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evebrief

Editorial



Hilary Wescombe

Rights of parking and access were in dispute in the case of **Waterman v Boyle** (item 24) but this case underscores the Court of Appeal's view that its function is to determine the parties' rights and enforce them, not to decide who has engaged in the more unneighbourly behaviour. Often a party may do what it wants on its own land, but this is not always the case and neighbours are expected to show some give and take. Parties to boundary disputes were reminded that they should try to resolve their disputes without recourse to litigation.

However, with the number of households set to rise by 6.3 million by 2031 (item 26) neighbour issues are almost certain to continue to feature. Although it is important to note that the projections are based on 2006 data, the overall trend shows a significant rise, particularly in single person households, and higher growth than the 2004 based projections. The projected increase equates to 252,000 per year and with net additional dwellings reaching 207,500 in 2007-08 (item 25) we may be able to look forward to some demand driven house price increases, even if we do have to wait until 2031!

Items 19 and 20 refer to changes to business rates, in particular the threshold for exclusion from empty rate liability and the application of Small Business Rate Relief. From 1 April 2009 premises with a rateable value less than £15,000 will not attract empty property rates. Small Business Rate Relief, which ranges from 0-50% of the full rate, can apply to assessments up to rateable value £21,499 in Greater London and £14,999 outside Greater London.

Hilary Wescombe

Landlord & Tenant

01

Court of Appeal

Surrender of lease by operation of law

* ARTWORLD FINANCIAL CORPORATION V SAFARAN
(2009) All ER (D) 02 (Mar) — Decision given 27.02.09

Facts: In September 2004 S took out a three-year lease on a property owned by AFC. The annual rent of £390,000 was payable in three monthly instalments in advance. Following a number of maintenance problems which were not rectified by AFC S left the property in 2006 when there were 15 months remaining on the lease. AFC sought to recover the rent for this period. The judge at first instance found that the lease had been surrendered by operation of law as: (i) AFL had taken back the keys; (ii) AFL had subsequently redecorated the property; (iii) AFL had rehung curtains and reinstated certain items of furniture which it had removed at S's request at the outset of the tenancy; and (iv) a member of the landlord's family had moved into and stayed at the property for his own convenience.

Point of dispute: Whether the landlord's appeal should be allowed against the judge's ruling that the lease had been surrendered by operation of law.

Held: The appeal was dismissed. From the material before her the judge had been entitled to reach the finding that the lease had been surrendered. By entering and living in the house the landlord had in effect taken it over and treated it as his own and such actions were inconsistent with the continuance of the lease.

02

High Court

Construction of lease — landlord wanting to enter commercial premises to drill boreholes and take samples for an environmental survey — whether terms of lease permitted landlord to enter premises for these purposes

* HERONSLEA (MILL HILL) LTD V KWIK-FIT PROPERTIES LTD
(2009) PLSCS 65 — Decision given 20.02.09

Facts: A former petrol station was let by H to KF for a 30-year term from December 2000. Para 13 of Schedule 4 of the lease entitled the landlord to enter the premises on reasonable notice for the purpose of making surveys and drawings. In May 2008 H notified KF that it wanted to carry out an environmental investigation survey which would necessitate drilling 13 boreholes, one to a depth of 20m and the remainder to 5m. KF refused consent and H applied to the county court for a declaration that it was entitled to enter the premises to carry out investigation.

Point of dispute: Whether H's appeal should be allowed against the decision of the court below to refuse H's application, the judge ruling that the word "survey" in para 13 did not include the activities which H wished to carry out. H argued that the judge had taken into account irrelevant matters when construing the meaning of the word "survey" in the lease, in particular various dictionary definitions of the word to ascertain its normal meaning, which was a wrong approach in law.

Held: H's appeal was dismissed. A reasonable person having all the background knowledge available to the parties when the lease was executed would not have thought that para 13 of the lease entitled H to enter to premises for the purpose of drilling boreholes and taking samples. The court was entitled to have regard to dictionary definitions as an aid to construction, particularly where the ambit of the activities covered by the word in question was in doubt. The standard of a reasonable commercial person would generally be hostile to overly technical or literal interpretations. In the context of a lease a survey would be of buildings or of land, and the latter would be to identify its boundaries and description. Carrying out a survey of the type envisaged by H would significantly interfere with KF's quiet enjoyment of the land, and, had the parties intended the tenant to have to suffer such interference, the lease should have been much clearer on the subject.

