

Property News

Quarterly round up

Issue 5

Climate Change Bill: emissions targets

The Scottish Parliament's Transport, Infrastructure and Climate Change Committee is reviewing the interim targets for emissions cuts. The target for 2050 remains set at an 80% reduction. The Climate Change (Scotland) Bill, once enacted, would provide Ministers with wide framework powers to make secondary legislation in relation to the energy performance of buildings, which account for almost half of all emissions.

You can't stop the music

The sale of an Edinburgh music venue to a company promoting live music was regulated by a 'non compete' agreement preventing direct competition so that the seller would not lose custom at their other disco venue in Edinburgh. The purchaser began to run discos at their new venue and the seller sought a court order to prevent them from doing this on the basis of the agreement. The court considered the wording used in the agreement but decided that the discos were not in direct competition since the type of music, ambience and clientele were quite distinctive. (*Luminar Lava Ignite v. MAMA Group plc and ors*)

Purposive interpretation

A landowner erected padlocked barriers to prevent equestrian access to land because of the damage caused to the footpaths by allowing access. The wording of the Land Reform (Scotland) Act 2003, that the owner of land will not erect signs or barriers etc with the "purpose or main purpose" of deterring public rights of access, was considered. The court decided that the relevant section of the Act envisages many agricultural activities that might prevent responsible access but are permitted for the purpose of land management. Accordingly the barriers were allowed to remain. (*Tuley & anr. v. the Highland Council*)

Court parks problem

Two separate flats were sold from a development with allocated parking spaces. The problem was that one of the flat owners couldn't physically park his car when the other space was in use. The flat owner sued the developer in terms of the warranty the developer had given against eviction caused by defective title. The court said that describing part of the property as a car parking space did not imply any warranty as to the fitness and availability for that purpose and the 'buyer beware' principle should apply. The flat owner could use the 'parking space' property for other things (the examples given were parking a bike or sitting out with a chair and pot plants) and therefore the defect in title is not unquestionable, as the law requires. The court considered that the issues fell to be resolved by both owners and therefore deferred taking any decisions pending possible further proceedings. (*Holms & anr. v. Ashford Estates Limited*)

Hang on (for 20 years)

This case concerns a dispute over ownership of pipes and ducts for an air conditioning unit within an industrial unit, part of which encroached over an adjoining property. The pipes and ducts had been obliquely referred to as belonging to the unit in a title deed dating from 1983. The court ruled that where there is a tension between a property's boundaries and the location of pipes and ducts outside those boundaries, possession for the prescriptive period of twenty years would resolve any ambiguities. In answer to a fall-back argument, the court preferred Roman law to a recent House of Lords authority, in ruling that a servitude right of overhang was possible in Scots law and the supports for the pipes or ducts would fall within the right of support. (*Compugraphic International Limited v. Nikolic*)

New build date of entry not triggered

Contracts for the purchase of apartments contained a mechanism for determining the date of entry as being when the local authority building inspector passed the building as being 'habitable and fit for occupation'. The practice for triggering the mechanism that had developed was that the developer's solicitor would telephone the building inspector to confirm that the building had passed, on the understanding that the local authority paperwork would follow. However, in this case the buyer wanted to back out of the purchase of apartments and challenged that the date of entry had been properly determined. The court agreed, saying that the mechanism set up in the contracts was tied into the building control legislation and that a building could not be 'habitable' in terms of that legislation without the local authority's written approval. (*FM Finnieston v. Ross*)

Development Management Scheme

The Scottish Government has brought the Development Management Scheme into force with effect from 1 June 2009. The scheme provides detailed rules for the establishment and management of an owners' association for a development.

Budget 2009

The consensus is that there was very little in the Budget for property. The temporary increase in the nil rate SDLT band for residential property from £125,000 to £175,000 will be extended by three months, until the end of the year. We also have confirmation that the VAT rate will revert to 17.5% (and not some higher rate) at the end of the year. The Finance Bill contains 'anti-forestalling' provisions designed to prevent taxpayers from inappropriately exploiting this year's reduced rate for future transactions.

Proposed legislation

Historic Scotland is consulting on the proposed provisions of the Ancient Monuments and Listed Buildings (Amendment) (Scotland) Bill. Comments by August 14, 2009.

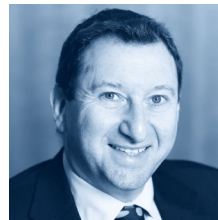
The Scottish Government has published a draft Housing Bill and consultation paper to "reinvigorate" social housing. Comments by 14 August 2009.

Parts of the Licensing (Scotland) Act 2005 will come into force at 5am on 1 September 2009, introducing the new liquor licensing regime.

This briefing note sets out a summary of the law at the time of writing and is for information purposes only. It should not be regarded as legal advice but if you would like more information please contact:



Caroline Drummond, Partner
+44 (0)131 473 6164
caroline.drummond@burness.co.uk



Lionel Most, Partner
+44 (0)141 273 6753
lionel.most@burness.co.uk

If you would like to opt out of future e-bulletins please contact webmarketing@burness.co.uk

Burness LLP

Edinburgh +44 (0)131 473 6000
Glasgow +44 (0)141 248 4933

www.burness.co.uk

50 Lothian Road, Edinburgh EH3 9WJ Fax: +44 (0)131 473 6006 DX ED73 LP60
120 Bothwell Street, Glasgow G2 7JL Fax: +44 (0)141 204 1601 DX GW154 LP5
Burness LLP is a limited liability partnership registered in Scotland (SO300380).

The registered office is at 50 Lothian Road Festival Square Edinburgh EH3 9WJ. Lawyers with offices in Edinburgh and Glasgow at which a list of partners is available for inspection.

© June 2009. Burness LLP. All rights reserved.