EVEBRIEF

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SERVICE CHARGES RECOVERED

Tony Chase
Editor

We report at item 01 of this edition, the decision of the Supreme Court in the Daejan Investments case on the recovery by a landlord of a residential block, by way of the service charges, of the costs of works carried out. The landlord had failed to comply strictly with the statutory consultation requirements, and the issue was whether this should, in effect, disqualify him from recovering the costs.

Tenants are unlikely to be pleased with the decision. A leaseholder group was quoted in the press, even before the decision was announced, as fearing that allowing a freeholder to recover the costs of works where the proper procedures for consulting the lessees had not been followed, will enable freeholders to "bamboozle" lessees into paying for expensive and unnecessary work.

The decision may also impact on the prices to be paid by lessees in cases of collective enfranchisement. In two recent decisions, the Upper Tribunal has increased the deferment rate for the valuation of freeholders' reversionary interests, on the basis of its own and the Court of Appeal's decisions in Daejan, to reflect the risks of freeholders being unable to recover the costs of works – thereby reducing the price paid by the lessees for the freehold.

It remains to be seen whether these valuation adjustments will now be reversed in future enfranchisement cases.

At item 07, we report the High Court's decision to overturn the grant of planning permission by an inspector for a wind farm development, on the grounds of its impact on the setting of a number of listed buildings. The policy for protection of such 'heritage assets' in the National Planning Policy Framework is broadly the same as in PPG5, and the Practice Guide for PPS5 remains in force; the decision is likely therefore, to influence future proposals and decisions on wind farm and other development, which might affect historic buildings and their settings.

Tony Chase

GERALDEVE

LANDLORD & TENANT

01 Supreme Court

Landlord & Tenant Act 1985 – service charges – whether errors in the statutory consultation precluded recovery of the costs

***DAEJAN INVESTMENTS LTD v BENSON
[2013] PLSCS 69 – Decision given 06.03.13

Facts: B, and four others (the Respondents), each held a long lease of a flat in a building owned by DI comprising seven flats above shops. DI gave notice to the Respondents of its intention to carry out qualifying works as defined in ss20 and 20ZA, Landlord & Tenant Act 1985, in respect of which the consultation requirements of the Service Charges (Consultation Requirements) (England) Regulations 2003 applied. DI made errors in the statutory consultation process – in particular by not providing copies of the cost estimates until after the contract for the work had been awarded. The Respondents resisted payment of the sum of approximately £280,000 for the works on the grounds of non–compliance with the consultation requirements; DI offered a discount of £50,000 to reflect this. The Upper Tribunal (Lands Chamber) and the Court of Appeal held that the loss of the Respondents' opportunity to make further representations on the proposed works was a serious matter that caused significant prejudice to them and that DI's ability to recover the costs was limited to £250 per lessee, £1,250 in total. DI appealed.

Point of dispute: Whether DI's error in the consultation process was sufficient to disqualify it from being able to recover the cost of the works.

Held: The appeal was allowed.

(i) The requirements of ss19 to 20ZA of the 1985 Act were directed towards ensuring that tenants were not required to pay for unnecessary or substandard services, or to pay more than they should for unnecessary services of an acceptable standard. The consultation requirements were relevant to the appropriateness of the works, and obligations to obtain more than one estimate, and to consult on those were relevant to the quality and cost of the works. If the extent, quality and cost were not affected by the landlord's non–compliance, dispensation should normally be granted since the tenants' position was not adversely affected.

(ii) In considering the question of prejudice to tenants, their arguments should be viewed sympathetically and resolved in their favour where there were doubts as to whether the works would have cost less had they been given a proper opportunity to make representations.

(iii) The Court's choice was not simply one of either dispensing unconditionally with the consultation requirements or refusing dispensation. To the extent that tenants would suffer prejudice, the landlord should be required to reduce the amount claimed to compensate the tenants for that prejudice. The burden of identifying relevant prejudice is however on the tenants.

(iv) In this case, the Upper Tribunal and the Court of Appeal had taken the wrong approach. The Respondents had not identified any specific prejudice suffered and it was questionable, on the evidence, whether they had suffered any. They had been given a substantial opportunity to comment on the proposed works and it was difficult to see what further submissions or suggestions they could have made. Dispensation from the strict consultation requirements should have been granted on terms that required DI to adhere to the offer to make a discount and pay the Respondents' reasonable costs.

