Legal & Parliamentary

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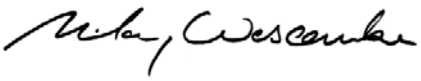
evebrief

Editorial



At item 17 we report the case of *Rodriquez v Sokal,* which came before the Technology and Construction Court at the end of July and concerned an action under the Party Wall etc Act 1996. The claimant sought to recover damages over and above the award that had been made by the nominated surveyor in the Party Wall Act procedure, alleging that some of the damage had occurred before the defendant served his Party Wall Act notice. The judge found in the defendant's favour confirming that a party cannot bring a separate action in relation to alleged damage caused by a neighbour's works to the extent that the matters in issue have been dealt with in an award under the statutory procedures of the 1996 Act. The statutory procedure effectively superseded any common law procedure to which the claimant might otherwise have had recourse.

Two Lands Tribunal cases which confirm the importance of properly complying with the requirements of s20 of the Landlord & Tenant Act 1985 are reported at items 03 and 04. In *Swanlane Estates Ltd v Woods* the judge held that the Leasehold Valuation Tribunal could raise s20 points of its own motion where the tenants were unrepresented, but if it does so the landlord must be given sufficient time to produce evidence to deal with the matters raised. In *Savant v Brown* the judge held that the landlord could not recover from the tenants of a block of flats considerable sums that it had expended on repairs since it had not properly complied with the consultation requirements of s20 by only making copies of estimates available for inspection at the offices of the managing agents, some ten miles away from the flats.

We should read with caution the reports currently splashed all over the press about plummeting house prices. The Government statistics, based on Land Registry completion figures, appear to be much less gloomy than the Halifax House Price Index indicating, by way of example, that house prices have only fallen by 3.4% since August last year, and that the average price of a house was £211,410 in August. Halifax's comparable statistics show a 12.4% fall between September 2007 and September 2008, and that the average price for a house in September was £170,866.

Hilary Wescombe

GeraldEve

Landlord & Tenant

01

Court of Appeal

Application for new business tenancy — whether illegal use of site a relevant consideration in applying s30(1)(c) Landlord & Tenant Act 1954

***** FOWLES V HEATHROW AIRPORT LTD
(2008) PLSCS 272 — Decision given 16.10.08

Facts: HA was the freehold owner of a site on which F had carried out various activities since 1978 including a haulage business, recycling of concrete waste, skip and bin hire and a demolition business. F's original lease terminated in 1990 and a number of F's continuing activities were being carried on in breach of planning control which meant that he was guilty of criminal offences.

Point of dispute: Whether F's appeal should be allowed against the decision of the judge in the court below that F had not acquired title to the land by adverse possession and refusing his claim to a new tenancy relying upon the ground in s30(1)(c) of the Landlord and Tenant Act 1954: "for any other reason connected with the tenant's use or management of the holding". The judge found that most of F's activities were illegal and that he did not intend to stop doing them. F argued that it was irrelevant to the exercise of discretion under s30(1)(c) whether he would continue to commit criminal offences under a new tenancy. He would confine himself to legitimate uses and obtain a lawful use certificate for the skip and bin hire and demolition businesses.

Held: F's appeal was dismissed. A "reason connected with the tenant's use or management of the holding" could include all matters concerning a tenant's use of the land and an existing illegal use would be a relevant consideration. On the facts F had no prospect of obtaining a lawful use certificate in respect of the skip and bin hire business and even if he did obtain one for the demolition business the indications were that it was likely F would continue to flout planning control.

02

High Court

Agreement for lease — whether negotiations created oral binding agreements to create new tenancies

***** HUTCHISON V B&DF LTD
(2008) PLSCS 258 — Decision given 03.10.08

Facts: H was the freehold owner of an industrial estate on which B&DF carried on a business as an industrial caterer from a number of units. It occupied Unit 1 pursuant to an assignment of a 21-year lease from 08.03.85 and Units 3 and 4 pursuant to an assignment of a lease for a term of four years from 01.03.02. H argued that an oral agreement had been entered into on about 15.02.06 for new terms of three years at £8,000 pa which created immediate leases at the best rent payable without taking a fine with immediate possession. H also alleged that B&DF had agreed to take a five year lease of Unit 15.

