

# EVEBRIEF

## Legal & Parliamentary

Volume 33(01) 24 January 2011

01 Planning  
12 Rating  
13 Real Property  
14 Contract

15 Tort  
16 Housing  
18 Construction  
21 General

### LOCALISM: STREAMLINING NATIONAL POLICY



Ben Aldridge  
Senior Surveyor

We reported in the last edition of Evebrief on the Localism Bill which has since undergone its second reading in the House of Commons and has now been sent to a Public Bill Committee for scrutiny. In this edition we report at Item 09 on another measure being taken forward which seeks to return power to local communities by cutting unnecessary central instructions issued by central government: the Department for Communities and Local Government's announcement that it is to begin consulting on a National Planning Framework for England. Promised in the Coalition Agreement between the Conservatives and the Liberal Democrats, the Framework will streamline policy statements and guidance into a single user friendly document focusing on the Government's key priorities. Many of us who deal with the planning system would agree with the suggestion in the announcement that the amount of central guidance and

statements can make it cumbersome to use effectively. The Department is inviting views on the priorities and policies which should be adopted to produce a draft for formal consultation and those with strong opinions should make them known.

The localism theme continues at item 06 where we report on an update to Planning Policy Guidance 13: Transport, published on 3 January 2011. The key changes are the removal of parking space restrictions in residential developments, allowing local authorities to determine appropriate standards for their area, and the removal of the requirement to set high parking charges to encourage other modes of transport.



GERALDEVE

---

**PLANNING**


---

01 Court of Appeal

---

**Screening opinion – whether grant of planning permission rendered unlawful by failure to adequately consider need for Environmental Impact Assessment (EIA)**


---

\* R (ON THE APPLICATION OF FRIENDS OF BASILDON GOLF COURSE) V BASILDON DISTRICT COUNCIL (2010) PLSCS 317 – Decision given 14.12.10

---

**Facts:** The interested party sought planning permission from BDC to develop its golf course, the works to include the construction of a clubhouse and a driving range with associated landscaping and remodelling of parts of the course, the latter involving depositing large quantities of inert waste material in order to create bunds. BDC's screening opinion concluded that no EIA was required under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 since, although the development amounted to an 'installation of the disposal of waste', the amounts of material involved were below the limits – in fact the volumes of material were much greater – and, secondly, that the application should be supported by a detailed ecological report to include a wildlife survey and mitigation strategy. Permission for the development was granted.

**Point of dispute:** Whether the appellants' appeal should be allowed against dismissal of judicial review proceedings to quash the permission on the grounds that the screening opinion was defective owing to:

- i. the error regarding the quantity of waste; and
- ii. the inadequate treatment of ecological issues in the light of various reports concerning protected species on the site.

**Held:** The appeal was allowed. The need for an EIA had been insufficiently considered and the planning permission should be quashed on that ground. The screening opinion was deficient in its treatment of the amount of inert waste that would be deposited on the site and the effect on the local environment of the creation of substantial bunds. Its treatment of ecological issues was also legally defective as its brevity reflected inadequate consideration of the issues. The assumption that an EIA was not required because any concerns could adequately be dealt with by mitigation measures was not justified in the circumstances. BDC's post-decision statements that the errors concerning waste quantity had not been material to their decision and that any further ecological information obtained subsequent to the screening opinion would not have affected it had to be viewed with caution.

02 Court of Appeal

---

**Appeal against grant of permission for conversion of hotel into residential units with no affordable housing element – inspector's decision focusing on economic viability of affordable housing provision – appeal against decision of court below quashing inspector's decision**


---

\* KENSINGTON & CHELSEA ROYAL LONDON BOROUGH COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2010) PLSCS 321 – Decision given 20.12.10

---

**Facts:** A developer was refused permission by KCRLBC ('the council') to convert a hotel into nine residential units, a project which did not include any element of affordable housing. The key issue in the developer's appeal against the refusal of permission, which was heard by a planning inspector appointed by the Sec of State, was whether the provision of affordable housing on the site, or a financial contribution to its provision elsewhere, would make the development financially unviable. The London Plan stated that affordable housing should normally be provided on sites with capacity for ten or more homes but that this target should be applied flexibly, depending on economic factors. It referred to a 'Toolkit' programme into which various input values could be fed to produce an analysis of the economic viability of affordable provision, but it was not a requirement to use this. Both the developer and the council produced a Toolkit analysis but with widely differing results owing to the use of different input figures. The inspector concluded that these analyses were unreliable and therefore attached little weight to them. Considering other factors to be more important, such as the Mayor's policy of encouraging residential development and the practical difficulties of incorporating affordable housing into this development, he concluded that it would not be reasonable to require any affordable housing and granted permission for the development.

