

# EVEBRIEF

## Legal & Parliamentary

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### POLICY CHANGED BY MINISTERIAL LETTER



Steve Hile  
Editor

At item 4 in this edition we report on the Court of Appeal decision in the Cala Homes case, which confirmed the lower court's decision and dismissed the appeal. The decision effectively allows proposed changes to planning policy to be taken into account when considering a new application. At the time no white paper had been issued, simply a statement by the Sec of State confirming the meaning of an earlier letter he had issued. Considering the range and number of reviews under way by the Coalition, this might not be the last time this issue arises – only last week a Government Minister, when questioned about the thousands of additional homes planned in the drought-hit South East (difficult to believe this week!), suggested that these should not go ahead until the water supply infrastructure had been improved.

Elsewhere in Evebrief at item 09 we report on the second public consultation on the proposed Mayoral Community Infrastructure Levy that will apply to all new developments in Greater London. A large part of this will go to Crossrail, to which the majority of existing businesses already contribute through a supplement to the Business Rates.

Finally at item 10 we report on a Valuation Tribunal rating case which Gerald Eve recently won concerning the valuation method for offices in the City of London. Other agents had accepted City Valuation Office practice which clearly prejudiced our clients. The decision will be particularly of benefit to serviced office occupiers.

*Steve Hile*



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## LOCAL GOVERNMENT

01 CLG Guidance

### Enterprise Zones: Application form and guidance May 2011

The 2011 Budget announced the establishment of 21 Enterprise Zones in England. The Department of Communities and Local Government published the Enterprise Zone prospectus the day after the Budget and this was followed by workshops attended by local enterprise partnerships. The first 11 local enterprise zones were named in the Budget while the competition to ascertain the location of the remaining 10 will be based on proposals that offer the best prospects to increase growth. Applicants will have to show that their prospective zone has genuine potential to create new businesses with positive economic benefits across the wider economic area. Applications must be submitted by 30.06.11.

<http://www.communities.gov.uk/publications/localgovernment/enterprisezoneapplication2011>

## LANDLORD & TENANT

02 Court of Appeal

### Change from assured to assured shorthold tenancy – whether appellant continuing to hold assured tenancy by reason of non-compliance with procedural requirements of para 7(2)(a) of Schedule 2A, Housing Act 1988

\*\* KAHLON V ISHERWOOD  
(2011) PLSCS 137 – Decision given 19.05.11

**Facts:** The appellant was the assured tenant of the respondent landlord. In 2008 possession proceedings brought by the respondent were compromised after successful mediation, and the mediation agreement, signed by both parties and the mediator, provided that the appellant's assured tenancy would be replaced with a 12 month assured shorthold tenancy. The parties subsequently signed a Tomlin order drawn up by the appellant's solicitor and a tenancy agreement headed 'Assured shorthold tenancy' was executed. The respondent served notice on the appellant to terminate the assured shorthold tenancy at the end of the 12-month period and when the appellant did not vacate he brought possession proceedings. The appellant argued that he still had an assured tenancy since the notice requirements of para 7(2)(a) of Schedule 2A to the Housing Act 1988, which apply where an existing assured tenant is downgraded to an assured shorthold tenant with the same landlord, had not been met and that he should have served a form 8 notice as prescribed by the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997. In the county court a possession order was granted, the recorder finding that the schedule to the earlier Tomlin order, although not identical to form 8, was to "substantially the same effect" within the meaning of para 2 of the 1997 Regulations. He also considered that the appellant had received legal advice and was aware of the implications of agreeing to enter into an assured shorthold tenancy.

**Point of dispute:** Whether the appellant's appeal against the county court ruling would be allowed.

**Held:** The appeal was allowed.

Unlike with certain other notices under the 1988 Act, there was no provision for the court to dispense with the requirements for a notice under para 7(2)(a) of Schedule 2A if it considered it just and equitable to do so. The schedule to the Tomlin order was not to "substantially the same effect" as the prescribed form 8, in particular because it did not contain the important paragraph setting out the tenant's understanding and acceptance of the consequence of a change from an assured to an assured shorthold tenancy in terms of security of tenure, which was a matter of substance. The purpose of the notice under para 7(2)(a) was to give the tenant this information and to acknowledge that fact to the landlord. The possession order would be set aside and the case remitted to the county court to reconsider the claim for possession on the basis that an assured rather than an assured shorthold tenancy had been created.

