.04.12; and
- the commitment to allow all eligible ratepayers to have their bills calculated using the Small Uniform Business Rate multiplier.

In order to be able to qualify for Small Business Rate Relief, a hereditament must have a rateable value of less than £12,000. From 01.04.12 the small multiplier will apply to all occupied hereditaments with a rateable value below £18,000 if outside Greater London and less than £25,500 in Greater London.

http://www.legislation.gov.uk/uksi/2012/148/contents/made

12 CLG Letter to Chief Finance Officers of English Billing Authorities

Business Rates Information Letter (2/2012): Amendments to Regulations

This letter covers The Non-Domestic Rating (Small Business Rate Relief) (England) Order 2012 (see item 11 above) and Demand Notices. Attached to the letter is the revised draft text of the explanatory notes to be contained in demand notices. This has been prepared from the draft of the amending Regulations prior to their being laid in Parliament but it is not anticipated that the text will change substantially.

http://www.communities.gov.uk/publications/localgovernment/bril22012

HOUSING

13 CLG Statistics

House Price Index – November 2011

The latest UK house price index statistics produced by the Department for Communities and Local Government were released on 17.01.12. Key points from the release are as follows:

- in November UK house prices decreased by 0.3% over the year but remained unchanged over the month;
- the average mix-adjusted UK house price was £205,796 (not seasonally adjusted);
- average house prices increased by 0.2% over the quarter to November. This compares to the quarter to August when no change was recorded (seasonally adjusted);
- average prices decreased during the year in all UK countries, in England by 0.1%, in Wales by 0.6%, in Scotland by 0.8% and in Northern Ireland by 11.7%;
- prices paid by first time buyers were 0.7% higher on average than a year earlier whilst prices paid by former owner occupiers decreased by 0.7%; and
- prices for new properties were 7.7% higher on average than a year earlier, whilst prices paid for pre-owned dwellings fell by 0.9%.

http://www.communities.gov.uk/publications/corporate/statistics/hpi112011

14 CLG Guidance

Bringing Empty Homes back into use: Application guidance for Community and Voluntary Groups

"Laying the foundations", a Housing Strategy for England, which was published in November last year, sets out the Government's strategy for tackling the problem of empty homes, including the provision of £100m from the 2011-15 Affordable Homes Programme. This funding has been set aside to tackle long-term empty properties which would not come back into use without additional financial intervention and is intended to deliver at least 3,300 affordable homes by early 2015. The Strategy sets out that the funding will be allocated either via a national intermediary grants-giving organisation, or the Homes and Communities Agency via formal bidding rounds, so that both not-for-profit voluntary and community groups and Registered Providers of Social Housing can access it. A range of solutions may be appropriate to individual areas or schemes, which can attract funding through the Empty Homes Community Grant Fund (EHCGF) (to which the Government is intending to award at least £10m), or the Homes and Communities Agency route, or both. This guidance sets out the requirements, assessment criteria and timetable for applications where funding is sought from the EHCGF by not-for-profit community and voluntary groups who do not intend to become Registered Providers.

http://www.communities.gov.uk/publications/housing/emptyhomeappguidance

15 RICS Publication

RICS UK Housing Market Survey – December 2011

The survey reports that:

- sales activity at the end of 2011 was a little stronger than earlier in the year, although it was still at historically low levels;
- the average number of sales per surveyor in the final three months of 2011 was 15.2 – higher than anything recorded since the autumn of 2010;
- in terms of new enquiries the picture remained positive;
- there was an increasing flow of stock onto the market; and
- London was the only region which recorded a positive net balance for both current prices and price expectations.

http://www.rics.org/site/scripts/download_info.aspx?downloadID=8229&fileID=11095

16 Homes and Communities Agency (HCA) Statistical Publication

Housing Market Bulletin – 25 January 2012

This Bulletin provides HCA staff with the latest information on housing market trends, the economy and the housebuilding industry.

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

REAL PROPERTY

17 Court of Appeal

Adverse possession

* CHAMBERS V HAVERING LONDON BOROUGH COUNCIL (2012) PLSCS 06 – Decision given 20.12.11

Facts: The respondent council (HLBC) had been the registered freehold owner of some undeveloped land ("the disputed land") since 1984. The appellant, C, acquired some neighbouring land in 2008. C started to use the disputed land for various purposes and when, in September 2010, HLBC commenced proceedings for possession C asserted that he had been in possession of it since 1981. The court found as a fact, that C had kept animals, but only intermittently, on the disputed land and that he had placed moveable shelters on it. He had also repaired and replaced fencing, but in order to keep animals in rather than HLBC out. HLBC, whose intended use of the land was woodland or parkland, planted trees on it, strimmed pathways and replaced fences and gates.

