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Volume 30(06) 12 May 2008

evebrief

Editorial



Krista Fieldhouse

As if the current state of the housing market wasn't enough for estate agents to contend with, they have now got something else to worry about. At item 23 we report on a case which reached the Court of Appeal concerning those hard fought over fees. Foxtons, operating on a sole agency basis, showed a potential purchaser round a house. When the sole agency ended, a joint agency agreement was entered into and the new agent approached the same individual who ultimately bought the house. The judge at the Court of Appeal has decided in favour of the vendor of the house who doesn't now have to pay Foxtons a fee as well as the new agent. The phrase in Foxtons' contract saying they should be entitled to a fee from a "purchaser introduced by us" has been interpreted by the judge as meaning "a person who becomes a purchaser as a result of our introduction". The alternative interpretation of introducing someone "who at some time in the future may become a purchaser" could, it has been decided, result in inequities. For example, an agent could claim a fee even if they had shown a person around a property a number of years before that person

buys it through a competitor. No doubt there will be a lot of lawyers scrutinising the decision on behalf of their estate agent clients and reviewing the estate agents' standard contract. The case may yet proceed to appeal at the House of Lords. It is clear however that this decision makes it vitally important for an estate agent to demonstrate a clear link between any purchaser's offer and their introduction to the property.

Continuing on the housing theme, at items 17 and 18 we report on the most recent housing statistics. It is striking what a difference there is between the sources. Are you going to bandy about the Land Registry March 2008 statistic of an annual change in house prices of +3.6% or do you prefer the Halifax data of an annual change of +1.1%? This seems a prime example of how misleading statistics can be or, as Mark Twain put it, there are three kinds of recognized untruths: "Lies, damn lies and statistics"!

Krista Fieldhouse

Landlord & Tenant

01

Court of Appeal

Whether reasonable to introduce an overnight parking scheme at industrial park

* SHAH V COLVIA MANAGEMENT COMPANY LTD
(2008) All ER (D) 256 (Mar) — Decision given 18.03.08

Facts: S ran six car repair businesses from an industrial park owned and managed by CMC. CMC also owned all the accessways and car parking spaces at the park. Under the terms of their lease S occupied units on the basis that they could use the car parks and amenity land "subject to such reasonable rules and regulations for the common enjoyment thereof as [CMC] may from time to time subscribe". S needed overnight car parking but there was a shortage of spaces on the park. During the course of meetings held to discuss the rates bill for the park a proposal was developed under which a company called ITSM would manage a new car parking scheme under which they would charge tenants who wanted to park cars overnight. S objected and made an open offer under which it agreed to pay £300 per annum for each of 70 spaces with the controlled period being from midnight to 02:00.

Point of dispute: Whether CMC's appeal would be allowed against the decision of the judge in the court below that although it was reasonable to introduce an overnight car parking ban with rationing by price, this particular scheme was unreasonable as CMC had not researched the proper local market rate for overnight car parking spaces and the rates bill for the parking area should be borne by all the lessees. CMC argued that there was no evidence that the amounts charged were unreasonable and that the judge was wrong to reject the scheme, having accepted that, in its main features, it was reasonable.

Held: CMC's appeal was allowed. The onus of proving that consent had been unreasonably withheld was on the tenant; the landlord did not have to justify his refusal of consent if the same conclusion could have been arrived at by a reasonable man in the circumstances of the case. The points relied on by the judge for striking down the scheme did not justify him in doing so. To reach the conclusion that the scheme was unreasonable because the charges were unreasonable without any evidence to prove that was the case was not warranted.

Planning

02

Administrative Court

Local planning authority granting itself permission for an outdoor education centre on site in the green belt — "other material considerations" capable of rebutting presumption against development — adequacy of reasons given

* R (ON THE APPLICATION OF WATES) V SURREY COUNTY COUNCIL
(2008) All ER (D) 173 (Apr) — Decision given 19.03.08

Facts: In June 2007 SCC granted itself conditional planning permission to demolish an outdoor education centre situated in the green belt and to replace it with a new centre five times the size of the old one. SCC stated that the proposed development would not normally be permitted, but that there were "other material considerations" which outweighed the presumption contained in paras 3.1 and 3.2 of PPG2: Green Belts against development in the green belt, including: (i) the fact that there had been an established centre providing a range of outdoor activities on the site for a long time; (ii) no other site that it owned could provide the range of activities required; (iii) the facilities at the existing centre needed to be updated to meet modern day expectations and provide for disabled people; and (iv) the new centre was unlikely to have a significant impact on the openness of the green belt.

