

# EVEBRIEF

## Legal & Parliamentary

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**Ben Aldridge**  
Editor

### HIGH SPEED 2 JUDICIAL REVIEW

We report at item 11 the High Court's decision in the much-publicised Judicial Review of High Speed 2 brought about by challenges by 15 local authorities and an organisation working with over 70 local action groups and residents' associations. There were five challenges made on ten grounds, of which nine were dismissed. The challenge relating to the consultation on the Government's proposed compensation and 'blight' scheme was however upheld, on the grounds that the consultation process was "so unfair as to be unlawful".

The Government has stated its intention to consult again as soon as possible but, unfortunately for those directly affected, there is no basis for the suggestion in some press reports that improvements to the compensation proposals can now be expected as a consequence of the decision. The decision was based on the way in which the consultation was carried out, and in particular the lack of detail about how the scheme would operate, not on the scheme itself. Nevertheless, this will undoubtedly be seen as an opportunity to make further representations to the Government about the adequacy or fairness of the proposals – which amounted to little more than some relaxation in the requirements for serving a 'blight notice' requiring HS2 to purchase affected properties.

In other transport related matters, at item 23 we report on the Mayor's revised Crossrail SPG which took effect from 1st April 2013. The SPG seeks to ensure consistency and a common approach to Mayoral CIL and Crossrail Planning Obligations. Given that the changes introduced by the SPG may have a significant impact on the level of Crossrail Planning Obligations and CIL payable, developers will wish to ensure they are familiar with the detail and seek advice as necessary.



**GERALDEVE**

## LOCAL GOVERNMENT

01 DCLG Statistical Release – 27.02.13

### Council tax levels set by local authorities in England: 2013–14

This release provides information on council tax levels and associated information for the financial year 2013–14 and changes over 2012–13. In England the average council tax per dwelling will be £1,045 in 2013–14.

<https://www.gov.uk/government/publications/council-tax-levels-set-by-local-authorities-in-england-2013-to-2014>

## LANDLORD & TENANT

02 Upper Tribunal: Lands Chamber

### Service charges – reasonableness and affordability – whether LVT erring in deciding issue of reasonableness without considering affordability

\*HILLFINCH PROPERTIES LTD V LESSEES OF SOUTHBOURNE COURT  
(2013) PLSCS 74 – Decision given 26.02.13

**Facts:** HP, the appellant, owned the freehold of a block of flats let to 28 respondent lessees. In May 2011, HP served notice on the lessees under s20 of the Landlord and Tenant Act 1985 of its intention to carry out major works to the block. Subsequently, it decided that the balconies also needed to be replaced at extra cost, but, since the balcony works were not included in the consultation process, the LVT were unable to determine whether those costs were reasonable when HP applied for a determination under s27A of the 1985 Act. Notwithstanding the lessees' concerns about affordability, the LVT determined that the scope of the other proposed works and their estimated cost were reasonable. The LVT did, however, note that in the light of the 2011 Upper Tribunal decision in *Garside v RFYC Ltd* a tribunal might find the cost of works to be unreasonable where the landlord had failed to take into account the issue of affordability to the lessees in relation to the phasing and timing of the works.

**Point of dispute:** Whether the LVT should have taken the issue of affordability into account. The LVT had refused permission to appeal on that point, finding that it was not necessary for it to decide the *Garside* point which had not been raised by either of the parties at the hearing, but permission to appeal was subsequently granted by the Upper Tribunal.

**Held:** The appeal was allowed. It was necessary for the LVT to decide the *Garside* point in deciding whether the cost of the proposed works was reasonable since the issue of affordability might go to whether the costs were reasonably incurred within the meaning of s19 of the 1985 Act. Since affordability was the only concern raised by the lessees the parties were entitled to a determination of it as the only live issue between them and the matter should be remitted to the LVT.

## PLANNING

03 Court of Appeal

### Appeal against refusal of planning permission for residential development on former pig farm – adequacy of inspectors reasoning

\*PROUDFOOT PROPERTIES V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT  
(2013) PLSCS 79 – Decision given 19.03.13

**Facts:** PP, the respondent, who had been refused planning permission for residential development on a property where he had formerly run an intensive pig farming business, appealed against the refusal to an inspector appointed by the appellant Sec of State. Before the inspector there was a factual dispute concerning the manner in which the former pig-rearing use had ended: the local council had concerns about the suitability of the site for intensive pig-rearing and PP alleged that he had given an undertaking to the local council to stop that use as part of a deal in which the council agreed to permit an alternative use. The inspector upheld the refusal of permission on the grounds of incompatibility with development plan policy, impact on an AONB, lack of accessibility and highway safety issues. He noted the parties' disagreement about the reasons for cessation of the pig-farming use, but stated that PP's personal circumstances were insufficient to outweigh the harm of the proposed development.