## PLANNING

03 Court of Appeal

### Wind farm – control of noise levels

\* HULME V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT  
(2011) PLSCS 139 – Decision given 16.05.11

**Facts:** Following an appeal against refusal of permission for the development, the Sec of State granted conditional planning permission for a nine wind turbine farm on a site close to the appellant, H's, land. Two of the conditions were intended to deal with concerns relating to noise from the turbines, in particular amplified modulated aerodynamic noise which rose and fell as air passed over the rotating turbine blades. Condition 20 provided that if requested to do so by the lpa the wind farm operator would employ a consultant to assess whether noise from the turbines at H's home was characterised by "greater than expected amplitude modulation". Condition 21 prohibited any wind turbine from generating electricity to the grid until the lpa had approved in writing a scheme for the measurement of greater than expected amplitude modulation emissions, and the scheme was only to terminate once compliance with condition 20 had been demonstrated to the lpa's satisfaction. H applied to quash the permission, arguing that conditions 20 and 21 were ineffective to control noise as they only provided a scheme for its measurement and no effective means of enforcement if the noise was excessive.

**Point of dispute:** Whether H's appeal would be allowed against the decision of the court below dismissing his claim. The judge held that the inspector had intended there to be an enforcement mechanism and must have intended that the scheme under condition 21 would be framed so as to secure that objective.

**Held:** H's appeal was dismissed. The conditions should be construed in the context of the decision letter as a whole and should be interpreted benevolently; if it were possible to give them a sensible meaning when read in context that is how they should be interpreted. It was conceded that interpretation of condition 21 was particularly difficult, but the best construction to put on it was that if the developer could satisfy the lpa that no breach could arise whatever the particular circumstances, the scheme could end. It could not be construed in such a way that the scheme thereunder was a means of achieving enforcement in respect of noise levels, but the operator had to comply with the noise levels specified in condition 20 for the duration of the planning permission and that obligation could be enforced by the lpa.

04 Court of Appeal

### Whether Government's proposal to abolish regional spatial strategies a material consideration in reaching planning decisions

\*\* R (ON THE APPLICATION OF CALA HOMES (SOUTH) LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT  
(2011) PLSCS 140 – Decision given 27.05.11

**Facts:** CH, the appellant, wanted to build 2,000 houses on a site near Winchester. Planning permission for the development had been refused by the lpa and an appeal against that decision was pending. In May 2009 a regional spatial strategy (RSS) which would provide for the development of 5,500 new homes in the Winchester area was introduced. Since this covered CH's site it greatly increased CH's chances of securing planning permission. After the Coalition Government was elected in May 2010 the Sec of State issued a letter to all lpas informing them that the Government intended to abolish RSSs and directing them to have regard to that letter as a material consideration when making planning decisions. In July 2010 the Sec of State made a statement of intention to revoke RSSs. CH challenged the lawfulness of that statement by judicial review, a claim which was allowed. On the same day as this judgment was published, 10.11.10, the Sec of State issued a further statement addressed to lpas to the effect that the Government still intended to abolish RSSs and indicating that the advice contained in the May 2010 letter stood. CH obtained an order that this statement should be stayed, but that stay was lifted on application by the Sec of State (see Evebrief volume 33(01) item 03). CH brought a further judicial review to challenge the November statement and letter as being an unlawful attempt to subvert the existing statutory framework for planning decisions and the effect of the earlier judgment. That claim was dismissed, the judge holding that the government's intention to abolish RSSs was capable of being a "material consideration" that planning authorities were entitled to take into account in planning decisions. (see Evebrief volume 33(03) item 06).