Point of dispute: Whether W, who owned a neighbouring property, should be granted his application for judicial review of SCC's decision.

Held: W's application was allowed. Once a local planning authority had stated that "other material considerations" outweighed the harm that would be caused by a development, that would be equivalent to the "very special circumstances" required to rebut the presumption against development in the green belt, under paras 3.1 and 3.2 of PPG2. The use of the words "other material considerations" in its decision was acceptable, but in this case SCC's decision was flawed as there was no basis on the available evidence upon which it could have established ground (ii) (that it did not own another site which could provide the required range of activities).

03

Administrative Court

Refusal of planning permission for development within settlement policy boundary – whether inspector had erred in law

* ANTLER HOMES WESSEX LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2008) PLSCD 104 — Decision given 16.04.08

Facts: AHW had a conditional contract to purchase a site for residential development which was within the settlement policy boundary (SPB) as shown on the proposal map of their district local plan. During the course of the process for producing the local plan there had been a number of objections concerning the extent of the SPB but the local plan was adopted with the SPB in the position originally proposed in the vicinity of AHW's site. AHW was refused planning permission to demolish two large dwellings with substantial gardens and to replace them with a number of smaller houses and to use the rear garden of a third party for the purpose of the development. On appeal the inspector recognised that development in the SPB could extend to garden areas (backland development), but nevertheless took the view that the AHW's proposed development would have an intrusive effect on the character and appearance of the surrounding areas.

Point of dispute: Whether AHW's application should be allowed to quash the inspector's decision on the grounds that the inspector had erred in law in concluding that development was objectionable as a matter of principle, as that was contrary to s38(6) of the Planning and Compulsory Purchase Act 2004.

Held: AHW's application was dismissed. In the circumstances the inspector was entitled to conclude that the proposed development would seriously damage the character and appearance of the area and would be likely to set a precedent for other similarly harmful developments. The inspector had properly considered all the relevant planning policies and correctly identified the main issue as being the effect of the proposed development on the character and appearance of the surrounding area. He was entitled to conclude that the proposals would represent a major change to the appeal site and that they were wholly out of keeping with the nature of the existing development on the site.

04

Administrative Court

Application for planning permission in Special Protection Area (SPA)

* HART DISTRICT COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2008) PLSCS 131 — Decision given 01.05.08

Facts: Some developers applied for planning permission for residential development of land designated as a special protection area for birds (SPA) under EC Council Directive 92/43 (the Bird Directive). Natural England advised that residential development within 5km of the SPA was likely to have a significant effect upon the site because the increased number of dog walkers would disturb nesting birds and recommended refusal of permission unless satisfactory mitigation measures were provided. The developers proposed a package of avoidance and mitigating measures at the initial screening stage of their applications in the form of suitable alternative green space. The developers appealed against HDC's refusal of permission and, contrary to the recommendation of the inspector, the Sec of State allowed the appeal considering that the proposed development would not significantly affect the SPA. This meant that it was not necessary to make an appropriate assessment of the implications for the site in view of its conservation objectives under regulation 48(1)(b) of the Conservation (Natural Habitats, etc) Regulations 1994.

Point of dispute: Whether HDC's application to quash the Sec of State's decision should be allowed on the grounds that the Sec of State had erred in law by concluding that planning permission could be granted in the absence of an appropriate assessment and in failing to consider the inspector's conclusions regarding the effect of the development on the integrity of the SPA.

