EVEBRIEF

Legal & Parliamentary

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COMPLETION NOTICES, BANKSY AND THE BANKROBBER.

Hilary Wescombe
Editor

The rating case reported at Item 11 may seem a little dry, even compared to other rating cases, as it concerns the serving of completion notices. This is however an important area and understandably the ratepayer is seeking leave to appeal, particularly given the potential impact on its rate liability. Billing Authorities may issue a completion notice for a new or substantially new building, when it is nearing completion, specifying the day on which it might reasonably be ready for occupation. Doing so allows the Valuation Officer to make assumptions about the building that enable him to place a rateable value in the rating list, and allows rate liability to commence albeit there may be a period of empty rate relief. There are strict time limits on challenging a notice so it is particularly important that the owner is aware of the impending liability and has the opportunity to challenge the correctness of the notice. Correct service is the appropriate way to ensure that is the case and the requirement for correct service should not be diluted.

The question of compliance with repairing obligations is considered at Item 01. In an unusual reversal of the normal positions the tenant argued that it was required to carry out works under its repairing obligations. The case centred on a Banksy mural that appeared last year during the Folkestone Triennial creative arts festival but was later removed by a specialist art dealer who trades under the name of 'Bankrobber'. The mural depicts a woman listening to headphones looking at an empty plinth. Verification by Banksy boosted the value towards £500,000 although it failed to sell at that price. The court ruled that the tenant was not entitled to remove the piece of wall under the repairing obligation and ordered its return to The Creative Foundation, the not-for-profit organisers of the Folkestone Triennial.

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LANDLORD & TENANT

01 High Court

Title to Banksy mural on wall of building – whether tenants in breach of lease by removing part of wall – whether mural vesting in landlord – implied terms in lease

**THE CREATIVE FOUNDATION V DREAMLAND LEISURE LTD
[2015] PLSCS 263 – Decision given 11.09.15

Facts: The claimant, CF, acquired the title to a mural which had been sprayed onto the wall of a building in Folkestone by the street artist known as Banksy. The defendant, DL, was the tenant of the building where it operated an amusement arcade. Included in the demise were the structure and exterior of the building. The mural had been painted without the knowledge or consent of either CF or DL. DL severed the section of the wall of the building with the mural without the landlord's knowledge or consent. CF brought an action for delivery up of the section of the wall bearing the mural, as assignee of the title to the mural and of the landlord's cause of action.

Point of dispute: Whether to allow CF's application for summary judgment. It contended that upon being sprayed on the building the paint used to create the mural became part of the land vested in the landlord. Although DL had been in breach of its lease by cutting the wall, but once removed, the bricks and cement together with the paint sprayed onto them, regained their character as chattels, title to which vested in the landlord. The court should therefore exercise its power to order delivery up of the mural to CF pursuant to s2 of the Torts (Interference with Goods) Act 1977. DL argued that they were obliged to remove the mural in order to comply with the lessee's covenants including to keep the premises in good repair and condition and to redecorate them every four years. Once removed the mural became their property, rather than the landlord's, by virtue of an implied term in the lease.

Held: CF's application was granted.

i. An obligation to keep a building in good repair and condition was only engaged if that part of the building was actually out of repair and condition. On the evidence DL had no reasonable prospect of establishing that they were entitled, let alone obliged, to remove the mural in complying with their repairing obligations under the lease.

ii. The parties agreed that it was necessary to imply a term into the lease to address the question of what happened to parts of the building, whether structural, decorative or landlord's fixtures which had to be replaced or otherwise removed by the lessee in complying with its repairing obligations. Such parts reverted to the status of chattels once removed from the building. The default position was that every part of the building belonged to the lessor so it would be for the lessee to show that it was proper to imply into the lease a term which led to a different result. By discharging its repairing obligation did not lead to the implication that the lessee acquired ownership of such a chattel. It made no difference that the value was attributable to the spontaneous actions of a third party.

iii. The fact that the mural was valuable, both financially and aesthetically, was a relevant consideration. In all the circumstances of the case the term to be implied was that the chattel had become the property of the lessor and CF succeeded in its claim against DL for delivery up of the mural.

