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evebrief

Editorial



Jeremy Dharmasena

We report at item 01 on possibly the first Court of Appeal decision concerning compensation to a tenant during the lease renewal process under s37a of the Landlord and Tenant Act 1954. That section of the Act, introduced only in 2004, entitles a business tenant to potential compensation for damage or loss as a result of leaving its premises because of misrepresentation or concealment of material facts by a landlord. In this case the landlord served a s25 notice to terminate, on grounds under s30(1)(f) for refurbishment and redevelopment, but subsequently decided not to pursue its scheme. The court considered that the landlord had a duty to disclose that fact to the tenant so, whilst there was apparently no other contractual relationship between the parties, the tenant had recourse to seek damages given the change in circumstances and following his signing up for a new lease in alternative premises at a higher rent. No doubt all asset managers and other advisers will need to be aware of this far reaching decision when implementing their portfolio strategy.

We report also on a raft of planning regulation orders bringing into effect, amongst other things, the power for local planning authorities to extend planning permissions where works have yet to commence. These provisions will assist developers, for example, where difficulties arise in timing and availability of funding, thus avoiding the associated costs of resubmitting planning applications for which permissions have lapsed.

And finally... The new 2010 Rateable Value assessments have been published by the Valuation Office Agency. These may prove to offer yet more confusion for UK businesses given their startling variations from the Government's original statistics. Whilst we are writing separately to our rating clients and other contacts, please follow this link to our website which provides an overview of what this could mean for your business: <http://www.geraldeve.com/news-and-events/2009/10/1/new-business-rates-assessments-offer-yet-more-confusion-for-uk-businesses.aspx>

Jeremy Dharmasena

GeraldEve

Landlord & Tenant

01

Court of Appeal

Claim for compensation under s37A Landlord & Tenant Act 1954 – scope of continuing obligation of landlord to tenant, where, having served a notice on the tenant under s30(1)(f), the landlord subsequently resolves not to undertake demolition and reconstruction – Misrepresentation

** INCLUSIVE TECHNOLOGY V WILLIAMSON

(2009) All ER (D) 63 (Sep) — Decision given 07.05.09 (Although decided a few months ago this case has only been reported recently)

Facts: Commercial premises were let by W to IT under a six-year lease which expired on 31.01.07. On 07.06.06 W served a notice on IT under s25 of the Landlord and Tenant Act 1954 ("the Act") stating that he would oppose the grant of a new tenancy at the end of the term on grounds of s30(1)(f) that he intended to demolish, reconstruct or carry out a substantial work of construction to the property. However, by the end of September 2007 W had decided to "hold fire" on his plans, although he still intended to carry out the works at some time in the future when the circumstances were right. IT, who was not informed of W's plans, entered into a new lease for premises in a nearby building and vacated the property on 15.12.06. Subsequently IT became aware that the proposed refurbishment works had not been carried out and brought proceedings for compensation under s37A of the Act.

Point of dispute: Whether IT's appeal should be allowed against the dismissal of its claim by the judge in the court below.

Held: IT's appeal was allowed. The disposition of legal rights under the Act was, to a certain extent, determined by a landlord's subjective intentions, a system which was open to abuse unless the landlord acted responsibly and in good faith. W's representation in this case, that he intended to carry out substantial works of reconstruction to the premises, was not just a statement of what was in his mind when he made that statement, but was also directly referable to a statutory process which was designed to enable a landlord to obtain possession in due course. Accordingly, it was to be regarded as a continuing representation which became false, and therefore a misrepresentation. Pre-notice exchanges between W and IT showed that W had been very open with IT about his plans for the property and W's letter of June 2006 accompanying the s25 notice was a clear statement of his present intention, which intention led to service of the notice. On the facts, it amounted to a continuing representation which brought s37A into play, and it was correct to say that there had either been misrepresentation or concealment which had led IT to give up possession.

Planning

02

Commercial Court

Option to purchase – whether option agreement requiring defendants to approve s106 agreement

** NIRAH HOLDINGS LTD V BRITISH AGRICULTURAL SERVICES LTD

(2009) PLSCS 259 — Decision given 11.09.09

Facts: The defendant granted the claimant an option to purchase land for the purpose of developing a visitor attraction and science research park. It was estimated that the project would cost in excess of £375m while the consideration for the option was £1. Clause 2.1 of the option agreement set out the claimant's aim to maximise the value and amenity of its development and the defendant's aim of enhancing the value of its land. A pre-condition to the exercise of the option was the grant of a satisfactory planning permission. The local planning authority indicated that they would grant permission for the development, subject to completion of an agreement under s106 of the Town and Country Planning Act 1990, providing, inter alia, for a shuttle bus service from a park-and-ride facility which would transport visitors to and from the park. The defendant considered that it had not been given sufficient information to enable it to decide whether to approve the agreement, and it had particular concerns about the route of the shuttle bus.