Held: HDC's application was dismissed. If there was a high chance that a project would affect a site's conservation objective the competent authority should undertake an appropriate assessment, having regard to conservation objectives, after which stage mitigation measures might be considered. Where a proposed development could have a significant effect upon an SPA but for remedial measures it would not be right to require the Sec of State to ignore an existing package of mitigation and remediation measures when determining whether an appropriate assessment should be carried out. If the mitigation measures could be predicted with confidence it would be reasonable to take them into account in determining whether an appropriate assessment was required.

05

Divisional Court

Renovation of listed building – unauthorised works

* EAST RIDING OF YORKSHIRE COUNCIL V HOBSON
(2008) PLSCS 111 — Decision given 18.04.08

Facts: H, an architect, was engaged to carry out renovation works to an old Grade II listed building comprising an old watermill, a farmhouse and a stable block. In June 2005 ERYC granted planning permission and listed building consent for the extension and alteration of the listed building. The first stage of the works involved dismantling the roof and the second various rebuilding works. Following notification by a member of the public that the stable block had been dismantled a planning enforcement officer visited the site in January 2006 and took photographs which showed that it had been largely dismantled. By October it had been totally dismantled and all the works were completed by the end of 2006 without any further intervention by ERYC.

Point of dispute: Whether ERYC's appeal should be allowed against the decision of the judge in the court below that, although the character of the building had been affected at the first stage of the works, subsequent to the reconstruction they had not affected the building's special architectural or historic character and H was not guilty of an offence under s9 of the Planning (Listed Buildings and Conservation Areas) Act 1990. ERYC argued that the purpose of the statutory scheme meant that the judge should have just considered the works at the dismantling stage when assessing their effect on the character of the listed building, rather than the entirety of the works.

Held: ERYC's appeal was dismissed. When a defendant is charged with carrying out unauthorised works of alteration by dismantling sections of a listed building as part of a larger reconstruction project a judge was correct not to limit his consideration to those works on their own, but also to consider other unauthorised works of reconstruction or restoration to determine the effect as a whole on the special architectural or historic character of the building. A planning authority could not stop assessing works in an artificial manner halfway through a project. The purpose of the legislation was to protect the special character of listed buildings and a realistic and practical approach had to be taken to interpretation of the statute.

06

DCLG Circular

Circular 04/08: Planning-related Fees

This Circular contains an explanation of the fees charged by local planning authorities for handling applications for planning permission, for approving details after the grant of outline permission and for altering or removing conditions attached to permissions. It also explains the fees for "deemed" applications (generated during the course of appeals against enforcement notices), and for applications to display advertisements, for lawful development certificates, and for confirmation that planning conditions have been fulfilled.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/10.pdf>

07

DCLG Publication

Design to delivery: eco-towns transport worksheet

This Transport Worksheet, together with the initial guidance published by the Department of Transport in the form of a "Menu of Options" forms part of the Government's advice on planning for transport in eco-towns. The aim of the eco-town is to produce sociable neighbourhoods with lower car dependency where healthier and more sustainable modes of travel are promoted.

- planning for transport in eco-towns should focus on creating lifetime places that work;
- street and place design should start with pedestrians and cyclists having priority and with limited and managed car access;
- speed limits should be low on all streets, but with a speed hierarchy system;
- the use of public transport for journeys not suitable for walking or cycling should be the norm; and
- the distribution of activities such as services and work places should reinforce access by walking, cycling and public transport

http://www.tcpa.org.uk/press_files/pressreleases_2008/20080325_ET_WS_Transport.pdf

08

DCLG Publication

Towards sustainable communities: eco-towns community worksheet

The aim of this Worksheet is to ensure that the opportunities provided by the eco-towns are properly used in the interests of achieving sustainable communities. It sets out a number of recommendations regarding the support that eco-town promoters can give to enable the formation of sustainable communities — based on the idea of building social capital within the new development by bringing people together in a supportive environment.

http://www.tcpa.org.uk/press_files/pressreleases_2008/20080325_ET_WS_Community.pdf

09

DCLG Publication

Sustainable water management: eco-towns water cycle worksheet

This Worksheet sets out a range of innovative ideas to help achieve sustainable water management in eco-towns, including flood risk management, sustainable drainage, water efficiency and water quality. It contains guidance as to the processes that should be followed and the desired outcomes of an eco-town development, as well as details of relevant regulations and policies, case study examples and sources of further information.

