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evebrief

Editorial



Steve Hile

Welcome to the first edition of Evebrief for 2010 and may I wish you all a Happy New Year on behalf of the Editorial Team.

The first item we report on is the Court of Appeal decision in *Clarence House Limited v National Westminster Bank Plc*, where those involved in lease advisory matters will be interested to see that the appeal was allowed.

A virtual assignment, which was invented as a mechanism to pass on the economic burdens and benefits of a lease to a third party without an actual assignment of the lease taking place, has been around as a concept for about ten years. It is typically used in the sale of a large portfolio of leasehold properties or when a business is selling off its assets; obtaining landlord's consent can be time-consuming and be a significant burden if a large number of different landlords have to be approached for consent.

In the *Clarence House* case, the Court of Appeal overturned the decision that *National Westminster Bank* was in breach of its alienation covenant against assignment of the lease and held that there had been no breach of covenant.

The High Court decision could potentially have resulted in the demise of the virtual assignment and, although virtual assignments will be an option for only a small number of tenants, the Court of Appeal decision confirms they will continue to be a useful tool, particularly in large portfolio transactions.

As the economy hopefully returns to growth in the coming months there is mixed news from the recently released Planning Application statistics. Whilst overall planning applications were 12% higher in 2009 than 2008, planning applications for residential developments continued to fall, as did decisions on residential schemes, both down by a third on the same period a year ago.

Finally, in the Rating section, there is the usual raft of changes or amendments to available rate reliefs which in the current economic climate will be even more important to businesses than under normal circumstances.

Any readers requiring information or guidance on this issue should contact Gerald Eve's Head of Landlord & Tenant, Graham Foster, on 020 7653 6832 or by email at gfooster@geraldev.com.

Steve Hile

GeraldEve

Landlord & Tenant

01

Court of Appeal

Virtual assignment

*** CLARENCE HOUSE LTD V NATIONAL WESTMINSTER BANK PLC
(2009) PLSCS 341 – Decision given 08.12.09

Facts: The respondent was the landlord and the appellant the tenant under a 25 year lease of office premises from 1985. The lease contained standard covenants against alienation prohibiting the tenant from assigning, underletting, sharing or parting with possession of the demised premises or executing any declaration of trust in respect of the property or the lease without the landlord's consent. The appellant had underlet the premises to an occupant, with the respondent's consent, for a term expiring three days before its lease. In 2005 the appellant entered into a virtual assignment whereby it transferred to a third party (the assignee) all the economic benefits and burdens of the lease, including management responsibilities, but it did not assign the leasehold interest and the occupancy of the premises remained as before. It also granted a power of attorney to the assignee to act in its name and on its behalf in respect of the property. The respondent landlord was not informed of the arrangements and its consent to them was not sought.

Point of dispute: Whether the appellant had breached the terms of the lease by entering into the virtual assignment. The judge in the High Court ruled that the effect of the assignment was that the assignee dealt with the property in the appellant's place and that the appellant could no longer do so – this amounted to a parting or sharing or possession in breach of the lease.

Held: The appellant's appeal against the High Court ruling was allowed. (i) By entering into the virtual assignment the appellant had not shared or parted with possession of the demised premises or any part of them. At the time of the assignment the appellant was not in occupation of the premises as it had already divested itself of possession by virtue of the underlease. When it collected rent as agent for the appellant the assignee did not receive that rent itself in the sense of putting it into possession of the premises. (ii) The relationship between the assignee and the appellant was a contractual one, therefore the prohibition in the lease against declaring any trust of the property or the lease had not been breached. (iii) The prohibition on assignment had not been breached: the lease specifically restricted several specified forms of alienation and therefore only those particular kinds of alienation would fall foul of the provisions. (iv) The virtual assignment did not amount to an underletting as an underlease was a demise of the property for a term creating a new inferior estate and a new landlord/tenant relationship. In this case there was no privity of estate between the respondent and the assignee.

