EVEBRIEF

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DECISIVE GOVERNMENT OR DIMINISHING DEMOCRACY?

Steve Hile
Editor

At item 6 in this edition we report on the impact assessment of the Growth and Infrastructure Bill which the Government hopes will "remove unnecessary bureaucracy that can hinder sustainable growth". However, one person's reduced bureaucracy is another's reduction of debate or discussion. At item 7 we report on the DCLG Consultation on planning appeal procedures – perhaps a less 'heavy handed' way of dealing with such reform.

In section 22 of this Bill is a proposal to postpone the next rating revaluation from 2015 to 2017 without consulting any of the businesses that the Government claims will be affected. The reason for doing so seems to change by the week as they are forced to provide evidence to back up their claims.

Few would argue that the process to get a major infrastructure project from drawing board to reality is painfully slow in the UK. For example the new High Speed Two rail link from London to Birmingham is 15 years away – in the same time, China will build a network the size of Europe's. Granted there will be little or no debate in China but there has to be a happy medium.

Steve Hile

GERALDEVE

LANDLORD & TENANT

01 Court of Appeal

Assured shorthold tenancy – claim by appellant tenant for return of deposit plus three times that amount under s214 Housing Act 2004 for failure to comply with statutory requirements regarding provision of information about tenancy deposit scheme

*AYANNUGA V SWINDELLS
(20120 PLSCS 236 – Decision given 06.11.12

Facts: The respondent was the landlord and the appellant the tenant under an assured shorthold tenancy of a residential property at a rent of £950 per month. The appellant's deposit had been paid into an authorised "custodian"–type tenancy deposit scheme under the Housing Act 2004. In 2011 the respondent brought a claim for possession on the ground of rent arrears. The appellant counterclaimed under s214 of the 2004 Act for the return of her deposit, plus a sum of three times that amount, because of the respondent's alleged failure to comply with the requirements of s213 of the 2004 Act and the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 which concerned the provision of information to tenants on the protection of their deposit in an authorised deposit scheme. At trial the judge advised that the respondent could correct this non–compliance at any point before judgment was given and the respondent supplied a document confirming that the deposit had been paid into an authorised scheme and giving its contact details and those of himself and his agent. The judge considered this to be sufficient, notwithstanding the continued omission of the information prescribed by para 2(e) and (f) of the 2007 Order concerning dispute resolution procedures, because the appellant could easily find out the relevant details by contacting the scheme administrator. The possession claim and the s214 counterclaim were both dismissed.

Point of dispute: Whether the appellant's appeal on the s214 issue would be allowed.

Held: The appeal was allowed. There had been no compliance with the requirements of para 2(c) to 2(f) of the 2007 Order. Neither the tenancy agreement nor the additional information addressed the procedural provisions in the deposit scheme itself as required by para 2(c) and (d); the relevant provisions in the tenancy agreement were based on the hypothesis that the landlord's agent had retained the deposit as stakeholder, when in fact it had been paid to the trustee of a custodian scheme. Secondly, providing the procedural information prescribed by para 2(e) and (f) was as important as safeguarding the deposit in a scheme. The fact that the appellant might be able to obtain the information by other means did not alter the conclusion that the landlord had not complied with the statutory requirement that he provide this information.

PLANNING

02 Court of Appeal

Display of advertisements – appellant claiming advertisements displayed on wooden posts enjoyed deemed planning consent on ground of ten years continual use – whether breaks in ten–year period precluded "continual" use

*WINFIELD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) PLSCS 234 – Decision given 07.11.12

Facts: For many years the appellant, W, had positioned advertisements for his business on land that he owned next to a road junction. At first these were attached to wooden posts and later he displayed them on a large wooden structure. In 2011 he applied for a lawful use certificate in respect of the advertising use contending that the advertisements enjoyed deemed planning consent by virtue of Class 13, Part 1, Schedule 3 to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 on the grounds that they had been displayed on a site that had been used continually for the display of advertisements without express consent for the preceding ten years. The application was dismissed by the lpa and by a planning inspector on appeal to the Sec of State, who found that there had been a material break in the use because W had removed the advertisements from time to time at the request of the local council in order to avoid enforcement action. The inspector concluded that each reinstatement of the advertisements a few weeks later represented a new breach of planning control and that the ten–year period started again.

