EVEBRIEF

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LOCAL AUTHORITIES GET THEIR FAIR SHARE?

Tony Chase
Editor

We report at Items 10 to 14 of this edition a plethora of 'Statements of Intent' by the Government in relation to the Local Government Finance Bill currently going through initial readings in The House of Lords. The fact that these statements are necessary rather highlights the enormous complexity of the proposed business rates retention scheme which will allow local authorities to retain a portion of the increase in their rates.

At the start of the scheme in 2013/14 a baseline funding level will be established for each local authority based on its level of spending at that time; a system of 'tariffs' and 'top-ups' will then be applied, with the Government taking away some of the business rate income from authorities where this exceeds current spending and topping up the income for authorities which are in the converse position. All authorities will then keep the 'local share' – set at 50% – of all their business rates growth, but adjustments may be made under the "Safety Net and Levy" arrangements (Item 11).

Critics of the scheme consider the 50% share insufficient, and also point out that the Government's ability to "reset" the tariffs and top-ups in 2020 gives authorities little incentive to promote growth as they are guaranteed the 50% share only for seven years at most – and in practice much less for income from new development which is not nearing completion at the start of the scheme.

At Item 18 we report on a decision of the Lands Chamber on a large compulsory purchase compensation claim. It is of considerable help in clarifying the law in relation to the use of post valuation date 'comparables' and on the principle of 'piercing the corporate veil', whereby legally separate but closely related companies can in appropriate circumstances be treated as one for compensation purposes. Somewhat more notable is the decision that capital gains tax liability (or more accurately, in this particular case, corporation tax on chargeable gains) can be a proper subject for compensation if, but for the compulsory acquisition, the property would not have been disposed of until a later date or CGT liability would not have been incurred. This in effect reverses the Lands Tribunal's decision in an earlier case on this issue.

Tony Chase

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LOCALISM

01 CLG Guidance

Community Right to Challenge: Statutory Guidance (Draft)

This guidance contains further explanation of the legislative framework for the Community Right to Challenge contained in Part 5, Chapter 2 of the Localism Act 2011, The Community Right to Challenge (Expressions of Interest and Excluded Services) (England) Regulations 2012, and The Community Right to Challenge (Fire and Rescue Authorities and Rejection of Expressions of Interest) (England) Regulations 2012. The Localism Act was enacted on 15.11.11, but the Community Right to Challenge provisions will commence at the same time as the secondary legislation comes into force. This guidance remains in draft and subject to changes as a consequence of changes to secondary legislation following its passage through Parliament.

http://www.communities.gov.uk/publications/localgovernment/righttochallengestatguidance

LANDLORD & TENANT

02 Court of Appeal

S30(1)(g) Landlord and Tenant Act 1954

*HUMBER OIL TERMINALS TRUSTEE LTD V ASSOCIATED BRITISH PORTS (2012) PLSCS 105 – Decision given 10.05.12

Facts: Land on which an oil terminal was situated was leased by the appellant (HO) from the respondent authority (ABP). The leases expired in December 2009 and following the breakdown of negotiations to extend them HO commenced proceedings for the grant of new tenancies. These were resisted by ABP who argued, relying on s30(1)(g) of the Landlord and Tenant Act 1954, that it intended to occupy the premises in order to provide port facilities and services for the import and export of oil. In the High Court it was held that ABP had established its ground (g) opposition, the judge concluding, as a matter of fact, that it had the requisite intention to reoccupy the premises at the end of the leases (the subjective element) and that it had a reasonable prospect of being able to bring about the desired result (the objective element). (See Evebrief, Volume 33(11) i03).

Point of dispute: Whether HO's appeal would be allowed against the High Court decision. It challenged the legal basis upon which the judge had approached the objective element of the test under s30(1)(g). It argued that it was not legitimate to consider the viability of ABP's stated intention on the hypothesis that it had already succeeded in opposing the renewal of the tenancies and that the correct question was whether ABP had been able to show the requisite intention that would enable it to oppose their renewal.

