

COMMERCIAL PROPERTY WEEKLY BULLETIN

Week ending 12 February 2010

NEWS

Redevco secures multi-million pound sale

Redevco has sold Ignis House in Glasgow for £29 million in a deal which represents a net yield of 6.75%. The building has an area of 90,000 sq ft and is currently let to Ignis Assess Management, M&S Simply Food, Superdrug and Costa.

Property Week, 9th February 2010

<http://www.propertyweek.com/story.asp?sectioncode=297&storycode=3157794&c=1>

Cold snap freezes new buyers' interest

RCIS have reported that more surveyors are seeing a fall in the number of new buyers last month. The survey shows a massive dip in new buyers between December and January. Overall, 20% more surveyors reported a drop in new house-hunters than those who saw a rise, down from 18% more who reported a rise in inquiries in December.

Building, 9th February 2010

<http://www.building.co.uk/story.asp?sectioncode=284&storycode=3157765&c=1>

Land Agreements to lose competition law exemption

The Government has announced that the rule which automatically deems land agreements to be compatible with the UK competition law regime is to be revoked with effect from 6 April 2011. From then, conditions in contracts for the sale, lease or licensing of land which have an anti-competitive object or effect will be subject to full scrutiny under the Competition Act 1998.

Scottish Property Network, 11 February 2010

<http://www.scottishproperty.co.uk/news/index.cfm?Fuseaction=ViewFullStory&ID=10532>

New rateable values published and subject to appeal

The Scottish Government has published draft Rateable Values for the forthcoming revaluation of commercial and industrial properties which takes effect April 2010. The Government has also confirmed that no transitional relief will be available in the forthcoming revaluation. A right of appeal will however be available once a revaluation notice is issued to companies next month and must be lodged before 30 September 2010.

Scottish Property Network, 12 February 2010

<http://www.scottishproperty.co.uk/news/index.cfm?Fuseaction=ViewFullStory&ID=10536>

Major investment transaction on George Street

The Lothbury Property Trust has purchased 125 George Street, Edinburgh, trading as "Tigerlily" for £9.6 million from seller Alliance Trust Real Estate Partners Limited, reflecting a net initial yield of 5.42%. The property extends to 35,000 sq ft and comprises the "Tigerlily" bar/restaurant on the ground floor, with 33 hotel bedrooms on the upper levels, plus the "Lulu" nightclub at basement level. The property is currently let to Belhaven Brewery Company Ltd until April 2030 with minimum fixed rental uplifts throughout the term and sub-let in its entirety to the operator, Montpeliers (Edinburgh) Ltd.

Scottish Property Network, 12 February 2010

<http://www.scottishproperty.co.uk/news/index.cfm?Fuseaction=ViewFullStory&ID=10537>

Stewart Milne completes multi-million pound deal Aberdeen

Stewart Milne Developments has completed the sale of its Acergy Development in Westhill, Aberdeen to a commercial property fund managed by PRUPIM for £36 million. The transaction represents a net initial yield of 7.1% and the transaction is the biggest commercial development sale in Aberdeen since 2008, indicative of early signs of recovery in the north-eastern property market.

Property Week, 15 February 2010

<http://www.propertyweek.com/story.asp?sectioncode=297&storycode=3158204&c=1>

Barr secures Tesco contracts

Barr Construction has secured a series of multi-million pound contracts from Tesco which will see it construct a new store in Middlesex and construct a new replacement store at Musselburgh, East Lothian. Work will start on the Musselburgh store this month and is due for completion in mid-October 2010.

Scottish Construction News, 16 February 2010

<http://www.constructionnow.co.uk/index.asp?CAT=News#176908>

Green light for schools in Scotland

Planning permission has been granted for the first hybrid PPP project in Scotland involving work on five schools in the Western Isles. 3DReid has secured planning permission and listed building consents for the developments. The £60 million Western Isles Schools Project includes a new 1,100 pupil high school for the Nicolson Institute in Stornoway, as well as the refurbishment, remodelling and extension to existing Sir E Scott School, Tarbert, Harris High School for 161 pupils and a new primary school for 75 pupils and a nursery for 20 pupils.

Building, 15 February 2010

<http://www.building.co.uk/story.asp?sectioncode=284&storycode=3158164&c=3#ixzz0fgt22XPu>

East Lothian agrees housing land purchase

East Lothian Council has agreed to purchase two areas of land behind Dunbar High Street. Both areas have been vacant for some time and have been zoned for housing under the Council's local development plan. Planning consent has already been granted for the sites to Castle Rock Edinvar for affordable housing.

Scottish Construction News, 11th February 2010

<http://www.constructionnow.co.uk/index.asp?CAT=News#176187>

LEGISLATION

The Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2010

Order relating to the development of air source heat pump and wind turbine microgeneration equipment.

OPSI, 11 February 2010

http://www.opsi.gov.uk/legislation/scotland/ssi2010/ssi_20100027_en_1

CASES

Fleming Buildings Ltd v Mrs Jane Forrest or Hives and Mr William Forrest

In 2001, Mrs Forrest purchased a house and ground in Bothwell. She and her husband Mr Forrest intended to build an extension to the house and thereafter to live in it. The extension was constructed but the work was defective and they decided to demolish the extension and the original house and build a new house on the site.