Point of dispute: Whether W's appeal would be allowed against the ruling of the court below which upheld the inspector's decision. He contended that the inspector had wrongly based his decision on the provisions for immunity from enforcement in s171B of the 1990 Act rather than on Class 13 and that under Class 13 short interruptions in advertising use were allowed. He also submitted that the wooden posts and structure had continued to be "advertisements" even when nothing had been attached to them.

Held: W's appeal was dismissed.

i. The inspector's findings had taken the case outside Class 13 and in the circumstances of the case nothing turned on the use of the word "continually" as opposed to "continuously". An interruption caused by taking down one advertisement pending the arrival of the next one was different from taking down an advertisement for a few days or weeks in order to avoid enforcement action and until it was thought safe to put it back. Interruptions that occurred due to the threat of legal sanction, knowing that the use was unlawful, would automatically bring the period of use to an end.

ii. The wooden posts and later wooden structure were not advertisements for Class 13 purposes during the times when no advertisement was displayed on them.

03 Administrative Court

Land in green belt being used for paintballing and DIY livery – local authority issuing enforcement notices – whether inspector had adopted an unlawful interpretation of PPG2

*NEWLYN DEAN & SONS LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) PLSCS 219 – Decision given 22.10.12

Facts: The claimant, ND, owned a farm in the green belt. The lpa issued four enforcement notices relating to unauthorised use of the land for paintballing, structures that had been placed on the land in connection with that use and use of the land for DIY livery. An inspector appointed by the Sec of State dismissed ND's appeal against these notices.

Point of dispute: Whether ND's appeal would be allowed against the inspector's decision. ND contended that the inspector's interpretation of PPG2: Green Belts, that in order to be appropriate development in the green belt, the use of land for outdoor recreation and the provision of essential facilities for such uses had to preserve openness, was unlawful. ND argued that outdoor sport and outdoor recreation and cemeteries were deemed to preserve openness.

Held: The appeal was dismissed.

i. Para 1.4 of PPG2 set out the fundamental aim of green belt policy which was to prevent urban sprawl by keeping land permanently open and the paragraphs which followed had to be interpreted so as to give effect to that aim. There was nothing in PPG2 which said that outdoor sport and recreation were deemed to preserve openness and, therefore, on its true construction the policy did not have the effect for which ND contended.

ii. Any buildings on green belt land were inappropriate unless they were shown to be essential facilities for a use which was intended to preserve openness, but in this case the court was not persuaded that ND's uses for this green belt land were deemed to preserve openness.

04 Court of Appeal

Scrap–metal yard – whether intensification of use amounted to material change of use – whether appellants entitled to contend for material change of use by referring to other factors not mentioned in enforcement notice

*HERTFORDSHIRE COUNTY COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) PLSCS 246 – Decision given 15.11.12

Facts: In 2009 the appellant council, HCC, issued an enforcement notice against the second respondent who operated a scrap–metal yard pursuant to a 1970's planning permission. The notice alleged a breach of planning control consisting of a material change of use of the land by intensification of use as there had been a material increase in the amount of scrap handled by the yard. The notice alleged that the substantial increase in the level of operations and the resulting increase in noise, dust and vehicles had resulted in a new use not permitted under the extant permission. The second respondent's appeal against the enforcement notice was allowed by the Sec of State's planning inspector who applied a test of whether the increase in the scale of the use had reached a point where it gave rise to such materially different planning circumstances that it resulted in a change in the definable character of the use. The inspector found that it had not and this decision was upheld by the judge in the court below.

Point of dispute: Whether HCC's appeal would be allowed against the judge's decision. In the appeal HCC sought to rely not only on increase in throughput but also other factors, such as the increased use of gas bottles and canisters with potential for explosions and changes in legislation regarding lorry drivers' working hours which had resulted in more nighttime and early morning lorry movements.

