EVEBRIEF

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Editor

GROWTH AND INFRASTRUCTURE BILL BEFORE PARLIAMENT

At item 21 we report on the Growth and Infrastructure Bill which was introduced to Parliament last month. The Bill is part of the government's efforts to boost economic growth.

Some of the Bill's provisions are welcome: the proposal to limit local planning authorities to requesting only information that is reasonable having regard to the nature and scale of the proposed development is entirely sensible; the ability to submit applications for stopping up or diverting highways and public paths in parallel with the application for planning permission should have the effect of speeding up the development process; and the ability to apply to modify affordable housing requirements attached to planning permissions where these mean that development is not economically viable may help unlock stalled sites.

However some aspects of the Bill have been criticised, particularly the proposed postponement of the 2015 business rates revaluation for two years until 2017. Though the government has suggested this will help businesses by providing certainty, it would likely hit struggling businesses whose rental values have declined significantly by delaying the benefits that the 2015 revaluation would have brought.

Elsewhere at item 6 we report on draft amendments to the Community Infrastructure Levy regime laid before parliament last month. The proposals include: changes to the formulae in relation to chargeable area and social housing relief; provisions which would mean applications to extend the lifespan of a permission granted before CIL would not give rise to a CIL liability; and changes meaning CIL would effectively be payable only on the balance of the additional floorspace in the case of amendments to existing planning permissions under s73 TCPA1990.

Developers should note that these changes will not be retrospective and may wish to seek advice as to their likely impact.

GERALDEVE

LANDLORD & TENANT

01 Court of Appeal

Right to manage – Commonhold and Leasehold Reform Act 2002 – respondent RTM company seeking right to manage two blocks of flats within larger development owned by appellant

*GALA UNITY LTD V ARIADNE ROAD RTM CO LTD
(2012) PLSCS 212 – Decision given 23.10.12

Facts: The respondent RTM company (AR) served notices on the appellant landlord, GUL, under s79 of the Commonhold and Leasehold Reform Act 2002 seeking to acquire the right to manage two blocks of flats within a larger development on behalf of the tenants. The development also included two freestanding "coach houses" comprising flats with car parking spaces below, and "estate common parts" which included footpaths, roads, visitor parking, grassed areas and bin areas. The tenants' leases included the use of a car port or a parking space and the right to use the common parts and provided for the payment of a service charge. AR served a counternotice which stated that the two blocks were not self-contained buildings or parts of buildings as required by s72(1)(a) since they could not function independently from the rest of the development as they relied on shared facilities such as the access road and visitors parking, while the demised car parking spaces were in the coach houses.

Point of dispute: Whether GUL's appeal would be allowed against the decision of the LVT (upheld by the Lands Chamber of the Upper Tribunal) that AR was entitled to acquire the right to manage: each of the two blocks was a self–contained building, being "structurally detached" within the meaning of s72(2) and the right to manage applied to those buildings plus such appurtenant property as they had, this being the car ports or parking spaces demised with the leases and the various rights granted by them.

Held: GUL's appeal was dismissed. Each of the two blocks was a "self–contained building" for the purpose of s72(1)(a) and there was no justification for imposing a requirement that the building should be able to function independently without the need to use any shared facilities. Nor was there any requirement that "appurtenant property" should be exclusively appurtenant to the self–contained building. Appurtenant property was defined in s112(2) as including appurtenances "belonging to" or "usually enjoyed with" the building and this definition would cover the car ports and spaces as well as the estate common parts over which the tenants were given rights in common with others in their leases.

02 Upper Tribunal: Lands Chamber

Service charge – whether respondents liable for charges of managing agent retained by appellant local authority landlords to provide management services

*SOUTH TYNESIDE COUNCIL V CIARLO
(2012) PLSCS 200 – Decision given 25.07.12

Facts: The respondents held long leases on flats at a low rent which they had acquired from the appellant council (STC) under the right–to–buy legislation. Under the terms of their leases they were required to pay a management charge which represented a proportion of the reasonably estimated amount required to cover the costs and expenses incurred by STC in managing and maintaining the building. The leases provided that STC could appoint managing agents for the purpose of managing the property and remunerate them properly for their services, and also that STC could delegate any of their management functions on such terms and conditions and remuneration as they thought fit. After STC set up an arm's length management organisation (ALMO) to manage their housing stock on a non–profit–making basis STC's management charge was calculated by determining the proportion of the ALMO's global fee that was attributable to the work of its leasehold team, (excluding a percentage of that cost which related to specific properties and was recoverable from their lessees).

