

EVEBRIEF

Legal & Parliamentary

Volume 34(12) 3 September 2012

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IS A MAN'S HOUSE (OR MARKET GARDEN) HIS CASTLE?



Gemma Dow
Editor

The recent sporting distractions combined with a holiday for many of the courts have led to a rather quiet 'legal' period. A case of particular note however (item 12) concerning trespass helps to clear up a number of points including how one serves a notice on an owner or occupier of a piece of land, in this case a market garden, where there is no clearly visible letter box. In July 2010 a possession claim was brought against a group of campaigners occupying the land, but the campaigners contended that notice was not properly served and that their removal would be an infringement of their human rights.

The court decided that, although the landowner had arguably not complied strictly with the requirements stated in the legislation, his conduct had not been unreasonable in the circumstances. It also clearly held that a private landowner has his own human rights which can be interfered with by those of 'squatters' only in exceptional circumstances.

Continuing with this theme, the new 'anti-squatting laws' came into force on 1st September under the provisions of the Legal Aid Sentencing and Punishing of Offenders Act 2012. The offence applies where a person knowingly trespasses in residential premises with the intention of living there and is punishable by up to a year's imprisonment or a £5,000 fine.

On the face of it, this will bring an end to property owners' and indeed property managers' nightmares. Sadly though this is not entirely the case: for some reason best known to the Government, the new laws apply only to residential properties, and do not extend to commercial properties which will therefore continue to be under considerable threat.

Gemma Dow



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PLANNING

01 Statutory Instrument

SI 2012/2031 The Neighbourhood Planning (Referendums) Regulations 2012

These Regulations, which came into force on 03.08.13, make provision for the conduct of referenda held under para 16 of Schedule 4B to the Town and Country Planning Act 1990. The referenda will relate to the question of whether a neighbourhood plan, neighbourhood development order or a community right to build is approved.

<http://www.legislation.gov.uk/ukxi/2012/2031/contents/made>

02 Supplementary Planning Guidance

Preparing Borough Tree and Woodland Strategies SPG

This SPG is a joint publication by the London Assembly Government and the Forestry Commission. It sets out an approach to trees and woodland 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 terms and the broad range of economic and environmental benefits they provide;
- considers all the trees in a borough as a single unified resource – an ‘urban forest’;
- extends the concept of an ‘urban forest’ across boundaries so that the cumulative benefits of trees to Londoners can be enhanced; 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>

03 CLG Responses to Consultation

Proposals for changes to planning application fees in England: Consultation – Summary of responses

This document summarises the responses made to the consultation on proposed changes to the planning application fees regime which ran from 15.11.10 to 07.01.11. If implemented the responsibility for setting fees would be decentralised to local authorities. Authorities would also be allowed to charge for some applications which are currently free.

<http://www.communities.gov.uk/publications/planningandbuilding/planningfeesresponses>

04 CLG Consultation

Renegotiation of s106 planning obligations: Consultation Deadline for Comments: 08.10.12

The Government’s Housing Strategy Laying the foundations: A Housing Strategy for England published on 21.11.11, set out a proposal to allow reconsideration of planning obligations agreed when market conditions were more buoyant in order to help unlock stalled development. There are currently about 1400 housing schemes of over 10 housing units with planning permission that are stalled. This consultation contains details of how this proposal will work and seeks views on it.

Section 106A of the Town and Country Planning Act 1990 allows voluntary renegotiation of a planning obligation at any time. Where voluntary agreement cannot be reached there may be a formal request to reconsider an obligation when that obligation is five years old. It is proposed that for all planning obligations agreed on or prior to 06.04.10, the relevant local authority can be asked to formally renegotiate the terms one month after the new regulations are introduced. For all planning obligations agreed after 06.04.10 the period will remain at five years and there will no change to the ability to renegotiate obligations voluntarily at any time. 05.04.10 is considered to be the appropriate cut-off date since new statutory tests were introduced for most planning obligations on that date and it is also clear that a high proportion of stalled developments date back to before April 2010 when different market conditions prevailed.