Held: The appeal was dismissed. Intensification of use could constitute a material change of use, but only where the intensification had resulted in a change in the character of the use. Although there had been a very substantial increase in tonnage the inspector had been entitled to conclude that it had not resulted in a change in the character of the use as the premises continued to be used as a scrapyard. HCC should not be entitled to change their grounds of appeal to include factors other than the increase in throughput. These factors had not been included in the breach of planning control alleged by HCC in the enforcement notice, nor had they formed part of its case before the inspector.

05 Administrative Court

Application for certificates of lawful use and development

**R (ON THE APPLICATION OF PEEL LAND AND PROPERTY INVESTMENT PLC) V HYNDBURN BOROUGH COUNCIL (2012) PLSCS 231 – Decision given 31.10.12

Facts: The claimant, who owned a large retail park, had entered a written agreement with the defendant lpa (HBC) pursuant to s106 of the Town and Country Planning Act 1990, undertaking not to use one of the units for the sale of certain retail goods.
A further agreement entered into at a later date extended these s106 obligations and restrictions to the other units. Both the agreements contained a proviso that nothing in it was to limit the right to develop any part of the site in accordance with any planning permission granted after the date of the agreement. Between September 2008 and 2011 the claimant obtained planning permissions which permitted external work, some internal reconfigurations of the units and the insertion of a mezzanine floor in two units. The claimant applied for certificates of lawful use and development (CLD) to the effect that as a result of these planning permissions the proviso was triggered and the s106 restrictions on the types of goods that could be sold from the units no longer applied. HBC refused to issue the certificates and the claimant appealed.

Point of dispute: Whether the claimant's appeal would be allowed. The claimant contended that the relevant permissions permitted both internal and external works which led to the creation of one or more new retail units and that by the operation of s75(3) those units could be used for unrestricted A1 retail purposes; accordingly, it had obtained a "right to develop" the units in accordance with the later permissions and the obligations under the s106 agreements no longer applied to the units once the relevant work had been done.

Held: The appeal was dismissed.

i. On the face of it the grant of full planning permission did not purport to be a complete and self–contained description of the development permitted and the plans and drawings were a vital part of it.

ii. Some of the communications between the claimant and HBC which clarified the basis upon which a planning application was made would be admissible, but not the planning officer's reports or internal notes.

iii. In the context of the interpretation of the later permissions, a dispute had arisen as to the scope and effect of s55(2)(a) of the 1990 Act which dealt with alteration works to a building and defined what was meant by development and the material parts for the purposes of this case. Whether in any given case the internal works were to be treated as forming part of a larger scheme of works which included external works, was a question of fact and degree and judgment.

iv. S75(3) would only be engaged where there was something as substantial as the erection of a new building. It did not apply in this case as none of the applications for planning permission involved any material change of use – all that was being done was altering or reconfiguring the floor space of certain existing units.

v. No new chapter in the planning history of the site had been created by the later permissions. The essential nature and purpose of the units remained as before and it could not be said that there had been a radical change in their nature.

06 Bill

Growth and Infrastructure Bill: Impact Assessment

The Government hopes that measures in the Growth and Infrastructure Bill will help to remove unnecessary bureaucracy that can hinder sustainable growth. This impact assessment provides a statement of the impact that the Bill will have on businesses, local government and communities.

https://www.gov.uk/government/publications/growth-and-infrastructure-bill-impact-assessment

07 DCLG Consultation

Technical Review of Planning Appeal Procedures
Deadline for Comments: 13.12.12

This consultation seeks views on proposals to make the appeals process faster and more transparent. This will involve making changes to secondary legislation to bring into effect the following:

- earlier submission and notification of appeals statements;
- agreeing 'Common Ground' upfront;
- starting hearings and inquiries sooner;
- introducing an expedited 'Commercial Appeals Service;
- exploring opportunities for aligning other planning–related appeal processes; and
- issuing a single guide to planning appeals procedures.

https://www.gov.uk/government/consultations/technical-review-of-planning-appeal-procedures

08 CLG Consultation

Strategic Environmental Assessment of the Revocation of the North East of England Regional Strategy: Environmental Report
Deadline for Comments: 10.01.13

This Environmental Report is a consultation document on the likely significant effects of the revocation of the North East of England Plan and the Regional Economic Strategy. It replaces the previous environmental report on the revocation of the North East of England Regional Strategy which was consulted on between October 2011 and January 2012.