02 Upper Tribunal: Lands Chamber

Service charges – whether FTT erring in holding that no service charge due where appellants failing to comply with obligation to provide audited service charge accounts – whether FTT had jurisdiction to determine issue in light of terms of referral

*ELYSIAN FIELDS MANAGEMENT CO LTD V NIXON
[2015] PLSCS 260 – Decision given 06.08.15

Facts: N, the defendant, was the lessee of some flats in a building which was managed by the appellant, EFM. Under Clause 1 of the Fifth Schedule to the lease N was required to pay annually "the amount of the Service Charge estimated by the Management Company as being required to enable the provision of Services during that year" with any underpayment for a previous year being payable on demand. EFM was required to keep proper accounts of all costs, charges and expenses incurred by them in fulfilling their obligations, to provide audited accounts each year and to serve written notice on the lessees stating the amounts of service charge certified by the accountant as being due and payable by them. EFM brought county court proceedings against N to recover unpaid service charges. N defended the action contending that the service charges were unreasonable and that EFM had failed to provide audited accounts. The county court referred the matter to the first tier tribunal (FTT) to determine the reasonableness of the service charges.

Point of dispute: Whether to allow EFM's appeal against the FTT's ruling that no service charge was due since EFM had failed to comply with the accounting requirements on the leases. EFM argued that: (i) the FTT was wrong to hold that compliance with the accounting requirements in the leases was a condition precedent to the payment of the service charge; and (ii) in any event, the FTT had no jurisdiction to decide the point since it was not in issue in the county court proceedings and the matter that had been referred to the FTT was limited to the reasonableness of the service charges.

Held: The appeal was allowed.

i. The FTT had erred in holding that the service of a certificate complying with the accounting requirements of the leases was a condition precedent to any liability to pay the service charge. Clause 1 of the Fifth Schedule clearly provided for payment based on an estimated amount due as determined by EFM and there was nothing in that clause which required audited accounts to be provided.

ii. The terms of the referral from the county court did not confine the jurisdiction of the FTT to considering the reasonableness of the service charge. If, as a matter of law, no service charge was payable, no figure could be said to be reasonable.

03 Upper Tribunal (Lands Chamber)

Service charges – whether lessees liable to pay service charges demanded by landlord in absence of accountant's certificate – whether provision of certificate a condition precedent to liability to pay

*CLACY V SANCHEZ
[2015] PLSCS 264 – Decision given 13.08.15

Facts: The appellants were the freeholders of a block of four flats in Croydon which were let on long leases to the respondents. The standard form leases provided for payment of a service charge in advance with any balance due or overpaid to be paid or credited at the end of each service charge year. Clause 2(2)(ii) contained the lessee's covenant to pay a service charge representing the relevant proportion of the management company's general expenses "without any deduction upon written demand… and at all times keep the Lessor and the Management Company indemnified in respect of the same".Clause 2(2)(iii), which was expressed to be "without prejudice" to that covenant, set out certain terms and conditions relating to the payment of the service charge, including certification of the relevant costs by an accountant as soon as practicable after the end of each financial year.

Point of dispute: Whether the lessees were liable to pay service charges when they had not been certified by an accountant. The first tier tribunal (FTT) held that the appellants' service charge demands were ineffective since they had been made after the end of the service charge year and when that was the case it was a condition precedent to a valid demand that an accountant's certificate had been obtained. The FTT held that an agreement between the appellants and previous lessees that certification was not required did not affect the lessees' legal entitlements.

