EVEBRIEF

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DECENTRALISATION AND LOCALISM, CAN THIS APPROACH RESULT IN A MORE EFFECTIVE AND EFFICIENT PLANNING SYSTEM?

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The dust is beginning to settle from the general election and it is clear that the new Government wants to impose its mark on the development industry as soon as possible. At items 01 and 02 we report on the Queen's speech and the new Coalition Government's programme which sets out the "Localism" agenda building on the themes of the Conservative manifesto. This has been followed up more recently with a government statement turning its back on regional planning. So a very different approach to planning decision making is going to emerge in the near future, less resilient on the needs of the Country, more dependant on the attitudes of local, key stateholders and decision makers.

The effect of these changes will be amplified by the country's current and short to medium term economic conditions, already making life difficult for the development industry. It is interesting that the Administration has started by increasing the potential hurdles to development, in particular, to new house building, we will of course be looking out for measures intending to address the country's housing crisis.

At item 09 we report on an interesting case in respect of the disclosure of information relating to the viability of a development project in the context of assessing the need for affordable housing. The conclusion is that disclosure is required.

GOVERNMENT

01 The Coalition: our programme for government

This document contains the new Coalition Government's programme covering 31 areas of activity. The deficit reduction programme takes precedence over all the other measures.

Communities and Local Government is contained in s4 and the following are of note:

- Devolution of power and greater financial autonomy are to be given to local government.
- Regional Spatial Strategies are to be abolished.
- The planning system will be reformed to give local neighbourhoods more say.
- The Infrastructure Planning Commission is to be abolished and replaced with a more democratically accountable system with a fast-track process for major infra-structure projects.
- There will be a new consolidated national planning framework covering all forms of development and setting out national economic, environmental and social priorities.
- The Green Belt and SSSIs will be maintained and a new designation will be created to protect green areas of particular importance to local communities.
- Council tax will be frozen for at least one year.
- Continuous improvements to the energy efficiency of new housing will be required.

Proposed measures relating to Energy and Climate Change are contained in s10. These are aimed at cutting carbon emissions, decarbonising the economy and supporting the creation of new green jobs and economies and include:

- the introduction of measures to promote the creation of energy from waste using anaerobic digestion;
- the introduction of measures to encourage marine energy;
- cancelling the third runway at Heathrow and permission for any further runways at Stansted and Gatwick will be refused;
- the replacement of passenger duty with a per flight duty;
- HIPs are to be abolished but energy performance certificates will be retained;
- the introduction of financial incentives to encourage home energy efficiency improvements; and
- the delivery of an offshore energy grid to support the development of offshore wind power.

Measures relating to Environment, Food and Rural Affairs are contained in s11. The new Government is committed to making the economy more environmentally sustainable while improving quality of life and well-being. It believes that more needs to be done to support farmers, protect biodiversity and encourage food production.

- The findings of the Pitt review will be taken forward to improve flood defenses and prevent unnecessary building in areas of high flood risk.
- Reform of the water industry to ensure more efficient use of water.
- The Government will work towards a "zero waste" economy with councils being encouraged to pay people to recycle.

http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf

PLANNING

02 Queen's Speech

The new Coalition Government's first Queen's speech was delivered on 25.05.10, announcing its legislative programme for 2010-11. The following are of interest to the property industry:

- Decentralisation and Localism Bill – which aims to devolve greater powers to councils and neighbourhoods and give local communities control over housing and planning decisions. Regional Spatial Strategies will be abolished and decision-making powers on housing and planning returned to local councils. The Infrastructure Planning Commission will also be abolished and replaced with a more efficient and democratically accountable system that provides a fast-track process for major infrastructure projects. Local Enterprise Partnerships will be created – these are joint local authority-business bodies to promote local economic development. Local government and community groups will be given greater financial autonomy and local residents will have the power to veto excessive council tax increases. Home Improvement Packs (HIPs) have been abolished altogether.
- Energy Bill – which aims to deliver a national programme of energy efficiency measures to homes and businesses. The new Government is committed to improving energy efficiency in existing homes, offices and other buildings which in turn will help it to meet legally binding emissions reduction targets. The Bill provides for the establishment of a Green Infrastructure Bank which will help support the funding of the transition to a low carbon infrastructure.
- Construction of a high-speed rail line between London and Birmingham, Manchester and Glasgow "in due course".
- Increased investment in high-speed broadband, to enable the continued existence of rural communities as sustainable communities.
- The announcement of a Local Government Bill to revoke the orders that created new unitary councils in Exeter, Norwich and Suffolk, which are considered to be wasteful and unnecessary.

