

# EVEBRIEF

## Legal & Parliamentary

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### LOCALISM AND BUSINESS RATES



Hilary Wescombe  
Editor

In the editorial to the 22 November 2010 edition of Evebrief we mentioned proposed changes to the rating system in Scotland that would allow an authority to retain a proportion of the growth in non-domestic rates. Now at items 16 and 17 we report on the latest step in introducing legislation to allow English authorities to keep some of the additional rate revenue raised from growth in their economies.

Under the current system business rates are collected by local authorities but paid into a central pool before being redistributed by way of formula grant. The changes are intended to provide local authorities with a financial incentive to promote business growth.

However, the proposals also include a provision for tariffs, top ups and levies to protect those authorities who see a decline in their rates revenue after the 2012-2014 baseline period, thereby creating more complexity for local authorities to navigate. The size of the local share of rates to be retained is to be set out in the spring. Despite the proposed 'top up' safety net it seems inevitable that under these proposals authorities in areas with greater economic difficulties will fall behind stronger areas in the services they are able to provide.

A handwritten signature in cursive script, reading "Hilary Wescombe".

## LOCALISM

01 Statutory Instrument

### SI 2011/2896 The Localism Act 2011 (Commencement No 1 and Transitional Provisions) Order 2011

This Order brought into force on 03.12.11, the following provisions of the Localism Act 2011 for the limited purposes of enabling the Sec of State to make certain subordinate legislation:

- s8(2) (general power of competence: eligible parish councils);
- ss15, 19 and 20 (power to transfer local public functions to permitted authorities);
- s21, 22 and Schedules 2 and 3 in part (new arrangements with respect to governance of English local authorities);
- s69(8) (non-domestic rates, discretionary relief) in relation to England only;
- s72-79 and Schedules 5-7 (referendums relating to council tax increases; and
- transitional provisions in relation to the workings of council tax.

<http://www.legislation.gov.uk/ukxi/2011/2896/contents/made>

## LOCAL GOVERNMENT

02 CLG Publication

### Local Government Finance Bill: Technical reforms to council tax – Impact assessment

The Government is considering giving local authorities more flexibility on what discounts they can charge on second homes and certain empty properties as part of its drive to decentralise local control over local government finance. This document sets out the impact of these proposals.

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

## LANDLORD & TENANT

03 Court of Appeal

### Operation of break clause – appellant tenants resisting exercise of clause – constructive trust/estoppel

\* CROSSCO NO 4 UNLIMITED V JOLAN LTD (2011) PLSCS 296 – Decision given 21.12.11

**Facts:** The appellant tenants and respondent landlords originally comprised a group whose interests included the ownership of commercial premises and the operation of an amusement arcade on the ground floor. Following a demerger the respondents became landlords of the premises and the appellants became tenants of the ground floor. The respondents, who wished to carry out substantial redevelopment works, served notice on the appellants under a break clause in the lease and opposed the grant of a new tenancy of the ground floor. The appellants claimed that a binding oral agreement reached between the parties in February 2009 prevented the respondents from operating the break clause. Alternatively, they argued that the respondents held the freehold on constructive trust to give effect to the parties' common intention that the appellants would remain as ground floor tenants making it unconscionable for the respondents to operate the break clause.

**Point of dispute:** Whether the appellants' appeal would be allowed against the ruling of the judge in the court below that, on the facts, the respondents had been entitled to operate the break clause.

**Held:** The appeal was dismissed.

- i. Applying the requirements for a common intention constructive trust, the critical question was whether the respondents' conduct had been unconscionable. The judge had been right to conclude that the respondents were not guilty of unconscionable conduct such as to raise an equity against them. On the facts the judge had been entitled to find that there had never been any assurance by the respondents that the break clause would not be operated. The fault lay with the appellants who had failed properly to check the terms of the lease and since the respondents were unaware that the appellants had been labouring under a misapprehension as to its terms their conduct could not have been unconscionable. The judge had also been entitled to find that no agreement had been reached in February 2009.
- ii. The main elements of the doctrine of proprietary estoppel were a representation or assurance made to the claimant, reliance on it by the claimant and detriment to the claimant in consequence of his reasonable reliance. On the evidence the judge had been correct to conclude that none of those requirements were satisfied in this case.