**Point of dispute:** Whether to allow CH's appeal against the ruling of the judge in the court below.



**Held:** CH's appeal was dismissed.

- i. A prospective change to planning policy was capable of being a material consideration for the purposes of s70(2) of the Town and Country Planning Act 1990 and s38(6) of the 2004 Act. In each case it was for the decision maker's planning judgment to decide the weight to be given to prospective changes – the means by which the change in policy would be effected went to the weight, not the materiality, of the proposed change. The policy and objects of the legislative scheme, construed as a whole, required that those responsible for determining planning applications and appeals should look beyond the development plan, of which RSSs were a part, and also have regard to other material considerations – these could include the fact that development plan policies had become outdated or were no longer relevant because of changes in circumstances, and as such, might indicate that the decision should not accord with the development plan.
- ii. The November statement and letter had not unlawfully advised lpas to ignore the policies in the regional strategies, to treat them as no longer forming part of the development plan or to determine planning applications otherwise than in accordance with the RSSs, nor had it told decision makers what weight they should give to the government's proposal. Although the advice that decision makers should continue to have regard to the letter of May 2010 might have been misleading if it had been directed to a less expert audience, it had not been unlawful. In the majority of cases the letter would have been irrelevant because regional policy would not be in issue. Lpas would have been aware of that and would have sensibly interpreted it as referring only to those decisions to which, in their judgment, regional policy was a significant issue. Given the early stage that the proposal to abolish RSSs had reached, many would consider that lpas should give little, if any, weight to the proposal to abolish regional spatial strategies in their decisions. However, in finely balanced cases, the very slight prospect of a substantial policy change might tip the balance in favour of granting or refusing permission.

05 Statutory Instrument

**SI 2011/1399 The Local Government, Planning and Land Act 1980 (Amendment of Schedule 16) (England) Order 2011**

This Order, which comes into force on 30.06.11, amends Schedule 16 to the Local Government, Planning and Land Act 1980 by adding the Greater London Authority, Transport for London and the British Transport Police to the list of bodies to whom Part X of the Act applies. This means that the Sec of State has powers to direct them to take steps to dispose of unused or underused land which they hold, subject to certain procedural requirements set out in the Act.

<http://www.legislation.gov.uk/uksi/2011/1399/contents/made>

06 Planning Policy Statement

**Planning Policy Statement 3: Housing**

This Planning Policy Statement and accompanying advice and guidance have been developed in response to recommendations made in the Barker Review of Housing Supply, published in March 2004, and the research and consultation exercises which have been carried out since. The principal aim of the new PPS3 is to ensure a more responsive approach to land supply at local level. It reflects the government's commitment to improving affordability and supply of housing in all communities including rural areas.

- The Government's housing policy goal is to ensure that everyone has the opportunity of living in a decent home, which they can afford, in a community where they want to live.
- These housing policy objectives provide the context for planning for housing through development plans and planning decisions. The specific outcomes that the planning system should deliver are:
  - i. high quality housing – well-designed and built to a high standard;
  - ii. a mix of housing, both market and affordable, in terms of tenure and price;
  - iii. sufficient housing to meet demand;
  - iv. housing developments in suitable locations which offer a range of community facilities, access to jobs, key services and infrastructure; and
  - v. a flexible, responsive supply of land.

- The policies in PPS3 are designed to achieve these outcomes based on the following principles:
  - i. sustainable development;
  - ii. visionary and strategic approach;
  - iii. market responsiveness;
  - iv. collaborative working;
  - v. evidence-based policy approach; and
  - vi. outcome and delivery focus.

This PPS replaces Planning Policy Guidance: Housing (PPG3) published in March 2000 and earlier editions of PPS3 published on 29.11.06, 19.01.10 and 09.06.10.

<http://www.communities.gov.uk/publications/planningandbuilding/pps3housing>

07 CLG Publication – Summary of Responses to consultation

#### **Planning Policy Statement 3: Planning for Housing – Technical change to Annex B – Affordable Housing definition: Consultation – Summary of responses**

This is a summary of the Government's responses to the consultation on the PPS3 definition of affordable housing. The main purpose of this consultation was to seek views on whether the new affordable rent product should be included within the definition of affordable housing for planning purposes. The consultation did not invite views on the affordable rent product itself, details of which were set out in the Affordable Homes Framework document which can be accessed at:

[www.homesandcommunities.co.uk/affordable-homes](http://www.homesandcommunities.co.uk/affordable-homes)

<http://www.communities.gov.uk/publications/planningandbuilding/pps3annexsummary>

08 National Planning Policy Framework Publication

#### **A proposed draft from the Practitioners Advisory Group – May 2011**

The National Planning Policy Framework sets out the Government's economic, environmental and social priorities for England and explains how planning can help to ensure a pattern of development that accords with these priorities, whilst meeting local aspirations. This document sets out the objectives for the planning system and core planning principles – elaborated in a short series of policies for each topic area. The National Planning Policy Framework is expected to play a key role in supporting sustainable development. It does not, however, apply to the development of Nationally Significant Infrastructure Projects, which are subject to specific policies set out in National Policy Statements.

