

# EVEBRIEF

## Legal & Parliamentary

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### A TIMELY REMINDER ON LOCALISM



Peter Dines  
Editor

We report on the advice note from the Planning Officers Society in respect of the Community Infrastructure Levy and Infrastructure planning. It is probably quite timely to remind practitioners that the Localism Bill will very shortly gain Royal Assent and with it a number of changes will be introduced, including:

- new provisions relating to planning consultation;
- providing a local authority with a general power of competence to enable it to do "anything that individuals may do" (subject to some limitations);
- the provision of the ability to hold local referenda;
- the power to provide community groups with an opportunity to purchase "Assets of Community Value" which come up for sale (for example public houses); and
- new neighbourhood planning powers i.e. Neighbourhood Development Orders (NDOs), Neighbourhood Development Plans (NDPs), Neighbourhood Right to Build Orders.

Some of the provisions of the soon to be Act will require specific regulations to be made but these will follow swiftly, for example the regulations relating to the Community Assets register are likely to be made in April 2012. So together with the National Planning Policy Framework the new Government is implementing its promises on planning change.

We live in interesting times!

## LOCAL GOVERNMENT

01 Consultation Paper

### Technical reforms of council tax: Consultation

Deadline for Comments: 29.12.11

This consultation contains proposals to give billing authorities greater discretion over the reliefs from council tax that are available for second homes and some empty properties. It also covers some potential reforms of the council tax system including modernising arrangements for payment of council tax by installments, delivery of information to be supplied with demand notices and treatment of annexes to dwellings. The changes being considered include the following:

- giving billing authorities power to levy up to full council tax on second homes;
- replacing exemption Classes A and C2 with discounts;
- abolishing Class L exemption, and making mortgagees in possession of empty dwellings liable to council tax in respect of them;
- allowing billing authorities to levy an "empty homes premium" in respect of dwellings that have been left empty for over two years;
- setting a default assumption that payment of council tax by installments will be over twelve months, rather than ten; and
- encouraging the take up of electronic billing.

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

## LANDLORD & TENANT

02 Upper Tribunal: Lands Chamber

### Right to manage – defects in application

\* GATEWAY PROPERTY HOLDINGS LTD V  
6-10 MONTROSE GARDENS RTM CO LTD  
(2011) PLSCS 245 – Decision given 08.09.11

**Facts:** The respondent was a right to manage (RTM) company formed by qualifying tenants of flats for the purpose of a claim to acquire the right to manage their building under Chapter 1 of the Commonhold and Leasehold Reform Act 2002. The appellant landlord disputed the respondent's entitlement to acquire the right to manage at the relevant date. The respondent applied to the LVT for a declaration that it had acquired this right but the landlord contended that this application was out of time since it had not been made within the statutory two-month time limit from the date of its counternotice. The LVT found that the hard copy of the application had been received out of time, but that an earlier faxed copy was in time. Even though the faxed copy was not accompanied by the documentation listed in para 4 of Schedule 2 of the Leasehold Valuation Tribunals (Procedure) Regulations 2003 the LVT considered it appropriate to dispense with those requirements pursuant to its discretion under para 3(8).

**Point of dispute:** Whether the appellant's appeal would be allowed against the LVT's ruling that the respondent was entitled to acquire the right to manage the premises.

**Held:** The appeal was allowed. Although a fax was an acceptable method of lodging an application the respondent's faxed application did not satisfy the 2003 Regulations since the documents listed in para 4 of Schedule 2 were not included. The discretion to dispense with those requirements only arose if sufficient particulars and documents had been served that would enable the application to be determined. For an LVT to determine whether a RTM company had the right to manage the premises it needed certain information about the premises, the RTM company, whether there were the requisite number of qualifying tenants, the nature of the leases, and the notices that had been served. Without this information the LVT could not dispense with or relax the requirements of para 3(5) of the regulations.

## 03 Upper Tribunal: Lands Chamber

**Reasonableness of service charges**

\* GARSIDE V RFYC LTD  
(2011) PLSCS 246 – Decision given 15.09.11

**Facts:** The appellants, G, were long lessees of three flats in an estate comprising five blocks of flats. After years of mismanagement the LVT appointed the second respondent (X) to manage the estate. X arranged for substantial outstanding maintenance works to be carried out which added £100,000 to the service charge for 2009 and a further £538,012 for 2010. A number of the lessees were concerned about the significant increase in service charges and their ability to pay them and X applied to the LVT for a determination as to whether the 2009 and 2010 service charges were reasonably incurred within s19 of the Landlord and Tenant Act 1985. The tenants argued that the works should be phased so as to spread the increased service charge costs.