Held: The freeholders' appeal against the FTT's ruling was allowed.

i. The lessees' primary obligation was to pay the service charge on demand as set out in Clause 2(2)(ii). The ascertainment and certification of the service charge pursuant to Clause 2(2)(iii) was a confirmatory procedure and not a precondition to the ability of the management company to seek payment of the general expense. The words "without prejudice" reinforced this conclusion. The absence of a certificate did not, therefore, prevent the appellants from claiming the service charges due and owing after the end of the financial year.

ii. Even if, on a strict interpretation of the lease, certification had been a prerequisite of the liability to pay service charges, the lessees could no longer rely on this owing to the agreement between the appellants and the former lessees which had led the appellants, to their detriment, to assume that no certification was required. Over a period of 19 years the respondent lessees and their predecessors had accepted and paid demands without requiring certification. This was a course of conduct giving rise to an equitable estoppel which prevented the respondents from seeking to assert that there should now be a certification process in accordance with the standard lease provisions.

04 Statutory Instrument

SI 2015/1646 The Assured Shorthold Tenancy Notices and Prescribed Requirements (England) Regulations 2015

W.e.f. 01.10.15 these Regulations introduce a new form for a s21 Housing Act 1988 notice informing a tenant that the landlord intends to seek recovery of possession of a property let under an assured shorthold tenancy and new restrictions on the use of the "no fault" eviction procedure for assured shorthold tenancies when a landlord has not complied with certain obligations. Landlords are required to provide tenants with gas safety certificates and energy performance certificates and the "no fault" eviction procedure for assured shorthold tenancies is not available to landlords at a time when either of these requirements has not been complied with. This also applies to the requirement to provide tenants with a copy of the DCLG's booklet entitled "How to rent: the checklist for renting in England".

http://www.legislation.gov.uk/uksi/2015/1646/contents/made

If you require advice on landlord & tenant issues, contact Graham Foster on Tel. +44 (0)20 7653 6832 gfoster@geraldeve.com

PLANNING

05 Planning Court

Gypsies – caravan site – appeal against refusal of temporary planning permission for established gypsy site – Sec of State overruling recommendation of planning inspector – whether sufficient reasons for doing so – bias

*ALLEN V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2015] PLSCS 256 – Decision given 19.08.15

Facts: A and his family were gypsies living near to the village of Bletsoe, Bedfordshire on a caravan site with a temporary planning permission until June 2012. A's appeal against the decision of the lpa to refuse his application for a permanent permission was recovered by the Sec of State for his own determination. Following a public inquiry the planning inspector appointed by the Sec of State recommended the grant of a further two-year temporary planning permission on the basis that there was a current unmet need for gypsy sites in the area. Although the lpa had granted planning permission for another site (Meadow Lane) in the area it was uncertain whether that site could provide a satisfactory living environment due to various issues relating to noise, inaccessibility and unpleasant odours. The Sec of State disagreed with the inspector's conclusion and issued a decision letter refusing permission. The letter stated that the lpa would overcome the problems at the Meadow Lane site which would meet the current unmet need for caravan pitches.

Point of dispute: Whether to allow A's challenge to the Sec of State's decision to refuse permission. A argued that the Sec of State had given inadequate reasons for disagreeing with the conclusions of his inspector and that he had shown bias against A in the way in which he had treated the inspector's findings and in his treatment of planning appeals relating to gypsies and travellers generally.

Held: The appeal was allowed.

i. The main issue was whether the Sec of State had properly grasped the inspector's findings of fact and conclusions about the contribution of Meadow Lane to the supply of caravan pitches. Issues relating to suitability of the site had to be addressed – the Sec of State's decision letter did not identify any finding of fact, or any planning judgement made by the inspector in relation to the environmental issues at Meadow Lane, or its suitability as a place to live with which he disagreed. His conclusion that the local council would overcome the problems at the site was inadequately explained and without any evidence to support it. The Sec of State's decision should be quashed because he had failed to give adequate reasons for his decision and had failed to grapple adequately with the principal issue.

ii. However, A's arguments regarding bias were misconceived; there was no evidence of bias by the Sec of State in his decisions on planning appeals relating to gypsies and travellers. The Sec of State's decision to recover jurisdiction to decide the appeal himself was not a matter which could be challenged under s288 of the Town and Country Planning Act 1990. There was nothing wrong in law with him being both policy maker and decision maker.