Point of dispute: Whether the claimant should be granted a declaration that the defendant was obliged to approve and enter into the s106 agreement. The claimant relied upon clause 5.1 of the option agreement, which stated that the defendant "if requested by [the claimant] and provided that to do so would not directly or indirectly adversely impact upon or adversely interfere with or in any way prevent" the defendant's business activities or other stated aims in clause 2.1 in respect of their land, must enter into any ancillary agreements in a form approved by the defendants, such approval not to be unreasonably withheld or delayed. The defendants counter-claimed that they were entitled to terminate the option agreement since it had been breached by the claimant's failure to provide sufficient information.

Held: The claimant was granted a declaration that the defendant was not entitled to refuse to approve the s106 agreement or to enter into it, and specific performance. To construe the option agreement in such a way that the defendants could block any aspect of the claimant's project that would prevent the defendant from maximising the value of future development of its land was inconsistent with the balance of aims set out in clauses 2.1 and 2.3. The experts agreed that the defendant had been supplied with all the information concerning the proposed shuttle bus route, travel plans and proposed highway mitigation measures that it could reasonably have expected at this stage and the defendant had not provided any evidence that the possible shuttle bus routes would affect or prevent its stated aims in clause 2.1 from being achieved. The defendant's counterclaim also failed.

03

Administrative Court

Challenge under s288 Town and Country Planning Act 1990 to called-in application – whether third claimant was a "person aggrieved" entitled to bring challenge

** HISTORIC BUILDINGS AND MONUMENTS COMMISSION FOR ENGLAND (ENGLISH HERITAGE) V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2009) PLSCS 262 — Decision given 17.09.09

Facts: A developer sought planning permission for a tall tower in a Central London location which would house an extensive mixed-use development. Objections to the scheme were received from a number of bodies including a local community group of which the third claimant was a member. Issues raised included concern about the height of the tower and its visibility from a number of sensitive locations including Somerset House, the Royal Parks and conservation areas in Lambeth and Westminster. The Sec of State called in the application and a public inquiry was held following which the inspector recommended that permission for the development be refused. However, the Sec of State disagreed with his conclusion and granted planning permission subject to various conditions.

Point of dispute: Whether the claimants' challenge to the Sec of State's decision to grant permission under s288 of the Town and Country Planning Act 1990 would be allowed. The claimants contended: (i) that the Sec of State had acted irrationally in concluding that the development was acceptable notwithstanding its effect on landmark buildings and conservation areas because a development that would harm the setting of a conservation area could not be said to preserve that setting, as required by PPG 15; (ii) that the Sec of State had failed to consider alternative means of securing the benefits of the development; and (iii) that the third claimant was not a "person aggrieved" within s288.

Held: The claim was dismissed.

- (i) The Sec of State had not erred in her approach to the relevant statutory and policy provisions. She was entitled to disagree with the inspector on the degree of harm that would be caused to the setting of historic buildings. Her conclusion that the degree of harm was not such as to justify a refusal of planning permission was a planning judgment that was open to her and in reaching her decision she had taken no immaterial considerations into account.
- (ii) The Sec of State's failure to deal with alternative means of securing the benefits of the development did not amount to an error of law. She was entitled to adopt the inspector's conclusions regarding the viability of the scheme and was not obliged to expand upon that issue.
- (iii) The test of being a "person aggrieved" for the purposes of s288 did not equate to the test of "standing" in respect of judicial review claims. The test determining whether someone was a "person aggrieved" was whether that person had taken a sufficiently active role in the planning process. The person had to be a substantial objector who had actively pursued the objection by one means or another and whether a person met that test was a matter of fact and degree in each case. In this case the third claimant had not played a sufficiently active role in the planning process properly to be described as "aggrieved" within s288. He had not made any oral submissions or written representations at the inquiry and had not played any part in the presentation of the community group's case.

