

EVEBRIEF

Legal & Parliamentary

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EDITORIAL



Ben Aldridge
Editor

In this edition we report at Items 11 to 17 and 30 on the government's 'light touch review' of the Planning Act regime, which was launched on 13 April. The Localism Act made significant changes to the regime, providing for the abolition of the Infrastructure Planning Commission and transferring responsibility for decision making to the Secretary of State, with responsibility for examining applications delegated to the Planning Inspectorate. The existing guidance documents have been condensed and redrafted and the government is consulting on the draft guidance. This consultation runs for twelve weeks, and as ever we would urge interested parties to make their views known. A full scale review of the major infrastructure planning regime will take place in 2014 once a sufficient number of applications have passed through the system.

Elsewhere, at Item 22 we report on a consultation in which the government is seeking views on ways in which the existing REIT regime could be amended to provide social housing providers with an alternative source of finance to fund development. This consultation is to be welcomed given the challenges the sector is facing of growing demand, reduced construction grants and a difficult funding environment, and again we would urge interested parties to respond.

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

LOCALISM

01 Statutory Instrument

SI 2012/1008 The Localism Act 2011 (Commencement No. 5 and Transitional, Savings and Transitory Provisions) Order 2012

This Order brought into force on 04.04.12 the following provisions of the Localism Act:

- s1(7) and Schedule 1 (repeals related to general power of competence);
- Schedule 14 (grounds for landlords to refuse to surrender and grant tenancies under s158); and
- s237 and Schedule 25.

On 03.05.12 further provisions of the Act are brought into force relating to the London Housing Strategy, the Mayor's economic development strategy for London, the London Environment Strategy and Transport for London.

Various other provisions relating to governance are brought into force on 04.05.12 and EU financial sanctions on 31.05.12.

<http://www.legislation.gov.uk/ukxi/2012/1008/contents/made>

LANDLORD & TENANT

02 High Court

Termination of tenancy – exercise of break clause

*PCE INVESTORS LTD V CANCER RESEARCH UK
(2012) PLSCS 84 – Decision given 04.04.12

Facts: In October 2008 the claimant tenant took over the residue of an underlease of commercial premises. The term commenced on 12.10.05 and expired on 27.09.14 and the rent of £190,000 per annum was payable by equal quarterly payments in advance on the usual quarter days. The underlease contained a break clause which allowed the claimant to determine it on the expiration of the fifth year of the term by serving not less than six months prior written notice and paying the rents reserved and demanded up to the termination date. The claimant sought to exercise the break clause. It served notice on the defendant on 25.09.09 and paid the rent for the period between the last quarter day of 29.09.10 and the intended break clause date of 11.10.10, rather than for the full quarter. When the defendant sent a demand for the full quarter's rent the claimant sought confirmation that it had paid the correct sum of rent due in accordance with the break clause. No such confirmation was received and the defendant took the view that the claimant had not complied with the break clause condition and had therefore failed to terminate the underlease.

Point of dispute: Whether to allow the claimant's claim for summary judgment and a declaration that the underlease had been validly terminated. The claimant argued that the rent was only due up until the termination date, but that if a full quarter's rent was in fact due the defendant was estopped from relying on the claimant's failure to pay because it was aware that the claimant had believed it was only liable to pay part of the rent apportioned up to the termination date.

Held: The claim was dismissed.

- i. All the obligations in the underlease subsisted until its actual termination. A quarter's rent fell due on the September quarter day, payable in advance and on that day it could not be certain that the lease would terminate on the termination date. All obligations should operate until the date of termination and they should not be retrospectively changed if early termination occurred. Accordingly the claimant had failed to comply with its obligations as to payments of all rent due up to the termination date and its break notice was invalid.
- ii. The rent demand spoke for itself and the claimant therefore knew that the defendant was expecting the rent to be paid in full notwithstanding the break notice. There was no evidence to support the assertion that the claimant believed that only a reduced rent would be payable. The claimant could not take advantage of the defendant's failure to inform it that it was making a mistake in assuming that only the lesser sum of rent was payable.