02

High Court

Landlord and Tenant Act 1954 business lease of electricity substation and land under which claimant owned and maintained electricity cables – whether tenancy had been determined by a section 25 notice given by one of several reversioners under a severed reversion – whether part of lease extinguished by merger with freehold interest acquired by claimant

** EDF ENERGY NETWORKS (EPN) PLC V BOH LTD
(2009) PLSCS 339 – Decision given 04.12.09

Facts: EDF operated an electricity substation on a site in the Wembley Stadium trading estate. In order to access the site it was necessary to cross land owned by the first and second defendants and underground electricity cables were laid in that land. In 1953 EDF's predecessor had been granted a lease of the substation site by a common predecessor of all the parties which included a right of way over the lessor's land for all purposes necessary for the enjoyment of the demised premises, together with a right to lay and maintain electricity cables under the land. The lease expired in 1994 and following the service of a s25 notice by the relevant landowner EDF had acquired the freehold of the substation site.

Point of dispute: Whether the s25 notice had terminated the 1953 lease. The notice had been served by only one of three reversioners and related only to the substation land. For that reason EDF claimed that it was invalid and that the 1953 lease, under which it enjoyed the rights that it needed over the defendants' land in order to carry out repairs and upgrades to its electricity network, was still in existence. The defendants contended that the notice was valid since it related to the only piece of land on which business activities that could enjoy 1954 Act protection were being carried out. They also argued that the claimant had waived its right to assert that the s25 notice was invalid because it had served a counter-notice.

Held: EDF's claim was allowed. The 1953 lease remained in existence and could not be terminated without EDF's consent, as the freehold owner of the substation. (i) Any s25 notice served by the landlord had to relate to all the property comprised in the tenancy, and the severing of the reversion did not alter that position; there continued to be one single tenancy. The s25 notice which had been served on EDF was invalid because it related only to the substation site and was given by only one of three reversioners. (ii) EDF was not stopped from (waived its right) asserting the invalidity of the notice because the reversioner who had served the notice had not been the person who was entitled to do so; to find otherwise would be contrary to the scheme of the 1954 Act. (iii) EDF's acquisition of the freehold of the substation site had not extinguished the leasehold interest by merger: there was an equitable presumption against an intention of merger where it would benefit the leaseholder to keep the two interests separate and the defendants had not rebutted that presumption. (iv) EDF had abandoned the area of land that was now occupied by the third defendant and that part of the lease had been surrendered by operation of law. In other respects the lease continued.

03

Upper Tribunal, Lands Chamber

Recovery of service charges – failure to comply with consultation requirements – ss20 and 20ZA Landlord and Tenant Act 1985

* DAEJAN INVESTMENTS LTD V BENSON
(2009) PLSCS 354 – Decision given 27.11.09

Facts: DI was the freeholder and B and others were long leaseholders of flats in a mixed-use building. The leases provided for payments of service charges. In early 2005 DI's managing agents gave notice of the landlord's intention to carry out qualifying works to the building within the meaning of ss20 and 20ZA of the Landlord and Tenant Act 1985 and in respect of which the consultation requirements of the Service Charges (Consultation Requirements) (England) Regulations 2003 applied. DI made a number of errors during the statutory consultation process. The lessees were provided with a report setting out details of the tenders received and the pros and cons of the two most favourable, but copies of the actual estimates were not provided until August 2005 by which time DI had already informed B that the contract had been awarded to the managing agent's nominee.

Point of dispute: Whether DI's appeal should be allowed against the ruling of the court below that it could only recover £250 from each of the lessees on the grounds that it had failed to comply with the consultation requirements. The LVT held that the landlord's failure to provide the estimates to the lessees until after it had awarded the contract had curtailed the consultation process and caused them significant prejudice. Following the decision in *Re 30-40 Grafton Way* it rejected DI's contention that the disproportionate financial consequences to the landlord of this decision should be taken into account.

Held: DI's appeal was dismissed. The LVT had a discretion to dispense with the consultation requirements, not with their statutory consequences, and there was no power to remove or mitigate the financial consequences to a landlord if the LVT decided not to exercise its discretion. In this case the LVT had been entitled to find that the regulations had been breached and that the breach was serious rather than a technical or excusable oversight given the fact that the landlord was a corporate organisation. The lessees had as a result of the breach lost their right to make further representations following examination of the estimates.