Planning

03

Administrative Court

Environmental Impact Assessment (EIA) — planning permission granted for further development of a waste-disposal facility — Sec of State deciding that EIA unnecessary — claimants seeking to quash permission — whether domestic regulations properly implementing EIA Directive

** R (ON THE APPLICATION OF BAKER) V BATH AND NORTH EAST SOMERSET COUNCIL
(2009) PLSCS 69 — Decision given 19.02.09

Facts: H, who operated a waste-disposal facility near to B's home, obtained three planning permissions for further developments to enable the use at the main site to be intensified and for garden compost (which produced unpleasant odours) to be transported to and processed at a secondary site. No environmental impact assessment (EIA) was carried out before these permissions were granted.

Point of dispute: Whether B's application for judicial review to quash the planning permissions should be allowed. B argued that the decision that no EIA was necessary was flawed as there had been no screening. The Sec of State contended that EIA was not required since the applications were for modifications of an existing authorised development. The further developments did not cross the threshold for a project/development requiring an EIA contained in para 13, col 2 of Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 which implemented the European Environmental Impact Assessment (EIA) Directive 85/337. An issue arose as to whether the 1999 Regulations had properly implemented the Directive.

Held: B's application was granted and the planning permissions were quashed. Article 4 of the EIA requires projects that are likely to have a significant effect upon the environment to have an EIA prior to approval. Annex II permits member states to adopt a case-by-case approach or set a threshold for projects such as waste development, but para 13 makes it clear that where such projects have already been authorised any change or extension that might have significant adverse effects on the environment require fresh consideration of the need for an EIA. Col 2 in para 13 of Schedule 2 to the 1999 Regulations failed properly to implement the Directive, as it limited the application of the threshold to the further development rather than assessing the cumulative effect of that development upon the project as a whole. In this case it was clear that no consideration had been given to the effect of the intensification of the development upon the environment. Furthermore, under Article 10a of the EIA Directive affected members of the public should have a right to request the Sec of State to consider whether an EIA is appropriate before approval is given to a project that is likely to have an adverse effect upon the environment. The procedure in the 1999 Regulations did not comply with this Article since there was no requirement or obligation to inform members of the public about their right to address the Sec of State.

04

Administrative Court

Advertisement consent — change in type of display

* R (ON THE APPLICATION OF CLEAR CHANNEL UK LTD) V HAMMERSMITH AND FULHAM LONDON BOROUGH COUNCIL
(2009) PLSCS 72 — Decision given 27.02.09

Facts: CC operated an advertisement display site in Fulham which had been used for that purpose for many years. Originally, it had been used for displaying a static poster hoarding, but over the years there had been a number of changes in the types of advertisements displayed on the site, culminating in 2008 with a taller digital display with internal illumination that was programmed to display a different advertisement from a selection every seven seconds. HFLBC served a notice under s11 of the London Local Authorities Act 1995 requiring CC to remove the new structure.

Point of dispute: Whether CC's application for judicial review of HFLBC's decision to issue the notice should be allowed. CC argued that it had deemed consent for the display by virtue of the use of the site for advertising without express consent over the previous ten years pursuant to regulation 6 of, and Class 13 of Schedule 3 to, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. HFLBC maintained that the new display fell within the exceptions to Class 13 since (i) there had been a material increase in the manner in which the site was used for the display of advertisements, or (ii) the new display was a "sequential display" within Class 13(4) that did not meet the conditions of that paragraph. CC argued that: (i) the changes to the display were not "material"; (ii) the display was not a sequential one since there was no connection between the different advertisements displayed; and (iii) if there was no deemed consent, HFLBC should not have served the notice without first asking CC to remove the objectionable elements and revert to the original display.

Held: CC's claim was dismissed. (i) An alteration to a display would be "material" for the purpose of the 2007 Regulations if it could affect amenity and public safety. The changing brightness of the display every few moments did this in a way that a constant, fixed illumination would not. (ii) It was not necessary that all the items in a "sequential" advertisement had to be related to each other. Although the order in which the different advertisements was displayed was random the display was sequential for the purpose of Class 13(4). (iii) Under the 2007 Regulations there was no "right to revert" to a previous use that had enjoyed Class 13 deemed consent before its replacement with the objectionable display. Once a display was in place that fell outside the deemed consent provisions of Class 13, the previous deemed consent would be lost.

05

Administrative Court

Antennae and equipment housings — Part 24 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO)

* O₂ (UK) LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2009) PLSCS 76 — Decision given 02.03.09

Facts: O₂ held a license for 2G and 3G communications. In 2005 it notified the council of its intention to erect three antennae and two equipment housing cabinets for 3G communications, but it considered that this was permitted development under the GPDO. It later notified the council of a similar proposal in respect of 2G. O₂ disagreed with the council's opinion that planning permission for the development was required and proceeded to erect three masts each with a 2G and a 3G antenna together with four equipment housings. The inspector dismissed O₂'s appeal against an enforcement notice served in respect of the development on the grounds that the permitted 2.5 cubic metre size limit had been exceeded. She considered that this limit was cumulative and thus applied to the total area of all housings comprised in a particular development and not to each individual housing.