02 Court of Appeal

Non–secure tenancy of flat – reasonableness of notice to quit and whether notice revoked

**FAREHAM BOROUGH COUNCIL V MILLER [2013]
PLSCS 70 – Decision Given 06.03.13

Facts: FBC granted a non–secure tenancy, under Part VII, Housing Act 1985, to M, who had a history of criminal offences. The tenancy agreement included covenants by the tenant "not to do or permit or suffer to be done" anything which might cause nuisance, damage, annoyance or interference to adjoining owners or occupiers. When M was in prison for long periods, FBC received complaints from neighbours regarding noise and nuisance from persons occupying the flat. FBC accordingly served M with notice to quit but agreed subsequently to 'give him another chance'. When the disruptive behaviour continued, FBC brought proceedings for possession; M contended that those using the flat did not have his permission and he had been unable to prevent this and also that his eviction would contravene his rights under Article 8 of the European Convention on Human Rights on the grounds of his vulnerability as an ex–offender and drug addict.

Point of dispute: Whether FBC's appeal should be allowed against the decision of the County Court dismissing the claim for possession, on the basis that FBC had revoked the notice to quit by its actions and reinstated the tenancy.

Decision: The appeal was allowed. In the case of a non–secure tenancy, the Court did not have to be satisfied that it was reasonable to make an order for possession provided that the notice to quit satisfied the statutory requirements. In any case it was, as a matter of law, impossible for the notice to quit to be revoked; once served it determined the tenancy and, even if FBC decided not to rely on it, the tenancy would still have come to an end and M's security would have depended on the grant of a new tenancy, which in some cases might be inferred if the landlord were to accept rent after expiry of the notice. On the evidence in this case, the decision to give M another chance was conditional on his future behaviour and he had remained in the flat merely as a tolerated trespasser. It was for M to raise a proportionality challenge under Article 8; in this case, his personal circumstances did not raise a sufficiently compelling case to require a full proportionality review; there were no factors to suggest that anything was required beyond a conventional balancing exercise between his interests and those of the other tenants.

03 High Court

Service charge accounts – whether full account required by lease

*MORSHEAD MANSIONS LTD V MACTRA PROPERTIES LTD [2013] PLSCS 53 – Decision given 15.02.13

Facts: MML owned the freehold of a large block of flats, some of which were let on long leases to MPL. Under the terms of each lease MPL covenanted to pay a quarterly service charge in respect of MML's expenses in providing certain services. Both MML's actual expenditure and provision for anticipated expenditure were provided for. As soon as practicable after the end of each accounting year, MML had to provide MPL with an account of expenses and service charge payable for that year, with the account being certified by its auditors. MPL then had to pay any shortfall or MML had to repay any excess, or credit it against the next interim payment.
The service charge also had to include a contribution to a reserve fund. Initially, MML provided fully audited service charge accounts, but between 2000 and 2003 the block was managed by a manager appointed under Part 2 of the Landlord and Tenant Act 1987. After 2003, although MML resumed its management responsibilities, there was significant delay in producing service charge accounts for 2003–07. MML argued that owing to inadequate record keeping by the manager, in particular relating to the reserve fund, it was not practicable to prepare full accounts for those years until the accounts for 2000–02 could be prepared and certified. MPL brought proceedings for specific performance requiring MML to provide a certified account of expenses and service charge for 2003–07.

Point of dispute: Whether MML's appeal would be allowed against the ruling of the county court judge, who gave summary judgment for MPL, that it was sufficient for MML to provide a list of expenses for the relevant years, rather than fully audited accounts.

Held: MML's appeal was dismissed and the county court ruling upheld.

i. On a proper construction of the reserve funds schedule in the leases, it was not necessary to provide full accounts in relation to everything relevant to service charges or to state the income and expenditure of the reserve funds in a way that reflected accountancy practice.

ii. The service charge schedule required MML to furnish an account of the expenses and service charge payable. Its purpose was to inform the lessees of the expenses and thus the amount of service charge they actually had to pay. Nothing more was required, and the full account for which MML contended was not necessary.

iii. Consequently, MML's inability to provide full accounts in their final form because of problems with accounting in respect of the reserve fund did not absolve it from providing an account of the expenses.

iv. The account of expenses and service charge had to include the reserve fund statement. On a proper approach, MML could anticipate future expenditure and make reasonable provision for that expenditure in one accounting year, so that the amount representing the reasonable provision became part of the expenses for that accounting year.

v. There was sufficient doubt about the position in relation to 2003 to provide MML with an arguable defence to the summary judgment in relation to that year. However, for the years 2004–07, it ought to be able to produce accounts in accordance with the court's analysis of the leases. MML was ordered to furnish accounts for the years 2004–06. No order was made for 2007 as MML had not had reasonable time in which to prepare accounts for that year by the time that MPL brought its claim in early 2008.