Planning

04

Planning Policy Statement

Planning Policy Statement 25: Development and Flood Risk – Practice Guide

This is an updated edition of the on-line Practice Guide which supports PPS 25 and replaces the previous version published in June 2008. Chief Planning Officers have been made aware of the importance of spatial planning in helping to manage flood risk to people and property through the PPS 25 policy approach and further recent flooding events have highlighted the importance of assessing and avoiding flood risk when planning for new development. The update reflects policy and other developments since June 2008 and in particular contains guidance on:

- site-specific flood risk assessment, including the need for a proportionate approach;
- strategic Flood Risk Assessment;
- application of the Sequential and Exception Tests, including "what is safe" (safe access and egress in times of flood); and
- surface water flood management, including sustainable drainage systems.

The guide also contains new case studies to help planners implement the policy.
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/pps25guideupdate.pdf>

05

Planning Policy Statement

Planning Policy Statement (PPS) 4: Planning for Sustainable Economic Growth

This document sets out the Government's planning policies for economic development. They do not replace or override other national planning policies and should be read alongside other relevant statements of national planning policy. These policies are a material consideration to be taken into account when making development management decisions. For the purposes of this PPS economic development includes development within the B Use Classes, public and community uses and main town centre uses. The policies also apply to other development which achieves at least one of the following objectives:

- the provision of employment opportunities;
- wealth generation; or
- the generation of an economic output or product.

They are relevant to both rural and urban areas but do not apply to housing development. The main uses to which the town centre policies in this PPS apply are:

- retail development (including warehouse clubs and factory outlet centres);
- leisure, entertainment facilities, and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night clubs, casinos, health and fitness centres, indoor bowling centres and bingo halls);
- offices; and
- development related to the arts, culture and tourism (including theatres, museums, galleries and concert halls, hotels and conference facilities).

The Government's main objective is sustainable economic growth and in order to achieve this its planning objectives are:

- to build prosperous communities by improving the economic performance of cities, towns, regions, sub-regions and local areas;
- to reduce the differences in economic growth rates between regions, promoting regeneration and tackling deprivation;
- to deliver more sustainable development patterns, reducing travelling needs and responding to climate change;
- to promote the vitality and viability of town and other centres; and
- to improve the quality of life and environment in rural areas by promoting thriving and inclusive rural communities while protecting open countryside.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningpolicystatement4.pdf>

06

CLG Publication

Taking forward the Government's response to the Killian Pretty Review: Second Progress Report

This report outlines the progress that has been made since the first report in July 2009 on the implementation of the Killian Pretty recommendations to improve the planning application process. Published alongside this document are three consultation papers, reported below. In addition to the overall summary the report includes the following two substantive annexes:

- Annex A: Improving the quality of information available to users of the planning system – the work of the Planning Portal; and
- Annex B: Update on action to take forward the Government's response to the Killian Pretty recommendations.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1419562.pdf>

07

CLG Consultation

Improving engagement by statutory and non-statutory consultees

Deadline for Responses: 19.03.10

This consultation considers proposals to improve the consultation arrangements for statutory and non-statutory consultees on planning applications. It is the Government's response to Recommendation 9 in the Killian Pretty Review which stated that "the Government should clarify and improve the process for consulting on applications so that it is clearer which organisations need to be consulted, when they must be consulted and why, what response is required, and how the response should be taken into account in the decision by the local planning authority." Statutory consultees are organisations and bodies defined by statute who must be consulted on relevant planning applications, the key ones being the Environment Agency, Natural England, English Heritage and the Highways Agency. Other bodies include local highway and local planning authorities. Non-statutory consultees are organisations and bodies identified in national planning policy, who have to be consulted on relevant planning applications. Some of these bodies may also be statutory consultees eg. English Heritage and English Nature.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1419828.pdf>

08

CLG Consultation

Improving the use and discharge of planning conditions

Deadline for Responses: 19.03.10

This consultation paper sets out the Government's proposals for changes to the planning system in relation to the use of planning conditions and processes for discharging planning conditions. It is the Government's response to the Killian Pretty recommendation that the approach to planning conditions should be comprehensively improved to ensure that conditions are only imposed when justified and to ensure that the processes for discharging conditions are made clearer and faster. The proposals include updated policy on the use of planning conditions and a package of measures designed to improve the discharge of planning conditions. The position on fees that LPAs can charge for discharging conditions is also clarified.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1419816.pdf>

