EVEBRIEF

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EDITORIAL

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Editor

Validity of rating appeals may not be at the top of many people's interests, however, against the backdrop of regulations that do not always allow for a fresh appeal, if a prior one was invalid, and the significant burden that rates have become, for many businesses validity can become an important, if rather technical, point. Items 10 and 11 relate to cases where the Valuation Officers concerned attempted to treat appeal as invalid and to have them struck out but outside the normal period for doing so.

In both cases the decisions of the President of the Valuation Tribunal for England shows a common sense approach rather than a rigid application of the regulations. In one case the proposal was held to be valid, as the error was insignificant and related to information of no relevance to the resolution of the dispute, in the other the President found that although the error was material, it was unreasonable and irrational for the Valuation Officer to claim invalidity, and had the appearance of using a technicality to immunise the assessment of rateable value from scrutiny.

The procedures surrounding lodging appeals against rating assessments, meeting prescribed time frames for negotiation and preparation of Statements of Case, and so on, are now quite onerous with many and varied ways for the unprepared to trip up and for an appeal to be formally struck out. It is because of this, that these decisions, offering ratepayers and their representatives some protection from inappropriate reliance on technicalities, are particularly welcome. The possibility of appeals against them remains however.

GERALDEVE

LANDLORD & TENANT

01 Court of Appeal

Renewal of business tenancy – whether respondent precluded from relying on s30(1)(g) opposing grant of new tenancy as immediate, but not competent, landlord

*FROZEN VALUE LTD V HERON FOODS LTD
(2012) PLSCS 89 – Decision given 24.04.12

Facts: The appellant held an underlease of business premises which expired on 14.07.10, three days before the expiry of the headlease of the whole property which was held by the appellant's immediate landlord, the respondent. Just before its underlease expired the appellant served on the competent landlord under the headlease a request for a new lease under s26 of the Landlord and Tenant Act 1954, and it applied to the county court under s24 for the grant of a new tenancy. On 24.02.10 the respondent was granted a new headlease for a term of 15 years from 18.07.10 so that it then became the appellant's competent landlord as defined in the 1954 Act. The respondent served a counter–notice on the appellant under s26 opposing the grant of a new tenancy on the grounds that it intended to carry on its business at the premises after the expiry of the underlease (s30(1)(g)). However, between 17.05.09 and 24.02.10 the respondent had been the appellant's immediate landlord, but not the competent landlord.

Point of dispute: Whether the appellant's appeal would be allowed against the county court ruling that it was not entitled to a new tenancy since the respondent had a genuine intention to operate a retail business on the premises and was not precluded from relying on ground (g). The appellant argued that the respondent could not rely on ground (g) since, under the five year rule set out in the 1954 Act, a landlord was barred from relying on s30(1)(g) unless he had acquired the relevant interest more than five years before the end of the tenancy. It argued that the temporary interruption of the respondent's status as competent landlord prevented it from satisfying the rule.

Held: (By a majority) the appeal was allowed. s30(2) prevented a new landlord who arrived towards the end of the lease from asserting his right to occupy the demised premises for his own purposes. A landlord who was otherwise entitled to rely upon ground (g) was not precluded from doing so by s30(2) if the interest of an inferior landlord, who was not a competent landlord, was merged into the inferior landlord's interest during the relevant five year period. However, in this case, the respondent had not been the landlord at all, for the purposes of s30(2), between 17.05.09 and 24.02.10 and the respondent's "interest of the landlord" was only created on 24.02.10. The nine month break in the respondent's status as competent landlord was fatal to its case and it could not rely on ground (g) to oppose the appellant's application for a new tenancy.

PLANNING

02 Court of Appeal

Legitimate expectation

*R (ON THE APPLICATION OF GODFREY) V SOUTHWARK LONDON BOROUGH COUNCIL
(2012) PLSCS 91 – Decision given 24.04.12

Facts: The former site of a district centre providing community services, including a stand–alone community hall, was earmarked for redevelopment. A project brief prepared in 2002 by SLBC stated that a developer would be required to carry out improvements or create a new infrastructure that would include financing and building a new community hall on the site if the old one was to be demolished. In 2007 SLBC's adopted UDP included a policy 7P which required the site to be used as a community centre and health centre. In 2010 planning permission was granted for a mixed use development, including a health centre and a smaller community centre within the same building.