http://www.tcpa.org.uk/press_files/pressreleases_2008/20080325_ET_WS_Water.pdf

10

Spatial Plans in Practice: Supporting the reform of local planning

The Spatial Plans in Practice project is a major, three-year study of the new local plan-making system. The Project which commenced in April 2005 was launched by the Planning Minister Yvette Cooper on 14.06.05.
<http://www.communities.gov.uk/planningandbuilding/planning/regionallocal/spatialplans/>

In connection with this project three new papers have recently been published:

1. Stakeholder Involvement: Spatial Plans in Practice – Supporting the reform of local planning

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

2. Participation and policy integration in spatial planning: Spatial Plans in Practice – Supporting the reform of local planning

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

3. Cross boundary working: Spatial Plans in Practice – Supporting the reform of local planning

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

11

CABE Publication

Creating successful masterplans: a guide for clients

This paper argues that masterplanning is the key to creating great places — that a clear considered masterplan developed by professionals and local people working together can lead to physical, social and economic revival. This paper sets out advice based on the experience of CABE's programmes on various topics, including:

- what is masterplanning;
- how masterplans fit into the development process;
- stages of preparation: the strategic framework, baseline data, urban design analysis, characterisation, the outline business case;
- consulting and communicating with stakeholders;
- testing a masterplan;
- implementation strategies;
- competitive selection;
- EU procedures; and
- masterplanning/developer competitions

<http://www.cabe.org.uk/default.aspx?contentitemid=451>

Real Property

12

Court of Appeal

Acquisition of right to light by prescription

* RHJ LTD V FT PATTEN (HOLDINGS) LTD
(2008) All ER (D) 161 (Mar) — Decision given 12.03.08

Facts: The claimant bought some land from a local authority in 2001. The land was held under a 99-year lease which had been granted in 1975. Some neighbouring land, which had also originally been owned by the local authority, was acquired by the defendant in 1989. Para (i) in the First Schedule to the claimant's lease excepted and reserved: "the full and free right to erect build rebuild and/or alter as they may think fit at any time and from time to time any buildings or bays or projections to buildings on any land adjoining the demised property and/or on the opposite sides of the adjoining streets and access ways". Clause 2 stated "provided always that nothing herein contained shall operate to grant by way of implication or otherwise any estate right or easement not hereby expressly granted or not hereafter expressly granted by the lessor over or in respect of any land retained by or belonging to the lessor whether now held on lease from the lessor or not or over any land to be hereafter acquired by the lessor".

Point of dispute: Whether the claimant had any rights of light over the defendant's land. Section 3 of the Prescription Act 1832 provides: "When the access and use of light to and for any dwelling house, workshop, or other building shall have been actually enjoyed therewith for the full period of 20 years without interruption the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing".

Held: The claimant's appeal was dismissed against the decision of the court below, heard as a preliminary issue, that the claimant had been prevented from acquiring any rights of light over the defendant's land since para (i) read together with clause 2 amounted to a consent or agreement for the purposes of s3 of the Prescription Act 1832. The "purpose" referred to in s3 was that of preventing the enjoyment of light becoming absolute and indefeasible by the mere fact of enjoyment over 20 years. An express reference to light was not a necessary feature of an agreement or consent for the purposes of s3.

13

Court of Appeal

Modification of restrictive covenant

* DUFFIELD V GANDY
(2008) PLSCS 110 — Decision given 17.04.08

Facts: D obtained planning permission to erect a bungalow in a corner of their property, which was affected by a restrictive covenant prohibiting the erection of a "residence". Their application to modify or discharge this covenant under s84(1)(aa) of the Law of Property Act 1925 was disputed by G, D's next door neighbour, who contended that the restriction protected the privacy of her property which was not overlooked or disturbed by any close neighbours and that the privacy of her garden would be disturbed by the proximity of the bungalow's rear garden.

