

Commercial Property Factsheet

Relevant as of January 2009

There is no doubt that the current economic downturn is having a major impact on the Commercial Property sector. However, it is not the economic downturn alone that should be occupying the minds of developers, sellers and landlords. There are also several pieces of new legislation, some implemented and some shortly to be implemented, of which developers, sellers and landlords need to be aware.

Energy Performance Certificate

From 1 October 2008 all commercial buildings have to have an Energy performance certificate for construction, sale or let. The builder, owner or landlord will be responsible for providing the Energy Performance Certificate.

The EPC indicates how energy efficient a building is, giving it a rating from A to G, where A is very efficient and G is least efficient. It is drawn up by an assessor who inspects the building, produces the EPC and also makes recommendations. Although there is no legal requirement to comply with the recommendations, it is anticipated that the energy ratings themselves and the recommendations may provide points for negotiation on purchases or leases.

A very limited category of buildings do not require an EPC (for example, agricultural barns with "low energy demand" and buildings about to be demolished). However, failure to provide an EPC when required by the regulations means that the person responsible may be liable to a civil penalty charge notice. This penalty fixed, in most cases, is set at 12.5% of the rateable value of the building, with a default penalty of £750 if the formula cannot be applied. The maximum penalty is £5,000.

Planning and Energy Act 2008

Developers should be aware of another piece of environmental legislation which is on the horizon, the Planning and Energy Act 2008. It received royal assent on 13 November 2008, and enshrines into law what is known as the "Merton Rule". What this means is that local planning authorities in England and Wales will have the power to impose "reasonable" requirements on developers regarding the proportion of on-site and near-site renewable energy and other "low carbon" energy that must be used in developments. Although the Act does not specify the proportion of renewable energy, it is anticipated that it will be around 10-15%.

Empty Business Rates

An added burden for sellers and landlords came into effect from 1 April 2008, with the implementation of the Rating (Empty Properties) Act 2007.

Prior to 1 April, most empty commercial properties received 100% relief from business rates for the first three months that they remained empty, with a 50% relief thereafter. Industrial and warehouse premises received an even more generous relief of 100% for as long as they remained empty.

Following 1 April, the 50% relief has been scrapped and in its place, all properties will receive a 100% relief for the first three months, with industrial and warehouse premises getting 100% relief for the first six months. Thereafter, full rates will be payable by the owner, regardless of the fact that their property is empty.

If you have any queries or questions relating to any of these matters, please contact the Commercial Property Team on 0115 9888777 or email info@fraserbrown.com.