Point of dispute: Whether G's appeal would be allowed against the decision of the court below to refuse its application for judicial review of the decision to grant permission for the development. G argued that there was a legitimate expectation that better and larger facilities would be provided and that SLBC had failed to give effect to an understanding with community members that there would be a free–standing community hall, the project brief and its own policy 7P of the UDP.

Held: The appeal was dismissed.

i. Only when a failure to give effect to a promise would be so unfair as to amount to an abuse of power would it override other public policy considerations. Changes of policy are more likely to be accepted as taking precedence over the interests of groups which enjoyed expectations generated by an earlier policy; the standard to be applied when a substantive legitimate expectation was claimed on the basis of a representation or promise by a public authority was a rigorous one.

ii. Policy 7P of the 2007 UDP required a community centre as part of the proposed development but made no specific requirement as to its size. It was necessary to assess current needs, which was a material consideration, and this had been done thoroughly by the planning officer in his report.

Even assuming that there was an intention in 2002 to include a large, separate community centre in the development and that intention was made known to community representatives, that fell well below substantive legitimate expectation. There was a delay of many years before the relevant planning application was considered and SLBC were obliged to have regard to the current development plan which required an assessment of current needs. The 2002 assessment and project were not material considerations in the statutory sense to an assessment made in 2010. It had not been an abuse of power to assess current needs rather than apply an assessment of needs made many years before.

03 Administrative Court

Challenge to development plan – whether claimant applying out of time

*BARKER V HAMBLETON DISTRICT COUNCIL
(2012) PLSCS 99 – Decision given 09.05.12

Facts: The appellant, B, sought to challenge, under s113 of the Planning and Compulsory Purchase Act 2004, HDC's decision not to allocate any of his land for housing and employment in the local development plan document (DPD). The DPD was adopted on 21.12.10 and under s113 an application to the High Court had to be made with six weeks of the DPD being adopted. The statutory time limit for B's application therefore expired on 01.02.11, based on the premise that time started to run on 22.12.10, the day after the adoption resolution had been passed. B's claim form and particulars of claim were delivered by hand to the court building after it had closed on 01.02.11. Since there was no letter box the envelope was posted under the outer door of the court. The claim form was sealed the next day with a date of issue of 02.02.11.

Point of dispute: Whether B's appeal would be allowed against the decision of the judge in the court below that his application had been made out of time. The judge rejected B's arguments that his application was made on 01.02.11 when the documents were put under the door, and/or that the six weeks should be taken to have commenced on 31.12.10 as HDC had published documents stating that although the DPD had been adopted on 21.12.10 applications to the High Court could be made within six weeks of 31.12.10. In the appeal HDC sought to rely on the decision in Hinde v Rugby Borough Council (2011) EWHC 3684, decided after the earlier judgment in this case, when the Administrative Court held that time started to run on the actual day of adoption.

Held: The appeal was dismissed.

i. The judge in Hinde had correctly decided that s113 required the calculation of the six weeks to start with the date of adoption. The period was stipulated in the primary legislation. This meant that time had expired on 31.01.11 and the issue with the delivery of the documents to the court on 01.02.11 was irrelevant.

ii. HDC had no power to extend the statutory time limit of six weeks starting with the date of adoption.

04 Administrative Court

Challenge to rear garden being included in green belt in core strategy

*HUNDAL V SOUTH BUCKS DISTRICT COUNCIL
(2012) PLSCS 90 – Decision given 30.03.12

Facts: In 1998 the claimant, H, purchased a house with front and rear gardens. The 1999 local plan included the rear garden within the green belt for the first time. In accordance with their duty to produce development plan documents for their area under Part 2 of the Planning and Compulsory Purchase Act 2004 the defendant council, SBDC, prepared and adopted a core strategy in February 2011 which continued the designation of the garden as within the green belt. The core strategy was independently examined by an inspector.