**Point of dispute:** Whether the Sec of State's appeal would be allowed against the decision of the judge in the court below who overruled the inspector and quashed the refusal of permission. The judge held that the inspector had failed to give adequate reasons for his conclusions which had caused substantial prejudice to PP.

**Held:** The appeal was allowed. The Court of Appeal was satisfied that the inspector's decision had been clear as to his findings and had been adequately reasoned. The inspector had decided that maintaining the character of the area and highway safety were legitimate aims, and that refusal of planning permission was the only way to safeguard them. PP's personal circumstances could not outweigh those aims, even if there had been an agreement with the council, and it was implicit in the inspector's decision that even if PP's factual assertions were correct, his personal circumstances could not outweigh the substantial harm that would be caused by the development. The inspector had given adequate reasons for his decision which would be restored.

## 04 Administrative Court

**Designation of neighbourhood forum**

\*R (ON THE APPLICATION OF DAWS HILL NEIGHBOURHOOD FORUM) V WYCOMBE DISTRICT COUNCIL  
[2013] PLSCS 75 – Decision given 13.03.13

**Facts:** The claimant, DHNF, was a local residents' association which applied to WDC to be designated as a neighbourhood forum for a specified neighbourhood area under new provisions inserted into the Town and Country Planning Act 1990 by the Localism Act 2011, for the purpose of participating in the process for making neighbourhood development orders and development plans. The area over which it sought designation was the Daws Hill residential community south of High Wycombe, Bucks, and two adjacent brownfield sites which were identified in WDC's core strategy as strategic sites for development. One of the sites had outline permission for a mixed use development. WDC decided to designate DHNF as a neighbourhood forum for a smaller area, excluding the strategic sites.

**Point of dispute:** Whether DHNC could succeed in its application for judicial review of WDC's decision. DHNC contended that the purpose of the new legislation was to ensure that local communities had an input into development proposals that would have a significant impact on their communities and that WDC's decision frustrated that aim. They also contended WDC had not taken into account the character of the area by excluding the development sites which were part of it.

**Held:** The claim was dismissed. The 2011 Act gave new rights and powers to enable local communities to participate in the planning process within their local area through neighbourhood planning. Where a neighbourhood forum applied to designate a neighbourhood area there was no requirement to have regard to the "character" of the area. The situation differed to a parish council area – in a non-parish council case the local authority had a broad discretion as to whether to designate the whole of the area applied for, or just part of it and it had to consider the particular circumstances existing at the time. WDC had done this, as at the outset of the process it appeared that a referendum with regard to the strategic sites would be needed over a wider area than the proposed neighbourhood area. The neighbourhood plan would probably have been overtaken by events as the sites would be under development before the process was completed in which case the proposed plan would not influence the outcome of the planning applications in respect of the two sites.

## 05 Administrative Court: Manchester

**Housing supply – whether inspector should have taken into account strategic sites included in draft core strategy when considering whether there was a sufficient five-year supply of delivering housing sites available to meet requirements of NPPF**

\*WAINHOMES (SOUTH WEST) HOLDINGS LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT  
[2013] PLSCS 88 – Decision given 25.03.13

**Facts:** WH, a developer, sought planning permission to build up to 50 houses on land in Purton, Wiltshire. The Ipa failed to determine the application and the matter went to public inquiry. The inspector had to consider whether there were material considerations that outweighed the presumption in the development plan against development in the countryside. He considered whether there was a supply of specific deliverable sites in the area sufficient to meet the council's housing requirements for five years, with a buffer, as required by the NPPF. In reaching his decision that there were sufficient sites, the inspector took into account strategic sites that were included in the Ipa's core strategy, concluding that these sites were "deliverable" within the meaning of the NPPF.