Held: HO's appeal was dismissed. The judge had approached the question of requisite intention correctly. He had to assess the objective element of ABP's stated intention by making the required statutory assumption that it was ABP, and not HO, who was in possession of the premises – and therefore, necessarily, on the assumption that HO's tenancies had terminated. His findings had been made on the correct statutory assumption and they showed that the objective element of the required intention had been met.

03 Court of Appeal

Determination of interim rent

*HUMBER OIL TERMINALS TRUSTEE LTD V ASSOCIATED BRITISH PORTS (2012) PLSCS 112 – Decision given 18.05.12

Facts: The facts were as detailed in Item 2 above. The claimant (HO) applied to the court to determine the level of interim rent payable under s24D of the Landlord & Tenant Act 1954 for its continued occupation and use of the demised property pending a final decision on whether new leases should be granted.

Point of dispute: The main issue in dispute was the level of interim rent payable by HO for a lease of an oil jetty that protruded approximately 1 km into the Humber estuary and provided seven berths for ships. Under the terms of the lease HO was entitled at the end of the term to remove the "Lessee's works", which included pipes and loading and unloading equipment that it had installed, so the question was whether the interim rent should be determined on the assumption of a letting of a bare jetty. Secondly, the terms of the lease exempted HO from paying ship and goods dues that the defendant, ABP, as harbour authority would otherwise be entitled to charge for ships using the jetty under the Harbours Act 1964 and the question arose as to whether a willing tenant of the jetty would pay a higher rent to reflect the benefit of exemption from these charges.

Held: The application was determined as follows:

i. The governing obligation on the court as set out in s24D(1) was to set a level of rent "which it is reasonable for the tenant to pay". The contributions of both sides to the oil jetty had to be taken into account.

ii. For the purpose of assessing the interim rent the tenancy to be assumed was an open market letting on a tenancy from year to year and otherwise assuming the same terms as were included in the oil jetty lease including the exemption from ship and goods dues.

iii. It was difficult to see why anyone would want to take a yearly tenancy of a bare jetty. In setting a reasonable rent under s24D the court was not required to imagine a bare jetty and arrive at a purely nominal interim rent that would be unfair and unreasonable between the parties.

iv. The notional tenancy was not, however, to be treated as a demise also of property that the tenant had installed and was entitled to remove from the oil jetty at the end of the lease – that was to be disregarded.

v. The jetty should be valued according to the depreciated replacement cost (DRC) method whereby it was assumed that the potential willing buyer of a particular asset would not pay more to acquire it than it would cost to acquire an equivalent new one, but disregarding the cost of the Lessee's works and applying a discount of 40% for depreciation and a decapitalisation rate of 11%.

vi. The agreed dues exemption incentive period had now expired and HO and the oil companies had received the benefit for which they had bargained. The interim rent should not be set at a level that continued to afford the full exemption.
The interim rent should take into account the commercial value of the exemption. A willing landlord and a willing tenant could be expected to negotiate an additional element in the annual rent to reflect the exemption, dividing up the commercial benefit between themselves.

04 Court of Appeal

Guarantor's liability for assignee's rent

*GREENE KING PLC V QUISINE RESTAURANTS LTD (2012) PLSCS 119 – Decision given 24.05.12

Facts: GK was the landlord and QR (the appellant) was the tenant of premises pursuant to an underlease for a term expiring in 2032. The second appellant – the parent company of QR – guaranteed QR's obligations under the lease. In 2007, when the underlease was assigned to a third party (the assignee), both the appellants guaranteed its liabilities in respect of the rent and tenant's covenants. By clause 8 of the licence to assign GK undertook to use all reasonable endeavours to give notice in writing to the second appellant if any rent payable by the assignee was more than two months in arrears. After a few months arrears of rent had built up GK served a notice on the appellants under s17 of the Landlord and Tenant (Covenants) Act 1995 in respect of the last six months' rent, but it had not previously served a notice under clause 8 in respect of rent unpaid for at least two months. GK issued proceedings to recover the rent arrears.

Point of dispute: Whether the appellants' appeal would be allowed against the ruling of the judge in the court below that compliance with clause 8 of the licence was not a condition precedent to the appellants' liability. Its breach gave rise to a liability in damages, but on the evidence no loss had been suffered and only nominal damages were awarded.