<http://www.nppfpractitionersadvisorygroup.org/wp-content/uploads/2011/05/A-proposed-draft-from-the-Practitioners-Advisory-Group.pdf>

09 Mayor of London Consultation

#### **Proposals for a Mayoral Community Infrastructure Levy Draft Charging Schedule**

Deadline for Responses: 08.07.11

This consultation document has been issued by the Mayor of London as part of the process for setting a Community Infrastructure Levy for London under the powers set out in Part 11 of the Planning Act 2008 and the Community Infrastructure Levy Regulations 2010. These enable the Mayor to set a Community Infrastructure Levy (CIL) which will be paid by most new development in Greater London which:

- consists of buildings that are usually occupied (which means that structures that are visited rarely or which are not buildings, such as electricity pylons, are excluded); and
- has 100 sq m or more of gross internal floorspace, or creates one dwelling even where this is smaller than 100 sq m.

The money raised by CIL will be used to pay for infrastructure needed to support development of an area. In particular, it will be used to fund part of the cost of the Crossrail project. The Mayor must carry out two rounds of public consultation on his proposed Charging Schedule, of which this is the second. This document contains the following:



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- a draft charging schedule;
- the relevant evidence about the use of CIL to fund infrastructure in Greater London and the effect of the Mayor's proposals on the viability of development; and
- an explanation of how to comment and take part in the next stages of the process.

If, following this consultation, the Mayor makes further changes to the draft Schedule he must consult for four weeks on those. The Mayor will appoint an independent examiner to conduct a public Charging Schedule Examination, which will be a public hearing. The examiner will report to the Mayor who will make his final decision on the rate to be charged in the light of any recommendations the examiner may make and he will then formally approve and publish the Charging Schedule. CIL will be payable for developments that receive planning permission after the date when the Charging Schedule formally comes into force. Once it has been approved the Charging Schedule will sit alongside the Mayor's Spatial Development Strategy (the London Plan), but will not form part of it. Changes to the CIL will be made through the Localism Bill which is currently before Parliament. Authorities charging a CIL must pass "a meaningful proportion" of CIL monies raised in each neighbourhood back to that neighbourhood. It is also intended to limit the binding nature of recommendations made by the independent examiner. Once the Localism Bill receives Royal Assent it is proposed that authorities will have to correct charges that are considered excessive by examiners, but they will have greater discretion about how this is done.

<http://www.london.gov.uk/consultation/mayoral-community-infrastructure-levy>

## RATING

10 Valuation Tribunal for England

### Rating of offices – "rebus sic stantibus" principle

AVANTA V VALUATION OFFICER  
Appeal No. 503017409696/539N05 – Decision given 27.04.11

**Properties:** 1st, 2nd and 5th floors, 9 Devonshire Square, London EC2M 4YF where the appellants were seeking a reduction in the values shown in the Rating List to £250 per sq m, the VO having applied rates of between £293.45 to £339.75. The three floors had been divided up to create a large number of small serviced offices which were let out under licence agreements.

**Issues:** The rate per sq m to be applied to the individual offices, which required a decision as to whether the offices should be valued as they are now, as per the principle of "rebus sic stantibus", or with reference to how the floors were prior to them being split up with extra allowances being added in for the corridor areas and reception area – these were normally excluded from the net internal area of a multi-let building. The appellant argued that a property should be valued as it is, not what it was or may become. The VO was seeking to apply higher rates of value to identical space within a building, which meant that in effect he was valuing the businesses occupying it rather than the property. The VO argued that the additional facilities available to the serviced offices eg reception areas, meeting rooms, waiting areas, kitchen etc should, as with conventional offices, be reflected in the assessment of individual serviced offices; serviced offices commanded a higher rent per sq m than conventional offices, this had always been reflected in the Rating List and had also been accepted by other professional representatives in the City.

**Decision:** The correct rate per sq m was £250. The serviced offices should be valued similarly to conventional offices and also as they stand in accordance with the principles of "rebus sic stantibus". Serviced office use was not a reason to increase the price per sq m. The Panel accepted the comparable evidence presented to support the appellant's case where there was no uplift for serviced offices and accorded little weight to the VO's comparables. It was also noted that no substantive evidence was presented to support the VO's contention that the City of London should be treated any differently to other locations.