Point of dispute: Whether C's appeal would be allowed against the ruling of the judge in the court below that HLBC had not been dispossessed and that C had not held the necessary intention to possess the land for the required 12-year period in order to establish adverse possession.

Held: C's appeal was allowed in part. In deciding whether there was adverse possession the question was whether the squatter had dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner. The two elements necessary for legal possession were: (i) a sufficient degree of custody and control (factual possession); and (ii) an intention to exercise such custody and control on one's own behalf and for one's own benefit. There had to be a single and exclusive possession. What acts constituted a sufficient degree of exclusive physical control depended on the circumstances – the nature of the land and how land of that nature was commonly used and enjoyed. To satisfy the requisite "intention to possess" test there had to be an intention, in one's own name and on one's own behalf, to exclude the world at large, including the paper owner. C's appeal was disallowed in respect of part of the disputed land; with regard to the remainder of it, the matter was remitted for a further hearing, since the judge had not applied the correct legal test when considering C's intermittent use of the land for keeping animals.

18 Court of Appeal

Boundary dispute

* DIXON V HODGSON
(2012) All ER (D) 162 (Jan) – Decision given 20.12.11

Facts: The appellants and the respondents were in dispute about the exact position of the boundary between their properties. The dispute was determined by a recorder who made an order that the line of the boundary was along the northern face of a low wall, as contended for by the respondents. His approach was:

i. To determine, objectively, from admissible evidence available, what the parties had intended to transfer, disregarding evidence of their subjective intentions;

ii. If the terms of the transfer clearly defined the land, extrinsic evidence was not admissible to contradict the transfer; and

iii. The modern tendency was to use all admissible material in order to arrive at the correct answer.

As the relevant conveyance did not assist him, the recorder considered other plans, the terms of the transfer of the appellants' property and the physical features on the ground. He also made a site visit.

Point of dispute: The appellants appealed against the recorder's determination, arguing that he had applied the wrong legal test when determining the boundary or, alternatively, that he had construed the documentary evidence incorrectly. They argued that the recorder had determined what the parties had intended to transfer, rather than determining what the transfer deed had objectively transferred. The issues were:

i. whether the recorder could have recourse to a clearer plan; and

ii. whether he had applied the correct principles of construction.

Held: The appeal was allowed.

i. As part of the exercise of interpreting the transfer, it was permissible to have recourse to a clearer plan.

ii. The construction process started with the conveyance which described the relevant land and there was a distinction between a plan that was said to be for identification and one which defined a property. The effect of the conveyance was not determined by evidence of what the parties to it believed it meant, but what, against the relevant objective factual background, they would reasonably have understood it to have meant. The recorder had been wrong to discard the transfer plan completely because of its lack of clarity and to construe the transfer by looking only at the physical features on the ground at that date. Although the sight of an obvious boundary structure, such as a low wall in place at the time of the transfer, gave rise to the assumption that that had been the boundary, that assumption was not the end of the matter.

19 Court of Appeal

Boundary dispute

* TAYLOR V LAMBERT
(2012) PLSCS 14 – Decision given 18.01.12

Facts: The appellant and respondent owned adjacent properties, which prior to 1974 had been in common ownership. At around that time, the then owners of the land constructed a house on part of it and this property was later sold to the appellant. The remainder, which was sold to a predecessor in title of the respondent, was defined in the parcels clause of the 1974 conveyance by reference to a verbal description of the property, as including certain premises "with the outbuildings yard garden and conveniences thereto adjoining and belonging", an area measurement of "553.4 square yards or thereabouts" and a plan which was "for the purposes of identification only". The county court, in dealing with a dispute between the parties, held that the boundary between the two properties was the line of a wall constructed by the landowners before the 1974 sale and that this accorded with the boundary shown approximately by the line on the conveyance plan and represented the intentions of the parties at that time.

Point of dispute: Whether the appellant's appeal would be allowed against the finding of the judge in the county court. He contended that the judge had been incorrect in deciding that the wall represented the boundary since this finding meant that the respondent owned more land than the precise area measurement stated in the parcels clause.