**Point of dispute:** Whether the appellants' appeal should be allowed against the LVT's determination that the service charges were reasonably incurred. It determined that the ability of individual lessees to pay for the works was not a relevant factor and that reasonableness under s19 related to the reasonableness of the works themselves and their costs, not to the ability of lessees to pay for them.

**Held:** The appeal was allowed. The ambit of reasonableness in s19 should not exclude considerations of financial impact. Considering the financial effect of major works on lessees and the possibility of phasing works was a material consideration when considering whether costs were reasonably incurred. It was common practice for service charges to be demanded on account over time in order to establish a reserve fund to pay for extraordinary expenditure and the management order permitted X to do this. The LVT was required to weigh all relevant matters in order to decide whether, on the evidence, the service charge costs were reasonably incurred. The LVT had not properly carried out that exercise and the matter would be remitted for rehearing.

## 04 CLG Survey

**Private Landlords Survey 2010**

The Private Landlords Survey 2010 is a national survey commissioned by the DCLG of landlords and managing agents who own and/or manage privately rented properties in England. It aimed to provide a snapshot of the composition and experience of landlords and how they (together with any agents) acquire, let, manage and maintain privately rented accommodation. Similar surveys were carried out in 2001, 2003 and 2006. The private rented sector is characterised by its diversity and choice as demonstrated by the wide range of characteristics, attitudes, needs, expectations and experiences of private landlords and renters. This report identifies and explores some of the different characteristics and the varied approaches to letting and managing properties that are seen in this sector. Key findings include the following:

- 89% of landlords are private individuals who are responsible for 71% of all private rented dwellings;
- More than three quarters of private landlords own just one dwelling which they rent out with only 8% describing this activity as their full time occupation;
- 54% of privately let dwellings met the Decent Homes Standard, although for new landlords this figure is higher at 74%;
- just over half of privately let dwellings have been acquired by landlords since 2000;
- almost half of landlords would be happy to rent to tenants on Housing Benefit (HB) or the Local Housing Allowance (LHA), but 21% said that they would be encouraged to do so if payments were not made direct to the tenant; and
- issues relating to HB or LHA were considered to be a serious problem by 18% of landlords.

<http://www.communities.gov.uk/publications/corporate/statistics/privatelandlordssurvey2010>



## 05 Greater London Assembly Report

**Landlord accreditation**

Accreditation is a method for helping landlords or agents to achieve agreed standards of competence, skills or knowledge in the business of owning, managing or letting a private home and public recognition of having achieved that standard. Requirements for accreditation may vary from one scheme to another, some being focused on property management, some on property conditions and others on a combination of the two. The highest volume of private rented housing in England is to be found in London, and with the Government's proposed increased role for the private rented sector in the housing market the Mayor is keen that the number of accredited landlords and agents continues to grow. This study, which was completed in May this year, considers whether and how the mechanisms for delivering landlord and agent accreditation in London could be enhanced or improved and presents some potential options for cost effective, long term and sustainable ways of achieving this.

<http://www.london.gov.uk/publication/landlord-accreditation-report>

**PLANNING**

## 06 National Policy Statement

**National Policy Statement for Ports**

This statement forms part of the planning system established under the Planning Act 2008 to deal with nationally significant infrastructure proposals. It will provide the framework for decisions on proposals for new port development. It is also a relevant consideration for the Marine Management Organisation established in the Marine and Coastal Access Act 2009, which decides other port development proposals, for local planning authorities in some cases, and it also applies, where relevant, to road and rail links for which consent is sought alongside the principal development.

<http://www.dft.gov.uk/publications/national-policy-statement-for-ports/>

## 07 CLG Reports

**Environmental Reports on the revocation of regional planning guidance**

As part of its stated commitment to protecting the environment the government has carried out environmental assessments on the revocation of the existing regional strategies on a voluntary basis. It is the Government's intention to revoke existing regional strategies outside London, but this is subject to the outcome of these assessments and will not be undertaken until the Sec of State and Parliament have had the opportunity of considering the findings of the assessments. Links to the reports for the different regions are set out below:

Environmental report on the revocation of regional planning guidance for the South West

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

Environmental report on the revocation of the East Midlands Regional Plan

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

Environmental report on the revocation of the East of England Plan

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

Environmental report on the revocation of the North East of England Plan

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

Environmental report on the revocation of the North West of England Plan

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

Environmental report on the revocation of the Regional Spatial Strategy for the West Midlands

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

Environmental report on the revocation of the South East Plan

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

Environmental report on the revocation of the Yorkshire and Humber Plan

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

## 08 Greater London Authority Consultation

**All London Green Grid Supplementary Planning Guidance (SPG)**

Deadline for comments: 27.01.12

The concept of a “green grid” – an integrated network of green and open spaces together with the blue ribbon network of rivers and waterways – is at the centre of the London Plan’s approach to the provision, enhancement and management of green infrastructure. This SPG aims to promote the concept of green infrastructure, and increase the amount that is provided by boroughs, developers and communities. It describes and advocates an approach to the design and management of green and open spaces which will deliver such benefits as sustainable travel, flood management, enhanced well-being for London’s inhabitants and visitors, and more healthy living.