09

CLG Consultation

Development Management: Proactive Planning from Pre-Application to Delivery

Deadline for Responses: 19.03.10

This paper's main purpose is to provide a clear national policy framework for development management in response to recommendation 17(c) of the Killian Pretty Review, which stated: "As a part of the new national policy framework, there should be a clear statement by Communities and Local Government about the key principles underpinning a move from development control to a development management approach." It also considers national policy on pre-application engagement, as suggested in recommendation 4(a) of the Killian Pretty Review.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1419804.pdf>

10

CLG Guidance

Planning for Town Centres: Practice guidance on need, impact and the sequential approach

This guidance is intended to help those involved in preparing or reviewing impact assessments and sequential site assessments and to help the interpretation of town centre policies set out in PPS 4. Its main objectives are:

- to promote the development of positive strategies to underpin the planning and development of town centres;
- to provide advice on preparing and understanding need and impact assessments to guide the development of effective town centre strategies in plans, and assist the determination of planning applications;
- to illustrate how the sequential approach can be applied when allocating sites in plans and assessing planning applications using examples of good practice; and
- to encourage a greater degree of consistency and transparency in terms of the approach and key data required to assist those preparing and reviewing need and impact assessments.

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

11

CLG Statistical Release

Planning Applications: September Quarter 2009, (England)

- there were 12% more planning applications in this quarter in 2009 than in 2008.
- on the other hand the number of applications that were decided decreased by 18% over the same period.
- decisions on planning applications for residential developments decreased by 37% in the September quarter of 2009 compared to the same quarter in 2008. Decisions on major residential developments fell by 29%.
- 72% of applications were determined within the 13 week target compared to 70% in the September quarter of 2008.
- authorities that determine county level applications determined 391 applications, 11% less than during the same quarter a year ago.

<http://www.communities.gov.uk/documents/statistics/pdf/1417675.pdf>

12

CLG Review

Improving the process of discharging planning conditions: Final report

The purpose of this study is to identify, test and recommend the best ways of improving the process of discharging planning conditions, taking forward Recommendation 6 of the Killian Pretty Review. The Review found that the post decision stage was the most problematic and put forward specific suggestions:

- the use of approved contractors to assist LPAs to discharge and monitor conditions;
- the potential for a default approval of a condition, if not decided within a fixed time period; and
- a fast track appeal process for matters only concerned with the discharge of conditions.

The feasibility of these proposals is examined against relevant costs and benefits in conjunction with the feasibility of further suggestions arising from the evidence gathering exercise.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1419487.pdf>

13

Administrative Court

Affordable housing policy in development plan

* BARRATT DEVELOPMENTS PLC V WAKEFIELD METROPOLITAN DISTRICT COUNCIL
(2009) PLSCS 397 – Decision given 10.12.09

Facts: WMDC's development plan adopted in 2009 and setting out its development strategy until 2026 had been formulated during a period of favourable market conditions. Prior to its adoption the strategy had been submitted for independent examination by an inspector appointed by the Sec of State, pursuant to s20 of the Planning and Compulsory Purchase Act 2004. As finally adopted the policy provided that all proposals for new housing above specified size thresholds should provide 30% affordable housing unless otherwise agreed with WMDC. The actual amount of affordable housing to be provided on a site was to be negotiated at the time of the planning application having regard to any abnormal costs, economic viability and other requirements associated with the development and all but the smallest sites should contribute to affordable housing provision.

Point of dispute: Whether BD's application to have the affordable housing policy quashed should be allowed. BD contended that it would not be viable to provide any element of affordable housing during the period of the strategy owing to market conditions and that the inspector had not given sufficient reasons for her conclusions.