Point of dispute: Whether H should be granted (i) a declaration that B&DF was the tenant of the units; (ii) an order that B&DF should execute leases in respect of the units; and (iii) judgment for the amounts due in respect of the units together with interest. H argued that the three-year terms constituted immediate legal leases by virtue of s54(2) of the Law of Property Act 1925 and were not therefore affected by the requirement for the contract to be in writing under s2 of the Law of Property (Miscellaneous Provisions) Act 1989. B&DF claimed that it had vacated the units on 31.12.06 until which time the original tenancy had continued, and had not entered into any new agreements. It argued that it had made it clear to H that it could not enter into any new lease until planning permission had been obtained for a new odour control system and that it occupied the units as a tenant at will.

Held: H's application was granted. On the evidence it was clear that the discussions between the parties had led to a binding oral agreement for all three units, except for Unit 15, for the grant of three-year terms at the best rent available without a fine. It was not necessary to satisfy s2 of the 1989 Act since the agreements became legal leases by virtue of s54(2) of the LPA 1925 when possession was taken. However, the agreement for Unit 15 was void as it fell foul of s2 of the 1989 Act. This meant that B&DF had entered into possession of Unit 15 under a void lease and paid rent by reference to the yearly rent. This meant that the lease became a yearly periodic tenancy.

03

Lands Tribunal

Service charges for block of flats — application to LVT for determination of tenants' liability to pay — whether LVT could raise s20 points of its own motion — whether landlord deprived of fair hearing

****** SWANLANE ESTATES LTD V WOODS
(2008) PLSCS 260 — Decision given 05.08.08

Facts: SE was the landlord and W the tenants of a block of flats. In April 2007 SE issued a demand for service charges for the period 2004-07. W applied to the Leasehold Valuation Tribunal (LVT) for a determination of their liability to pay and the reasonableness of the amount claimed. At the hearing the LVT raised various matters of its own motion with regard to SE's compliance with the procedural requirements of s20 of the Landlord and Tenant Act 1985. SE produced an undated and unaddressed photocopy of a document which purported to demonstrate that it had complied with the section but the LVT was not satisfied with that and adjourned the hearing for 30 minutes to enable SE to obtain further evidence. SE failed to do this. The LVT took the view that evidence showing it had complied with s20B should have been included in SE's bundle of documents before the hearing and referred to in its statement of case. It disallowed a number of items reducing the amount of costs recoverable by SE by more than £70,000.

Point of dispute: Whether SE's appeal should be allowed against the decision of the LVT. It contended that the LVT was not entitled to raise s20 points of its own motion and that, having done so, it had acted unfairly in failing to allow sufficient time for SE to deal with them.

Held: SE's appeal was allowed. (i) The LVT was entitled to raise the s20 points of its own motion since an unrepresented tenant (as in this case) might not be aware of the provisions which were designed to help him and on the grounds of justice it could explore the matter. Provided that it was given a fair and proper chance to deal with it a party should not complain about a fair point being raised by a tribunal. (ii) The manner in which the LVT had dealt with the s20 points, once these had been raised, had deprived SE of a fair hearing. The 30 minute adjournment was unfair and SE should have been given longer to enable it to produce evidence to prove that the notices had been served.

04

Lands Tribunal

Recovery of service charges — s20 Landlord & Tenant Act 1985

****** M & M SAVANT LTD V BROWN
(2008) PLSCS 264 — Decision given 08.08.08

Facts: MML was the landlord of a block of flats while B and others held long leases of the individual flats. MML carried out major works to the block in 2003-04 and sought to recover the cost from the tenants by way of service charges. MML had written to the tenants informing them of the amount of the estimates and that these could be inspected by appointment at the managing agents' offices about ten miles away from the block. The Leasehold Valuation Tribunal determined that MML had not complied with the consultation requirements of s20 of the Landlord and Tenant Act 1985 and that it could only recover £1,000 for the whole block. In the event that the county court granted a dispensation from the consultation requirements the sum of £1,727 could be recovered from each flat.