**Point of dispute:** Whether the developer's appeal would be allowed against the decision of the court below, in proceedings brought by the council, to quash the grant of planning permission on the ground that the inspector had failed to deal with the issue of economic viability, which was a principal and controversial issue (see Evebrief Volume 32(07) 17.05.10 item 04).

**Held:** The appeal was allowed. The London Plan policies required the inspector to consider whether affordable housing should be provided and economic viability was only one of the elements that he had to take into account when considering that question. If the inspector considered that neither of the input figures for the Toolkit analysis was reliable, and using either set would produce an unreliable result, he had acted lawfully in deciding that he would not use this method to reach a conclusion on the economic viability of the proposal. Following on from this it had been reasonable for him to decide that he could not put any significant weight on the economic reliability factor when determining whether affordable housing should be provided. His decision could not be impugned for any error of law.

03 Administrative Court

**Regional Spatial Strategies**

\*\* CALA HOMES (SOUTH) LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2010) PLSCS 319 – Decision given 16.12.10

**Facts:** Cala Homes (CH), a housebuilder, had applied for planning permission to build 2,000 residential properties on a site near Winchester. Its appeal against the local planning authority's failure to determine that application was dismissed in 2007. After May 2009, when regional spatial strategies (RSS) were introduced, CH's prospects for obtaining permission for the development were increased and it made a second application. After the May 2010 General Election the Coalition Government issued a letter to all Ipas stating that it intended to abolish RSSs and directing them to have regard to that letter as a material consideration when considering planning applications. In July 2010 the Sec of State made a statement of intention to revoke all RSSs and CH applied for judicial review of that statement contending that the Sec of State had no power to amend or repeal the provision for RSSs. On 10.11.10 the judge upheld CH's challenge (see Evebrief Volume 32(17) item 02). On the same day the Sec of State issued a statement that Ipas and the Planning Inspectorate should have regard to the government's stated intention to enact primary legislation to abolish RSSs as a material consideration in making determinations under the Planning Acts and should still have regard to the 27.05.10 letter when making decisions. CH sent a pre-action protocol letter to the Sec of State contending that its 10.11.10 letter was unlawful. On 25.11.10 the judge directed that the effect of the Sec of State's statement and the 10.11.10 letter should be stayed until further order.

**Point of dispute:** Whether the Sec of State's application to lift the stay should be granted.

**Held:** The application was granted. The court had to establish the procedural justice of the matter, having regard to the balance of convenience and considering the wider importance of the issues raised, as well as CH's particular circumstances. In the instant case there were public interest considerations of clarity, consistency and certainty in the daily business of Ipas, inspectors and the Sec of State in making development control and planning decisions to be taken into account. This was a particularly important claim since, until it was determined, the exercise by Ipas of their planning functions would continue to be affected. The balance of convenience fell in favour of removing the stay in view of the fact that there would be a further hearing in January 2011.

04 Administrative Court

**Appeal against refusal of planning permission in case where planning inspector did not carry out a site visit within its boundaries**

\* PAYNE V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2010) PLSCS 316 – Decision given 09.12.10

**Facts:** P appealed against a refusal of planning permission to erect a replacement dwelling on her property. In determining the appeal the lpa requested a site visit by the planning inspector, but the inspector declined to enter the property since P objected to her being accompanied by an objector with whom P was involved in a dispute. Instead the inspector viewed the site from outside its boundaries and determined that development of the property would have an overwhelming visual effect on the neighbourhood and determined that it would be inappropriate to grant permission.

**Point of dispute:** Whether P's appeal against the inspector's decision would be allowed. P argued that the inspector had acted in breach of the Town and Country Planning (Hearings procedure) (England) Rules 2000 and had acted unfairly by failing to enter the site to view it. The Sec of State took the view that it was not necessary for the inspector physically to enter the site, and that in any event such a visit would not have made any difference to the outcome of the decision.

**Held:** P's appeal was allowed. Under the 2000 Rules a site inspection had to be carried out if one was requested by the lpa and under Reg 12(2)(b) the inspector had to enter the site in order to carry out that inspection. From the evidence it was clear that the inspector had intended to carry out a site visit and her failure to do so was unfair and contrary to the Rules. The onus was on the appellant to show that the procedure had been breached, but where the Sec of State maintained that the breach would have made no difference the onus was on him to prove that that was not the case. In this matter a site visit was needed for the inspector to properly examine the physical dimensions of the proposed development and such an inspection might have led her to give different weights to the matters before her.