**Point of dispute:** Whether WH's application to quash the inspector's decision would be allowed. WH argued that the inspector had erred in finding that a five year supply of deliverable housing sites existed, and that he should have taken into account the recent decisions of another inspector relating to a site in Calne, Wiltshire, which were published after the end of the inquiry hearing, and where it was concluded that the strategic sites should be excluded from consideration of the supply of deliverable housing.

**Held:** The claim was allowed. A previous inspector's planning decision was capable of being a material consideration, although the importance to be attached to it would depend on the extent to which the issues overlapped with those currently under consideration, and whether the planning regime or development plan at the time of the previous decision had been similar to or significantly different from the current planning context. The inspector had discretion to admit materials that had not been provided in accordance with the normal procedural timetable up to the time when he made his decision. In this case the inspector's decision should be quashed since he had not properly exercised his discretion and had given inadequate reasons for deciding not to take the Calne decisions into account. Those decisions were important being very recent and dealing with the same issues as those central to WH's appeal; they were in the same area and addressed the same draft core strategy and other aspects of the development plan as applied to WH's appeal, and also they addressed those matters at the same stage of their progress.



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06 Statutory Instrument

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**SI 2013/629 The Regional Strategy for the East Midlands (Revocation) Order 2013**

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W.e.f. 12.04.13 this Order revoked the Regional Strategy for the East Midlands including all directions preserving policies contained in structure plans in the corresponding area.

<http://www.legislation.gov.uk/uksi/2013/629/contents/made>

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07 CLG – summary of responses to consultation and government response

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**Nationally significant infrastructure planning: expanding and improving the ‘one stop shop’ approach for consents**

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On 22.11.12, DCLG published a consultation seeking views on proposals to expand and improve the “one-stop-shop” approach for (non-planning) consents for the planning regime for nationally significant infrastructure projects. The consultation closed on 07.01.13 and this document sets out the Government’s response and next steps towards implementation. The response to the consultation was largely positive and the Government is now taking forward a rapid programme of work to deliver rapid implementation of the proposals.

<https://www.gov.uk/government/consultations/nationally-significant-infrastructure-planning-expanding-and-improving-the-one-stop-shop-approach-for-consents>

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08 Government Consultation outcome

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**Strategic environmental assessment about revoking the North East regional strategy: environmental report**

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This document is the post adoption statement for the revocation of the regional strategy for the North East.

<https://www.gov.uk/government/consultations/strategic-environmental-assessment-about-revoking-the-north-east-regional-strategy-environmental-report>

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**RATING**

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09 High Court

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**Liability of charity for non-domestic rates – s43(6) Local Government Finance Act 1988**

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\*\*KENYA AID PROGRAMME V SHEFFIELD CITY COUNCIL [2013] EWHC 54 (Admin) – Decision given 22.01.13

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**Facts:** Non-domestic rate liability orders were obtained against Kenya Aid Programme (KAP), a registered charity, in October 2011 for just over £1.5 million relating to two industrial units in Sheffield. It was not in dispute that KAP had at all material times been in rateable occupation of both units, but it only used 30–35% of the first unit and 25–30% of the second unit for furniture storage and its non-domestic rates were effectively paid by the landlord, which also gave the charity a donation of £17,000. KAP sought mandatory charitable relief of 80% under s43(6) of the Local Government Finance Act 1988 arguing that provided the use to which the premises were being put was for charitable purposes only, that was all that was required to fall within the relief provision, and the extent or efficiency of its use of the premises was not a relevant consideration. The charity argued that the correct approach to determine whether premises were being used mainly for charitable purposes was set out in the case of *Glasgow v Johnston* [1965]. The council contended that the court should consider the content and context of the use of the premises.

The district judge took the view that the correct approach to determine whether premises were being “wholly or mainly used” for charitable purposes is that set out in *English Speaking Union v City of Edinburgh Council* [2010]. Following that approach, and taking into account witness evidence that the way in which the charity had spread out furniture throughout the premises meant that it was only occupying approximately 50% of the overall property, the district judge was unable to conclude that they were being used by KAP wholly or mainly for charitable purposes as there was a marked absence of substantial use of the premises and accordingly the relief was not available.

**Point of dispute:** Whether the district judge was correct to apply the test in *English Speaking Union v City of Edinburgh Council* by placing weight upon: (i) the extent to which the premises were used; (ii) the inefficiency of the furniture storage use which was taking place at the premises; (iii) whether there was a necessity for KAP to occupy both premises when one building would have satisfied their present and future needs; and (iv) the mutual advantages to KAP and the landlord of the letting to KAP as a consideration against KAP’s entitlement to mandatory charitable relief.