Point of dispute: Whether STC's appeal would be allowed against the ruling of the leasehold valuation tribunal (LVT) that it was not entitled to recover management charges calculated in that manner. The LVT held that STC could not pass on all the charges of their managing agents, but only those incurred in performing the functions specified in the lease. i.e. not all of the costs of the ALMO were recoverable since they included matters not concerned with the proper and reasonable management of the building. The LVT also held that STC should calculate a separate management fee for each property by reference to the nature of the block in which it was situated.

Held: The appeal was allowed.

i. Under the terms of the clause that entitled STC to appoint managing agents for the purpose of managing the building and to remunerate them properly for their services, the fees payable to the ALMO were properly recoverable as part of the management charge under the terms of the respondents' leases. The wording of the clause meant that the management charge did not only cover services and repairs but also extended to the general managing of the relevant building as part of STC's property portfolio.

ii. STC was entitled to charge the respondents as a management charge, the due proportion of the reasonably estimated amount required to cover the cost and expenses incurred by STC in paying the ALMO for managing their building. The ALMO's invoices did not specify a separate amount for the management of each particular building but STC was not obliged under the terms of the leases to agree terms and conditions for remuneration that involved such separate charges. A careful apportionment had been made as to what part of the global sum paid to the ALMO for managing STC's entire housing stock was attributable to the leasehold properties, and this figure properly represented the costs and expenses incurred by STC in paying the ALMO for its management services in relation to the building.

03 Upper Tribunal (Lands Chamber)

Reasonableness of service charge – LVT determining charge unreasonable since not reasonable to replace windows – whether LVT entitled to reach a decision on point not advanced by parties – LVT exceeding its jurisdiction and appeal allowed

**BIRMINGHAM CITY COUNCIL V KEDDIE
(2012) PLSCS 210 – Decision given 25.09.12

Facts: BCC, the appellant, was the landlord of a block of flats. In 2006–07 it undertook a programme of major works including replacement of windows and balconies. Subsequently K, the respondent, purchased one of the flats and BCC sought to recover the sum of £5,909 from him in respect of works to the flat as part of the service charge payable under the lease. K applied to the LVT under s27A of the Landlord and Tenant Act 1985 for a determination of whether the charge was reasonable within s19(1), arguing that the cost of the windows should be discounted since the standard of workmanship had been poor and ongoing repairs were needed. The LVT disallowed the costs of the works on the grounds that it had not been reasonable to replace the windows at all, even though K had not advanced this contention. The LVT took the view that its jurisdiction extended to determining the entire service charge, not just the matters in dispute as pleaded.

Point of dispute: Whether BCC's appeal would be allowed against the LVT's ruling. It contended that the LVT had breached the rules of natural justice by reaching a decision on grounds that were not raised in K's application without giving it the opportunity to make submissions on the point, and, secondly, that the decision was perverse as the LVT had not considered any evidence regarding the state of the old windows.

Held: The appeal was allowed. The LVT did not have jurisdiction under s27A to determine the entire service charge, beyond the matters in dispute as pleaded or otherwise specifically identified in the application. In rare cases it might be appropriate or necessary for the LVT, in order to properly determine the issues expressly in dispute, to raise issues that were not expressly raised by the parties but that fell within the broad scope of the application. Such issues would have to fall within the scope of the application and could not relate to something that arose outside it. In this case the LVT had had no jurisdiction to determine whether it was reasonable to replace the old windows; it had not been asked to determine that issue and it was clear from the application that K agreed or accepted that replacement was reasonable.

PLANNING

04 Administrative Court

Interested party seeks judicial review of decision to grant planning permission for demolition and relocation of sports pavilion on grounds that an environmental impact assessment should have been carried out

*R (ON THE APPLICATION OF LYON) V CAMBRIDGE CITY COUNCIL
(2012) PLSCS 204 – Decision given 05.10.12

Facts: A college sought planning permission to demolish its existing sports pavilion and to replace it with a new building on a site which was allocated as protected open space. The building would be in linear form with an open veranda, the roof height being 2.5 metres rising to a ridge of eight metres. Although there were a number of objections to the proposal from local residents, including the claimant, L, the Ipa (CCC) granted full planning permission.