04 Upper Tribunal: Lands Chamber

Landlord & Tenant Act 1985 – whether managing agents' fees recoverable as part of service charge

*KULLAR V KINGSOAK HOMES LTD
[2013] PLSCS 72 – Decision given 26.02.13

Facts: K was the tenant of one of 85 flats in two blocks in a mixed use development. The tenants held long sub–leases which provided for payment of a service charge to include KH's expenses of managing and administering the property and, if necessary, employing for that purpose a firm of managing agents whose fees "shall be met exclusively from the fees more particularly detailed in para 2 hereto". Paragraph 2 however made no provision for fees and dealt only with expenditure on the maintenance of service installations. K sought a determination from the Leasehold Valuation Tribunal (LVT), under s27A(1), Landlord & Tenant Act 1985, of the service charges properly payable for 2003 to 2010. The LVT made various deductions from the charges demanded but allowed management fees subject to a 10% reduction to reflect failures by the managing agent.

Point of dispute: Whether K's appeal against the LVT's decision should be allowed on the new ground that the sub–leases did not permit recovery of any fees at all for employing managing agents. K contended that recovery of fees was limited to the provisions in para 2 and, since that made no provision for fees, KH could recover nothing.

Held: The appeal was dismissed. Whilst the reference to para 2 made no sense, the provisions of the sub–leases had to be construed against the background knowledge that would have reasonably been available to the parties at the time the leases were entered into so as to reflect, as far as possible, the meaning that the parties had intended. The background knowledge included the fact that it was normal for blocks containing this number of flats to be managed by a firm of managing agents and for the agents' costs to be recoverable as part of the service charge. Moreover, the sub–leases clearly envisaged management by managing agents and made specific provision for the payment of their costs. A decision that no costs could be recovered because of a drafting error would be contrary to the clear intention that the costs of managing agents should largely be recoverable.

PLANNING

05 Administrative Court

Planning appeal – local authority claimed greater weight should be given to its views under the Localism Act 2011 in indicating that they would have refused permission to competing scheme

*TEWKESBURY BOROUGH COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT AND OTHERS
[2013] PLSCS 57 – Decision given 20.02.13

Facts: TBC failed to determine two planning applications for residential development of 450 and 550 units submitted by the 2nd and 3rd defendants, who appealed against this non–determination. The Sec of State allowed the appeals (July 2012) balancing the conflict with the development plan with the view that little weight should be given to a development plan with an end date of 2011, the lack of a five year supply of housing land and his view that little weight could be given to the emerging draft joint core strategy. TBC which in the meantime had resolved that it would have refused planning permission, challenged the decision.

Point of dispute: Whether, with the new statutory regime of the Localism Act 2011, there was a fundamental requirement for TBC to take the lead in spacial planning for its area.

Held: The claim was dismissed. The inspector's report and the Sec of State's decision accepting and adopting that report were the result of an entirely unexceptional application of the legal and policy principles. While the 2011 Act made significant changes to the planning system, it could not be accepted that the effect of those changes was to eliminate the role of the Sec of State in determining planning applications opposed by local planning authorities. There was nothing in the 2011 Act to suggest that relevant national policies would no longer apply, or that the Sec of State would no longer perform his function in determining planning application appeals applying the same principles and policies as before. In particular, the policies relating to a five year housing land supply and the principle of prematurity were expressly reaffirmed in the National Planning Policy Framework. It could not sensibly be suggested, therefore, that those policies were intended to be swept away.

06 High Court

Enforcement Notice requiring the cessation of part residential use of former RAF camp – whether defendants having reasonable prospect of successful defence at full trial

*NEW FOREST DISTRICT COUNCIL V OWEN AND OTHERS
[2013] PLSCS 61 – Decision given 22.02.13

Facts: The subject site was a former RAF camp comprising around 100 units. It was run by the defendants as a training activity having the benefit of a lawful development certificate (LDC) for use as a "training and rest camp on an occasional basis including day and residential training, educational course and activity courses and ancillary uses". NFDC applied for an injunction under s187B of the TCPA 1990 against O, requiring them to cease using three units for residential purposes in breach of a previous enforcement notice in relation to two other units on the site. NFDC considered that the use of the units for residential purposes was both obvious and without justification; it had made unsuccessful attempts to get O to stop the use and had no alternative other than to seek injunctions.