**GERALDEVE**

## 05 Administrative Court

**Enforceability of requirement for undertaking from developer to make financial contributions towards leisure, education and library facilities**

\*R (ON THE APPLICATION OF MILLGATE DEVELOPMENTS LTD) V WOKINGHAM BOROUGH COUNCIL  
[2011] PLSCS 10 – Decision given 14.01.11

**Facts:** MD, the claimant developer, sought planning permission from the defendant, WBC, for a development of 14 dwellings on a site near Reading. Permission was refused on the grounds that the proposal did not adequately provide for services and infrastructure, but it was indicated that this could be overcome if MD provided a unilateral undertaking under s106(1) of the Town and Country Planning Act 1990 to make financial contributions towards leisure, education and library facilities. MD provided the required undertaking, but the obligations would not take effect until planning permission was granted and the development commenced. Subsequently, on appeal to an inspector, MD obtained planning permission. The inspector's letter stated that little weight should be given to the undertaking since WBC had not demonstrated the necessity of the contributions required under it.

**Point of dispute:** Whether to allow MD's application for judicial review of WBC's decision to refuse MD's request to discharge the undertaking. WBC took the view that the inspector's decision did not affect its enforceability. MD's argument was that WBC should not have sought to enforce the undertaking without ensuring that each of the required contributions was justified.

**Held:** MD's claim was dismissed.

- i. The undertaking was enforceable in law. MD had entered into it voluntarily and it was conditional only on the grant of planning permission and commencement of the development, both of which had occurred. The inspector's comments in his decision letter about the weight that he had attributed to the undertaking in determining the planning application were not relevant to the question of enforceability of the undertaking, or WBC's decision to enforce it. WBC had been entitled to conclude that the undertaking served a useful planning purpose.
- ii. WBC were entitled to take account of the principle laid down in the 1995 case of *Tesco Stores Ltd v Sec of State for the Environment* as a relevant consideration and to rely on it to support the principle that once an undertaking became binding, its enforcement was determined by its provisions and not by the degree to which it specifically related to the proposed development.
- iii. The fact that there was a power to refund any surplus funds to the developer justified the conclusion that WBC's decision to enforce the undertaking was not irrational or unreasonable.

## 06 Planning Policy Guidance

**Planning Policy Guidance 13: Transport**

PPG 13, which was published in April 2001, sets out the Government's objectives to integrate planning and transport at national, strategic and local levels and to promote more sustainable transport choices. This update to PPG 13 reflects changes which have been made to parking standards and charges, giving local authorities the right to determine parking standards for their areas and to set parking charges.

<http://www.communities.gov.uk/publications/planningandbuilding/ppg13>

## 07 CLG Letter to Chief Planning Officers

**Letter to Chief Planning Officers: Planning Policy on Residential Parking Standards, Parking Charges, and Electric Vehicle Charging Infrastructure**

This letter advises Chief Planning Officers of the changes to PPG 13 referred to at item 06 above. Local authorities are also encouraged to install electric vehicle charging infrastructure in new development and the Government has announced its intention to proceed with proposals to introduce permitted development rights for electric vehicle charging points.

<http://www.communities.gov.uk/publications/planningandbuilding/letterresidentialcharging>

## 08 CLG Statistics

**Planning Applications: July to September 2010 (England)**

The latest statistics on planning applications were published on 17.12.10. In the period between July and September 2010:

- there were 126,200 district level planning applications, 6% more than the September 2009 quarter;
- 120,200 applications were decided, 7% more than a year earlier;
- 97,100 applications were granted, an increase of 8%;
- 13,500 applications for residential developments were decided, 7% more than during the September 2009 quarter;
- 1,300 applications for major residential developments were decided and increase of 8% on a year earlier; and
- 69% of major applications were decided within 13 weeks.

<http://www.communities.gov.uk/publications/corporate/statistics/planningapplicationsq32010>

## 09 CLG Announcement

**Planning system overhaul**

The Decentralisation Minister announced just before Christmas that the centralist approach to planning is to be brought to an end and all existing policy statements, circulars and guidance documents will be consolidated and replaced with a single National Planning Policy. The aim of the proposed framework is to:

- hand power back to local communities;
- be more accessible to the public;
- ensure that planning is used as a mechanism for delivering Government objectives only where it is relevant, proportionate and effective to do so; and
- establish a presumption in favour of sustainable development.

The aim of these changes is to make the planning system less bureaucratic and to put local communities at the heart of decision making.

The following are of note:

- the Government will continue to maintain Green Belt protection, Areas of Outstanding Natural Beauty, National Parks and Sites of Special Scientific Interest
- the number of advisory guidance notes and best practice guides will be reduced as it is considered that too much weight is given to them
- National Policy Statements, which will set out the Government's policy on major infrastructure projects, will not be included in the Framework (see item 10 below)
- organisations and individuals will be invited to offer views on policies that should be included in the new Framework before the consultation draft is issued

<http://www.communities.gov.uk/news/corporate/1804403>

## 10 CLG Paper

**Major infrastructure planning reform: Work plan**

In October 2010 the Government set out its vision for the infrastructure investment it considers is required in the UK with the publication of a National Infrastructure Plan. The implementation of this plan will be overseen by Infrastructure UK. This work plan contains more details of the Government's specific proposals for the planning regime for major infrastructure, including:

- confirming its commitment to reforms to ensure that the system is rapid, predictable and democratically accountable;
- providing an update on the abolition of the Infrastructure Planning Commission and the creation of the Major Infrastructure Planning Unit;
- confirming which Sec of State will be responsible for decision making; and
- setting out a timetable for production and designation of National Policy Statements and providing details about the approval process of National Policy Statements.