PLANNING

03 Court of Appeal

Appeal against grant of planning permission – whether inspector erred in following written representation procedure after expert evidence adduced

*ASHLEY V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) PLSCS 78 – Decision given 29.03.12

Facts: A local planning authority (lpa) refused planning permission for a residential development on various grounds, including the problem of noise disturbance to neighbouring residents from cars entering and leaving the car park. The developer appealed against that decision to the Sec of State indicating that the appeal could be conducted by written representations. The lpa made no objections. The developer's representations were accompanied by a noise consultant's report (produced on the last day of the limitation period) which advised that the noise from car park movements would fall within acceptable levels. An inspector appointed by the Sec of State allowed the developer's appeal against the refusal of permission, finding that the noise levels from vehicle movements would not be significantly harmful to the amenity of adjoining residents. A was a local resident who objected to the proposed development and claimed that the inspector's decision should be quashed on the grounds of procedural unfairness.

Point of dispute: Whether A's appeal would be allowed against the decision of the judge in the court below who upheld the grant of planning permission. The judge found that A could have found out about the expert's noise report by visiting the local planning office, inspecting the documents that were going to be put before the inspector and asking for an opportunity to make further representations.

Held: The appeal was allowed. The written representations procedure had been adopted because no expert evidence was expected. That procedure was appropriate if there was no need to challenge the evidence by questioning but where it was necessary to test evidence and question witnesses a planning inquiry would be more appropriate. The noise report had been produced on the last possible day and as A had been told that any representations made after that date would not be considered by the planning inspector he could not be blamed for failing to inspect evidence that was submitted so late. Although the judge had found that the written procedure was appropriate, he had relied on the fact that the expert's report was uncontroversial, when in reality the only reason A had not opposed it was because he was not aware of it. The appeal hearing had been unfair and in breach of natural justice and the planning permission should be quashed.

04 Court of Appeal

Judicial review

*R (ON THE APPLICATION OF BERKY) V NEWPORT CITY COUNCIL
(2012) PLSCS 79 – Decision given 29.03.12

Facts: On 26.01.11 NCC granted planning permission for a mixed development. B, a local resident applied for permission to bring judicial review proceedings challenging the grant of permission, lodging his application on 26.04.11, the day after a bank holiday. By that time work on the development had started. The food store opened for business in October 2011. B's grounds of challenge to the grant of permission concerned errors and inadequacy of reasoning in the screening opinion issued by NCC to the effect that no EIA was required under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

Point of dispute: Whether B's appeal would be allowed against the decision to refuse his judicial review claim on the grounds that it had not been brought promptly or within three months from the time when the grounds for it first arose.

Held: B's appeal was dismissed.

- i. The screening opinion could have been more fully reasoned, but the development was well below the indicative criteria for an EIA development. B's allegations of bias or irrationality had no merit either.
- ii. The judge had erred in finding that the application had not been brought within three months of the grant of planning permission. That period started with the day following the grant of permission and the bank holiday should have been disregarded.



 05 Administrative court

Environmental impact assessment

*THREADNEEDLE PROPERTY INVESTMENTS LTD V SOUTHWARK LONDON BOROUGH COUNCIL
(2012) PLSCS 82 – Decision given 30.03.12

Facts: X, who proposed to construct a tall building on a site near to London Bridge station owned by Y, wrote to the lpa, SLBC, requesting an EIA screening opinion under the 1999 Town and Country Planning (Environmental Impact Assessment) Regulations. SLB issued an opinion stating that the proposed development was not an EIA development and was not likely to have significant effects on the environment. X applied for planning permission to construct a 32-storey tower. TPI, who managed a six-storey office building adjoining the development site, objected to the proposal and claimed judicial review of: (i) the refusal of the Sec of State to consider making a direction under Regulation 4(8) of the EIA regulations that the proposed development, which would be used to house students, was EIA development; and (ii) the decision to grant planning permission for X's development.

Point of dispute: Whether TPI's claim would be allowed. TPI argued that:

- i. the Sec of State had erred in law by not considering whether to make a direction under regulation 4(8);
- ii. that error vitiated the grant of planning permission; and
- iii. SLBC had erred in law in their approach to strategic policy 8 of the draft core strategy (which supported the need for student housing) and the summary reasons for giving planning permission in the decision notice were materially defective.