06 CLG Publication

Improving planning performance: criteria for designation

This document sets out the government's criteria for assessing local planning authority performance which have recently been revised following publication of the productivity plan "Fixing the foundations".

https://www.gov.uk/government/publications/improving-planning-performance-criteria-for-designation

07 CLG Consultation Response

Planning and travellers: proposed changes to planning policy and guidance

This document sets out the government's response to the consultation on planning and travellers which was undertaken in the autumn of 2014 due to various issues having arisen, including:

- the perception that some groups had been securing planning permissions in inappropriate locations, fuelling community tensions and undermining public confidence in the planning system;
- the need for local authorities to plan positively in order to address their accommodation needs and to update annually their supply in order to provide five years worth of deliverable sites;
- concern about protection of sensitive and Green Belt areas; and
- concern about travellers who ignore planning rules and occupy sites without permission.

https://www.gov.uk/government/publications/planning-and-travellers-proposed-changes-to-planning-policy-and-guidance-consultation-response

08 DECC and CLG Policy Statement

Shale gas and oil policy statement by DECC and DCLG

This statement expresses the government's view that there is a national need to explore and develop the UK's shale gas and oil resources in a safe, sustainable and timely way and the steps it is taking to support this. This statement is to be taken into account in planning decisions and plan-making.

https://www.gov.uk/government/publications/shale-gas-and-oil-policy-statement-by-decc-and-dclg

09 Parliamentary Research Briefing

Planning Reform Proposals

This note sets out the reforms that the government intends to make to the planning system in order to make it quicker and simpler to use. These proposals are set out in:

- the Productivity Plan;
- the Conservative Party's Manifesto; and
- the May 2015 Queen's Speech.

http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06418

10 CLG Statistical Publication

Planning applications in England: April to June 2015

This release contains statistics relating to planning applications received and decided including decisions on applications for residential developments (dwellings) and enforcement activities. The following are of note:

- in the quarter April to June 2015 11,300 residential applications were granted, 10% more than in the same quarter in 2014;
- in the year to June 2015 362,800 applications were granted, up 4% higher on the year ended June 2014; and
- 44,900 of these decisions were for residential developments, 5,700 for major developments and 39,200 for minors.

https://www.gov.uk/government/statistics/planning-applications-in-england-april-to-june-2015

If you require advice on planning & development issues, contact Hugh Bullock on Tel. +44 (0)20 7333 6302 hbullock@geraldeve.com

RATING

11 Upper Tribunal (Lands Chamber)

Rating of new premises – service of Completion Notice – whether CN addressed to "the owner" valid – whether delivery to building receptionist valid

**WESTMINSTER CITY COUNCIL V UKI (KINGWSAY) LIMITED AND DUNLEVEY (VO) [2015] UKUT 0301 (LC) Decision given 28.07.15

Facts: WCC served a Completion Notice (CN) for a redeveloped unoccupied building (3rd-6th floors, 1 Kingsway, WC2), addressed to the "Owner, 1 Kingsway, London WC2B 6AN". It was hand delivered to the receptionist of the facilities management (FM) company employed by the owner (UKI (Kingsway) Ltd) to manage the building. The receptionist emailed a scanned copy to the owner within seven days. Neither the FM company nor the receptionist had authority to accept legal documents on behalf of the owner. The validity of the CN was challenged and a separate proposal to delete the assessment served on the VO. The VT agreed with the ratepayer that the CN was invalid because it was not addressed to the owner by name and, secondly, because it had not been validly served.

Point of dispute: (i) Whether a CN is invalid if it fails to state the name of the intended recipient (there was no suggestion that reasonable enquiries had failed to ascertain that name); and (ii) whether a CN delivered to the building addressed to the "Owner" was validly served.