Point of dispute: Whether L's application for judicial review of the decision to grant permission for the development would be allowed. L argued that the development fell within the scope of the Town and Country Planning (Environmental Impact Assessment) Regulations 2001 as it was an urban development project within Schedule 2, paragraph 10(b) and as such required a screening opinion.

Held: The application was dismissed.

i. The demolition of the existing pavilion and construction of a new one to replace it did not amount to an urban development project. Paragraph 10 of Schedule 2 was concerned with "infrastructure projects" and a small sports pavilion could not be classed as such – it was not a sports stadium or a leisure centre.
ii. CCC had correctly taken the view that the development was not likely to have significant effects on the environment by virtue of factors such as its size, nature or location and it had lawfully exercised its planning judgment on this matter.
iii. L had failed to show that an arguable case with ground sfor seeking judicial review existed which merited full investigation at a full oral hearing.

05 Statutory Instrument

SI 2012/2613 The Town and Country Planning (Local Planning) (England) (Amendment) Regulations 2012

The principal 2012 Regulations make provision for the operation of the system of local development planning in England which was established by the Planning and Compulsory Purchase Act 2004. Section 33A of the Act imposes a duty on local planning authorities, county councils and prescribed persons to co–operate with each other and with persons prescribed under s33A(9) in relation to the planning of certain categories of sustainable development or use of land. These Regulations amend the Principal Regulations so that such prescribed persons include each local nature partnership.

http://www.legislation.gov.uk/uksi/2012/2613/contents/made

06 Draft Regulations

The Community Infrastructure Levy (Amendment) Regulations 2012

These draft Regulations, which were laid before Parliament on 15.10.12, will make amendments to the 2010 Regulations which implemented the detail of the Community Infrastructure Levy (CIL). Some of the main changes proposed by these Regulations include the following:

- Developments granted consent under neighbourhood development orders will become liable to CIL;
- Amendments to make provision for applications made under s73 of the Town and Country Planning Act 1990 in respect of development for which a liability notice has already been issued. CIL already paid can be set off against any CIL liability in relation to the s73 application, but the onus is on the applicant to claim the credit;
- If a s73 permission is obtained for a development that initially gained permission before CIL came into force, then CIL is only payable on the balance of the additional floorspace created through the s73 permission;
- Applications to extend the lifespan of permissions before CIL was introduced will not give rise to CIL liability;
- Amendments have been made to the formulae relating to the calculation of CIL liability (Reg 40 – chargeable area) and to the calculation of social housing relief (Reg 50);
- CIL can be used for the provision, improvement, replacement, operation or maintenance of infrastructure; and
- The Mayor can now adopt an instalment policy for the payment of CIL even where the London borough does not have one.

07 CLG Consultation

Strategic Environmental Assessment of the Revocation of the South East Regional Strategy: Environmental Report Deadline for Comments: 06.12.12

This Environmental Report is a consultation document on the likely significant environmental effects of revocation of the South East Plan and the Regional Economic Strategy (which together form the Regional Strategy).

http://www.communities.gov.uk/publications/planningandbuilding/searevocationsoutheast

08 Greater London Authority publication

Implementation Plan

The document sets out how the policies of the London Plan will be translated into practical action. It also provides a more robust basis for infrastructure planning across London. The Plan is an evolving document and the final London Plan Implementation Plan 1 document is expected to be published before the end of this year. Thereafter the Implementation Plan will be updated during the summer of each year.

http://www.london.gov.uk/publication/implementation-plan

09 CLG Statistics

Planning Applications: April to June 2012 (England)

The latest statistics on planning applications were published on 28.10.12. In the period April to June 2012 district level planning authorities in England:

- received 121,150 applications for planning permission, a decrease of 1% compared with the corresponding period in 2011;
- decided 110,500 planning applications, 1% more than during the same quarter in 2011;
- granted 90,200 permissions, 1% higher than in the same quarter in 2011;
- decided 2% fewer residential decisions compared to the June quarter in 2011;
- received 476,100 applications, 1% fewer than during the year ended June 2011;
- decided 436,000 planning applications, slightly fewer than during the year ended June 2011;
- granted 355,200 permissions, slightly more than last year;