## 04 Court of Appeal

**Determination of interim rent**

\* NEALE V WHITNEY ELECTRIC THEATRE  
[2011] EWCA Civ 1032 – Decision given 15.07.11

**Facts:** Between 1992 and 2006 the tenant had a lease of nightclub premises under which it paid rent of £43,000 per annum to the landlord. The lease was terminated by the landlord serving a s25 notice. T's application for a new tenancy under s24 was rejected by the court, which meant that it had to determine the interim rent due from 25.06.07 until the date when the interim tenancy expired on 14.06.10. The judge fixed this under s24D of the Landlord and Tenant Act 1954 at the same level as the passing rent, £43,000 per annum.

**Point of dispute:** Whether the tenant's appeal against the judge's interim rent determination would be allowed. It argued that the judge had:

- i. failed or declined to make any assessment of the rent which would have been payable in accordance with s34(1) and (2) if a new year-by-year tenancy had been granted;
- ii. placed excessive emphasis on the duty in s24D(2) to have regard to the rent payable under the existing tenancy; and
- iii. reached an unsustainable or unreasonable conclusion on the facts, in particular to the fact that the tenant had been paying £43,000 since 1992.

**Held:** The appeal was dismissed. The overriding provision of s24D is s24D(1) which states that the interim rent should be "the rent which it is reasonable for the tenant to pay". The judge's duty was to arrive at a reasonable rent, taking into account the passing rent and the interim market rent on a year-by-year basis and he had been entitled to conclude that there was no good reason why the tenant should not continue to pay a rent, which was close to the market rent on a profits basis and not discounted on a year-by-year basis. The judge had acted reasonably when fixing the interim rent at the same level as the passing rent.

## 05 Upper Tribunal Lands Chamber

**Leaking pipe in block of flats – respondent tenant refusing to allow entry to his flat by company secretary but will to allow access by another agent of landlord – s168(4) Commonhold and Leasehold Reform Act 2002**

BEAUFORT PARK RESIDENTS MANAGEMENT LD V SABAHPOUR  
(2011) PLSCS 292 – Decision given 21.11.11

**Facts:** S owned a long lease of a flat in a block in North London, which was owned and managed by the appellant company. Each of the flat owners owned a share in the appellant and one of them, B, also acted as company secretary and director. In 2008 S reported a leak in his flat, which he alleged was caused by a broken pipe in the communal parts of the building and was therefore the appellant's responsibility to repair. Under the terms of his lease he was required to co-operate with the lessor to enable the building to be repaired and maintained and "in particular... to permit the Lessor and its Surveyors or Agents... at all reasonable times to enter upon the Flat for the purpose of examining the state and condition thereof". Due to a personal dispute, S would not allow B to enter his flat to trace the leak, although he would not have objected to a suitably qualified agent of the appellant entering it in order to carry out the necessary works.

**Point of dispute:** Whether the appellant's appeal would be allowed against the finding of the Leasehold Valuation Tribunal (LVT) that S was not in breach of the terms of his lease since he was willing to allow access in principle, and that the appellants could not insist on access specifically by B. A determination under s168(4) of the Commonhold and Leasehold Reform Act 2002 that S was in breach of his lease would have enabled the appellant to serve a notice under s146 to determine it.

**Held:** The appeal was allowed in part. The question which had to be answered was whether B fell within the class of persons that S was required to allow access to under the terms of his lease. Since he was its secretary and a director and had also been given a management role to deal with day-to-day issues, B was properly an agent of the appellant and therefore fell within the class of persons to whom the lessee had to permit access. He was entitled to such access in order to investigate the possible cause of the leak. It was, however, inappropriate to make a determination that S was in breach of the terms of the lease, pursuant to s168(4), since this would allow the appellant to institute forfeiture proceedings which was too draconian a step given that S might now allow B access in the light of this decision. If within six weeks he failed to do so then the appellant had permission to apply for a s168(4) determination.



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**PLANNING**


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06 Court of Appeal

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**Consultation on statutory instruments altering planning legislation**


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\* R (ON THE APPLICATION OF MILTON KEYNES COUNCIL AND OTHERS) V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2011) All ER (D) 132 (Dec) – Decision given 16.12.11

**Facts:** In 2009 the Sec of State carried out a formal consultation exercise on the issue of Houses in Multiple Occupation. He proposed three possible solutions (Options 1, 2 and 3). In April 2010 two new statutory instruments were brought into force which implemented a form of Option 2. In May 2010 the newly elected Government decided to reconsider the question of HMOs, including the possible implementation of Option 3, and as part of an informal consultation process the Sec of State wrote to eight representative bodies including the Local Government Association and the Planning Officers Society requesting their comments on Option 3. The claimants, three Ipas, learned about this process and submitted their own responses. In September 2010 two further sets of regulations were issued which effectively implemented Option 3. These were brought into force in October and a motion in November to seek their annulment failed. The claimants sought judicial review of the Sec of State's decision to make the statutory instruments.