Held: BD's claim was dismissed. (i) An affordable housing policy that imposed a target of 30% across the district for the life of the plan would not have accorded with the requirements of PPS 3 and PPS 12, and the latter policy indicates that a strategy must be capable of dealing with changing circumstances over time. However, the policy in question applied the 30% affordable housing target only to sites that passed specified thresholds and was subject to site-by-site negotiation to take account of specific factors associated with each development. The targets were justifiable for sites above a workable threshold limit and it was also recognised that target was achievable only in certain economic conditions. (ii) The inspector's decision was not flawed by a failure to give reasons for dismissing the concerns expressed by BD with regard to an expert viability appraisal. It was not for the inspector to adjudicate on differences of opinion between developers as to the assumptions that should inform the viability modelling exercise. On the important controversial issues she had given intelligible and adequate reasons for her conclusions.

Rating

14

Pre-Budget Report – 09.12.09

Empty Property Rates (EPR)

It was announced that the Government will extend the relief from EPR for low value properties by another year and increase the threshold. The relief will apply from April 2010 for another year for hereditaments with a rateable value of up to £18,000.

15

CLG Publication

Small business rate relief – improving evidence on eligibility and take-up: Methodology

It is estimated that in 2009 there were 575,000 hereditaments that were eligible for small business rate relief (SBRR). Overall take-up of the SBRR scheme can only be estimated because it is based on individual hereditaments rather than businesses. The Government is keen to maximise take up of SBRR. but it has not been possible for local authorities to provide accurate estimates of the number of hereditaments that are occupied by small businesses as they do not hold the correct data on business ratepayers which would enable them to establish whether they occupy just one hereditament making them eligible for the relief. In order to address this difficulty CLG analysts have established a methodology to enable them to produce a national estimate of the number of hereditaments occupied by eligible small businesses. This was achieved using the best information available on the percentage of hereditaments that are occupied by businesses with just one hereditament and that are not claiming other, more beneficial reliefs. This paper sets out the methodology, approach and results of the exercise.

<http://www.communities.gov.uk/documents/localgovernment/pdf/14068801.pdf>

16

Statutory Instrument

SI 2009/3175 The Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) (No.2) Order 2009

This Order, which will come into force on 01.04.10, amends the 2004 Order which prescribes the conditions that have to be satisfied to obtain small business rate relief. Normally, the ratepayer must only occupy one hereditament in England, but occupation of a second hereditament will be disregarded if its rateable value is not more than a prescribed amount. This Order increases that amount to £2,599. The rateable value of the hereditament in respect of which the application is made must not exceed a prescribed amount and that sum is increased to £25,499 for hereditaments in Greater London and to £17,999 outside Greater London. A valuation period is the five years for which a non-domestic rating list is in force. Where a ratepayer has made an application in respect of one valuation period and the conditions for relief which apply on the first day of a new valuation period are satisfied, the existing application in respect of the earlier period will count as one for the new period. New figures are to be used when calculating the amount of relief to be given to a particular hereditament.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20093175_en.pdf

17

Statutory Instrument

SI 2009/3176 The Non-Domestic Rating (Rural Settlements) (England) (Amendment) Order 2009

Section 43 of the Local Government Finance Act 1988 provides for mandatory rate relief for certain hereditaments in rural settlements and in 2001 public houses and filling stations became eligible for this relief. Section 47 of the 1988 Act provides that a billing authority may grant discretionary relief for hereditaments to which s43(6A) applies and additionally to any hereditament in a rural settlement which is used for purposes which benefit the local community. Wef 01.04.10 this Order amends the 1997 Order to prescribe that in respect of a filling station or public house in a rural settlement, £12,500 and in respect of any other hereditament in a rural settlement, £8,500 is the maximum rateable value of a hereditament which can be eligible for such mandatory relief. The Order also amends the 1997 Order to prescribe £16,500 as the maximum rateable value of a hereditament which can be eligible for discretionary relief under s47(3A).

