Recent news stories of interest

Journal of Building Appraisal (2007) **2**, 270–274. doi:10.1057/palgrave.jba.2950054

MARKETS

New York office market

A record high average asking rent for Manhattan was set in October as the class A figure hit \$63.26 per ft² besting the previous high of \$61.48 per ft² in April 2001. In addition, it was the largest month over month jump going back to 1991 with a 4.8 per cent spike from September's \$60.35 per ft². The class A vacancy rate for Manhattan continued to fall, slipping to 6.5 per cent from 6.8 per cent in September, its lowest figure since the 6.2 per cent of July 2001.

Source: Colliers, 13th November, 2006

US economic forecast

The economic data have become very confusing. The weaker-than-expected third-quarter GDP growth rate of 1.6 per cent has to be judged against the upward revisions in the employment data and the five-year low of 4.4 per cent in the unemployment rate. The weakness is believed by some to be temporary and that there will be a soft landing similar to the 1995 experience. The risk that the landing will turn hard, however, remains high.

Source: David Wyss, The Property Investors Association of Australia Inc, 14th November, 2006

European housing markets

Over the past year, residential property markets across Europe have continued to be active, as reflected by both real increases in house prices and the continuous growth in mortgage loans. For the EU as a whole, mortgage debt reached 47.5 per cent of GDP in 2005, up from 44.5 per cent in 2004.

Source: European Economic Forecast: The Storm Clouds Gather Over European Housing Markets, Standard & Poors, December 2006

EMPIRE STATE BUILDING

The Empire State building is to undergo a \$200m revamp that will halve the number of tenants and see the 5,000 visitors a day separated from the 15,000 workers. In January, owner W&M Properties will announce to the New York market a five-year plan to clear and refurbish much of the 2.2 million ft² of space on 76 floors. There will be a push to increase the lease lengths and raise the rents from the current average of \$32–\$33 to closer to \$50 per ft².

Source: Estates Gazette, 11th November, 2006

DILAPIDATIONS

Suggested declaration required under the Pre Action Protocol

This claim has been prepared by XYZ being the surveyor appointed/employed by the Landlord in this matter. It contains my true views and the overall figure claimed is a fair assessment of the Landlord's loss. I confirm that in making this assessment I have had regard to the principles laid down in the Royal Institution of Chartered Surveyors' Guidance Note on Dilapidations, the common law principles of how that loss should be calculated and, in relation to repairing covenants, Section 18(1) of the Landlord and Tenant Act 1927

AGENCY

Dishonest estate agents could face prosecution

Estate agents who knowingly inflate the value of houses or send out bogus mailshots could face prosecution under a bill to be proposed in this

week's Queen's Speech. Alistair Darling, the secretary of state for trade and industry, is preparing to bring in a new law to force estate agents to join an ombudsman scheme.

Source: Estates Gazette 12th November, 2006

WATER DAMPENS PROPERTY INVESTOR RETURNS

Water leaks, malicious damage and storms all impact on Landlords time and insurance premiums. The ability to 'bounce back' from an incident is vital, says insurer Zurich who advises tightening up on procedures to reduce incidents.

The insurer's own data (Table 1), updated annually, shows that escape of water remained the chief cause of insured loss to investors' property portfolios between 2004 and 2006, accounting for almost half (43 per cent) of settled claims in the last three years.

During this period the problem has cost an average of £1,760 per incident in settled claims with burst and leaking pipes, leaking domestic appliances and boiler and radiator defects on the premises being the top three sources.

Malicious and accidental damage claims were also consistent over three years (responsible for one claim in ten year on year). These gave rise to an average cost of just over £1,000. Burglary and theft rates, however, witnessed a slight decline, from one in ten in 2004 to below this in 2005 and 2006.

Over the last three years storm damage has resulted in average claim costs of over £2,000 per incident. The year 2005 brought the highest frequency of claims over the three years for this type of peril (at one in ten).

Table 1: Zurich insurance claims 2004–2006

Type of claim	%
Escape of water	43
Accidental damage	14
Malicious damage	11
Impact third party	5
Storm	6
Fire	3
Subsidence	2
Flood	1
Other	3

Loss incurred by fire prevailed as the most significant single cost averaging £10,500 per settled claim, despite ranking seventh in terms of frequency and accounting for only 3 per cent of settled claims over three years. Claims citing arson as a cause accounted for just under a third of those settled over three years in respect of this type of peril.