**Point of dispute:** Whether the claimants' appeal would be allowed against the decision of the court below to refuse their application. The judge held that the failure of the Sec of State to consult the authorities directly, rather than through their representative bodies, was not, in the circumstances, so unfair as to render the consultation exercise unlawful.

**Held:** The appeal was dismissed. The fairness of the 2010 consultation had to be considered in the context of the very full consultation conducted in 2009, when all Ipas had been given an opportunity to make representations upon a series of options. The government was entitled to conduct a more limited consultation the following year and the failure to consult the claimants directly had not been unfair. The Sec of State's decision to make the orders he had was ultimately political and he had been entitled to make it.

07 Statutory Instrument

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**SI 2011/2918 The Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011**


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This Order came into force on 07.12.11 and makes provision to enable a CIL authority in England and Wales to authorise another person, or that person's employees, to exercise functions relating to the setting, charging, collection, enforcement and spending of CIL. The Order sets out which functions may, or may not, be contracted out, it prescribes conditions which attach to the exercise of contracted out functions and provides for cases where the authority applies for a warrant of commitment against a debtor and where legal proceedings are instigated by a contractor.

<http://www.legislation.gov.uk/uksi/2011/2918/contents/made>

08 Department for Business Innovation and Skills (BIS)

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**Implementation of the Penfold Review**


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The Penfold Review, set up to identify whether non-planning consents delay or discourage business investment, published its final report in July 2010. This publication is a further update on its implementation, the agenda of the Government's latest programme being to:

- scrap unnecessary development consents and simplify others;
- reform the remits and working practices of the public bodies which grant or advise on development consents;
- set a clear timescale for deciding development consent applications; and
- make it easier to apply for development consents.

<http://www.bis.gov.uk/policies/bre/policy/scrutinising-new-regulations/penfold-review-for-non-planning-consents>

09 CLG Letter to Chief Planning Officers

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**Householder permitted development rights for micro wind turbines and air source heat pumps**


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This letter draws the attention of local authorities to the amendments which were made to the Town and Country Planning (General Permitted Development) 1995 on 01.12.11 – these provide new permitted development rights for householders to install micro wind turbines and air source heat pumps on their premises.

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

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 10 Greater London Authority Consultation
 

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**London Plan Implementation Plan 1**


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 Deadline for Comments: 29.02.12
 

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This Implementation Plan sets out how the policies of the London Plan are to be put into action. The Implementation Plan provides an overview of mechanisms for translating the trends and policies contained in the London Plan into investment decisions and plans. It is intended to:

- facilitate effective coordination and cooperation of activities to ensure that the London Plan is realised;
- inform developers and all delivery partners who need to understand the envisaged implementation actions and strategic infrastructure provision in relation to the London Plan;
- provide communities with transparent and accessible information to enable them to get involved in the development of their area; and
- help boroughs in terms of the wider context for their local implementation and infrastructure planning and the preparation of their Community Infrastructure Levy.

<http://www.london.gov.uk/publication/implementation-plan>

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 11 CLG Discussion Paper
 

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**Liberalising the regime for flying flags: Discussion paper**


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The Government recognises that the flying of flags can be an important means of geographic, institutional or cultural expression, while for some businesses they are important for advertising. It aims to streamline the planning regulations that apply to flag-flying in order to cut bureaucracy and reduce or eliminate the cost of applying for consent. This discussion paper sets out proposals for possible change to secondary legislation in order to achieve this.

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

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 12 Government Response
 

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**Government Response to CLG Select Committee report on draft National Planning Policy Framework**


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The Committee's report established the following areas of common ground with the Government:

- the planning system needs to be made more simple and accessible;
- local plans are the starting point for decision making;
- the current absence of plans has contributed to the shortage of homes;
- the "presumption of sustainable development" should be the dominating factor throughout the planning system;
- the definition of sustainable development should be based on the 1987 Brundtland definition (development that "meets the needs of the present without compromising the ability of future generations to meet their own needs");
- local authorities should be incentivised to have plans in place as soon as possible; and
- transition arrangements should be established in consultation with local government.

