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**Legal & Parliamentary**

**Volume 30(09) 14 July 2008**

# evebrief

## Editorial

Three items of particular note are included in this issue.

The first relates to a leasehold reform decision from the House of Lords known as Aggio (item 11). The unanimous conclusion of their Lordships confirms that headlessees of blocks of flats are entitled to a lease extension of each individual flat within the block. Accordingly, where they have let out flats on Assured Shorthold Tenancies, for example, they will be permitted to extend the leases of those flats. This ruling will allow an opportunity for investors to obtain marriage value gains which were thought not to be previously available, possibly leading to an increased interest in this type of investment and providing further opportunity for collective enfranchisement. However, it is argued that the decision does leave practical difficulties which might ultimately require resolution by the Leasehold Valuation Tribunal.

The second item of note relates to consultation on the decapitalisation rates on non-domestic rating valuations (item 10, and item 01 in the regional supplement). Although only affecting about 11% of the total rateable value in England, the rates will impact upon the total RV and therefore have a knock-on effect on the Uniform Business Rate multiplier. For the 2005 Revaluation, if the rates were set one percentage point lower, the multiplier would have increased by about 1.3p. It follows that the setting of the decapitalisation rate is relevant to all ratepayers.

Lastly, we are reminded in items 12 and 13 that, from October this year, Energy Performance Certificates will be required whenever a domestic or commercial property is sold, rented out or newly built. However, what appears to be still unclear is whether the requirements apply to certain transactions at all (ie sale and leasebacks or share sales, for example), and whether modifications to buildings will trigger an obligation. If you think this affects you, do speak to one of our building surveyors who can advise further.

**Jeremy Dharmasena**

GeraldEve

# Landlord & Tenant

## 01

Court of Appeal

**Rectification of lease of business premises containing right of pre-emption**

**** HICKLANE PROPERTIES LTD V BRADBURY INVESTMENTS LTD
(2008) PLSCS 175 — Decision given 19.06.08

**Facts:** A 30-year lease of business premises granted in 2002 included a right of pre-emption to the respondent tenant to purchase the freehold reversion. In 2004 Z, the original landlord, gave notice to the respondent of its intention to sell the freehold reversion, subject to the lease. The respondent served a counternotice, exercising the right of pre-emption and offering to buy the freehold for £275,000. Subsequently, the appellant purchased the reversion agreeing to be bound by Z's offer notice under the pre-emption conditions, but the parties could not reach agreement as to the price for the freehold. The appellant contended that the freehold should be valued "with vacant possession" as stated in the lease (value £2.9m) while the respondent contended that it should be valued subject to the lease (£250,000). After taking legal advice, the valuer concluded that, on the true construction of the lease, the open market value was "with vacant possession". The respondent applied to rectify the lease on the grounds that the valuation provisions were not as originally contracted between the parties.

**Point of dispute:** Whether the appellant's appeal should be allowed against the ruling of the judge in the court below that the lease should be rectified to provide that the freehold should be valued subject to the lease.

**Held:** The appeal was dismissed. The judge's conclusion and rectification order made commercial sense. There was ample evidence to support the judge's finding that the parties had agreed and intended that the open market value of the freehold would have regard to the continued existence of the lease, and that that agreement and intention had not been correctly recorded in the lease. If the lease were not rectified the parties and their successors would, as a result of their advisers' drafting error, which was not noticed when the lease was executed, be bound by a different bargain than the one that they had made.

## 02

High Court

**Validity of service of purchase notice for freehold**

* GREEN V WESTLEIGH PROPERTIES LTD
(2008) PLSCS 187 — Decision given 27.06.08

**Facts:** G owned a 199-year lease of one of two flats. The freehold interest in the building was transferred to WP in 1992. Following a dispute between the parties in 2004 over ground rent, insurance payments and G's claim that the freehold reversion should be transferred to the tenants, the county court gave judgment for G and required him to serve a purchase notice pursuant to s12 of the Landlord & Tenant Act 1987. G's notice contained various errors, bearing an incorrect date, referring to the Housing Act 1987 which did not exist, and quoting s12A of the Landlord & Tenant Act 1987 which was not applicable.