Held: The appeal was dismissed. The landowner had very probably built the wall before the 1974 sale so as to mark the boundary and the judge had been entitled to find that the wall existed at the date of the 1974 conveyance and so formed part of the relevant area of land apparent on an inspection at the time of the sale. A conveyance should be read in the light of relevant surrounding circumstances, including the situation on the ground at the relevant time, and in this case it was impossible to work out the line of the boundary just from an area measurement in the parcels clause. Evidence as to what in 1974 had been the extent of the "yard garden and conveniences adjoining and belonging" to the property had to be admitted and considered. A reasonable layman would have thought that he was buying all the land up to the wall and that view was supported by the outline of the property shown on the plan. It had been intended that the wall would form the boundary of the land sold in 1974.

20 High Court

Boundary dispute – principles to be applied

** ACCO PROPERTIES LTD V SEVERN
(2012) All ER (D) 62 (Jan) – Decision given 01.04.11

Facts: S, the defendants, purchased a property in 2008, while the neighbouring property was acquired by AP, the claimant, in 2009. Successive owners of S's property had neglected a hedge growing on their land and it crossed over onto AP's land by 19 inches. The parties agreed that S would cut down the trees along the boundary between the two properties but subsequently S erected a new fence and a dispute arose about the position of the boundary. AP brought proceedings against S in order to restore the boundary.

Point of dispute: The appropriate remedies to be applied in respect of boundary disputes. Whether an oral agreement between the parties to cut down the trees amounted to an informal agreement to demarcate the boundary line.

Held:

i. Where the property in question was registered land, the filed plans showed only general boundaries and not the exact line of the boundaries unless the property was said to be "more particularly described in the plan".

ii. If OS plans did not form part of the registered title filed plans they were no more than a general guide to a boundary feature and should not be scaled up to delineate an exact boundary. This was because lines marking the boundaries became so thick on being scaled up as to render them useless for detailed definition.

iii. In order to determine the exact line of a boundary the starting point was the language of the conveyance. If the verbal description in the conveyance was not sufficient this could be aided by the representation of the boundaries on any plan, or the conveyance would be guided by the plan if that was intended to be definitive.

iv. If that did not bring clarity, or the clarity necessary to define a boundary, recourse might be had to extrinsic evidence that might have existed when the dividing conveyance was executed.

v. Evidence of subsequent conduct might show what the original parties intended.

vi. Evidence of later features might or might not be of relevance.

vii. It was important to bring certainty to the determination of the boundary.

viii. Even where a boundary line might be determined by reference to a conveyance other evidence might be admitted and probative in establishing a different boundary obtained by adverse possession. Title was then established by intentionally taking exclusive possession of land without the consent of, and adverse to the interests of, the true owner and maintaining such possession continuously for the limitation period.

ix. In the case of informal boundary agreements the statutory requirement that contracts for the sale or other disposition of land be in writing does not apply.

x. Such agreements were usually oral, but there was scope for a boundary agreement to be implied or inferred.

xi. When bearing the above principles in mind the judge must have regard to three further important rules of thumb:

   a. When considering any acquisition of property, it is vital to consider what a reasonable layman would think he was buying;

   b. Every case turns on its own facts; and

   c. The task of the court is to assess all available and admissible material in arriving at its answer.

   In this case the boundary was that defined by the informal boundary agreement which meant that AP had lost a very narrow strip of land of no commercial value, for which it should be compensated.

TORT

21 Court of Appeal

Professional negligence

* PADDEN V BEVAN ASHFORD SOLICITORS
(2012) PLSCS 10 – Decision given 21.12.11

Facts: The appellant, P, was told by her husband and his solicitor that he had taken money from a client, and in order to avoid his being sent to prison they would have to sell their family home and other assets in order to pay him back. This meant that P would have to give up her interest in the house and other assets. P consulted BA, a firm of solicitors, and explained in a brief meeting that she intended to go ahead with this for the sake of the children.
The solicitor advised her not to sign the documents, but did not arrange another meeting. P and her husband visited another branch of BA and the solicitor they saw witnessed their signatures on four documents, including a mortgage and charges over other assets. He did not give any advice but certified in the mortgage that P had had the consequences of the transactions explained to her by a solicitor, that he was satisfied she understood the nature of the transactions and that to the best of his knowledge she freely consented to them without undue influence or misrepresentation. P's husband was convicted for fraud and sentenced to six years in prison. P brought a claim for damages against BA for negligent advice in connection with the transactions whereby she had lost her interest in her home and other assets.

Point of dispute: Whether P's appeal would be allowed against the finding of the judge in the court below that BA had not acted in breach of their duty to her.