03 Court of Appeal

Environmental Impact Assessment – appellant alleging procedural defect – whether refusal of judicial review was an infringement of Community law

* COOPER V ATTORNEY GENERAL
(2010) PLSCS 136 – Decision given 05.05.10

Facts: C, the appellant, was the trustee of the Council for the Protection of Rural England. His application for judicial review of the decision to grant outline planning permission and approval of reserved matters for the White City development in London on the grounds that the Environmental Impact Assessment Directive 85/337/EEC (EIA Directive) had not been complied with before permission was granted was rejected. C's application for judicial review of the refusal to revoke the permission was also rejected, and the Court of Appeal dismissed C's renewed application for permission to apply for judicial review and his application for permission to appeal.

Point of dispute: Whether the Court of Appeal had contravened Community law in its disposal of the judicial review proceedings which could give rise to a UK liability in damages.

Held: C's appeal was dismissed against the decision of the court below that no manifest error had been made so as to give rise to a claim for damages. In determining whether the UK was liable in damages for a serious breach of Community law the court had to consider whether (i) the alleged breach was a rule conferring rights on individuals; and (ii) whether the breach was sufficiently serious. The Court of Appeal had made a mistake on the meaning of the term "development consent" in the EIA Directive but arriving at an incorrect judgment on this point was not of itself a manifest breach of Court of Justice (CJ) case law. This was not a serious enough breach of Community law to give rise to liability. The court could look at all relevant considerations, including whether it was deliberately intended to breach Community law, and it was also relevant to consider whether the court's decision accorded with other domestic law decisions.

04 Court of Appeal

Agreement under s106 Town and Country Planning Act 1990 – additional works not included in planning application

* R (ON THE APPLICATION OF BROWN) V CARLISLE CITY COUNCIL
(2010) PLSCS 141 – Decision given 19.05.10

Facts: The lessee of Carlisle airport sought planning permission for various works, including the replacement and realignment of the main runway, the construction of a new passenger terminal, offices and hangars (airside works) and a new warehouse and distribution depot. The application was called in by the Sec of State. A new application omitting the airside works was made, including an environmental statement. CCC decided that the application did not need to be referred to the Sec of State as the proposed works would accord with the development plan provided that the airside works were secured using a s106 agreement. The application also fell within article 2(2) of the Town and Country Planning (Development Plans and Consultation) (Departures) Direction 1999 as being one under which compliance with the development plan could be ensured by imposing conditions. Planning permission for the development was granted and a s106 agreement in respect of the airside works was concluded.

Point of dispute: Whether to allow B's appeal against the decision in the court below to refuse his application for judicial review. B contended that CCC had not complied with regulation 3(2) of the Town and Country Planning Environmental Impact Assessment (England and Wales) Regulations 1999 since it had considered only the environmental impact of the application development rather than the cumulative effect of that and the s106 works.

Held: B's appeal was allowed. On its own, the distribution facility did not accord with the development plan. On the one hand, the lessee's commitment in the s106 agreement to bring forward the airside works was regarded as sufficient to ensure that the development as a whole was policy-compliant for the purposes of the development plan, but on the other hand it was not regarded as being sufficient to contribute to the cumulative effects of the development for the purpose of the EIA regulations – it was difficult to reconcile these two positions. By insisting on a s106 agreement the distribution facility could only be lawfully developed in conjunction with the airport works, leaving open the possibility of a completed but unoccupied distribution facility. There had been a breach of Reg 3(2) and an assurance that the environmental effects would be assessed at a later stage, when a decision was given as to whether further development would be permitted, was not sufficient to justify a decision not to quash the permission.

05 Court of Appeal

Aggrieved person

* ASHTON V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2010) PLSCS 143 – Decision given 24.05.10

Facts: A developer sought permission for an extensive 43-storey tower development comprising, inter alia, a community sports centre, residential units, offices, retail space and a swimming pool. A was a local resident who belonged to a community group which objected to the development. The application was called in by the Sec of State and, notwithstanding that the inspector who considered it recommended that planning permission be refused, permission was granted.