Held: The appeal was dismissed. Compliance with clause 8 was not a condition precedent to liability under the guarantee. The giving of notice was not expressed as a pre–condition to the operation of the guarantor's covenant, but was a separate obligation of GK in the main body of the licence. The second appellant could only succeed on the basis that a breach of clause 8 by GK had released both the appellants from further performance of the guarantee. It was not possible to attribute to the parties to the licence an intention to treat a breach of clause 8 as going to the root of the contract so as to entitle the appellants to be discharged from their liabilities as guarantors. Clause 8 had not been intended to operate as a condition, but merely to give the second appellant a warning of a problem with the assignee so that he could take informal steps to rectify the situation and minimise his exposure.

PLANNING

05 Administrative Court

Appeal against refusal of planning permission for wind farm – whether inspector failing to have regard to regional and national policies promoting renewable energy

*SEA & LAND POWER & ENERGY LTD V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2012) PLSCS 121 – Decision given 29.05.12

Facts: The claimant, SLPE, was refused planning permission to construct a wind farm on land in Great Yarmouth, the main reason for the refusal being that the development would have an adverse impact on important landscapes and open countryside, contrary to local plan policy. An inspector appointed by the Sec of State dismissed SLPE's appeal against the refusal, finding that although there was a commitment at national, regional and local level to producing energy from renewable resources and that the development would play an important part locally in meeting the government's targets for renewable energy supply, the development would cause material harm to the character and appearance of the area.

Point of dispute: Whether SLPE's application to quash the inspector's decision would be allowed. SLPE contended that the inspector had erred in law by failing to have due regard to the renewable energy policies in the regional spatial strategy (RSS) for the East of England or had failed to give adequate reasons for her decision. Relying on a supplement to PPS 1 which stated that national policies were a material consideration that could supersede the policies in the development plan, SLPE also argued that the inspector should have given primacy to national policy over local plan policy where there was a conflict between them.

Held: The claim was dismissed.

i. Reading the inspector's letter fairly and in good faith, it was apparent that she had taken RSS policies into account. She had made the decision after the judgment in R (Cala Homes (South) Ltd) v Sec of State for Communities and Local Government 2010 46 EG 116 (CS) which quashed an earlier purported revocation of all RSSs.

ii. The inspector's reasons for her decision had been adequate. It would be clear to an informed reader of the decision letter that planning permission had been refused because of the material harm that the wind farm would cause to the character and appearance of the area.

iii. The inspector had not erred in her approach to PPS 1. PPS 1 did not require the inspector to give primacy to national policy over local policy, but merely provided that national policies were a material consideration that could supersede the policies in the development plan. They would not necessarily do so and a balancing exercise had to be carried out. On a proper reading of the decision letter the inspector had had regard to all the relevant policies and carried out the requisite balancing exercise.

06 Upper Tribunal (Lands Chamber)

Tree Preservation Order (TPO) – compensation claim in respect of loss caused by refusal of consent to fell tree

**KEEPERS AND GOVERNORS OF JOHN LYON FREE GRAMMAR SCHOOL V WESTMINSTER CITY COUNCIL (2012) PLSCS 114 – Decision given 03.05.12 – Member: N.J. Rose FRICS

Facts: A detached house on land belonging to the claimants suffered cracking damage which they alleged was caused by a robinia tree growing on adjacent land belonging to WCC. An arboricultural consultant recommended removal of the tree. However, WCC made it subject to a TPO and in February 2005 refused a formal application for permission to fell the tree. The underpinning works and repairs to the claimants' property came to more than £68,000.

Point of dispute: Whether the claimants' claim for compensation for the cost of the underpinning, under s203 of the Town and Country Planning Act 1990 and article 9 of the TPO, would be allowed. WCC denied liability to pay compensation, arguing: (i) that in order to show that loss had been caused by the refusal of consent the claimants needed to establish that continuing damage to their property would occur in the future through the retention of the tree, as a consequence of the refusal; and (ii) in the light of article 9(4)(b) causation on that issue could only be established by reference to matters that were or should have been foreseeable to WCC at the time when the decision to refuse consent was made.