Point of dispute: Whether O₂'s appeal should be allowed against the inspector's decision. O₂ argued that the inspector had wrongly construed the relevant provisions of the GDPO and, even if she had not, her approach had arisen for the first time at a site visit such that O₂ had not had an opportunity to make further submissions. O₂ maintained that it had carried out two developments for 2G and 3G respectively, each of which was under the size limit.

Held: O₂'s claim was allowed. (i) The 2.5 cubic metre size limit applied to the totality of the housings comprised in a development as a whole and the inspector had correctly interpreted the GDPO. (ii) The distinction that O₂ sought to make between the 2G and 3G developments was acceptable and not artificial. The works could fairly be regarded as two developments. The cumulative approach had not formed part of the council's case initially and the inspector should have invited O₂ to make submissions on it. The decision would be quashed and the matter remitted for hearing of further submissions on whether the works amounted to one or two developments.

06

Administrative Court

Planning permission for new jetty and access way over estuary foreshore — whether planning condition effective to achieve objective of controlling vehicular use of foreshore

* R(ON THE APPLICATION OF HELFORD VILLAGE DEVELOPMENT CO LTD) V KERRIER DISTRICT COUNCIL
(2009) PLSCS 88 — Decision given 05.03.09

Facts: HVDCL was an organisation set up to represent the views of the residents of a village located on the Fal and Helford Estuary on the south coast of Cornwall. The 30 fishermen who operated in the estuary transported their catch to a jetty on the foreshore by punts and dinghies and then drove it 300m across the mid and lower foreshore over a rough track. An application was made to KDC for planning permission for a scheme which would improve the fishermen's facilities, including a new jetty and access way across the foreshore. The application was accompanied by an EIA which recognised that the scheme could adversely affect the local environment. KDC granted planning permission subject to a condition that the new access road could only be accessed from a particular slipway with car parking in a specified area. The purpose of this condition was to control vehicular use of the foreshore.

Point of dispute: Whether HVDCL's application to quash the grant of planning permission should be allowed. HVDCL argued that KDC had failed to take into account material considerations, including that the condition would not meet its purpose as fishermen and members of the public could still lawfully gain vehicular access to the mid and lower foreshore.

Held: HVDCL's claim was allowed. KDC had not properly addressed the difficulties and complexities of achieving the critical objective of taking out of use the mid to lower foreshore. This was the intended mitigation for the inevitable damage to wildlife habitats that would be caused by the development but the condition did not prevent any fisherman or member of the public from continuing to drive vehicles over the mid to lower foreshore. Accordingly the conservation would not be achieved.

07

Statutory Instrument

SI 2009/197 The Sites of Special Scientific Interest (Appeals) Regulations 2009

These Regulations came into force on 01.03.09 and establish the procedure to be used when there is an appeal to the Sec of State relating to a consent or management notice relating to a site of special scientific interest under the Wildlife and Countryside Act 1981 or a stop notice under the Countryside and Rights of Way Act 2000.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090197_en.pdf

08

Statutory Instrument

SI 2009/380 The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Amendment) (England) Regulations 2009

These Regulations came into force on 06.04.09 and amend the 1997 Regulations which prescribe the classes of appeal which are to be determined by persons appointed by the Sec of State in accordance with the provisions of Schedule 6 to the Town and Country Planning Act 1990 ("the Act"). Firstly, appeals relating to old mining permissions are prescribed as appeals to be determined by an appointed person instead of by the Sec of State. Secondly, unless a direction has been given by the Sec of State or appropriate Minister that s266 of the Act (applications for planning permission by statutory undertakers) applies and the direction has not been revoked, appeals by statutory undertakers under ss78 or 174 of the Act, relating to operational land or prospective operational land, will now be determined by a person appointed by the Sec of State.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090380_en.pdf

09

Statutory Instrument

SI 2009/384 The Planning and Compulsory Purchase Act 2004 (Commencement No 11) Order 2009

Article 2 of this Order brings into force on 06.04.09 in relation to England s43 of the Planning and Compulsory Purchase Act 2004 so far as it is not already in force. The provisions inserted by that section (into the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990) relate to the power to decline to determine overlapping applications for planning permission, listed building and conservation area consents.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090384_en.pdf