Point of dispute: Whether MML's appeal should be allowed against the finding of the LVT and whether it should be granted a dispensation from the consultation requirements of s20.

Held: MML's appeal and application were dismissed. (i) On the facts of the case MML had not met with the requirements of s20(4)(b) which required the documents to be displayed in a sufficiently convenient and obvious place to make it likely that they would come to the attention of tenants straight away. Many of them were disabled and elderly and having documents available for inspection at a place where only a determined tenant could see them if he made an effort to do so was not a display within s20(4)(b). (ii) The consultation requirements could not be dispensed with since MML had not acted reasonably in all the circumstances. Copies of the estimates should have been enclosed with the tenants' letters. Where a landlord receives a letter from a tenant's solicitor correctly asserting that consultation requirements of s20 have not been complied with, giving reasons why and setting out possible consequences a landlord acts unreasonably if it carries on with the works regardless without first carrying out those requirements.

05

Lands Tribunal

Whether landlord could recover cost of replacement windows as service charge — Para 14(2)(a) of Schedule 6, Landlord & Tenant Act 1985

**** SHEFFIELD CITY COUNCIL V OLIVER
(2008) PLSCS 276 — Decision given 18.08.08

Facts: O held a 125-year lease of a maisonette the freehold of which was owned by SCC. In 2006 SCC gave notice to O of its intention to replace the windows in the building with double-glazed UPVC units at an estimated cost to O of £4,532.

Point of dispute: Whether SCC could recover the cost of the new windows as part of the service charge. O's lease defined the demised premises as including "the windows and doors including the glass and frames thereof in the exterior walls of the demised premises", excepting and reserving "those parts of the structure and exterior of the demised premises which the Council are by virtue of paragraph 14(2)(a) of and Part III of Schedule 6 of the [Housing Act 1985] obliged to keep in repair"; that reservation was expressly stated not to apply to the exterior windows and doors. Under the terms of the lease O was obliged to pay a service charge in respect of the costs of carrying out the landlord's obligations including "keeping in repair and improving the structure and exterior of the demised premises and building".

Held: SCC's appeal was allowed against the finding of the Leasehold Valuation Tribunal that SCC could not recover the cost of the new windows as service charge on the grounds that the windows and frames formed part of O's demised premises and were therefore the lessee's responsibility. External windows would usually form part of the structure and exterior of the building for the purposes of the covenants to be implied under para 14(2)(a) of Schedule 6 to the 1985 Act which required landlords to "keep in repair the structure and exterior" of the building. Therefore SCC was required to keep the external windows in repair and the cost of fulfilling that obligation was attributable to the service charge. The lease definition of the demised premises had no bearing upon the construction to be placed upon the landlord's repairing covenant. It was, however, surprising that the lease permitted SCC to undertake and charge the lessee for works of improvement when the lessee did not want them carried out.

Planning

06

Administrative Court

Change of use — appeal against enforcement notice

* COLVER V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2008) PLSCS 268 — Decision given 09.10.08

Facts: For many years a site in the Green Belt had been used by C and his predecessors in title for "open leisure" purposes. In 2005 the lpa issued an enforcement notice alleging that there had been a breach of planning control since there had been a material change of use from open leisure purposes to mixed use due to the stationing of a caravan for human habitation. C argued that he was immune from enforcement action since the change of use had commenced in the 1970s and continued for longer than ten years without abandonment during that time. The inspector appointed by the Sec of State found that a material change of use had occurred in the 1970s but that during the 1990s the caravan ceased to be used for human habitation. On 27.07.92, when the amended s191 and the new s171B(3) of the 1990 Act came into force, the unlawful use of the site had ceased, the breach of planning control had come to an end and there was no activity against which the lpa could have taken enforcement action until C acquired the site in 2001 and started to live in a caravan there.

Point of dispute: Whether C's appeal should be allowed against the inspector's decision. The inspector had rejected C's argument that the existence of a shell of a caravan on the site indicated that it was still capable of human habitation and that there had been no intention to abandon such use.