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

09 DCLG Consultation

Extending permitted development rights for homeowners and businesses: technical consultation
Deadline for comments: 24.12.12

This consultation seeks views on the Government's proposals to extend the current permitted development rights with the aim of promoting economic growth. The following are the most important proposed changes:

- Increasing the size limits for the depth of single–storey domestic extensions from 4m to 8m (for detached houses) and from 3m to 6m (for all other houses), in non–protected areas, for a period of three years. No changes are proposed for extensions of more than one storey;
- Increasing the size limits for extensions to shop and professional/financial services establishments to 100 square metres, and allowing the building of these extensions up to the boundary of the property, (except where the boundaries are with a residential property), in non–protected areas, for a period of three years;
- Increasing the size limits for extensions to offices to 100 square metres, in non–protected areas, for a period of three years;
- Increasing the size limits for new industrial buildings within the curtilage of existing industrial premises to 200 square metres in non–protected areas, for a period of three years; and
- Removing some prior approval requirements for the installation of broadband infrastructure for a period of five years.

https://www.gov.uk/government/consultations/extending-permitted-development-rights-for-homeowners-and-businesses-technical-consultation

10 DCLG Letter to Chief Planning Officers – 14.11.12

Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012

These Regulations will come into force on 22.11.12, consolidating 12 statutory instruments dating back to 1989 and introducing new levels of planning application fees that have been put up by 15% in line with inflation since 2008.

HOUSING

11 CLG Statistics

Net supply of housing 2011–12 England

The latest set of net housing statistics were released on 01.11.12.

- There were 134,900 net additional dwellings in England in 2011–12, 11% more than in the previous year. Between 2009–10 and 2010–11 housing supply fell by 6%.
- Of the 134,900 net additions figure 128,160 were new homes, 5,240 were additional homes created from conversions, 12,590 were additional homes resulting from change of use, 1,100 represented other gains and 12,200 were lost through demolitions.
- There was a net increase of 2,400 communal establishments, composed of 2,350 more student halls and 50 other communal establishments.

https://www.gov.uk/government/publications/net-supply-of-housing-in-england-2011-to-2012

12 CLG Statistics

Affordable Housing Supply 2011–12 England

The latest figures on gross affordable housing supply in England were released on 01.11.12.

- 57,950 additional affordable homes were supplied in England in 2011–12 representing a decrease of 4% on the number supplied in 2010–11 (60,430).
- 37.540 new affordable homes were provided for social rent in 2011–12.
- 19.490 homes were provided through intermediate housing schemes, including shared ownership and shared equity.
- 91% of the additional affordable homes provided in 2011–12 were new builds.
- In 2011–12 88% of affordable homes were in receipt of funding through the Homes and Communities Agency (excluding homes delivered under s106 without a grant).

https://www.gov.uk/government/publications/affordable-housing-supply-in-england-2011-to-2012

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

Housing Market Bulletin October 2012

This bulletin provides up–to–date information on housing market trends, the economy and the housebuilding industry. The following are the key points:

- House prices are falling gradually across most of the UK, although prices in London continue to rise;
- The UK economy has started to grow again after three consecutive quarters of recession;
- The UK Bank Rate remained at 0.5%;
- CPI and RPI inflation levels are virtually unchanged; and
- Unemployment continues to fall but remains high compared with the long term average.

http://www.homesandcommunities.co.uk/sites/default/files/our-work/housingbulletin_october2012.pdf

14 DCLG Statistical Publication

Housebuilding in England: July to September 2012

The latest national statistics on house building in England were released on 15.11.12.