**Held:** Treacy LJ held that he did not consider the *Glasgow Corporation* authority meaning that the court is precluded from considering whether examination of the extent of the use is a relevant consideration. He considered the approach in the *English Speaking Union* case requiring a court to look at the evidence before it and considering on a broad basis whether the premises were being used wholly or mainly for charitable purposes was a tenable approach.

The district judge was right to take account of and place weight upon the extent to which the premises were used. There is a clear distinction between “occupation” in s43(1) and “use” in s43(6). The qualifying adverbs “wholly” and “mainly” are important in looking at the context of the use. In relation to the financial arrangements, Treacy LJ held that if one of the uses of the units was to produce revenue for KAP, and such an arrangement does amount to a use of the premises (which may be open to argument) the district judge had failed to give any indication of how this use affects the question of whether the storage of furniture at the units was the whole or main use. Accordingly, the matter was referred back to the original district judge to reconsider liability in light of the particular evidence available to him and the guidance issued by this court.

## 10 Statutory Instrument

### SI 2013/737 The Non-Domestic Rating (Levy and Safety Net) Regulations 2013

These Regulations, which came into force on 27.03.13, set out the operation of levy and safety net payments under the scheme for local retention of non-domestic rates.

The Local Government Finance Act 2012 inserts a new Schedule 7B into the 1988 Act which provides for the local retention of non-domestic rates collected. Part 7 of the Schedule provides that the Sec of State may make provision for imposing a levy on the non-domestic rates income of an authority and for paying safety net payments.

These Regulations form part of a group of statutory instruments that will establish the new scheme:

- The Non-Domestic Rating (Rates Retention) Regulations 2013 (SI 2013/452);
- The Non-Domestic Rating (Transitional Protection Payments) Regulations 2013 (SI 2013/106);
- The Non-Domestic Rating (Designated Areas) Regulations 2013 (SI 2013/107);
- The Non Domestic Rating (Renewable Energy projects) Regulations 2013 (SI 2013/108); and
- The Local Government Finance Act 2012 (Consequential Amendments Order 2013 (SI 2013/733).

## COMPENSATION

### 11 Administrative Court

#### High-speed rail link – whether public compensation on blight compensation measures so unfair as to be unlawful

\*\*R (ON THE APPLICATION OF BUCKINGHAMSHIRE COUNTY COUNCIL) V SEC OF STATE FOR TRANSPORT [2013] PLSCS 78 – Decision given 15.03.13

**Facts:** In 2009 the government incorporated High Speed Two Ltd for the purpose of developing and advising on proposals for the new HS2 high-speed rail link. The preferred route was confirmed in December 2010 and the matter was put out to public consultation, part of this being to deal with blight measures for those affected by the HS2 scheme, but not covered by current statutory provisions. A two-stage consultation process was adopted: the first dealt with the principle of non-statutory blight and set out three possible options for addressing this, while the second stage dealt in detail with the single option chosen. After the consultation closed, the government issued a command paper entitled “Decisions and Next Steps” (DNS) which affirmed the government’s view that the high-speed proposal was the best means of improving Britain’s inter-city rail network, while another document “Review of Property Impacts” (ROPI) set out the blight compensation package. Various claimants brought five separate judicial review claims to challenge the lawfulness of the government’s decisions.

#### Points of dispute:

- i. Whether the DNS was in breach of various European directives.
- ii. Whether the ROPI document on blight measures was vitiated by an unlawful consultation process. The claimants contended that: (i) the information about the options at the first stage had been insufficient to enable consultees properly to evaluate them; (ii) the decision to proceed with the “hardship scheme option” was unlawful since it was based on considerations that were not covered in the consultation; and (iii) consultation responses from one of the claimants, a not-for-profit organisation working with more than 70 affiliated action groups and residents’ associations, had not been considered in reaching the decision.



