

EVEBRIEF

Legal & Parliamentary

Volume 33(10) 01 August 2011

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DRAFT NATIONAL PLANNING POLICY FRAMEWORK PUBLISHED



Ben Aldridge
Editor

The Government's National Planning Policy Framework (NPPF) has now been published in draft for consultation, and is reported on at item 13. The Government's aim is to consolidate and simplify national planning policy, making it more user-friendly, handing power back to local communities, and introducing a strong presumption in favour of sustainable development. The consultation draft does not differ greatly in substance from the Practitioners Advisory Group draft, and certainly achieves its goals in terms of a reduction in volume of policy, albeit at the expense of detail, with communities and local authorities left to determine this in their own areas. At the time of writing it has already drawn some criticism – always to be expected from some quarters in light of this loss of detail and the broadly pro-development stance it adopts – but has received a warm reception from others. The Government is seeking comments on the draft and, as ever, if you have strong views we would urge you to make them known. In the meantime, as a

consultation draft the NPPF will be a material consideration in planning decisions, though of course the weight to be given to will be a matter for the decision maker.

Elsewhere at item 11 we report on the revised London Plan, which incorporates the majority of the changes recommended by the panel who conducted the Examination in Public.

Finally at item 01 we report on a Department of Communities and Local Government consultation into local business rates retention, as proposed in the Local Government Resource Review, which includes options for enabling authorities to carry out Tax Increment Financing, allowing them to pay for future infrastructure development by borrowing against future rates.

A handwritten signature in black ink, appearing to read 'B. Aldridge', with a long horizontal line underneath it.



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LOCAL GOVERNMENT

01 CLG Consultation

Local Government Resource Review: Proposals for Business Rates Retention – Consultation

Deadline for comments: 24.10.11

This consultation seeks views on proposals to change the way Local Government is funded by introducing retention of business rates, and on options for enabling authorities to carry out Tax Increment Financing in the business rates retention system. A series of technical papers are to be published in August providing further detail on some of the topics dealt with in the consultation.

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

02 CLG Report

Local Government Resource Review: Proposals for Business Rates Retention – A Plain English Guide

This guide explains the Government's proposals to change the way in which local government is funded by introducing retention of business rates. It sets out:

- what is being changed and why;
- the government's proposals for change; and
- the impact of these proposals in practice.

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

LANDLORD & TENANT

03 High Court

Rent review – challenge to arbitrator's award

* CORDOBA HOLDINGS LTD V BALLYMORE PROPERTIES LTD (2011) PLSCS 177 – Decision given 30.06.11

Facts: A commercial building was let by the defendant, BPL, to the claimant, CHL, for a term of 25 years at an initial rent of £1.77m, with reviews at five-yearly intervals. At the first review the rent was increased to £1.8m, but at the second review the parties were unable to agree terms and an arbitrator was appointed. The arbitrator determined the correct value at £2.85m on the basis that the existing use of the premises as a data centre, as opposed to an ordinary office building, was a use which would be available to the hypothetical open market tenant.

Point of dispute: Whether CHL's appeal against the arbitrator's award, under s69 of the Arbitration Act 1996, would be allowed. CHL disputed the award arguing that the arbitrator should have disregarded improvements that CHL had carried out on the demised premises in order to enhance the power supply, without which the premises could not be used as a data centre.

Held: The appeal was dismissed. A tenant had to show that improvements it considered should be disregarded had been carried out by the tenant. It was impossible to disregard an increase in rent attributable to an improvement to the premises carried out by the tenant if, as in this case, there was no evidence as to the nature of the improvement, who carried it out, when and at what cost. The arbitrator had made no finding as to the existence of any external works of enhancement to the power supply carried out by the claimant that could affect the rental value of the building. Therefore, the issue that the claimant relied on was not a question of law arising out of an award made in the proceedings for the purposes of s69(1) of the 1996 Act.

04 Upper Tribunal: Lands Chamber

Reasonableness of service charges

* SOUTHALL COURT (RESIDENTS) LTD V TIWARI (2011) PLSCS 181 – Decision given 16.06.11

Facts: The respondents, T, were tenants of two flats within a block owned by SC. SC sought to recover £2053.53 from each tenant for interim service charges for the year commencing June 2009, which related mainly to major works to replace parts of the roof of the block. SC had fulfilled their statutory consultation obligations under s20 Landlord and Tenant Act 1985 but the tenants had not responded. SC applied to the Leasehold Valuation Tribunal (LVT) to determine the tenants' liability to pay the service charges. In November 2009, the LVT ordered the terms of the leases to be varied to provide for tenants to contribute to a sinking fund, but by the time the application was determined, there were insufficient funds to pay for the roof works.