Held: The WCC's appeal was allowed. The CN does not need to state the name of the intended recipient, albeit this would be preferable and is usually not difficult to ascertain. A valid CN only needs to identify the premises to which it relates and the completion date. There is no prescribed form. WCC's failure to make reasonable enquiries to ascertain the identity of the owner of the premises was not relevant. Although delivery to the receptionist was not in itself valid service, service validly occurred when the CN was then forwarded electronically to the building owner. The fact that the owner appealed the notice within the statutory 28 day time limit was proof that service had been effectively achieved. Provided that the intended recipient receives the notice the mode of service is irrelevant.

Editor's note: The ratepayer is seeking leave to appeal the decision

12 CLG Consultation

The decapitalisation rates for the 2017 business rates revaluation
Deadline for comments: 09.11.15

The next revaluation for business rates will take effect from April 2017. Rateable values will be updated by the Valuation Office Agency using market rental values as at 01.04.15, but in cases where there is no rent the contractor's basis of valuation will be used. This technical discussion paper seeks views on setting the decapitalisation rates to be adopted when properties are valued using the contractor's basis for the 2017 revaluation.

https://www.gov.uk/government/consultations/the-decapitalisation-rates-for-the-2017-business-rates-revaluation

If you require advice on rating issues, contact Jerry Schurder on Tel. +44 (0)20 7333 6324 jschurder@geraldeve.com

HOUSING

13 HCA Statistical Publication

Housing market bulletin – August 2015

The housing market bulletin provides the latest information on the housing market, the economy and the housebuilding industry. The information is drawn from several different sources, including house price changes from the top house price indices, housing market forecasts, housing starts and completions as reported by the DCLG and updates on key housebuilders. In August it was recorded that:

- national house prices are increasing at a slower rate than at the same time last year, but nevertheless average price rises remain strong; and
- the seasonally adjusted number of home sales has been steady for at least the last 12 months at around 100,000 homes per month.

https://www.gov.uk/government/publications/housing-market-bulletin

14 Parliamentary Research Briefing

Extending the Right to Buy (England)

This briefing explains the Government's proposal to extend the Right to Buy to assured tenants of housing associations. This measure, which is proving to be controversial, requires primary legislation and will be included in a forthcoming Housing Bill.

http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7224#fullreport

15 CLG Statistical Release

House building in England: April to June 2015

This release presents figures on new build housing starts and completions in England.

- It is estimated that there were 33,280 house building starts in England in the June quarter, 14% fewer than in the previous quarter and 6% fewer than in the same quarter of 2014.
- It is estimated that there were 35,640 housing completions in the June quarter of 2015, 4% more than in the previous quarter, but up 22% on the same quarter of 2014.
- Seasonally adjusted housing starts are 94% above the trough in the March quarter of 2009 but 32% below the March quarter 2007 peak. Completions are 26% below their March quarter 2007 peak.
- There were 136,320 housing starts in the 12 months to June 2015, just 1% fewer than the year before, while annual housing completions totalled 131,060 over the same period, an increase of 15% compared with the previous 12 months.

https://www.gov.uk/government/statistics/house-building-in-england-april-to-june-2015

16 Bond Dickinson and Quod commissioned Report September 2015

Housing – Nationally Significant Infrastructure?