04

Statutory Instrument

SI 2009/2260 The Planning Act 2008 (Commencement No 2) Order 2009

Article 2 of this Order brought into force on 01.10.09 the following provisions of the Planning Act 2008 ("the Act") in relation to England and Wales, and, to the extent specified in s240(4) of the Act, to Scotland, so far as they were not already in force:

- ss1 to 4 and Schedule 1 (the Infrastructure Planning Commission)
- ss37 to 40 (applications)
- ss41 to 50 (pre-application procedures)
- ss51 to 54 (assistance for applicants and others)
- ss56 to 59 (handling of applications by Commission)

Article 3 brought into force on 01.10.09 in relation to England and Wales subsections (1) to (3), (5) and (6) of s190 of the Act (power to make non-material changes to planning permission). Article 4 brought into force on 01.10.09, in relation to England, s200 of the Act (fees for appeals).

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092260_en.pdf

05

Statutory Instrument

SI 2009/2261 The Town and Country Planning (General Development Procedure) (Amendment No 3) (England) Order 2009

This Order, which came into force on 01.10.09, amends the 1995 Order which sets out the procedure for various matters including planning applications.

- It prescribes the application procedure for non-material changes to planning permission for the purposes of the new s96A of the Town and Country Planning Act 1990. This was inserted by s190 of the Planning Act 2008.
- It modifies the consultation requirements in respect of applications made under s73 of the Town and Country Planning Act 1990 to vary conditions attached to a previous permission. The former requirement to provide enough information to identify the previous permission is removed.
- It amends the procedure for planning applications which are made for a planning permission to replace an extant permission, granted on or before 01.10.09, for development which has not yet begun, with a new planning permission subject to a new time limit. For such applications, the requirement to provide a design and access statement will not apply, the consultation requirements are modified, and plans and drawings will not have to be provided.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092261_en.pdf

06

Statutory Instrument

SI 2009/2262 The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2009

Wef 01.10.09 these Regulations amended the 1990 Regulations relating to applications for listed building and conservation area consent. Where an application for such consent is one to which article 10B(1)(b) of the 1995 GDPO applies it will no longer be necessary to include three copies of the form and a design and access statement. Article 10B(1)(b) refers to applications for planning permission for development which has not begun and for which planning permission was granted on or before 01.10.09 subject to a time limit imposed by or under s91 of the Town and Country Planning Act 1990 (general condition limiting duration of planning permission) or s92 of that Act (outline planning permission) which has not expired.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092262_en.pdf

07

Statutory Instrument

SI 2009/2263 The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009

The Planning Act 2008 provides for the grant of development consent for development which is, or forms part of, a nationally significant infrastructure project. These Regulations, which came into force on 01.10.09, implement in relation to such projects Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment. The Regulations impose requirements concerning environmental impact assessments (EIAs).

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092263_en.pdf

08

Statutory Instrument

SI 2009/2264 The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

These Regulations, which came into force on 01.10.09, prescribe various matters in connection with the making of an application for development consent for certain types of nationally significant infrastructure projects under the Planning Act 2008. These relate to publicity, the application procedure, and the procedure to be followed when compulsory acquisition of land will be necessary.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092264_en.pdf

09

Statutory Instrument

SI 2009/2265 The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009

Development consent for certain types of nationally significant infrastructure project granted under the Planning Act 2008 is in the form of an Order made by the Infrastructure Planning Permission or the Sec of State. This Order, which came into force on 01.10.09, prescribes model provisions for inclusion in the draft Order, which has to accompany the application for an order granting development consent. The Commission must have regard to these prescribed model provisions when making an order granting development consent, but it is not compelled to use them.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092265_en.pdf

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CLG Guidance

Planning Act 2008: Guidance on pre-application consultation

The Planning Act 2008, which received Royal Assent on 26.11.08, provides for a faster and fairer development consent system for nationally significant transport, energy, water, waste-water and waste infrastructure projects. The Act makes provision for the Government to produce national policy statements which will provide clarity on the national need for infrastructure. It also makes provision for the creation of a new independent body, the Infrastructure Planning Commission (IPC) which will be responsible for examining applications for development consent for nationally significant infrastructure projects. This guidance is part of a package of statutory instruments and guidance being prepared as part of the implementation process for the Act.