Point of dispute: Whether H should be granted an order quashing the core strategy to the extent that it included his rear garden in the green belt. He contended that the inspector had erred in law in concluding that the core strategy was sound because she had failed to determine whether it was consistent with the national policy as set out in PPG2. She had not had regard to the full history of the green belt boundary at H's property because of a mistaken belief that she could not change the boundary by reason of events which took place before the 1999 local plan was adopted, and in the light of those errors SBDC should not have adopted the core strategy in relation to the rear garden land.

Held: H's application was dismissed.

i. As the 1999 local plan had been adopted without any challenge to its validity SBDC were entitled to proceed on the basis that it was valid and lawful. The purpose of the core strategy was not to rectify historic errors of law, but to set out prospective overall strategy to be adopted in relation to the future development and use of land. It was not the inspector's role to substitute his or her decision as to the policy that should be adopted, but to examine the legal compliance of the lpa's policy as a whole. Provided that it satisfied the criteria laid down in s20 of the 2004 Act that was the end of the matter. The inspector had approached this matter in the correct manner.

ii. H's alternative case – that the existence of an alleged historic error meant that there was at the time of the inspector's report and the adoption of the core strategy an exceptional circumstance which necessitated a change in the boundary of the green belt – also failed. The presence of an error which resulted from the failure in the past to follow national policy did not necessitate a change to the green belt boundary for the purposes of para 2.7 of PPG2. The overriding policy of PPG2 was that the green belt boundaries should remain fixed once they had been validly determined, and only if a relevant circumstance occurred that required a change in the future for planning purposes would it be exceptional.

05 Administrative Court

Screening opinion for combined heat and power plant

*BURRIDGE V BRECKLAND DISTRICT COUNCIL
(2012) PLSCS 90 – Decision given 26.04.12

Facts: The interested party applied to the defendant council (BDC) for planning permission to construct an anaerobic digester with a combined heat and power plant (CHP). The proposed digester was to receive cattle slurry, chicken litter and maize, which it would convert into a biogas; this in turn would be fed into the CHP where it would be converted into heat and electricity with the latter being supplied to the National Grid. The development fell within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.
BDC issued a screening opinion stating that the development was not likely to have significant effects on the environment and that no environmental impact assessment (EIA) was required. The interested party later amended its original application as it decided to relocate the CHP to another site with a pipeline connecting the two.
BDC considered that this development was not of a sufficient size to fall within Schedule 2; it did not issue any new screening opinions and resolved to grant planning permission for both.

Point of dispute: Whether B's application for judicial review of the planning permissions would be allowed. B contended that BDC should have issued new screening opinions that considered the cumulative effect of the two applications together since when considered with the original application the development under the second application did fall within Schedule 2.

Held: B's claim was dismissed.

i. No screening opinion had been required for the second planning application. B was relying on government guidance contained in Circular 02/99, but the parts on which she relied were concerned not with whether an application fell within Schedule 2, but with whether, if it did, there were likely to be significant environmental effects, and the reference to considering more than one application together was made in the same context. Nor was there any indication in this case that the applicant had deliberately split a single project into separate planning applications in order to avoid a screening opinion.

ii. BDC was not required to issue a new screening opinion on the original application so as to consider the combined environmental effects of that application together with those of the second application. The original application had already been subject to a screening opinion and no material change to the development under that application had been made such that it could be said that it was not the same as that which had been screened.

06 Administrative Court

Planning applications for gypsy sites – changes in government planning policy – whether breach of Town and Country Planning (Inquiries Procedure) (England) Rules 2000

*MURPHY V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) PLSCS 98 – Decision given 08.05.12

Facts: The claimants belonged to the Irish travelling community and occupied caravans on green belt land. In the first case planning permission had been refused by the lpa for use of the land as a traveller site; in the second the claimant with a temporary planning permission had his application for a permanent permission refused. Both matters involved green belt considerations and were referred to the Sec of State for consideration, but he dismissed both applications, although a two–year temporary permission was given to the second claimant.