Held: The claim was allowed.

i. Compensation was payable under article 9(1) of the TPO for loss or damage caused or incurred in consequence of the refusal of consent to fell the tree. The claimants had to establish both that the loss or damage had been caused or incurred and that it was in consequence of the refusal of consent. The claim was for the cost of preventive works and the test of causation was whether it had been reasonable for the claimants to carry out the works when they did. On the evidence the previous damage had been caused by subsidence as a result of water extraction by the robinia and at the time of the underpinning works there was a risk of future subsidence.

ii. Article 9(4)(b) provided a defence for the compensating authority where the loss or damage was not reasonably foreseeable at the time when consent was refused. There was enough information available to WCC to indicate that the damage to the property was caused by the robinia tree and that there was, on the balance of probabilities, a real risk of further subsidence in the future. A reasonable compensating authority would have foreseen the risk of future subsidence and the need for underpinning.

iii. WCC were liable for the full cost of the underpinning works; the works and their cost were both reasonable, notwithstanding that the costs exceeded the estimate put forward when the application was made.

07 English Heritage publication

Good Practice Guide for Local Heritage Listing

This guide describes how local heritage listing, backed by the National Planning Policy Framework, can help to recognise local distinctiveness and character so as to ensure that these values are taken into account when consideration is being given to changes that will affect the historic environment. It is the first comprehensive guide to local heritage listing in England.

http://www.helm.org.uk/upload/pdf/local-listing-guide.pdf?1339470898

08 Town and Country Planning Association (TCPA) Report

Creating Garden Cities and Suburbs Today

A Garden Cities and Suburbs Expert Group convened by the TCPA has identified the need for urgent action in the following five principal areas to address barriers to the development of a new generation of world–class communities:

- Vision, leadership and governance: the Government must make a commitment to the Garden City principles while local authority advocacy of Garden Cities and Suburbs is also important, and communities should be at the heart of debates about a locality's future;
- Unlocking land: access to the right land at the right price needs to be achieved, and the key to this is for local authorities, landowners and developers to enter into a Garden City Joint Venture of Local Development Agreement;
- Investing in infrastructure – balancing risk and reward: the Government needs to provide certainty about policy and fiscal measures in order to de–risk investment. Local authorities should consider actions such as prudential borrowing against income from the New Homes Bonus;
- Planning ahead: a vision for sustainability must be integral to new Garden Cities developed today, while an effective strategic approach is needed in order to maximise certainty for business and reap the benefits of economies of scale; and
- Skills co–ordination and delivery: the government should offer a "one–stop shop" offering local authorities and developers direct access to statutory and support bodies that will influence the evolution and content of emerging policies.

http://www.tcpa.org.uk/resources.php?action=resource&id=1084

RATING

09 Statutory Instrument

SI 2012/1292 The Central Rating List (England) (Amendment) Regulations 2012

These Regulations, which will come into force on 15.06.12, amend Part 12 of the Schedule to the 2005 Regulations to reflect changes in ownership and occupation of certain long distance pipelines.

http://www.legislation.gov.uk/uksi/2012/1292/contents/made

10 CLG Statement of Intent

Business rates retention scheme: The central and local shares of business rates – A Statement of Intent

The Government's White Paper "Local Growth: realising every place's potential" outlined a new approach to local growth, shifting power away from central government to local authorities, citizens and independent providers. This statement sets out how locally collected business rates will be shared between central and local government, containing details of the grants from central government to local authorities that will be included within the rates retention scheme. The local share will be fixed at 50% until any reset of the system; the Government does not intend to reset the system until 2020 at the earliest, except in exceptional circumstances.

http://www.communities.gov.uk/publications/localgovernment/businessratescentral

11 CLG Statement of Intent

Business rates retention scheme: The Safety Net and Levy – A Statement of Intent

The Rates Retention Scheme is to include a safety net to protect local authorities from significant "negative shocks" to their income by guaranteeing that no authority will see its income from business rates fall beyond a set percentage of its spending baseline. This safety net will be funded by a levy on the disproportionate financial benefits that some authorities will experience as a result of business rates growth caused by the uneven distribution of business rates bases and the different spending needs of local authorities. The Local Government Finance Bill provides for the making of regulations about the calculation and operation of safety net and levy payments due to and from authorities. This statement contains information about the Government's current proposals for the content of those regulations.