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20093176_en.pdf

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Statutory Instrument

SI 2009/3177 The Non-Domestic Rating (Stud Farms) (England) Order 2009

Para 2A of Schedule 6 to the Local Government Finance Act 1988 provides for deductions to be made from the amount that would otherwise be the rateable value of hereditaments that are used for breeding and rearing horses and ponies where these hereditaments are occupied with agricultural land or buildings. The deduction is the smaller of either a specified amount, or the amount that would otherwise be the rent that a hypothetical tenant would pay for so much of the hereditament as consists of buildings used for stud purposes. Wef 01.04.10 the specified amount is £2,400, £700 more than the figure specified in the 2004 Order.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20093177_en.pdf

Leasehold Reform

19

Upper Tribunal, Lands Chamber

Leasehold Reform, Housing and Urban Development Act 1993 – collective enfranchisement – whether potential development value of property to be taken into account when calculating marriage value

* FORTY-FIVE HOLDINGS LTD V GROSVENOR (MAYFAIR) ESTATE
(2010) PLSCS 2 – Decision given 16.12.09

Facts: GME owned the freehold of two mews properties while FFH held long leases which included the roof and air space immediately above. The leases contained absolute covenants against making alterations and thus FFH, as long leaseholder, would be unable to enjoy any of the potential development value. Similarly GME's freehold interest, held subject to FFH's long leases, would be unable to benefit from any development value until the termination of these leases. However, as FFH would be able to carry out the development following enfranchisement, it was disputed as to whether this value should be shared with GME. FFH applied to acquire the freehold of the building under Part I of the Leasehold Reform, Housing and Urban Development Act 1993, acting both as participating tenant and nominee purchaser. All elements of the purchase price were agreed apart from marriage value. The question was whether, in calculating the marriage value, the potential to unlock development value by adding an extra storey in the roof space should be taken into account. If it were, the price for the freehold would be £567,550 and £347,000 if not.

Point of dispute: Whether FFH's appeal should be allowed against the LVT's ruling that the development value arising from the collective enfranchisement could be included in the marriage value calculation.

Held: FFH's appeal was dismissed. In valuing the freehold when acquired by a nominee purchaser, para 4(3) and (4) of Schedule 6 to the 1993 Act requires the freehold to be valued in the hands of the nominee purchaser rather than the value the nominee purchaser could obtain by immediately reselling the freehold in the open market. Development value arising from the collective enfranchisement, could be included in the marriage value calculation. Any merger of the freehold and leasehold interests, eg. through the nominee purchaser and the participating tenant being one and the same, was to be disregarded under para 4(4)(b). The price payable for the freehold was therefore £567,550.

Real Property

20

Court of Appeal

Right of way – whether appellant's proposed use of track excessive

* DAVILL V PULL
(2009) PLSCS 344 – Decision given 10.12.09

Facts: The appellant, who owned three plots of land ("the dominant land") to which express rights of way had been granted in conveyances executed between 1919 and 1921, wished to use the servient track in order to access the dominant land for the purpose of a new residential development. The respondents, who owned neighbouring plots of land and had similar rights over the track, objected on the grounds that the appellant's proposed use of the track would be excessive.

Point of dispute: Whether the appellant's appeal would be allowed against the decision of the county court judge that his rights were limited to use of the track for all reasonable and usual purposes relating to the dominant land as "garden ground", as described in the conveyances, and that he could not use it for the purpose of building houses on the dominant land or for accessing any such houses.

Held: The appeal was allowed. The judge had to ascertain the intention of the parties to the original conveyances from the words of the grants read in the light of the background circumstances that would have been known to them at the time. The background to the original conveyances did not justify the inference that the original parties had intended the easement over the track to be used only in connection with the use of the dominant land as garden land. The purpose for which a right could be used would not be limited by the original use of the dominant land, although a "reasonable and usual" qualification would be imported. The conveyances had conveyed garden plots, but with no limitation on their future use; the rights of access to them over the track had been granted "for all reasonable and usual purposes" thus indicating an expanded rather than limited range of uses. Use of each of the plots for the building and occupation of a dwelling house and in accordance with a planning permission was a "reasonable and usual" use.

Housing

21

CLG Statistical Release

Affordable Housing Supply, England, 2008-2009

- 55,770 new affordable homes were supplied in England in 2008-09, a 4% increase on 2007-08 and the highest number of new affordable homes provided in England since 1996-97.
- 31,090 new affordable homes were made available for social rent in 2008-09.
- new build homes accounted for 43,220 or 78% of all new affordable homes supplied in 2008-09.
- new build homes with funding from the Homes and Communities Agency accounted for 63% of all the additional affordable homes supplied in 2008-09.
- 23% of new affordable homes were supplied in London and 19% in the South East.
- in eight of the nine regions there was an increase in affordable housing supply, but London saw a decrease.