Point of dispute: Whether D's appeal should be allowed against the decision of the Lands Tribunal not to modify the covenant as it concluded that the benefits it secured were of "substantial value or advantage" to G. D argued that the covenant was not of any value to G as the area of land adjoining G's property could be used as a garden without breaching the restriction and without the need for permission. D submitted that the tribunal had wrongly construed the covenant as preventing such use and had therefore taken into account an immaterial consideration when reaching its decision.

Held: D's appeal was dismissed. Nothing in the covenant prevented D from using any part of their property as a garden. The tribunal had been correct to conclude that the practical benefit of the covenant for G was to protect her privacy, not only from the erection of the bungalow, but also from use of an adjoining part of D's property as a garden ancillary to occupation of the bungalow. The tribunal had adopted the correct approach and was entitled to conclude that the practical benefits of the restriction, being the ability to prevent the development of D's property by the erection of a residence that would also involve ancillary use of a garden which would adjoin G's property, were of substantial value or advantage to her.

14

High Court

Agreement for sale of land — specific performance

* EZEKIEL V KOHALI

(2008) PLSCS 96 — Decision given 11.04.08

Facts: In September 1999 K and E entered into a written agreement for the sale of two plots of development land in North London. The agreement did not specifically refer to title or to the status of any representations, nor did it contain a precise definition of the land being sold which meant that it was necessary to rely upon the annexed plan and specification. E's searches showed that the registered titles did not include the entire site, in particular an access strip, but argued that throughout the negotiations leading up to the September 1999 agreement K had represented that they owned all the land including the strip and that he had relied upon those representations.

Point of dispute: Whether E should be awarded specific performance of the contract with an abatement of £300,000 to the purchase price, on the grounds that K could not show good title to all of the land they had contracted to sell and particularly the access strip, and could not grant appropriate easements over it. K, who counterclaimed for specific performance but without abatement, argued that E had been shown their registered titles at an early stage of the negotiations and that E was aware of the limited extent of the title being sold.

Held: E's application was dismissed and K's counterclaim was allowed. Where there is an innocent misrepresentation as to the area of land to be sold the purchaser is entitled to whatever the vendor can sell with an appropriate abatement in the purchase price for the area that falls short of what was represented to be sold. The obligation to show good title in every respect can, however, be rebutted by proving that the purchaser had entered into a contract with the knowledge of the particular defects in title. On the evidence in this case it was more than likely that E had been aware of the extent of K's title before the September 1999 agreement was executed, so his implied right to good title was rebutted and he could not show reliance upon misrepresentation as to title at that time.

15

High Court

Defence of common mistake

* APVODEDO NV V COLLINS

(2008) PLSCS 109 — Decision given 17.04.08

Facts: C was involved in the business of property investment and development. In 2006 he met L, who claimed that he was a business associate of the owners of the Ritz Hotel and was in a position to be able to buy the hotel for £200m. An agreement was entered into under which L would purchase the hotel and immediately sell it on to LAH, the company with which C was associated, for £250m. LAH agreed to pay to L a deposit of £1m in return for L agreeing to send the relevant documentation to C's solicitor to enable the sale to proceed. This deposit was refundable if L failed to send the documentation. C approached ANV for finance and they entered into an exclusivity agreement on 15.12.06 under which ANV was given exclusive negotiating rights to buy the Ritz from LAH for £258.5m in return for financing LAH's initial purchase of it from L and the £1m deposit. Under clause 10.2 of the agreement C undertook to repay the deposit to ANV if LAH had not received the relevant documentation by 15.02.07. £1m was transferred to L, but the parties later realised that L had no connection with the Ritz owners and that the relevant documentation did not exist.

Point of dispute: Whether ANV could recover the £1m deposit from C relying on clause 10.2 of the exclusivity agreement. C contended that the agreement had been void from the start as the parties had both been operating under a common mistake with regard to the existence of the relevant documentation.

Held: ANV's application for summary judgment was dismissed. In order to defeat an application for summary judgment it was enough for the defendant to show a real prospect of success in the sense of not being false, fanciful or imaginary, but the burden of proof was on the claimant to establish that the defendant had no real prospect of success and there should not be a trial. In this case C's defence of common mistake might well succeed, depending upon the outcome of a detailed examination of the facts at trial.