http://www.communities.gov.uk/publications/localgovernment/businessratessafety

12 CLG Statement of Intent

Business rates retention scheme: Renewable Energy Projects – A Statement of Intent

The Government is committed to allowing communities that host renewable energy projects to keep the additional business rates that these generate. This Statement sets out the way in which the Government intends to define renewable energy projects.

http://www.communities.gov.uk/publications/localgovernment/businessratesrenewable

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13 CLG Statement of Intent

Business rates retention scheme: Pooling Prospectus

As part of the rates retention scheme local authorities will be able voluntarily to pool their business rates, giving them scope to generate additional growth through collaborative effort and to smooth the impact of volatility in rates income across a wider economic area. This document sets out the opportunities that pooling presents and the process for formally designating pools, and invites local authorities to come forward with their pooling proposals by 27 July.

http://www.communities.gov.uk/publications/localgovernment/businessratespooling

14 CLG Statement of Intent

Business rates retention scheme: The economic benefits of local business rates retention

This analytical paper provides further detail about the economic impacts of the business rates retention scheme, responding to a commitment made in the Impact Assessment published on 19.12.11.

http://www.communities.gov.uk/publications/localgovernment/businessrateseconomic

15 CLG Statistics

National Non–Domestic Rates to be collected by local authorities in England 2012–13 (Forecast)

The latest statistics release includes data from 2008–09 to 2012–13 and updates the statistics released on 25.05.11. The key points from the latest release are as follows:

- It is estimated that the contribution from the local lists is expected to increase by 5.1% to £21.3 billion in 2012–13;
- Between 2008–09 and 2012–13 the contribution from the local lists is expected to have increased by £2.6 billion or 14%; and
- Although it has only 15% of the population London accounts for 29% of the contribution to the national pool.

http://www.communities.gov.uk/publications/corporate/statistics/nondomesticrates201213f

HOUSING

16 CLG Statistics

House Building: March Quarter 2012, England

- There were 24,140 housing starts in the March quarter (seasonally adjusted), 11% fewer than during the previous quarter.
- Completions were up by 6% to 31,010 (seasonally adjusted).
- Private enterprise housing starts (seasonally adjusted) were 85% lower than during the previous quarter, whilst housing association starts were also down, by 21%.
- Seasonally adjusted starts are currently 42% above the March 2009 trough, but still 50% lower than their 2005 December quarter peak. Completions are 36% below their 2007 March quarter peak.
- During the 12 months to March 2012 there were 104,970 housing starts, 6% fewer than during the 12 months to March 2011. The number of housing completions reached 117,870 in England in the 12 months to March 2012, 6% more than during the 12 months to March 2011.

http://www.communities.gov.uk/publications/corporate/statistics/housebuildingq12012

17 RICS Publication

Residential Policy

This sets out RICS policy for all aspects of the residential sector and contains recommendations for the Government and the sector to deliver the legislation, policy and regulation that will create a vibrant and sustainable land and construction sector. The RICS is inviting comments and will publish an updated version based on member feedback early next year.

http://www.rics.org/site/scripts/news_article.aspx?newsID=2738

COMPENSATION

18 Upper Tribunal (Lands Chamber)

Relevance of post–valuation date evidence, compensation for Capital Gains Tax and 'piercing the corporate veil'

*** BISHOPSGATE PARKING (NO 2) LIMITED V THE WELSH MINISTERS ACQ/459/2010 – Members: The President and N.J. Rose – Decision given 29.03.12

Facts: BPL2 held the long leasehold interests in three multi–storey car parks in the centre of Cardiff all let on occupational leases to NCP. The Welsh Development Agency compulsorily acquired BPL2's interests and title vested in March 2007. BPL2 was a wholly–owned subsidiary of Powerfocal Ltd which had raised debt finance to fund the acquisition of the properties by BPL2 and would suffer bank breakage costs and other penalties due to the sale of the interests.