<http://www.communities.gov.uk/documents/statistics/pdf/1405884.pdf>

22

Homes and Communities Agency (HCA) Report

Housing our Ageing Population Panel for Innovation

The HCA were commissioned by CLG in partnership with the Department of Health to set up the innovation panel as part of CLG's commitment outlined in *"Lifetime Homes, Lifetime Neighbourhoods: A National Strategy for Housing in an Ageing Society"* published by CLG in 2008. The panel carried out an intensive research programme in the summer of 2009 and this report sets out its findings and contains recommendations for the Government and key organisations.

<http://www.homesandcommunities.co.uk/housing-ageing-population-panel-innovation.htm>

23

CLG Statistical Release

House Price Index – October 2009

UK house prices were 2.2% lower than in October 2008 but 0.5% higher than in September 2009.

- the mix-adjusted average house price in the UK stood at £198,450 in October 2009 (not seasonally adjusted)
- UK house prices rose by 2.3% in the quarter ending October 2009. The rise in the quarter ending July 2009 was 2.0% (seasonally adjusted)
- annual average house prices rose in Scotland by 0.7%. In England they fell by 2.1%, in Wales by 4.5% and in Northern Ireland by 14.8%
- annual average house prices paid by first time buyers in October 2009 were 0.1% lower than a year ago. Average prices paid by former owner occupiers were 3% lower
- annual average house prices paid for new properties in October 2009 were 0.7% lower than a year ago. By comparison average prices paid for pre-owned dwellings were 2.2% lower

<http://www.communities.gov.uk/documents/statistics/pdf/1412398.pdf>

Construction

24

CLG Consultation

Building Regulations Competent Person Self-certification Schemes: Consultation paper Deadline for Responses: 19.03.10

This consultation seeks views on proposals to amend the conditions of authorisation, the application process and monitoring of performance for competent person self-certification schemes. The changes are intended to improve the level of compliance with the Building Regulations and to increase consistency across the schemes.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1420091.pdf>

25

CLG Paper

Evaluation of Competent Person Self-certification Schemes

This evaluation covers the period 06.04.06 to 31.03.09. By the mid-1990s it was recognised that the extension of the Building Regulations requirements to areas of building work not previously covered could no longer practicably be accommodated within the local authority building control body and Approved Inspector (AI) framework. The competent person schemes enabled self-certification of compliance with Building Regulations, thus allowing extension of the Regulations. The first three schemes, FENSA (Replacement glazing), HETAS (Combustion appliances – solid fuel) and OFTEC (Combustion appliances – oil) were set up in April 2002. In 2005 Part P (Electrical Installations) was introduced. Further schemes to cover elements of Part L (Conservation of Fuel and Power) were authorised in April 2006. The aims of this evaluation were as follows:

- to provide evidence as to whether the competent person schemes have successfully enabled extension of Building Regulations to new areas outside the local authority and AI network;
- to advise on how to further develop the schemes, including increasing registered membership and compliance with technical and procedural aspects of Building Regulations;
- to consider whether lessons learned from comparing schemes can be shared with each scheme operator to help them further develop their own schemes; and
- to provide an independent report for submission to the Building Regulations Advisory Committee (BRAC) and ministers on the operation and success of the schemes.

The findings of the evaluation may be found at the following link:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1417144.pdf>

Taxation

26

Stamp Duty

The Stamp Duty holiday (for transactions up to £175,000) ended on 31.12.09. The threshold reverts back to £125,000 wef 01.01.10.

General

27

CLG Consultation

Policy options for geographic information from Ordnance Survey

Deadline for Responses: 17.03.10

This consultation relates to a proposal made by the Prime Minister in November 2009 that certain Ordnance Survey datasets should be available for free with no restrictions on re-use. It seeks views on how best to implement this proposal in the context of other strategic options for Ordnance Survey and the wider geographic information market.