<http://www.communities.gov.uk/publications/planningandbuilding/mipworkplan>



---

11 Policy Exchange Paper

---

### Planning Curses – How to deliver long-term investment in infrastructure

---

This paper examines the reasons behind the UK's failure over the long term to invest in infrastructure and suggests changes to the planning and policy environment that could address this failure. Drawing on examples of recent infrastructure projects, large developments and regional and spatial plans it illustrates the problems and their roots. The authors consider there are four main elements to the problems currently faced:

- i. too much credence has been given to economists' forecasts and forecasting models;
- ii. economists and other experts couch the conclusions of their modelling in terms which make little sense in the real world;
- iii. the way in which the models, forecasts and their assumptions are presented has had the consequence of focusing attention on the short term; and
- iv. the current short term focus leads to inadequate decision mechanisms.

In the paper suggestions for improving the system are proposed.

[http://www.policyexchange.org.uk/images/publications/pdfs/Planning\\_Curses\\_-\\_Dec\\_\\_10.pdf](http://www.policyexchange.org.uk/images/publications/pdfs/Planning_Curses_-_Dec__10.pdf)

## RATING

---

12 CLG – Business Rates Information Letter

---

### Business Rates Information Letter (BRIL) 11/2010: General Rating Information

---

This letter provides information to local billing authorities and stakeholders on the following:

- business rates measures within the Localism Bill;
- the proposed 2011/12 business rate multiplier; and
- the Empty Property Rate threshold.

<http://www.communities.gov.uk/publications/localgovernment/bril112010>

## REAL PROPERTY

---

13 High Court

---

### Restrictive covenants

---

\* CHURCHILL V TEMPLE  
(2010) PLSCS 327 – Decision given 14.12.10

---

**Facts:** In 1967 a building plot was conveyed by S (the Vendors) to a purchaser subject to two covenants: (i) no dwellinghouse was to be constructed on the land without the written approval of the Vendors or their surveyor; and (ii) the written consent of the Vendors or their surveyor was to be obtained to any structural alteration or addition to any permitted dwellinghouse. The Vendors sold their property in 1967 and ultimately it was acquired by the defendants in 1995. The Vendors having died some years previously, C, the claimant, who had acquired the building plot, wished to demolish and replace the house that had been built on it.

**Issues:** The claimant applied to the court for declarations concerning the enforceability, meaning and effect of the 1967 covenants.

**Held:** The declarations were granted as follows:

- i. The term 'the Vendors' in the conveyance meant only the original vendors and not their successors in title. When addressing the issue of construction of the words in the document the court had to be aware of how much time had passed since the original contract was entered into, and that the issue was now between parties who were not parties to the original contract. In literal terms the covenants restricted the right to withhold consent to the Vendors and construed in that way represented a reasonable balance between both parties' interests: the Vendors would have wanted to protect the value of their property and the original purchasers would not have wanted an indefinite restriction. The structure of the provision suggested that what the parties had in mind was control in the short term over the initial building.
- ii. In all the circumstances, on the proper construction of the 1967 conveyance and applying commercial common sense, the provisions in question had been discharged by the Vendors' death. The court was not bound by the Court of Appeal's decision in *Re Beechwood Homes Ltd's Application* (1994) 2 EGLR 178 holding that the Vendor's death made the prohibition in the restrictive covenants absolute.

**CONTRACT**

14 Court of Appeal

**Estate agents' commission**

\* GLENTREE ESTATES LTD V FAVERMEAD LTD  
(2010) PLSCS 2 – Decision given 21.12.10

**Facts:** F, the respondents, a company owned and controlled by K, owned a property in Kensington. It appointed GE, three estate agents, as joint sole agents to sell the property on the basis that K would pay a fixed fee of £1m in the event that one of the agents "introduces an applicant who subsequently purchases the property" and a reduced fee of 20% if K found a purchaser through his own endeavours. K found a purchaser which resulted in the property being sold in October 2001 to a company, C, for £50m with an overage agreement under which the parties would share equally in any profit if the property was resold for more than £50m within five years. K and GE agreed that the agency agreement would continue and subsequently GE arranged a viewing for a prospective purchaser, M. K was informed of M's interest but thereafter GE played no further part in the sale. In 2004 the property was resold to a company controlled by M for £57m. At first instance the judge dismissed GE's claim for commission in respect of both sales, £200,000 for the first, and £1m for the second. He found that although the first sale to C had triggered a right to 20% commission, GE had waived its entitlement by entering into a new agency contract in respect of the proposed resale. In respect of the second sale it was an implied term that GE had to be an effective cause of the resale to qualify for their commission and they had not proved that was the case.