This report was commissioned by Bond Dickinson LLP and planning consultants Quod to explore the question of whether large scale housing development could be brought forward more successfully by using the consent regime that is available for Nationally Significant Infrastructure Projects (NSIPs) under the Planning Act 2008. At present housing is excluded from the NSIP regime although proposals were included in the July 2015 budget to legislate "to allow major infrastructure projects with an element of housing." Advocates of extending the NSIP regime to include housing schemes argue that the complexity and uncertainty associated with the current planning regime and problems of delivering infrastructure and with compulsorily acquiring land are a major impediment to the delivery of large scale development and much needed housing.

http://www.bonddickinson.com/insights/publications-and-briefings/report-housing-%E2%80%93-nationally-significant-infrastructure

REAL PROPERTY

17 High Court

Sale of property – specific performance – time of the essence – notice to complete

*HAKIMZAY LTD V SWAILES
[2015] PLSCS 259 – Decision given 25.02.15

Facts: The parties exchanged contracts for the sale of a residential property by the defendant to the claimant. The contract, which was governed by the Standard Conditions of Sale Fifth Edition, provided that the property would be sold with vacant possession on completion and a 10% deposit was paid by the claimant purchaser. At the time of exchange the property was occupied by a number of tenants under an assured shorthold tenancy, but the defendant failed to remove them from the property in time for the completion date. The claimant served notice to complete but the defendant was not in a position to complete until several days after the deadline set by the notice had passed. The claimant did not rescind the contract but requested a compensatory price reduction of £10,000. The defendant notified the claimant that the tenant had vacated the property and five days later, after the claimant had failed to complete, served a notice rescinding the contract.

Point of dispute: The claimant brought proceedings for specific performance of the contract with an award of compensation. The defendant counterclaimed for a declaration that he had validly terminated the contract and that the deposit paid to him had been forfeited.

Held: The claim was allowed.

i. A party who was in the right, in this case the claimant, who had allowed the defaulting party to try to remedy his default after an essential date had passed, could not then call off the contract without first warning the defaulting party and setting a new time limit which was reasonable in the circumstances. It followed that the defendant could not do so either.

ii. In this case there had been no attempt to specify a further date, performance by which was to be of the essence of the contract. A new notice to complete would have been needed. However, even if that was wrong, by analogy with the contractual provisions and having regard to the facts of the case, more than two clear working days notice by the defendant would be required in any event. The defendant had not been entitled to serve his notice of rescission which had been ineffective in bringing the contract to an end.

18 Administrative Court

Application to register land as town or village green – objection application for judicial review to quash decision – whether inspector erring in law by placing reliance on inferred re-appropriation of land by council

*R (ON THE APPLICATION OF GOODMAN) V SEC OF STATE FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS
[2015] PLSCS 267 – Decision given 30.07.15

Facts: Eastern Fields was an area of open land owned by Exeter City Council (ECC). The Exeter Local Plan contained a proposal allocating the most southerly part of the land for employment use. ECC formally appropriated the land from recreational use to industrial uses. An application was made to register the whole of Eastern Fields as a town or village green. A public inquiry was held at which the claimant, G, gave evidence in support of the application while ECC was the principal objector. In relation to part of the land that had been allocated to employment use, and some former railway sidings, the inspector came to the tentative conclusion that the land had been re-appropriated to open space and that the use of the land by the public had been "by right". Its use was such that reasonable people would have concluded that they were let onto the land by virtue of ECC's implied consent. The application was therefore refused.

Point of dispute: Whether to allow G's application for judicial review of the decision to refuse to register the land as a town or village green. G argued that the inspector: (i) had misdirected himself in law in concluding that reliance could be placed upon the inferred re-appropriation of the land; and (ii) had failed to have regard to two important material considerations, the public ownership of the land and the nature and quality of the events that had been held on it. If ECC had not re-appropriated the land to open space its use must have been "as of right" rather than "by right".

Held: The application was granted.

i. Appropriation from one use to another could not simply be inferred from how the council managed or treated the land. However, for land which was open space there was a prescribed statutory process contained in the consultation requirements in s122(2A) of the Local Government Act 1972. Having allocated the land to employment use the s122 test was not satisfied. The inspector had misdirected himself in concluding that an appropriation for land to open space could be inferred from planting trees on the land and that misdirection was fatal to his reasoning.

ii. The inspector had failed to have regard to two key and distinct features of the case: the fact that the land was in public ownership and the nature and character of events which had taken place on the land which were arguably not inconsistent with a public entitlement to use the land.