Held: The appeal was allowed. The correct approach to cases such as this was outlined by Lord Nicholls in the case of *Royal Bank of Scotland v Etridge (No 2) [2001] 2 AC 773*. The certificate which the solicitor had signed confirmed that P had been given appropriate legal advice about the mortgage and, to the best of his knowledge, had understood its effect and was not acting under undue influence or pursuant to a misrepresentation. Just providing bad advice not to enter into the transaction was not a sufficient discharge of BA's duty to P on her first visit. P should have been advised to explore why she was prepared to put her home and assets at severe risk in order to protect her husband, who was a fraudster, and that her signing the four documents was unlikely to prevent him from being prosecuted or sent to prison. The court could not conclude that P would not have acted differently if she had been properly advised. A new trial before a different judge was ordered.

22 High Court

Surveyor's negligence

* PARATUS AMC LTD V COUNTRYWIDE SURVEYORS LTD (2012) PLSCS 08 – Decision given 14.12.11

Facts: P, the claimant, provided mortgage loans secured on residential properties while CS, the defendant firm of surveyors, provided valuation services to it under an ongoing agreement. In 2004 P instructed CS to value a first-floor, two-bedroom flat in York in connection with a mortgage application from a borrower who sought a loan of £166,500. The application form stated that the borrower had purchased the property as newly built in 2003 for that sum, but in fact the original purchase price had only been £139,400. CS's July 2004 valuation stated that the property was worth £185,000. The borrower fell into arrears with his interest payments and in May 2008 P obtained a possession order. It sold the property in September that year for £123,500.

Point of dispute: Whether CS was liable in damages to P for negligence. P's expert gave evidence that the property was worth £153,340 in July 2004, that valuation being partly based on a percentage increase from the original purchase price to reflect the rise in the market in the intervening period and partly on the derivation of an average price per square metre from comparables. CS's expert's valuation at the same date was £175,000.

Held: P's claim was dismissed.

i. When valuing this property it was unsafe to rely on the original purchase price as setting the base to which the effects of a rising market should be applied. A developer might have given incentives to purchase, such as discounts on the purchase price, and the RICS advised caution in using these prices when valuing new properties. Nor was it appropriate to approach the valuation by conducting an arithmetical exercise based on a price per square metre. The evidence of CS's expert was preferred – the true value of the property in July 2004 was £175,000.

ii. Whether CS was in breach of duty depended on whether its valuation was within a range that might have been given by a competent valuer exercising reasonable care and skill. In this case an acceptable "margin of error" would have been 8%, taking into account the lack of consistency and clarity in the comparable evidence, the buoyancy of the market at the relevant date, heightened buoyancy in respect of this particular development due to the limited availability of properties there by the relevant date and the difficulties faced by a surveyor in valuing flats in blocks compared to standard houses on newly built estates. Adopting this approach, the acceptable range of valuations of the property was between £160,000 and £190,000 which meant that CS's valuation was not negligently high.

ENVIRONMENT

23 Defra Report

UK Climate Change Risk Assessment (CCRA)

The CCRA has reviewed the evidence for over 700 potential impacts of climate change in the UK context. Detailed analysis was undertaken for over 100 of these impacts across 11 key sectors on the basis of their likelihood, the scale of their potential consequences and the urgency with which action may be needed to address them. The following reports form this Assessment, and links to all of them may be found via the web page link below:

- the CCRA UK Government Report – this report sets out the main priorities for adaptation in the UK under five key themes identified in the CCRA 2012 Evidence Report – Agriculture and Forestry; Business, Industries and Services; Health and Wellbeing; Natural Environment and Buildings and Infrastructure – and describes the policy context, and action already in place to tackle some of the risks in each area;
- underpinning evidence for the CCRA;
- UK climate Change Risk Assessment Evidence Report; and
- reports and summaries for each of the eleven sectors: Agriculture; Biodiversity and Ecosystem Services; Built Environment, Business, Industry and Services; Energy; Floods and Coastal Erosion; forestry; Health; Marine and Fisheries; Transport; Water.

http://www.defra.gov.uk/environment/climate/government/risk-assessment/

GENERAL

24 CLG Consultation

Consultation on proposed changes to the Department's statistics: Land Use Change Statistics, Rationalised Collection of Local Authority Housing Statistics and Publication of Regional Statistics

Deadline for Responses: 02.04.12

The Government is committed to rationalising data collections so as to minimise the burden on data providers whilst ensuring the Department of Communities and Local Government's Statistics are aligned with policy priorities and meet user needs. The consultation is in three parts:

i. the first part seeks users' views on what data to collect and the method of collection in order to ensure that the Land Use Change Statistics will continue to meet users' priority needs whilst maximising value for money;

ii. the second part proposes a rationalised collection of housing data to reduce the burden on local authorities; and

iii. the third part seeks users' views on the proposal to end publication of the Department's statistics at a regional level in the light of the closure of the Government Office network.