*Editor's note: Gerald Eve's partner Steve Hile represented the appellant, Avanta, in this case.*

11 CLG Statistical Release

### National Non-Domestic Rates to be collected by local authorities in England 2011-12 (Forecast)

Details of the forecasts of national non-domestic rates to be collected by local authorities in England were announced on 25.05.11. This release includes data from 2007-08 to 2011-12 and the key points are as follows:

- yield before reliefs for 2011-12 will be £1,287m – 5.6% higher than in 2010-11;
- it is estimated that the contribution to the pool from local lists will have increased by 1.4% to £20.3bn in 2011-12;
- between 2007-08 and 2011-12 the contribution to the pool from the local lists is expected to have increased by 18%;
- London, having 15% of the population, contributes 28% to the national pool; and
- at 31.10.10 there were 510,000 hereditaments benefiting from Small Business Rate relief.

<http://www.communities.gov.uk/publications/corporate/statistics/nondomesticrates201112f>

## COMPULSORY PURCHASE

12 Court of Appeal

### Compulsory purchase – assessment of compensation – admissibility of late evidence

\* RIDGELAND PROPERTIES LTD V BRISTOL CITY COUNCIL (2011) PLSCS 141 – Decision given 27.05.11

**Facts:** By a CPO made in 2003 and confirmed in 2005 the respondent council, BCC, acquired an office building owned by the appellant, RP, whose claim for compensation was referred to the Lands Tribunal to be assessed on the assumption under ss14-16 of the Land Compensation Act 1961 that planning permission would have been granted for redevelopment of the property. The parties agreed that the residual valuation method would be used in the absence of relevant comparables. In June 2009 the tribunal awarded compensation in the sum of £4.5m on the basis of one of RP's proposed redevelopment schemes, although RP's residual valuation was £15.2m. Before the decision became final RP applied to the tribunal to admit new evidence, consisting of three offers to purchase its property that it had received in 2002 and 2003 of between £19.5m and £23m. RP contended that these were valuable comparable evidence, but that its valuation witness had overlooked them when submitting his evidence.

**Point of dispute:** Whether RP's appeal would be allowed against the tribunal's decision that the comparable evidence should not be admitted. RP argued that the tribunal had failed to take into account three relevant matters, namely:

- i. the likely effect of the new evidence if it were admitted;
- ii. the reasons given for the failure to introduce it earlier; and
- iii. the fact that BCC also knew about the offers, but had failed to refer to them.

**Held:** RP's appeal was dismissed.

In general, permission should not be given to admit fresh evidence on a new point between the giving of judgment and drawing up the order, unless:

- i. the evidence could not have been obtained with reasonable diligence for use at the trial;
- ii. it would probably have an important influence on the outcome of the case, though not necessarily decisive; and
- iii. it should be apparently credible.

The tribunal had not misdirected itself as to the existence of its discretion to admit the new evidence or the principles on which it should exercise it. The offers were very different from the tribunal's valuation figure on the residual analysis, and "testing" the tribunal's residual valuation by reference to the offers meant persuading it to abandon the residual method of valuation and to adopt a new method – in effect permission was being sought for the presentation of a new valuation case. BCC could reasonably have expected RP's witness to mention such an important piece of evidence during the three-year period of negotiations and preparation of evidence. RP had not acted with reasonable diligence. The tribunal had validly taken the view that none of the arguments put forward by the parties outweighed the failure to adduce evidence that had been available to RP at all material times. It had been correct to refuse to admit the new evidence.

## HOUSING

13 Homes and Communities Agency (HCA) Strategy

### Development and Land Disposal Strategy

The first land disposal strategy published by the HCA sets out its approach to accelerating its land disposal, summarises its landholdings and explains the principles for making disposal decisions. The aim of the strategy is to make more surplus public sector land available for the creation of new homes, employment opportunities and community facilities and at the same time the HCA has published a list of "accelerated sites" which will be brought to the market over the next two years with capacity for 3,000 new homes. The HCA's key aims will be:

- transparency about its sites and disposal principles;
- not to hold onto land for any longer than necessary;
- to ensure that land is disposed of in a way which supports local plans;
- to transfer land to end users as quickly as possible; and
- to carry out disposals on terms such as a deferred payment model (Build Now, Pay Later) that promote development, economic activity and growth.