The report makes a number of specific constructive suggestions, including:

- an expanded definition of sustainable development;
- standardising key terms;
- emphasising the importance of the local plan; and
- clarifying policy on brownfield land, offices in town centres and windfall sites.

The Government has stated that it welcomes these suggestions and will consider them carefully.


**GERALDEVE**

**RATING**

13 Upper Tribunal (Lands Chamber)

**Rating of shop premises – list inaccuracy – material change of circumstances – effective date**

\* WILLIAM BRUCE GOULBORN V OWAIN WYNN COWELL (VO)  
UTLC Case Number:RA/27/2011 – Before AJ Troll FRICS –  
Decision given 28.11.11

**Property:** 4, Sussex Street, Rhyl, Denbighshire, a ground floor lock up shop which was entered in the 2005 local non-domestic rating list with RV £5,300. The list was altered by the valuation officer on 08.08.06 to RV £9,600 wef 23.03.06 because the RV in the initial list was inaccurate and, secondly, because there was a material change of circumstances (MCC) being an improvement in the area, on 23.03.06. Had there been no MCC the effective date of the correction could have been no earlier than the date the change was made. The MCC led to a number of list alterations in Sussex Street and subsequent appeals to the Valuation Tribunal for Wales (VTW). The VTW reduced the entry to RV £8,200 wef 23.03.06.

**Issue:** Whether the ratepayer's appeal against the VTW's determination would be allowed.

**Decision:** The appeal succeeded in part.

- i. the effective date for the alteration of the list for the MCC is 23.03.06
- ii. the effective date for the alteration to correct the inaccuracy in the compiled list is 25.09.07
- iii. the RV was determined as £6,100 wef 23.03.06, being the value in the compiled list (£5,300) increased by 16% to reflect the effect of the MCC
- iv. the RV was determined as £8,200 wef 25.09.07, being the corrected value in the compiled list, adjusted to reflect the effect of the MCC

(ie the Tribunal decided that there should have been one alteration to pick up the MCC, effective from the MCC date, with a subsequent alteration to correct the compiled list inaccuracy effective from the date of the schedule. In the specific circumstances it decided that the effect of the MCC was to increase value by 16% and therefore ordered a 16% increase from the artificially low compiled list assessment to be effective from the date of the MCC with the undervaluation corrected by a date of schedule increase.)

14 Statutory Instrument

**SI 2011/2993 The Non-Domestic Rating Contributions (England) (Amendment) Regulations 2011**

These regulations, which came into force on 31.12.11, amend the rules contained in the 1992 Regulations for the calculation of non-domestic rating contributions and the assumptions to be made in calculating the provisional amount of contributions for the financial years beginning on or after 01.04.12. They are concerned with the following:

- the offset for a special authority (defined in s144(6) of the Local Government Finance Act 1988);
- the percentage amounts in respect of discretionary relief in paragraph 3 of Schedule 1 to the 1992 Regulations;
- the national cost of collection figure in para 4(4) of Schedule 1;
- the buoyancy factor (one of the assumptions used by billing authorities in calculating the provisional amount) in para 2(12) of Schedule 2; and
- the losses in collection percentages in paragraph 8(1) of Schedule 2.

<http://www.legislation.gov.uk/uksi/2011/2993/contents/made>

15 CLG – Summary of Responses to Consultation

**Local Government Resource Review: Proposals for Business Rates Retention Consultation – Summary of Responses**

This document provides a summary of the 461 responses received to the Government's consultation on its proposal to introduce the local retention of business rates and powers for Tax Increment Finance. The consultation ran for 14 weeks from 18.07.11 to 24.10.11.

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

16 CLG Publication

### Local Government Resource Review: Proposals for Business Rates Retention Consultation – Government Response Plain English Guide

This plain English guide sets out the Government's response to the consultation carried out in the summer on the proposed business rates retention scheme and how it will operate to create a direct financial incentive for local authorities who grow their economies that is both deliverable and sustainable. It also sets out the Government's proposals for ensuring that local authorities have sufficient resources to deliver local services. The legislative framework required to introduce the rate retention scheme forms part of the local Government Finance Bill which was introduced on 19.12.11. This Bill takes forward a package of proposals designed to encourage local economic growth, reduce the financial deficit and work towards decentralisation of control over local government finance.