http://www.communities.gov.uk/publications/corporate/statistics/consultchangesstats

25 CLG Publication

Regeneration to enable growth: A toolkit supporting community-led regeneration

This document was originally published in January 2011 under the title 'Regeneration to enable growth: What Government is doing in support of community-led regeneration'. Since then the progress that the Government has made with its growth and localism agendas has added several new tools to the "regeneration toolkit". The aim of this updated toolkit is to help local communities, councils, businesses and civil society organisations to navigate their way through the many tools, options, powers, flexibilities and incentives available to them as they make plans for their areas and communities.

http://www.communities.gov.uk/publications/regeneration/communityledregenerationtoolkit

26 Command Paper

Government Response to the House of Commons Communities and Local Government Committee Report of Session 2010-12: Regeneration (Cm 8264)

This Command Paper contains the Government's formal response to the recommendations and conclusions set out in the Department of Communities and Local Government Committee's report on regeneration.

http://www.communities.gov.uk/publications/regeneration/governmentresponseregeneration

27 RICS Publication

RICS UK Commercial Market Survey Q4 2011

The latest RICS survey reports the following:

- there is continued falling occupier demand and rising availability, which is leading to an increasingly negative outlook for rent levels;
- surveyors expect the market to stagnate as finance remains tight and tenants become increasingly cautious due to concern about economic prospects at home and abroad;
- development starts fell further across all sectors of the market, particularly for retail units;
- capital value expectations also continued to fall and surveyors expect investment transactions to slow significantly; and
- London and the South no longer seem to be immune to the negativity felt elsewhere in the UK, and the Central London office market, which had remained buoyant for the first half of 2011, saw occupier demand fall for the first time in 18 months.

http://www.rics.org/site/scripts/download_info.aspx?downloadID=8248&fileID=11118

28 London Assembly Publication

Convergence Framework and Action Plan 2011-2015

The Mayor of London and the elected Mayors and leaders of the six Olympic Host Boroughs are committed to working towards achieving socio-economic convergence between the Host Boroughs and the rest of London over the period to 2030. In his London Plan the Mayor has declared the Olympic Park and surrounding areas as "London's most important regeneration priority for the next 25 years". The challenge of convergence is to ensure that over 20 years the scale of disadvantage experienced by Host Borough residents is reduced through:

- higher educational attainment;
- achievement of greater skills qualifications;
- increases in the number of economically active adults;
- reduction in child poverty;
- increase in life expectancy;
- reduction in housing overcrowding; and
- reduction in violent and gang crime.

This Plan is a statement of how in the next four years the Host Boroughs, the Mayor of London and their partners will take practical steps to address these issues.

http://www.london.gov.uk/publication/strategic-regeneration-framework-east-london

29 London Assembly Consultation

Olympic Legacy SPG background studies

Deadline for Comments: 11.02.12

In connection with the draft Olympic Legacy Supplementary Planning Guidance (OLSPG), which was published in September 2011 for consultation, the London Assembly has published a number of background studies on which comments are invited. These are:

- OLSPG Delivery Study;
- OLSPG Draft IIA;
- OLSPG Energy Study;
- OLSPG Development Capacity Methodology;
- OLSPG IIA Final Scoping Report; and
- OLSPG draft Convergence Guidance.

Links to all these documents may be found at the following page:

http://www.london.gov.uk/publication/olympic-legacy-spg-background-studies

30 London Assembly Consultation on Draft Supplementary Planning Guidance (SPG)

Green Infrastructure and Open Environments: Preparing Borough Tree and Woodland Strategies

Deadline for Comments: 23.04.12

This SPG is a joint publication with the Forestry Commission. It sets out an approach to London's trees and woodlands which:

- covers the audit, protection and management of trees and woodland in line with Policy 7.21 of the London Plan;
- highlights the asset value of trees and woodland, both in financial and environmental terms;
- considers all the trees in a borough as a single resource – an "urban forest";
- extends the concept of an "urban forest" across boundaries in order to enhance the cumulative benefits of trees to Londoners; and
- takes a step by step approach to the management of trees and woodland.

http://www.london.gov.uk/publication/tree-and-woodland-strategies-spg

31 RICS Publication

UK Economy & Property Market Chart Book – February 2012

This contains data on the current state of financial markets, the economy, and the construction, housing and commercial property sectors.

http://www.rics.org/site/scripts/download_info.aspx?fileID=11195

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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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