Held: C's appeal was dismissed. On the evidence the inspector had been entitled to conclude that lawful use rights in respect of human habitation/residential occupation of the caravan could not be accrued on the date that the new 1990 enforcement provisions came into force if that use, which had been carried on earlier for more than ten years, was not actually being carried on at that time. Only after lawful use rights had been accrued could a use become dormant without losing those rights. The question which the inspector had to answer was whether the unlawful use had ceased in 1992 and on the evidence he had been entitled to find that it had.

07

Administrative Court

Alternative sites

***** BOVALE LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2008) PLSCS 269 — Decision given 13.10.08

Facts: B was refused planning permission to develop a "total care" village for the elderly on a site in Hereford. The inspector appointed by the Sec of State to hear B's appeal concluded that the proposals were contrary to development plan policy as they did not provide for any contribution to affordable housing and that it was desirable for the land in question to be retained for Class B employment use. He considered that the absence of any evidence concerning the availability of alternative sites was a relevant factor.

Point of dispute: Whether B's application to quash the inspector's decision should be allowed. B argued that in determining an application for planning permission on a particular site, the existence or otherwise of alternative sites for the development in question was not, as a matter of law, a material consideration.

Held: B's claim was dismissed. There was no general rule that the availability of alternative sites was an immaterial consideration when determining an application in respect of a particular site. Following the enactment of s54A of the Town and Country Planning Act 1990 and the introduction of a plan-led system an inspector was required to determine applications in accordance with the development plan unless there were material considerations which indicated the contrary. The inspector had found B's proposals to be contrary to development plan policies regarding affordable housing and so was obliged to dismiss the appeal unless their were material considerations in B's favour. B relied upon the need in Hereford for the proposed facilities and it was relevant to ask whether that need could be met on another site in the area to which the same planning objections did not apply.

08

CLG Guidance

Tree Preservation Orders — A Guide to the Law and Good Practice: Addendum — September 2008

Changes to the Tree Preservation Order system have been introduced by The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Amendment) (England) Regulations 2008 (which came into force on 06.04.08) and the Town and Country Planning (Trees) (Amendment) (England) Regulations 2008 (which came into force on 01.10.08). This addendum sets out the Government's policy advice on these changes the effect of which is to:

- introduce a standard application form which has to be used when applying for consent to carry out works to trees protected by a TPO;
- introduce a fast-track appeal process for cases where consent has been refused, conditions imposed, or where an article 5 certificate or a tree replacement notice has been issued;
- empower the Planning Inspectorate to process these appeals; and
- empower planning inspectors, rather than the Sec of State, to make decisions on them

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

09

CLG Guidance

Guidance on Planning Propriety Issues

The aim of this note is to provide advice to Ministers in the Department of Communites and Local Government who are charged with making decisions, both under the Town and Country Planning Acts in individual planning cases, and with respect to Regional Spatial Strategies and Local Development Documents so as to ensure that their decisions are properly taken and in such a way as to avoid the risk of successful legal challenge.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/guidanceplanningpropriety.pdf

10

CLG and English Partnerships Research Report

National Land Use Database Scoping Study

This major report provides a detailed review of the National Land Use Database of Previously Developed Land (NLUD-PDL). Commissioned by English Partnerships and carried out by Kingston University, the research is based on a wide range of stakeholder interviews, workshops and surveys. A number of key recommendations to improving NLUD-PDL are put forward.
http://www.englishpartnerships.co.uk/landsupplypublications.htm

11

CABE and BioRegional Report

What makes an eco-town? A report from BioRegional and CABE inspired by the eco-towns challenge panel

BioRegional initiated the Peabody Trust's BedZED eco-village in south London and is now working with partners to apply the lessons that have been learned on that project to larger new and existing communities in the UK and other parts of the world as part of its concept called "one planet living". How to judge whether a place can be described as "sustainable" is an important current topic of debate and CABE is particularly interested in tackling the problem of how buildings and places can be designed to improve people's quality of life and in a more sustainable way. The two organisations have joined together in order to develop some testing criteria for the developers of eco-towns, more challenging than the minimum standards that will soon be consulted on in a proposed new planning policy statement on eco-towns.
http://www.cabe.org.uk/AssetLibrary/12242.pdf