Zurich has the following advice for property investors on what they can do to minimise the potential for damage to their properties:

- Engage with local authorities regarding the protection and ongoing maintenance of rivers, streams and culverts.
- Ensure that all areas containing water pipes and equipment are adequately heated. Lag and trace heat any pipework and equipment sited in unheated areas, such as canopies or roof spaces to avoid burst pipes resulting from frost or ice.
- Where possible, re-route water pipes that pass through vulnerable areas, such as data processing facilities.
- Ensure that valley gutters, downpipes and storm drains are designed to cope with heavy rainstorms and that they are inspected and cleaned regularly.
- Store vulnerable stock at least 100mm off the floor, for example on pallets.
- Ensure that vulnerable stock is not stored directly below valley gutters.
- Introduce an effective maintenance regime for plumbing, rainwater equipment, etc.
- Dispose of rubbish carefully — a pile of rubbish, even when stacked neatly against your premises, is an easy target for children playing or anyone who wants to start a fire. So at night place combustible rubbish in a secure, preferably fully enclosed, metal container well away from the building.

ENVIRONMENTAL IMPACT — TIMING FOR PROVISION IN PLANNING PROCESS

R (on the application of Barker) v Bromley London Borough Council **House of Lords**

In December 2006 the House of Lords backed a decision by the European Court of Justice (ECJ)

in May 2006 that environmental impact assessments (EIA) can be required at both the outline and reserved matters stages. The ruling clears the way for a change in the UK's 1999 EIA regulations that the ECJ held were in violation of European law. The regulations had permitted an EIA to be carried out only before the grant of outline permission. The ECJ found that the UK's system of issuing outline consent with reserved matters was a 'multi-stage' process that might require an EIA at the reserved matters stage in order for full consent to be given. Upholding the decision, the House of Lords said that, although an EIA at the initial stage would normally be sufficient, a further assessment could be required if a scheme had significant environment effects not anticipated earlier.

Source: EGi Legal News, 6th December, 2006

LISTED BUILDING GUIDANCE TO LOCAL AUTHORITIES ON ENFORCEMENT

A new guide, published by the *Department of Communities and Local Government*, will help councils take enforcement action against those who ignore or flout the rules which protect the country's most historic buildings. The *Best Practice Guidance Note on Listed Building Prosecutions*, addressed principally at local authority conservation and planning officers, seeks to increase awareness of the powers held by councils and other prosecuting bodies as part of the listed building enforcement regime. A study showed that many local authorities do not have enough heritage cases for a dedicated heritage enforcement officer and that planning lawyers may also not have a specific expertise in heritage cases meaning an inconsistency of investigations and prosecutions across England. This guidance provides advice for local authorities on how to take forward prosecutions and make sure listed buildings are safeguarded for future generations to enjoy.

13TH NOVEMBER, 2006: NEW ASBESTOS REGULATIONS COME INTO FORCE

In detailed guidance, published on its website, Health and Safety Executive (HSE) explains that

the new regulations prohibit the importation, supply and use of all forms of asbestos. They continue the ban introduced for blue and brown asbestos in 1985, for white asbestos in 1999 and for second-hand use of asbestos products. This includes asbestos cement sheets and asbestos boards and tiles — including panels, which have been covered with paint or textured plaster containing asbestos.

HSE points out that the ban only applies to new use of asbestos. Anyone who comes across existing asbestos containing materials in good condition may leave them in place. They must, however, ensure that the condition of the asbestos-containing materials is monitored and managed so that they are not disturbed.

The Asbestos Regulations now include a new 'duty to manage asbestos' in non-domestic premises and a detailed explanation is set out in the 'Approved Code of Practice: The Management of Asbestos in Non-Domestic Premises' [<http://www.hse.gov.uk/asbestos/regulations.htm>].

The Regulations require mandatory training for anyone liable to be exposed to asbestos fibres at work (see regulation 10). This includes maintenance workers and others who may come into contact with or who may disturb asbestos (eg cable installers) as well as those involved in asbestos removal work.