<http://www.london.gov.uk/publication/all-london-green-grid-spg>

## 09 London Assembly Consultation

**London’s Foundations Supplementary Planning Guidance**

Deadline for Comments: 27.01.12

London’s Foundations (2009), a joint publication with Natural England, set out London’s geological heritage, explained the process for identifying sites of national, regional and local geological importance, identified geological sites for protection and contained advice to boroughs on how geodiversity can be promoted and protected. This 2011 consultation draft updates the 2009 version in response to a number of recent developments:

- the publication of the London Plan;
- the emerging advice of the Government in its National Planning Policy Framework;
- the ongoing work of the London Geodiversity Partnership (LGP) in updating the number of sites that should be promoted/protected by boroughs through their development plan documents; and
- the publication by LGP of their Geodiversity Action Plan.

<http://www.london.gov.uk/publication/londons-foundations-spg>

## 10 Planning Officers Society Advice Note

**CIL and Infrastructure Planning**

This advice note is intended to provide practical advice to authorities on what is needed in terms of infrastructure planning to underpin the local planning process and to implement CIL. It outlines the measures that are needed to take CIL forward, recognising that it is a new initiative with few examples and little best practice to fall back on.

[http://www.planningofficers.org.uk/Planning-Officers-Society-News/POS-Publishes-New-CIL-and-Infrastructure-Planning-Advice-Note\\_173.htm](http://www.planningofficers.org.uk/Planning-Officers-Society-News/POS-Publishes-New-CIL-and-Infrastructure-Planning-Advice-Note_173.htm)

**RATING**

## 11 Upper Tribunal (Lands Chamber)

**Rating of garden with wooden summer house – whether domestic property**

\* AYLETT V O’HARA (VO)

RA/28/2010 Before: The President – Decision given 19.10.11

**Property:** River Gardens, Bridle Way, Goring, Reading, Berkshire.

**Issues:** Whether open land with a small wooden summer house and a 50ft frontage to the River Thames was domestic property, as claimed by A and his co-owners who lived some distance from the land, or non-domestic as determined by the Valuation Tribunal.

**Held:** Dismissing the VO’s appeal, the President found that the property did not fall within the definition of domestic property in s66 (1) of the Local Government Finance Act 1988, as it did not fall within any of the subsections:

- as the property was not ‘used wholly for the purposes of living accommodation’. He differentiated between beach huts which were found to be domestic as their use was for living accommodation, whereas the summer house was only used as a store;
- having determined that the summer house was not living accommodation, the land could not fall within (b) as it was not belonging to or enjoyed with property falling within para (a);
- was not claimed to be relevant; and
- which treats as domestic private storage property used for articles of domestic use, could not apply where the store is part of a hereditament that is otherwise non-domestic.



**CONTRACT**

12 Court of Appeal

**Estate agent's commission**

\* GREAT ESTATES GROUP LTD V DIGBY  
(2011) PLSCS – Decision given 13.10.11

**Facts:** In 2007 the appellant, a firm of estate agents, entered into a sole agency agreement with the vendor of a property, D, for six weeks. On the day the agreement was signed the appellant introduced three potential purchasers to D, one of whom offered the asking price. Later that month D exchanged contracts with another purchaser who had made a higher bid – a different estate agent, who only became involved after that offer was accepted, received commission on the sale. The appellant claimed damages against D for the loss of opportunity to receive 2% commission that it would have earned under the sole agency agreement, a sum of £60,000.

**Point of dispute:** Whether D was liable to pay commission to the appellant. At first instance the county court judge held that the appellant had failed to comply with s18 of the Estate Agency Act 1978 (supplemented by the Estate Agents (Provision of Information) Regulations 1991) as it had not explained to D that he would be liable to pay a commission if contracts were exchanged with a purchaser introduced by another agent during the sole agency period. This court was asked to determine whether:

- i. on its proper construction, D was in breach of the sole agency agreement; and
- ii. the appellant had satisfied its obligations under s18 of the 1979 Act.