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Statutory Instrument

SI 2009/400 The Planning Act 2008 (Commencement No 1 and Savings) Order 2009

This Order brings into force on 06.04.09 in relation to England and Wales and, to the extent specified in s240(4) of the Planning Act 2008 ("the Act"), to Scotland, a number of provisions of the Act which are concerned with infrastructure planning and the community infrastructure levy.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090400_en.pdf

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Statutory Instrument

SI 2009/401 The Town and Country Planning (Local Development) (England) (Amendment) Regulations 2009

These Regulations, which mainly come into force on 06.04.09, amend the 2004 Regulations which make provision relating to the system of local development planning established by Part 2 of the Planning and Compulsory Purchase Act 2004. The 2004 Act has been amended by s180 of the Planning Act 2008 with respect to local development schemes and local development documents, and the amendments made by these Regulations are consequential upon those amendments to the 2004 Act.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090401_en.pdf

12

Statutory Instrument

SI 2009/452 The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulation 2009

These Regulations come into force on 06.04.09 and lay down the procedure and time limits in connection with appeals under s78 of the Town and Country Planning Act 1990 which are to be considered on the basis of representations in writing.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090452_en.pdf

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Statutory Instrument

SI 2009/453 The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2009

Wef 06.04.09 this Order amends the Town and Country Planning (General Development Procedure) Order 1995 ("the 1995 Order"). A new defined term of "householder application" is introduced into article 1(2) of the Order. The definition of "playing-pitch" in article 10 is amended and the categories of development and the persons who must be consulted in cases of such development before permission may be granted are defined. A definition of "householder appeal" for the purposes of the new paragraphs in article 23 of the 1995 Order is added.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090453_en.pdf

14

SI 2009/454 The Town and Country Planning (Determination of Appeal Procedure) (Prescribed Period) (England) Regulations 2009

Section 196 of the Planning Act 2008 inserted a new s319A into the Town and Country Planning Act 1990, giving the Sec of State the power to determine the procedure for specified appeals. Under the new provision the Sec of State must make a determination before the end of the prescribed period. These regulations, which come into force on 06.04.09, prescribe that period as seven working days from receipt of a valid appeal, and "receipt of a valid appeal" is defined for these purposes.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090454_en.pdf

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Statutory Instrument

SI 2009/455 The Town and Country Planning (Hearings and Inquiries Procedures) (England) (Amendment) Rules 2009

These Rules come into force on 06.04.09 and make various amendments to the following Regulations:

- The Town and Country Planning (Hearings Procedure) (England) Rules 2000
- The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000
- The Town and Country Planning (Inquiries Procedure) (England) Rules 2000
- The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005

The changes relate to procedure and some clarificatory amendments are also made.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090455_en.pdf

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CLG Response

Government Response to the Killian Pretty Review

The Government has welcomed the *Killian Pretty Review Final Report* which, it is anticipated, will provide a strong foundation for the next stage of planning reform. It proposes to introduce an ambitious programme of measures that will create a more proportionate, effective and efficient planning application process. An early priority will be reducing the need for planning permission for some small scale developments by businesses and public services and streamlining information requirements for applicants. By the summer of this year the Government intends to do the following:

- consult on draft proposals to extend permitted development rights for businesses and public services;
- consult on a simplified process for some minor commercial developments, such as new shop fronts;
- consult on draft proposals to streamline information requirements for applicants;
- consult on possible changes to give local authorities greater flexibility to determine how best to notify the public about planning applications;
- identify options for an improved approach to minor amendments to planning permissions;
- publish an action plan to develop new national policy on Development Management, together with a staged programme to deliver simplified and consolidated secondary legislation; and
- report on progress in developing proposals to take forward the other agreed recommendations in particular in relation to changing the performance framework, engaging statutory consultees and improving the use and discharge of planning conditions, with consultation on the latter two issues in the autumn of 2009

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

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CLG News Release

Eco-towns public consultation deadline extended

The consultation on the draft Planning Policy Statement (PPS) and Sustainability Appraisal on eco-towns has been extended to 30.03.09.
<http://ecotownsyoursay.direct.gov.uk/>

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CLG Study

Financial viability study of the eco-towns programme

This financial viability study, on which comments are invited, considers whether an eco-town could be economically viable in the following locations:

- Weston Otmoor, Oxon
- Ford Airfield, West Sussex
- Whitehill Bordon, Hampshire
- Pennbury, Leicestershire
- St Austell China Clay Community, Cornwall
- Rossington, S Yorks
- Middle Quinton, Warwickshire
- North East Elsenham, Essex
- North West Bicester (Cherwell), Oxon
- Rackheath, Norwich
- Rushcliffe, Notts

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

Rating

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Statutory Instrument

SI 2009/353 The Non-Domestic Rating (Unoccupied Property) (England) Regulations 2009