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

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

This document provides the Government's response to consultation and confirms its intention to introduce business rates retention from April 2013.

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

17 CLG Publication

### Local Government Finance Bill: Business rates retention scheme – Impact assessment

This document sets out the impacts of the proposals to introduce a business rates retention scheme. These proposals will change the way in which non-domestic rates are distributed, but not how they are collected. It is anticipated that local retention of business rates will provide authorities in England with an incentive to promote business development as increases in local authority budgets will be more directly linked to changes in local business rates.

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

18 CLG Publication

### Business Rates Information Letter 8/2011: 2012/13 Provisional Multipliers Announcement and Additional Information

This letter covers the following:

- 2012-13 Provisional Multipliers;
- The Non-Domestic Rating Contributions (England) (Amendment) Regulations 2011;
- National Non-Domestic Rates Form 2;
- The Local Retention of Business Rates Consultation; and
- New Burden Payments: Temporary increase in Small Business Rate Relief until 30.09.12.

The provisional small business non-domestic multiplier for 2012/13 is 45.0p. The provisional non-domestic multiplier for 2012/13 is 45.8p.

<http://www.communities.gov.uk/publications/localgovernment/bril82011>

## HOUSING

19 Greater London Authority – draft Planning Guidance

### Draft Housing Supplementary Planning Guidance

Deadline for Comments: 24.02.12

This draft document sets out proposed guidance to supplement the housing policies in the recently published 2011 London Plan (LP). In particular, it provides detail on how to carry forward the Mayor's view that "providing good homes for Londoners is not just about numbers. The quality and design of homes and the facilities provided for those living in them, are vital to ensuring good liveable neighbourhoods". It is informed by the Government's draft National Planning Policy Framework which will, when finalised, replace previous national planning policy guidance, and by its new Housing Strategy for England. The draft guidance takes account of new Mayoral powers, especially those concerned with planning, housing and climate change, and it complements other Mayoral strategies. As SPG (Supplementary Planning Guidance) this document does not set new policy, but it provides guidance on how LP housing policies can be implemented most effectively, it will assist London boroughs in preparing Development Plan Documents and ensuring that these are in general conformity with the LP, and it will also be a material planning consideration when determining planning applications. Once adopted the new Housing SPG will replace the 2005 SPG and the 2010 Interim Housing SPG.

<http://www.london.gov.uk/who-runs-london/mayor/publications/planning/housing-supplementary-planning-guidance>



**GERALDEVE**

## 20 Homes and Communities Agency (HCA) Bulletin

**Monthly Housing Market Bulletin 24 November 2011**

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

- according to Nationwide and Halifax house prices rose in October, but only marginally
- both Nationwide and Halifax expect the trend of stable house prices to continue for the remainder of 2011, although Rightmove data suggests that there was a 3.1% fall in asking prices in November
- according to the RICS, London was the only region to see a rise in house prices
- the number of loans advanced for house purchases fell by 2% in September to 48,200, but this is still 3% higher than at the same time in 2010
- according to the Land Registry house prices in England and Wales fell by 0.3% in September and by 2.6% over the year
- again Land Registry figures indicate that the number of properties sold in England and Wales was 11% lower in July 2011 than in July 2010

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

## 21 Homes and Communities Agency (HCA) Bulletin

**Monthly Housing Market Bulletin 22 December 2011**

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

- Nationwide and Halifax reported little change in house prices in November
- rightmove reported a 2.7% drop in asking prices in December
- the RICS again reported that London was the only region to see any rise in house prices
- according to the RICS private rents continued to rise across the country in the three months to October
- the Land Registry reported that house prices in England and Wales fell by -0.9% in October and 3.2% over the year and that the number of properties sold in England and Wales was 6% lower during May to August 2011 than during the same period in 2010

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

## 22 CLG Statistics

**House Price Index – October 2011**

These latest house price statistics were published on 13.12.11. Key points from the release are as follows:

- in October house prices in the UK fell by 0.4% over the year and increased by 0.6% over the month (seasonally adjusted);
- the average mix-adjusted UK house price was £205,974 (not seasonally adjusted);
- average house prices increased by 0.6% over the quarter to October, compared to a decrease of 0.6% over the quarter to July (seasonally adjusted);
- average prices fell during the year in all UK countries – in England by 0.2%, in Wales by 0.5%, in Scotland by 1.5% and in Northern Ireland by 12.1%;
- prices paid by first time buyers were 0.4% higher on average than a year earlier whilst prices paid by former owner occupiers were 0.7% lower; and
- prices for new properties were on average 12.1% higher than a year earlier whilst prices for pre-owned dwellings decreased by 1.2%

<http://www.communities.gov.uk/publications/corporate/statistics/hpi102011>

## 23 Greater London Authority Consultation

**The Revised London Housing Strategy**

Deadline for Comments: 06.03.12

The Mayor's first statutory London Housing Strategy was published in February 2010 since when there have been major changes to the allocation of government funding for housing while the Localism Bill includes significant new housing and regeneration powers for the Mayor. As a result of a review of the 2010 Strategy a number of areas have been identified where change is needed and this Revised Housing Strategy follows on from this. The Mayor recognises the importance of delivering more affordable housing, more affordable accommodation that is suitable for families, better quality housing, increasing home ownership and encouraging people to become more involved with their communities leading to greater stability and stronger neighbourhoods.

<http://www.london.gov.uk/publication/revised-london-housing-strategy-public-consultation>

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24 London Assembly, Planning and Housing Committee Report

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### Bleak Houses: Improving London's private rented housing

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An investigation by the Planning and Housing Committee found that about a third of the private rented sector in London – around 280,000 homes – fails to meet the “decent homes” standard used in the social rented sector and that about one in three landlords is considered to be “rogue” – leaving tenants living in poor conditions and in fear of eviction, but the private sector is increasingly housing people who would once have lived in social accommodation. This report calls on the Mayor, boroughs and central Government to take action to address the problems inherent in the private rented sector. Its recommendations include the following:

- consideration should be given to introducing longer and more secure tenancies with protection from retaliatory eviction;
- develop the idea of a “kitemark” in the form of an “accreditation badge” – an achievable minimum standard that would apply to landlords and property;
- encourage estate agents and managing agents to require rented properties to have the “accreditation badge” before advertising them for rent;
- where public subsidy for new mixed tenure housing developments has been given to ensure that landlords offering private rented sector homes offer a range of tenancy lengths;
- review the selective licensing approach being adopted by the London Borough of Newham in terms of cost effectiveness and its ability to target improvements in the worst private rented sector housing; AND
- work with boroughs to find ways of incentivising landlords and managing agents to take part in accreditation schemes.

<http://www.london.gov.uk/publication/bleak-houses-improving-london-private-rented-housing>

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25 CLG Housing Survey Bulletin

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### English Housing Survey Bulletin: Issue 5

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This is the fifth issue of the English Housing Survey Bulletin which presents key findings from the latest Housing Survey Stock and Household reports.

<http://www.communities.gov.uk/publications/housing/ehsbulletin5>

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## CONTRACT

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26 High Court

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### Validity of contract for sale of land – s2 Law of Property (Miscellaneous Provisions) Act 1989 – written document contains no express obligation to purchase

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\* FRANCIS V F BERNDES LTD  
(2011) PLSCS 293 – Decision given 15.12.11

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**Facts:** The claimant alleged that the defendant had agreed to sell some freehold premises to himself and H for £50,000. The defendant refused to complete the sale and sold the premises to a third party. The claimant sought damages based on the market value of the property (which was alleged to have been £300,000 at the time of the agreement and £1m at the date of the claim). The alleged agreement was contained in a letter written on the defendant's headed notepaper bearing the apparent signatures of the defendant, the claimant and H stating that the defendant was “prepared to sell” the property for £50,000 on certain conditions.

**Point of dispute:** Whether the claimant's appeal would be allowed against the finding of the master that the letter did not set out in writing all the express terms of the alleged agreement, contrary to s2 of the 1989 Act, since the purchaser was not identified and nor did it set out mutual obligations to buy and sell the property. The claimant also argued that even if the agreement was void for failure to comply with s2, rectification should be granted.

**Held:** The claimant's appeal was allowed only to the extent that the claimant was granted permission to make an application to amend his particulars of claim to include a claim in restitution.