- decided 57% of major applications in 13 weeks, 70% of minors and 82% of others in eight weeks; and
- made 1% fewer residential decisions than during the year ended June 2011.

http://www.communities.gov.uk/publications/corporate/statistics/planningapplicationsq22012

RATING

10 DCLG Information Letter

Business Rates Information Letter (9/2012): 2015 business rates revaluation announcement

It was announced on 24.10.12 that the Government intends to postpone the next business rates revaluation in England to 2017. The legislation is to be brought through the Growth and Infrastructure Bill (see item 21).
The Government's stated intention is to help local firms and shops who could otherwise face unexpected rises in their business rates bills over the next few years and help provide certainty for businesses to plan and invest supporting economic growth.

http://www.communities.gov.uk/publications/localgovernment/bril9-12

11 Deadline for Comments: 23.11.12

This consultation invites comments on drafts of the key regulations that will underpin the business rates retention scheme which it is intended will come into effect from 01.04.13. The draft sets of regulations are:

- The Non–Domestic Rating (Rates Retention) Regulations 2012;
- The Non–Domestic Rating (Levy and Safety Net) Regulations 2012;
- The Non–Domestic Rating (Renewable Energy Projects) Regulations 2012;
- The Non–Domestic Rating (Designated Areas) Regulations 2012; and
- The Non–Domestic Rating (transitional Protection payments) Regulations 2012.

http://www.communities.gov.uk/publications/localgovernment/businessratesdraftregs

HOUSING

12 Statutory Instrument

SI 2012/2625 The Housing (Empty Dwelling Management Orders) (Prescribed Period of Time and Additional Prescribed Requirements) (England) (Amendment) Order 2012

Under Chapter 2 of Part 4 of the Housing Act 2004 local housing authorities may make interim and final empty dwelling management orders in respect of dwellings which are wholly unoccupied. Before a final empty dwelling management order can be made there must be an interim empty dwelling management order and the 2006 Order prescribes requirements that a local housing authority must have complied with when making an application to a residential property tribunal for one of these. This Order, which comes into force on 15.11.12, prescribes that the dwelling must be wholly unoccupied for at least two years, this period being in substitution for the six month period that was specified in s134(2)(a) of the 2004 Act.

http://www.legislation.gov.uk/uksi/2012/2625/contents/made

13 Homes and Communities Agency (HCA) Monthly Housing Market Bulletin

Housing Market Bulletin September 2012

This bulletin provides HCA staff with the latest information on housing market trends, the economy and the housebuilding industry.

- House prices remain relatively stable across most of the country, although prices in London are continuing to rise.
- UK growth was negative for a third consecutive quarter, but since the publication of this bulletin figures have been released which show that the UK is no longer in recession and growth is beginning. CPI and RPI inflation levels were virtually unchanged from the previous quarter. Unemployment continues to fall, but is still high compared to the long term average.

http://www.homesandcommunities.co.uk/ourwork/market-context

LEASEHOLD REFORM

14 Supreme Court

Leasehold Reform Act 1967 – enfranchisement of properties originally built as single residences but now let as bedsits for short term holiday lets or used as office accommodation – whether properties qualified as "houses" for purposes of s2(1) of the 1967 Act

***HOSEBAY V DAY; LEXGORGE LTD V HOWARD DE WALDEN ESTATES LTD
(2012) PLSCS 202 – Decision given 10.12.12

Facts: Both these appeals concerned large terraced properties in London which had originally been constructed and occupied as houses. The first appeal related to three properties in South Kensington which, notwithstanding the terms of their leases, had been converted into self–catering units and were let as short–term accommodation for tourists. The second appeal concerned a property in Marylebone where the lease described the demised premises as a "messuage or residential or professional premises" and stipulated that the two lower floors should be used for professional offices and the upper two as self–contained flats or maisonettes. In fact, all four floors had been used as professional offices over a long period of time.