Housing

16

DCLG Survey Report

English House Condition Survey 2006: Private Landlords Survey

This report contains information on the private rented sector which was derived from the Private Landlords Survey, updated to 2006. The key findings include:

- landlords with small portfolios continue to dominate the sector;
- there is a high level of tenant, landlord and property turnover in the sector;
- landlords and agents tend to consider that properties are in a better state of repair than they are, when compared to assessments by surveyors;
- about two fifths of landlords were aware of the relatively new Housing Health and Safety Rating System; and
- more than three quarters of landlords/agents were aware of licensing requirements for Houses in Multiple Occupation and 78% of those letting HMOs had applied for a license at the time of the survey

<http://www.communities.gov.uk/documents/housing/pdf/privatelandlordsurvey.pdf>

17

DCLG Statistical Publication

House Price Index – February 2008

- The mix-adjusted average house price in the UK in February 2008 stood at £217,737, down from £221,278 in January this year (not seasonally adjusted).
- UK annual house price inflation in February 2008 was 6.7%, down from 8% in January. In London house price inflation was 9.5%, down from 13.8% in January.
- For the quarter ending February 1998 house prices fell by 0.5%, compared with a decline of 0.2% for the three months ending November 2007.

<http://www.communities.gov.uk/documents/housing/pdf/748123.pdf>

These figures differ from those shown in the **Land Registry House Price Index** which indicate that:

- House prices in England and Wales remained static during February, with no monthly price change, according to the latest figures from the Land Registry. The average house price stands at £185,616.
- London prices fell by 0.4%, with the average price for a house in the capital dropping to £353,760.
- The number of transactions during the period September to December 2007 averaged 90,880 per month, down from 117,301 for the same period last year.

<http://www.landregistry.gov.uk/www/wps/portal/PrimaryWebsite>

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House Price Indices

1. Halifax House Price Index – March 2008

- House prices fell by 2.5% in March. Prices in the first quarter of 2008 were 1.0% lower than in the last quarter of 2007. House prices in March were 1.1% higher than a year earlier.
- Highest rises were seen in Greater London (1.6%), East Anglia (1.4%) and East Midlands (2.2%). The largest falls were in the West Midlands (-5.0%) and Wales (-4.7%).

http://www.hbosplc.com/economy/includes/08_04_08HousePricelIndexMar2008.pdf

2. Land Registry House Price Index — March 2008

- average house price: £184,798
- monthly change: -0.4%
- annual change: 3.6%
- average house price in London: £357,675

<http://www1.landregistry.gov.uk/assets/library/documents/280508.pdf>

19

CABE Publication

Building for Life — Evaluating housing principles step by step

Building for Life is the national standard for well-designed homes and neighbourhoods. It is led by CABE and the Home Builders Federation and backed by the Housing Corporation, English Partnerships and Design for Homes. The purpose of this guide is to support housing designers and developers in producing well designed developments and achieving Building for Life awards. The Building for Life standard is made up of 20 criteria that embody the partners' vision of how housing developments should be: functional, attractive and sustainable.

<http://www.cabe.org.uk/AssetLibrary/11349.pdf>

Environment

20

Publication by The National Trust

Nature's Capital — Investing in the nation's natural assets

The National Trust is the largest non-government landowner in the UK, managing more than 250,000 hectares of which around 80% is farmland. Its land is held in perpetuity for the benefit of the nation. The purpose of this briefing is to set out the case for investment in the following four key environmental services:

- clean water — water company investment in land management to improve water quality at its source, thereby reducing the need for expensive treatment;
- flood risk mitigation — The National Trust considers that a greater share of the £800m flood risk management budget should be invested in land management that makes space for water and thus reduces flood risk;
- carbon stewardship — private sector investment in land-based carbon storage through inclusion within carbon markets to help mitigate climate change; and
- access to green space for health and well-being. The National Trust advocates NHS/Primary Care Trust funding for green exercise prescriptions for people's health and well-being

http://www.nationaltrust.org.uk/main/w-natures_capital.pdf

21

English Partnerships Best Practice Note

Contamination and Dereliction Remediation Costs (Best Practice Note 27)

This Best Practice Note (BPN) sets out guidance on assessing the costs of preparing, for redevelopment, previously developed land (PDL) or 'brownfield' sites affected by contamination or dereliction. It also provides guidance on pre-acquisition site investigations, as part of 'due diligence', and expands the remediation costs to include the problems associated with dereliction.