<http://www.communities.gov.uk/publications/planningandbuilding/renegotiationobligationsconsult>

05 Department of Culture Media and Sport – Consultation

Consultation on Improvements to the system of Listed Building Consents Deadline for Responses: Now closed

This consultation delivers the Government’s commitment contained in its response to the Penfold Review of Non-Planning Consent. It seeks public consultation on simplifying the Listed Building Consent (LBC) system through measures to reduce the circumstances in which LBC is required and reduce the level of information applicants are required to submit. The aim of the proposed changes is to reduce burdens on developers and to allow the public agencies which administer these consents to focus on areas at the highest risk and deliver a more efficient service.

<http://www.culture.gov.uk/consultations/9236.aspx>

06 CLG Impact Assessment

Renegotiation of s106 planning obligations: Impact assessment

This impact assessment has been produced alongside the consultation document and explores the policy position and available evidence.

<http://www.communities.gov.uk/publications/planningandbuilding/renegotiationobligationsimpact>

07 English Heritage guidance

Heritage in local plans: how to create a sound plan under the NPPF

This document is a guide to local authorities on how to achieve the objectives of the National Planning Policy Framework for the historic environment and thereby pass the test for a sound local plan.

<http://www.helm.org.uk/upload/pdf/120725-heritage-local-plans.pdf?1345615399>

RATING

08 CLG Statistical Release

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

Details of the national non-domestic rates collected by local authorities in England in 2011-12 were announced on 15.08.12. The latest statistics release includes data from 2007-08 to 2011-12. Key points from the latest release are as follows:

- The net rate yield (after allowances for changes in respect of previous years and reliefs) increased by 9.1% to £21.0 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 in 2011-12;
- Between 2007-08 and 2011-12 the contribution to the pool from local lists increased by £3.5 billion or 21%; and
- London accounts for 29% of the contribution to the national pool while having only 15% of the population.

<http://www.communities.gov.uk/publications/corporate/statistics/nondomesticrates201112>

HOUSING

09 CLG Statistics

House Building: June Quarter 2012, England

These statistics relate to the period April to June 2012. Key points are as follows:

- There were 21,540 seasonally adjusted housing starts in the June quarter 2012, 10% lower than the number in the March quarter;
- Completions (seasonally adjusted) also fell, by 6% to 29,470 in the June quarter 2012;
- There were 7% fewer private enterprise housing starts (seasonally adjusted) in the June quarter 2012 than the previous quarter. There were 23% fewer starts by housing associations;
- Seasonally adjusted private enterprise completions fell by 5% and housing association completions fell by 11% from the previous quarter;
- Seasonally adjusted starts are now 27% higher than the March quarter 2009 trough, but 54% below the December quarter 2005 peak. Completions are 39% below their March quarter 2007 peak; and
- Annual housing starts totalled 98,670 in the 12 months to June 2012, down by 10% compared with the year before. There were 118,330 housing completions in England in the 12 months to June 2012, 8% more than the previous 12 months.

<http://www.communities.gov.uk/publications/corporate/statistics/housebuildingq22012>

10 CLG Publication

Review of the barriers to institutional investment in private rented homes

The Government's Housing Strategy, published in November 2011, set out the Government's plans for increasing the supply of housing. It recognised an increasingly important role for the private rented sector both in meeting people's housing needs and in supporting economic growth. The gap between housing supply and household growth is widening – in 2009-10 there were 115,000 new build housing completions in England while the most recent housing projections suggest that the number of households will grow by an average of 232,000 per year until 2033. This report contains a summary of the results of Sir Adrian Montague's review of the barriers to institutional investment in private rented homes. The review examined how best to encourage greater investment in rental properties and sought to explore the factors that might encourage institutions to invest in new homes for rent. Its main recommendations were that the Government should promote the expansion of the "build to let" market by encouraging local authorities to make more positive use of existing opportunities under the planning system to promote private rented schemes.

<http://www.communities.gov.uk/publications/housing/privaterentedhomesreview>



TORT

11 High Court

Duty of care

*DRYSDALE V HEDGES
(2012) PLSCS 178 – Decision given 27.07.12

Facts: H, the defendant, owned a mid-terrace Victorian house which included a basement. A path and three steps, which had recently been painted red, led up to the front door. A very low wall separated the steps and the path from a drop of eight feet to the basement area below. Under clause 3.2 of H's tenancy agreement with D, the claimant, H covenanted to provide and maintain the structure and exterior in good repair, except in respect of damage caused by the tenant or any invitee, or insofar as the tenant was liable to keep the premises in repair. D suffered severe injury when she fell from the steps into the basement area.