Point of dispute: Whether there were reasonable prospects of O succeeding at a full trial.

Held: The applications were dismissed. The court's jurisdiction under s187B was an original and not a supervisory jurisdiction. It had a discretionary power as to the grant of an injunction and that power had to be exercised judicially with regard to its purpose of restraining actual and threatened breaches of planning control. The judge was not entitled to reach his own view on the planning merits of the case but had to take into the account the possibility that a planning application might succeed. O had an arguable case that the enforcement notice did not relate to the three subject units and the LDC definition could arguably include O's use. The case for the final injunctions had not been made out and the balance of convenience was overwhelmingly in favour of maintaining the status quo.

07 High Court

Wind farm development – Inspector's failure to apply planning policies on the effect on heritage assets

**EAST NORTHAMPTONSHIRE DISTRICT COUNCIL V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2013] EWHC 473 – Decision given 08.03.13

Facts: An inspector granted, on appeal, planning permission for four large wind turbines within the setting of a Grade I listed Elizabethan garden lodge and other important listed buildings. ENDC had refused the application on grounds including significant visual and landscape impacts and unacceptable harm to the setting of the Grade I listed building and the other listed buildings – the proposal therefore being considered to conflict with historic environment planning policy and guidance in PPS5, PPS22 and the relevant Regional Plan and Core Spatial Strategy policies. The inspector's decision was challenged by ENDC, English Heritage and the National Trust. The Sec of State accepted that the inspector's reasoning was flawed and the challenge was therefore opposed by the prospective developer.

Points of dispute: Whether the inspector:

(i) gave special regard to the desirability of preserving the settings of listed buildings as required by s66(1) Planning (Listed Buildings and Conservation Areas) Act 1990;

(ii) correctly interpreted and applied planning policy on the effect of development on the setting of heritage assets; and

(iii) gave adequate reasons for his decision.

Held:

(i) In giving effect to the statutory duty under s66(1), a decision maker should accord considerable importance and weight to the "desirability of preserving… the setting" of listed buildings when balancing this with other material considerations. The use of the word "desirability" indicates that preservation of such settings is an objective to which the inspector ought to give special regard, which goes beyond mere assessment of harm. In this case, theiInspector had failed to give proper effect to s66(1) in the balancing exercise.

(ii) The inspector failed to have proper regard to relevant planning policies. In particular, he merely identified the heritage assets as being of national significance without deciding which particular category of significance applied and why, and did not identify the contribution made to their significance by the setting of the assets. He may therefore have failed to assess the overall magnitude of harm and, on the balance of probabilities, it was likely that his balancing exercise was flawed.

(iii) The inspector failed to give adequate reasons, and this had prejudiced ENDC as it was not possible to ascertain the inspector's conclusions in relation to an important issue nor whether he had made an error of law.

The decision was therefore quashed and the appeal remitted for reconsideration.

08 GLA Supplementary Planning Guidance

Green infrastructure & open environments: preparing borough tree and woodland strategies February 2013

This Tree and Woodland Strategy Supplementary Planning Guidance (SPG), prepared jointly with the Forestry Commission, gives guidance on the implementation of the London Plan Policy 7.21 to protect, maintain and enhance trees and woodland in London. It also takes forward the guidance in the London Tree and Woodland Framework. This Framework identifies that in order to maximise the benefits that London receives from its trees this resource should be considered as an urban forest. This means that trees will no longer be managed in a fragmented and ad hoc manner but will be planned, cared for and protected in a truly coordinated way.

http://www.london.gov.uk/publication/tree-and-woodland-strategies-spg

09 GLA Statistical Release

2012 Population Projections February 2013

Each year the GLA produces a set of demographic projections and forecasts incorporating the most up–to–date data available. Successive rounds of projections include additional years of birth, death and migration data and may also include methodological improvements as new sources of data become available. The GLA's 2012 round of demographic projections is the first to incorporate data from the 2011 Census.