<http://www.englishpartnerships.co.uk/publications.htm#contamination> — where a link to this note can be found

22

DCLG Publication

Code for Sustainable Homes: Technical guide – April 2008

The Code for Sustainable Homes provides a comprehensive measure of the sustainability of new homes, with the aim of ensuring that sustainable homes deliver real improvements in key areas such as carbon dioxide emissions and water use. The Government's aim is that the Code should become the single national standard for the design and construction of sustainable homes.

This technical guidance sets out the requirements for the Code, and the process for achieving a Code.

assessment.http://www.planningportal.gov.uk/uploads/code_for_sustainable_homes_techguide.pdf

Contract

23

Court of Appeal

Estate agent's commission

** FOXTONS LTD V PELKEY BICKNELL

(2008) PLSCS 119 — Decision given 23.04.08

Facts: In 2004 PB appointed F, a firm of estate agents, to sell her house on a sole agency basis. F's standard terms provided that a commission of 2.25% of the sale price was payable to F "if at any time unconditional contracts are exchanged...with a purchaser introduced by us during the period of our sole agency or with whom we have had negotiations about the property during that period; or with a purchaser introduced by...another agent during that period". In June 2005 the property was viewed by L on behalf of his former wife. L was enthusiastic about it, but his former wife was not and F's sole agency terminated in July 2005. PB appointed another agent and F agreed to continue to act under a multiple agency agreement. The new agent sent particulars of the house to L, whereupon he and his former wife viewed it again and agreed to buy it. Contracts were exchanged and the sale completed in January 2006. Commission was paid to the second agent.

Point of dispute: Whether PB's appeal should be allowed against the decision of the court below that F was also entitled to commission under the original sole agency agreement. The judge held that: (i) the reference in the sole agency agreement to an "exchange of contracts" at any time meant that there was no implied term requiring F to be the effective cause of a sale; and (ii) in any event, F was the effective cause of the sale since L's interest in the property had continued ever since it had first been introduced to him by F.

Held: PB's appeal was allowed. The words in the sole agency agreement "a purchaser introduced by us" should be interpreted as referring to a person who had become a purchaser as a result of F's introduction, not as referring to anyone who at some time in the future became a purchaser even if the purchase owed nothing whatsoever to F. F had to show that it had introduced the purchaser to the purchase and not merely to the property. The normal principle applied, namely that the agent had to be the effective cause of the transaction in order to receive commission.

Development Plan Progress

Adopted

Neath Talbot UDP

20.03.08

Notice of Availability for Inspection – Regulation 12 Environmental Report and Regulation 16 Environmental Statement and Habitats Directive (92/43/EEC)

Neath Talbot UDP

Gerald Eve's UK office network

Gerald Eve is an independent firm of chartered surveyors and property consultants, employing over 300 staff across the UK.

We provide a comprehensive range of services to our private and public sector clients covering agency, asset management, professional and transaction-based advice.

Our philosophy is to serve clients by identifying opportunities and solving problems relating to property through the provision of high quality, thoroughly researched cost-effective advice.

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Evebrief has been established for over 25 years. It is a summary of the latest statutory and legal cases affecting the property industry and is widely regarded in the industry as the most comprehensive document of its type.

