

# real estate newsknight

At a time when much is being said about the state of the property market we thought it may be interesting and useful to pull together some comments from local professionals. This issue, therefore, contains some detailed analysis as to where others feel we are and which direction we may be travelling in. We update you on new developments in our Cheltenham office and our planning unit provides their regular update. We look forward to seeing you at one of our events and to working with you in the months ahead.

Best wishes  
IAN WHITE  
head of real estate department



## AN OUTSIDE VIEW...

**Mike Johnson**  
Associate Director  
Structured Debt Solutions, RBS



“ The heavy demand for our services in 2009 to date has been around working capital requirements. We have seen utilisation of working capital lines harden this year as the focus for business owners is on the funding of day to day operations. We have not seen the demand for investment purposes as in previous years but you can understand how a nervous market makes for nervous investors. We are though beginning to see in our conversations with customers more business plans and holding initial stage conversations on investment propositions than we have since the turn of the year.

... For the SME market in particular there are more levels of funding available for businesses than previously. A number of government initiatives are providing funds into the marketplace to support the traditional lending offered by banks and other funders so it is more important for business owners to explore all options to ensure the right funding package is put in place. More than ever the solution should fit the business, rather than the business fit the finance product.”

**Richard Day BSc (Hons) MRICS**  
Partner  
Daniel & Hulme

**Daniel & Hulme**

“ There are good news stories out there and it is a shame that we only hear about the “doom and gloom” of the recession. We can report that enquiry levels have increased and there is more interest in all types of property as well as more viewings. This interest has also been converted to deals.

North Staffordshire seems to be weathering the storm well and hopefully we can build on the growth and activity which is taking place in the market now.

The regeneration of North Staffordshire is now starting to pick up pace particularly around the city centre, City Waterside and the University and Business Quarters. Some exciting projects are about to happen within this area, which, just like its football team, will bring the city into the premiership.”



**Knights solicitors llp**  
The Brampton  
Newcastle-under-Lyme  
Staffordshire ST5 0QW

T 01782 619225  
F 01782 620410

Eagle Tower  
Montpellier Drive  
Cheltenham GL50 1TA

T 01242 524654  
F 01242 524590

E mail@knightsllp.co.uk  
W knightsllp.co.uk

Printed on 80%  
recycled material



## AN OUTSIDE VIEW(continued)...

**Richard Wain BSc (Hons) MRICS**  
Director  
Hawksmoor Planning & Development Consultants



**Ian Cheetham FRICS**  
Partner  
Butters John Bee



“ There has been a noticeable increase in enquiries from housebuilders in the last couple of months, who have been seeking land with the benefit of planning permission.

Many housebuilders currently have a shortage of “short term” land, and even if a site is purchased today, it will still be 9-12 months before sales can commence on that site. This is a positive sign as it would indicate that we have perhaps reached, or are close to reaching, the bottom of the market. At the present time, landowners are reluctant to release their land, given the significant fall in values and given the lack of transactions involving land, it is very difficult to predict where the current market is in terms of land values. Holding costs and the ability to generate cash will determine how long landowner’s can hold on.

In addition, estate agents would also suggest that viewings and sales of property have increased gradually during the course of 2009, which all points towards a positive outlook. However, it remains a buyers market in terms of residential property...Whilst this evidence would suggest that a recovery in the property market is on the way, this must be tempered slightly by the wider economy and the remaining uncertainty in many sectors, which is leading to higher unemployment.”

“ House prices have stabilised in this region. There is more confidence in the market and enquiry levels have significantly improved. It may be stating the obvious, but pricing is the key to a successful marketing strategy, if houses are priced correctly then they will generate interest and if they are not, then they will stick on the market! Purchasers are very market savvy and increasingly aware of overpricing and those properties which have been on the market for a long period.

Auctions are leading the market; at our monthly auctions since March we have sold, on average 85% of all lots offered either prior to the auction or on the night – significantly outperforming the national trend month on month! Purchaser interest in property auctions is increasing. We attract upwards of 500 people to each auction and expect this number to grow going forward. Interest in auction properties seems to be back at a level last experienced in 2006.

There continues to be demand for well located retail units and small industrial units. Investor enquiries continue to outnumber investment opportunities. Of the three main sectors, the office sector has been worst affected by the economic downturn, followed by retail and then industrial.....

The market has improved significantly during the first 6 months of the year with the number of sales substantially up on the same period last year. The lack of commercial lending continues to be the preminent factor in commercial sales not proceeding. We fully expect the market to return in the medium term.”

# Highly successful work in Cheltenham

**At the first anniversary of the opening of the office in Cheltenham we are delighted to announce significant expansion.**

Mark Anton-Smith who leads the office has been admitted to partnership since July 2009. He was joined earlier this year by solicitor Ben Thomas and in September partner Russell Coddington will also be based in Cheltenham, becoming the only minerals & waste expert in Gloucestershire.

Managing partner Ian White said “We were confident from the outset that our work in Cheltenham was going to be highly successful. This measure of commitment and growth is extremely encouraging particularly in the current climate. The Cheltenham office is fully supported by all the resources available at The Brampton where we have expertise in all relevant areas. This is an exciting time for the firm as a whole and to see this expansion in our 250th anniversary year is really excellent.”