**Point of dispute:** Whether GE's appeal would be allowed against the judge's ruling.

**Held:** The appeal was allowed in part.

- i. GE were not entitled to £200,000 commission in respect of the first sale because by entering into the second agreement they had relinquished any right to reduced commission on the first sale in return for the chance of earning a larger fee of £1m on a resale.
- ii. GE were, however, entitled to £1m commission on the resale. The terms of the first agreement formed the basis of the second one and they had effected the introduction to M who had ultimately purchased the property. In this case no implied term should be read into the agreements that GE had to be the effective cause of the sale.

**TORT**

15 Technology and Construction Court

**Claim for damages from solicitor for negligence**

\* D MORGAN PLC V MACE & JONES  
(2010) PLSCS 4 – Decision given 22.12.10

**Facts:** M, the claimant, acquired a quarry in 1993 and planning permission for carrying out quarrying activities. It also wished to use the site for tipping/landfill, but neither the permission nor the conditions attached to it expressly referred to these activities. The advice that M received from the defendant, MJ, a firm of solicitors, was that planning permission for landfill was implied as, in the light of the decision in *Irlam Brick v Warrington Borough Council* [1982] JPL 709, where positive conditions required works to be carried out the condition granted permission for those works. In arriving at this advice MJ had relied upon counsel's opinion. In 1998 MJ, having received a further opinion from counsel, changed this advice and informed M that the express terms of the planning permission did not permit waste to be brought onto the site. M was advised to make an application under s73 of the Town and Country Planning Act 1990 to amend the terms of the planning permission so as to vary the conditions, or, if necessary, reapply for planning permission.

**Point of dispute:** Whether M's claim for damages in negligence against MJ would be allowed. Most of the claim, which was in excess of £40m, was for loss of profits. M argued that MJ should have queried counsel's 1998 advice and advised M to make a new application for planning permission. Failure to do this had caused M loss as it could have secured planning permission on more advantageous terms.

**Held:** M's claim was dismissed. The court had to consider whether, when reading counsel's 1993 and 1998 opinions together, a reasonably competent solicitor would have realised that there was potential for confusion. MJ should have recognised there was and its failure to do so was negligent. However, the burden of proof was on the claimant to prove causation. In this case there was nothing to indicate that any s73 application was doomed to fail and that the only way to obtain consent for tipping was by making a fresh application. M's conduct had failed to demonstrate that a fresh planning application would have progressed quicker than an application to amend; this litigation had taken a very long time to reach trial, the schedule of loss and supporting expert's evidence had only recently been received by the court, and the loss of profit claim was flawed.

**GERALDEVE**

---

## HOUSING

---

16 CLG Statistics

---

### House Price Index – October 2010

---

These statistics were released on 14.12.10. Key points to note are as follows:

- in October 2010 UK house prices were 5.5% higher than in October 2009;
- the average mix-adjusted UK house price was £209,466 (not seasonally adjusted);
- average house prices increased in Wales by 9.1%, in England by 5.9%, but they went down in Northern Ireland by 8.9% and in Scotland by 0.4%;
- first time buyers paid on average 3.4% more than a year earlier whilst prices paid by former owner occupiers went up by 6.3%; and
- prices paid for new properties were 4.4% higher on average than a year earlier whilst prices for pre-owned dwellings increased by 5.6%.

<http://www.communities.gov.uk/publications/corporate/statistics/hpi102010>

17 Homes and Community Agency (HCA) Statistical Publication

---

### Monthly Housing Market Bulletin 31 December 2010

---

This bulletin provides HCA staff with the latest information on housing market trends, the economy and the housebuilding industry. The following are of note:

- the slightly downward trend which has been recorded in house prices over the past few months continued with both Halifax and Nationwide recording small falls in house prices
- there appears to have been a fall in demand for properties with Hometrack recording a 4.3% fall in new buyers registering in November. This fall has been fuelled by buyers expecting prices to fall further
- the number of houses coming onto the market fell in November for the first time in nine months
- according to the Council of Mortgage Lenders mortgage lending fell by 16% compared with the same time a year earlier
- the economy continued to grow with UK GDP increasing by 0.7% in Q3 2010, but it is still thought that this growth will be difficult to sustain due to the Spending Review cutbacks to public expenditure
- unemployment rose by 35,000 in the three months to October mainly driven by public sector job losses
- the rate of inflation remains above target

<http://www.homesandcommunities.co.uk/public/documents/monthly-housing-bulletin-Dec2010.pdf>

---

## CONSTRUCTION

---

18 CLG Publication

---

### Future changes to the Building Regulations – next steps

---

This document outlines the Department for Communities and Local Government's work programme on changes to the Building Regulations which will focus particularly on deregulation and streamlining of the technical and procedural aspects of the Regulations. Detailed proposals will be consulted on at a later date.