Key Findings are that:

- the 2012 round of Strategic Housing Land Availability Assessment (SHLAA) projections shows higher population outcomes for London than previous projection rounds;
- the 2012 round SHLAA projection gives a 2031 Greater London population of 9.66 million compared with 9.06 in the 2011 round projection;
- the rise in projected population is a consequence of incorporating results from the 2011 Census, principally a higher 2011 population and larger average household sizes than previously assumed;
- the 2012 round includes a trend–based projection variant that is independent of forecast development. This shows higher overall growth than the SHLAA–based projection with a 2031 London population of 9.95 million;
- twelve local authorities show higher growth when the projections are linked to the SHLAA development trajectories and 21 show the converse;
- the SHLAA–based projections are sensitive to assumptions of future household formation rates. Additional variants are necessary to give a better indication of range of future population; and
- older age groups are projected to see the largest proportional increases in size, a consequence of falling mortality rates.

http://www.london.gov.uk/publication/gla-2012-round-population-projections

10 DCLG Post Adoption Statement

Consultation outcome: Strategic environmental assessment about revoking the South East regional strategy: environmental report

This environmental report is a consultation document on the likely significant environmental effects of revoking the South East Plan and the regional economic strategy (which together form the regional strategy). This report succeeds the previous environmental report for the revocation of the South East Plan which was consulted on between October 2011 and January 2012. It is a stand-alone document that is intended to give the reader an up–to–date comprehensive assessment of the environmental effects of the revocation of the South East Plan and the Regional Economic Strategy.

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

11 Government Publication

Review of Coastal Projects and Investments

This paper summarises the findings of the Focus on Enforcement (FoE) Review of enforcement as it affects coastal projects and investments. FoE Reviews examine the impact and regulatory delivery and enforcement in particular sectors or areas of the economy. This review covers:

- Balance between growth and the environment;
- Overlaps between regulators;
- Timescales;
- The applicants' experience of the system; and
- The regulators.

https://www.gov.uk/government/publications/coastal-projects-and-investments-focus-on-enforcement-review

12 Government research and analysis

Valuation of townscapes and pedestrianisation

There are currently no guidelines for giving a monetary value to the benefits of townscape and pedestrianisation improvements. This report attempts to address the gap.

https://www.gov.uk/government/publications/valuation-of-townscapes-and-pedestrianisation

RATING

13 Statutory Instrument

SI 2013/408 The Central Rating List (England) (Amendment) Regulations 2013

The Central Rating List Regulations designate persons, and prescribe in relation to them, descriptions of non–domestic hereditaments, in order to secure the central rating of those hereditaments. These Regulations, which come into force on 01.04.13, remove from the Schedule to the 2005 Central Rating List Regulations the names of two companies – Independent Power Networks Limited and Laing Energy Limited – so that hereditaments occupied or owned by those companies will no longer be shown on the Central Rating List.

http://www.legislation.gov.uk/uksi/2013/408/contents/made

14 Statutory Instrument

SI 2013/452 The Non–Domestic Rating (Rates Retention) Regulations 2013

These Regulations, which came into force on 1 March 2013, make provision for the payment, from 1 April 2013, by billing authorities of a proportion of their non–domestic rating income to the Sec of State ("the central share") in accordance with para 6 of Schedule 7B of the Local Government Finance Act 1988.

http://www.legislation.gov.uk/uksi/2013/452/contents/made

15 Statutory Instrument

SI 2013/465 The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2013

These Regulations, coming into force on 01.04.13, make amendments to the 2009 Regulations (SI 2009/2269) including giving the VTE the power to delegate its function of striking out cases in certain circumstances and making provisions in relation to s16 appeals.

http://www.legislation.gov.uk/uksi/2013/465/contents/made

16 Statutory Instrument

SI 2013/467 The Council Tax (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2013

These Regulations, coming into force on 1 April 2013, amend the 2009 Alteration of Lists and Appeals Regulations by inserting a new paragraph 2A into Regulation 3, which introduces a new restriction on alteration to valuation bands where the relevant transaction is a lease under a rent–a–roof or similar scheme for installation of solar panels or other microgeneration plants.

http://www.legislation.gov.uk/uksi/2013/467/contents/made

17 Statutory Instrument

SI 2013/468 The Non–Domestic Rating and Council Tax (Definition of Domestic Property and Dwelling) (England) Order 2013

This Order, which comes into force on 1 April 2013, amends the definition of "domestic property" in s66, Local Government Finance Act 1988 to include property used for microgeneration (small scale energy generation using sustainable technologies such as solar and wind) installed on or within domestic properties. The Order also amends the definition of "dwelling" for the purpose of Part 1, Local Government Finance Act 1992 to exclude property used for microgeneration installed in domestic properties except where it forms part of a larger property which is itself a dwelling.

http://www.legislation.gov.uk/uksi/2013/468/contents/made

LEASEHOLD ENFRANCHISEMENT

18 Court of Appeal

Collective Enfranchisement – purchase price – whether such restrictive covenant to be included in transfer – whether tribunal was right to discount for uncertainties and erred by failing to determine legal issues