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

More information on the process for consulting on, publishing and implementing the package can be found in the Infrastructure Planning Commission Implementation Route Map at:

www.communities.gov.uk/documents/planningandbuilding/pdf/routemap.pdf

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CLG Guidance

Guidance on associated development: Applications to the Infrastructure Planning Commission

If the Infrastructure Planning Commission (IPC) decides to grant development consent for a nationally significant infrastructure project it may also decide to grant consent for an associated development under s115 of the Planning Act 2008. The Act provides that it is for the IPC to decide whether a development is such associated development, but in doing so it must have regard to the provisions of s115 and to any guidance issued by the Sec of State. That guidance is contained in this document.

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

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CLG Guidance

Planning Act 2008: Nationally significant infrastructure projects – Application form guidance

This document contains guidance on completing the necessary forms when applying to the Infrastructure Planning Commission for an order granting development consent for a nationally significant infrastructure project.

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

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Letter from Chief Planner to Chief Planning Officers

Extensions to the time limits for implementing existing planning permissions – Non material amendments

This letter confirms that the power to extend time limits for existing full planning permissions will apply to all eligible consents, and not just those for major development. The new arrangements came into force on 01.10.09 and cover both listed building and conservation area consents. Outline permissions can also be extended, provided that they were extant both on 01.10.09 and at the date of application, and have not yet commenced. From 01.10.09 non-material amendments to existing planning permissions under s96A of the Town and Country Planning Act 1990 can be made. A Questions and Answers sheet on these measures and a list of web-links to relevant documents is attached to the letter.

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

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CLG Statistical Release

Planning Applications: June Quarter 2009, (England)

- The number of planning applications received by district level planning authorities decreased by 21% compared with the June 2008 quarter.
- The number of planning applications that were decided also decreased by 27% compared with the same quarter last year.
- Decisions on planning applications for residential developments decreased by 37% in the June quarter 2009 compared with the same quarter in 2008, while decisions on major residential developments (defined as ten or more dwellings) fell by 46% over the same period.
- 71% of major applications were determined within the 13-week target compared with 72% in the June quarter of 2008.

<http://www.communities.gov.uk/documents/statistics/pdf/1343703.pdf>

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Scottish Housing Statistical Bulletin

Statistical Bulletin Housing Series: Affordable Housing Securing Planning Consent in Scotland 2008/09

This summary presents key statistics from the third survey of Scottish Planning Authorities on the amount of affordable housing provision granted planning consent during the 2008/09 financial year and the three previous years covered by the survey. The survey records information on all affordable housing provision through the planning system, whether by public subsidy or developer contributions.

- An estimated 6,767 affordable housing units were granted planning consent in Scotland in 2008/09, a 1% reduction from the 6,835 units granted permission in 2007/08 but is a 1% increase on the three-year average.
- The highest number of consents were in Glasgow (1,170 units) followed by Highland (722 units).
- Most planning authorities gave planning consent for a few hundred units, and only nine authorities consented to less than 50 affordable units.

<http://www.scotland.gov.uk/Resource/Doc/285180/0086636.pdf>

Rating

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Statutory Instrument

SI 2009/2542 The Business Rate Supplements (Rateable Value Condition) (England) Regulations 2009

The Business Rate Supplements Act 2009 gives county councils, district councils in areas where there is no county council, and the Greater London Authority, the power to levy a supplement on the national non-domestic rate wef 01.04.10. This supplement will only be payable in respect of non-domestic properties which have a rateable value that exceeds a prescribed amount. These Regulations, which come into force on 15.10.09 prescribe that amount as £50,000 for non-domestic properties in England. http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092542_en.pdf

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Statutory Instrument

SI 2009/2543 The Business Rate Supplements (Transfers to Revenue Accounts) (England) Regulations 2009

These Regulations, which also come into force on 15.10.09, are concerned with making provision for the transfer of Business Rate Supplement revenues from a billing authority's collection fund into a levying authority's Business Rate Supplement revenue account. http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092543_en.pdf

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CLG Business Rate Information Letter

Business Rate Information Letter (12/2009): Small Business Rate Relief

This letter concerns Small Business Rate Relief and The Non-Domestic Rating (Small Business Rate Relief) (England) Order 2004. The Government has already removed the requirement for eligible small businesses to reapply for the relief annually. However, at present, ratepayers already receiving SBRR are required to reapply for it in each valuation period and so would be required to reapply for it for the 2010 revaluation from this October. In the interests of maximising take-up of the relief by eligible small businesses, and of reducing bureaucracy and costs for both small businesses and local authorities, the Government has decided to remove the requirement to reapply annually for SBRR. To continue to be eligible for SBRR at the time of the 2010 revaluation, businesses must meet the conditions which apply at that time. The requirement for businesses to notify their billing authorities if they are no longer eligible for the relief will continue to apply. Billing authorities must ensure that if the RV of a property claiming SBRR rises at revaluation the relief granted to that property is adjusted accordingly. <http://www.communities.gov.uk/documents/localgovernment/pdf/1338668.pdf>