<http://www.homesandcommunities.co.uk/news/hca-launches-development-and-land-disposal-strategy>



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 14 Statutory Instrument
 

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**SI 2011/1410 The Land Registration (Amendment) Rules 2011**


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These Rules are made under the Land Registration Act 2002 and amend the 2003 Rules in consequence of the changes under the Legal Services Act 2007 to the regulation of persons carrying out legal activities and the introduction of alternative business structures on the coming into force of Part 5 of that Act. Rules 3 and 4 amend the definition of "conveyancer" in Rule 217 of the 2003 Rules to include those who are or who employ authorised persons, authorised or licensed under the provisions of the Legal Services Act 2007 to carry on certain reserved instrument activities relating to land registration. The definition also includes public officers carrying on those activities, and specifies when the conveyancer giving a certificate must be an individual.

<http://www.legislation.gov.uk/ukxi/2011/1410/contents/made>

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 15 Statutory Instrument
 

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**SI 2011/1411 The Land Registration (Proper Office) (Amendment) Order 2011**


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This Order is made under the Land Registration Act 2002 and amends the 2010 Order. The proper office order designates particular offices of the Land Registry as the proper office for the receipt of specified descriptions of application under the Act, with two exceptions. The first of these is where there is a written arrangement as to delivery made between the registrar and the applicant's conveyancer. Article 2 of this Order amends the definition of "conveyancer" as explained in SI 2011/1410 (see item 14 above).

<http://www.legislation.gov.uk/ukxi/2011/1411/contents/made>

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 16 Law Commission Report
 

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**Easements, Covenants and Profits à Prendre**


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This report, which was published on 08.06.11, makes recommendations to simplify, modernise and enhance the law of easements, covenants and profits à prendre. Some parts of the current law are very ancient, contradictory and unsuitable for modern society and this report recommends reform where it is needed whilst preserving those aspects of the law that function well. The recommendations would not affect the validity and enforceability of existing rights. Under the proposed reforms:

- the benefit and burden of positive obligations could be enforced by and against subsequent owners;
- the rules relating to the acquisition of easements by prescription (or long use of land) and implication would be simplified, as would the rules relating to the termination of easements by abandonment;
- developers would be given more flexibility to create the webs of rights and obligations needed to allow modern estates to function well;
- the creation of easements that allow a substantial use of land by a benefiting owner would be facilitated (such as rights to park a car); and
- the jurisdiction of the Lands Chamber of the Upper Tribunal would be expanded to allow for the discharge and modification of easements and profits that are created post-reform.

<http://www.justice.gov.uk/lawcommission/publications/1497.htm>

## ENVIRONMENT

### 17 Defra White Paper

#### The Natural Choice: securing the value of nature

This White Paper outlines the Government's vision for the natural environment for the next 50 years, with practical suggestions for delivery of its aims. The themes of the White Paper are as follows:

- protecting and improving our natural environment, with case studies on environmentally sensitive farming, sustainable woodland management and protecting fish stocks;
- growing a green economy, with case studies on greening retail and greening industry;
- reconnecting people and nature, with case studies on schools connected with nature, sustainable tourism, and volunteering; and
- international and EU leadership.

The White Paper aims to improve the quality of England's natural environment, to halt the decline in habitats and species and to strengthen the connection between people and nature. It is hoped that a new way of looking at nature will help the growth of a green economy which treats natural capital in a responsible and fair way, encouraging businesses to use that capital in a sustainable manner, and that there will be a radical shift in how we view our natural assets.

<http://www.defra.gov.uk/environment/natural/whitepaper/>

## GENERAL

### 18 London Assembly Report

#### Public life in private hands

This report examined the different ways in which London's squares, parks and thoroughfares are managed, and has identified a number of consequences relating to the shift in the ownership and management of public spaces from local authorities to private developers. It found that many London boroughs do not have explicit policies for managing public space in new developments with the result that local people have little opportunity to comment on how the public space in their areas should be run. This has led to concerns about how private management runs public space. The report calls on the Mayor to develop new planning guidance which would encourage boroughs to agree principles for the management of public space in new developments to ensure that local residents can enjoy permanent access.