**Point of dispute:** Whether G's appeal should be allowed against the ruling of the judge in the court below that he had not served a valid notice within the requisite time limit, which meant that the freehold could not be transferred to him.

**Held:** G's appeal was allowed. For the notice to be valid it had to be in writing, served on the new landlord in time and give adequate notice of the requirement of the qualifying tenants to have the estate or interest transferred to them. It was necessary to consider whether the disputed document was sufficiently clear and unambiguous so as to leave a reasonable recipient in no reasonable doubt that the tenants were giving such notice. In this case, although the notice had been badly and incorrectly drafted, the reasonable recipient could have been left in no doubt that G and the other tenant were giving notice to WP of the requirement to have the freehold of the premises transferred to them. Neither the incorrect date nor naming the wrong Act were sufficient to leave a reasonable recipient in any doubt as to what the tenants required.

## 03

Lands Tribunal

**Breach of covenant — tenant failing to notify landlord of assignment — whether remedied by landlord's knowledge**

***** GLASS V CAMPION
(2008) PLSCS 173 — Decision given 11.06.08

**Facts:** A covenant in a lease of a property let for a term of 125 years from 2003 required the tenant "within 28 days of any assignment to give notice to the Landlord of such deed or document… and to pay the Landlord's solicitor's charges of £25 together with value added tax thereon for the registration of every such document". C acquired the lease in 2005 but no notice of the change of ownership was given to G, the freeholder. In 2007 G wrote to C drawing the matter to their attention and requiring C to remedy the breach by serving the notice and paying the registration fee. This was not done and C applied to the Leasehold Valuation Tribunal (LVT) under s168 of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of covenant had occurred.

**Point of dispute:** Whether G's appeal should be allowed against the ruling of the LVT that time was not of the essence for serving the notice of assignment and that because G had become aware of C's identity and were in contact with them and their solicitor there was no longer any material breach of covenant.

**Held:** The appeal was allowed. The LVT had been incorrect in refusing to determine that a breach of covenant had occurred on the ground that the breach had been remedied by G discovering the new tenant's identity. The LVT's jurisdiction was to determine whether there had been a breach of covenant, and the question of whether the breach had been remedied so that no loss had been occasioned to the landlord was a matter for the court in an action for forfeiture or damages for breach of covenant. C was in breach of covenant by failing to give notice of the assignment and paying the required fee within 28 days and had done nothing to remedy the breach, which did not cease to exist merely because the landlord had become aware of the assignment. Under the terms of s168, it was not for the LVT to determine whether any relief should be awarded to the landlord.

# Planning

## 04

Court of Appeal

**Appeal against enforcement notice requiring removal of gypsy's mobile home on green belt land — whether High Court judge had erred in law**

***** WYCHAVON DISTRICT COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2008) PLSCS 178 — Decision given 23.06.08

**Facts:** The appellant gypsies were husband and wife who had acquired a green belt site and stationed on it a mobile home and caravan where they lived with their two young children. WDC served a number of enforcement notices seeking to enforce green belt policy but the appellants sought permanent planning permission. An inspector appointed by the Sec of State recommended that they should be entitled to five years temporary permission as there was increased demand for gypsy sites in the area.

**Point of dispute:** Whether the appellants' appeal should be allowed against the High Court's decision to quash the inspector's decision, the judge having found that the inspector had failed properly to consider the correct test to justify development in the green belt, namely whether very special circumstances existed.

**Held:** The appeal was allowed. The judge had been wrong to treat the words "very special" in para 3.2. of PPG 2 as just the converse of "commonplace". The word "special" in the guidance required a qualitative judgement regarding the weight to be given to the particular factor for planning purposes. It was impossible to hold that the loss of a gypsy family's home, with no prospect of replacement, was incapable in law of being regarded as being a "very special factor" for the purposes of the guidance. The inspector had been entitled in law to treat the prospect of the immediate eviction of a young gypsy family who had nowhere else to go as being sufficiently "special" to support his decision.