Held: TPI's claim was dismissed.

- i. There was no general obligation on the Sec of State to consider making a Regulation 4(8) direction. The regulation did not provide a duty, but only a power reserved to the Sec of State alone which would only be used in exceptional cases. As there had been no effective application to the Sec of State to exercise his power under Regulation 4(8) and no failure by him to act, there had been no breach of duty.
- ii. SLBC's planning committee had acted consistently with the overarching principles of planning decision-making. In the circumstances prevailing at the time there was a reasonable and lawful basis for the decision it had made to approve the proposed development and the planning officers' advice had been consistent with the general principle that the weight to be given to emerging policy depended on the stage it had reached in its progress towards finality.
- iii. The court was not persuaded that the summary reasons given in the decision notice were fatal to the planning permission itself. Although the reasons given did not fully reflect SLBC's reasoning process, B could not say that he was in any real doubt about the basis for the decision to grant planning permission.

 06 Administrative Court

Statutory power

*THE MANYDOWN CO LTD V BASINGSTOKE AND DEANE BOROUGH COUNCIL
(2012) PLSCS 86 – Decision given 17.04.12

Facts: In 2006 the claimant, M, who owned the freehold of a 800 hectare site to the west of Basingstoke sold a 900-year lease of it to the defendant council (BDBC) with the intention that it should be promoted for a high-quality housing development. In order to complete the purchase BDBC used its powers under ss226 and 227 of the Town and Country Planning Act 1990. A committee was formed to deal with matters relating to ownership of the site and it was agreed that M would be entitled to receive half of the proceeds of any development achieved before 2050. Following a change of administration in council elections later in 2006 the committee resolved to cease actively promoting the site for development. This decision was taken due to BDBC's earlier lack of success in promoting the site for allocation in the local plan, a local inspector having rejected it for inclusion due to problems with major infrastructure. Notwithstanding that during the intervening period works were carried out to improve the water and transport facilities for the site, in December 2011 BDBC took the decision not to include it in their draft core strategy which was submitted for consultation as part of the local development framework process. That decision was affirmed in a decision notice of January 2012.

Point of dispute: Whether M should be granted judicial review of BDBC's decisions of December 2011 and January 2012. M argued that BDBC had acted contrary to the objectives of the statutory power under which the site had been acquired. BDBC argued that M's claim was barred by s113 of the Planning and Compulsory Purchase Act 2004 which imposed a six-week time limit on any challenge to a "development plan document".

Held: M's claim was allowed.

- i. s113 of the 2004 Act did not preclude M's judicial review proceedings since it applied only to development plan documents. M's claim did not question a document of the kind to which s113 referred but it impugned two decisions that were antecedent to the process which would culminate in the adoption of the core strategy.

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- ii. BDBC had acquired the site under their statutory planning powers for the statutory purpose of promoting housing development on the land. There was no rational basis for BDBC's conclusion in December 2011 and January 2012 that the site was not available for development. Its December 2011 decision was not only inconsistent with the purpose for which the site was acquired and held, but was actually contrary to that purpose. BDBC had deliberately put the process for reviewing the promotion of the site onto a timetable that lay outside and beyond the process in which the core strategy would be evolved: in effect they had sought to use their control of the site as a means of delaying the development of this land that was acquired with public money for the express purpose of promoting development which was unlawful. The two decisions would be quashed and should be reconsidered.

07 Planning Inspectorate Advice

Advice produced by The Planning Inspectorate for use by Inspectors: National Planning Policy Framework (NPPF)

This leaflet contains advice to Inspectors, including the following:

- The policies in the new NPPF must be applied immediately and they apply to all decisions which have not been issued at the point of its publication;
- Normal standards of appeals service timeliness are to be applied;
- The Framework must be taken into account in the preparation of local and neighbourhood plans and is a material consideration in planning decisions; and
- The Government has set out arrangements for implementation of the Framework. For 12 months from the day of its publication, decision-takers may continue to give full weight to relevant policies in development plan documents adopted in accordance with the Planning and Compulsory Purchase Act 2004 (or published in the London Plan) since 2004, even if there is a limited degree of conflict with the Framework. In other cases and following this 12 month period due weight is to be given to relevant policies in existing plans according to their degree of consistency with the Framework.

http://www.planningportal.gov.uk/uploads/pins/advice_for_inspectors/nppf.pdf

08 CLG Publication

Main changes to the tree preservation order system in England from 6 April 2012

This document summarises the main changes which have been brought about by the Town and Country Planning (Tree Preservation) (England) Regulations 2012 which came into force on 06.04.12. The aim of the Regulations is to introduce a more unified system which is simpler for authorities to administer and easier for tree owners to understand.