Housing

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CLG Statistical Release

House Price Index – July 2009

- UK house prices were 8.3% lower than in July 2008, but 1.4% higher than in June 2009 (seasonally adjusted).
- The mix-adjusted average house price in the UK stood at £196,338 in July 2009 (not seasonally adjusted).
- UK house prices rose by 2.1% in the quarter ending July 2009. This compares with a fall of 2.8% during the quarter ending April 2009.
- Annual average house prices fell in England by 8.4%, in Wales by 6.4%, in Scotland by 4.4% and in Northern Ireland by 22.2%.
- Annual average house prices paid by first time buyers in July 2009 were 9.1% lower than a year ago while prices paid for new properties were 12.6% lower.

<http://www.communities.gov.uk/documents/statistics/pdf/1335311.pdf>

Construction

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Statutory Instrument

SI 2009/2397 The Building (Amendment No 2) Regulations 2009

These Regulations have made some amendments to the 2000 Regulations with effect from 01.10.09, including amending Regulation 17K to provide an updated reference to the newest edition of the document "The Water Efficiency Calculator for New Dwellings" published in September (see item 24). The extension of the time limit for the prosecution of certain contraventions of building regulations where the contravention occurred before 22.09.08 is preserved.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092397_en.pdf

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Statutory Instrument

SI 2009/2465 The Building and Approved Inspectors (Amendment No 2) Regulations 2009

These Regulations amend the Building and Approved Inspectors (Amendment) Regulations 2009 and the Building (Amendment No 2) Regulations 2009 to provide that both of these sets of Regulations will now come into force on 06.04.10.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092465_en.pdf

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CLG Circular

Circular 09/2009: The Building Regulations 2000 – Authorisation of New Competent Person Schemes, New Water Efficiency Calculation Methodology Publication, and Revocation of a Spent Provision on the Time Limit for Prosecution

The purpose of this Circular is to draw attention to the Building (Amendment No 2) Regulations 2009 (SI 2009/2397) (see item 20 above).

- It draws attention to the amendments and explains the changes they make to the Building Regulations 2000.
- It announces the publication of a revised edition of *Water Efficiency Calculator for New Buildings* (September 2009), which sets out the revised methodology for calculating the potential consumption per person per day of wholesome water in new dwellings.
- Annex A to this Circular sets out in tabular form all the changes made to the Building Regulations 2000 by SI 2009/2397.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1327867.pdf>

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CLG Circular

Circular 10/2009: Postponement of the coming into force of the amendments made to Part G and other provisions of the Building Regulations 2000

This Circular draws attention to the Building and Approved Inspectors (Amendment No 2) Regulations 2009 (SI 2009/2465) (see item 21 above) which were made on 08.09.09 and came into force on 30.09.09 with regard to:

- the changes they make to the dates on which the amendments made to the Building Regulations 2000 and the Building (Approved Inspectors etc.) Regulations 2000 by the Building and Approved Inspectors (Amendment) Regulations 2009 (SI 2009/1219) and the Building (Amendment No 2) Regulations 2009 (SI 2009/2397) will come into force;
- corresponding amendments to the dates in the transitional provisions in the Building and Approved Inspectors (Amendment) Regulations 2009; and
- announcing the approval of Approved Document G (Sanitation, hot water safety and water efficiency) which was published in draft on 13.05.09 and will not now come into force until 06.04.10.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1334770.pdf>

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CLG Publication

The Water Efficiency Calculator for new dwellings

This is the Government's national calculation methodology for assessing the whole house potable water consumption in new dwellings in support of:

- The Code for Sustainable Homes, May 2009 and subsequent versions;
- The Building Regulations 2000 (as amended); and
- The Building (Approved Inspector etc) Regulations 2000 (as amended).