**Held:** The appeal was dismissed and D was not liable to pay commission to the appellant.

- i. The sole agency clause was influenced by statutory requirements which obliged an agent to tell his client what “sole agency” meant. Such a clause provides that the agent would earn its commission not only if it had introduced the purchaser but also if it had negotiations about the property with the purchaser during the agreed period.
- ii. The 1991 Regulations required an agent which used terms such as “sole agency” to explain their intention and effect to its client.
- iii. On the basis that “remuneration” covered damages in lieu of commission, the appellant had breached s18(1)(a) and (2)(a) in failing to provide D with adequate particulars of the circumstances in which he would become liable to pay remuneration. It had also breached other provisions in s18 and in the regulations as it had failed to set out either the scheduled information, or such other information as was required, so as accurately to describe the liability of the client to pay remuneration in accordance with the provisions of his contract.

**LEASEHOLD REFORM**

13 Court of Appeal

**Collective enfranchisement**

\* SMITH V JAFTON PROPERTIES LTD  
(2011) PLSCS – Decision given 04.11.11

**Facts:** In 1926 a freeholder granted a 99-year lease of a whole property at an annual rent of £85 payable quarterly in advance. There were no express covenants against assignment or underletting. In 2004 the appellants bought the lease at auction and assigned it to a company in which they owned 75% of the shares and were the only directors. They refurbished the property and created four flats. In 2008 the company executed three transfers purporting to assign the property comprised in the lease in three parts: flats 1 and 2 to the first appellant, flats 3 and 4 to the second appellant and the common parts to the appellants jointly with the yearly rent being apportioned. The respondent (the current freeholder), who had not been consulted about the assignments, did not consent to them or to the apportionment of rent.

**Point of dispute:** Whether the appellants had the right to collectively enfranchise the property. At first instance, the judge found that they were excluded from being qualifying tenants by virtue of s5(5) of the Leasehold Reform, Housing and Urban Development Act 1993 and the decision of the Court of Appeal in the case of *Lester v Ridd* [1989] 1 EGLR 114.

**Held:** The appellants' appeal against the decision of the court below was allowed.

- i. An assignee's liability to pay the rent and perform the obligations of the lessee depended on privity of estate alone. If the assignee was the assignee of part only of the leased property then the rent and other obligations for which he was liable were those which related only to the part of the leased property that had been assigned to him. It thus followed that the estate had been severed.
- ii. Following a physical severance of the land comprised in a term of years the tenant's obligations were likewise severed and apportioned between the respective parts of the land. If the landlord wished to prevent an assignment of part he should include a covenant to that effect in the original tenancy. The facts in *Lester* were distinguishable from this case.
- iii. The 1993 Act used the words “lease” and “tenancy” interchangeably. It was not concerned with the contract but with the tenure or status of the holder of the leasehold estate. Nothing in the definitions in s101 of the 1993 Act displaced the common law which meant that neither appellant was excluded from being a qualifying tenant as the result of s5(5) of the 1993 Act and both were entitled in principle to exercise the right of collective enfranchisement.

14 Upper Tribunal (Lands Chamber)

**Collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) – purchase price – relativity – development value – hope value – deferment rate – terms of transfer**

TRUSTEES OF THE SLOANE STANLEY ESTATE V CHARLES CAREY-MORGAN & JOHN MATTHEW STEPHENSON [2011] UKUT 415 (LC) – Decision given 10.10.11

**Property:** Vale Court, 21 Mallord Street, London SW3. Freehold claim by tenants appealed from the LVT, subject to a date of valuation of 24 September 2007. Comprising a total of 25 flats, 8 with 4.75 years unexpired (two of which were leased back to the freeholder), 3 with circa 70 years unexpired and the remainder with unexpired terms between circa 87 and 95 years.

**Issues:**

- a) the existing leasehold vacant possession values of the flats that have less than five years unexpired and which are not subject to leaseback;
- b) whether there is potential to undertake additional residential development on the roof; if so, whether there is a prospect of obtaining planning consent, and, if so, the value of that potential;
- c) hope value in respect of the five non-participating flats with terms of less than 80 years unexpired;
- d) deferment rate relating to those flats with less than five years unexpired; and
- e) landlord's proposed terms of transfer.