Point of dispute: Whether each of these properties constituted a "house" that qualified for enfranchisement within s2(1) of the 1967 Act. In both the county court and the Court of Appeal the properties were held to qualify, the latter finding that each of the properties fulfilled both limbs of the s2(1) definition since it had originally been designed and subsequently adapted for living in and could also reasonably be called a house.

Held: The appellants' appeals against the Court of Appeal's rulings were allowed.

i. The 1967 Act was not intended to confer statutory rights on lessees of buildings that were used for non–residential purposes. The words "designed" and "adapted" in the s2(1) definition should not be treated as alternative qualifying requirements, and the fact that a building had originally been designed for living in was not sufficient to bring it within the first part of the definition regardless of any subsequent adaptations to other uses. The word "adapted" meant "made suitable" and did not imply any particular degree of structural change. Where a building was in active and settled use for a particular purpose, the likelihood was that it had undergone some physical adaptation to make it suitable for that purpose. The second part of the definition, which asked whether the property was a house "reasonably so called", tied the definition to the primary meaning of a "house" as a single residence, as opposed to a hostel or a block of flats.

ii. Applying these principles neither of the properties qualified for enfranchisement. The first was wholly used as a self–catering hotel and the fact that the building looked like a townhouse was irrelevant. The second property was used entirely for offices and was not therefore a house reasonably so called, even though it had been designed originally as a house and was still described as a house for many purposes.

15 Upper Tribunal (Lands Chamber)

Leasehold enfranchisement – premium payable for new lease of flat in block in Horsham – whether addition to generic 5% Sportelli deferment rate justified to take into account management risks associated with block – appeal allowed in part and 5.5% rate applied

**CITY & COUNTY PROPERTIES V YEATS
(2012) PLSCS 192 – Decision given 17.07.12

Facts: The respondent tenant, Y, applied to the appellant freeholder (CCP) and a headlessee for the grant of a new underlease of a flat in Horsham, West Sussex pursuant to Chapter II of the Leasehold Reform, Housing and Urban Development Act 1993. The flat, which was in a four–storey 1930s block close to the town centre, was found to be poorly sited, dated and in a poor state of repair.

Point of dispute: Whether CCP's appeal would be allowed against the LVT's determination of a 6% deferment rate. Starting with the 5% rate for flats laid down in the case of Earl of Cadogan v Sportelli (2008) a further 0.5% was added for the additional risks that growth would not be achieved at the same rate as in prime central London (PCL), 0.25% for obsolescence, and a further 0.25% for the risks involved in the management of the block. Y contended that the LVT had erred in making additions for capital growth issues and management risks, but no appeal was made on the issue of obsolescence.

Held: The appeal was allowed in part.

i. There would need to be compelling evidence to justify an additional allowance to reflect exceptional difficulties in management, but there was no evidence that the management problems relating to this block were not already full reflected in the vacant possession value of the property.

ii. An additional 0.25% was justified in respect of increased management risks arising from the consultation requirements imposed by s20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003: Zuckerman v Trustees of Calthorpe Estate (2010). As a result of that factor those investing in freehold reversions of flats would have had greater concerns about possible management problems during the course of the tenancy than had been recognised in Sportelli.

iii. The hypothetical successful purchaser of the freehold could be assumed to have cast its bid after carefully analysing the value of the prospective investment. The evidence of long–term growth trends in this case did not support the assumption of a different growth rate in Horsham compared to PCL.

iv. The 0.25% addition for obsolescence was retained and after adding 0.25% for management risks a deferment rate of 5.5% was produced.

COMPULSORY PURCHASE

16 Administrative Court

Compulsory Purchase Order (CPO) – Empty Dwelling Management Order (EDMO) – local authority making CPO in respect of empty property in disrepair – whether inspector had erred in failing to consider whether property was empty under EDMO regime – whether making of CPO proportionate

*BRAITHWAITE V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) PLSCS 209 – Decision given 18.10.12

Facts: B owned a property which had fallen into disrepair owing to lack of use and maintenance since 2000. In November 2009 the lpa resolved to make a CPO pursuant to s17 of the Housing Act 1985, the stated purpose of which was to return the property to residential use – the local authority would use it to increase its housing stock, either by selling it to a registered social landlord or offering it for sale to the private sector at auction. Notwithstanding B's objections to the CPO, it was confirmed by the Sec of State.