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

09 CLG Guidance

Protected trees: A guide to tree preservation procedures

This leaflet, which has been written for tree owners, their neighbours and local community groups, answers some commonly asked questions about tree preservation procedures in England.

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

10 CLG Publication

Planning Act 2008: Procedures for revoking or making changes to development consent orders for nationally significant infrastructure projects: Consultation – Summary of responses

This is a summary of the responses to the consultation on procedures for revoking or making changes to development consent orders for nationally significant infrastructure projects made under the Planning Act 2008. The document also explains how the Government has taken those comments into account in finalising the procedures and the regulations in which they are set out.

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



11 CLG Consultation

**Planning Act 2008: Guidance on the pre-application process
Deadline for comments: 06.07.12**

The 2008 Planning Act created a new development consent regime for nationally significant infrastructure projects in the fields of energy, transport, water, waste and waste water (major infrastructure projects). This guidance forms part of the package of statutory instruments and guidance for the Planning Act and the major infrastructure sections of the Localism Act, and relates to both s37 (applications) and s50 (pre-application process) of the Planning Act. It covers all the main steps to be followed by an applicant prior to the submission of an application, including the pre-application consultation, the environmental impact assessment and drafting a Development Consent Order, as well as clarity on the ability to use alternatives in a draft order. The guidance also gives more specific advice about consultation for offshore wind developments where there is no obvious local authority to consult.

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

12 CLG Consultation

**Planning Act 2008: Nationally significant infrastructure projects: Application form guidance
Deadline for comments: 06.07.12**

The application form guidance has been updated to bring it into line with the Localism Act 2011 and has been made more concise in the process.

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

13 CLG Consultation

**Planning Act 2008: Guidance for the examination of applications for development consent for nationally significant infrastructure projects
Deadline for comments: 06.07.12**

The examinations guidance has also been updated to bring it into line with the Localism Act 2011 and made more concise in the process. Clarifying some of the examination procedure rules, there are now sections dealing with the purpose of the preliminary meeting and explaining what happens at specific issue hearings. The guidance also addresses the process for making changes to a Development Consent Order post submission.

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

14 CLG Consultation

**Planning Act 2008: The Infrastructure Planning (Fees) Regulations 2010: Guidance – Consultation
Deadline for comments: 06.07.12**

This note provides non-statutory guidance on the fees payable to the Sec of State when seeking a Development Consent Order for major infrastructure proposals that are determined under the Planning Act 2008. The guidance on the Infrastructure Planning (Fees) Regulations 2010 has been refreshed to bring it into line with the Localism Act 2011 and made more concise in the process. At the same time, the worked examples have been removed until more evidence of actual costs becomes available.

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

15 CLG Consultation

**Guidance on associated development: Applications for major infrastructure projects under the Planning Act 2008 – Consultation
Deadline for Comments: 06.07.12**

This guidance is intended to help those who intend to make an application for a major infrastructure project under the Planning Act 2008 to determine how the provisions of the Act in respect of associated development apply to their proposals. It has been updated in order to bring it into line with the Localism Act 2011 and to capture a recent High Court ruling on the definition of dwellings under associated development in the Planning Act 2008. The definition of associated development has been amended to clarify that in tightly constrained circumstances (where it would offset the impacts of nearby future development which the Sec of State is reasonably satisfied will be applied for), a degree of overcapacity may be applied for as associated development. This is not a regulatory or a policy change; it clarifies what may be permitted as associated development in the Planning Act.