KUTCHUKIAN V KEEPERS AND GOVERNORS OF JOHN LYON FREE GRAMMAR SCHOOL
[2013] PLSCS 59 – Decision given 20.02.13

Facts: K and his wife held a headlease, expiring in September 2046, of a property originally built as a house, but subsequently converted into four flats each let on extended occupational leases expiring in 2136. The headlease contained a covenant not to use the property other than as four self–contained private residential flats. A dispute arose as to the price to be for collective enfranchisement of the freehold by the four lessees under the Leasehold Reform, Housing and Urban Development Act 1993; K acted as the nominee purchaser for the tenants. As four flats the full freehold value of the property was agreed to be £5.5m, whereas as a house it was £8.5m. The Upper Tribunal determined that the freehold would be acquired without the imposition of any term which would prohibit the conversion of the property into a single dwelling, which was not subject to challenge in the C of A, but discounted by 30% the value attributable to the prospect of conversion in 2046 to a single dwelling to allow for uncertainties over "legal issues". Both parties appealed.

Points of dispute:

i) Who could exercise the rights to redevelop? The respondent freeholders contended that they, rather than the immediate landlord, would be able to exercise their s61 rights to redevelop in 2046.

ii) The respondents challenged the 30% discount for possible legal problems, representing an allowance for uncertainty as to the position under s61.

iii) K proposed that if the new leases were terminated by s61 rights, the tenants would be entitled to receive compensation for loss of development value.

Held: The respondents' appeal was allowed and K's appeal dismissed.

i) The immediate landlord held only a three day reversion. Although s57(7)(b) of the 1993 Act confers the right on the immediate landlord to redevelop, it was found on the facts of this case that the respondents as freeholders would have the right to rely upon s61 rights.

ii) A valuer has to know what is to be valued. It was not correct to allow for uncertainty, rather than eliminate it by deciding the legal point. In this case, even though s61 rights would not be available until 2046, it had to be decided either way if the rights could be claimed or not. It was not correct to include a proportion of value on the basis that these questions were difficult and gave rise to uncertainties. As it was decided that s61 rights were available to the freeholder, it followed that the full value was included in the valuation.

iii) Under s61 the leaseholders would be compensated for the residue of their existing leases. They would not be entitled for any loss of redevelopment value, of which they had never had any prospect, and which was not something the leaseholder had been deprived of by the exercise of s61 rights.

HOUSING

19 Homes & Communities Agency Bulletin

HCA Monthly Housing Market Bulletin 27.02.13

The latest HCA Housing Market Bulletin reports changes to the market including the following:

- House prices are falling across most of the UK relative to inflation, although prices in London continue to increase;
- Average UK house prices in the year to December 2012 increased by 3.3%, but excluding London and the South East the increase was 1.9%;
- The number of residential transactions in the UK in January 2013 was 6.5% higher than in January 2012;
- Halifax's house price to earnings ratio was 4.49 in January 2013;
- The average private rental level for the 12 months ending September 2012 was £705 per calendar month, 1.3% higher than in the same period a year earlier; and
- The RICS residential lettings survey for October 2012 records rises in both demand and supply in the private rental market.

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

20 Government Publication

House Building: December Quarter 2012, England

This statistical release by the Department for Communities and Local Government reports the latest national statistics on house building in England, including the following:

- Seasonally adjusted starts in England in Q4 2012 were 1% higher than in the previous quarter;
- Seasonally adjusted completions in Q4 2012 were 2% higher than the previous quarter;
- Seasonally adjusted starts are now 58% above the March quarter 2009 trough, but 45% below the March 2007 peak; and
- Annual housing starts in 2012 were down by 11% from 2011, but housing completions in 2012 were 1% higher than in 2011.

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

REAL PROPERTY

21 Law Commission Consultation

Rights to Light
Deadline for Comments: 16.05.13

A right to light is an easement that entitles a landowner to receive, usually through a window, enough of the natural light passing over a neighbour's land to enable the ordinary use of a building. This project, which examines the law governing rights to light, builds on the Law Commission's 2011 report on Easements, Covenants and Profits à Prendre which contained recommendations for reform that would simplify the law, remove contradictions and anomalies and maximise the effective and efficient use of land. The four main proposals in this consultation are as follows:

- it should no longer be possible to acquire rights to light by "prescription";
- the introduction of a new statutory test to clarify the current law on when courts may order a person to pay damages instead of ordering that person to demolish or stop constructing a building that interferes with a right to light;
- introduction of a new statutory notice procedure, which requires those with the benefit of rights to light to make clear whether they intend to apply to the court for an injunction (ordering a neighbouring landowner not to build in a way that infringes their right to light), with the aim of introducing greater certainty into rights to light disputes; and
- the Lands Chamber of the Upper Tribunal should be able to extinguish rights to light that are obsolete or have no practical benefit, with payment of compensation in appropriate cases, as it can do under the present law in respect of restrictive covenants.

http://lawcommission.justice.gov.uk/consultations/rights-to-light.htm

CONTRACT

22 Court of Appeal

Breach of contract for sale of property – date for assessment of damages

**HOOPER V OATES
[2013] PLSCS 58 – Decision given 20.02.13

Facts: H contracted to sell the freehold of their property to O for £605,000, with completion by 30 June 2008. O failed to complete by that date and, after serving of notice to complete with which O did not comply, H accepted a repudiation. H were anxious to sell the property but failed to do so despite two periods of marketing; by summer 2011 they gave up and moved back into the property but by that time its value had fallen substantially. The Court had ordered, in a previous hearing, that O was liable for damages for breach of contract.

Point of dispute: Whether, as determined by the court below, damages should be assessed by reference to the valuation of a single expert valuer, in June 2010, of £495,000 with damages accordingly to be in the sum of £110,000. O denied any liability for the diminution in the value of the property after the date of the breach.

Held: O's appeal was dismissed. The availability of a market for the property was relevant to the date for assessment of damages for breach of contract for a sale; there was rarely an immediate market for a property and the definition of market value involved an assumption that the property had been marketed for a reasonable time which might well be several months or longer. The date of the breach would be the appropriate date for assessment of damages only where there was an immediately available market. In most cases the eventual re–sale price was likely to be the figure to be set against the contract price for assessment of damages as it showed the loss suffered; if the market had declined over that time, it was not open to the defaulting buyer to say that he had no responsibility for the decline in value. In this case, the seller had decided not to re–sell only after taking reasonable steps to do so; there was no suggestion that H had failed to take reasonable steps to mitigate their loss and accordingly the appropriate date was when they ended their reasonable attempts to sell and decided to reoccupy the property.

TRANSPORT

23 Department for Transport Consultation

Consultation on 'The Strategic Road Network and Delivery of Sustainable Development'
Deadline for Comments: 25.03.13

The Highways Agency, which is an Executive Agency of the Department for Transport, is responsible for operating, maintaining and managing England's road network in England on behalf of the Sec of State for Transport. This consultation seeks views on the revision of policy on the way the Highways Agency engages with the planning system and fulfils its remit to help deliver sustainable economic growth whilst maintaining, managing and operating a safe and efficient strategic road network.

https://www.gov.uk/government/consultations/consultation-on-the-strategic-road-network-and-the-delivery-of-sustainable-development

LONDON

24 London Assembly Consultation

Draft Supplementary Planning Guidance (SPG) – Shaping Neighbourhoods: Character and Context
Deadline for comments: 12.05.13

This draft SPG has been published to help with the implementation of policies in Chapter 7 of the 2011 London Plan, particularly Policies 7.4 on Local Character and 7.1 on Building London's Neighbourhoods and Communities. The draft guidance recognises that understanding the existing character and local context of a place is essential to an appreciation of how it can and should develop in the future, protecting the elements that are essential to an area's distinctive sense of place and identifying those that could be enhanced through managed change. This draft SPG aims to set out an approach and process which will help identify and understand the character and context of a place so that the results of using this approach can be used to inform the planning and design process.

http://www.london.gov.uk/publication/shaping-neighbourhoods-character-and-context

GENERAL

25 RICS Consultation Draft

RICS Professional Standards – Incorporating the International Valuation Standards

The new global edition of the RICS Professional Standards (the Red Book), intended to come into effect in January 2014, has opened for public consultation. Mandatory for all RICS members who are providing valuation services, the new Red Book has a completely revised layout and a number of improvements to the text designed to make it more accessible to valuation providers and valuation users alike, whilst continuing to adopt and remain fully compliant with the International Valuation Standards which will be reproduced in full. The Red Book represents the definitive reference work for delivering valuations to the highest of professional standards and in accordance with the best of professional practice. The public consultation period runs from Monday 18 February until Thursday 4 April 2013.

https://consultations.rics.org/consult.ti/RICS_Red_Book_2013_Global/consultationHome