Point of dispute: Whether to allow A's appeal against the High Court's decision to dismiss his applications under s288 of the Town and Country Planning Act 1990, the judge having concluded that the Sec of State's approach to the relevant statutory and policy provisions had been correct. The conclusion that there was insufficient evidence to justify a refusal of planning permission was a judgment that was open to the inspector, and A had not played a sufficiently active role in the planning process to be described as "aggrieved" within s288. A argued that the judge had erred in this second finding, and also contended that the inspector's findings regarding the funding of the sports centre contained a material error of fact in that the inspector believed the funds would be provided by the developer at no public cost.

Held: A's appeal was dismissed. The Sec of State had correctly understood the meaning of the term "public cost" as referring to costs to central or local government, as opposed to grants from public agencies, charities and private sector bodies and the term "at no public cost" had been used accurately. As a result of this finding the court did not have to rule on the question of A's standing, but if it had had to do so, it would have found that his participation in the planning process had not been sufficient for him to acquire the necessary standing, as he had not made representations at the public inquiry – merely attending parts of the hearing and being a member of the objectors' group was not sufficient. Moreover, no representations had been made to the inquiry regarding loss of amenity to A's property, either personally or to the objector's group. Therefore the extent of any such loss could not be assessed to ascertain whether it amounted to a sufficient interest.

06 High Court

Noise impact from wind farm – whether inspector correct to uphold the local planning authority's decision to refuse permission for development – inspector's decision quashed

* TEGNI CMYRU CYF V WELSH MINISTERS
(2010) All ER (D) 246 (May) – Decision given 20.05.10

Facts: The claimant, a wind farm developer, sought planning permission to construct 13 wind turbine generators on a site in a forest in Denbighshire which was designated as a "Strategic Search Area" (SSA). The local planning authority refused permission on the grounds of the detrimental impact of the development on the character and appearance of the landscape, and because it considered that the cumulative effect of noise from the claimant's development together with noise from turbines on nearby farms would have an unacceptable impact on the local community. The claimant appealed to the Sec of State whose inspector determined that the lpa had been correct to refuse permission for the development.

Point of dispute: Whether the claimant should be granted an order quashing the inspector's decision. It argued that the inspector's approach to the issue of noise had been flawed in a number of respects, particularly because he had not given sufficient reasons for his findings on the issue. It was argued that no reasonable inspector could have reached the conclusions about noise impact that he had in this case and that the impact of noise upon residential amenity was no greater than that which the relevant policies regarded as acceptable.

Held: The order to quash the inspector's decision was granted. The inspector's conclusion that the noise levels associated with the development would be unacceptable had to be a reasonable one, and in this case the decision that the inspector had reached was unreasonable in the Wednesbury sense. However, the decision to quash the inspector's decision was made because he had failed to provide adequate reasons for his conclusion that the noise impact of the proposed development was unacceptable.

07 High Court

Section 106 Town and Country Planning Act 1990 agreement – whether grant of declaratory relief appropriate when claimant not party to agreement

* MILEBUSH PROPERTIES LTD V TAMESIDE METROPOLITAN BOROUGH COUNCIL
(2010) PLSCS 134 – Decision given 13.05.10

Facts: TMBC, the first defendant, acquired a site in Uxbridge which had planning permission, granted by the second defendant council, for an office development with car parking. MP, the claimant, owned properties on the nearby High Street. The permission included a condition requiring the construction of a service road for premises on the south side of the High Street and provisions relating to this were contained in two s106 agreements entered into by TMBC's predecessors in title. Clause 3.5 of the principal agreement required the developer to grant a right of way over the service road to "authorised properties", including MP's property, to be exercisable at all reasonable times on such reasonable terms as the developer might impose. The right of way which TMBC proposed to grant to MP in 2009 was limited by certain conditions, including times of access and the use of a security gate, to which MP objected.

Point of dispute: Whether MP should be granted a declaration that TMBC was obliged to grant a right of way in accordance with Clause 3.5 and the proper construction of that clause. TMBC argued that their proposed conditions were covered by that clause and that declaratory relief was not available to MP as it was not a party to the principal agreement. It also argued that the agreement was contract for the disposition of an interest in land to the claimant which was void for failure to comply with s2 of the Law of Property (Miscellaneous Provisions) Act 1989 since MP had not signed it.

Held: MP's claim was dismissed.