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

16 CLG Consultation

Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land – Consultation
Deadline for comments: 06.07.12

The purpose of this document is to provide guidance to those intending to make an application for a Development Consent Order under the Planning Act 2008 which includes provision authorising the compulsory acquisition of land or rights over land. Its aim is to help promoters of major infrastructure projects understand the powers contained in the Planning Act, and how they can be used to best effect. It also aims to advise on the application of the correct procedures and statutory or administrative requirements to help ensure that the process of dealing with such orders is as fair, straightforward and accurate for all parties as possible. The new guidance has been updated to bring it into line with the Localism Act and it also clarifies that after the abolition of the Infrastructure Planning Commission the Planning Inspectorate will handle requests for certification under ss127, 131 and 132 of the Planning Act 2008.

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

17 CLG Consultation

Planning Act 2008: Consultation on proposed changes to the suite of guidance documents for the major infrastructure planning regime
Deadline for comments: 06.07.12

This consultation is on the proposed changes to the suite of guidance documents (see items 11–16 above) for the major infrastructure planning regime. It outlines the context and aims of the consultation as well as the main changes proposed in each of the documents. It also lists the consultation questions for each document.

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

18 National Flood Forum Guidance

Guidance on Insurance and Planning in Flood Risk Areas for Local Planning Authorities in England

This guidance is aimed at Local Planning Authorities (lpas) in England for use when producing Local Plans or dealing with planning applications in flood risk areas. It is designed to be considered in the context of the new National Planning Policy Framework which sets out the Government's vision for planning in England and focuses particularly on sustainable development and local decision making. In 2009 the Association of British Insurers (ABI) published "Climate Adaptation: guidance on Insurance Issues for New Developments" which offered general advice about building new developments in the context of climate change. 5 more specific recommendations contained in this document complement the ABI's 2009 guidance and aim to help lpas ensure that properties built locally are able to access competitively priced insurance cover.

<http://www.abi.org.uk/Information/61595.pdf>



RATING

19 Upper Tribunal (Lands Chamber)

Valuation of an abattoir – whether lairage exempt as an agricultural building – whether abattoir to be valued by reference to local industrial tone or by reference to agreed assessments of similar abattoirs

*CHEALE MEATS LIMITED V JOHN PHILIP RAY (VO)
RA/6/2010 – Before the President and A J Trott FRICS – Decision given 26.03.12

Property: Abattoir, Orchard Farm, Little Warley Hall Lane, Little Warley Brentwood, Essex entered in the 2005 non-domestic rating list at RV £205,000. The ratepayer contended that the rateable value was excessive when compared to similar plants and sought a reduction to £50,000.

Issues:

- i. Whether lairage forming part of an abattoir was exempt as agricultural; and
- ii. Whether the abattoir should be valued by reference to other abattoirs or based on the local industrial tone.

Held:

- i. Whilst animals were held overnight at the lairage buildings prior to slaughter, they were not used “for the keeping of livestock” within the meaning of paragraph 5(1)(a) of Schedule 5 to the Local Government Finance Act 1988 and accordingly they were not agricultural.
- ii. An abattoir is sui generis use and not in the same mode or category of occupation as an industrial building. Whilst evidence of industrial values is not on that account irrelevant and there was evidence that Valuation Officers have valued other abattoirs by reference to local industrial values, they are only the starting point. In the instant case, there was substantial evidence relating specifically to agreed or accepted assessments of other abattoirs which provided the best evidence of value.
- iii. The rateable value was assessed at £170,000.

20 Statutory Instrument

SI 2012/994 The Non-Domestic Rating and Business Rate Supplements (Deferred Payments) (England) Regulations 2012

These Regulations, which come into force on 30.04.12, amend the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 and the Non-Domestic Rating (Collection and Enforcement) (Central Lists) Regulations 1989 to make special provision in relation to the collection of non-domestic rates and business rate supplements payable in respect of the financial year beginning on 01.04.12. They also make consequential modifications to the Non-Domestic Rating (Contributions) (England) Regulations 1992 and the Council Tax and Non-Domestic Rating (Demand Notices) (England) Regulations 2003. The Local Lists Regulations and the Central Lists Regulations provide for annual rates liability to be discharged in instalments. However, under the existing instalment scheme the instalments are payable in the financial year to which the demand for payment relates.