Point of dispute: Whether the claimants' applications to quash the Sec of State's decisions would be allowed. These claims raised issues as to the implications of: (i) his purported revocation of all regional spatial strategies (RSSs) in July 2010 and their subsequent reinstatement in November 2010 after the revocation was found to be unlawful and quashed (Cala Homes (South) Ltd v Sec of State for Communities and Local Government); and (ii) his announcement in August 2010 of his intention to withdraw the national planning guidance for gypsy and traveller sites in Circular 01/2006. The claimants contended that the failure of the Sec of State to invite further representations before issuing his decision meant that they had been unfairly deprived of the opportunity to make representations on those matters, contrary to the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 and to principles of natural justice.

Held: The claims were dismissed.

i. The Sec of State had considered whether to refer back to the parties, but had decided in each case that it was not necessary. There was no new evidence, nor new matters of fact. In the circumstances of these cases there had been no breach of the 2000 Rules, nor any breach of the wider principles of natural justice. His decision not to refer back to the parties had not been unreasonable.

ii. The Sec of State had been entitled to take into account, as material considerations, his decisions to revoke RSSs and to withdraw Circular 01/2006 and the weight that he gave to those considerations was a matter for him. Taking different approaches for built accommodation and travellers did not offend anti–discrimination legislation.

iii. In the case of the second claimant the Sec of State had been entitled to refuse a permanent permission on the ground of prematurity and he had given adequate reasons for disagreeing with the inspector. A decision maker could postpone a decision relating to a proposed development until a relevant emerging local planning policy had been settled. The Sec of State had given adequate reasons for his view that the possible grant of a permanent permission for a gypsy caravan site should be determined via the emerging core strategy process rather than through an individual application for planning permission.

07 Statutory Instrument

SI 2012/1100 The Planning and Compulsory Purchase Act 2004 (Commencement No. 13) Order 2012

This Order brought into force on 30.04.12 the following provisions of the Planning and Compulsory Purchase Act 2004, in relation to Wales, insofar as they are not already in force:

- s40 and Schedule 1 (local development orders); and
- s41 (effect of revision or revocation of development order on incomplete development).

http://www.legislation.gov.uk/uksi/2012/1100/contents/made

08 CLG Statistical Release

Planning Applications: October to December 2011

From October to December 2011 authorities undertaking district planning in England:

- received 111,500 applications for planning permission, 1% more than in the corresponding quarter in 2010;
- decided 108,600 planning applications, 1% fewer than in the same quarter the previous year; and
- granted 88,700 permissions, a small decrease compared to the same period in 2010.

In the year ending December 2011 district planning authorities:

- received 472,800 applications, a decrease of 2% on the year ending December 2010;
- decided 430,700 planning applications, 2% fewer than during the year ending December 2010;
- granted 350,400 permissions, 1% more than in the year to December 2010;
- decided 60% of major applications in 13 weeks, 71% of minors and 83% of others in 8 weeks. In the year to December 2010 the corresponding figures were 68%, 76% and 86%; and
- decided 7% fewer major residential decisions than in the year to December 2010.

http://www.communities.gov.uk/documents/statistics/pdf/2136336.pdf

09 Planning Officers Society Advice Note

Advice Note on Transition to the Localism Act and the National Planning Policy Framework

This note contains advice and information to authorities considering how to respond to the enactment of the Localism Act and the publication of the finalised NPPF. The note focuses on the following five matters:

- the new flexibility in relation to the local plan;
- some implications of the duty to cooperate;
- how LPAs can update or amend their local plan to make it compliant with the NPPF;
- retaining national or regional policy which will otherwise be lost; and
- development management decision–making and the NPPF.

http://www.planningofficers.org.uk/POS–Library/POS–Publications/Advice–Note–on–Transition–to–the–Localism–Act–and–the–National–Planning–Policy–Framework_342.htm

RATING

10 Valuation Tribunal for England (VTE)

Validity of proposal with error in rent stated

** IMPERIAL TOBACCO GROUP V MS JANET ALEXANDER VO
Valuation Tribunal for England 306018810247/511N05 Before: The President. Decision given 24.04.12

Facts: The ratepayer's agent submitted a proposal in which they incorrectly stated the hereditament to be occupied freehold. After the Valuation Officer (VO) had issued an invalidity notice the agent issued a correcting proposal which stated that the rent was £40,500 pa when the correct figure was £44,019 pa. The VO did not issue an invalidity notice but challenged validity at the VT hearing.