Fleming Buildings were contracted to carry out the works which commenced in January 2006. Work progressed and certain payments were made for the works. However, during adjudication proceedings instigated by Fleming Buildings in July 2007 Mr and Mrs Forrest sought to argue that there was no contract between the parties. The adjudicator found that there was a contract and that £112, 598 was due by the Forrests to Fleming Buildings. The Forrests did not pay and Fleming Builders raised an action for payment. Decree was for payment was granted by the Outer House in favour of the builders. The Forrests appealed to the Inner House.

The main issue for the court to decide was whether there was a contract between the parties. Fleming Buildings had drafted their tender documents in respect of works in the name of "Mr and Mrs Forrest". The minutes for pre-start meetings also listed John and Jane Forrest as "clients". Mr & Mrs Forrest however sought to rely on a letter sent by their chartered surveyor, accepting the tender in the name of KWF Homes Limited (a company wholly owned by the Forrests). They argued that this letter could be regarded as a counter offer by KWF to contract on the same terms as those contained in the Fleming Buildings' tender to the Mr and Mrs Forrest. The letter was not acknowledged by Fleming Buildings as it was not in the name of the Forrests. However the Forrests argued that, by starting on site without communicating any rejection of it, Fleming Builders could be taken to have accepted that offer. This was rejected by the Inner House as the letter did not come from the parties to whom the original tender was addressed. Fleming Buildings were entitled to treat the letter as a mistaken attempt to accept their offer.

At a subsequent pre-start meeting no reference to KWF was made in the minutes. However Mr & Mrs Forrest submitted that Mrs Forrest had asked a director of Fleming Buildings if he would have any objection to contracting with KWF instead of her and her husband, to which he had advised he would have no objection if they could provide him with a bank reference. This evidence had been rejected in the Outer House. However, the Inner House also considered that it was not capable of being treated as a counter offer. Rather, Fleming Buildings were entitled to treat the request simply as a possibility that KWF would be employers in the place of the Forrests. Nothing was said to the effect that the Forrests would not be prepared to contract unless the company was the employer. A subsequent Form 10 notification form for the Health and Safety Executive was sent in the name of the Forrests (rather than KWF) to Fleming Buildings for signature and the court found that, in the light of the background, the builders were reasonably entitled to treat this as confirmation that Mr & Mrs Forrest were continuing as their clients.

The fact that payments had been made by KWF was treated as neutral. It was accepted that it was not unusual for such payments to be made by a third party.

The Forrests' appeal was refused by the Inner House.

Scottish Courts, 10 February 2010

<http://www.scotcourts.gov.uk/opinions/2010CSIH8.html>

Mohammed Khaliq v Londis (Holdings) Limited

Mr Khaliq owned two neighbouring shop units on Broomfield Road in Glasgow. One he used to trade as a fast food outlet and the other had been leased to a solicitors firm who were about to vacate. On their vacation of the premises, Mr Khaliq wanted to join the Londis trading group which operates as a wholesaler, supplying goods and offering advice and services to its members. A representative of Londis, Mr McCaughey advised Mr Khaliq to move the fast food unit to the other unit as the first unit had better frontage for a wholesaler shop. He further recommended a company (Swallow Design and Storefitting) to refurbish the first unit.

Mr Khaliq submitted a Londis membership form and a cheque for £50 which was soon after encashed. The application was approved about two months later. Londis then prepared a store development plan for the first unit and Mr Khaliq instructed Swallow to proceed with the refurbishment. Swallow advised that they had a large number of shop fitting contracts to fulfil and so could not undertake the work immediately.

In the meantime Mr Khaliq arranged the move of his fast food shop to the second unit, paying £20,100 for this work. He also spent a further £5,000 odd on the installation of a structural beam. Throughout this period, Mr McCaughey regularly visited the premises and was advised of the progress of the work being undertaken.

A year after his application, Mr Khaliq was advised that his membership application to Londis was not proceeding. However, he agreed with Swallow nevertheless to carry out the refurbishment on which he spent about £35,000.

Mr Khaliq now claimed his losses upon two bases: (1) alleged breach of contract on the part of Londis; and (2) alleged Melville Monument liability. The first failed as there had never been a contract between the parties as the proposed agreement had never been signed and executed. The claim therefore rested on Melville Monument liability, a doctrine originating from the case of *Walker v Milne* to the effect that liability to reimburse arises when one party acts in reliance on an implied assurance by the other part that there is a binding contract between them even though in reality there is no more than an agreement falling short of a contract.

The Inner House upheld the Sheriff's finding that the requirements of Melville Monument liability were not met. Mr Khaliq had been furnished with an application form for membership of Londis with accompanying conditions of membership. Only that material could be considered to demonstrate his obligations under the alleged contract, and within those conditions there was nothing to cause him to consider that he had to undertake the works on his two units. The work undertaken to move his fast food outlet was in light of representations made by Mr McCaughey not by Londis. The work on his second unit was carried out after it became clear there was no contract with Londis. Also, Mr Khaliq had effected improvements on his properties and continued to trade from them both.

Scottish Courts, 12 February

<http://www.scotcourts.gov.uk/opinions/2010CSIH13.html>

RESEARCH

Energy Efficiency Action Plan for Scotland: Consultation Responses

The Scottish Government is developing the Energy Efficiency Action Plan for Scotland with the intention of publishing this in spring 2010. Demand for energy continues to grow. Under current production patterns this will lead to increased carbon emissions and tends to drive higher energy prices. Improving energy efficiency is widely recognised as the easiest and most cost-effective means of reducing carbon dioxide emissions. These are the responses to the consultation process.

Scottish Government, 10 February 2010

<http://www.scotland.gov.uk/Publications/2010/02/10103413/0>

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