These Regulations insert a new Schedule 1G into the Local Lists Regulations and a new Schedule 1C into the Central Lists Regulations to provide that where a ratepayer who is subject to non-domestic rates in respect of the financial year 2012/13 satisfies certain conditions, they can defer payment of a specified proportion of that liability to the financial years beginning on 01.04.13 and 01.04.14.

<http://www.legislation.gov.uk/uksi/2012/994/contents/made>

21 CLG Letter

Business Rates Information Letter (6/2012): 2012–13 Business Rates Deferral Scheme

This letter contains:

- Information on the 2012–13 Business Rates Deferral Scheme; businesses will be able to defer payment of 3.2% of their 2012–13 rates bills until 2012–14 and 2014–15. The purpose of this scheme is to give businesses more flexibility to manage their rates bills in the current economic climate, to help them manage their cashflow and to give them time to adjust to the impact of inflation; and
- A round-up of new measures: local discounts; small business rate relief; cancellation of certain business rates liabilities; and enterprise zones.

<http://www.communities.gov.uk/publications/localgovernment/bril62012>

HOUSING

22 CLG and HM Treasury Consultation

Consultation on reforms to the real estate investment trust (REIT) regime

Deadline for Comments: 27.06.12

This consultation considers the possibility of adapting the existing real estate investment trust (REIT) regime to support the creation of a social housing real estate investment trust business model in order to offer social housing providers with an alternative source of finance to fund future housing developments. The risks and benefits of REITs investing in other REITs are also considered.

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

REAL PROPERTY

23 High Court

Right to light

*CIP PROPERTY (AIPT) LIMITED V TRANSPORT FOR LONDON Commercial Leases Volume 26 Issue 2 1789 – Decision given 25.01.12

Facts: As part of the Crossrail project and the exercise of compulsory purchase powers the defendants acquired title to various parcels of land around Tottenham Court Road underground station. The third defendant, DVC, had previously owned the land and by virtue of a pre-emption agreement had the right to build above the station by way of an "oversite" development. As Crossrail is not due to be completed until 2016 DVC's right of pre-emption could not be exercised until 2017 at the earliest. The claimant, CIP, owned an adjacent property overlooking the development site, which it claimed enjoyed an ancient right to light, which CIP feared would be interfered with by the development scheme. In October 2011 DVC applied for planning permission for a scheme, but sought to assure CIP that it would not proceed with any scheme without considering the rights of third parties.

Point of dispute: Whether CIP should be granted a negative declaration that the defendants were not entitled to erect any structure that would diminish or obstruct its ancient right to light and a mandatory injunction to restrain any development that would interfere with that right.

Held: The claims were struck out. For a claimant to be entitled to a negative declaration it had to satisfy the court that the defendant had done or threatened to do something it was not entitled to do. The court also had to consider whether the declaration sought would serve any useful purpose. There was no evidence that Transport for London had encouraged DVC to pursue a development scheme, nor that it had threatened any right to light which CIP might enjoy. As far as DVC was concerned the judge held that it did not yet own the land in question and its future ownership was conditional on compliance with the terms of the right of pre-emption. There was no immediate threat to CIP by a development that would not take place for at least five years. CIP's claim against DVC was misconceived and premature, it served no useful purpose and should be struck out.

ENERGY

24 CLG Publications

Making energy performance certificate and related data publicly available: Privacy impact assessment Impact assessment

From this month Energy Performance Certificates, Display Energy Certificates and Air Conditioning Reports are to be made publicly available. These assessments consider the impacts of enabling wider access to this data and the benefits and proposed safeguards for individuals.

<http://www.communities.gov.uk/publications/planningandbuilding/epcdatapia2012>

25 CLG Publication

Making energy performance certificate and related data publicly available: Guidance for authorised recipients

This energy performance certificate data guidance is aimed at authorised recipients and describes the processes for obtaining the data in bulk. It describes who is entitled to the data, what data will be provided, the cost of making it available, where to request the data and details of the three standard packages that will be offered.