Points of dispute: Whether to uphold the LVT's decision that the amount claimed in respect of the roof works was unreasonable, as the roof tiles had another 12-18 months use, and a landlord acting reasonably should take into account the fact that a sinking fund was being built up. SC argued the LVT had erred in its approach to reasonableness, submitting that reasonableness depended on whether the works fell within a range of reasonable decisions and that the existence of the sinking fund was not a relevant factor in considering reasonableness.

PLANNING

06 Court of Appeal

Conditional planning permission – condition upheld on appeal – whether insufficient reasons given for decision

* GEORGIU V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2011) PLSCS 176 – Decision given 07.07.11

Facts: G owned a restaurant and bar on Clapham High Street in south London which he renovated before opening to the public in March 2009. The local planning authority granted retrospective planning permission for the works, including the installation of bi-folding doors at the front of the premises, but it was a condition of the permission that these doors were to be closed while the restaurant and bar were in use in order to protect the amenity of adjoining occupiers. G appealed against this condition, citing a report from an acoustic consultant which concluded that keeping the doors open during the day would not disturb local residents.

Point of dispute: Whether to allow G's appeal against the decision of the judge in the court below, who refused the application to quash the inspector's decision to dismiss his appeal against retention of the condition. G argued that the inspector had failed to deal properly with the acoustic report or to provide adequate reasons as to why he disagreed with its findings, but the judge ruled, having read the report and visited the premises, that the inspector had been entitled to exercise his own planning judgment for the reasons set out in his decision letter.

Held: G's appeal was allowed. The acoustic report had stated that there was no reason why the doors should not be open during the day, but this did not prevent the inspector from exercising his planning judgment and coming to the conclusion that noise would be generated at other times and thus rejecting G's argument for discharging the condition altogether. He had not been obliged to consider modifying the condition, for example by limiting the opening of the doors to daytime hours, as that possibility had not been put to him by G's advisers. However, the inspector's reasoning had not been adequate: he had given no reasons for rejecting the analysis in the acoustic report, which left G in doubt as to the potential for a future application for a planning permission with a modified condition requiring the doors to be kept closed at certain night time hours. It was unclear whether the inspector disagreed with the report in its entirety or only with its facts or analysis, and for that reason his decision would be quashed and remitted for reconsideration.

Held: The appeal was allowed. A landlord had wide discretion as to the programme of works to be adopted. In the absence of expert evidence apart from that of SC which indicated the roof tiles should be replaced, it was not open to the LVT to find the decision to replace the roof tiles immediately unreasonable. When considering whether proposed works were reasonable, all relevant facts should be taken into account, with the weight given to each to be determined by the tribunal. Whilst the existence of a sinking fund was not irrelevant to the issue of reasonableness, here it could not make the difference between the reasonableness of a decision to carry out the works immediately or in 12-18 months time. A landlord was entitled to conclude there was no serious objection to proposed works in the absence of any objection during the statutory consultation process. The amount payable by the tenants of each flat was determined at £2,053.43.

05 Upper Tribunal: Lands Chamber

Appeal against Leasehold Valuation Tribunal's determination of liability for service charge

* AKORITA V MARINA HEIGHTS (ST LEONARDS) LTD
(2011) PLSCS 183 – Decision given 29.06.11

Facts: A held a long lease of a flat in a block owned and managed by the respondent company MH. MH was entitled to recover service charges from the lessees under the terms of their leases, which provided that the service charge was to be ascertained and certified by the lessee's surveyor. A applied to the Leasehold Valuation Tribunal under s27A Landlord and Tenant Act 1985 for a determination as to whether service charges were recoverable for the years 2002-08, contending MH had failed to comply with the requirement to have the amounts certified by their surveyor.

Points of dispute: Whether to uphold the LVT's decision that whilst a surveyor's certificate was a condition precedent for recovery of service charges, certificates provided by MH's accountants which included sums in respect of the service charge component that would have been prepared by surveyors were capable of amounting to such a certificate. MH argued that as the lease had been executed against the background of s19(1) of the 1985 Act, which confined service charges to such amount as was reasonable, the parties should not be taken to have intended a protection for the tenant that went beyond that conferred by s19.