Points of Dispute: The matters to be addressed by the Tribunal included inter alia:

i. Whether evidence of post–valuation date transactions was admissible as 'comparables'. BPL2 argued that the value of the car parks must be assessed as at the valuation date and that, in accordance with s.5A, Land Compensation Act 1961, anything which happened after that date was to be ignored.

ii. Whether compensation could be claimed for CGT liability which could have been avoided or delayed in the absence of compulsory acquisition. BPL2 contended that as a property investment company it held the interests long term and had it chosen to dispose of them it would have done so by way of a corporate sale not by a sale of the properties as individual assets and therefore would not have crystallised any CGT liability. WM argued that CGT had been held in Harris v Welsh Development Agency (1999) to be merely a latent liability and therefore not compensatable.

iii. Whether Powerfocal was entitled to 'pierce the corporate veil' and claim compensation under s.5(6) LCA 1961 for its losses although it had no legal interest in the properties.

Held:

i. Section 5A requires that no adjustment is to be made to the valuation in respect of anything which happens after the valuation date. Evidence of a post valuation date event may however be relied on to establish an objective fact as at the valuation date – e.g. a comparable may provide evidence of what a hypothetical purchaser and vendor would have agreed.

ii. The Tribunal did not accept that any compensation which reflected the claimant's CGT liability would offend the principle of equivalence – that principle could in fact be offended if such compensation were not provided. If on the evidence there would, in the absence of the acquisition, have been no disposal until a later date or the owner could have transferred the land in a way that did not constitute a disposal for CGT purposes then, contrary to the decision in Harris, the element of CGT liability due to the acquisition may be compensatable.

iii. The decision in DHN Food Distributors Ltd v Tower Hamlets LBC (1976), relied upon by Powerfocal, had not been overruled and was therefore authority that, where one company in a group owns the land and another is in lawful occupation for the purposes of the business of the group, the corporate veil may be pierced so as to give the second company an entitlement to compensation for disturbance. There was nothing however which entitled Powerfocal, as a group company not in occupation, to recover compensation under s.5(6).

(Editor's note: Gerald Eve's Partner Alex Gillington gave evidence on aspects of the claim on behalf of BPL2 and Powerfocal.)

COMPULSORY PURCHASE

19 Administrative Court – Leeds

Compulsory Purchase Order (CPO) in respect of village green – Sec of State refusing to confirm CPO – whether permissible to acquire land compulsorily for "wellbeing" purposes

**R (ON THE APPLICATION OF BARNSLEY METROPOLITAN BOROUGH COUNCIL) V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2012) PLSCS120 – Decision given 24.05.12

Facts: The claimant local authority (BMBC) made a CPO in purported exercise of its powers under the Local Government Act 1972 to acquire an area of land that was a registered village green under the Commons Act 2006. The land, which was next to a housing development built in the 1980s, should have been transferred to BMBC as a condition of the permission for the development but when this did not happen a third party was registered with possessory title to the land. A group of travellers moved onto the land and BMBC obtained an injunction prohibiting its use for residential purposes. In its statement of reasons for the CPO BMBC stated that it wished to have proper control of the land in order to ensure that it was maintained and available for public use as an amenity area, relying on the power under s121 of the 1972 Act to acquire land "for any purpose for which they are authorised by this or any other public general Act"; the stated purpose of the CPO was the promotion of the social and environmental wellbeing of their area pursuant to s2 of the Local Government Act 2000.

Point of dispute: Whether to allow BMBC's application for judicial review of the Sec of State's decision not to confirm the CPO, the Sec of State having taken the view that the CPO was not authorised by the relevant statutory provisions. BMBC relied on statutory guidance contained in s3 of the Local Government Act 2000 to the effect that a local authority's power under s2 to promote the economic social and environmental wellbeing of its area could be regarded as a "power of first resort" of which innovative and imaginative use was encouraged.