<http://www.communities.gov.uk/publications/planningandbuilding/epcdataguidance2012>



GERALDEVE

 26 CLG Publication

Changes to the Energy Performance of Buildings Framework

This document provides links to the documents which describe the April 2012 changes to the Energy Performance of Buildings framework. It is hoped that the changes will enable consumers to save money on their fuel bills by:

- the introduction of a more consumer friendly Energy Performance Certificate that is easier to understand;
- requiring better customer service from Domestic Energy Assessors;
- opening up access to the Energy Performance Certificate register; and
- amending the Regulations so that Energy Performance Certificates are provided earlier to prospective buyers and tenants in anticipation of people acting on recommendations which identify cost effective savings.

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

ENVIRONMENT

 27 Defra Research Report

Business attitudes to climate change

The purpose of this research, carried out on behalf of Defra by the Carbon Disclosure Project, was to assist in gathering evidence of the resilience of UK businesses to climate change. It found that while 80% of FTSE100 companies surveyed identified substantial risks to their business from climate change, only 46% said that they had included adaptation plans in their business strategies. The report lists the risks and opportunities from climate change identified by 91 organisations, who were also asked about what actions they are taking to prepare for the challenges presented by climate change.

<http://www.defra.gov.uk/news/2012/03/27/firms-must-prepare-for-climate-change/>

 28 Defra Guidance

Contaminated land statutory guidance

This statutory guidance is issued by the Sec of State for Environment, Food and Rural Affairs and is legally binding on enforcing authorities. It replaces the previous statutory guidance which was published as Annex 3 of Defra Circular 01/2006 but does not apply to radioactive contamination of land. Part 2A of the Environmental Protection Act 1990 contains the legal framework for dealing with contaminated land in England. This guidance explains how local authorities should implement the regime, including how they should go about deciding whether land is contaminated land in the legal sense of the term. It elaborates on the remediation provisions and how regulators should ensure that remediation requirements are reasonable, and also explains specific aspects of the Part 2A liability arrangements and the process by which the enforcing authority may recover the costs of remediation from liable parties in certain circumstances.

www.defra.gov.uk/publications/2012/04/10/pb13735contaminated-land/

 29 Department of Energy and Climate Change – Statutory Guidance

Environmental Protection Act 1990: Part IIA Radioactive Contaminated Land

This statutory guidance is issued by the Sec of State for Energy and Climate Change in accordance with s78YA of the Environment Protection Act 1990. It applies only to radioactive contamination of land and only to England. The guidance is intended to explain how local authorities should implement the radioactive contaminated land regime, including how to decide whether land is “contaminated” in the legal sense of the term. It also elaborates on the remediation provisions of Part 2A such as the goals of remediation and how the Environment Agency should ensure that remediation requirements are reasonable. Specific aspects of the Part 2A liability arrangements are explained as well as the process by which the Environment Agency may recover the costs of remediation from liable parties in certain circumstances.

<http://www.decc.gov.uk/assets/decc/11/meeting-energy-demand/nuclear/4472-draft-statutory-guidance-covering-radioactive-cont.pdf>

GENERAL

30 CLG consultation

Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land – Consultation **Deadline for comments: 06.07.12**

The guidance on the compulsory acquisition of land has been refreshed to bring it into line with the Localism Act 2011 and has been made more concise in the process. In addition, it clarifies that after the abolition of the Infrastructure Planning Commission, the Planning Inspectorate will handle requests for certification under ss127, 131 and 132 of the Planning Act 2008.

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

GERALD EVE'S UK OFFICE NETWORK

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

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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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EVEBRIEF

Legal & Parliamentary

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SCOTLAND

GENERAL

01 Scottish Government Consultation

Consultation on a Strategy for the Private Rented Sector **Deadline for Comments: 10.07.12**

This consultation has been produced in partnership with the Scottish Private Rented Sector Strategy Group and the findings from it will inform the final Scottish Government strategy for the sector which will be published later this year. The overall aim is to produce “a thriving and professional private rented sector that offers good quality homes and high management standards; inspires consumer confidence; and encourages growth and investment to further develop and improve the sector”. Three specific strategic aims for the next ten years are proposed:

- For growth and investment – to increase overall housing supply, and for more investment to develop and improve the existing sector;
- For better quality – of property management, condition and energy efficiency enabled by more targeted regulation; and
- For more informed choices – to support and encourage consumer driven improvement of the sector.