Held: Whilst one of the requirements for a valid proposal (Non–domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009) at Regulation 6 (3) (a) "is the amount payable each year by the proposer" and the VO was entitled to raise invalidity as a preliminary issue at the substantive appeal, the President of the VTE held:

- The relatively minor error in the rental information (in the context of a Rateable Value difference between the parties of £600,000) was not only insignificant, but it was of no relevance to the determination of the issue in dispute;
- It would be unconscionable to prevent the appeal being determined on its merits by an explicable and irrelevant mistake; and
- The proposal was therefore valid, notwithstanding the error.

11 Valuation Tribunal for England (VTE)

Validity of proposal with error in rent stated

**MAYDAY OPTICAL V MS KAREN KENDRICK VO
Valuation Tribunal for England 524017577018/072N10
Before: The President – Decision given 24.04.12

Facts: This appeal was determined together with the Imperial Tobacco case (See item 10) by the President of the VTE given the similarity of the issues. The ratepayer's appeal in this case was originally struck out by the Valuation Tribunal as invalid due to an error in the rent stated on the proposal form, but the President set aside that decision on the basis that it had not been made clear to the ratepayer that the VO intended to apply at the hearing for the proposal to be treated as invalid.

Issues: The issues which arose for consideration were:

1. Is the VO entitled to raise invalidity at the hearing not previously having issued an invalidity notice?
2. Does the mistake in the rent render the proposal invalid?
3. Is the VO acting unlawfully in asserting invalidity?

Held:

1. Where an invalidity notice has not been issued in accordance with Regulation 8 (1) within four weeks of receipt, the issue of invalidity may be raised subsequently (whether at the hearing or otherwise) only in very limited circumstances. In this case, the VO was in possession of information that would have enabled her to identify the error in rent stated during the initial four week period, but the onus is on the ratepayer to supply accurate information and the VO is entitled to raise invalidity after the four week period.
2. The proposal stated the rent to be £9,500 pa when it was £10,000. The error was outside the category of clerical, trivial or de minimis, and whilst there could be circumstances in which errors of such magnitude could be ignored, in the present case the error made the proposal potentially invalid.
3. The President found that the VO's attempt to treat the proposal as invalid was "an unattractive display of pedantry and formalism". He found the approach to be "unreasonable and irrational and therefore unlawful". The proposal was held to be valid notwithstanding the error.

LEASEHOLD REFORM

12 Court of Appeal

Enfranchisement – whether property qualifying for enfranchisement as house "reasonably so–called" within s2(1) of the Leasehold **Reform Act 1967 ("the 1967 Act")**

**MAGNOHARD LTD V EARL CADOGAN
(2012) PLSCS 96 – Decision given 04.05.12

Facts: M, the appellant, was the tenant of a property in central London under a lease granted in 1986. The property had been constructed in 1888 with an overall square footage of 20,000 sq ft and comprised a basement, ground and five upper floors. There were six residential suites, one on each floor, a housekeeper's flat and three small shops. By 2010 there were eight flats and the retail element occupied slightly less than 7% of the total area. In September 2010 M served a notice on EC, the landlord, under s8 of the 1967 Act to acquire the freehold of the property.

Point of dispute: Whether M's appeal would be allowed against the ruling of the court below that the property did not qualify for enfranchisement under the 1967 Act, s2(1) of which requires that the building is designed or adapted for living in and is a house reasonably so–called. Although it was common ground between the parties that the property was designed or adapted for living in, the judge concluded that it was not a "house" for the purposes of s2(1), since it was a block of flats with three shop units.