It should be noted that this document is not a design tool for water supply and drainage systems and nor is it capable of calculating the actual potable water consumption of a new dwelling due to the effects of behaviour and changing behaviour patterns. It should also be noted that the calculation method requires the use of water consumption figures provided from manufacturers' product details.

http://www.planningportal.gov.uk/uploads/br/water_efficiency_calculator.pdf

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CLG Report

Understanding permeable and impermeable surfaces: Technical report on surfacing options and cost benefit analysis

The floods experienced during the summer of 2007 demonstrated the challenges presented by the current approach to surface water management in the UK. These challenges are likely to increase in the future as a result of climate change and a tendency to replace gardens and green areas in cities with hard spaces such as parking, buildings or extensions. The use of permeable surfaces such as gravel, reinforced grass, concrete block permeable paving and porous asphalt can help to manage or reduce flooding and other adverse impacts associated with increased rainfall and run-off in urban areas by allowing water to soak into the ground beneath or provide underground storage. This report discusses the design, construction, maintenance and performance of the various surfaces and quantifies the costs and benefits of each. Changes have been made to the permitted development rights (PDR) for homeowners so that front gardens can now be paved over with permeable materials without the need to apply for planning permission.

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

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RICS Research

Can building codes deliver energy efficiency? Defining a "best practice" approach

This research report examines the role that building regulations can make to the goal of achieving energy efficiency with the aim of identifying "best practice" for energy-related building codes and regulations in the context of both UK and world-wide conditions and needs.

<http://www.rics.org/site/scripts/downloads.aspx?categoryID=523>

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CLG Consultation Paper

Removal of restrictions on the self-certification of the installation of combustion appliances: Consultation paper Deadline for Responses: 06.11.09

This consultation seeks views on proposals to remove the restriction on the self-certification of combustion appliances over 100kW input/output and in buildings of more than three storeys.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1338674.pdf>

Environment

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Centre for Research in the Built Environment — Good Practice Guide

Greening the Commercial Property Sector: A Guide for Developing and Implementing Best Practice through the UK Leasing Process

Commercial buildings are significant consumers of energy and if not managed efficiently can have a significant impact upon the environment. More stringent legislation in the UK, combined with the introduction of Government schemes such as Carbon Reduction Commitment and Energy Performance Certification, is increasing the pressure on both occupiers and landlords to address these issues. Incorporating good environmental management at lease negotiation stages can ensure that a fair yet sustainable approach is met for both parties. In 2007 'Incorporating Environmental Best Practice into Commercial Tenant Lease Agreements' was published following extensive research, but due to the complexity of varying commercial structures currently operating within the UK it has been recognised that further specific guidance is required regarding methods of implementing the recommendations. This document contains further advice that is linked to the 2007 publication, but also refers to other work being carried out in the UK and studies being undertaken abroad. While recognising that there are some lessons to be learned from methods adopted elsewhere, it has become clear that the complexity of the UK commercial market requires more flexibility to encompass a range of commercial structures and building types.

http://www.bco.org.uk/uploaded/Greening_The_Commercial_Property_Sector_Sep_9.pdf

General

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Statutory Instrument

SI 2009/2494 Local Land Charges (Amendment) Rules 2009

Wef 01.01.10 the fee for a personal search in the whole or part of the register in respect of one parcel of land will rise to £22.

http://www.opsi.gov.uk/si/si2009/pdf/ukxi_20092494_en.pdf

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Defra Consultation Paper

Coastal Access: Consultation on proposals to amend the Countryside and Rights of Way Act 2000 for coastal land Deadline for Comments: 01.12.09

In 2007 Natural England recommended the creation of a new type of access tailored to the specific circumstances of the coast and the Government announced its intention to introduce new legislation which would enable the public to have rights of access to walk around the whole of the English coast. The Marine and Coastal Access Bill, which was introduced into Parliament in December 2008, includes provision for improved access by incorporating new sections into the National Parks and Access to the Countryside Act 1949 and the Countryside and Rights of Way Act 2000 ("the CROW Act"). It also enables changes to be made to the existing provisions in the CROW Act as they will apply to coastal land.

- Views are sought on the description of the land that will be included in the coastal margin which it is proposed to insert into the CROW Act. Land which falls within this description will become access land.
- It is proposed to remove the right for landowners to exclude or restrict access at their discretion.
- In Schedule 1 of the CROW Act there are certain categories of excepted land which are not access land for the purpose of Part 1 of the CROW Act — it is proposed to remove some of these categories.
- It is proposed to amend certain existing restrictions to be observed by persons exercising rights of access, including restrictions regarding control of dogs and on fishing in tidal waters.

<http://www.defra.gov.uk/corporate/consult/coastal-access/consultationdoc.pdf>

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

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