<http://www.communities.gov.uk/publications/planningandbuilding/buildingregsnextsteps>

---

 19 CLG Responses to Consultation
 

---

**Zero Carbon for New Non-domestic Buildings:  
Consultation on Policy Options – Summary of responses**


---

This report summarises the responses that were received to the Government's consultation on its proposals to try and achieve its aim of all non-domestic buildings being zero carbon from 2019.

- the majority of respondents supported the proposals
- about half of respondents were in favour of balancing on-site and off-site measures, with a significant proportion of developers favouring off-site measures
- there was little support for the proposal to set a flat rate requirement above 100% regulated emissions to account for unregulated emissions
- overall there were no marked sectoral differences in views and any differences were found to be question dependent. Support for some of the proposals was, however, less strong in the energy sector

[http://www.communities.gov.uk/publications/  
planningandbuilding/zerocarbonnewnondomsor](http://www.communities.gov.uk/publications/planningandbuilding/zerocarbonnewnondomsor)

---

 20 CLG Circular Letter
 

---

**Circular letter: Building Control by Approved Inspectors  
under Part II of the Building Act 1984 – Designated Warranty  
Schemes by Construction Register Ltd for the purposes of  
the Warranty Link Rule**


---

This letter informs building control bodies about the approval of the Construction Register Limited, Residential New Build Policy ('the Policy') as a Designated Warranty Scheme for the purposes of the Warranty Link Rule. This means that the Policy is added to the list of Designated Warranty Schemes that Approved Inspectors can accept in respect of the Warranty Link Rule.

[http://www.communities.gov.uk/publications/  
planningandbuilding/constructionregister](http://www.communities.gov.uk/publications/planningandbuilding/constructionregister)

---

**GENERAL**


---

 21 CABA Paper
 

---

**Managing green spaces – seven ingredients for success**


---

The amount of money that local councils have to manage green spaces is being reduced dramatically in the current economic climate. The purpose of this briefing is to assemble evidence which will assist green space managers, corporate decision-makers and advisers when making decisions about the future of services. Councils are considering different approaches to managing and financing public spaces and this paper sets out CABA's seven 'ingredients for success' – these arose from research carried out between 2009 and 2010 by the New Local Government Network for CABA which examined how the structure and organisation of parks and green space services affect their performance.

<http://www.cabe.org.uk/files/managing-green-spaces.pdf>

---

 22 CABA Papers
 

---

**Creating successful masterplans: A guide for clients**


---

Creating excellent buildings: A guide for clients

These guides contain advice on masterplanning aimed at people who are involved with commissioning and managing development projects. The first guide is particularly concerned with the delivery of high quality individual buildings, while the second is concerned with larger development projects.

[http://www.cabe.org.uk/publications/  
creating-successful-masterplans](http://www.cabe.org.uk/publications/creating-successful-masterplans)

[http://www.cabe.org.uk/publications/  
creating-excellent-buildings](http://www.cabe.org.uk/publications/creating-excellent-buildings)


**GERALDEVE**

---

23 Centre for Cities Paper

---

### **Grand Designs? A new approach to the built environment in England's cities**

---

This report demonstrates how long-term restructuring and population change has led to falling demand for space in some of England's urban areas and explains how policy makers can deal more effectively with the negative consequences this has for built environments and local people in affected areas. It argues that a new approach to the built environment in England's cities is needed, based on the following five principles:

- i. built environments need to adapt to changing economic circumstances and levels of population;
- ii. strategies should focus on delivering the best outcomes for people;
- iii. decision makers should respond to the needs of different neighbourhoods;
- iv. community engagement and leadership is crucial when managing the impact of decline on built environments; and
- v. places need to keep reviewing their economic circumstances. No city-region or neighbourhood is on a fixed path towards either growth or decline.

Measures that could be taken by local authorities, communities and national government are outlined.

[http://www.centreforcities.org/assets/files/10-12-09\\_Grand\\_designs.pdf](http://www.centreforcities.org/assets/files/10-12-09_Grand_designs.pdf)

---

24 CLG Paper

---

### **Valuing the Benefits of Regeneration**

---

This study was commissioned by the Department of Communities and Local Government in October 2009 to examine how the benefits of regeneration might be valued. It aims to provide an analytical framework which will underpin a programme of research on the value of benefits from regeneration and how they compare with relevant costs.