**Held:** Judgment was given for the claimants.

- i. The claimants' allegations, relating to the DNS and the European Directives it was alleged to have breached, were dismissed.
- ii. However, the Sec of State for Transport had failed to carry out a lawful consultation on the issue of blight compensation. The consultation documents contained no practical detail about whether and how the options might differ in practical value to those suffering from blight as a result of HS2. Consultees were asked whether they agreed with the options but, although it was apparent that the government was seeking views on which of the three options to take forward to the second stage, they were not asked which one they preferred. Insufficient information was given to the consultees about the factors that would influence the first stage decision. The document was silent about the fact that cost would affect the choice between options, which meant that the government had taken into account unspoken detail that was relevant to the first stage choice, but which had not been revealed to consultees. The government's reliance on that information was so unfair as to make the consultation unlawful. In addition, the full consultation response of one of the claimants, a key stakeholder, had not been considered. Overall, the consultation process in respect of blight and compensation was so unfair as to have been unlawful.

## HOUSING

12 Administrative Court

### **House in Multiple Occupation – Licensing of Houses in Multiple Occupation (Prescribed Description) Order 2006 (“the 2006 Order”) – whether cluster student flats required licence under 2006 Order – whether comprising “three or more storeys” within article 3(2)(a)**

\*ISLINGTON LONDON BOROUGH COUNCIL V UNITE GROUP PLC [2013] PLSCS 86 – Decision given 22.03.13

**Facts:** The defendant company, UG, provided student accommodation. One of its properties was a five-storey block of flats with main entrance and shop on the ground floor and residential accommodation on the upper floors. Most of the accommodation was in “cluster flats” each of which was spread over a single storey and contained six bedrooms with en-suite bathrooms, a communal living area and shared kitchen. It was common ground that each of these flats was a “house in multiple occupation” (HMO) within Part 2 of the Housing Act 2004.

**Point of dispute:** Whether, as contended by ILBC, the flats fell within the licensing requirements of article 3(2) of the 2006 Order, as HMOs comprising “three or more storeys” and occupied by five or more persons living in two or more households. Although each flat occupied only one floor the claimant council contended that all four residential floors had to be taken into account when calculating the number of storeys for the purposes of article 3(1).

**Held:** ILBC's claim was dismissed. It was the HMO that had to comprise three storeys and not the building in which the HMO was situated. A tenant of a purpose-built flat in a tower block who sublet a flat to two households of five people should not be at risk of prosecution for failing to obtain a licence. The living accommodation in the HMO and other parts of the premises used “in connection with and as an integral part of the HMO” did not comprise more than one storey and when the ground floor business use was added to the HMO the three-storey threshold was not reached.

## ENERGY

13 CLG Impact Assessment

### **Increasing the fees for entering Energy Performance Certificates and related documents onto the Energy Performance Certificate registers**

All Energy Performance Certificates, Display Energy Certificates and Air Conditioning Inspection Reports must be entered onto the relevant Energy Performance Certificate Register to meet the requirements of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2012. The register operates on a cost recovery basis and operators are permitted to charge fees for entering certificates onto the registers. From 06.04.13 the fees will increase to ensure that the cost of operating the registers will be recovered from the fees, and this document examines the impact of the increase.

<https://www.gov.uk/government/publications/increasing-the-fees-for-entering-energy-performance-certificates-and-related-documents-onto-the-registers>

14 Government Policy Paper

### **Long-term Nuclear Energy Strategy**

This paper explains government policy to help the UK nuclear sector increase its key role in UK electricity provision and the global economy to 2050.

- It sets out the government's vision for the future of nuclear energy in the UK and its strategy for ensuring that the nuclear sector has the best prospect of reaching its full potential.
- It provides a clear framework within which to assess decisions and priorities for policy and research.
- It explains the role of nuclear power in the UK electricity mix and the role of the UK nuclear sector in the global economy.

<https://www.gov.uk/government/publications/long-term-nuclear-energy-strategy>

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15 Government Publication

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### **Nuclear Industrial Vision Statement**

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This document sets out the nuclear industry's vision for the UK nuclear sector in domestic and global markets to 2050 and what needs to be done by government and industry in order to achieve its aims.

<https://www.gov.uk/government/publications/nuclear-industrial-vision-statement>

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16 Government Policy Paper

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### **Nuclear Industrial Strategy: The UK's Nuclear Future**

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This paper sets out Government and industry strategy for the future of the nuclear sector in the UK. It aims to provide opportunities for economic growth and job creation and covers the following areas:

- opportunities in the nuclear new build programme;
- waste management and decommissioning;
- operations and maintenance; and
- associated professional services, both in the UK and abroad.

The Strategy includes:

- a new Nuclear Industry Council;
- better co-ordination of research and development through the creation of new bodies;
- a cost reduction initiative; and
- a long term plan to ensure that the necessary skills are in place.