When work with asbestos or which may disturb asbestos is being carried out, the Asbestos Regulations require employers and the self-employed to prevent exposure to asbestos fibres. Where this is not reasonably practicable, they must make sure that exposure is kept as low as reasonably practicable by measures other than the use of respiratory protective equipment. The spread of asbestos must be prevented. The Regulations specify the work methods and controls that should be used to prevent exposure and spread.

Worker exposure must be below the airborne exposure limit (Control Limit). The Asbestos Regulations have a single Control Limit for all types of asbestos of 0.1 fibres per cm³. A Control Limit is a maximum concentration of asbestos fibres in the air (averaged over any continuous 4-h period) that must not be exceeded.

In addition, short-term exposures must be strictly controlled and worker exposure should not exceed 0.6 fibres per cm³ of air averaged over any continuous 10-min period using respiratory protective equipment if exposure cannot be reduced sufficiently using other means.

Respiratory protective equipment is an important part of the control regime but it must not be the sole measure used to reduce exposure and should only be used to supplement other measures. Work methods that control the release of fibres such as those detailed in the *Asbestos Essentials task sheets* (<http://www.hse.gov.uk/asbestos/essentials/index.htm>) for non-licensed work should be used.

Respiratory protective equipment must be suitable, must fit properly and must ensure that worker exposure is reduced as low as is reasonably practicable.

Most asbestos removal work must be undertaken by a licensed contractor but any decision on whether particular work is licensable is based on the risk. Work is only exempt from licensing if:

- the exposure of employees to asbestos fibres is sporadic and of low intensity (but exposure cannot be considered to be sporadic and of low intensity if the concentration of asbestos in the air is liable to exceed 0.6 fibres per cm³ measured over 10 min);
- it is clear from the risk assessment that the exposure of any employee to asbestos will not exceed the control limit;
- the work involves:
 - short, non-continuous maintenance activities. Work can only be considered as short, non-continuous maintenance activities if any one person carries out work with these materials for less than 1 h in a seven-day period. The total time spent by all workers on the work should not exceed a total of 2 h; (<http://www.hse.gov.uk/asbestos/regulations.htm#notes#notes>)
 - removal of materials in which the asbestos fibres are firmly linked in a matrix. Such materials include: asbestos cement; textured decorative coatings and paints

which contain asbestos; articles of bitumen, plastic, resin or rubber which contain asbestos where their thermal or acoustic properties are incidental to their main purpose (eg vinyl floor tiles, electric cables, roofing felt) and other insulation products which may be used at high temperatures but have no insulation purposes, for example gaskets, washers, ropes and seals;

- encapsulation or sealing of asbestos-containing materials which are in good condition; or
- air monitoring and control, and the collection and analysis of samples to find out if a specific material contains asbestos.

Under the Asbestos Regulations, anyone carrying out work on asbestos insulation, asbestos coating or asbestos insulating board (AIB) needs a licence issued by HSE unless they meet one of the exemptions above.

Although you may not need a licence to carry out a particular job, you still need to comply with the rest of the requirements of the Asbestos Regulations.

If the work is licensable you have a number of additional duties. You need to:

- notify the enforcing authority responsible for the site where you are working (for example HSE or the local authority);
- designate the work area (see regulation 18 for details);
- prepare specific asbestos emergency procedures; and
- Pay for your employees to undergo medical surveillance.

The Asbestos Regulations require any analysis of the concentration of asbestos in the air to be measured in accordance with the 1997 WHO recommended method.

From 6th April, 2007, a clearance certificate for re-occupation may only be issued by a body accredited to do so. At the moment, such accreditation can only be provided by the United Kingdom Accreditation Service (UKAS).

The term 'construction' includes demolition, refurbishment, most maintenance activities as

well as new build projects. The CDM Regulations place duties on the *client* to appoint a *planning supervisor* (to coordinate and manage health and safety during the design and early stages of preparation) and a *principal contractor* (to coordinate health and safety issues during the construction work). The *client* should pass any information about asbestos to the *planning supervisor* and the *principal contractor* early enough for any work to be properly planned and

any potential risks to be effectively managed. The *principal contractor* should ensure that the risks from asbestos (etc) are effectively managed during the construction work. This includes ensuring that any such work is properly planned (in a plan of work), is carried out by competent people and monitored to ensure that the work is carried out as in the plan of work. The CDM Regulations are being revised — see www.hse.gov.uk/construction/cdm.htm.