Held: M's appeal was dismissed. The words "reasonably so–called" in s2(1) were intended to be words of limitation and their purpose was to exclude buildings that would otherwise come within other parts of the definition. The question was not whether it was possible to call a building a house, but whether it was reasonable to do so. A purpose built block of flats could not reasonably be called a house. This building had been constructed, laid out and used as a block of substantial self–contained flats throughout its 120–year existence and could not reasonably be called a house, and the additional feature of the three shops meant that the building was not a wholly residential building.

HOUSING

13 Homes and Communities Agency Bulletin

Housing Market Bulletin 2012 – April

The Housing Market Bulletin provides the latest information on the housing market, the economy and the housebuilding industry. The information, which is drawn from several different sources, includes:

- house price changes from indices such as Nationwide, Halifax, the Land Registry and Royal Institute of Chartered Surveyors (RICS);
- housing market forecasts;
- housing starts and completions as reported by the Department for Communities and Local Government and updates from key housebuilders; and
- mortgage trends and information on the economy overall.

Both Nationwide and Halifax reported falls in house prices during March (–1.0% and –2.2% respectively). However the Land Registry, whose data is more comprehensive being based on completions and including cash sales, states that prices in February in England and Wales were 0.1% higher than in January, but fell by 0.6% over the year. London continues to have the strongest housing market. The number and value of house purchase loans is significantly higher than they were during the dip one year ago, although constraints in credit conditions continue to be felt.

UK growth was negative for a second consecutive quarter which means that the country is in recession again. The UK Bank Rate remained at 0.5% and CPI and RPI inflation levels are stable although remaining at higher than target levels. Unemployment fell for the first time since May 2011 but remains high in comparison with the long term average.

http://www.homesandcommunities.co.uk/ourwork/market–context

14 CLG News

Public land housing target

The Housing Minister has announced that sufficient surplus public land to build over 100,000 new homes is to be released. The unused land includes empty offices, former hospital sites and empty public service buildings formerly occupied by the Ministry of Defence, the Department of Health and the Homes and Communities Agency. This means that the Government is on track to exceed the Prime Minister's stated aim of releasing enough land for 100,000 homes by 2015.

http://www.communities.gov.uk/news/corporate/2140487

15 RICS Survey

RICS Housing Market Survey – April 2012

This survey has found that there has been a slight reversal in the previously improved tone of activity and price indicators.

- 19% more surveyors recorded price falls rather than rises (up from 11% in March).
- However, 63% of respondents reported no price changes, and of the ones that did see a fall in prices, 81% reported falls in the 0–2% range.
- Levels of demand and supply remain unchanged.
- The three month price outlook (seasonally adjusted) declined in April, reflecting the still fragile level of confidence in the market.
- Anecdotal evidence from surveyors suggests that the recent announcement of the economy re–entering recession has been the main reason for the less upbeat outlook.
- There remains considerable regional divergence. London is the only region recording price rises, while the West Midlands and Wales are seeing the most severe falls in prices.

http://www.rics.org/hms

CONSTRUCTION

16 RICS News

Legislative update on the Energy Performance of Buildings Directive

- The EU recently published a comparative methodology framework and guidance document for calculating cost–optimal levels of minimum energy performance requirements for buildings and building elements.
- The regulations published on 21.03.12 are part of the implementation of the recast Energy Performance of Buildings Directive (EPBD) and will require Member States to set their national building regulations in accordance with the cost–optimal calculation methodology.
- The guidelines released on 14.04.12 are intended to support the application of the regulations by presenting accepted principles for cost calculations.
- Although the European Commission introduced requirements to define minimum energy performance standards in all Member States through the 2002 EPBD, it did not, at that time, give guidance on the desired ambition level. The recast of the EPBD introduced a cost–effectiveness thinking and a provision that national energy performance requirements should be comparable, and of the same level of ambition, in all Member States.
- The directive defines 'cost–optimal levels' as the energy performance level which leads to the lowest cost during the life cycle of the building. The methodology differentiates between new and existing buildings and between different categories of buildings, and it takes into account energy–related investment costs, maintenance and operating costs, and disposal costs.
- The regulation will require regular reporting from Member States in order to reflect technical progress and change in the national circumstances. The first report is due by March 2013.
- The calculation methodology will apply from 09.01.13 to buildings occupied by public authorities and from 09.07.13 to other buildings.
- In practice, the relevance of the regulation for RICS members is that the parts of the building codes dealing with the energy efficiency standards will be regularly tightened further across the EU.