**Decision:** Appeal allowed in part.

- a) It was decided that graphs of relativity were not appropriate for a term of 4.74 years, preferring a capitalised rental approach, which was not unexpected.
- b) Although it was suggested there was a high probability that planning permission would be granted on appeal, the Upper Tribunal was reluctant to award anything other than a nominal amount. Should there be planning consent in place or perhaps a positive view from the planning authority, then a premium for development value would be more likely.
- c) Taking into consideration the circumstances of all the non-participators (including the length of the unexpired terms, the number of flats, frozen s42 notices, etc) the Upper Tribunal determined hope value at 10% of overall marriage value for the one 70.25 year lease and 20% of overall marriage value for the four 4.74 year leases.
- d) For unexpired terms of less than five years the Upper Tribunal determined a departure from the Sportelli deferment formula. Instead they based the rate on the net rental yield that the evidence shows to be appropriate for the property in question (ideally from comparables within the subject building) and in addition, there should be an end allowance which, in the absence of establishing some other percentage, should be 5%.
- e) There was a dispute over the proposed deed of transfer, with the landlord seeking to include a qualified covenant against alterations and a declaration as regards light and air. It was held that evidence is required to establish that a restriction will materially enhance the value of other property being retained, although quantification of such enhancement in value is not needed. Further, mere assertions by Counsel on behalf of the freeholder are not evidence. Therefore these covenants were not included in the transfer.



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## HOUSING

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### 15 London Assembly Response to Consultation

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#### Mayor's revised housing strategy consultation – London Assembly Response

This report sets out the Planning and Housing Committee's response to the Mayor's consultation on proposed changes to his Housing Strategy, published on 31.08.11. The strategy needs to be revised in the light of new funding settlements, legislative changes and additional housing and regeneration powers that have been given to the Mayor. The Committee supports the Mayor's proposals to address overcrowded housing and his plans to ensure that new housing developments contain a good housing mix and calls on him to:

- publish more details of the size, type of tenure and location of the 13,635 new affordable homes he intends to deliver over the next four years;
- report on progress on delivering homes in terms of how many people were taken out of housing need;
- reassess how a greater number of family sized homes could be delivered through the affordable rent model;
- elaborate on his proposals to deliver larger homes while keeping rents low; and
- consider using incentives to make building larger homes more financially viable for developers.

The response also makes a number of suggestions concerning control over contracts with housing providers, promoting Community Land Trusts, improving energy efficiency and design standards, bringing empty homes back into use, making allocations policies more flexible, reducing the amount of people housed in temporary accommodation and tackling rough sleeping.

<http://www.london.gov.uk/publication/mayor%E2%80%99s-housing-proposals>

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### 16 CLG Statistics

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#### Net supply of housing: 2010-11, England

These statistics, which were released on 02.11.11 report on the net supply of housing up to the 2010-11 financial year and update the figures that were released on 21.10.11. Key points are as follows:

- there were 121,000 net additional dwellings in 2010-11, 6% less than the number of additional dwellings in the previous year. Between 2008-09 and 2009-10 there was a 23% fall;
- of the 121,000 net additions figure, 117,700 were new build homes, 5,050 were additional homes created from conversions and 11,540 resulted from change of use. 14,890 homes were lost through demolitions; and
- the largest fall in net additional homes was seen in London, and the largest increase in the North East.

<http://www.communities.gov.uk/publications/corporate/statistics/netsupplyhousing201011>

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### 17 Homes and Communities Agency (HCA) bulletin

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#### Monthly Housing Market Bulletin 21 October 2011

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

- house prices have changed only marginally over the last month;
- London is the only region to have seen any rise in house prices;
- the number of loans advanced for house purchase in August rose by 7%, 2% higher than this time last year;
- lending to both first-time buyers and home movers was at its highest for over a year;
- the latest estimate for GDP growth for Q2 has been revised downwards to +0.1%;
- Bank Rate was held at 0.5% in October and the quantitative easing programme was increased by £75bn to £274bn; and
- CPI inflation increased from 4.5% to 5.2% in September; RPI inflation increased from 5.2% to 5.6% which is the highest level for over 20 years.

<http://www.homesandcommunities.co.uk/sites/default/files/our-work/housing-bulletin-oct2011.pdf>

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18 Defra Report

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### Surplus Public Sector Land: Accelerated Disposal Strategy to Deliver Land for Housing

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Defra has a diverse landed estate comprising waterways, flood defence infrastructure, forestry and farm land, administrative offices and laboratories. The accelerated release of surplus public land capable of being developed for housing is regarded by the Government as an important means of stimulating construction activity, facilitating growth, meeting current housing need and providing sustainable homes for the future. This strategy document sets out Defra's forthcoming surplus land disposal plans.

<http://www.defra.gov.uk/publications/2011/10/05/pb13628-public-sector-land/>

## REAL PROPERTY

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19 Upper Tribunal: Lands Chamber

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### Application to modify restrictive covenant

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\* RE PHILLIPS AND OTHERS' APPLICATION  
(2011) PLSCS 243 – Decision given 05.09.11

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**Facts:** The applicants were lessees of chalets in a holiday park. Under the terms of their 999-year leases the chalets could only be used for holidays and another restrictive covenant prevented them from being occupied during January and February. These covenants partly reflected the terms of the 1974 planning permission for the holiday park, but in 2006 that permission was varied to remove the requirement for non-occupation during January and February, although the requirement for holiday use only was retained.