<http://www.communities.gov.uk/documents/corporate/pdf/1411177.pdf>

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CLG Guide

Code for Sustainable Homes Technical Guide: Consultation version

The Code for Sustainable Homes (the Code) is an environmental assessment method for rating and certifying the performance of new homes. Designed as a national standard for use in the design and construction of new homes its aim is to encourage continuous improvement in sustainable home building. The Code came into operation in April 2007 in England and having a Code rating for new-build homes became mandatory from 01.05.08. The Code covers nine categories of sustainable design:

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

Each of these is a source of environmental impact which can be assessed against a performance target and awarded one or more credits. The performance targets are more demanding than the minimum standard needed to satisfy Building Regulations or other legislation. In addition to the mandatory standards each design category scores a percentage rating. From 01.05.08 it became mandatory for a Code sustainability certificate or a nil-rated certificate (where no assessment has taken place) to be included in Home Information Packs for prospective purchasers. The purpose of this technical guide is to enable Code service providers and licensed assessors to deliver environmental assessments of new dwellings on the basis of the Code scheme requirements. The guide includes a list of issues associated with construction which are known to impact on the environment, and for which performance measures to reduce their impacts can be objectively assessed, evaluated and delivered in a practical and cost-effective way by the construction industry. Results of the Code assessment are recorded on a certificate assigned to the dwelling.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1418744.pdf>

Code for Sustainable Homes: Impact assessment – December 2009

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1418945.pdf>

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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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Parliamentary

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evebrief

SCOTLAND

General

01

Scottish Government Publication

Scotland's Climate Change Adaptation Framework Sector Summaries

The Scottish Government is concerned with the effect that climate change is likely to have on almost all aspects of Scottish society, its environment, economy and day to day life. It has therefore decided that under the strategic direction of the Climate Change Adaptation Framework a number of Sector Action Plans will be developed in 2010 to address the issues specific to that sector. These Plans will be developed by Scottish Government sector leads, in consultation with relevant stakeholders. They will be updated regularly to reflect the evolution and needs of that sector and, following the publication of each UK Climate Change Risk Assessment, the plans will demonstrate what action is being taken in that sector to manage for the risks outlined in the Assessment. Sector Action Plans will be prepared for the following sectors:

- water resource management
- agriculture
- forests and forestry
- spatial planning and land use
- biodiversity and ecosystem resilience
- transport
- the built environment
- energy
- business and industry
- marine and fisheries
- health and wellbeing
- emergency and rescue services

These principles will govern the plans:

- adaptation must be addressed alongside actions to reduce emissions
- adaptation should build broader resilience, such as through an ecosystem approach
- adaptation should be informed by a cycle of review and action
- adaptation should be integrated into existing development and implementation practices
- adaptation should be integrated at an appropriate scale
- adaptation should seek to be developed in partnership with interested parties and avoid restricting others from adapting

<http://www.scotland.gov.uk/Publications/2009/12/08131340/0>

The following frameworks have been published so far:

Scotland's Climate Change Adaptation Framework – Spatial Planning and Land Use

<http://www.scotland.gov.uk/Resource/Doc/295158/0091320.pdf>

Scotland's Climate Change Adaptation Framework – The Built Environment

<http://www.scotland.gov.uk/Resource/Doc/295130/0091313.pdf>

WALES

Rating

02

Statutory Instrument

WSI 2009/3147 The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2009

Under Part II of Schedule 8 to the Local Government Finance Act 1988 billing authorities have to pay non-domestic rating contributions to the Welsh Ministers and the 1992 Regulations contain rules for the calculation of those contributions. These Regulations, which came into force on 31.12.09, amend the 1992 Regulations by substituting a new Schedule 4 (Adult Population Figures).

Regulations.http://www.opsi.gov.uk/legislation/wales/wsi2009/pdf/wsi_20093147_mi.pdf

NORTHERN IRELAND

Planning

03

Statutory Instrument

The Planning (Control of Major-Accident Hazards) Regulations (Northern Ireland) 2009

These Regulations, which came into force on 31.12.09, implement in relation to planning in Northern Ireland, Article 12 of Directive 96/82/EC on the control of major accident hazards involving dangerous substances ("the Seveso II Directive"), as amended by Council Directive 2003/105/EC.

http://www.opsi.gov.uk/sr/sr2009/pdf/nisr_20090399_en.pdf