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CONTRACT

19 High Court

Sale of development land with overage clause in contract – onward sale of whole or part of property subject to condition requiring purchaser to provide covenant to comply with overage obligations – exceptions for "permitted disposals" – whether sale of affordable housing units to registered social landlord a permitted disposal

*BURROWS INVESTMENTS LTD V WARD HOMES LTD
[2015] PLSCS 266 – Decision given 14.09.15

Facts: In 2007 the claimant sold land in Camber, East Sussex to the defendant with planning permission for residential development. The contract contained an overage clause which would apply in certain circumstances if the finished units were sold on. Clause 4.9 contained a covenant by the defendant not to dispose of the whole or part of the property without satisfying certain conditions, including obtaining a covenant by the purchaser to perform the overage obligation in respect of the whole of the property. These conditions would apply unless the sale was a "permitted disposal" as defined in Clause 1.1. The defendant obtained planning permission to build more units on the property, subject to a requirement to provide five affordable housing units. These were sold to a private registered provider of social housing but this did not trigger any obligation to pay overage to the claimant.

Point of dispute: Whether the claimant could succeed in its claim for damages against the defendant. It contended that the defendant was in breach of contract by selling part of the property without complying with the conditions. The defendant argued that the sale fell within one or more of the permitted exceptions in clause 1.1 namely: (a) a "residential disposal" meaning the sale of one or more units to an "individual private purchaser or a third party investor" in the open market at arm's length; or (c) the transfer, dedication/lease of land for "social/community purposes".

Held: The claim was dismissed.

i. Clause 4.9 was intended to apply to the sale of the property as a whole to another developer and the words "or part of it" were intended to prevent the obligation being avoided by selling it all apart from a small part. Disposing of a small number of residential units to a social landlord was not intended to trigger the clause 4.9 obligation.

ii. The sale of five units to a registered social landlord was a "residential disposal". An "individual private purchaser" could encompass a sale to a private company such as a registered social landlord. The sale therefore fell within clause 1.1(a) provided it was carried out at arm's length in the open market. The fact that the affordable housing units could only be offered for sale to registered social landlords did not prevent a class of such landlords from constituting an "open market" provided it was not a private deal on a confidential basis but was open to other registered social landlords. There was insufficient evidence to be able to make that determination as a finding of fact.

iii. The sale to the registered social landlord qualified as a permitted disposal as a sale for "social/community" purposes within clause 1.1(c).

iv. Even if the sale of the affordable housing units had been in breach of the 2007 contract the claimant would not have been entitled to substantial damages. Clause 4.9 was intended to protect the claimant's overage payment and since no overage had become due at the outset of the transaction the claimant had suffered no loss by reason of the defendant's purported breach of the clause and it would only be entitled to compensatory damages of a nominal sum.

CONSTRUCTION

20 Mayor of London Report

Creating benchmarks for cooling demand in new residential developments

Overheating in homes is increasingly being recognised by the building industry as a significant and growing problem leading to adverse effects on the health, comfort and productivity of inhabitants. This report describes the outcomes of a study recently carried out for the Greater London Authority aimed at developing good practice cooling energy demand set of benchmarks for typical apartment dwelling types currently being developed in London. The benchmarks are based on the dwelling designs including reasonable design measures to reduce the need for active cooling and the risk of overheating.

If you require advice on construction issues, contact Richard Fiddes on Tel. +44 (0)20 7333 6294 rfiddes@geraldeve.com

http://www.london.gov.uk/priorities/environment/publications/creating-benchmarks-for-cooling-demand-in-new-residential

GENERAL

21 TCPA Publications

The TCPA Garden City Principles
New Towns and Garden Cities: Lessons for Delivering a New Generation of Garden Cities

The TCPA has called on the government to learn from the Garden City and post-war New Towns programme and initiate a local authority-led process to designate new Garden Cities as a means of addressing the current housing crisis.