**Point of dispute:** Whether to allow the applicants' application for the restrictive covenants to be modified under s84(1)(a) of the Law of Property Act 1925 so as to allow occupation during January and February. They argued that: (i) the restriction had become obsolete within s84(1)(a) since it had been imposed in order to ensure compliance with the terms of the original planning permission; and (ii) it impeded a reasonable user of the land and did not secure to the freeholders any benefits of substantial value or advantage, within s84(1)(aa). The applicants argued that they needed to carry out maintenance work to their chalets during those months. The freeholders of the park contended that the two-month winter shutdown was advantageous to them as landlords as it enabled them to carry out maintenance and improvement works to the park more conveniently and economically.

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**Held:** The application to modify the covenant was dismissed.

- i. The landlord's interest had to be taken into account and it was relevant that freeholders had a reversionary interest in all the chalets and also an interest in possession in the remainder of the park. They had obligations under each lease to maintain the estate in such a way as to maximise the value of new and existing chalets and the winter shut-down period was a real benefit to them both in terms of saving on staffing costs and for practical reasons. Because the restriction conferred a practical benefit of substantial value or advantage to the freeholders the ground in s84(1)(a) was not made out.
- ii. The test for whether the restriction had become obsolete within s84(1)(a) was whether the purpose for which the restriction was imposed could still be achieved. Since the covenant did not incorporate the precise words of the planning condition it could not be concluded that the only reason for the restriction was to ensure compliance with it. The variation effected by the 2006 planning permission had not made the restriction obsolete.

## ENVIRONMENT

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20 Defra Report

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### Exercise Watermark final report – PB13673

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This document is a report on the findings of Exercise Watermark, a test of the country's response to flooding and the largest civil emergency exercise ever conducted in Britain. It was commissioned following the Pitt Review of the 2007 summer floods which recommended a wide-ranging test of the country's emergency response to severe flood events. It contains 36 recommendations for the UK and Welsh governments, responders and communities in England and Wales using feedback from the participants, but the success of the exercise demonstrates that England and Wales are now more prepared for flood events.

<http://www.defra.gov.uk/publications/2011/10/31/pb13673-exercise-watermark/>



**GERALDEVE**

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21 Greater London Authority publication

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### **Managing risks and increasing resilience: the Mayor's climate change adaptation strategy**

This document is the Mayor's climate change adaptation strategy for London, containing details of his strategic approach to managing the climate risks that it faces now and in the future – warmer, wetter winters, hotter and drier summers and more extreme weather. It looks at the people and places that are most vulnerable to extreme weather at the moment, considers how climate change will affect existing climate risks, or create new ones, or opportunities, in the future, and it provides a framework for action.

<http://www.london.gov.uk/who-runs-london/mayor/publications/environment/london-climate-change-adaptation-strategy>

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22 Greater London Authority publication

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### **Securing London's water future: The Mayor's Water Strategy**

This publication, the first water strategy for London, promotes increased efficiency in the use of water and reducing the amount of water that is wasted in order to balance the supply and demand for water. It sets out how the Mayor intends to help communities that are at risk from flooding and to increase their resilience to flooding. The strategy calls on organisations which are involved in London's water management to:

- invest in a water management and sewerage infrastructure system that is fit for a world class city and will create jobs;
- support and encourage Londoners to take practical steps to save water and energy and thus reduce their utility bills; and
- work in partnership with the Mayor, boroughs and communities to seek and develop opportunities to manage flood risk through enhancing London's green spaces.

<http://www.london.gov.uk/who-runs-london/mayor/publications/environment/london-water-strategy>

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23 National Audit Office Report

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### **Flood Risk Management in England**

Over 5.2 million properties in England are at risk of flooding from rivers, the sea or surface water. It is estimated that flood damage in England currently costs about £1.1bn per year and this figure is likely to rise as the risk of flooding increases with climate change. The Department for Environment, Food and Rural Affairs (the Department) has policy responsibility for flood and coastal risk management, while operational responsibility lies with the Environment Agency (the Agency). The Agency estimates that an extra £20m needs to be invested each year in flood defences between 2010 and 2035 in order to sustain current levels of protection. In response to the 2007 floods the Department initiated reforms to clarify local responsibilities and reduce risk and its report examined the performance of the Agency, focusing on its flood and coastal defence programme. This report considers the progress that has been made since then in identifying the risk of flooding, examines how well investment has been targeted at risk and assesses how well the Department and the Agency are supporting and managing reform. It covers England only and does not address flood incident response or coastal erosion.