Held: The appeal was allowed. On the proper construction of the lease, it was a condition precedent to any liability of the leaseholder in respect of service charges, that MH obtained a surveyor's certificate certifying the amount of the payment. There was no reason to conclude that the lease did not intend to confer greater protection for the tenant than that conferred by s19. MH had not provided any document that could be regarded as a surveyor's certificate. The certificate provided by their accountants did not constitute a certificate by a surveyor "acting as an expert and not as an arbitrator". As the condition precedent to liability had not been fulfilled, A was not liable for each of the service charge years.


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07 Administrative Court

Time limit for filing application to challenge development plan

* BARKER V HAMBLETON DISTRICT COUNCIL
(2011) PLSCS 172 – Decision given 24.05.11

Facts: The claimant B owned land in north east Thirsk which he had hoped would be allocated for housing in the local development plan document (DPD). The DPD was adopted by the defendants, HDC, on 21.12.10 but B's land was not allocated for development. An application to the High Court to challenge the DPD had to be made within six weeks of it being adopted, which meant in this case that it expired on 01.02.11. However, in their published adoption statement and notice of adoption, HDC stated that any proceedings had to be brought within six weeks of 31 December. B posted his particulars of claim under the doors of the court building at 7.46pm on 01.02.11, after it was closed. Officials sealed the form the next morning with a date of issue of 02.02.11.

Point of dispute: Whether B's application had been made in time pursuant to s113 of the Planning and Compulsory Purchase Act 2004. B contended that he had made his application on 01.02.11 since it was a unilateral act not requiring reciprocity from the court. HDC argued that in order to start proceedings the court had to issue a claim form stamped with a date of issue which in this case was 02.02.11 and the application was out of time.

Held: B's application was dismissed. Putting the envelope through the letterbox of the court office when it was closed did not mean that the application had been made in time. The time limit was not extended to the next business day when the recipient's office was closed before midnight on the day in question. HDC had no power to give more time than that allowed for in the 2004 Act, so B was not saved by HDC's error in that regard either.

08 Administrative Court

Application for planning permission for waste treatment facility – whether inspector appointed by defendant Sec of State erred in law in not taking account of regional spatial strategy

* RESOURCE RECOVERY SOLUTIONS (DERBYSHIRE) LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2011) PLSCS 175 – Decision given 05.07.11

Facts: After being refused planning permission for a waste treatment facility on disused land in Derby the claimant company appealed to the defendant Sec of State whose inspector conducted a 12-day inquiry including a site visit. A decision maker exercising powers under the Town and Country Planning Act 1990 must have regard to the development plan and under s38(6) of the Planning and Compulsory Purchase Act 2004, if regard is to be given to the development plan, the determination must be made in accordance with the plan unless there are material considerations to indicate otherwise. Taking various local issues into account the inspector concluded that the factors in favour of the proposed development did not outweigh those against it, and she dismissed the claimant's appeal.

Point of dispute: Whether the claimant's appeal against the Sec of State's decision would be allowed. It argued that the inspector had erred in law because:

- i. she had not taken any account of the regional spatial strategy (RSS) in reaching her decision;
- ii. she had not referred the matter back to the parties to reconsider the RSS, following the judgment in *Cala Homes (South) Ltd v Sec of State* [2010] 46 EG 116; and
- iii. she had not considered, determined or given adequate reasons as to whether the proposal accorded with the development plan.

Held: The appeal was allowed. Under s38(6) if the provisions of the development plan were relevant to a particular application it must govern the decision, unless material considerations indicated that it should not be followed in a particular case. In this case the regional planning policy framework included the East Midlands Regional Plan which contained up to date and highly relevant data. The inspector had not reached a conclusion as to whether the proposal accorded with the development plan read as a whole, but rather had made an "on balance" decision and it was not possible to tell what conclusion she had reached on the plan. Following the decision in *Cala Homes* and pursuant to the planning inspectorate guidance the inspector should have referred the matter back to the parties. It could not be said that the Sec of State would have reached the same decision had the inspector's duties been properly performed in compliance with s38(6).

09 Administrative Court

Planning permission granted for tennis court floodlights – whether lpa had acted unlawfully in failing to carry out environmental impact assessment

* R (ON THE APPLICATION OF WARLEY) V WEALDEN DISTRICT COUNCIL
(2011) All ER (D) 88 (Jul) – Decision given 08.07.11

Facts: A tennis club located in an area of outstanding natural beauty was granted planning permission to erect nine columns with floodlights attached to them alongside two of its tennis courts.