Regulation 4 of the 2008 Regulations excludes from liability for non-domestic rates under s45 of the Local Government Finance Act 1988 all hereditaments shown in a non-domestic rating list with a rateable value of less than a specified amount, currently £2,200. These Regulations increase that figure to £15,000 for the purpose of a hereditament shown in the list for the financial year beginning on 01.04.09.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090353_en.pdf

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Statutory Instrument

SI 2009/354 The Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) Order 2009

This Order comes into force on 01.04.09 and amends the 2004 Order, which prescribes the conditions for entitlement to small business rate relief. The rateable value of the hereditament in respect of which a ratepayer is seeking relief must still be no more than £21,499 in Greater London, or £14,999 outside Greater London, but those values must apply on every day for which relief is actually sought rather than just on the first day of each financial year in which relief is sought.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090354_en.pdf

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Statutory Instrument

SI 2009/355 The Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations 2009

These Regulations which come into force on 01.04.09 amend the 2003 Regulations in relation to non-domestic rating demand notices only. They update the information to be provided to ratepayers about small business rate relief as a result of changes being made wef 01.04.09 and add extra information about circumstances in which certain backdated rates liability can be rescheduled as a result of changes being made to the arrangements for collection and enforcement of rates liability wef March 2009.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20090355_en.pdf

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CLG Consultation Paper

Valuation Tribunal for England: Regulatory Framework and Detailed Arrangements — A Consultation Paper Deadline for Comments: 05.06.09

The Government plans to establish the Valuation Tribunal for England (VTE) on 1 October as the single national tribunal for hearing appeals on council tax and business rates in England. It will take over the jurisdiction of the existing 56 separately constituted valuation tribunals in England. This paper seeks views on proposals for the regulatory framework and the transitional and other detailed arrangements that need to be put into place in order to establish the VTE. In particular, it seeks comments on the scope of the procedural regulations for the VTE, arrangements for transferring unresolved appeals and the length of appointments of VTE members and chairmen.

<http://www.communities.gov.uk/documents/localgovernment/pdf/1175826.pdf>

Real Property

23

House of Lords

Adverse Possession

** OFULUE V BOSSERT

(2009) PLSCS 86 — Decision given 11.03.09

Facts: O, who lived in Nigeria, was the registered owner of a property in London which he let out. In 1981 the then tenant allowed B and her father into possession. In 1989 O commenced possession proceedings but B and her father claimed that they had taken an assignment of the tenant's lease or alternatively that they had carried out substantial works to the property on the understanding that they would be granted a 14-year lease. In 1992 there was some "without prejudice" correspondence between the parties when B and her father's offer to purchase the freehold was rejected by O. These discussions did not progress any further and were automatically stayed when B's father died in 2000. O applied for possession again in 2003.

Point of dispute: Whether O's appeal should be allowed against the decision of the courts below dismissing his possession claim. They accepted B's argument that she had been in uninterrupted possession of the property as a trespasser for more than 12 years before the commencement of the new possession proceedings and had thus acquired title to the property under ss15 and 17 of the Limitation Act 1980.

Held: O's appeal was dismissed.

- (i) Subject to the effect of the earlier possession proceedings and the "without prejudice" correspondence, B had been in adverse possession of the property for more than 12 years before the 2003 proceedings were commenced. It did not matter that she and her father might have believed they were tenants in law or equity since all that was required for possession to be adverse was an intention to possess together with actual physical possession.
- (ii) The admission of title in the earlier possession proceedings was an acknowledgement of title so as to stop time running against O for the purposes of s29(2) of the 1980 Act. However, that acknowledgement had been made more than 12 years prior to the current possession proceedings and was not continuing in nature.
- (iii) (Lord Scott of Foscote dissenting on this point) The 1992 offer to purchase the freehold was not admissible as evidence of an acknowledgement by B of O's title to the property since it formed part of "without prejudice" negotiations. O could not rely on the 1992 offer as evidence that an acknowledgment of title had been made where it was inadmissible as evidence of O's ownership. There were no public policy grounds for overriding the "without prejudice" rule in this case.

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Court of Appeal

Car parking — dispute over access to neighbouring properties — whether right of vehicular access implied a right to park

* WATERMAN V BOYLE

(2009) PLSCS 73 — Decision given 27.02.09

Facts: The appellants owned a property which they had converted into three connected dwellings. They retained the first and sold the second and third, the second to the respondents. Access and parking rights for the second property were limited in the conveyance. The respondents were entitled to a shared right of access with or without vehicles at the northern end of the property via part of the entrance drive, they were permitted to park two cars on designated parking spaces next to their front door and they had a shared right of access to part of the rear of their property where their predecessors had built a double garage. Initially parking did not present a difficulty as the appellants permitted parking on their land. Following disputes about parking the appellants altered the layout of a traffic island on the northern drive and constructed a wall on their land which made it impossible for the respondents to turn cars into their garage. They also prohibited the respondents' visitors from parking on the northern drive.