http://www.rics.org/site/scripts/news_article.aspx?newsID=2691

ENVIRONMENT

17 European Commission Paper

A Blueprint to Safeguard Europe's Water Resources – consultation document

This paper contains an outline of the policy options that will be considered for the impact assessment of the Blueprint to Safeguard Europe's Water Resources ("the Blueprint"). It builds on the preliminary results of the analysis of the key challenges faced by Europe's water resources and identified in the implementation of EU water policy. Over the years the EU's water policy has shifted from addressing mainly health concerns to consideration of the environmental impacts of major water–using sectors and significant improvements have been achieved. The Water Framework Directive ("WFD") was adopted in 2000 leading to a more integrated approach to water management based on the concept of "river basin management". A number of issues, including pollution, over–abstraction and climate change, will make the achievement of EU water policy goals a challenge but in order to respond to these and ensure the achievement of these objectives, it is necessary to clarify whether and what additional actions and tools are needed at Member States and EU level. The Blueprint will try to do this with the long term aim of ensuring availability of good quality water for sustainable and equitable use in line with the WFD objective. The Blueprint will focus on the following areas:

- improving the implementation of current EU water policy;
- fostering the integration of water and other policies' objectives; and
- where necessary, seeking the completion of the current policy framework, especially in relation to water quantity, efficiency and adaptation to climate change.

http://www.rics.org/site/scripts/download_info.aspx?fileID=11846

18 Natural England Review

Microeconomic Evidence for the Benefits of Investment in the Environment – review (NERR033)

The aim of this review is to help Natural England staff make the case for the natural environment to decision makers such as Local Authorities and Local Economic Partnerships. It highlights the economic value of providing good quality green spaces in urban areas, for example:

- People are prepared to pay 19% more for a home near to a park;
- People with good access to green space are 24% more likely to be physically active. Lack of exercise places a huge burden on the economy, costing the UK an estimated £8.2 billion per year;

- A 10% increase in green space in a city the size of Manchester could prevent a temperature rise of more than three degrees Centigrade since concrete and other hard surfaces retain heat much more than trees, plants and grass; and
- Improvement in air quality. It is estimated that poor air quality reduces average life expectancy by seven or eight months.

http://publications.naturalengland.org.uk/publication/32031

GENERAL

19 Court of Appeal

Human rights – opposition to licence to disinter and relocate human remains

*R (ON THE APPLICATION OF RUDEWICZ) V SECRETARY OF STATE (2012) PLSCS 89 – Decision given 24.04.12

Facts: A 27–acre estate near to Henley–on–Thames had been owned by a Roman Catholic religious order which used it as a school, a retreat and a conference centre. The Polish priest who founded the school was accorded almost saint–like status by its members and when he died in 1964 he was buried on the estate in accordance with his wishes. In 2008 the estate was deconsecrated and sold to a company. It applied to the Sec of State under s25 of the Burial Act 1857 to disinter the priest's remains and relocate them to a nearby cemetery where other members of the religious order had been buried. This application was opposed by 2000 members of the Polish community, including the appellant, his nearest living relative, who contended that the priest's remains should be left undisturbed so that they could visit his grave.

Point of dispute: Whether to allow the appellant's appeal against the decision of the court below not to grant judicial review of the Sec of State's decision to grant the company's application. In reaching its decision, the Sec of State had regarded as very important the wishes of the deceased's next of kin – in the case of religious orders the head would be considered as next of kin to its members meaning that removal of the priest's remains would reunite him with his former brothers. If his remains had stayed on the estate access to his grave by visitors might have been denied by the new owners. The appellant argued, inter alia, that the Sec of State had reached a decision which was disproportionate and in breach of her human rights contrary to Articles 8 and 9 of the European Convention on Human Rights.