Key points from the latest release are:

- Seasonally adjusted house building starts in England increased by 18% and stood at 25,760 in the September quarter 2012;
- Seasonally adjusted completions fell, down 7% to 27,060 in the September quarter 2012;
- Private enterprise housing starts (seasonally adjusted) were 15% higher in the September quarter 2012 than the previous quarter, whilst starts by housing associations were 23% higher;
- Seasonally adjusted private enterprise completions fell by 6% and housing association completions fell by 14% from the previous quarter;
- Seasonally adjusted starts are now 52% above the trough in the March quarter 2009 but 45% below the December quarter 2005 peak. Completions are 44% below their March quarter 2007 peak; and
- There were 98,020 housing starts in the 12 months to September 2012, down by 9% compared with the year before. Annual housing completions in England reached 117,190 in the 12 months to September 2012, an increase of 6% compared with the previous 12 months.

https://www.gov.uk/government/publications/house-building-in-england-july-to-september-2012

REAL PROPERTY

15 Court of Appeal

Property held by appellant and respondent as joint tenants in common in equal shares under express declaration of trust – whether court could infer common intention of parties to effect that respondent entitled to the entire beneficial interest

*PANKHANIA V CHANDEGRA
(2012) PLSCS 241 – Decision given 09.11.12

Facts: In 1987 the appellant and his aunt, the respondent, purchased a property in joint names with the assistance of a mortgage. The transfer contained an express declaration that the property was held as tenants in common in equal shares. When the appellant applied to the court for an order for the sale of the property and the sale proceeds to be divided equally between them the respondent disputed that the appellant had any beneficial interest in the property.

She maintained that there had always been an understanding between them, and among wider members of the family, that the property had been purchased as a matrimonial home for herself and that the only reason the appellant became involved was because he was the only family member eligible for a mortgage. The deposit had been paid by the respondent's brother and the respondent had paid the mortgage instalments.

Point of dispute: Whether the appellant's appeal would be allowed against the ruling of the judge in the court below dismissing his claim. The judge found that the common intention of the parties had been that the house should be purchased for the benefit of the respondent, taking into account that the appellant had contributed very little towards the purchase price, had never asked for income from the property, had never sought to live there and had not done anything before to suggest that he claimed any entitlement to the property. The judge held that the appellant had been named as a joint owner as an "expedient sham" in order to obtain a mortgage and nobody had envisaged that he would have any beneficial interest in the property.

Held: The appeal was allowed.

i. The matters that the judge had taken into account would have been relevant if the property had been transferred to the parties as joint tenants with no indication in the transfer as to how the beneficial interest was to be held. However, in this case, the parties had executed an express declaration of trust in favour of themselves as tenants in common so there was no need to impose a constructive or common intention trust as to the beneficial ownership.

ii. A declaration of trust could be set aside for fraud, mistake or undue influence but there was no evidence that any of these applied in this case.

iii. The declaration of trust could not be characterised as a "sham" which the court could look behind. The parties had not entered into the declaration of trust in order to mask the true nature of their agreement from others and although the appellant had become involved in the purchase in order to facilitate the mortgage there had been no deception of the mortgage lender or of the court.

16 Court of Appeal

Whether appellant entitled to right of way by proprietary estoppel

*JOYCE V EPSOM AND EWELL BOROUGH COUNCIL
(2012) PLSCS 225 – Decision given 30.10.12

Facts: J, the appellant, was the owner of a chalet bungalow. As well as enjoying access to the street at the front of the property, there was also a vehicular access to the rear of the property via a private service road which had been created by the respondent council, EEBC, in the context of a planning permission for a supermarket development. This road, on EEBC's land, had been constructed in response to concerns by local residents about traffic issues associated with the development, but it had never been adopted as a highway. J's predecessor in title had built a garage and rear driveway on a strip of land that he had requested from EEBC but which had never been formally transferred to him. When J planned to develop his property by constructing further dwellings EEBC indicated that they required a premium of £5,000 for the grant of a right of way over the service road and that this would be restricted to the dwelling that stood on the property.