Point of dispute: Whether the claimant's application for judicial review of the decision to grant permission would be allowed. The main issue was whether the lpa had erred in concluding that the proposal did not fall within Schedule 2 to the Town and Country (Environmental Impact Assessment) (England and Wales) Regulations, SI 1993/293.

Held: The application was allowed and the planning permission would be quashed. The approach adopted by the lpa had been erroneous and it had misdirected itself as a matter of law eg in considering para 10(b) of Schedule 2 to the 1993 Regulations it had sought to identify something similar to the projects set out in that section, when it should have considered whether the project was an urban development project. Further errors of law had been made, including the lpa's approach to the wider impact of the development. More careful analysis had been needed of the overall impact of the proposal and there was no evidence to show that the authority had ever carried out that analysis.

10 Administrative Court

Local authority granting consent to demolish and replace cottage in conservation area

* R (ON THE APPLICATION OF MAXWELL) V WILTSHIRE COUNCIL
(2011) PLSCS 187 – Decision given 15.07.11

Facts: The interested parties, W, owned a cottage which was in a poor state of repair and not listed, but in a village designated as a conservation area. W wished to demolish the cottage and replace it with a building of equivalent dimensions and appearance but of modern construction, and applied for demolition consent. The report prepared by WC's officers for the planning committee referred to: (i) WC's duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area; (ii) the local plan and PPG15; and (iii) the extant planning permission for a replacement dwelling on the site. The committee resolved unanimously that consent was granted for the demolition.

Points of dispute: Whether M's application for judicial review of the decision would be granted. M contended that: (i) as the report did not set out the full text of relevant parts of PPG15 it did not provide proper guidance to the committee; (ii) WC had failed properly to consider and reach a conclusion whether the proposal complied with PPG 15; and (iii) WC's decision was irrational, as it failed to protect and preserve any part of the existing cottage.

Held: The application was dismissed. WC's approach to the grant of consent was well-considered, well-informed and legitimate. It recognised a presumption in favour of retaining the existing building, but on balance assessed the presumption was outweighed on the particular facts. It had regard to the condition of the building and the balance of its value against the cost of repairing it, to the adequacy of efforts made to retain the building in use and to the merits of the alternative proposals for the site. The officers' report in this case gave appropriate and sufficient guidance to members regarding the approach they should adopt and the relevant effect of PPG 15 was not misrepresented. The judge found the committee had properly and adequately considered the application. The decision was not irrational and neither the Planning (Listed Buildings and Conservation Areas) Act 1990 nor PPG 15 suggests demolition of an old building in a conservation area is always unacceptable.

11 Mayor of London Spatial Development Strategy

The London Plan

This document replaces the version of the London Plan published in 2008, with effect from 02.07.11. It is the overall strategic plan for London and sets out an integrated economic, environmental, transport and social framework for London development to 2031. The Local Plans of London Boroughs must be in general conformity with the London Plan and its policies guide decisions on planning applications by councils and the Mayor. It is intended to be different from the previous version – shorter, more clearly strategic and arranged in topic based chapters to make policies on particular issues easier to find.

<http://www.london.gov.uk/publication/londonplan>

12 Mayor of London Statement

Replacement London Plan Sustainability Statement

This document sets out sustainability considerations integrated into the London Plan prior to publication. It gives reasons for choosing the preferred policies and measures for monitoring the Plan. It has been produced in accordance with the requirements of Article 9(1) of European Directive 2001/42/EC and sustainability appraisal.

<http://www.london.gov.uk/priorities/planning/londonplan>



13 CLG Draft Policy Framework

Draft National Planning Policy Framework

The National Planning Policy Framework has been published in draft and sets out the Government's economic, environmental and social planning policies for England. It is a key part of the Government's reforms to make the planning system less complex and more accessible, promoting sustainable growth. It sets out the Government's requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so, and provides a framework within which local people and their councils can produce their own local and neighbourhood plans, reflecting local needs and priorities.

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

14 CLG Consultation

Draft National Planning Policy Framework: Consultation

Deadline for comments: 17.10.11

This consultation seeks views on the draft National Planning Policy Framework which will replace the current suite of national Planning Policy Statements, Planning Policy Guidance notes and some circulars with a single streamlined document.

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

15 CLG Impact Assessment

Draft National Planning Policy Framework: Impact Assessment

This impact assessment of the draft National Planning Policy Framework consists of two sections. Part A considers the overall consolidation of national policy and Part B specific changes in national policy, including the introduction of the presumption in favour of sustainable development.

