



Welcome to the autumn edition of the Maples Teesdale newsletter – inside you will find Partners' opinions on current marketplace and property issues.

Empty Commercial Buildings

From 1 April 2008 the provisions of The Rating (Empty Property) Act 2007 come into force changing the business rates applicable to empty buildings.

Currently vacant commercial buildings such as shops and offices benefit from a 3 month exemption from business rates after which rates are levied at 50%.



Vacant industrial buildings are exempt from business rates altogether.

As of 1 April 2008, however, empty commercial and industrial buildings will be liable for full business rates following an initial rate-free period of 3 months and 6 months respectively. Complete exemptions from business rates will apply in the case of empty buildings owned by charities or community amateur sports clubs, empty buildings where the rateable value is less than £2,200 and empty buildings in such poor condition that repairing them is uneconomical.

The Government hopes that these reforms will encourage landlords to bring empty properties back into use through letting, redevelopment or sale. In turn it is hoped that this will improve the competitiveness in the market, reduce rental costs and discourage the need to develop greenfield sites.

Buying a company to buy a property?

If you want to acquire a property by buying the company that owns it, you may currently have to comply with technical procedures relating to "financial assistance". From October 2008, these procedures will no longer be required.

When you borrow money to buy a property, you will normally give the lender a mortgage over the property. However, if a company owns the property and, instead of buying the property, you buy the company,

the legal position at the moment is more complicated.

If you borrow money to buy the company and give the lender a mortgage over the property, that will constitute "financial assistance" for the purpose of the purchase of the company's shares. Under section 151 of the Companies Act 1985, financial assistance is unlawful and the directors who allow it will be guilty of a criminal offence, unless they carry out a "whitewash".

continued overleaf...

Maples Teesdale nominated in this year's LawWorks Pro Bono Awards

Laura Cotton's work for the community group has been commended...

"Through LawWorks we were put in contact with Laura Cotton at Maples Teesdale and she examined the lease on our behalf. Her strong advice was that the lease positively obliged the charity to use the building for community purposes, and the rent for the building should therefore be lower than for commercial premises. This enabled us to negotiate a settlement whereby rent will increase by RPI rather than the 120% that was originally sought."

LawWorks



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Before 1981, the prohibition on financial assistance was absolute. It was thought to be a great evil for an unscrupulous corporate raider to fund the purchase of a company by using the assets of the target company. This was apparently contrary to the interests of the company's business and its creditors and might result in the ruin of the business, when the assets were sold off to repay the debt.

In 1981, the prohibition was relaxed by the introduction of the "whitewash" procedure for private companies. This procedure was intended to allow the unscrupulous raiders to resume acting as they had previously, provided that this did not result in the company becoming insolvent.

The whitewash procedure requires the directors to make a statutory declaration to the effect that the company can pay its debts and will be able to pay its debts as they fall due over the following twelve months.

To guard against the directors treating this declaration too casually, it must be supported by a report from the company's auditors, confirming that they are not aware of anything unreasonable in the directors' declaration, and by a special resolution of shareholders.

The Companies Act 2006 will bring the position full circle by abolishing the prohibition altogether for private companies, with effect from October 2008. It will no longer be necessary to go through a whitewash procedure. It seems that the aim of reducing red tape has triumphed over the principle of protecting unsecured creditors.

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Flooding Risks and Insurance Issues

The effects of climate change have resulted in more areas being flooded, or being at risk of flooding than ever before.

The Association of British Insurers (ABI) are lobbying the Government to spend more on flood defences. In the meantime the ABI continues to provide flood insurance. However, the availability of such cover is not guaranteed and the premiums are certainly likely to rise.

It is important for developers and property investors to be aware of flooding as a possibility and to check the continuing availability of flood insurance for their properties.

In December 2006 the Government published Planning Policy Statement 25 – Development & Flood Risks. This aimed to ensure that flood risk

was taken into account at all stages in the planning process and sought to avoid inappropriate development in areas at risk of flooding.

If flood insurance is removed from specific areas then effectively damage to property becomes an uninsured risk. The 2007 Commercial Lease Code supported by the British Property Federation and a wide section of the property industry puts the risk of uninsurable risks in commercial property firmly on to the property owner. This follows the terms of many modern leases. The tenant is neither expected to pay for repairs nor pay rent during the time that the building is unusable. So this issue is likely to become more important in the future.



"... if flood insurance is removed from specific areas then effectively damage to property becomes an uninsured risk."

...and NEWS



CONSTRUCTION UPDATE

A note on withholding payments

A party under a construction contract is entitled to withhold payment of sums due under that contract only where correct procedures are followed. If the contract contains suitable provisions then those contract terms will apply and must be followed in order for payments to be validly withheld. If the contract does not adequately deal with these issues a statutory scheme will apply.

Under that scheme a party may not withhold payment without having first served an effective notice of intention to withhold payment, at least 7 days before the final date for payment of the sum due.

Clients should be aware that it is possible for the contract terms and the statutory scheme to apply in unison. It is crucial that any client considering withholding obtains adequate legal advice in plenty of time as to the necessary procedure in their particular case.