Housing

12

CLG Consultation Paper

Shared Ownership and Leasehold Enfranchisement and Designation of 'Protected Areas' — A consultation paper
Deadline for Comments: 31.12.08

The consultation paper *Shared Ownership and Leasehold Enfranchisement*, published in July 2007, outlined a proposal to restrict staircasing on shared ownership properties in certain areas designated as “Protected”, to ensure that such properties remain affordable and available on shared ownership terms in perpetuity.
This paper:

(i) sets out the Government's proposed criteria to be taken into account when deciding whether to designate an area in England as a "protected area" for the purposes of s302 of the Housing and Regeneration Act 2008, which received Royal Assent on 22.07.08. The consequence of a shared ownership house in such a protected area is that a developer who grants a lease of such a house that is in accordance with the prescribed conditions may restrict the tenant of the house from "staircasing" to full ownership, by buying additional shares in the property;
(ii) sets out possible rural areas to be designated as protected areas and seeks views from local authorities on other types of locations which could be considered for designation; and
(iii) describes and seeks views on the terms and conditions which the Government plans to prescribe and which must be satisfied in order for a shared ownership lease granted for a house by a landlord, other than a housing association, to be excluded from Part 1 of the Leasehold Reform Act 1967

http://www.communities.gov.uk/documents/housing/pdf/protectedarearsconsultation.doc

13

Rapid Evidence Assessment of the Research Literature on the Purchase and Use of Second Homes

This report, which was published on 10.10.08, sets out the results of a rapid evidence assessment of the research literature on the purchase and use of second homes. The brief for the research project included the following:

- how have 'second homes' been identified in the literature and what data sources have been used?
- to what extent, if any, have second homes increased house prices and have they crowded out first-time buyers?
- what are the factors that attract people to buy second homes, what types of property do they buy and where?
- what is the geographical distribution of second homes in England and what characteristics do places with a high concentration of second homes share?
- what are the social and demographic characteristics of people who buy second homes?
- what proportion of people own more than one second home?
- has there been any improvement in the supply and quality of the housing stock as a result of second home purchases?
- what are the social and economic impacts of households owning second homes?

http://www.communities.gov.uk/documents/507390/pdf/990454.pdf

14

House Price Indices — August to September 2008

CLG Statistical Publication and Halifax House Price Index

The latest UK house price index statistics produced by Communities and Local Government were released on Tuesday 14.10.08. These include data based on mortgage completions during the month of August 2008.

The CLG House Price Index for August 2008, published on 11.10.08, shows:

- UK house prices have fallen by 3.4% since August 2007;
- the mix-adjusted average house price in the UK was £211,410 in August 2008;
- UK house prices fell by 2.4% in the quarter ending August 2008, this compares with a fall of only 0.2% for the quarter ending May 2008; and
- annual average house prices increased in Scotland by 1.3%, but fell in England by 3.4%, in Wales by 4.3% and in Northern Ireland by 18.6%

The Halifax House Price Index for September 2008, published on 09.10.08, showed a rather different picture:

- house prices fell by 1.3% in September;
- UK house prices fell by 5.2% in the third quarter of the year, almost the same as the fall seen in the second quarter which was 5.1%; and
- the average price of a house in September was £170,866, 12.4% lower than a year earlier

http://www.communities.gov.uk/documents/corporate/pdf/991743.pdf
http://www.hbosplc.com/economy/includes/09_10_08HousePriceIndexSeptember2008.doc

Taxation

15

VAT Tribunal

Whether works to construct further flats in roof spaces of blocks of flats was a zero-rated taxable supply within Item 1(b) to Group 5 of Schedule 8 to Value Added Tax Act 1994

***** MERLEWOOD ESTATES LTD V COMMISSIONERS FOR REVENUE & CUSTOMS
(2008) PLSCS 157 — Decision given 22.09.08

Facts: ME, which owned the freehold of five blocks of flats, planned to construct new flats within the roof spaces of the buildings, which were currently only used for the passage of television cables.