(l to r): Ben Thomas, Mark Anton-Smith & Russell Coddington

# BLOW FOR BOCARDO... as compensation award shrivels

The Court of Appeal have overturned the decision of the High Court in Bocardo SA's battle with Star Energy for a sizeable award of compensation for trespass.

The issue in this case was not so much whether a trespass had occurred, but what the amount of compensation should be for that trespass.

## Background...

Bocado was the owner of an estate in Oxted, Surrey, below which is an oilfield, a natural reservoir of petroleum and petroleum gas. The petroleum and gas however were not owned by Bocado. By virtue of the Petroleum (Production) Act 1934, these belong to the Crown. This Act also permits the granting of licences to third parties to search and bore for and get petroleum.

Star Energy had a licence under the 1934 Act and it started to extract petroleum from the oilfield beneath Bocado's land by means of underground pipework. However, the licence alone was not sufficient to entitle Star Energy do this. It should also have tried first to negotiate an agreement for access with Bocado and in the absence of that agreement, it should have made an application under The Mines (Working Facilities and Support) Act 1966 to obtain the right to work the petroleum and for ancillary rights of access to enable them to work the petroleum. On granting an appropriate order, the court also has the right under the 1966 Act to award compensation to affected landowners.

Bocado satisfied the High Court that, as it had neither obtained Bocado's consent to work the oil via underground pipes or applied to the court under the 1966 Act, that Star Energy had committed a trespass. It should be borne in mind, however, that Bocado had suffered no real loss by the actions of Star Energy as Bocado had no rights to the petroleum itself; the only loss they could be said to have sustained was the missed opportunity to negotiate a suitable wayleave payment for the laying and use of the underground pipes.

Notwithstanding the small degree of loss sustained by Bocado, the High Court (deciding not to follow the ruling in an earlier case (BP Petroleum Developments Limited v Ryder & Ors [1987] 2 EGLR 233) in which the Court concluded that to use the value of minerals extracted to calculate the compensation due was incorrect) awarded damages at 9% of the income received by Star Energy from the extraction of the



petroleum. This resulted in a windfall to Bocado in excess of £6 million.

Not surprisingly, Star Energy appealed to the Court of Appeal. The Court stated that the decision in the Ryder case with regard to the method of calculating compensation had been correct and ruled that if a court had been asked to assess the compensation payable by Star Energy to Bocado under the 1966 Act for a right to bore the pipelines, it would have awarded a one-off lump sum payment of a mere £82.50. The Court also took into consideration that Star Energy would have been prepared to be generous in negotiations and awarded damages at a maximum of £1,000.

Now mineral operators will be anxious to see if Bocado makes an appeal to the House of Lords, (or, come October 2009, the new Supreme Court) and if it does, whether the Lords will uphold the Court of Appeal's decision - there is potentially £5,999,000 riding on it...

(Bocado SA (1) and Star Energy UK Onshore Limited and Star Energy Weald Basin Limited (2) [2008] EWHC1756 (Ch)

Star Energy UK Onshore Limited and Star Energy Weald Basin Limited (1) and Bocado SA (2) [2009] EWCA Civ 579)

For further information please contact Alison McCracken.  
Email: [alison.mccracken@knightsllp.co.uk](mailto:alison.mccracken@knightsllp.co.uk)

# Second Homes - an opportunity for saving tax?



**You might be forgiven for thinking that we are trying to wind up our readership by keeping the flame of fury about MP's expenses alive, but actually this article is not about MPs and the practice of "flipping"; it is directed at anyone who owns a second home.**

It is hard to see how falling property prices can ever be good news, unless of course you are a first time buyer – but it may be that those of you with second homes, which are used by other members of the family, have an opportunity to gain a taxation advantage out of the slow down in the property market.

If (a) your estate is facing an Inheritance Tax bill and (b) you own a second home (even if it is just a holiday home) which you share with your family then you might want to consider taking a tax planning opportunity.

## **HOW?**

You can give away a share of your property to the person who also occupies the property from time to time, for example, to one or more of your children.

For this to work to save you Inheritance Tax :

- the recipient of the gift must continue to occupy the property for a minimum period during the year
- the outgoings on the property must either be shared with the recipient of the gift or be paid wholly by you

Another option would be to give away the whole of the second property instead of a share. One thing to watch out for, however, is that effectively you cannot be a "visitor" or "guest" of your children at the property in question. If you do use the property once it has been gifted, you should pay a market rent for this particular tax planning method to work.

If you do give away the whole or a part of your second home, then, provided that you survive for 7 years after making the gift and the recipient of the gift continues to occupy the property, the value of the Property or the share given away will fall outside of your estate for Inheritance Tax purposes.

One word of warning, however, if the property is not your main residence (and you are not an MPI) then there may be a Capital Gains Tax liability for you on making the gift, if the Property has increased in value since you acquired it. Notwithstanding this, with falling property prices the gain may be reduced and it may be possible to further mitigate any liability by using available tax reliefs.

However, in case the 'green shoots' start sprouting in earnest in the property market, you probably need to move quickly on this to get the maximum benefit.

This article only gives a very brief outline of this particular tax-planning opportunity.

For further information please contact Dominic Potier.  
Email: [dominic.potier@knightstillp.co.uk](mailto:dominic.potier@knightstillp.co.uk)