Point of dispute: Whether to allow B's application for judicial review to quash the Sec of State's decision to confirm the CPO.
B contended that:

i. The inspector and the Sec of State had erred in law in failing to take into account, in determining whether the property was an empty property under the 1985 Act, that the property was not an "empty dwelling" for the purpose of making an EDMO, which was a material consideration in deciding whether it was an "empty property" under the CPO regime.

ii. The inspector had erred in concluding that the lpa had demonstrated that its intentions for the property were preferable to those advanced by B.

iii. The making of the CPO engaged B's rights to family and private life under Article 8 of the European Convention on Human Rights and making the CPO was not proportionate.

Held: B's application was dismissed.

i. There was no serious dispute that the property was not "an empty dwelling" for the purposes of the EDMO regime. The EDMO regime was intended to create additional powers for bringing unoccupied property back into use, but it had safeguards, and it was not intended that the CPO regime should be cut back or qualified by the EDMO regime.

ii. B's argument that the inspector should not have considered whether the lpa's intentions in respect of the property were preferable was without merit. The inspector had been correct to consider the lpa's carefully defined proposals and to conclude that more reliance should be placed on these than on B's unsupported proposition that he was capable of returning the property to housing use.

iii. The compelling social need for more housing outweighed B's Article 8 rights and the CPO was proportionate. Under B's continuing ownership there was no realistic prospect the property would be restored for use as a private dwelling.

REAL PROPERTY

17 Upper Tribunal: Lands Chamber

Appropriation of land for planning purposes blocking claimant's right of way – whether claimant entitled to compensation assessed by reference to ransom value for "taking" of easement or whether compensation confined to diminution in value of claimant's land

*HOLLIDAY V BRECKLAND DISTRICT COUNCIL
(2012) PLSCS 207 – Decision given 30.08.12

Facts: The claimant, H, owned a furniture shop with a separate workshop to the rear. Access to the workshop was gained along an access way that crossed BDC's adjoining land which was subject to a right of way for the benefit of H's land. When BDC appropriated their land for planning purposes and commenced development works the access way was blocked and H sought compensation under s237 of the Town and Country Planning Act 1990 for interference with the easement. BDC, as compensating authority, accepted that H was entitled to compensation for injurious affection, being the diminution in value of the shop premises as a consequence of the loss of the right of way.

Point of dispute: Whether H was also entitled to compensation for the "taking" of his right of way, based on its market value.
H contended that this included a "ransom value" representing the amount he could have extracted, a proportion of the development value of the BDC's land, in return for agreeing to the extinguishment of the easement.

Held: The issue was determined in favour of BDC. Compensation under s237(4) was payable in respect of injurious affection only and H was not entitled to have compensation assessed on the basis that an interest in land had been acquired from him. The basis of compensation for injurious affection under that was the diminution in value of the retained land.

ENERGY

18 Department of Energy and Climate Change Consultations

Changes proposed to overhead power line regime
Deadline for Comments: 28.11.12

The Government proposes to make changes to the process for obtaining consent for overhead power lines in England and Wales. There are three consultation documents:

- Consultation on amendment to the threshold for high voltages overhead lines (electric lines above ground) in the Planning Act 2008. This amendment will mean that a number of applications for minor works on overhead lines will no longer be treated in the same way as major infrastructure projects such as large power stations, but instead they will be considered under s37 of the Electricity Act 1989.

- Consultation on revision of fees payable for applications under s37 of the Electricity Act 1989. This consultation proposes to increase the fees payable for applications under s37 of the Electricity Act 1989 in order to bring them into line with the actual administration costs associated with these applications.
- Consultation on the Necessary Wayleaves Regime. Necessary wayleaves enable electricity network operators to secure the right to run electric lines across land in cases where they are unable to reach voluntary agreement with the owners/occupiers of the land in question. It is proposed that the parties could submit written representations in certain circumstances, instead of there being a full hearing, to introduce a formal procedure for hearing applications made by electricity network operators relating to essential vegetation management adjacent to overhead lines, and to introduce a scale of fees for handling necessary wayleaves and essential vegetation management applications, to be paid by electricity network operators.

http://www.decc.gov.uk/en/content/cms/news/pn12_124/pn12_124.aspx

GENERAL

19 European Court of Human Rights

Human Rights – applicant facing eviction from caravan site – seeking damages for violation of human rights