Point of dispute: Whether D's claim for damages for personal injury against H would be allowed. D alleged that the steps were unduly slippery because of the fact of having been painted, and because they were wet and dirty. It was also alleged that the wall was not sufficiently high and that a handrail should have been provided to prevent someone from falling down into the basement area. D alleged that as a result of those failures H was: (i) in breach of s2 of the Occupiers Liability Act 1957; (ii) in breach of clause 3.2 of the tenancy agreement and s4 of the Defective Premises Act 1972 (which was concerned with the landlord's duty of care by virtue of the obligation or right to repair the demised premises); and (iii) in breach of his common law duty of care.

Held: D's claim was dismissed.

- i. A landlord's duty of care under the Occupiers Liability Act 1957 was defined in s4, not s2. Section 4 had been replaced by s4 of the Defective Premises Act 1972 which was the correct statutory provision to consider when ascertaining the extent of a landlord's duty in tort.
- ii. To show a breach of clause 3.2 and/or s4 of the 1972 Act, D had to show that the premises were not in good repair. This constituted the idea of making good damage – a duty to repair was not the same as a duty to make safe; nor did a duty to keep in good condition encompass a duty to put in a safe condition. A tenant had to take a house as he found it and neither a landlord nor a tenant was bound to provide the other with a better house than was there to start with. The paint on the steps did not cause them not to be in good repair and neither clause 3.2 nor s4 of the 1972 Act had been breached.
- iii. The court was bound by the 1906 House of Lords decision in *Cavalier v Pope* that a landlord who let premises in a dangerous condition owed no duty to remedy the defect and no duty of care to a third party injured as a result of the defect. This meant that H was under no duty to provide a guardrail. However, he was under a duty to ensure that the application of paint to the steps did not create an unnecessary risk of injury.

Where personal injury resulted from a failure to repair then the duty of care was that set out in the 1972 Act. Where, as in this case, the Act did not apply, a landlord owed a duty to take reasonable care not to create an unnecessary risk of injury. On the evidence the court could not conclude that there had been a breach of that duty in this case.

12 Central London County Court

Trespass

*MALIK V PERSONS UNKNOWN
(2012) PLSCS 179 – Decision given 17.07.12

Facts: The claimant, M, owned land which was blighted by the proposal to build a third runway at Heathrow airport. The defendants were part of a group which campaigned for the regeneration of villages affected by the runway proposal and proposed to restore M's land to a market garden. In July 2010 M brought a possession claim against the defendants on the grounds of trespass. Three copies of the claim documents were pinned to the outside of the premises and one was handed through a gap in the fence to an unidentified occupier.

Point of dispute: Whether M's claim for possession would be allowed. The defendants alleged that the requirements of CPR 55 (regarding the service of claims against trespassers) had not been complied with since the claim documents had not been posted through the letterbox and the second defendant had not been named, although his name was known. They also contended that: (i) they had an implied licence to remain on the land; and (ii) eviction would contravene their right to respect for their home under Article 8 of the European Convention on Human Rights (ECHR).

Held: M's claim for possession was allowed.

- i. Although the requirements of CPR 55 were mandatory, the requirement to post through a letterbox applied only "if practicable". M's solicitor had been unable to find the letterbox as it was obscured, but the claim documents had been placed in a clearly visible location. The failure to name the second defendant did not render the claim defective as M had probably never known his surname and M had correctly addressed the claim to "persons unknown".
- ii. The defendants had no implied licence to occupy. Negotiations about the terms upon which the defendants might be able to remain on the land did not in themselves give rise to a licence. The fact that M had acquiesced in the defendants' occupation by allowing them to remain and not taking steps to evict them was an estoppel argument, but a proprietary estoppel could only arise if there was an unequivocal representation, on which the defendants relied to their detriment. There had been no such representation and no detriment to the defendants – on the contrary, they had enjoyed rent-free occupation of the land.

iii. M, as a private landowner, had a right to the peaceful enjoyment of his possessions by virtue of Article 1 of the First Protocol to the European Convention on Human Rights. Only in a highly exceptional case could Article 8 rights of defendants who were trespassers justify interference with the protected rights of a landowner under Article 1.