Held: The appeal was dismissed.

i. It was for the Sec of State to decide on what grounds and in what circumstances he should grant a licence under s25, and apart from an obligation to act rationally and otherwise in accordance with the general law there should be no operative fetter or presumption.

ii. The Sec of Sate's decision to grant a licence had not been irrational. An important reason for granting a licence was to enable those wishing to visit the priest's grave to do so.

iii. With regard to the appellant's human rights it was difficult to see how her private life could fairly be said to be involved since she was a distant relative of the priest's and had never met him. While the exhumation might offend her and the other objectors' religious feelings it would not affect their right to hold or manifest those beliefs.

20 British Council for Offices Report

An Analysis of the new Lease Accounting Changes on the UK Real Estate Market

It is anticipated that the impact of the lease accounting changes on the real estate industry will be substantial as it will require companies to re–evaluate their real estates (CRE) strategies and the changes may lead to significant shifts in behaviour and CRE decisions. This report explores previous literature on lease capitalisation and focuses on the impact on the UK real estate market. The objective of this study was to identify the key implications of the changes and to analyse the magnitude of their impact on the UK real estate industry.

21 RICS Research Report

Locational Investment – Where to target investment for maximum economic returns

This paper considers the questions of what should be built, when, where and why to ensure responsible use of limited UK public resources, as well as the question of how investment in necessary infrastructure can be targeted locationally to enable sustainable settlement growth. The role of cities and how they are functioning in the world today are examined, as is the concept of the "mega–city region"

http://www.rics.org/site/scripts/download_info.aspx?fileID=11938

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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

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SCOTLAND

PLANNING

01 Statutory Instrument

SSI 2012/131 The Town and Country Planning (General Permitted Development) (Fish Farming) (Scotland) Amendment Order 2012

W.e.f. 01.06.12 this Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 ("the 1992 Order") which specifies in Schedule 1 the classes of development to which permitted development rights apply. Where such rights apply, an application for planning permission is not needed. This Order extends permitted development rights to the placing or assembly of certain equipment within the area of an existing fish farm.

http://www.legislation.gov.uk/ssi/2012/131/contents/made

GERALDEVE

ENVIRONMENT

02 Scottish Government Consultation

Consultation on Proposals for an Integrated Framework of Environmental Regulation
Deadline for Comments: 04.08.12

This consultation invites views on:

- Changes to the structure of environmental protection legislation in order to create a new, integrated framework for the permissions which SEPA uses to control activities that could be harmful to the environment; and
- Changes to the enforcement tools which SEPA uses to deter non–compliance. The aim is to bring forward a more joined–up and flexible range of sanction to reflect the more joined–up framework for permissions and to provide a balance to the more proportionate, risk–based approach which SEPA will take.

http://www.scotland.gov.uk/Publications/2012/05/6822

WALES

03 Welsh Assembly Government Consultation

Proposals for a Sustainable Development Bill
Deadline for Responses: 18.07.12

This consultation invites views on:

- the Welsh Government's approach to a sustainable development duty that applies to organisations delivering public services;
- its approach to the role and functions of a new independent sustainable development body;
- the barriers to taking more long–term, joined–up decisions, and how to remove them;
- evidence on promoting sustainable development;
- reviewing existing legal duties and simplifying them in the proposed Sustainable Development Bill; and
- the advantages and disadvantages of defining "sustainable development" in law.

http://new.wales.gov.uk/consultations/sustainabledevelopment/sdbill/?lang=en

NORTHERN IRELAND

04 Department of the Environment Guide

Building On Tradition – A Sustainable Design Guide for the Northern Ireland Countryside

This document is intended to assist those who are involved with sustainable development in the Northern Ireland countryside to understand the requirements of PPS21. It will be used as a development management tool and will be a material consideration in the determination of planning applications and appeals for development proposals outside settlement limits.

http://www.planningni.gov.uk/building_on_tradition_–_a_sustainable_design_guide_for_the_northern_ireland_countryside_.htm