Point of dispute: Whether the appellants' appeal should be allowed against the determination by the county court of the principal areas in dispute in favour of the respondents and its award of substantial damages to the respondents for interference with their right of access. The issues for determination were whether a right to park could be implied from a right of vehicular access and the extent of the respondents' parking right over the appellants' drive.

Held: The appeal was allowed. The building of the boundary wall by the appellants was a reasonable use of its land and was not actionable by the respondents. A right to park could be implied into a right of vehicular access if it was reasonably necessary for the exercise or enjoyment of that right — in this case, had the parties intended further parking rights they would have been indicated in the conveyance. The test to be applied was whether, having regard to circumstances at the time of the transfer, it was reasonably necessary to use the land for stationing vehicles for the duration of the user's visit to the property.

Housing

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CLG Statistical Release

Net supply of housing: 2007-2008, England

This statistical release presents figures on net additional dwellings in England and the individual regions up to 2007-08. They also update the figures released on 20.03.08. The key points from this release are as follows:

- annual housing supply in England reached 207,500 net additional dwellings in 2007-08, a 4% increase on the 199,000 net additional homes supplied in the previous year, and the highest annual level of net housing supply in the last 30 years;
- seven out of the nine English regions experienced an increase in the number of net additional dwellings supplied in the 2007-08 financial year, with only the East Midlands and the West Midlands experiencing falls of 7% and 3% respectively; and
- the largest annual increase was seen in the North West (15%) followed by the South West (9%)

<http://www.communities.gov.uk/publications/corporate/statistics/netsupplyhousing200708>

<http://www.communities.gov.uk/documents/statistics/pdf/1159395.pdf>

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CLG Statistical Publication

Household Projections to 2031, England

- the number of households in England is projected to grow to 27.8 million in 2031, an increase of 6.3 million (29%) over the 2006 estimate, or 250,000 households per year
- population growth will account for nearly three quarters of the increase in household numbers over this period
- one person households are projected to increase by 163,000 per year, amounting to two-thirds of the increase in households
- by 2031 it is estimated that 32% of households will be headed by people aged over 65
- by 2031 it is projected that 18% of England's population will live alone, compared to only 13% in 2006
- the largest increase in numbers of households will be seen in the South East, and the smallest in the North East

<http://www.communities.gov.uk/documents/statistics/pdf/1172133.pdf>

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CLG Publication

Industry briefing note: Changes to Home Information Packs (HIPs)

From 06.04.09 the following changes are made to HIPs:

- the temporary first day marketing exemption will be removed which means that a HIP must be available on the first day a property is marketed;
- a Property Information Questionnaire, completed by the seller, must be included in the HIP; and
- the end of the use of insurance to cover missing data in personal searches

<http://www.communities.gov.uk/documents/housing/pdf/1172231>

Construction

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CLG Consultation

Definition of Zero-Carbon Homes and Non-Domestic Buildings

Deadline for Responses: 18.03.09

This consultation is concerned with the definition of zero-carbon homes that will apply for new homes built from 2016, and it also seeks views on the Government's ambition that new non-domestic buildings should also be zero-carbon from 2019. Carbon emissions from new homes and buildings are currently regulated by Building Regulations. In December 2006 CLG consulted on proposals to make progressive changes to the energy efficiency and carbon requirements of building regulations, in 2010, 2013 and 2016, so that new homes would be zero-carbon from 2016. The Government's statement confirming that policy was issued in *Building a Greener Future: Policy Statement* in July 2007. Budget 2008 announced the Government's ambition that all new non-domestic buildings should be zero-carbon from 2019.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1101177.pdf>

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CLG Report

Costs and Benefits of Alternative Definitions of Zero-Carbon Homes: Project report

This report provides an update to the research report *Research to Assess the Costs and Benefits of the Government's Proposals to Reduce the Carbon Footprint of New Housing Development* which was published by CLG in September 2008. It focuses specifically on the implications of requiring all new homes to be zero-carbon by 2016 and assuming that there will be changes to the Building Regulations in 2010 and 2013. A range of alternative approaches to defining a zero-carbon home were considered and the implications of each option assessed in relation to costs, benefits, cost effectiveness, overall carbon savings and impact on fuel supply and technology mixes.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1158782.pdf>