<http://www.communities.gov.uk/publications/regeneration/valuingbenefitsregen>

---

25 RICS Practice Standards, UK – guidance note

---

### **The capital and rental valuation of public houses, bars, restaurants and nightclubs in England and Wales**

---

The RICS Valuation Standards (the 'Red Book') (GN2 under a revised system of numbering from spring 2011) considers the criteria to be adopted by valuers when assessing Market Value or market rent for an individual trade related property (ie one that is bought and sold with regard to its trading potential). It considers a wide range of trade related properties including hotels, theatres, cinemas and various other forms of property used for leisure purposes. This guidance note provides more specific guidance to valuers who are concerned with valuing public houses, bars, restaurants and nightclubs (licensed properties) that are occupied and trading. It has been written specifically with regard to the law and practice in England and Wales. Valuation methodology is referred to in s5 and a practical approach to the assembly and interpretation of relevant information is provided.

[http://www.rics.org/site/download\\_feed.aspx?fileID=8431&fileExtension=PDF](http://www.rics.org/site/download_feed.aspx?fileID=8431&fileExtension=PDF)

# GERALD EVE'S UK OFFICE NETWORK

Gerald Eve LLP is an independent firm of chartered surveyors and property consultants, employing more than 330 staff across the UK.

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

Our philosophy is to serve clients by identifying opportunities and solving problems relating to property through the provision of high quality, thoroughly researched cost effective advice.

## London (West End)

Hugh Bullock Tel. 020 7333 6302  
hbullock@geraldev.com

## London (City)

Simon Prichard Tel. 020 7489 8900  
sprichard@geraldev.com

## Birmingham

Chris Kershaw Tel. 0121 616 4800  
ckershaw@geraldev.com

## Cardiff

Joseph Funtek Tel. 029 2038 8044  
jfuntek@geraldev.com

## Glasgow

Ken Thurtell Tel. 0141 221 6397  
kthurtell@geraldev.com

## Leeds

Mike Roberts Tel. 0113 244 0708  
mroberts@geraldev.com

## Manchester

Mike Roorcroft Tel. 0161 830 7070  
mroocroft@geraldev.com

## Milton Keynes

Simon Dye Tel. 01908 685950  
sdye@geraldev.com

## West Malling

Lisa Laws Tel. 01732 229423  
llaws@geraldev.com



To add your name to the evebrief distribution list, please contact us at [evebrief@geraldev.com](mailto:evebrief@geraldev.com)

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.

### Useful web links

[www.ukonline.gov.uk](http://www.ukonline.gov.uk)  
[www.odpm.gov.uk](http://www.odpm.gov.uk)  
[www.dft.gov.uk](http://www.dft.gov.uk)  
[www.inlandrevenue.gov.uk](http://www.inlandrevenue.gov.uk)  
[www.hmso.gov.uk](http://www.hmso.gov.uk)  
[www.egi.co.uk](http://www.egi.co.uk)  
[focus.focusnet.co.uk](http://focus.focusnet.co.uk)  
[www.newLawonline.com](http://www.newlawonline.com)

### 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.

### Contact details

If you require full details of any of the cases presented in this publication, or would like to discuss them in further detail, please contact our specialists:

### Agency

Chris Kershaw Tel. 0121 616 4800  
ckershaw@geraldev.com

### Compensation & Compulsory Purchase

Tony Chase Tel. 020 7333 6282  
tchase@geraldev.com

### Building Consultancy

Michael Robinson Tel. 0161 830 7091  
mrobinson@geraldev.com

### Environment & Contamination

Keith Norman Tel. 020 7333 6346  
knorman@geraldev.com

### Landlord & Tenant

Graham Foster Tel. 020 7653 6832  
gfoster@geraldev.com

### Leasehold Reform

Julian Clark Tel. 020 7333 6361  
jclark@geraldev.com

### Minerals & Waste Management

Philip King Tel. 0113 244 0708  
pking@geraldev.com

### Planning & Development

Hugh Bullock Tel. 020 7333 6302  
hbullock@geraldev.com

### Rating

Jerry Schurder Tel. 020 7333 6324  
jschurder@geraldev.com

### Real Property

Annette Lanaghan Tel. 020 7333 6419  
alanaghan@geraldev.com

### Valuation

Mark Fox Tel. 020 7333 6273  
mfox@geraldev.com

### Gerald Eve Research

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

For more information on our research services please contact:

Robert Fourt  
Partner  
Tel. 020 7333 6202  
rfourt@geraldev.com

### Disclaimer & Copyright

*Evebrief is a short summary and is not intended to be definitive advice. No responsibility can be accepted for loss or damage caused by any reliance on it.*