<http://www.scotland.gov.uk/Publications/2012/04/5779>



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WALES

PLANNING

02 Statutory Instrument

WSI 2012/789 The Town and Country Planning (Compensation) (Wales) Regulations 2012

These Regulations came into force on 13.03.12 and prescribe various matters for the purposes of s108 of the Town and Country Planning Act 1990. s108 provides for the payment of compensation in certain cases where planning permission for development granted by a development order or a local development order is withdrawn and where on an application for planning permission for that development, the application is refused or permission is granted subject to conditions. Sections 108(2A) and (3B) to (3D) limit the circumstances in which compensation is payable. These Regulations prescribe types of development for the purposes of s108(2A) and (3C), prescribe the manner in which planning permission is to be withdrawn and prescribe the manner, and maximum period, in which notice of withdrawal, revocation, amendment or directions is to be given.

<http://www.legislation.gov.uk/wsi/2012/789/contents/made>

03 Statutory Instrument

WSI 2012/791 The Town and Country Planning (Control of Advertisements) (Amendment) (Wales) Regulations 2012

The 1992 Regulations made provision, among other things, for the form of applications for express consent to display an advertisement. W.e.f. 30.4.12 Regulation 2 of these Regulations substitutes Regulation 9 of the 1992 Regulations. The substituted regulation requires applications for express consent to be made on a form published by the Welsh Ministers and specifies the procedure for making an application for express consent.

<http://www.legislation.gov.uk/wsi/2012/791/contents/made>

04 Statutory Instrument

WSI 2012/792 The Town and Country Planning (Trees) (Amendment) (Wales) Regulations 2012

The 1999 Regulations make provision, among other things, for the form of tree preservation orders and for applications for consent to carry out work on trees subject to an order. These Regulations, which come into force on 30.04.12, insert a new Regulation 9B into the 1999 Regulations to make provision for the form and content of applications for consent for tree works in Wales.

<http://www.legislation.gov.uk/wsi/2012/792/contents/made>

05 WSI 2012/793 The Planning (Listed Buildings and Conservation Areas) (Wales) Regulations 2012

These Regulations come into force on 30.04.12 and consolidate with amendments the 1990 Regulations and subsequent amending instruments, insofar as they apply to Wales. Most provisions of the principal Regulations are carried forward with, in some cases, minor drafting changes. Some changes are made to the form and content of applications for listed building and conservation area consents and applications to vary or discharge conditions attached to such consents and various procedural provisions are made.

<http://www.legislation.gov.uk/wsi/2012/793/contents/made>

06 Statutory Instrument

WSI 2012/801 The Town and Country Planning (Development Management Procedure) (Wales) Order 2012

W.e.f. 30.04.12 this Order consolidates with modifications the provisions of the Town and Country Planning (General Development Procedure) Order 1995 ("the 1995 Order") and subsequent amending instruments, insofar as they apply to Wales. It also includes provisions regarding the application of this Order to the Crown which are similar to the provisions in article 4 of the Town and Country Planning (Miscellaneous Amendments and Modifications relating to Crown Land) (Wales) Order 2006 ("the 2006 Order") which modified the 1995 Order. Article 4 of the 2006 Order is consequently revoked. This Order provides for procedures connected with planning applications, consultations in relation to planning applications, the determination of planning applications, appeals, local development orders, certificates of lawful use or development, the maintenance of registers of planning applications and related matters.

<http://www.legislation.gov.uk/wsi/2012/801/contents/made>

07 Statutory Instrument

**WSI 2012/802 The Planning Act 2008 (Commencement No. 1)
(Wales) Order 2012**

Article 2 of this Order brings into force, on 30.12 the following provisions of the Planning Act 2008, in relation to Wales, so far as they are not already in force:

- s188 (local development orders: removal of requirement to implement policies);
- s197 and Schedule 11 (appeals: miscellaneous amendments);
and
- s238 and Schedule 13 so far as they give effect to the repeals specified in the Schedule to this Order, which relate to local development orders.

<http://www.legislation.gov.uk/wsi/2012/802/contents/made>