<https://www.gov.uk/government/publications/nuclear-industrial-strategy-the-uks-nuclear-future>

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17 Department of Energy & Climate Change Guidance

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### **The Green Deal: Guidance for the Property Industry in Great Britain**

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This guidance concerns those aspects of the Green Deal that will be of interest to the property industry and it applies to both domestic and non-domestic properties. The following areas are covered:

- the Green Deal charge;
- consent and confirmation provisions;
- disclosure and acknowledgment provisions;
- the role of the EPC in England and Wales and the EPC and Recommendations Report in Scotland;
- affordability of the Green Deal charge; and
- long-term treatment of Green Deal improved properties

<https://www.gov.uk/government/publications/the-green-deal-guidance-for-the-property-industry-in-great-britain>

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18 Department of Energy and Climate Change Publication

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### **How the Green Deal and Feed-In Tariffs work together**

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This short leaflet is a worked example of the costs of installing a domestic solar PV installation using a Green Deal loan and with the benefit of income from Feed-in Tariffs.

<https://www.gov.uk/government/publications/green-deal-how-the-green-deal-and-feed-in-tariffs-work-together>

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19 Department of Energy and Climate Change Policy Paper

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### **Estimated impacts of energy and climate change policies on energy prices and bills**

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This document, which updates analysis published in November 2011, assesses the impact of the Government's energy and climate change policies on households and businesses with an analysis of gas and electricity prices and bills.

<https://www.gov.uk/government/publications/estimated-impacts-of-energy-and-climate-change-policies-on-energy-prices-and-bills>

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**GERALDEVE**

20 Department of Energy and Climate Change Publication

**The Future of Heating: Meeting the Challenge**

This document reports on the progress that has been made in addressing the challenge of finding sources for low carbon heating, as an alternative to fossil fuels.

<https://www.gov.uk/government/publications/the-future-of-heating-meeting-the-challenge>

**TRANSPORT**

21 Response to consultation

**Summary of responses for the draft aviation policy framework consultation**

This report summarises the responses to the draft aviation policy framework consultation in July 2012.

<https://www.gov.uk/government/consultations/draft-aviation-policy-framework>

22 Government Publication

**Aviation Policy Framework**

This framework, which was published on 22.03.13, will fully replace the 2003 Air Transport White Paper and, alongside any decisions that the Government makes following the recommendations of the independent Airports Commission, contains the Government's full policy on aviation. The main elements of the policy may be summarised as follows:

- the benefits of aviation, particularly as a contributor to economic growth;
- the importance of the UK's connections with the rest of the world, particularly emerging markets;
- the role of the aviation sector in reducing global emissions;
- the importance of reducing the impact of aircraft noise;
- the importance of involving communities situated near airports in decision-making;
- the role of the Airports Commission;
- the protection of passengers' rights;
- competition and regulation policy;
- airspace;
- safety; and
- security.

<https://www.gov.uk/government/publications/aviation-policy-framework>

**LONDON**

23 Greater London Authority – Supplementary Planning Guidance (SPG)

**Use of Planning Obligations in the Funding of Crossrail, and the Mayoral Infrastructure Levy**

This SPG supports the policies in the London Plan dealing with the funding of Crossrail and other strategically important transport infrastructure, planning obligations and the Community Infrastructure Levy (CIL). It replaces the SPG on "Use of planning obligations in the funding of Crossrail" published in July 2010 and reflects developments since then, in particular:

- publication of the London Plan in July 2011;
- adoption of the Mayor's Community Infrastructure Levy charging schedule in April 2012;
- changes to the law, particularly the Community Infrastructure Levy Regulations 2010 (as amended) and subsequent amending regulations (including those coming into force in November 2012);
- changes to national policy guidance, in particular the publication of the National Planning Policy Framework and revocation of ODMP Circular 5/2005 and the publication of statutory guidance on the Community Infrastructure Levy (December 2012);
- the latest position in implementing Crossrail; and
- adoption of the Mayor's CIL instalments policy in April 2013.