- A planning condition in a s106 agreement was enforceable by the local planning authority against the party entering into the obligation and any party deriving title from it – in this case by TMBC against the second defendant council. Section 106 did not provide for enforcement by a beneficiary of the planning obligation. It had been appropriate to join the second defendants to the proceedings because the claim affected their interests as the lpa, but that did not enable MP to enforce the claim against them.
- It would frustrate the statutory scheme contained in s106 were s2 of the 1989 Act to be interpreted as invalidating s106 agreements that benefited third parties such as the claimant in this case, and this could not have been Parliament's intention.

08 High Court

Affordable housing – local planning authority had not acted unlawfully in refusing permission for a residential development – possibility of higher proportion of affordable housing being viable in the future

** ROBERT HITCHINS LTD V (1) SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT & (2) FOREST OF DEAN DISTRICT COUNCIL
(2010) EWHC 1157 (Admin) – Decision given 27.05.10

Facts: The applicant company (RH) applied for planning permission to develop two sites. Permission for 320 dwellings was granted for one of the sites, the lpa having accepted that 20% affordable housing was the maximum achievable having regard to the specific site viability assessment. RH sought permission for 750 dwellings on the other site, but the lpa had failed to determine this application. RH had initially proposed 30% affordable housing, but later reduced this figure to 13%, increasing to 20% if certain grants could be arranged. The lpa resolved that if it had been in a position to determine the application it would have refused permission as the affordable housing contribution was insufficient. RH had always made it clear that it would not develop either site independently.

Point of dispute: Whether to allow RH's application to quash the Sec of State's decision to dismiss RH's appeal against non-determination of the planning application. RH submitted, inter alia, that:

i the inspector had erred in law by disregarding its arguments regarding the economic situation which made a higher proportion of affordable housing unviable and had only taken into account specific site characteristics;

ii there was no evidence from which the inspector could conclude that the current conditions were only temporary;

iii to treat current economic conditions as only temporary was wrong;

iv the housing market assessment on which the inspector had relied was based on out of date market values and did not take into account major changes in market conditions;

v the inspector had misinterpreted the site's suitability for the purposes of the housing requirements of the relevant planning policy statement. (PPS3); and

vi the inspector had failed to take into account the advantages of developing the other site, which would be lost if the scheme under consideration did not go ahead.

Held: The application was refused.

i On a fair reading of the report this argument was not accepted.

ii The inspector was not obliged to recommend approval in the absence of firm evidence regarding the possibility and timing of economic recovery. She was entitled to take the view that a higher proportion of affordable housing might be viable in the future.

iii The inspector had not treated general economic conditions as being immaterial.

iv There had been no legal error in the inspector's reasoning. She had referred to the assessment as evidence of the need for more affordable housing than the council's 40% starting point and then considered it in the light of more relevant information.

v The inspector's interpretation of the site's suitability had been well considered. PPS3 sought to achieve mixed communities as well as more housing and where the prevailing economic conditions meant that both could be achieved, a planning judgment had to be made as to which should prevail.

vi The inspector had not ignored the link between the two sites and her reasoning had not been deficient. She had focused on housing because it was the principal issue, but she had not ignored the regeneration and employment benefits of the two schemes.

09 First-Tier Tribunal – General Regulatory Chamber (Information Rights)

Environmental Information Regulations 2004 – disclosure of information

** BRISTOL CITY COUNCIL V (1) INFORMATION COMMISSIONER (2) PORTLAND AND BRUSWICK SQUARES ASSOCIATION
Royal Courts of Justice Case No. EA/2010/0012 – Decision given 10.12.10

Facts: A developer applied to Bristol City Council (BCC) for permission to refurbish the Coroner's Court building, a listed building owned by BCC, and convert it into two flats, and to demolish the Lakota building. Both buildings were in a conservation area which meant that the developer required listed building consent for the refurbishment of the Coroner's Court and conservation area consent for the demolition of the Lakota building. PPG15 states that proposals to demolish buildings which make a positive contribution to the character or appearance of a conservation area should be assessed against the same broad criteria as proposals to demolish listed buildings ie evidence has to be provided that all reasonable efforts have been made to sustain existing uses or find new ones, and that these efforts have failed, or the benefits to the community from the refurbishment would substantially outweigh the loss resulting from the demolition. The developer lodged with its application a scheme for the retention and refurbishment of the Lakota building and a viability report showing that any profit from such a scheme would be negligible. The local residents' association (RA), which was concerned about the demolition proposal, requested BCC to supply it with a copy of the viability report under the Environmental Information Regulations 2004. BCC refused to disclose the report relying on Reg 12(5)(e), which relates to commercial confidentiality, on the grounds that the report contained commercially sensitive information. Planning permission and listed building and conservation area consent for the proposed development were granted by BCC in July 2008.