*© All rights reserved*

*The reproduction of the whole or part of this publication is strictly prohibited without permission from Gerald Eve LLP.*

# EVEBRIEF

## Legal & Parliamentary

Volume 33(01) 24 January 2011

- 01 Scotland – Planning
- 03 Scotland – Rating
- 04 Wales – Rating
- 05 Wales – Compulsory Purchase
- 06 Wales – Real Property
- 07 Northern Ireland – Rating

### SCOTLAND

#### PLANNING

---

01 Statutory Instrument

---

#### **SSI 2010/467 The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2010**

---

These Regulations, which come into force on 01.02.11, repeal and replace with certain amendments the 1987 Regulations. Regs 3, 4 and 5 prescribe the classes of appeal which are to be determined by persons appointed for the purpose by the Scottish Ministers instead of by the Scottish Ministers themselves. Reg 6 prescribes certain classes of appeal within those prescribed under Reg 3 which are to continue to be determined by the Scottish Ministers and under Reg 7 planning authorities are to publish any direction made by the Scottish Ministers specifying classes of case within the prescribed classes which are to be determined by the Scottish Ministers.

<http://www.legislation.gov.uk/ssi/2010/467/contents/made>

---

02 Scottish Government Publication

---

#### **Directorate for Planning and Environmental Appeals: Complaints**

---

This publication deals with the procedure for complaints against the Directorate for Planning and Environmental Appeals.

<http://www.scotland.gov.uk/Publications/2011/01/11115220/0>



GERALDEVE

**RATING**

03 Statutory Instrument

**SSI 2010/457 The Non-Domestic Rate (Scotland) (No 2) Order 2010**

This Order, which comes into force on 01.04.11, prescribes a rate of 42.6p as the non-domestic rate to be levied throughout Scotland in respect of the financial year 2011-12. In the financial year 2010-2011 the rate was 40.7p.

<http://www.legislation.gov.uk/ssi/2010/457/contents/made>

**WALES****RATING**

04 Statutory Instrument

**WSI 2010/2889 The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2010**

Under Part II of Schedule 8 to the Local Government Finance Act 1988 billing authorities are required to pay non-domestic rating contributions to the Welsh Ministers. The 1992 Regulations contain rules for the calculation of those contributions for Welsh billing authorities. These Regulations came into force on 31.12.10 and amend the 1992 Regulations by substituting a new Schedule 4 (Adult Population Figures).

<http://www.legislation.gov.uk/wsi/2010/2889/contents/made>

**COMPULSORY PURCHASE**

05 Statutory Instrument

**SI 2010/3015 The Compulsory Purchase (Inquiries Procedure) (Wales) Rules 2010**

These Rules, which come into force on 31.01.11, prescribe the procedure to be followed in connection with local inquiries relating to compulsory purchase orders in Wales. They replace in Wales the Compulsory Purchase by Non-Ministerial Acquiring Authorities (Inquiries Procedure) Rules 1990 and the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994. They relate to Orders where the Welsh Ministers are either the acquiring authority or the confirming authority.

<http://www.legislation.gov.uk/uksi/2010/3015/contents/made>

**REAL PROPERTY**

06 Welsh Assembly Consultation

**Welsh Consultation – Overriding easements and other rights**

Deadline for Comments: 08.03.11

This consultation seeks views on the proposal to amend Schedule 4 to the Welsh Development Agency Act 1975 which provides that where land has been acquired by the Welsh Ministers easements and other rights can be overridden to enable building or other works to be erected, constructed, carried out or maintained on that land. The aim of the proposed changes is to widen these powers in order to ensure that such easements and other rights are removed permanently, and not just during the construction phase of the development project.

<http://wales.gov.uk/docs/det/consultation/101214overridingen.pdf>

**NORTHERN IRELAND****RATING**

07 Statutory Rule of Northern Ireland

**NISR 2010/431 The Valuation (Telecommunications, Natural Gas and Water) Regulations (Northern Ireland) 2010**

These Regulations, which come into force on 31.01.11, provide as follows:

1. for the purposes of the Rates (Northern Ireland) Order 1977:
  - i. certain hereditaments occupied or owned by British Telecommunications plc (BT) and used for telecommunication services; and
  - ii. unbundled local loops which BT lets or licenses to another person shall be treated as a single hereditament occupied by BT;
2. the letting or licensing by BT of a fully unbundled local loop is to be assumed, for the purposes of valuing the single hereditament occupied by BT, to be a matter affecting the physical state or physical enjoyment of the hereditament;
3. certain hereditaments of any company listed in the Schedule to the Regulations shall for the purposes of the 1977 Order be treated as a single hereditament occupied by that company; and
4. the 2004 Regulations are revoked.

<http://www.legislation.gov.uk/nisr/2010/431/contents/made>