This SPG sets out:

- the background and policy context for Crossrail, including its funding arrangements and the use of planning obligations and the CIL to deliver the scheme in terms of relevant legislation and Government guidance;
- details of the standard charges and formula that will be applied to work out the contribution to be made in each case. This includes where the charge will apply, what type of development will be covered, the level at which the charge will be set, and how it will be collected and monitored;
- information and guidance on the Mayor's Community Infrastructure Levy;
- guidance on implementation issues common to both use of planning obligations and the CIL; and
- guidance on the approach the Mayor will take to assessing whether a borough has met the requirement to have regard to his CIL, and general advice based on experience of CIL setting to date.

<http://www.london.gov.uk/sites/default/files/Crossrail%20SPG%20April%202013.pdf>

24 Greater London Authority Publication

### London Housing Market Report, Q4 2012

This report summarises key trends in London's housing market, including prices, affordability, repossessions and new housing construction. It contains the latest available data as of late February 2013. The most important findings include the following:

- in real terms there has been zero economic growth in London and the rest of the UK over the last year, but unemployment in London is falling;
- the number of new mortgage loans to first time buyers rose over the last year, but are still well below pre-recession levels;
- average house prices in London went up by 6.4% over the last year, the highest growth of any English region. However, London house prices have had little growth over the past three months;
- average private rents rose by at least 8% for homes of all sizes over the past year; and
- both new construction orders and new housing starts have fallen on an annualised basis in recent months, though completions are still rising.

<http://www.london.gov.uk/publication/london-housing-market-report-q4-2012>

25 Greater London Authority Publication

### The Mayor's Vision for Cycling in London – An Olympic Legacy for all Londoners

This document sets out the Mayor's plans for transforming London's road network to make it much safer and more accessible for cyclists. The main flagship cycle route will be a 15 mile long properly segregated track, running from the western suburbs, through the City to Barking in the east – a bike Crossrail. London's cycling budget is to more than double to almost £400m over the next three years. The Mayor's vision for making London a better city for cyclists can be summarised under four main headings:

- A Tube network for the bike: London will have a network of direct, high-capacity, joined-up cycle routes many of which will run parallel to key Underground, bus and rail routes. There will be more fully-segregated lanes and junctions and more semi-segregated lanes.
- Safer streets for the bike: increased spending on junction review with priority being given to substantial improvements to the worst junctions; the introduction of a range of measures to improve the safety of cyclists around large vehicles.

- More people travelling by bike: Cycling across London is anticipated to double over the next ten years, with cycling becoming a more normal way of travelling around the capital.
- Better places for everyone: The new bike routes will help to create the Mayor's vision of a "village in the city" creating green corridors, more tree planting, more space for pedestrians and less traffic. It is intended that the new routes will specifically target parts of the Tube and bus network which are over capacity, encouraging people to travel by bike and thus relieving crowding.

<http://www.london.gov.uk/publication/mayors-vision-cycling>

## GENERAL

26 Statutory Instrument

### SI 2013/514 The Countryside and Rights of Way Act 2000 (Review of Maps) (England) Regulations 2013

W.e.f. 6.4.13 these Regulations amend s10(2) of the 2000 Act. Section 10(2) prescribes the time limits by when Natural England is required to review the conclusive maps prepared under the Act showing all registered land and all open country in England (excluding Inner London). As originally enacted, s10(2)(a) required the first such review of any such map to be undertaken not more than 10 years after its issue. In relation to England only, that period is now extended to 15 years. Under s10(2)(b) any subsequent review was to be undertaken not more than ten years after the previous review, and again that time limit is now extended to 20 years

<http://www.legislation.gov.uk/uksi/2013/514/contents/made>

27 Department of Health Correspondence

### Accelerating the release of public sector land funding support for NHS trusts

The NHS is seen as a major contributor to the Government's initiative of releasing public sector land in order to provide new homes in order to help the housing market and the wider economy. NHS organisations are to be given financial incentives and operational support to continue and accelerate their contribution to the release of surplus land for 100,000 homes by 2015. This letter, from Dr Dan Poulter, parliamentary Under Secretary for Health, contains details on how NHS trusts can apply for funding for investment and acquisition from the Dept of Communities and Local Government.

<https://www.gov.uk/government/publications/accelerating-the-release-of-public-sector-land-funding-support-for-nhs-trusts>



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28 English Heritage Publication

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### **Constructive Conservation**

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“Constructive conservation” is the term used by English Heritage to describe the protection and adaptation of historic buildings and places through actively managing change. It aims to achieve a balance which ensures that the qualities which make a place or building special are reinforced rather than diminished by change, whilst achieving a solution which is architecturally and commercially deliverable. This publication is the fifth in a series illustrating how England’s most valued buildings can be successfully adapted. The focus of this volume is on conservation-led schemes which can deliver economic benefits. Using case studies it aims to demonstrate the range of approaches that can be used in the application of constructive conservation and the results that can be achieved.