Point of dispute: Whether ME's appeal should be allowed against the refusal of the Commissioners to allow ME to register for VAT on the basis that it was intending to make zero-rated taxable supplies because it was "converting a … non-residential part of a building into a building designed as a … number of dwellings" within item 1(b) of Group 5 in Schedule 5 to the Value Added Tax Act 1994. The commissioners considered that the roof space was integral to the residential part of the building and could not therefore be described as a "non-residential part of the building". ME argued that the roof spaces were not designed or adapted for living in, none of the lessees in the building were permitted to have access to them and that its interpretation was consistent with the purpose of the legislation which was to zero-rate the construction of new dwellings.

Held: ME's appeal was allowed. The roof space of each building was a "non-residential" part of the building with item 1(b). They could not be regarded as residential since they were empty, had never been lived in and were uninhabitable. It was not part of the statutory test to ask whether the roof spaces were integral to the residential part of the building, but in any event they were not since they contained no utilities that were essential to enable residents to live in the flats below and the residents had no access to them. ME's intended supplies fell within item 1(b); they would be zero-rated taxable supplies for which ME should be registered for VAT.

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Administrative Court

Liability for council tax of non-resident assured shorthold tenant

***** JACKSON V CAMBRIDGE CITY COUNCIL
(2008) PLSCS 273 — Decision given 15.10.08

Facts: In October 1997 J entered into a six-month assured shorthold tenancy of a house owned by CCC. The rent was collected by a lettings agency and in October 2001 a new tenant took over the lease.

Point of dispute: Whether J's appeal should be allowed against the finding of the Leasehold Valuation Tribunal (LVT) that J was liable for council tax between October 1997 and October 2001. J argued that he had not lived at the property but had entered into the lease in order to help people who could not obtain accommodation themselves because of their poor credit ratings. CCC contended that apart from the last six months the house had been J's only or sole residence. The LVT concluded that during the relevant period J had continued to be the tenant of the property pursuant to a statutory periodic assured tenancy, but it made no decision about whether he had been resident at the house.

Held: J's appeal was dismissed. The LVT had not erred in law on its approach to the issue of multiple occupancy. A periodic tenancy would arise when a tenant held over on the expiry of a lease and paid rent that the landlord accepted. J had not suggested that he had informed CCC he was not in occupation or had sublet the property. The only conclusion that the LVT could have reached on the evidence was that J had continued to be a tenant of the entire property at common law when the fixed term expired.

Construction

17

Technology and Construction Court

Whether claimant could succeed in an action for damages in connection with alleged damage caused by works to adjoining building that had been the subject of a Party Wall Act award

***** RODRIGUES V SOKAL
(2008) EWHC 2005(TCC) Case No: HT 05 — 132 Decision given 30.07.08

Facts: R and S owned adjoining semi-detached properties in Forest Hill, South East London. In March or April 2004, without giving notice to the adjoining owner, R, under the Party Wall Act etc 1996 S commenced substantial structural works to his house in order to convert it into four self-contained flats. S's Party Wall Act notice was served on 15.05.04. Under the procedure laid down in the 1996 Act both parties appointed surveyors, who in turn appointed a third surveyor, N, whose final award was published on 01.06.07. R withdrew his appeal against this award and issued proceedings in the High Court alleging a number of unresolved counts of damage as a result of S's works.

Point of dispute: As a preliminary issue whether, given the terms of the surveyor's award under the Party Wall etc Act 1996, R was entitled to pursue his further claims for damages. Sections 1-9 of the 1996 Act sets out the rights and obligations of adjoining building owners and occupiers while s10 is concerned with the resolution of disputes, including the appointment of surveyors. Section 10(11) empowers either of the surveyors appointed by the parties to appoint a third surveyor to determine the disputed matter and to make a final award. Section 10(16) provides that that award shall be conclusive unless an appeal against it is made to the County Court within 14 days. S contended that N's award was conclusive and precluded any further litigation and that any finding to the effect that the party wall had been made unstable by the works would be inconsistent with that award. R relied upon the 1997 decision of the Court of Appeal in *Louis v Sadiq* in which it was stated that if an actionable nuisance is committed without giving notice and without obtaining consent a defendant cannot rely upon a statutory defence under procedures with which he has failed to comply.