Point of dispute: Whether J was entitled to a free and unrestricted right of way over the service road by proprietary estoppel. In the court below his claim had been dismissed, the judge finding that although J's predecessor had acted to his detriment in carrying out works in the belief that he would have a right of way over the service road, EEBC had not acted unconscionably in refusing to recognise the right since they had not known of the works.

Held: J's appeal against the county court ruling was allowed.

i. EEBC must have known that J's predecessor had planned to undertake and had undertaken some works on or near the strip in order to make rear access to his property viable. Lack of knowledge could not be used to justify a conclusion that EEBC had not acted unconscionably.

ii. It was not relevant that EEBC had not prevented J from using the road – by demanding payment for the grant of a right of way EEBC were in effect denying that J had any right of way over the road. This case was one of mutual understanding falling short of a contractual bargain, because of the implications of the supermarket development, and the equity of the situation required that J's predecessor, and consequently J, had a right of way over the access strip.

iii. The minimum that was required to do justice to J was the grant of a right of way over the service road, without payment of a premium, to serve the existing dwelling. He was not entitled to any more extensive right to accommodate his development plans as he should not be put into any better position than his predecessor in title.

TORT

17 Court of Appeal

Professional negligence – appellant surveyor engaged to advise respondents on proposed investment in factory outlet centre through enterprise zone property unit trust – investment unsuccessful – whether appellant liable for negligently overstating value and commercial prospects of centre

**CAPITA ALTERNATIVE FUND SERVICES (GUERNSEY) LTD V DRIVERS JONAS
(2012) PLSCS 237 – Decision given 08.11.12

Facts: The respondents (CAFS) were the trustee and the trust manager under an enterprise zone property unit trust (EZPUT) which was established in 2001 in order to invest in an enterprise zone, being the development of a Grade II listed structure at Chatham Historic Dockyard in Kent as a factory outlet centre (FOC). The 480 individual investors who participated in the investment would benefit from substantial tax allowances aimed at encouraging investment in enterprise zones. CAFS engaged the appellant firm of surveyors, DJ, to advise on the acquisition. DJ valued the property at £62.85m, including more than £21.547m in enterprise zone tax allowances, and CAFS paid this sum for a 155 year lease of the site. The investment proved unsuccessful and CAFS claimed damages from DJ for negligently overstating the value of the property. CAFS argued that as an FOC's ability to attract consumers was crucial to its valuation, DJ should have obtained a "CACI–style" retail analysis report. CAFS submitted its own CACI–style report and their expert referred to it in his evidence.

Point of dispute: Whether DJ's appeal would be allowed against the ruling of the judge in the court below who allowed CAFS's claim. The judge held that DJ's valuation exercise had been defective in a number of respects and that it had been negligent in not obtaining a CACI report. Although CAFS's report was flawed, the evidence of their expert had helped to reach a proper valuation. The judge awarded damages of £18m for diminution in value, but with no reduction to take account of the tax relief that the investors had received. DJ argued that:

i. The judge should only have awarded nominal damages, since, once he had found that CAFS's CACI report was defective, there was no basis for him to conclude that DJ's valuation was wrong or for establishing any particular figure for the loss; and

ii. CAFS should have been required to give credit for the tax benefits their investors received.

Held: The appeal was allowed in part.

i. (By a majority of 2:1): The judge had been entitled to conclude that DJ had been negligent in undertaking the valuation and giving advice without obtaining a CACI report. It did not follow that the discrediting of CAFS's report prevented the judge from reaching a conclusion on the quantum of damages for which DJ was liable, as long as there remained a rational and evidential basis on which the judge could determine a figure for damages. It would be wrong if despite DJ's breaches of duty the court were driven to conclude that no loss had been established. The judge had been correct to reject an arithmetical approach to assessing the quantum of damages in favour of "standing back" and seeing what looked reasonable.

ii. (All three appeal judges concurring): However, the judge should have taken into account the tax reliefs to investors when assessing damages. The tax breaks were integral to the investment as they underlay the concept of enterprise zones. Tax should be deducted both from DJ's valuation of £62.85m and the judge's valuation of £44.8m and on this basis the proper award of damages was £11.861m. It made no difference to that conclusion that the tax benefits accrued to the individual investors not to the respondents. For the purpose of tax credits the interests of the trust and the investors were synonymous.