[http://www.nao.org.uk/publications/1012/flood\\_management.aspx](http://www.nao.org.uk/publications/1012/flood_management.aspx)

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## **TRANSPORT**

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24 Greater London Authority publication

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### **Lane rental proposals**

This document is the response of the Transport Committee of the London Assembly to the Government's and Transport for London's recent consultations on lane rental proposals. The Committee is concerned about the potential for utility companies to pass on the cost of renting lanes to customers and considers that regulators must be given powers of intervention. Concerns are also raised about the impact of late night and weekend noise if utility companies carry out roadworks outside "chargeable" times in order to avoid paying for lane rental – TfL is suggesting that up to half a million Londoners could be affected. The response calls for more work to be done on the costs and benefits of the scheme as it considers that more safeguards are needed to protect residents and other road users.

<http://www.london.gov.uk/publication/lane-rental-proposals>

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25 Department for Transport guidance

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#### **Shared space – Local Transport Note 1/11**

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Shared space is a design approach that seeks to change the way streets operate by reducing the dominance of motor vehicles, primarily through lower speeds and by encouraging more considerate driver behaviour towards pedestrians. This note focuses on High Street environments and has been developed to assist local authorities who want to put in place well-designed shared space schemes. It places particular emphasis on engagement with the local community and on inclusive design, considering the needs of a diverse range of people at all stages of the development process.

<http://www.dft.gov.uk/news/press-releases/dft-press-20111020b>

#### **ENERGY**

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26 Greater London Authority publication

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#### **Delivering London's Energy Future: the Mayor's climate change mitigation and energy strategy**

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This document sets out the Mayor's strategic approach to limiting further climate change and securing a low carbon energy supply for London. He has set a target to reduce London's CO<sub>2</sub> emissions by 60% of 1990 levels by 2025 and this publication contains details of the programmes and activities that are currently happening in London towards achieving this. These include installing energy efficiency measures in homes and public sector buildings and a decentralised energy programme, the aim of which is to supply 25% of London's energy from secure, low carbon local sources.

<http://www.london.gov.uk/who-runs-london/mayor/publication/climate-change-mitigation-energy-strategy>

#### **GENERAL**

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27 London Assembly Report

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#### **The Mayor's role in economic development**

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This report, by the Economy, Culture and Sports Committee, calls on the Mayor to publish detailed plans of how he proposes to continue to deliver economic development for London, notwithstanding changes to the funding and powers he has at his disposal. It recommends that he clarifies how Business Rates revenue from Enterprise Zones will be spent in order to avoid potential conflict between the Mayor and London Boroughs over money that is raised on one part of London being spent elsewhere in the capital, and calls on him to develop a strategy in advance of the next Comprehensive Spending Review, including policy on powers and funding for skills and business support.

<http://www.london.gov.uk/publication/mayors-role-economic-development>

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28 Statement by the Mayor of London

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#### **Olympic Park Legacy Corporation – statement by the Mayor following public consultation**

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Between February and April this year the Mayor of London published his proposals to establish a Mayoral development corporation covering the Olympic Park and surrounding area, using powers that he expects to be granted by the Localism Bill currently before Parliament. There followed a period of consultation and this statement describes the Mayor's latest proposals and thinking regarding what would be known as the Olympic Park Legacy Corporation following his consideration of responses to the consultation and sets out the process required to give effect to those proposals.

<http://www.london.gov.uk/publication/oplc-mayor-statement-post-consultation>



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29 English Heritage guide

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**Vacant Historic Buildings: An owner's guide to temporary uses, maintenance and mothballing**

If left vacant for long periods of time historic buildings are at a greatly increased risk of damage and decay. This guidance has been produced by English Heritage to help owners reduce the risks faced by empty buildings, by undertaking a range of precautionary measures and adopting an active management approach. It explains how to decommission buildings that are about to be vacated and how to look after buildings that have been vacant for some time. The principles of good practice set out in this guide are relevant to all types of historic building, but it is particularly concerned with commercial, industrial, institutional and publicly-owned buildings.

<http://www.helm.org.uk/upload/pdf/acc-vacant-historic-buildings.pdf?1319603231>

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30 English Heritage Guide

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**Stopping the Rot: A Guide to Enforcement Action to Save Historic Buildings**

This guide is aimed at local authorities to advise them as to the range of statutory enforcement measures that are available to bring neglected historic buildings back into use.