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

16 Defra Consultation

Streamlining the Planning Process for Nationally Significant Wastewater Transportation Infrastructure Projects

Deadline for comments: 05.10.11

This consultation seeks views on proposals to include proposed major sewers in the existing streamlined planning system for other major infrastructure projects, by introducing secondary legislation in the form of an Order made under s14 of the Planning Act 2008.

<http://www.defra.gov.uk/consult/2011/07/12/wastewater-transportation/>

17 CLG Consultation

Local Planning Regulations: Consultation

Deadline for comments: 07.10.11

This consultation seeks views on the government's proposals to revise the Town and Country Planning (Local Development) (England) Regulations 2004 (as amended). The proposals are in response to the reforms set out in the Localism Bill, to consolidate changes to the 2004 Regulations into a single document and to ensure that they are as effective and simple as possible.

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

18 Defra Consultation

Consultation on a Draft National Policy Statement for Hazardous Waste

Deadline for comments: 20.10.11

The government is consulting on the draft Hazardous Waste National Policy Statement (NPS), which sets out the strategic need and justification of Government policy for the provision of Nationally Significant Infrastructure Projects (NSIPs) for hazardous waste and will guide decisions on development consent. Seven different types of facility are covered by the NPS.

<http://www.defra.gov.uk/consult/2011/07/14/hazardous-waste/>

19 GLA Consultation

Draft London View Management Framework

Deadline for comments: 28.10.11

The Mayor of London is consulting on a revised draft London View Management SPG. Some of the main changes include:

- the amendment of policy references to London Plan Policies 07.10, 07.11 and 07.12;
- a new Management Plan for the view from Parliament Square to the Palace of Westminster; and
- removal of the downstream view from Blackfriars Bridge.

<http://www.london.gov.uk/publication/draft-london-view-management-framework-july-2011>

RATING

20 Statutory Instrument

SI 2011/1664 The Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) Order 2011

These regulations, which come into force on 03.08.11 amend the 2004 Order to increase the level of Small Business Rate Relief for a further year beyond the current temporary increase, which otherwise would have ended on 30.09.11, to 30.09.12.

<http://www.legislation.gov.uk/uksi/2011/1664/contents/made>

21 Statutory Instrument

SI 2011/1665 The Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) (No 2) Regulations 2011

These regulations, which also come into force on 03.8.11, make provision for the amendment of the 1989 Regulations and for minor associated amendments to the Non-Domestic Rating Contributions (England) Regulations 1992, following changes to the level of Small Business Rate Relief between 01.10.11 and 31.12.12 to ensure the increased level of relief is apportioned to the correct part of the financial year and to allow authorities to amend their payments in the 2011/2012 financial year.

<http://www.legislation.gov.uk/uksi/2011/1665/contents/made>

22 CLG letter to Finance Officers of English Billing Authorities

Business rates information letter (4/2011): Temporary increase in Small Business Rate Relief

This letter contains information on the increase in Small Business Rate Relief announced in the March 2011 budget. The more generous rate of relief will now continue until 30.09.12. Eligible ratepayers will continue to receive relief at 100% on properties with rateable values of not more than £6,000, with a tapered relief of between 100% and 0% for properties whose rateable values fall between £6,001 and £12,000.

<http://www.communities.gov.uk/publications/localgovernment/bril42011>

HOUSING

23 CLG Statistics

House Price Index – May 2011

These figures, based on mortgage completions during May 2011, were released on 12.07.11.

- the average mix-adjusted UK house price was £203,528 (not seasonally adjusted)
- in May, UK house prices decreased by 1.6% over the year and by 0.5% over the month (seasonally adjusted)
- average house prices were 0.1% lower over the quarter to May, compared to a quarterly decrease of 0.3% over the quarter to February (seasonally adjusted)
- average house prices decreased during the year by 1.3% in England, by 6.1% in Wales, by 2.5% in Scotland and by 13.2% in Northern Ireland
- prices paid by first time buyers were 2.1% lower on average than a year earlier, while prices paid by former owner occupiers went down by 1.4%
- prices for new properties were 7.8% higher on average than a year earlier whilst prices for pre-owned dwellings decreased by 2.3%

<http://www.communities.gov.uk/publications/corporate/statistics/hpi052011>



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24 CLG Report

English Housing Survey (EHS) Housing Stock Report 2009

This report, which was published on 05.07.11, details the findings relating to the housing stock from this survey, building on results reported in the EHS Headline Report published in February 2011. The report contains findings on the following:

- stock profile and occupancy
- amenities and services
- dwelling condition
- dwelling safety
- energy performance
- energy improvement potential

<http://www.communities.gov.uk/publications/corporate/statistics/ehs2009stockreport>

25 CLG Statistics

English Housing Survey Housing Stock Summary Statistics Report 2009

This publication presents the English Housing Survey Housing Stock Summary Statistics Tables which are published every year to accompany the English Housing Survey Housing Stock Report.