Useful web links

www.ukonline.gov.uk
www.odpm.gov.uk
www.dft.gov.uk
www.inlandrevenue.gov.uk
www.hms.o.gov.uk
www.egi.co.uk
focus.focusnet.co.uk
[www.newLawonline.com](http://www.newlawonline.com)

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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Legal &
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Volume 30(06) 12 May 2008

evebrief

SCOTLAND

Planning

01

Statutory Instrument

SI 2008/164 The Planning etc (Scotland) Act 2006 (Commencement No 3) Order 2008

This Order brings s2 of the Planning etc (Scotland) Act 2006 into force on 19.05.08 for the purposes of enabling orders and regulations to be made and directions and guidance to be issued. The Order brings s2 and s17(a)(i) of the Act into force for other purposes on 25.06.08. Section 2 is commenced only for the purposes of the determination and redetermination of strategic development plan areas and related procedure, guidance and definitions.

http://www.opsi.gov.uk/legislation/scotland/ssi2008/pdf/ssi_20080164_en.pdf

02

Statutory Instrument

SI 2008/165 The Planning etc (Scotland) Act 2006 (Development Planning) (Saving Provisions) Order 2008

This Order preserves Part 2 of the Town and Country Planning (Scotland) Act 1997 in full force and effect notwithstanding the commencement for certain purposes of s2 of the Planning etc (Scotland) Act 2006. Section 2 of the 2006 Act substitutes a new Part 2 for Part 2 of the 1997 Act.

http://www.opsi.gov.uk/legislation/scotland/ssi2008/pdf/ssi_20080165_en.pdf

03

Circular

Planning Circular 2 2008: Statutory Guidance on Strategic Development Planning Authorities

This Circular contains guidance, issued under s4(7) of the Planning etc (Scotland) Act 2006, setting out how planning authorities should work together to prepare strategic development plans. It will sit alongside the forthcoming development planning regulations and accompanying circular, which will set out the process for preparing a statutory development plan and requirements as to form and content, and also non-statutory advice.

<http://www.scotland.gov.uk/Resource/Doc/220868/0059416.pdf>

Construction

04

Consultations

Proposed Amendments to the Building (Scotland) Regulations 2004

Deadline for Responses: 29.07.08

Review of Building Standards — Section 2: Fire

http://www.sbsa.gov.uk/latestupdates/consul_S2_fire.htm

Review of Building Standards — Sections 0: General, Section 3: Environment and Section 4: Safety

http://www.sbsa.gov.uk/latestupdates/consul_S0_3_4.htm

Review of Building Standards — Section 5: Noise

http://www.sbsa.gov.uk/latestupdates/consul_S5_noise.htm

NORTHERN IRELAND

Planning

05

Consultation Paper

Review of Old Mineral Permissions — Environmental Impact Assessment

This document invites comments on the application of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 to the determination of applications under paragraph 9(1) of Schedule 1A and paragraph 7(1) of Schedule 1B to the Planning (Northern Ireland) Order 1991. Article 63A and Schedules 1A and 1B of the 1991 Order are concerned with the review of mineral planning permissions (often referred to as the review of old mineral permissions). The purpose of applying the EIA Regulations 1999 is to ensure that through the review of old mineral permissions all mines and quarries in Northern Ireland are subject to planning conditions that meet modern environmental standards and that these are determined in accordance with the requirements of the relevant European Directives.

http://www.planningni.gov.uk/Corporate_Services/Consultation_Documents/consultation-romps.pdf

Construction

06

Statutory Rule

The Energy Performance of Buildings (Certificates and Inspections) Regulations (Northern Ireland) 2008

These Regulations, which come into force on 30.06.08, implement in Northern Ireland Articles 7 (energy performance certificate), 9 (inspection of air conditioning systems) and 10 (independent experts) of the Energy Performance of Buildings Directive, OJ No L1, 4.1 20043 ("the Directive") which lays down requirements for the production of energy performance certificates when buildings are constructed, sold or rented out, display of energy certificates in large public buildings providing a public service and regular inspections of air conditioning systems. Part 2 of the Regulations implements Articles 7(1) and (2) of the Directive, and requires the production of energy performance certificates when buildings are constructed, sold or rented out. In particular, regulation 5 requires sellers and prospective landlords to make available energy performance certificates to prospective buyers and tenants as early as possible.

The proposed timetable for energy performance certificates is as follows:

Dwellings: Sale — 30.06.08; New builds — 30.09.08; Rental — 30.12.08

Buildings other than Dwellings: Sale — 30.12.08; New builds — 30.09.08; Rental — 30.12.08