Held: R's case was dismissed. Until such time as the 1996 Act is invoked and either the building owner has obtained consent or acquires a statutory authority under the s10 procedure the building owner cannot rely upon a statutory defence under procedures with which he has not complied. If later he obtains authority for those works that authority overrides his common law rights from the time of the subsequent consent or when the 1996 procedure is successfully invoked. N had concluded in his award that all the works carried out both before and after the 15.05.04 referral date had been carried out satisfactorily and R could not pursue any further claims. The statutory procedure effectively superseded any common law procedure to which R might otherwise have had recourse.

18

CLG Guidance

Electronic Communication of Building Control Documents

The Building (Electronic Communications) Order SI 2008/2334 came into force on 01.10.08 and enables certain specified notices and other documents under the Building Act 1984 to be sent and received electronically. A new s94A has been added to the Building Act which sets out the conditions under which electronic service can be used. This document explains these conditions and provides simple guidance on sending and receiving documents electronically.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/enablingelectronicdivletter.pdf

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CLG Publication

Notice of Approval of the methodology of calculation of the energy performance of buildings in England and Wales

This notice of approval takes effect from 01.09.08 and sets out:

- the methodology of calculation of the energy performance of buildings including methods for calculating the target emission rate, building emission rate, asset rating and operational rating of buildings; and
- the ways of expressing the energy performance of buildings as calculated in accordance with this methodology that are approved by the Sec of State for the purposes of Regulation 17A of the Building Regulations 2000 as amended and for the purposes of Regulation 7 of the Stamp Duty Land Tax (Zero Carbon Homes Relief) Regulations 2007

The notice should be read in conjunction with the Tables Nos 1, 2 and 3 of approved calculation methods that can be downloaded from the CLG website: www.communities.gov.uk/publications/planningandbuilding/noticeapproval and with the approved methods of calculating the asset and operational ratings as set out in this notice.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/983941.pdf

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CLG Guidance

Requirements for energy performance certificates (EPCs) when marketing homes for sale or let

This document confirms the recent introduction of EPCs. Section 1 contains details in respect of homes requiring a home information pack (HIP), s2 concerns homes already on the market and those not requiring an HIP, s3 relates to lettings while s4 contains some Questions and Answers.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/984268.pdf

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CLG Guidance

Requirements for energy performance certificates (EPCs) when marketing commercial (non-domestic) properties for sale or let

It should be noted that recent regulations have changed the transitional arrangements as follows:

- Any non-domestic building already on the market before 1 October and still remaining on the market will need an EPC by 04.01.09 at the latest. If the premises are sold or let in the meantime, an EPC must be requested as soon as reasonably practicable and given to the buyer or tenant as soon as it is available.
- If a property is being marketed that needed an EPC as at 06.04.08 (buildings with a total useful floor area over 10,000 sq m) or as at 01.07.08 (buildings with a total useful floor area over 2,500 sq m) the additional period of grace for obtaining an EPC up to 04.01.09 will also apply.

It should also be remembered that the first inspection of all air conditioning systems over 250 kW must have taken place by 04.01.09 and the next relevant date for inspection of air conditioning systems over 12kW is 04.01.11.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/995136.pdf

22

Code for Sustainable Homes: Technical guide — October 2008

On 13.12.06 the Code for Sustainable Homes, a new national standard for sustainable design and construction of new homes, was launched. It provides a comprehensive measure of the sustainability of new homes, to ensure that sustainable homes deliver improvements in 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, driving improvements in building practice. This technical guidance sets out the requirements for the Code and the process by which a Code assessment is reached with the aim of making gaining a Code assessment as simple, transparent and rigorous as possible. The guide comes comes into effect on the 03.11.08 and will apply to homes registered on or after this date. The April 2008 version will continue to apply to homes registered before this date. This technical guidance manual underpins the publication: The Code for Sustainable Homes: Setting the standard in sustainability for new homes that was published on 27.02.08. A summary publication: Code for Sustainable Homes: Summary of Changes to the Technical Guidance October 2008 which details changes between the April 2008 and October 2008 versions has also been published.
http://www.planningportal.gov.uk/uploads/code_for_sustainable_homes_techguide.pdf
http://www.planningportal.gov.uk/uploads/code_for_sustainable_homes_techguide_changes_summary.pdf