<http://www.communities.gov.uk/publications/corporate/statistics/ehs2009stocksummary>

26 CLG Report

English Housing Survey 2009-10 Household Report

This report, which was published by the Department of Communities and Local Government on 05.07.11, is a detailed report of findings from the survey relating to households, and builds on results reported in the EHS Headline Report published in February 2011. The EHS started in April 2008, bringing together two former DCLG housing surveys, the English House Condition Survey and the Survey of English Housing. The report contains findings on the following areas:

- trends and cross tenure analysis
- owner occupiers, recent first time buyers and second homes
- social and private renters
- new and recently moved households

<http://www.communities.gov.uk/publications/corporate/statistics/ehs200910householdreport>

27 CLG Bulletin

English Housing Survey Bulletin: Issue 4

This, the fourth issue of the English Housing Survey Bulletin, contains key findings from the latest English Housing Survey Stock and Household reports.

<http://www.communities.gov.uk/publications/housing/ehsbulletin4>

28 London Assembly Report

Implications of the Affordable Rent Model in London

This report sets out to answer key questions on the implication of the Affordable Rent Model for London, considering:

- how many homes will get built under the new model;
- how building new affordable family-sized homes will be affected; and
- what the likely implications are for improving mobility and tackling overcrowding.

It highlights significant risks to the affordable rent delivery programme.

<http://www.london.gov.uk/publication/implications-affordable-rent-model-london>

29 CLG Report

Public attitudes to housing in England: Report based on the results from the British Social Attitudes survey

This report sets out the findings from a housing module of the British Social Attitudes survey commissioned in 2009 when households in England were asked a number of questions across a range of housing issues and subjects.

<http://www.communities.gov.uk/publications/housing/publicattitudeshousing>

REAL PROPERTY

30 Court of Appeal

Land Registration – Reference to Adjudicator

* SILKSTONE V TATNELL
(2011) PLSCS 182 – Decision given 14.07.11

Facts: In 2008 S lodged a unilateral notice against T's registered title, asserting a right of way by foot over T's garden. T applied to cancel that notice and S objected. The matter was referred to a deputy adjudicator pursuant to s73(7) of the Land Registration Act 2002. S had difficulties obtaining evidence and at a late stage sought to withdraw their objection and bring court proceedings at a later date, but the adjudicator proceeded with a hearing on the merits in their absence, concluding the unilateral notice should be cancelled.

Points of dispute: Whether to allow S's appeal against the decision of the court below that an objector could not withdraw an objection once a dispute had been referred to an adjudicator, and that the only way to stop the reference proceeding to a decision was by settling with the other party or conceding their entitlement to the relief sought.

Held: The appeal was dismissed. A reference to an adjudicator conferred jurisdiction on him to decide whether the application should succeed. That jurisdiction included determination of the underlying merits of the claim. Neither party could unilaterally terminate the reference to avoid a decision on the merits once a matter had been referred. When faced with the withdrawal by either party, the adjudicator will be called upon to make a "decision". Even if the adjudicator decided to terminate the reference without ruling on the underlying merits, that would be a decision on the reference itself or on a substantive issue in it, within rule 41 of the Adjudicator to Her Majesty's Land Registry (Practice and Procedure) Rules 2003. The 2003 Rules do not deal specifically with the situation but incorporate the overriding objective of dealing with cases justly. The adjudicator was not obliged to proceed with the substantive hearing, rule on the merits of the issue, and make an appropriate order, but had been entitled to do so in this case.