26 CABE Guidance

A design–led approach to infrastructure

This guidance document relates to Nationally Significant Infrastructure Projects (NSIPs) for energy, transport, water, waste water and waste. NSIPs must make design an integral part of their planning process and demonstrate that good design and the concerns of communities and stakeholders have been taken into account in the planning process. Recurrent themes have emerged from CABE's work on infrastructure and these are encapsulated in this guidance which is based on ten design principles which are intended to help NSIP applicants design successful proposals, as set out in the criteria for good design in National Policy Statements. The broad headings of these principles are set out below:

- Setting the scene;
- Multi–disciplinary teamwork;
- The bigger picture;
- Site masterplan;
- Landscape and visual impact assessment;
- Landscape design;
- Design approach;
- Materials and detailing;
- Sustainability; and
- Visitor centre.

http://www.designcouncil.org.uk/publications/a-design-led-approach-to-infrastructure/

27 CABE Publication

Design Review: Principles and Practice

Design Review is a method of promoting good design in a cost–effective and efficient way to improve quality. It offers independent impartial advice on the design of new buildings, landscapes and public spaces and is now an essential part of the planning process as it provides a well–established way of improving the quality of design in the built environment and is recognised in the National Planning Policy Framework. Containing practical advice to those who are involved with running design review panels or are thinking of doing so, this document will be of interest to anyone who might wish to use the service, particularly people working in local authorities, design teams and their clients, or community groups.

http://www.designcouncil.org.uk/publications/Design-Review-Principles-and-Practice/

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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

LANDLORD & TENANT

01 Scottish Statutory Instruments

SI 2013/90 The Tenant Information Packs (Assured Tenancies) (Scotland) Amendment Order 2013

This Order, coming into force on 30.04.13, amends the Schedule to the Tenant Information Packs (Assured Tenancies) (Scotland) Order 2013. The Schedule sets out the information to be contained in the Information Pack to be given by landlords to assured tenants.

http://www.legislation.gov.uk/ssi/2013/90/made

RATING

02 Scottish Statutory Instruments

SSI 2013/78 The Non–Domestic Rates (Enterprise Areas) (Scotland) Amendment Regulations 2013

These Regulations, coming into force on 01.04.13, amend the 2012 Regulations by adding areas in West Lothian to the General Manufacturing and Growth Sectors Enterprise Area, which makes business rates relief available for new businesses carrying on an activity listed in the relevant part of the Schedule to the 2012 Regulations. Other minor amendments are also made to the 2012 Regulations.

http://www.legislation.gov.uk/ssi/2013/78/contents/made

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WALES

RATING

03 Welsh Statutory Instrument

SI2013/371 – The Non–Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2013

This Order amends the 2008 Order by extending the provision for an increase in the level of small business rate relief for certain categories of ratepayer to 31 March 2014.

http://www.legislation.gov.uk/wsi/2013/371/contents/made

NORTHERN IRELAND

RATING

04 Statutory Rules of Northern Ireland

SR2013/45 The New NAV List (Time of Valuation) Order (Northern Ireland) 2013

This Order specifies 1 April 2013 as the date by reference to which values are to be ascertained for the purposes of the new NAV List coming into force on 1 April 2015.

http://www.legislation.gov.uk/nisr/2013/45/article/1/made

05 Statutory Rules of Northern Ireland

SR2013/46 Rates (Small Business Hereditament Relief) (Amendment) Regulations (Northern Ireland) 2013

These Regulations amend, with effect from 1 April 2013, the 2010 Regulations by raising the upper limit for the 20% relief category from £10,000 to £15,000 and removing entitlement for hereditaments which already receive relief under certain other categories.

http://www.legislation.gov.uk/nisr/2013/46/contents/made

06 Statutory Rules of Northern Ireland

SR2013/47 The Rates (Unoccupied Hereditaments) (Amendment) Regulations (Northern Ireland) 2013

These Regulations amend para 2 of the Schedule to the 2011 Regulations (SR2011/36) by extending from 18 months to 30 months the temporary exemption from unoccupied rates for a developer entitled to possession of a domestic hereditament appearing in the Valuation List before 1 April 2012 and never occupied.

http://www.legislation.gov.uk/nisr/2013/47/contents/made

GENERAL

07 Statutory Rules of Northern Ireland

SR 2013/34 The Waste and Contaminated Land (Amendment) (2011 Act) (Commencement No. 2) Order (Northern Ireland) 2013

This Order brings into operation, from 12.03.13, ss1 and 2 of the Waste and Contaminated Land (Amendment) Act (Northern Ireland) 2011.

http://www.legislation.gov.uk/nisr/2013/34/introduction/made