<http://www.helm.org.uk/guidance-library/1636610/>

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29 DCLG policy Paper

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### **The future of high streets**

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Following Mary Portas’ independent review of the future of high streets in December 2011 the Department of Communities and Local Government was asked to lead the government’s response to her recommendations. This report outlines the problems that the government is trying to tackle, describes the work that has been done over the past year, and sets out what will be done going forward.

<https://www.gov.uk/government/publications/the-future-of-high-streets>

# GERALD EVE'S UK OFFICE NETWORK

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We provide a comprehensive range of services to our private and public sector clients — including more than 40 per cent of the FTSE100 — covering agency, corporate property management, professional and transaction-based advice.

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Evebrief has been established for more than 30 years. It is a summary of the latest statutory and legal cases affecting the property industry and is widely regarded in the industry as the most comprehensive document of its type.

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## Abbreviations

The following abbreviations are used in evebrief:

BLD	Lexis Nexis Butterworths (internal abbreviation)
EG	Estates Gazette
EGLR	Estates Gazette Law Reports
EWCA	England & Wales Court of Appeal
EWHC	England & Wales High Court
P&CR	Property, Planning and Compensation Reports
PLSCS	Property Law Service Case Summaries

## The star system

Cases are marked with one, two or three stars as follows:

- \*\*\* Essential reading on the point of law or valuation with which the case is concerned, because it adds to, or clarifies or changes, the law.
- \*\* Noteworthy case which does not significantly alter the law or which relates to a relatively obscure point.
- \* Interesting but non-essential reading.

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One of our key roles at Gerald Eve Research is to communicate with our clients and others; to inform them, for example, on our latest thinking on topical issues such as legal matters and the implications for broader property market trends.

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# EVEBRIEF

## Legal & Parliamentary

Volume 35(05) 8 April 2013

- 01 Scotland – Planning
- 02 Wales – Planning
- 03 Northern Ireland – Construction

### SCOTLAND

#### PLANNING

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- 01 Statutory Instrument
- 

#### **SSI 2013/105 The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2013**

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These Regulations, which came into force on 06.04.13, amend the 2004 Regulations by increasing fees by approximately 20%. A replacement scale of fees is set out in the table in the Schedule to the Regulations.

<http://www.legislation.gov.uk/ssi/2013/105/contents/made>



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WALES

PLANNING

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02 Welsh Assembly Government Consultation

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**Planning for Waste – Revision to Chapter 12 of Planning Policy Wales and Technical Advice Note 21**  
**Deadline for Comments: 14.06.13**

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This consultation invites comments on proposed changes to national planning policy to help deliver waste infrastructure in Wales. The main changes that are proposed are:

- acknowledging that waste policy targets and drivers have evolved and consequently Regional Waste Plans, which are based upon land take, are now outdated and should be revoked;
- introducing a requirement for data collection, monitoring and annual reports, which can be used as evidence to support development plans and planning decisions;
- introducing a requirement to keep a minimum amount of landfill capacity in each region relative to a trigger point – the level of this trigger point forms part of this consultation. Hitting this point will result in a site search and selection process to identify suitable locations for landfill; and
- updating policy direction to enable waste facilities to move up the waste hierarchy through the introduction of a Waste Planning Assessment.

<http://new.wales.gov.uk/consultations/planning/planning-for-waste/?lang=en>

NORTHERN IRELAND

CONSTRUCTION

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03 Statutory Rule of Northern Ireland

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**NISR2013/60 Building (Prescribed Fees) (Amendment) Regulations (Northern Ireland) 2013**

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These Regulations, which came into force on 08.04.13, amend the 1997 Regulations by increasing the fees payable to district councils when applications for building regulation approval are made. The fee for approval to erect one or more small domestic buildings or to extend or alter a small building is increased by 20% for the erection of up to ten dwellings in an application and for works to a single dwelling. The increase is gradually lessened to approximately 11% for applications up to and over 20 dwellings in an application depending on the mix of dwelling types in the application.

<http://www.legislation.gov.uk/nisr/2013/60/contents/made>