TORT

31 Court of Appeal

Damages for trespass and personal injury caused by building works

* JONES V RUTH
(2011) PLSCS 180 – Decision given 12.07.11

Facts: The respondents owned two adjacent two-storey terraced houses next door to the appellant's adjoining three-storey property. Between 2002 and 2010 they carried out extensive works to their properties, including building a third storey addition. The appellants brought claims against the respondents for damages in nuisance and trespass to their property during the building works, their allegations including excessive noise and vibration, damage to their roof and boundary wall, and trespass to their garden by scaffolding. The first appellant also sought damages of nearly £29,000 for personal injury and financial loss as the severe back pain he suffered was brought on by anxiety and depression, allegedly caused by harassment by the respondents, and meant that he was unable to work leading to loss of earnings. At first instance the trial judge found that the allegations of trespass and nuisance were proved and awarded the appellants £30,000 in damages for loss of amenity. With regard to relief for stolen support for the respondents' raised roof and new third storey he awarded £45,000 in damages, which represented the value to the respondents of the enhanced value to their property. He made a further award of £6,000 damages for harassment, but none for personal injury.

Point of dispute: Whether to allow the appellants' appeal against dismissal of the personal injury claim. The issue here was whether, in order to found a damages claim in respect of personal injury caused by harassment, the injury had to have been reasonably foreseeable to the respondents. At the same time the respondents cross-appealed against the £45,000 award for the value of the additional storey.

Held: The appellants' appeal was allowed and the cross-appeal was allowed in part.

- i. Foreseeability of the injury or loss sustained by a claimant in a case of harassment was not an essential element of the cause of action: the judge had been incorrect to exclude an award of damages for personal injury based on absence of foreseeability and the first appellant was awarded the damages that he sought.
- ii. The judge had been incorrect to award £45,000 damages in lieu of an injunction for continuing trespass to the appellants' property (unauthorised works to the gable end wall carried out in order to support the respondents' third storey). He should have considered how much the parties, acting reasonably, were likely to have agreed as payment for the necessary licence as willing grantors and grantees. In this case the agreed licence fee was unlikely to have exceeded one-third of the prospective increase in value to the respondents' property and an award of £15,000 was substituted.



CONTRACT

32 Court of Appeal

Estate agent's commission on multiple agency basis

* GLENTREE ESTATES LTD V HOLBETON LTD
(2011) PLSCS 171 – Decision given 05.07.11

Facts: H placed a house on the market with the appellant estate agency GE and another agent on a multiple agency arrangement. In December 2008 the other agent provided a potential buyer, JI, with details of the property. Some time later, JI viewed the property with a negotiator employed by GE, and the same or next day, with the other agent. He then made an offer which was rejected. JI then purchased another property, but in June 2009 viewed the subject property again through the other agent and negotiated directly with H to purchase it. GE claimed commission on the sale, but H paid a commission to the other agent. The appellant brought proceedings against H to recover the commission.

Points of dispute: Whether GE's appeal should be allowed against the decision of the court below to dismiss the claim as GE had not been an, or the, effective cause of the sale. The judge had inferred that between the date of JI's first offer and the revival of his interest in June, he had effectively lost interest in the property, so that the chain of causation in respect of GE's involvement was broken. GE argued that the judge's inferences were perverse in light of the timescales, JI's continued interest in other properties in the area, and the eventual purchase of the property.

Held: The appeal was dismissed. The judge was entitled to draw the inferences that he had. The judge also commented that the test of "the" or "an" effective cause continued to complicate cases about estate agents' commission. The authorities were equivocal as to whether, in the absence of an express term, "an" effective cause may be sufficient. Though there was no legal presumption either way, the courts have been anxious to avoid the liability of a vendor with multiple agents having to pay more than one commission wherever possible.

33 Chancery Division

Freehold property – contract for sale

* FITZROY DEVELOPMENT LTD V FITZROVIA PROPERTIES LTD
(2011) PLSCS 184 – Decision given 15.07.11

Facts: FP agreed to sell a freehold property in W1 by a contract dated June 2009 to FD, who registered unilateral notices at the Land Registry in respect of FP's registered title. In June 2008, FP had decided to apply for planning permission to convert the property into a single dwelling and replace part of the building with a block of flats. The application, which involved entering into a s106 agreement, had not been considered by the date of the contract. The sale was conditional on planning permission being granted by a specified date. On 18 March 2010, FP gave notice to FD to rescind the agreement as the condition as to planning permission had not been satisfied by the relevant date.

Points of dispute: Whether FD's application to the court for a declaration that the agreement remained in force and for specific performance of FP's obligations to obtain planning permission should be granted. FD argued that as the council had resolved to grant planning permission by that date, subject to the s106 agreement, the deadline was postponed. FP maintained that as the final draft of the agreement had been amended with changes to which it did not agree, the deadline had not been postponed. FP sought removal of the unilateral notices and an inquiry as to damages under s77 Land Registration Act 2002.