Point of dispute: Whether BCC's appeal would be allowed against the decision of the Information Commissioner that it should disclose the requested information to RA, the Commissioner having found that the exception in Regulation 12(5)(e) did not apply in this case.

Held: The appeal was dismissed. The Commissioners were unanimous in their decision that the requested information should have been supplied.

- Regulation 12(5)(e) provides that "…a public authority may refuse to disclose information to the extent that its disclosure would adversely affect. the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest". There was an obligation of confidence imposed on BCC by law in relation to the Lakota viability report because: (i) it was usual practice for such reports to be accepted by BCC in confidence; and (ii) the developer had reasonable grounds for providing the information to BCC in confidence. There were reasonable grounds for finding that its release would be damaging to the developer's economic interests.
- On the public interest point Regulations 12(1) and (2) provide: "(1)…a public authority may refuse to disclose environmental information requested if – (a) an exception to disclosure applies under paragraphs (4) and (5); and (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information. (2) a public authority shall apply a presumption in favour of disclosure." It was significant that the information requested was directly relevant to, and a major factor in, a specific environmental decision about the imminent and controversial demolition of a protected building, which meant that there was very weighty public interest in disclosure. It was also significant that BCC owned part of the development site and that it was intending to take account of evidence presented to them by the developer which the public were not going to be able to see or comment on directly, and that BCC had not taken into consideration the differences in the resources of developers and residents interests groups when it argued that RA could have obtained its own viability report on the Lakota building. The public interest in disclosure substantially outweighed that in maintaining the exception in this case.
- This decision was reached due to the circumstances of this particular case and the judges stated that it is not designed to set a precedent. The result may have been different if the PPG 15 criteria had not been satisfied or if BCC had not owned the Coroner's Court building.

LEASEHOLD REFORM

10 High Court

Collective enfranchisement under Leasehold Reform, Housing and Urban Development Act 1993 (the 1993 Act) – application to acquire part of building containing 20 flats – whether property a "self-contained part of a building" within s3

** 41 – 60 ALBERT PALACE MANSIONS (FREEHOLD) LTD V CRAFTRULE LTD
(2010) PLSCS 149 – Decision given 27.05.10

Facts: C was the nominee purchaser for the purposes of an application by ten tenants to acquire the freehold of the property in which they owned flats by collective enfranchisement. The flats were in a five-storey terraced mansion building in London SW11. The tenants' notice, served on the freeholder under s13 of the 1993 Act, specified the property to be enfranchised as the part of the building which contained flats 41-60. This was a vertically divided section of the building and was itself divided into two halves each of which contained ten flats and had separate entrances and common parts. Three of the ten participating tenants owned flats in the 41-50 part, and the remaining seven had flats in the 51-60 part. The appellant freeholder did not serve a counternotice but disputed the tenants' right to enfranchise on the ground that the property did not qualify as a "self-contained part of a building" for the purposes of ss3 and 4 of the 1993 Act.

Point of dispute: Whether the freeholder's appeal would be allowed against the county court's ruling that the participating tenants were entitled to enfranchise the entire property specified in the notice. The freeholder contended that the property comprised two parts containing flats 41-50 and 51-60 respectively, each of which would itself qualify as a self-contained part. Its argument was that the statutory right to collective enfranchisement was exercisable only in respect of a self-contained part of a building that could not be further sub-divided into self-contained parts, and it relied on decisions under the 1993 Act, the Landlord and Tenant Act 1987 and on ministerial statements to support its case.

Held: The appeal was dismissed. There was no relevant authority on the point in issue. Cases concerning s3 of the 1993 Act related to different questions and did not shed light on this question. Decisions relating to the tenant's right of first refusal on a sale of a freehold under Part I of the Landlord and Tenant Act 1987 were of no assistance as those provisions and the scheme of the 1993 Act were entirely different. Section 3 did not require a self-contained part of a building to be indivisible into smaller parts. The property satisfied the statutory definition of a self-contained part of a building and none of the exclusions in s4 applied. The legislation was neither ambiguous nor obscure and there was no need to consider ministerial statements made during parliamentary debate on it.