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CLG Publication

The Code for Sustainable Homes: Case Studies

This Code was introduced in April 2007 as a voluntary national standard to improve the overall sustainability of new homes by setting a single framework within which the building industry can design and construct homes to higher environmental standards. The Code also gives buyers of new homes information about the environmental impact of the property they are buying and its potential running costs. It measures the sustainability of a home against nine design categories:

- energy and CO₂ emissions;
- water;
- materials;
- surface Runoff;
- waste;
- pollution;
- health and well-being;
- management; and
- ecology

CLG commissioned this research to develop case studies into some of the first Code homes that have been built. They cover a range of social and private housing, using a variety of different build systems or materials with the aim of helping to further develop and improve the operation of the Code.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1161997.pdf>

31

CLG Research Report

Understanding Builder to Builder Residential Land Transactions

This research considers housebuilders' land market behaviour — their decisions and in particular the factors that shape their land acquisition strategies and influence decisions to purchase, sell and/or resell plots of land. It is hypothesised that developer to developer transactions are of great importance strategically, both at individual firm level and in shaping the capacity and flexibility of the industry as a whole to meet the government's housing targets. The evidence for the research came from interviews with 20 leading house builders in May 2008.

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

General

32

CABE Report

Hallmarks of a sustainable city

This report argues that climate change gives us an opportunity to redesign how we think and organise our lives. It sets out a variety of practical and policy responses that CABE believes would help towns and cities to become genuinely sustainable places.

<http://www.cabe.org.uk/AssetLibrary/12996.pdf>

Gerald Eve's UK office network

Gerald Eve LLP is an independent firm of chartered surveyors and property consultants, employing more than 330 staff across the UK.

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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 more than 30 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.hmso.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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evebrief

SCOTLAND Planning

01

Scottish Statutory Instrument

SSI 2009/100 The Planning etc (Scotland) Act 2006 (Commencement No 7) Order 2009

To the extent that they are not already in force, this Order brings ss5, 11 and 54(19) of the Planning etc (Scotland) Act 2006 into force on 06.04.09 for all purposes. To the extent that it is not already in force s54(17)(a)(i) is commenced for the purpose of inserting new definitions into s277 of the Town and Country Planning (Scotland) Act 1997. Section 17 is commenced only for the purposes of enabling and requiring a planning authority to prepare and adopt a scheme of delegation.

http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090100_en.pdf

02

Scottish Statutory Instrument

SSI 2009/ 101 The Planning etc (Scotland) Act 2006 (Saving and Transitional Provisions) Order 2009

This Order makes transitional and savings provisions in connection with the commencement of ss11 and 54(19) of the Planning etc (Scotland) Act 2006. It will only be necessary to comply with the pre-application consultation requirements contained in the new ss35A and 35B of the Town and Country Planning (Scotland) Act 1997 ("the Act") introduced by s11 of the 2006 Act where an application for planning permission is made on or after 03.08.09. Article 3 saves the current provisions of paras 1 and 2 of schedule 14 of the Act for the purposes of Chapter 2 of Part 5 of the Act relating to blighted land. These paragraphs refer to structure and local plans which are to be replaced by strategic development plans and local development plans following amendments made to the Act by s2 of the 2006 Act.

http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090101_en.pdf

03

Scottish Planning Circular

Scottish Planning Series: Planning Circular 1 2009: Development Planning

Following the implementation of the Planning etc (Scotland) Act 2006 structure plans and local plans were replaced by strategic development plans and local development plans in Scotland. The Act gives Scottish Ministers powers to prepare regulations regarding detailed aspects of the new development planning system and contains detailed provisions on the procedures to be followed in preparing development plans. This circular explains how these two sets of requirements fit together and it accompanies three new statutory instruments:

- The Town and Country Planning (Development Planning) (Scotland) Regulations 2008 — these are the main development planning regulations;
- The Town and Country Planning (grounds for declining to follow recommendations) (Scotland) Regulations 2009; and
- The Planning etc (Scotland) Act 2006 (Development Planning) (Saving, Transitional and Consequential Provisions) Order 2008

<http://www.scotland.gov.uk/Resource/Doc/261030/0077887.pdf>

04

Housing, Regeneration and Planning Research Paper

Processing Planning Applications for National and Major Developments RF No 27/2009

This research considers best practice in the efficient handling of planning applications for national and major developments. This included reviewing the potential benefits of using processing agreements and also the potential for an advisory service to support those involved in dealing with major planning applications. The research focused on identifying successful approaches to streamlining the processing of major applications, taking into consideration the resource implications and the impact on effectiveness and efficiency of different approaches.