18 Technology and Construction Court

Claimants seeking damages for subsidence allegedly caused to property by roots of trees on public highway – statement of factors to be considered when considering claim

*DENNESS V EAST HAMPSHIRE DISTRICT COUNCIL
(2012) PLSCS 224 – Decision given 30.10.12

Facts: The claimant, D, owned a detached house with a garage that had been constructed in 2000. A number of beech trees, controlled by the defendant council, EHDC, which grew on the adjoining public highway had been removed, but D alleged their roots had caused structural damage to his property in the form of severe cracking. A joint single expert appointed by the parties considered there were two possible causes of the damage, heave and the beech trees, but that on the balance of probabilities the trees were responsible for it.

Point of dispute: Whether EHDC were liable to pay damages to D as a result of their failure to put in place a proper pruning regime.

Held: D's claim was dismissed. Cases involving tree root damage were subject to the same rules of law as a claim brought in common law negligence or nuisance. In all cases the following questions had to be considered:

i. causation;

ii. the extent of any risk of damage and the chances that any damage would occur;

iii. the foreseeable possible extent of the damage if the risk became a reality;

iv. how practical it was to prevent or minimise any damage;

v. if practicable, how simple or difficult were the measures that could be taken;

vi. how much work was involved, the cost and how long it would take; and

vii. whether there was sufficient time for preventative action to have been taken by persons acting reasonably in relation to the known risk, between the time when EHDC knew, or should have become aware of it, and when the damage occurred.

In this case D had failed to show the requisite standard of proof that the damage to his property had been caused by the trees or their roots. There was little or no evidence as to what preventative measures could or should have been taken, and in those circumstances the court could not make any findings as to whether a failure to put in place a proper pruning regime amounted to a breach of duty.

ENVIRONMENT

19 London Assembly Government – Consultation response

Aviation Policy Framework Consultation Response

This is the London Assembly Government's response to the Government's draft Aviation Policy Framework. Noise, air quality and climate change continue to be serious concerns that need to be addressed. The Health and Environment Committee suggest that an independent body should be set up to administer the airport mitigation and compensation schemes in order to help rebuild the trust that has been lost by local communities. Noise measurement should be consistent, the detrimental impact on local residents should be reduced and it is suggested that airports should work together to organise flight times to help reduce noise. Noise maps for Heathrow and City airports should be combined as London's residents are increasingly affected by the combined impact of aircraft noise from both airports.

http://www.london.gov.uk/publication/aviation-policy-framework-consultation-response

LONDON ASSEMBLY GOVERNMENT

20 Supplementary Planning Guidance

Housing Supplementary Planning Guidance (SPG)

This SPG provides guidance on how to implement the housing policies in the 2011 London Plan. It identifies the different sources of housing capacity that have to be explored if the Plan's targets are to be achieved and explains the balance that has to be struck between numbers, creating attractive places to live and respecting the character of the surrounding areas. It also provides more detail about the housing design standards which were outlined in the London Plan and contains updated guidance about the requirements of particular groups of people who have distinct housing needs. The need for affordable housing is addressed in particular and the SPG shows how the new Affordable Rent product can help maximise affordable housing output.

http://www.london.gov.uk/who-runs-london/mayor/publications/planning/housing-supplementary-planning-guidance

21 Draft Supplementary Planning Guidance

Use of planning obligations in the funding of Crossrail, and the Mayoral Community Infrastructure Levy
Deadline for Comments: 15.01.12

This Draft Supplementary Planning guidance (SPG) has been prepared to support 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. It replaces the SPG on "Use of planning obligations in the funding of Crossrail" published in July 2010. It reflects developments since 2010, and in particular:

- Publication of the London Plan in July 2011;
- Changes to the law, particularly the Community Infrastructure Levy Regulations 2010 (as amended);
- Changes to national policy guidance, particularly the publication of the National Planning Policy Framework and revocation of Office of the Deputy Prime Minister Circular 5/2005;
- Adoption of the Mayor's CIL charging schedule; and
- The latest position in implementing Crossrail.

http://www.london.gov.uk/publication/mayoral-community-infrastructure-levy

22 GLA Economics Report

London's Economic Outlook: Autumn 2012 – The GLA's medium–term planning projections

The autumn 2012 edition of London's Economic Outlook is GLA Economics' 21st London forecast. These forecasts are issued every six months to assist those preparing planning projections for London in the medium term. The report contains the following:

- an overview of recent economic conditions in London, the UK and the world economies with analysis of important events, trends and risks to short and medium term growth;
- a consensus forecast – a review of independent forecasts indicating the range of views about London's economy and the possible upside and downside risk; and
- the GIA Economics' forecast for output, employment, household expenditure and household income in London.

This report suggests that:

- London's Gross Value Added (GVA) growth rate should be 0.9% in 2012. Growth should increase to 1.8% in 2013 and 2.4% in 2014;
- London is likely to see a rise in employment in 2012 – 2014; and
- London household income and spending will both probably increase slowly over the forecast period.

http://www.london.gov.uk/publication/london%E2%80%99s-economic-outlook-autumn-2012

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THE SUNDAY TIMES 100 BEST COMPANIES TO WORK FOR 2012

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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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EVEBRIEF

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SCOTLAND

LOCAL GOVERNMENT

01 Scottish Assembly Government Publication

Consultation On Council Tax Charges On Long–Term Unoccupied Homes: Consultation Responses

This document contains details of the responses received to the Scottish Assembly Government's consultation on Council Tax charges on long–term unoccupied homes.

http://www.scotland.gov.uk/Publications/2012/11/4993

WALES

PLANNING

02 Consultation Paper

Proposed changes to Non–Domestic Permitted Development Rights Deadline for Responses: 11.01.13

This consultation seeks views on proposed changes to Part 3 (Changes of Use), Part 8 (Industrial and Warehouse Development) and Part 32 (Schools, Colleges, Universities and Hospitals) of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995. It also proposes the introduction of new permitted development rights for office buildings, shops, financial and professional services establishments (Use Classes B1(a), A1 and A2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 and the restriction of development rights in World Heritage Sites.

http://new.wales.gov.uk/consultations/planning/nondomopdrs/?lang=en

GERALDEVE

GENERAL

03 Consultation Paper

Vibrant and Viable Places – New Regeneration Framework
Deadline for Responses: 14.01.13

This consultation is the result of a policy review of approaches to regeneration instigated by the Minister for Housing, Regeneration & Heritage in February this year. The review was prompted by the following factors:

- the Welsh Government's determination to seek new ways to deliver better outcomes through joined–up working;
- the challenges presented by the faltering global economy, in particular the disproportionate effects on the most deprived communities and constraints on public finances;
- the guiding principles of the Welsh government that poverty must be tackled through sustainable development;
- the opportunities presented by the imminent fulfilment of the Welsh government's existing commitments to targeted investment in its seven Regeneration Areas; and
- the Government's specific commitments to address the changing roles of town centres and seaside towns and to integrate its Communities First programme with other regeneration activity.

http://new.wales.gov.uk/consultations/businessandeconomy/vvp/?lang=en

NORTHERN IRELAND

PLANNING

04 Northern Ireland Assembly Government Consultation

Consultation on Permitted Development Rights for Agricultural Buildings and Plant
Deadline for Responses: 18.01.13

This consultation is concerned with proposals to increase the permitted size limitation of agricultural buildings from 300 square metres to 500 square metres and to provide for the installation, alteration or replacement of structures to house anaerobic digestion plant on agricultural units, subject to the same ground area limitation of 500 square metres.

http://www.planningni.gov.uk/index/news/news_consultation/common_news-newpage.htm