The TCPA considers that the following are the ten principles necessary to achieve the title Garden City:

- Land value capture for the benefit of the community;
- Strong vision, leadership and community engagement;
- Long-term stewardship of assets;
- Mixed-tenure homes and affordable housing types;
- A range of employment opportunities within commuting distance;
- Imaginatively designed homes with gardens;
- Development which enhances the natural environment;
- Cultural, recreational and shopping facilities in walkable neighbourhoods;
- Integrated and accessible transport systems; and
- A strategic approach.

As part of its campaign to make the 21st century Garden City a reality the TCPA has produced a number of documents which deal with practical matters, and contain detail and case studies on issues such as planning, investment, land assembly, delivery, and long-term stewardship.

http://www.tcpa.org.uk/pages/garden-cities.html

http://www.tcpa.org.uk/resources.php?action=resource&id=1263

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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.

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Abbreviations
The following abbreviations are used in evebrief:

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

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

*** Essential reading on the point of law or valuation with which the case is concerned, because it adds to, or clarifies or changes, the law.

** Noteworthy case which does not significantly alter the law or which relates to a relatively obscure point.

* Interesting but non–essential reading.

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EVEBRIEF

Legal & Parliamentary

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SCOTLAND

RATING

01 Scottish Government Consultation

Consultation on the setting of Decapitalisation Rates
Deadline for Comments: 23.11.15

This consultation considers prescription of the decapitalisation rate to be used when subjects are to be valued using the contractor's basis. The paper examines the methodologies available to reach the rates but does not suggest a preferred option.

http://www.gov.scot/Publications/2015/08/9606

02 Scottish Government Publication

Business Rates Valuation Appeals System – Independent Analysis

- In 2012 the Scottish Government undertook a consultation on reforms to the business rates system (Supporting Business – Promoting Growth). As part of its response, the Scottish Government is undertaking a review of the valuation appeals system. A public consultation on the non-domestic rating valuation appeals system initiated that process.
- The consultation invited open written responses and sought views on how the operation, transparency and efficiency of the valuation appeals system might be improved.
- This is an independent analysis of all the responses received to the Business Rates Valuation Appeals System Discussion Paper.

http://www.gov.scot/Publications/2015/09/1764

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GERALDEVE

GENERAL

03 Consultation on transfer of functions and members of the private rented housing panel and homeowner housing panel to the Scottish Tribunals and composition of the First Tier Tribunal when hearing housing and property cases

http://www.gov.scot/Publications/2015/09/9987

WALES

PLANNING

04 Statutory Instrument

WSI 2015/1598 The Town and Country Planning (Local Development Plan) (Wales) (Amendment) Regulations 2015

These Regulations, which came into force on 28.08.15, make changes to the 2005 Regulations.

http://www.legislation.gov.uk/wsi/2015/1598/contents/made

05 Welsh Government Consultation

Proposed changes to Planning Policy Wales Chapter 10 and Technical Advice Note 4: Retail Centre Development
Deadline for Comments: 26.11.15

PPW promotes established retail centres as the most appropriate locations for retailing and other complementary functions. The aim of this review is to update PPW Chapter 10 and TAN4 so that it is line with the Welsh Government's objective of enhancing the vitality, attractiveness and viability of established centres.

http://gov.wales/consultations/planning/proposed-changes-to-ppw-and-tan-4/?lang=en

06 Welsh Government Consultation

Consolidation of the Environmental Permitting Regulations
Deadline for Comments: 27.10.15

The Department for Environment, Food and Rural Affairs and the Welsh Government intend to consolidate the Environmental Permitting (England and Wales) Regulations 2010, as amended. No change in policy, or to the overall structure and content of the Regulations, is intended within the consolidation. It is intended that the new consolidated Regulations will come into force on 01.01.17.

http://gov.wales/consultations/environmentandcountryside/150819-consolidation-of-the-environmental-permitting-regulations/?lang=en

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