## 05

Administrative Court

**Sec of State granting planning permission for retention and re-use of buildings for rail-related industrial uses — financial viability of proposals — whether imposition of condition sufficient to mitigate risk of buildings remaining unoccupied**

***** SAMUEL SMITH OLD BREWERY (TADCASTER) V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(208) PLSCS 168 — Decision given 13.06.08

**Facts:** SS owned a pub near to a disused industrial site located on a railway line, formerly used in connection with the coal industry. The 1976 planning permission for the site required it to be restored after coal production ceased — this had happened in 2004 after which a number of structures had been demolished. However, various buildings, infrastructure, landscaping and railway sidings remained and a planning application was made for the retention and re-use of some of these structures with the railway to be used as a sustainable form of transport. The application was called in by the Sec of State, but despite evidence provided by SS challenging the financial viability of the proposals, the Sec of State accepted the inspector's recommendation to grant planning permission, subject to a condition requiring the removal of the buildings in the event that they were not brought into use within five years. She stated in her decision letter that although the proposals conflicted with the development plan and government policy on sustainable development there were significant benefits in bringing a valuable asset back into manufacture and distribution uses making use of the rail connections, and that the risk of harm by leaving unoccupied buildings in the open countryside would be sufficiently mitigated by the condition.

**Point of dispute:** Whether SS's application to quash the grant of planning permission should be allowed. SS argued that it was financially unviable to bring the buildings back into use and that there was little evidence of any demand to re-use them. This meant that there were no material considerations capable of outweighing the conflict with the development plan.

**Held:** The application was dismissed. All material considerations had to be weighed in the balance and the weight to be given to each was a matter for the planning authority. The Sec of State had not ignored the issue of financial viability — the final decision letter was the end result of a long process that involved consideration of a wide range of previous primary material, and although its reasoning had to be clear and understandable the text did not need to be exhaustive. It could not be said that no reasonable decision maker would grant planning permission. It had been open to the Sec of State to find that even though the evidence of need for the buildings was weak, and a suitable use for them might not be quickly forthcoming, it was an unusual site with significant potential and that a suitable use might emerge. She had been entitled to conclude that imposing a condition was an appropriate means of dealing with the element of uncertainty and would mitigate the risk of harm caused by leaving unoccupied buildings in the open countryside.

## 06

Administrative Court

**Enforcement notices issued against construction of swimming pool and tennis court adjacent to existing dwelling — whether permitted development within curtilage of existing dwelling**

***** BARNETT V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2008) PLSCS 176 — Decision given 20.06.08

**Facts:** In 1995 B obtained planning permission to build an estate manager's dwelling on agricultural land in accordance with approved plans and drawings submitted with the application. The plans showed the application site outlined in red. In 1998 B successfully obtained further permission to extend the original dwelling, but the delineated area on the plan attached to that application was larger than that shown in the 1995 plans. Subsequently, B carried out further development on the site, including the construction of a swimming pool, pool house and tennis court.

**Point of dispute:** Whether B's appeal should be allowed against the issue of enforcement notices requiring removal of the pool, pool house and tennis court. B argued that the development was permitted within the curtilage of the existing dwelling, which had been implicitly extended by the 1998 permission to cover the area shown in red on the plan attached to the second application.

**Held:** B's appeal against the inspector's decision that the enforcement notices should stand was dismissed. The red outline on the 1998 plans could not be regarded as superseding the definition of the curtilage in the 1995 permission. An application for a new detached dwelling contained an implication was that there would be a surrounding curtilage, the extent of which had to be defined. However, permission to extend an existing dwelling would not necessarily involve an extension to the curtilage — B had not expressly applied for such an extension and the 1998 application was consistent with the curtilage remaining as defined in the 1995 permission. The 1998 permission had to be construed alone and without reference to the plans attached to it as these were not expressly incorporated into the permission by reference.