- i. The letter did not contain the critical term incorporating the express agreement that the claimant and H were to purchase the property from the defendant. The letter was no more than a counter-signed offer.
- ii. The court refused the claimant's request to advance his argument in rectification. The function of rectification was to correct a common mistake in the way that a transaction had been reduced to writing – resulting in a discrepancy between what the parties had actually agreed and the terms of the written document. It had to be assumed that the parties had actually concluded an agreement in the terms of the letter, but since they had not there was no scope for rectification. Rectification could not be used to make a document compliant with s2 by inserting into it a term that the parties had previously agreed to exclude.



**GERALDEVE**

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## CONSTRUCTION

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27 CLG letter to Building Control bodies

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### Circular letter: Building Regulations 2010 – Equality Act clarification

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This letter clarifies the relationship between the Equality Act 2010 and Part M (Access to and use of buildings) of the Building Regulations 2010. Compliance with the requirements of Part M does not signify compliance with the much broader obligations and duties set out in the Equality Act, frequently a source of misunderstanding. Part M sets out minimum requirements to ensure that a broad range of people are able to access and use facilities within buildings, while the Equality Act requires reasonable adjustments to be made in relation to accessibility

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

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## ENVIRONMENT

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28 Defra Publication

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### Flood risk and insurance: A roadmap to 2013 and beyond

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Insurance plays a key role in flood risk management. The Government has an agreement with the insurance industry, called the 'Statement of Principles', that commits insurers to continue to offer insurance to existing customers where they are at significant risk and where the Environment Agency has announced plans and notified the Association of British Insurers of its intention to reduce that risk within five years. The current agreement is due to end in 2013, but Defra is committed to ensuring that flood insurance continues to remain widely available. Three working groups have continued the dialogue on flood insurance and risk reduction and reported on their progress in an interim report in May 2011 and at a follow-up meeting in July 2011. This report provides a summary of the findings and recommendations of these working groups.

- working Group 1 identified options for managing the financial risks of flooding after 2013.
- working Group 2 identified issues and suggested improvements to the way that flood risk information is provided and shared
- working Group 3 focused on resistance and resilience measures that individuals could use to reduce their flood risk

<http://www.defra.gov.uk/publications/2011/12/19/pb13684-flood-risk-insurance/>

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## GENERAL

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29 CLG Publication

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### Unlocking growth in cities

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Cities are engines of growth and they will be critical to the UK's economic recovery. The Coalition Government is taking decisive action to improve public finances and confidence in the economy through a balanced approach led by private sector growth. The most economically important places for growth creation will be cities and their wider economic areas and a number of important steps have already been taken to help cities to drive forward growth, including the creation of Local Enterprise Partnerships and Enterprise Zones and putting more financial power into the hands of local authorities through business rate retention and new borrowing arrangements. In order to encourage growth the Government is now considering transferring more power to cities and this document sets out an initial menu of matters that it would be willing to discuss and negotiate as part of the deal-making process.

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

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30 CLG Report

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### Supporting Local Growth

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This report highlights the progress that the Government has made towards its aim of promoting strong, sustainable and balanced growth in all parts of the country with the introduction of Local Enterprise Partnerships, Enterprise Zones, a Regional Growth Fund, the New Homes Bonus and a Growing Places Fund, just some of the many new initiatives that it has introduced. To reduce the burden of regulation the Government has also abolished or simplified 160 sets of Regulations with more to follow.

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

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## 31 The Portas Review

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### **An independent review into the future of our high streets**

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This well-publicised review, published in December, considers what can be done to “put the heart back” into the centre of Britain’s high streets, so that they do not just contain shops but become destinations for socialising, culture, health, wellbeing, creativity and learning with a mix of housing, offices, sports facilities, schools, social, commercial and cultural enterprises and meeting places. The report includes a summary of its 28 main recommendations, the first ten of which are listed below:

- establish a “Town Team” – a management team for high streets;
- empower successful Business Improvement Districts to take on more responsibilities and powers;
- allow landlords to become high street investors by contributing to their Business Improvement District;
- establish a new “National Market Day”;
- remove regulations to make it easier for people to become market traders who can trade from high streets;
- consider ways in which business rates can better support small businesses and independent retailers;
- local authorities should use discretionary powers to give business rate concessions to new local businesses;
- local areas should implement free controlled parking schemes for town centres;
- consideration should be given to high street deregulation; and
- address the restrictive aspects of the ‘Use-Class’ system.

<http://www.maryportas.com/news/2011/12/12/the-portas-review/>



# GERALD EVE'S UK OFFICE NETWORK

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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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