TORT

11 High Court

Claim in nuisance against leaseholder of upper floors of a building for erection of scaffolding

* JOHN SMITH & CO (EDINBURGH) LTD V HILL
(2010) PLSCS 132 – Decision given 11.05.10

Facts: The claimant owned a long lease of the ground floor and basement of commercial premises. The company which had granted the lease retained the upper floors with a view to redeveloping them. The claimant's lease was subject to a 30-year sublease to the third defendant, which meant that the claimant became the third defendant's landlord . Both the claimant's and the third defendant's leases contained clauses permitting their respective landlords to erect scaffolding for the purposes of redevelopment. In 2008 scaffolding was erected around the upper floors for a redevelopment project, but work ceased when the company went into administration. The first and second defendant administrators carried out weather proofing works, but retained the scaffolding while trying to find a purchaser who would complete the development. The company's interest was sold in 2009, by which time the third defendant had stopped paying his rent, complaining of a breach of the covenant for quiet enjoyment in his lease. The claimant brought proceedings against the third defendant for rent arrears and against the administrators in nuisance. It contended that the administrators should indemnify it in respect of any damages for breach of the quiet enjoyment covenant that the third defendant might be entitled to set off against the rent.

Point of dispute: (i) Whether the claimant had a claim in respect of a purely temporary nuisance caused by the scaffolding; and (ii) whether administrators of an insolvent company could incur personal liability for a nuisance committed by that company. The claimant argued that an action in nuisance could lie in respect of interference with the right to receive rent.

Held: The applications were refused.

i The concept of an action in nuisance for an interference with rent, divorced from the interest in land to which it was attached, was a medieval relic. Having not been used for four centuries, it should remain unused. The claimant might still have a claim against the administrators in nuisance but that issue could only be resolved with the benefit of disclosure at a full trial.

ii Without a full trial it was not possible to reach a clear conclusion as to whether the administrators' role in the process which led to the scaffolding being left up for such a long period of time was sufficient to render them personally liable in nuisance.

HOUSING

12 Statutory Instrument

SI 2010/1455 The Home Information Pack (Suspension) Order 2010

This Order came into force on 21.05.10. It suspends the operation of all of the duties imposed by ss155 to 159 of the Housing Act 2004 relating to the content and provision of home information packs.

13 CLG Statistical Release

House Building: March Quarter 2010, England

- There were 24,930 seasonally adjusted house building starts in England in the March quarter 2010, 13% higher than in the previous quarter and 62% more than in the March quarter of 2009, but 49% less than the peak in March 2007.
- There were 16% more private enterprise housing starts than in the December quarter 2009 (seasonally adjusted). Starts by registered social landlords were unchanged.
- Housing completions in England fell by 6% to an estimated 26,090 (seasonally adjusted) in the March quarter 2010 compared to the previous quarter.
- Private enterprise housing completions were 8% lower in the March quarter of 2010 than in the 2009 December quarter (seasonally adjusted).
- There were 113,420 housing completions in England in 2009-10, 15% less than in 2008-09.

http://www.communities.gov.uk/documents/statistics/pdf/147350211.pdf

CONSTRUCTION

14 Statutory Instrument

SI 2010/1456 The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2010

These Regulations came into force on 21.05.10 They ensure the continued implementation in England and Wales of article 7 of European Directive 2002/91/EC on the energy performance of buildings (the Directive). The Directive lays down the requirements for the production of energy performance certificates (EPCs) when buildings are constructed, sold or rented out, display of certificates in large public buildings and regular inspections of air-conditioning systems. These Regulations amend the 2007 Regulations by introducing the following:

- a new duty for sellers of residential property in England and Wales to secure the commissioning of an EPC before placing the property on the market;
- a new duty for parties such as estate agents acting on behalf of a seller of residential property not to market the property unless satisfied that an EPC has been commissioned;
- Reg 6 of the 2007 Regulations imposed a duty on parties providing written particulars of a building to include with those particulars either an asset rating of the building or an EPC. This duty has been amended. Instead of arising where a duty under s155(1) or s159(2) of the Housing Act 2004 applies, the duty arises where a residential property is to be sold; and the duty arises only once a valid EPC has been obtained;
- the provision in the 2007 Regulations that an EPC is to be valid for three years in cases where a duty under ss155(1) or 159(2) of the Housing Act 2004 applies is revoked. The period of validity of all EPCs is ten years; and
- consequential amendments are made to the enforcement provisions of the 2007 Regulations.