[http://www.london.gov.uk/media/press\\_releases\\_london\\_assembly/mayor-urged-preserve-open-access-london%E2%80%99s-public-spaces](http://www.london.gov.uk/media/press_releases_london_assembly/mayor-urged-preserve-open-access-london%E2%80%99s-public-spaces)

### 19 Transfer of Private Sewers

#### The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011

These proposed new Regulations have been laid before Parliament and it is anticipated that they will come into force on 01.07.11. Under these Regulations private sewers and lateral drains in England and Wales will automatically be transferred to water and sewerage undertakers on 01.10.11 with pumping stations to follow progressively up to October 2016. Water and sewerage undertakers will be required to serve notices of the proposed transfer in July after which time sewer owners will have a two-month period in which to appeal against the transfer. Possible problems with these proposals include the following:

- the notices of proposed transfer will not include plans;
- notices of the proposals will only be served on undertakers' customers, who may not be the owner;
- difficulties in identifying the correct owner of a sewer (especially where complex leasing structures exist); and
- notices of proposals relating to private sewers and lateral drains will also relate to associated pumping stations, meaning that owners of such stations will need to appeal at the initial notice stage, rather than waiting for the relevant period when their pumping station will actually be transferred.

### 20 RICS DMC Information Paper

#### Catastrophes "Provide for the worst and hope for the best"

Disaster Management Commissioner Bill Keane has written this paper which focuses on natural geophysical catastrophes – earthquakes and tsunamis – and their impact on building resilience afterward. The paper looks at how risks from urban hazards are managed and recovery financed within developed countries and explores how these can be applied to developing nations to create more financially viable and sustainable models. It also looks at public/private funding initiatives introduced in some developing countries to deal more effectively with catastrophes.

[http://www.rics.org/site/scripts/download\\_info.aspx?fileID=9801](http://www.rics.org/site/scripts/download_info.aspx?fileID=9801)



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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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### Gerald Eve Research

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

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# EVEBRIEF

## Legal & Parliamentary

Volume 33(08) 20 June 2011

- 01 Scotland – Planning
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### SCOTLAND

#### PLANNING

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01 Scottish Planning Series Circular

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#### **Planning Circular 3 2011: The Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011**

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The purpose of this Circular, which relates to development under the Town and Country Planning (Scotland) Act 1997, is to give guidance on these Regulations, which transpose the EIA Directive into the Scottish planning system. The 2011 Regulations consolidate, update and replace Part II of the 1999 Regulations wef 01.06.11, but Parts III and IV of the 1999 Regulations, concerning Roads and Bridges, and Land Drainage, remain extant. Accordingly, this Circular supersedes guidance previously contained in Circular 8/2007.

<http://www.scotland.gov.uk/Publications/2011/06/01084419/0>



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**WALES**

**PLANNING**

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02 Welsh Assembly Government Research Paper

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**Planning for Sustainable Economic Renewal**

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This research, carried out by Roger Tym & Partners with Asbri Planning, was commissioned by the Welsh Government to evaluate the effectiveness of existing planning policy for its national economic development objectives. Its findings will inform a review of national planning policy and guidance on economic development.

The study complements an earlier piece of research which reviewed the planning application process in Wales and recommended some wide-ranging changes, but dealt only with planning for economic land uses, focusing especially on the B Use Class (employment uses), comprising industry, warehousing and offices.

<http://wales.gov.uk/topics/planning/planningresearch/publishedresearch/suseconrenewal/?lang=en>

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**NORTHERN IRELAND**

**PLANNING**

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03 Department of the Environment Consultation

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**Consultation on Draft PPS2 Natural Heritage (Revised)**

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Deadline for Comments: 08.07.11

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This draft PPS furthers the Northern Ireland Executive's commitment to sustainable development and to conserving and where possible enhancing and restoring Northern Ireland's natural heritage. The policy is accompanied by Draft Supplementary Planning Guidance that provides background information and guidance on relevant natural heritage legislation and the SPG will be taken into account in assessing development proposals.

When issued in final form this PPS will replace PPS 2 'Planning and Nature Conservation' and the following policies of 'A Planning Strategy for Rural Northern Ireland' insofar as they relate to protection of Northern Ireland's natural heritage:

- Policy SP 16 Environmental Protection; and
- Policy DES 4 Areas of Outstanding Natural Beauty.

[http://www.planningni.gov.uk/index/policy/policy\\_publications/planning\\_statements/draft\\_pps\\_2\\_revised\\_\\_natural\\_heritage.htm](http://www.planningni.gov.uk/index/policy/policy_publications/planning_statements/draft_pps_2_revised__natural_heritage.htm)