## 07

Administrative Court

**Material consideration**

***** R (ON THE APPLICATION OF LITTLEWOOD) V BASSETLAW DISTRICT COUNCIL
(2008) PLSCS 179 — Decision given 20.06.08

**Facts:** A developer applied for planning permission for the first phase of a larger development, although the wider site had not as yet been allocated for development in the local plan. L, who objected to the development, requested that a masterplan be produced in respect of the entire development in order to assess its effect. Whilst accepting that a masterplan was desirable, the developer maintained that it could not be prepared before permission for phase 1 was obtained as the development was urgently needed. Following the preparation of an environmental statement in respect of phase 1 BDC granted planning permission, subject to an agreement under s106 of the Town and Country Planning Act 1990 that a master plan for the whole site should be submitted within 12 months.

**Point of dispute:** Whether L's application for judicial review of the grant of planning permission for phase 1 should be allowed. L contended that as phase 1 was not a stand alone development it was necessary to have a masterplan in order to assess the cumulative environmental effect of the first phase in the context of the wider development and that BDC had failed to take into account a relevant planning consideration.

**Held:** L's application was dismissed. BDC were entitled to consider the planning application for phase 1 as a stand alone development and to require a masterplan pursuant to a s106 agreement to enable the cumulative effect to be assessed when further applications were made. The requirement to produce a masterplan subsequent to the grant of planning permission for phase 1 was a matter of planning judgment and could not be said to be unreasonable. Although capable of being a material consideration it was not in itself necessary to the grant of permission. There was no duty to consider the cumulative effect of unknown future development when there was no adequate information upon which a cumulative assessment could be made.

## 08

Statutory Instrument

**SI 2008/1556 The Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008**

The 1999 Regulations implemented in England and Wales the relevant European Directives on the assessment of the effects of certain public and private projects on the environment and, in relation to applications to mineral planning authorities, to determine the conditions to which a mineral planning permission is subject under Schedule 2 to the Planning and Compensation Act 1991 and Schedules 13 and 14 to the Environment Act 1995 ("ROMP applications"). The 2000 Regulations applied the 1999 Regulations, with modifications, to ROMP applications made on or after the date they commenced (15.11.00) which had yet to be determined. These Regulations apply the 1999 Regulations, with modifications, to ROMP applications made before 15.11.00 but which are still undetermined on 22.07.08. The modifications relate to procedures regarding the provision of screening and scoping opinions.
http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081556_en.pdf

# Rating

## 09

Lands Tribunal

**Whether sports club building used in connection with power station should be listed as separate hereditament**

****** RWE NPOWER PLC V COOPER (VO)
(2008) PLSCS 188 — Decision given 23.06.08

**Property:** A sports club building situated within the perimeter fence of a power station owned by RWE. The building was constructed in 1985 to replace a temporary structure that had been situated outside the fence and in which the club had operated since the power station had begun its operation in 1970. The club had no formal tenancy or license but successive owners of the power station site had allowed the club to use the building rent-free and provided the equipment for the gym. Power station employees could apply for membership but this had to be approved by the power station management, who occasionally used the club premises for meetings. The club building was insured along with the rest of the site whose owners paid for utilities and repairs.

**Point of dispute:** Whether RWE's appeal should be allowed against the determination by the VO that the sports club should be entered into the 2000 rating list as a separate hereditament with RV £42,375. RWE argued that the club should continue to be treated as part of its electricity hereditament because at the relevant date RWE occupied the building and controlled the club which it provided for the welfare of its employees. The VO submitted that the club was an unincorporated association with a separate identity from RWE and that it had the immediate and direct control of the building.