Held: The claim was dismissed. The final draft of the s106 agreement contained provisions that went beyond those of the earlier draft agreed by FP, and it could not be said FP had agreed its principal terms. The contract had ended when FP rescinded the sale agreement and FD was not entitled to the relief sought. FP was entitled to declaratory relief and an order for the removal of the unilateral notices from their title, but not to an inquiry as to damages under the 2002 Act. Section 77(1)(b) of the Act referred to a person exercising the right to apply for entry of a notice without reasonable cause. When FD applied for the notices, it had the benefit of a contract and had been entitled to act as it had.

CONSTRUCTION

34 CLG Report

Zero carbon non-domestic buildings: Phase 3 final report

This report is a technical and economic analysis of different options for zero carbon standards for new non-domestic buildings.

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

GENERAL

35 CLG Report

Progress towards the sustainability of the building stock in England and Wales: Third Parliamentary Report: Secure and Sustainable Buildings Act 2004

This report fulfils CLG's obligation under the 2004 Act to publish biennial reports to show the extent to which Building Regulations and Standards Division's policies have led to improvements in environmental sustainability in the built environment. It covers the period from 16 November 2008 to 15 November 2010 and includes, inter alia, building regulations made over the period and their expected impact, planned legislation and proposals for setting targets in relation to sustainable buildings.

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

36 English Heritage Report

Moats, Ponds and Ornamental Lakes in the Historic Environment

This report considers the effect of invasive site works on artificial water bodies, in particular the impact these may have on their archaeological and paleoecological value. It examines key historic environment considerations for planning and executing such works.

<http://www.helm.org.uk/upload/pdf/MoatsPondsOrn.pdf?1310358415>

37 Greater London Authority Report

State of the Environment report for London

This report examines how London's environment has changed over the last ten years and the challenges that are still faced by the city. Notwithstanding a growing population and the challenges posed by climate change the quality of London's environment is found to be improving, particularly in the areas of waste and recycling, public transport, wildlife habitats and urban greening.

<http://www.london.gov.uk/publication/state-environment-report-london>

38 Town and Country Planning Association Report

Re-imagining Garden Cities for the 21st Century

This report considers the benefits that could flow from bringing forward attractive, sustainable and comprehensively planned new communities which provide both new housing and jobs in high quality places. It aims to bring together the lessons of Britain's Garden Cities and New Towns in the creation of successful new, large-scale communities, with new funding models, placing communities at the heart of the development process.

<http://www.tcpa.org.uk/pages/re-imagining-garden-cities-for-the-21st-century.html>

39 ICLEI (Local Governments for Sustainability) White Paper

Financing the Resilient City: A demand driven approach to development, disaster risk reduction and climate adaptation

This paper argues that the resilience of cities and towns depends on the quality and performance of the overall urban system. While adaptation to climate change is becoming increasingly relevant, awareness about disaster risk reduction is also a growing concern and there needs to be a shift from a singular and specific focus on affected infrastructures and locations towards a more integrated focus on overall risks, development conditions and local area performance. The report calls for the following:

- making climate and disaster risk reduction factors in conventional planning processes, project design and development decision making;
- developing specialised financial instruments for the risk-oriented components of projects that cannot be addressed through mainstreaming measures; and
- building local institutional capacity to prepare, structure and manage large scale development.

http://iclei.org/fileadmin/user_upload/documents/Global/Publications/Report-Financing_Resilient_City-Final.pdf



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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

Legal & Parliamentary

Volume 33(10) 01 August 2011

- 01 Scotland – Local Government
- 02 Scotland – Planning

SCOTLAND

LOCAL GOVERNMENT

- 01 Scottish Government Publication
-

Evaluation of the Impact and Operation of Landlord Registration in Scotland

This publication sets out the findings of research commissioned by the Scottish Government to assess the impact on standards of service provided to tenants in the private rented sector, and the effectiveness of the national IT system installed to assist administration of landlord registration by local authorities.

<http://www.scotland.gov.uk/Publications/2011/07/13111732/0>

PLANNING

- 02 Scottish Government – Analysis of Consultation Responses
-

The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2011 Householder Permitted Development Rights – Consultation Analysis

This report analyses the consultation responses to the Scottish Government's proposals to change the rules that determine the type of householder development that needs planning permission.

<http://www.scotland.gov.uk/Publications/2011/07/01125252/0>



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