

NI Property Law Update

Gary Rocks, Commercial Property Solicitor with Mills Selig discusses developments in property law that have occurred in 2011.

Rates and Empty Homes:

From 1st October 2011 Landlords will no longer benefit from the 100% rates discount for empty houses. There are however a number of exclusions, including:

- the property has a rateable capital value of less than £20,000.00;
- where the owner is a developer of a new home completed during the period 1 April 2007 and 31 March 2012 and which has never been occupied the owner benefits from an 18 month exclusion period from payment of rates. If the property is completed from 1 April 2012 onwards then the owner will benefit from a 12 month exclusion period;
- the property is a listed building;
- the owner is in care or imprisoned;
- the owner is subject to a bankruptcy order; or
- the property can't be occupied due to the actions of a public body.

Landlords should check the nature of rates allowances that they currently claim in relation to their property portfolio before seeking the benefit of the above exclusions.

Dematerialisation of the Land Certificate

The Land Registry of England and Wales has for many years operated a system of paperless title but the Electronic Registration (NI) Order 2011 and the Land Registration (Amendment) Rules (Northern Ireland) 2011 which took effect as of 3rd October 2011, sees the Land Registry of Northern Ireland's move towards dematerialisation of the land certificate. This means, subject to certain exceptions, it will no longer be necessary to lodge a land certificate with all new land registry applications. The intention is that land certificates will become obsolete in time.

Planning Act (NI) 2011

The Act sees a radical change to the current planning system by transferring planning powers from the Planning Service to District Councils, much like the system in England and Wales. In practice the transfer of these powers will not occur until 2015. The Planning Service will still retain responsibility for legislation, policy and guidance on planning matters and regionally significant planning applications.

Some of the other significant changes that the Act introduces are an overhaul of the Appeals system by reducing the Appeal period from 6 months to 4 months, the award of costs following an appeal, a standardised enforcement period of 5 years for all development, fixed penalty notices for non-compliance with enforcement notices or breach of condition notices, maximum fines increased from £30k to £100k and statutory timeframes in which consultees are required to respond.

The changes that have been brought about by the Act are an effort to create a more streamlined, speedier and simpler planning system in Northern Ireland which is aimed at creating a positive development management culture.

Breach of Rights of Light: Mandatory Injunction or Damages?

Normally, a developer who is in breach of a third party's right of light was penalised by way of an award to the injured party of damages in lieu of an injunction, however the Court of Appeal has seen the award of a mandatory injunction to an injured party requiring a developer to demolish the offending part of the development which infringed the third party's right of light. Recent case law, in particular HKRUK II (CHC) Ltd v



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Heaney [2010] has upheld this ruling and is a warning sign to developers and their advisors that infringement of rights of light cannot be bought off at the start of or during a trial and it is therefore necessary for the developer to attempt to resolve potential claims before commencing works.

Business Tenancies Reform

Following a consultation process carried out by the NI Law Commission it is proposed that whilst the current prohibition of "contracting out" of the Business Tenancies (NI) Order 1996 ("the Order") will remain, there is to be a relaxation with regard to leases which form part of larger complex transactions such as those connected with outsourcing, supply and franchise agreements. It is proposed that for such leases the solicitors acting for both landlord and tenant would jointly certify that the lease was part of a complex transaction and that the requirements to the exemption from the Order were satisfied. If these changes are made law in the Assembly it will bring Northern Ireland into sync with the laws of England and Wales and the Republic of Ireland thereby providing companies investing in Northern Ireland with more certainty in relation to Landlord and Tenant law.

When are defective premises defective?

The recent case of *Jenson v Faux* held that if a claim for defective works to a property did not arise out of the creation of a new dwelling then the Defective Premises Act 1972 did not apply even if the works carried out were quite substantial, which in the *Faux* case consisted of an exterior extension and a substantial basement extension. The court's confirmation of the limited applicability of the Act to refurbishment and renovation works will be of relief to builders and contractors carrying out such works within the UK.

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