**BUCKLAND V UNITED KINGDOM
(2012) PLSCS 199 – Decision given 18.09.12

Facts: In December 2004 the gypsy council gave the applicant, B, notice to terminate her licence to occupy a pitch at a caravan site that it managed pursuant to an agreement with the local borough council. The council subsequently brought an action to recover possession of the pitch relying upon the termination of the licence and alleged misconduct amounting to nuisance. B argued that the relevant legal provisions were incompatible with the right to respect for home and family life under Article 8 of the European Convention on Human Rights (ECHR). It was common ground that the council was to be regarded as a public authority which owed a duty to refrain from acting incompatibly with Convention Rights and that B could rely upon the public law defence that the council's decision to recover possession was unreasonable. However, the judge granted the possession order, holding that incompatibility with the Convention was not arguable in the light of the amendment to the Caravan Sites Act 1968, which conferred a power on the court in cases concerning caravan sites to suspend the enforcement of any possession order for up to 12 months. The public law defence was rejected on the basis that it was not seriously arguable that the council's decision to recover possession had been an improper exercise of its powers. The possession order was suspended for four months.

Point of dispute: Whether B's appeal against the Court of Appeal ruling, upholding the decision of the judge in the court below, would be allowed. B alleged that this judgment constituted an unjustified breach of her rights under Article 8, and that the relevant statutory provisions had prevented her from challenging the possession claim in domestic proceedings.

Held: B's application was granted. Article 8 provided that a public authority should not interfere with the exercise of an individual's rights except in accordance with the law, and as may be necessary in a democratic society. The court had to examine whether the decision–making process leading to measures of interference was fair and such as to afford due respect to the interests of the individual safeguarded by Article 8. The loss of a person's home was the most extreme form of interference with the right to respect for the home. In this case B had sought to challenge the making of the possession order in her case, not merely to suspend its effect, but because of constraints of UK case law she was unable to challenge the making of a possession order based on her personal circumstances. She could have argued for the order to be suspended for up to twelve months and then sought another extension before that period expired, but she was unable to argue that no possession order should have been made at all. The possibility of suspending the possession order for up to twelve months was inadequate to provide the necessary procedural guarantees under Article 8 and nor did making repeated applications for suspension of a possession order remove the incompatibility of the procedure with Article 8. B's attempt to contest the making of a possession order had failed because it was not possible at that time to challenge it on the basis of alleged disproportionality of the decision in the light of personal circumstances. Accordingly, the procedural safeguards required by Article 8 for the assessment of the proportionality of the interference had not been observed. B had been dispossessed of her home without any possibility of having the proportionality of her eviction determined by an independent tribunal and accordingly there had been a violation of Article 8.

20 Court of Appeal

Registration of town or village green under Commons Act 2006 – field provided and maintained by local authority as recreation ground under s80(1) of the Housing Act 1936 – whether use by local inhabitants therefore "by right" not as "as of right" so as to preclude registration

*BARKAS V NORTH YORKSHIRE COUNTY COUNCIL
(2012) PLSCS 215 – Decision given 23.10.12

Facts: The appellant, B, applied to NYCC under s15 of the Commons Act 2006, to register a playing field in Whitby as a town or village green on the ground that it had been used as of right by local inhabitants for sports and pastimes for the requisite period of 20 years. The land belonged to the local borough council whose predecessor had acquired it in 1951 under the provisions of the Housing Act 1936 and had laid it out and maintained it as a recreation ground. The 1936 Act had been consolidated in various subsequent Housing Acts, culminating in the Housing Act 1985.

Point of dispute: Whether B's appeal would be allowed against the ruling of the court below, confirming the recommendation of an independent inspector, that the field did not meet the requirements of s15(2). Although the field had been used by many local residents for sports and other pastimes over a 20 year period, so as to meet that requirement of the section, it did not meet the requirement that such use had to be "as of right".