**Held:** RWE's appeal was dismissed. The case turned on whether the company (RWE) or the club was in paramount occupation of the building, which in turn depended on who was in control of it, not on the purpose of the occupation. On the evidence the club was the paramount occupier of the premises at the relevant date: it enjoyed occupation of the building for its own purposes and controlled the day-to-day use through its officers whereas the degree of control exercised by RWE and its predecessors over the use of the gym was minimal.

## 10

CLG Consultation Paper

**Consultation paper on the decapitalisation rate used in non-domestic rating valuations in England**
**Deadline for Responses: 16.09.08**

In April 2010 new rating lists will be introduced in England containing new rateable values based upon the annual rental value of non-domestic properties as at 01.04.08. This paper contains proposals for prescribing the decapitalisation rate to be used when the contractor's basis of valuation is used for valuing properties. It considers:

- whether the Government should prescribe the decapitalisation rates;
- how many rates should be prescribed; and
- the appropriate methodology for setting rates and the range of possible rates that different methodologies generate

Regarding decapitalisation rates themselves, this paper examines the methodologies available to reach the rates, but does not suggest a preferred option. Decisions on the rates will be made once the responses to this consultation have been considered.
http://www.communities.gov.uk/documents/localgovernment/pdf/861033.pdf

# Leasehold Reform

## 11

House of Lords

**Whether head lessees entitled to individual lease extension in respect of flat within building where no separate underlease exists of flat — Chapter II of the Leasehold Reform, Housing and Urban Development Act 1993**

******* HOWARD DE WALDEN ESTATES LTD V AGGIO; EARL CADOGAN V 26 CADOGAN SQUARE LTD [2008] UKHL 44; (2008) PLSCS 180 — Decision given 25.06.08

**Facts:** In both appeals the appellants were the head lessees of a building divided into self-contained units, some of which were let on underleases. The first building contained residential flats, while the second comprised offices with a maisonette above. In both cases the appellants controlled the internal common parts and external parking areas over which the underlessees enjoyed certain rights. The appellants sought lease extensions under Chapter II of the Leasehold Reform, Housing and Urban Development Act 1993 but the landlords argued that the head lessee of a building containing a number of flats was not a "qualifying tenant" entitled to an individual lease extension. At first instance the county court judge held that such a head lessee was a qualifying tenant entitled to exercise the right of individual lease extension.

**Point of dispute:** Whether the appellants' appeals should be allowed against the decision of the Court of Appeal (reversing that of the court below) that the head lessee of a building containing a number of flats had no right to an individual lease extension. The Court of Appeal held that the legislative scheme lacked any conveyancing mechanism to deal with the knock-on effect of such a grant on the existing lease as well as matters such as rights over common parts, the apportionment of the rent under the head lease and the modification of the applicable scheme of covenants.

**Held:** The appeals were allowed. A lessee under a lease of property that included, but was not confined to, a flat could be a "tenant" of that flat for the purposes of Chapter II of the 1993 Act, irrespective of the nature or extent of other property included in his demise. A number of phrases in the 1993 Act supported that interpretation; nor was there any policy reason why head lessees of such properties should be excluded from the right to individual lease extension. No restriction on the persons entitled to benefit from the statute could be gathered from the provisions directly relating to the identification of such persons, unless such a restriction was plainly justified and could be implied by reference to the operational provisions of the statute. No such restriction could be implied into Chapter II. Any alleged practical difficulties either did not exist or could be overcome.

# Construction

## 12

CLG Consultation Paper

**The Next Steps: EPCs and the establishment of the Green Homes Service**
**Deadline for Responses: 01.09.08**

Under Article 7 of the European Directive on the Energy Performance of Buildings (EPBD), from October of this year all buildings which are sold, rented out or newly built, whether domestic or commercial, will require an energy performance certificate (EPC). The purpose of these certificates is to demonstrate how efficiently the fabric of the building is designed (the "asset rating") and they are accompanied by recommendations for improving the building's energy efficiency. The certificates are lodged in a central register and are valid for ten years, apart from house sales where an EPC must not be more than one year old when included in a Home Information Pack. This document seeks views on practical steps for making EPCs more accessible by:

- giving the Energy Saving Trust access to the information contained in domestic EPCs as part of implementing the Green Homes Service;
- giving the Carbon Trust access to the information contained in non-domestic EPCs;
- allowing energy assessors to search the domestic register by address as well as by reference number; and
- allowing search of the commercial register by address in order to ascertain whether a building has an EPC, although it will not be possible to download it

http://www.communities.gov.uk/documents/planningandbuilding/pdf/862494.pdf

13

CLG Guidance

**Energy performance certificates for dwellings in the social and private rented sectors: A guide for landlords**

The main principle underlying the EPBD is to make energy efficiency transparent by the issuing of a certificate showing the energy rating, accompanied by recommendations on how to improve efficiency. This guidance will help landlords of dwellings in the social and private rented sectors understand:

- the basic legal requirements relating to EPCs;
- the situations for which EPCs will be required;
- at which point a dwelling may require an EPC, how to obtain an EPC and how long the EPC can be expected to remain valid;
- what an EPC will contain and what the tenant will receive; and
- the implications for the validity of the EPC if the dwelling's energy efficiency is improved

http://www.communities.gov.uk/documents/planningandbuilding/pdf/866773.pdf

# Tort

14

Court of Appeal

**Occupiers liability — employee of security company suffering injury in fall from unguarded staircase in dwelling house**

***** LOUGH V INTRUDER DETECTION AND SURVEILLANCE FIRE & SECURITY LTD
(2008) PLSCS 184 — Decision given 26.06.08

**Facts:** While carrying out renovation works to his home L employed the appellant company to design and install a specialist security system. A new staircase and balustrade were being fitted at the same time. An apprentice and his supervisor employed by the appellant company arrived unexpectedly to carry out work to the new alarm system, but, on the day in question, a temporary safety banister had been removed to enable some further work to be carried out on the new banisters. L was hesitant about giving them access, but eventually he did, warning them that the staircase and landing were unguarded. The apprentice fell from the stairs and was injured. He brought an action for damages against the appellant company on the grounds that his workplace was unsafe and his claim was settled by the appellant company.

**Point of dispute:** Whether the appellant company could recover a contribution from L for breach of his common law duty of care under the Occupiers' Liability Act 1957. At first instance its claim was dismissed on the basis that the apprentice had at all times been under the supervision of the appellant company and its employee and that there had been no breach of duty on L's part.

**Held:** The company's appeal was allowed. The judge had not properly addressed the common law duty of care under the 1957 Act to take such care as in all the circumstances of the case was reasonable to ensure that a visitor would be reasonably safe in using the premises for the purposes for which he was invited or permitted to be there. L had permitted the workers to enter the property knowing that it was unsafe, and his warning that some banisters were missing was insufficient to make the apprentice safe. L had been in breach of his duty of care under the Act and should be liable for 25% of the compensation payable in respect of the injuries suffered by the apprentice.

# Contract

## 15

High Court

**Dispute over how purchase price for property should be ascertained accounting for release or variation of restrictive covenants**

***** ANGLO-CONTINENTAL EDUCATIONAL GROUP (GB) LTD V CAPITAL HOMES (SOUTHERN) LTD
(2008) PLSCS 192 — Decision given 02.07.08

**Facts:** CH entered into an agreement to purchase two houses owned by ACEG. The contract was conditional upon planning permission being obtained to convert the houses into 14 flats within a certain timetable, although CH could, by giving notice, waive that condition and completion was to take place 28 days after the contract became unconditional. The houses were subject to restrictive covenants that prevented the proposed development and the agreement stated that the purchase price was to be £862,000 "less the amount… required to obtain a deed of release/variation of the covenants… to enable the Development to be implemented". CH gave notice to waive the condition regarding planning permission, but by the completion date the exact cost of releasing the restrictive covenants had not been ascertained, although the beneficiaries had indicated that a charge of £8,000 — £10,000 per unit might be acceptable.