http://www.opsi.gov.uk/si/si2010/pdf/uksi_20101456_en.pdf

15 The Building Regulations 2000

Approved Document F – Ventilation

This will not come into effect until 01.10.10 but is available now to view online.

http://www.planningportal.gov.uk/uploads/br/BR_PDF_ADJ_2010.pdf

http://www.planningportal.gov.uk/england/professionals/buildingregs/technicalguidance/bcconsfppartl/bcconsfppartlappdoc/

In addition to these new approved documents, new compliance guides to support Part L and F have also been published:

Part F – The Domestic Ventilation Compliance Guide 2010 Edition (valid from 01.10.10)

http://www.planningportal.gov.uk/uploads/br/domestic_ventilation_compliance_guide_2010.pdf

Part L Building Services Compliance guides (valid from 01.10.10)

http://www.planningportal.gov.uk/england/professionals/buildingregs/technicalguidance/bcconsfppartl/bcassociateddocuments9/bcptlothdocs

GENERAL

16 High Court

Estate agents' commission

* GLENTREE ESTATES LTD V FAVERMEAD LTD
(2010) PLSCS 142 – Decision given 20.05.10

Facts: F, a company owned and controlled by K, owned a valuable property in Kensington. In 1998 it rejected an offer of £45m for the property from M and in April 2001 K entered into an agreement with GE, three firms of estate agents, to act as sole agents to sell the house. K agreed to pay £1m plus VAT to GE in the event that one of the firms "introduced an applicant who subsequently purchased the property" and a reduced fee of 20% of that sum if K procured a purchaser through his own endeavours. On the same day K met Bernie Ecclestone (E) (but through a property agent that K had instructed before) and later that year the house was sold to CA, a family trust of E's for £50m. The parties also agreed that if the house was resold within five years they would share any profit equally. K agreed to continue GE's agency agreement to find a purchaser for such a resale and this was recorded by letter in November 2001. GE wrote to M about the house in February 2004, M viewed but GE played no further part in the proceedings which culminated in a sale of the property to M for £57m in June 2004.

Point of dispute: Whether GE were entitled to commission fees on both sales.

Held: GE's claim was dismissed.

- The first sale to CA had triggered a right to recover £200,000 plus VAT under the terms of the April 2001 letter. However, GE waived their right to commission on the first sale by entering into a new agency contract in respect of the proposed resale in November 2001, by which they had impliedly waived any claim to commission arising from the sale to CA. It was "counter-intuitive that an agent should expect to receive commission twice on successive dispositions of the same property by his principal".
- GE was not entitled to commission in respect of the second sale in 2004 as they were not the effective cause of the sale, and such a term had to be implied into the contract.

17 CLG Statistical Release

Land Use Change Statistics (England) 2009 – provisional estimates (May 2010)

It is estimated that in 2009:

- 80% of dwellings (including conversions) were built on previously developed land (unchanged since 2008);
- New dwellings were built at an average density of 45 dwellings per hectare, compared with 43 dwellings per hectare in 2008.

In 2008 it is estimated that:

- 2% of dwellings were built within the Green Belt (unchanged since 2004) and 7% of land changing to residential use (from any use) was within the Green Belt (up from 5% in 2007).
- 9% of dwellings were built within areas of high flood risk (unchanged since 2006) and 6% of land changing to residential use was within areas of high flood risk (unchanged from 2007).

http://www.communities.gov.uk/documents/statistics/pdf/1558850.pdf

GERALD EVE'S UK OFFICE NETWORK

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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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www.ukonline.gov.uk
www.odpm.gov.uk
www.dft.gov.uk
www.inlandrevenue.gov.uk
www.hmso.gov.uk
www.egi.co.uk
focus.focusnet.co.uk
www.newlawonline.com

Abbreviations
The following abbreviations are used in evebrief:

BLD	Lexis Nexis Butterworths (internal abbreviation)
EG	Estates Gazette
EGLR	Estates Gazette Law Reports
EWCA	England & Wales Court of Appeal
EWHC	England & Wales High Court
P&CR	Property, Planning and Compensation Reports
PLSCS	Property Law Service Case Summaries

The star system
Cases are marked with one, two or three stars as follows:

***	Essential reading on the point of law or valuation with which the case is concerned, because it adds to, or clarifies or changes, the law.
**	Noteworthy case which does not significantly alter the law or which relates to a relatively obscure point.
*	Interesting but non-essential reading.

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