Should a party fail to follow the relevant procedures, any withholding of sums due will be invalid and will leave that party open to the penalties imposed by the contract and/or by law for non-payment. Commonly this will result in interest falling due on the sums withheld and eventually possibly termination of the contract or litigation.

Landlords to be robbed of self-help remedies

Landlords will be disappointed to hear that they are shortly to be deprived of one of their most archaic but potent rent recovery weapons, distraint and are likely subsequently to be deprived of another powerful remedy, peaceful re-entry.

Abolition of Distraint

Part 3 of The Tribunals, Courts and Enforcement Act, which received Royal Assent in July, abolishes the common law right of distraint and replaces it with a watered down statutory right known as Commercial Rent Arrears Recovery or "CRAR". This part of the Bill has not yet come into force but it is likely that it will do so next year.

CRAR will only be available in respect of fully commercial premises with no residential element, will be limited to the main rent and not additional "rents" such as service and insurance charges and, most significantly, will require some notice to be given to the tenant before the bailiffs attend the premises.

This, of course, might in some circumstances (such as a tenant insolvency) defeat the value of distraining as the tenant is likely to take the opportunity to remove its goods from the premises as soon as it has received notice of the impending visit.

Proposed Abolition of Peaceful Re-entry

The draft Landlord and Tenant (Termination of Tenancies) Bill (which is yet to be presented to Parliament) essentially proposes to replace the present law on forfeiture with an alternative statutory scheme. The most significant change is the recommended abolition of the powerful self-help remedy of peaceful re-entry which presently allows a landlord to forfeit the lease immediately and without notice for rent arrears simply by entering the premises and changing the locks (subject to the tenant's right to apply for relief). The draft Bill proposes a weaker summary termination procedure for rent arrears, which will not offer a landlord such a powerful and immediate remedy.

CDM Regulations – Practical impact?

The Construction (Design and Management) Regulations 2007 came into force on 6 April 2007 and their practical effects on projects are now becoming clearer. In particular:

- In terms of timetabling, both the CDM Co-ordinator and Principal Contractor must

now be appointed much earlier than was the case under the old regulations and this must be carefully considered at the inception stage of a project.

- Before the construction phase begins, site welfare facilities must be in place and the employer must have given the contractor a period of time for planning and assessing health and safety issues. This is resulting in a time gap between the letting of a building contract and the start of works on site.

There are criminal sanctions for breach, which may not be insured against or transferred. Employers must therefore be fully aware of the requirements of CDM at the commencement of every project, particularly in terms of timetabling.



In brief...

The Government has announced that it has decided to scrap its controversial planning-gain supplement ("PGS") proposals.

The PGS was a proposed development tax through which the Government hoped to capture a proportion of the uplift in land value following the grant of planning permission. The decision to scrap this was announced in the October Pre-Budget Report after consultation with the property industry.

The Government now proposes to introduce a tariff-based solution along the lines suggested by a pan industry group comprising the British Property Federation, Home Builders Federation, Major Developers Group and London First. We await further details.

Chambers Guide 2007

The recently published Chambers Guide 2007 says about us:

"This boutique property firm "provides a very attentive service, with a lot of resources and experience on offer" according to clients, who also talk of "swift commercial advice, at a reasonable cost." Such client recommendation, combined with a genuinely partner-led service and a broad experience of complex deals has pushed this firm to the fore."

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We are very pleased to have been appointed to the panel by Rreef which is the real estate investment management arm of Deutsche Bank. We won this work in a competitive tender. Other new clients this year include P & O Estates and IVG Asticus.



Deutsche Bank 



Events

As well as being busy over the summer and autumn months we have also hosted a number of client networking events, including our autumn drinks reception at Dartmouth House, a chocolate tasting evening and an evening at Leith's as well as RICS and Cambridge University Land Society events.

Our team at the RICS property quiz dinner finished a highly commendable 9th equal out of 80 teams!



Cambridge University
Land Society

We hosted a client clay pigeon shoot at the prestigious Holland and Holland Shooting Ground set in sixty acres of woodland and open country side just outside London.



Again we have been highly regarded by Legal Business and the Legal 500 publications. The editorial comments note a consistent City level service and a professional and commercial service.



Recent Deals

Maples Teesdale acts for US Government on sale of 20 Grosvenor Square, London.

We were delighted to act for The United States of America on the disposal of 20 Grosvenor Square, London.

The sale was completed in June and took two weeks from exchange to completion. It was the United States' largest diplomatic property sale to date.



We have been advising P & O Estates and Property Merchant Group

in a joint venture to redevelop three adjoining buildings at the junction of Regent Street and Margaret Street, London W1.

The buildings occupy a prime West End corner site of around 76,000 sq ft and provide an exceptional mixed use redevelopment opportunity of over 100,000 sq ft of offices retail and residential behind a retained Regent Street façade.

The joint venture is preparing a planning application for the proposed redevelopment. The value of the scheme, once redeveloped and let, is likely to be in excess of £175m.