**Point of dispute:** The amount of the final purchase price. ACEG claimed for a declaration that it should be the full £862,000 since, as at the completion date, no amount could be said to be required for the release or variation of the restrictive covenants in the absence of any planning permission or any agreement with the beneficiaries of the covenants. CH counterclaimed for a declaration that a deduction representing the best estimate available of the cost of obtaining a release should be made, subject to adjustment once agreement was reached as to the definite figure.

**Held:** Both the claim and counterclaim were dismissed. ACEG's submission made no commercial sense: if CH could not obtain planning permission within the contractual timetable this potentially depressed the property's value and there was no good reason why the price should be dependent upon whether the covenantees had agreed a figure for release by the completion date since the parties had no control over that, and a deduction clearly had to be made from the figure of £862,000 to arrive at the final purchase price. Nor was CH's interpretation necessarily the one that the parties would have arrived at had they focussed on this question at the time the contract was made; it failed to address matters such as how the estimate was to be made and upon what basis. Having rejected both parties' submissions it was not appropriate to make a declaration setting out a third view as to the correct meaning and effect of the relevant clause and it was doubtful whether the court had jurisdiction to make such a declaration. Permission to appeal was granted, restricted to the "third view" question as a point of general importance.

# General

## 16

Statutory Instrument

**SI 2008/1712 The Estate Agents (Redress Scheme) Order 2008**

This Order, which comes into force on 01.10.08, requires every person who engages in estate agency work in the UK in relation to residential property to be a member of an approved redress scheme for the purpose of dealing with complaints relating to that work. Before such an Order can be made the Office of Fair Trading must have approved one or more redress schemes pursuant to Schedule 3 of the Estate Agents Act 1979 and details of every approved scheme are available on the Office of Fair Trading website.
http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081712_en.pdf

## 17

Statutory Instrument

**SI 2008/1713 The Estate Agents (Redress Scheme) (Penalty Charge) Regulations 2008**

These Regulations specify that a penalty charge of £1,000 may be imposed on anyone who engages in estate agency work in relation to residential property in the UK without belonging to an approved redress scheme.
http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081713_en.pdf

## 18

CABE Publication

**Public Space lessons — Land in limbo: making the best use of vacant urban spaces**

According to the National Land Use Database in 2006 there were 62,000 hectares of brownfield land in England, just over half of that being classed as derelict or vacant. Much of this land is 'in limbo' frozen between its different long term uses. This paper argues that these temporary sites should offer more of a contribution to the quality and character of the local environment by being more actively and creatively managed. It considers the barriers to short term use, cites case studies and suggests some answers.
http://www.cabe.org.uk/AssetLibrary/11601.pdf

## 19

CLG Publication

**Notes and recommendations from session 1 of Eco-town Challenge**

The Eco-town Challenge was established to encourage the promoters of eco-towns to develop and improve their proposals and to inject new thinking and expertise. The Eco-town Challenge Panel has held meetings with the promoters of all the eco-towns and this document is a record of the first session of the Eco-town Challenge and includes a number of recommendations for the promoters.
http://www.communities.gov.uk/documents/housing/pdf/eco-townschallengenotes

## 20

Land Registry House Price Index

**May 2008**

- The average price of a house in England and Wales was £183,266 in May.
- The May data shows a continued decline in annual house price change to 1.8%, the ninth consecutive decrease in annual price change in England and Wales.
- Volumes of sales in England and Wales fell to 53,080, a 50% fall from 106,047 in March 2007.
- House price growth in London was 6.9% in May, over three times the rate experienced by England and Wales overall.
- Monthly house price growth in London currently stands at 0.8%, higher than the rate of growth in England and Wales as a whole.
- The average value of a residential property in London is currently £354,714.