ENVIRONMENT

13 Defra Publication

Waste water treatment in the UK

This document describes what the UK has done to improve waste water treatment and meet its commitments under the Urban Waste Water Treatment Directive. It provides a general description of the present situation, monitoring and investment, and explains how individuals can help to reduce water pollution. It also explains how waste water is treated in the UK and what action is being taken to improve this.

<http://www.defra.gov.uk/publications/2012/08/22/pb13811-waste-water-treatment/>

14 Defra Information Note

Designation of structures and features for flood and coastal erosion risk management purposes

This information note is concerned with the statutory designation of structures and other features (natural or manmade) as defined by the Flood and Water Management Act 2010 (the 2010 Act), and the implications of designation for designating and responsible authorities in England and Wales. The note sets out recommendations on the practical considerations for designating and responsible authorities to enable designations to be made, recorded and managed effectively in the interests of flood and coastal erosion risk management.

<http://www.defra.gov.uk/publications/2012/07/20/pb13804-fcerm-info/>

CONSTRUCTION

15 CLG Statistical Release

Code for Sustainable Homes and Energy Performance of Buildings: Cumulative and Quarterly Data for England, Wales and Northern Ireland up to end of June 2012

The latest official statistics on the Code for Sustainable Homes and Average Energy Efficiency (SAP ratings) were released on 23.08.12. Statistics in this release relating to the Code for Sustainable Homes show the number of dwellings that have been certified to the standards set out in the Code Technical Guide.

Key points from the latest release are:

- There were 75,845 post construction stage certificates and 125,244 design stage certificates issued up to 30.06.12;
- 17% of homes with post construction certificates and 29% of those with design stage certificates have been built for the private sector;
- 83% of homes with post construction certificates and 71% of those with design stage certificates have been built for the public sector; and
- The average energy efficiency (SAP) rating of new homes was 80.1 in England and 79.0 in Wales for the quarter April – June 2012. This is a decrease of 0.1 points for England and 0.7 points for Wales on the same quarter in 2011, from 80.2 and 79.7 respectively.

<http://www.communities.gov.uk/publications/corporate/statistics/codesustainablesapq22012>

16 College of Estate Management Research Report

Sustainable Buildings: Smart, Green and People-Friendly

This research paper discusses the ways in which the next generation of 'smart' buildings will facilitate better working environments and higher standards of green design. Taking forward contemporary discussion within the global office industry on sustainable design and workplace productivity, the paper argues that green design supported by smart technologies will be a vital part of a new smarter built environment being created across the globe over the next decade.

<http://www.cem.ac.uk/research/reports-publications/sustainable-buildings-smart,-green-and-people-friendly.aspx>



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GENERAL

17 London Assembly Report

London Housing Market Report – Quarter 2, 2012

This report summarises key trends in London's housing market, including prices, affordability, repossessions and new housing construction. The data presented is the latest available as of mid-August 2012, although it should be read with the caveat that changes in the housing market can take time to show up in published data. Where possible, comparisons are made between trends in London and the rest of the country, as national trends may mask significant regional differences. Key findings include the following:

- Economic growth has slowed in London but is at a higher level than the rest of the UK. Unemployment in London fell over the last quarter;
- New mortgage lending and consumer confidence remain at low levels;
- Average house prices in London rose by 6.5% over the last year;
- Prices of average new homes rose by 10% and other homes by 5% in London during the last year; and
- New housing starts in London rose in the second quarter of 2012, but new home registrations and new construction orders have fallen.

[http://www.london.gov.uk/publication/
london-housing-market-report-quarter-2-2012](http://www.london.gov.uk/publication/london-housing-market-report-quarter-2-2012)

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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(12) 3 September 2012

01 Wales – Construction

WALES

CONSTRUCTION

01 Welsh Assembly Government Consultation

Building Regulations Part L Review

Deadline for Comments: 23.10.12

The Welsh Government is committed to achieving near zero carbon energy buildings by 2020. This consultation contains proposals for:

- changes to Part L (Conservation of Fuel and Power) of the Building Regulations;
- changes to the Approved Documents for Wales;
- a new template for the Approved Documents for Wales; and
- a discussion of future thinking as Wales moves towards zero carbon.

<http://wales.gov.uk/consultations/planning/buildingregspartl/?lang=en>



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