<http://www.helm.org.uk/upload/pdf/acc-stopping-the-rot-guidance.pdf?1319603231>

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31 English Heritage Guidance

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**The Setting of Heritage Assets**

The significance of a heritage asset derives not only from its physical attributes but also from its setting and the management of change within the surroundings of heritage assets needs to be handled with care. This document sets out English Heritage guidance on managing change within the settings of heritage assets, including archaeological remains and historic buildings, sites, areas and landscapes. The advice contained in it is intended to assist implementation of PPS 5: Planning for the Historic Environment and its supporting Historic Environment Planning Practice Guide, together with the historic environment provisions of National Policy Statements for nationally significant infrastructure projects. The guidance provides the basis for English Heritage's advice on the setting of heritage assets when it responds to consultations and when it assesses the implications of development proposals on the historic estate that it manages. It is also intended to assist people who are involved with managing development that may affect the setting of heritage assets.

[http://www.helm.org.uk/upload/pdf/The\\_setting\\_of\\_heritage\\_assets\\_english\\_heritage\\_guidance\\_\\_October\\_2011.pdf?1320126817](http://www.helm.org.uk/upload/pdf/The_setting_of_heritage_assets_english_heritage_guidance__October_2011.pdf?1320126817)

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32 English Heritage Guidance

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**The Maintenance and Repair of Traditional Farm Buildings: A Guide to Good Practice**

Changing agricultural practices and economic pressures mean that many traditional farm buildings have lost their original purpose and become vulnerable to neglect and decay, while even those that are still in active use still need care and periodic repairs in order to keep them in good order. This guidance, which is aimed at the owners and managers of such buildings, describes the best ways of carrying out maintenance and repairs and explains how this work can ensure that these buildings, which are so important historically and to the character of England's countryside, will have a sustainable future.

[http://www.helm.org.uk/upload/pdf/Acc\\_Maintenance\\_and\\_Repair\\_of\\_Traditional\\_Farm\\_Buildings.pdf?1320126817](http://www.helm.org.uk/upload/pdf/Acc_Maintenance_and_Repair_of_Traditional_Farm_Buildings.pdf?1320126817)

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### 33 Greater London Authority Consultation

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London World Heritage Sites – Guidance on Settings

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#### **Deadline for Comments: 20.01.11**

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This draft Supplementary Planning Guidance has been issued in response to the London Plan 2011 which set out policies to conserve and enhance London's World Heritage Sites and their settings and stated that the Mayor would produce guidance on defining the settings of these Sites which are:

- The Palace of Westminster and Westminster Abbey including St Margaret's Church;
- The Tower of London;
- Maritime Greenwich; and
- The Royal Botanic Gardens at Kew.

<http://www.london.gov.uk/publication/world-heritage-sites-spg>

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### 34 Homes and Communities Agency (HCA) Report

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#### **Heritage Assets Biennial Report, April 2009 – March 2011**

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As required under The Protocol for the Care of the Government Historic Estate this report records the HCA's approach to the management of heritage assets in its ownership. During the reporting period:

- the HCA has invested £9.58bn in housing and regeneration projects resulting in 120,360 new homes being built, 300,000 sq m of new employment floorspace being created and 626 ha of brownfield land being reclaimed;
- the HCA transferred the freeholds of five listed buildings having carried out major works to bring them back into re-use;
- six listed buildings and one Scheduled Ancient Monument site were transferred to the management of a developer;
- Hanham Hall (a Grade II\* listed property) has been redeveloped for community use;
- the HCA has invested £686m in property and regeneration projects, including Park Hill in Sheffield and Lime Street Gateway in Liverpool; and
- since March the HCA has completed the transfer of more than 350 land and property assets from Regional Development Agencies.

<http://www.homesandcommunities.co.uk/heritage-assets-report>

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### 35 RICS Publication

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UK Economy & Property Market Chart Book – November 2011

This publication contains an overview and discussion on the current state of the financial markets, the economy, the construction sector, the housing market and the commercial property sector.

[http://www.rics.org/site/scripts/download\\_info.aspx?fileID=10731](http://www.rics.org/site/scripts/download_info.aspx?fileID=10731)



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Evebrief has been established for more than 30 years. It is a summary of the latest statutory and legal cases affecting the property industry and is widely regarded in the industry as the most comprehensive document of its type.

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### Abbreviations

The following abbreviations are used in evebrief:

BLD	Lexis Nexis Butterworths (internal abbreviation)
EG	Estates Gazette
EGLR	Estates Gazette Law Reports
EWCA	England & Wales Court of Appeal
EWHC	England & Wales High Court
P&CR	Property, Planning and Compensation Reports
PLSCS	Property Law Service Case Summaries

### The star system

Cases are marked with one, two or three stars as follows:

- \*\*\* Essential reading on the point of law or valuation with which the case is concerned, because it adds to, or clarifies or changes, the law.
- \*\* Noteworthy case which does not significantly alter the law or which relates to a relatively obscure point.
- \* Interesting but non-essential reading.

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