Held: The appeal was dismissed. There was a distinction between use of land "by right" and use "as of right". In a situation where a statute conferred a right on the public to use a piece of land for recreational purposes, then their use of that land would be by right, not as of right. In a situation where land was "appropriated" for lawful sports and pastimes local inhabitants also had a statutory right to use the land because the local authority, having exercised its statutory powers to make the land available to the public for that purpose, was then under a public duty to use it as such until such time as it was formally appropriated for some other statutory purpose. These principles applied to a recreation ground which was provided, as in this case, under the 1936 Housing Act: although the local authority was under no obligation to lay out the land as a recreation ground, it had an express statutory power to provide a recreation ground in connection with housing; once it had done so and the land had been laid out and maintained as a recreation ground it had then been appropriated for the purpose of public recreation. The local inhabitants, had, throughout the relevant 20 year period, indulged in lawful sports and pastimes on the field by right and not as of right. Accordingly, the requirements for registration as a green under s15 of the 2006 Act had not been not been met.

21 Bill of Parliament

Growth and Infrastructure Bill

This bill received its first reading on 18.10.12. Proposals include the following:

- Providing the option to make planning applications directly to the Sec of State if the local authority is designated for such purposes and the application is not a s73 application or a reserved matter. The Sec of State must publish the criteria that are to be applied in deciding whether a local authority should be bypassed in this way;
- Limiting lpas' power to require information with planning applications. The paperwork required in respect of an application must be reasonable having regard to the nature and scale of the proposed development;
- Enabling applications to be made to authorities to modify or discharge affordable housing requirements if they have the effect of making developments not economically viable;
- Enabling applications for stopping up orders for highways and public rights of way to be made concurrently with planning applications;
- Allowing owners of land to register their land as a town or village green by depositing a statement that brings to an end any period of use, as of right, for lawful sports and pastimes on the land;
- Restricting rights to register land as a town or village green if there is a "trigger event", such as a planning application in relation to the land, or a development plan identifying the land for possible development.;
- Bringing business and commercial projects within the Planning Act 2008 regime. Applicants who wish to deliver nationally–significant (as decided by the Sec of State) business and commercial projects will have the opportunity to go through the infrastructure fast–track process; and
- Postponing the compilation of the 2015 rating list to 2017.

22 Defra Statistical Publication

Statistical Digest of Rural England 2012 – September 2012

This publication is a collection of statistics on a range of social and economic subject areas. They are split into rural and urban areas in order to allow for comparisons between the rural and urban classifications. It starts with a social section on rural and urban populations in England, followed by a range of subjects, including social issues such as housing, broadband, crime and education. The economic contains indicators on productivity, earnings and economic activity, as well as a selection of indicators relating to economic growth.

http://www.defra.gov.uk/publications/2012/09/25/pb13820-stats-digest-rural-england/

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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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SCOTLAND

LANDLORD & TENANT

01 Scottish Government Publications

Consultation on a strategy for the Scottish Private Rented Sector: Consultation Analysis Report and Responses

These reports provide an analysis of the Scottish Government's consultation on the development of a strategy for the Private Rented Sector, which was published on 17.04.12, and the responses to this consultation.

http://www.scotland.gov.uk/Publications/2012/10/5873
http://www.scotland.gov.uk/Publications/2013/09/1158

NORTHERN IRELAND

LANDLORD & TENANT

02 Statutory Rule of Northern Ireland

NISR 2012/373 The Tenancy Deposit Schemes Regulations (Northern Ireland) 2012

These Regulations, which came into force on 01.11.12, make provision for tenancy deposit schemes for the purposes of Articles 5A and 5B of the Private Tenancies (Northern Ireland) Order 2006. Such schemes must be approved by the Department for Social Development. The Regulations provide for the appointment of a scheme administrator and approval of tenancy deposit schemes.

http://www.legislation.gov.uk/nisr/2012/373/contents/made

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CONSTRUCTION

03 Statutory Rule of Northern Ireland

NISR 2012/375 The Building (Amendment) Regulations (Northern Ireland) 2012

These Regulations, which came into force on 31.10.12, amend the Building Regulations (Northern Ireland) 2012 as follows:

- Regulation 3(2) has been amended and a new paragraph 3(4) has been introduced to prescribe a timescale for issuing a contravention notice under Article 18 of the Building Regulations (Northern Ireland) Order 1979 in relation to work completed on plans deposited before the 31.10.12.

http://www.legislation.gov.uk/nisr/2012/375/contents/made