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Building Regulations Research Newsletter 2008-09 — October 2008

This newsletter contains details of the new projects in the Department of Communities and Local Government's 2008-09 Building Regulations research and technical support programme. New projects are planned in four areas:

- sustainability, including improving energy and water efficiency of new and existing buildings, ensuring that they are resilient to a changing climate and reducing their wider impact on the environment;
- progressing the review of the building control;
- initiating the proposed periodic reviews of the Regulations; and
- safety and standards

http://www.communities.gov.uk/documents/planningandbuilding/pdf/brresearchnewsletter0809.pdf

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Health and Safety Executive Campaign

Asbestos Hidden Killer Campaign

The Health and Safety Executive have launched a new campaign aimed at tradesmen to promote awareness of the dangers associated with exposure to asbestos materials in the workplace.

Anyone who is responsible for a building is under a Duty of Care to inform workers of their potential risk to exposure to asbestos materials in the building under Regulation 4 of The Control of Asbestos Regulations 2006. They must be provided with information about where asbestos is or likely to be, its condition and the risk that it poses to those working in the vicinity. It is recommended that a survey be carried out by a competent person and the condition monitored on a regular basis.

Set out below are details of the link to RPS, a UK Asbestos Consultancy, which can assist in managing potential asbestos risks and ensuring that the Regulations are complied with.
http://www.hse.gov.uk/asbestos/hiddenkiller/index.htm
http://www.rpsgroup.com/RPS_EnvMgt/HSED/services/asbestos.html

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CLG Research Publication

Research to Assess the Costs and Benefits of the Government's Proposals to Reduce the Carbon Footprint of New Housing Development

This report was commissioned by the Department for Communities and Local Government, with support from the Department for Environment, Food and Rural Affairs, to support the Regulatory Impact Assessment for the Building a Greener Future: Policy Statement issued in July 2007.
http://www.communities.gov.uk/documents/planningandbuilding/doc/986178

General

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CABE Survey

Local authority green space skills survey: summary of findings

A survey of 54 local authority green space managing departments was conducted with the aim of highlighting the main skills issues facing this sector. These findings will inform the development of *Skills to Grow,* the national urban green space skills strategy. The following are some of the key findings:

- 68% of authorities stated that a lack of skills in horticulture was affecting overall service delivery;
- there are managerial skills deficiencies in design, finance and funding, event management and marketing;
- only 11% of green space strategies address service skills;
- only 20% of authorities reported an increase in total revenue budget for the year;
- on average only 0.94% of total staff budgets are allocated to training; and
- 36% of significant parks had no on-site staff presence due to lack of funds

http://www.cabe.org.uk/AssetLibrary/12258.pdf

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Useful web links

www.ukonline.gov.uk
www.odpm.gov.uk
www.dft.gov.uk
www.inlandrevenue.gov.uk
www.hmso.gov.uk
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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Legal & Parliamentary

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evebrief

SCOTLAND

Planning

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Scottish Government Guidance

Planning Information Online — Data Protection Guidance for Planning Authorities: 1st Edition, September 2008

The Town and Country Planning (Electronic Communications) (Scotland) Order 2004 which came into force on 28.07.04 allows for the use of electronic communication for certain procedures in the planning system. This development means that it is important for authorities to ensure that personal information is processed in strict compliance with the Data Protection Act 1998 and the aim of this guidance is to assist planning authorities in that aim.
http://www.scotland.gov.uk/Resource/Doc/239175/0065876.pdf

WALES

Planning

02

Statutory Instrument

SI 2008/2335 The Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2008

These Regulations, which came into force on 06.10.08, amend the 1999 Regulations to implement the EIA Directives regarding the assessment of the effects of public and private projects on the environment in respect of applications for approval of reserved matters and applications for approval of similar conditions attached to the grant of planning permissions.
http://www.opsi.gov.uk/legislation/wales/wsi2008/pdf/wsi_20082335_mi.pdf