<http://www.scotland.gov.uk/Resource/Doc/260282/0077466.pdf>

<http://www.scotland.gov.uk/Resource/Doc/260287/0077467.pdf>

05

Scottish Government Publication

A Guide to the Use of Mediation in the Planning System in Scotland

This guide aims to assist those involved with the planning system in Scotland to understand how mediation can be used to enhance the planning process. Mediation may assist in improving the quality of an application, or may serve to resolve or narrow a dispute — as such it has the potential to help the planning process to flow more smoothly and to arrive at better informed and more cost-effective outcomes.

<http://www.scotland.gov.uk/Resource/Doc/263432/0078790.pdf>

Rating

06

Scottish Statutory Instrument

SI 2009/69 The Non-Domestic Rating (Petrol Filling Stations, Public Houses and Hotels) (Scotland) Order 2009

This Order will come into force on 01.09.09. The 2003 Order is revoked and this Order makes provision to ensure that particular licensed premises and petrol filling stations in rural areas can continue to qualify for the relief from non-domestic rates provided for by paragraph 3(2)(c)(ii) of Schedule 2 to the Local Government and Rating Act 1997, following implementation of the Licensing (Scotland) Act 2005. There will no longer be specific hotel and public house licences. The mandatory relief for petrol filling stations, public houses and hotels, all as defined in article 2, is retained, subject to satisfying the conditions prescribed by article 3. There are no changes in relation to petrol filling stations, but the relief in the case of public houses and hotels will only apply where:

- the public house or hotel is the only one in Scotland which the ratepayer occupies; and
- there is no other public house or hotel, as described in article 2, in the settlement concerned

http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090069_en.pdf

07

Scottish Statutory Instrument

SI 2009/70 The Planning etc (Scotland) Act 2006 (Commencement No 6) Order 2009

To the extent that they are not already in force, this Order brings ss2, 53, 54(11)(a), (12), (14) (15) and (16)(b)(i) and (f) of the Planning etc (Scotland) Act 2006 into force on 28.02.09 for all purposes.

http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090070_en.pdf

08

Scottish Statutory Instrument

SI 2009/76 The Non-Domestic Rating (Payment of Interest) (Scotland) Amendment Regulations 2009

These Regulations come into force on 01.04.09 and amend the 1992 Regulations. In certain cases where a rating authority in Scotland repays rates overpaid in error or in consequence of the entry on to a valuation roll of a valuation which is subsequently reduced, a payment in respect of interest has to be made. No interest will be payable if in respect of any year the relevant Bank of England base lending rate is 1% or less. This is to avoid uncertainty about whether the regulations would require application of a negative interest rate if the rate fell below 1%.

http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090076_en.pdf

WALES

Rating

09

Statutory Instrument

SI 2009/255 The Non-Domestic Rating (Unoccupied Property) (Wales) (Amendment) Regulations 2009

Regulation 4 of the 2008 Regulations excludes from liability for non-domestic rates under s45 of the Local Government Finance Act 1988 all unoccupied hereditaments shown in a non-domestic rating list with a rateable value of less than a specified amount, currently £2,200. These Regulations increase that figure to £15,000 for the purpose of a hereditament shown in the list for the financial year beginning on 01.04.09.

http://www.opsi.gov.uk/legislation/wales/wsi2009/pdf/wsi_20090255_mi.pdf

10

Statutory Instrument

WSI 2009/369 The Local Authorities (Charges for Property Searches)(Wales) Regulations 2009

These Regulations, which came into force on 28.01.09, allow local authorities to make charges for services provided in connection with property searches, specifically "access to property records" and "answering enquiries about a property".

http://www.opsi.gov.uk/legislation/wales/wsi2009/pdf/wsi_20090369_mi.pdf

NORTHERN IRELAND

Planning

11

Consultation Paper

Transposing the "Mining Waste Directive" (2006/21/EC) in Northern Ireland

Deadline for Comments: 11.05.09

This paper seeks views on the proposals of the Department of the Environment to transpose EU Directive 2006/21/EC on the management of waste from the extractive industries, otherwise known as the Mining Waste Directive, into Northern Ireland law.

http://www.planningni.gov.uk/index/news/news_consultation/consultation-mwd.pdf

Rating

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Statutory Instrument

SR 2009/77 The Rates (Maximum Capital Value) (Amendment) Regulations (Northern Ireland) 2009

These Regulations, which come into force on 01.04.09, amend the maximum capital value set by the 2007 Regulations changing it from £500,000 to £400,000. In the case of certain domestic properties which are distinguished in the capital value list as partly exempt from rates, these Regulations provide for amendments which will allow the maximum capital value to vary between £200,000 and £400,000 depending on the extent of the exemption.

http://www.opsi.gov.uk/sr/sr2009/pdf/nisr_20090077_en.pdf