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www.egi.co.uk
focus.focusnet.co.uk
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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### Gerald Eve Research

One of our key roles at Gerald Eve Research is to communicate with our clients and others; to inform them, for example, on our latest thinking on topical issues such as legal matters and the implications for broader property market trends.

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**Legal & Parliamentary**

**Volume 30(09) 14 July 2008**

evebrief

# SCOTLAND

## Rating

### 01

Scottish Government Consultation Paper

**Non-Domestic rates: Setting the decapitalisation rates for the 2010 Revaluation — a consultation paper**
**Deadline for Responses: 26.09.08**

The next Revaluation of non-domestic property in Scotland will take effect from 01.04.10. This paper contains proposals for prescribing the decapitalisation rate to be used when subjects are valued using the contractor's method of valuation. The paper is concerned with the methodologies available to reach the decapitalisation rates but does not suggest a preferred option. Ministerial decisions on the actual decapitalisation rates will take into account responses to this consultation.
http://www.scotland.gov.uk/Resource/Doc/917/0062245.pdf

# WALES

## Planning

### 02

Welsh Assembly Government Consultation

**Consultation on the Environmental Noise Action Planning (Wales) Guidance — Agglomerations, Roads and Railways**
**Deadline for Comments: 08.08.08**

The European Environmental Noise Directive, published in July 2002, requires Member States to produce strategic noise maps for road, rail and air traffic, and for agglomerations, focusing on the impact of such noise on individuals and complements existing EU legislation which sets standards for noise emissions from specific sources. The three main objectives of the Directive are:

- to determine the noise exposure of the population through noise mapping;
- to make information on environmental noise available to the public; and
- to establish Action Plans based on the mapping results, to reduce noise levels where necessary and to preserve environmental noise quality where it is good

The Directive, which was implemented in Wales by the Environmental Noise (Wales) Regulations 2006, outlines a number of stages to manage and, where necessary, improve environmental noise. Stage One, the creation of the first round of strategic noise maps, has been completed. The aim of this guidance is to help in the implementation of the second stage, setting out proposed mechanisms and arrangements for preparing and drawing up Action Plans to manage noise.
http://new.wales.gov.uk/consultations/currentconsultation/envandcouncurrcons/noiseactionplanning/?lang=en

## 03

Welsh Assembly Government Consultation
**Proposals for Resourcing the Planning Service: A Consultation Paper**
**Deadline for Responses: 19.09.08**

This consultation, which relates to Wales only, is concerned with the fees that LPAs charge for handling applications for planning permission, for applications for approval of reserved matters, and for altering or removing conditions imposed on planning permissions. The document puts forward options for changes to the system of planning fees to be introduced in November 2008, including:

- fee increases in-line with inflation annually linked to the Retail Price index;
- removal of the maximum fee for making a planning application;
- introduction of fee for discharge of planning conditions;
- increasing the specific fee for wind farm planning applications; and
- bringing fees into line with England

http://new.wales.gov.uk/consultation/desh/2008/planningfees/planningfeesconsulte.doc?lang=en

# NORTHERN IRELAND

# Planning

## 04

Consultation Paper
**Proposed Amendments to the Planning (Control of Advertisements) Regulations (Northern Ireland) 1992**
**Deadline for Responses: 12.09.08**

This paper invites comments on the proposed introduction of deemed advertising consent for advertisements on sites which have been used for the preceding ten years or more for the display of advertisements without the required express consent. It is also proposed to introduce a discontinuance provision which would allow (on an exceptional basis) the removal of any advertisements in the deemed consent category that cause a substantial injury to the amenity of the locality or a danger to public safety. The aim of the proposals is to bring Northern Ireland legislation broadly into line with the current provisions in England, to provide clarification as to the status of long standing unauthorised advertisements, to align with time limits for enforcement action against certain other breaches of planning control and to provide a measure of deregulation for the advertisement control regime.
http://www.planningni.gov.uk/Corporate_Services/Consultation_Documents/consultation-amendments-planning-regulations.pdf