Held: BMBC's claim was dismissed. The CPO was precluded by s121(2) of the 1972 Act. If a local authority were empowered to acquire land compulsorily purely for the "economic, social or environmental wellbeing" of the local area some quite radical acquisitions might be sought to be justified, and this was unlikely to have been Parliament's intention when the 2000 Act was passed. Land could not be acquired compulsorily by a local authority simply for the "benefit, improvement or development" of the local area, as that could only be achieved by agreement. The Sec of State had been correct in his view that the CPO could not be justified by a combined use of s2 of the 2000 Act and s121 of the 1972 Act.

REAL PROPERTY

20 High Court

Date of service of appeal against award under Party Walls etc Act 1996

*FREETOWN LTD V ASSETHOLD LTD (2012) PLSCS 111 – Decision given 21.05.12

F**acts:** The appellant and the respondent, who owned neighbouring properties, were in dispute in relation to development work that the appellant intended to carry out. Under s10(1) of the Party Walls etc Act 1996 the parties' surveyors appointed a third surveyor who made an award on 11.07.11. The appellant sought to appeal the award in the county court.

Point of dispute: Whether the appellant's appeal should be struck out on the grounds that it had been lodged out of time. The issue was when the 14 day time limit for appealing the award under s10(17) of the 1996 Act began. The appellant argued that when the award was sent by post time began to run on the date the award was received or deemed to have been received. The respondent, on the other hand, contended that when the method of service of the award was statutorily specified as an option, in this case sending the award by post, time began to run when it was posted.

Held: The time for appeal started to run on the date that the award was posted by the third surveyor. The governing provision was s15 of the 1996 Act which should be construed as treating service by post as effected when a document was consigned to the post, as this provided greater certainty of proof of service than would one which depended upon evidence of receipt. The court was bound by the judgment of the Court of Appeal in CA Webber (Transport) Ltd v Railtrack plc [2003] EWCA Civ117. The award was served on the appellant on 22 or 23 July 2011 which meant that their appeal lodged on 8 August 2011 was out of time.

TORT

21 Court of Appeal

Trespass by advertising hoarding

*ENFIELD LONDON BOROUGH COUNCIL V OUTDOOR PLUS LTD (2012) PLSCS 101 – Decision given 09.05.12

Facts: OP was granted a licence to erect and maintain a backlit advertising hoarding on land owned by S. However, when the hoarding was put up three steel supports trespassed onto land owned by ELBC. Over the years various changes occurred – OP was granted a second licence for a new hoarding and it entered into an agreement with another company granting it exclusive rights of use. A council planning officer recommended its removal and at about the same time a Land Registry search revealed the trespass.

Point of dispute: Whether ELBC's appeal would be allowed against the decision of the judge in the court below to award it only nominal damages for OP's admitted trespass, on the grounds that ELBC had failed to discharge the burden of showing that OP had derived any financial benefit from the trespass: if it had realised that a trespass was being committed it would have ensured that the hoarding was erected wholly on S's land.

Held: The appeal was allowed. The judge had asked himself the wrong question by considering what would have happened if the question of a possible trespass had been appreciated by the parties before the first hoarding was erected. The starting point was the admitted trespass which took place over a period of five years and the function of the hypothetical negotiation was to ascertain the value of the benefit of that trespass to a reasonable person in the position of OP. The value of that benefit was the price which a reasonable person would pay for the right of user, or the sum that might reasonably have been demanded as a quid pro quo for permitting the trespass. An alternative possibility that would eliminate the trespass itself could not be taken into account since that would negate the purpose of the exercise. The court had the benefit of an expert's evidence about the hypothetical licence fees that would have been agreed between two properly advised commercial parties, and the expert considered that the fees would have been split 50/50. Damages would be assessed for the relevant period on the basis of the expert's unchallenged evidence.

CONSTRUCTION

22 CLG Statistics

Code for Sustainable Homes and Energy Performance of Buildings: Cumulative and Quarterly Data for England, Wales and Northern Ireland up to end of March 2012

The latest official statistics on the Code for Sustainable Homes and Average Energy Efficiency (SAP ratings) were released on 24.05.12. The statistics in this release show the number of dwellings that have been certified to the standards set out in the Code Technical Guide. Key points from the latest release include the following:

- 64,662 post construction stage certificates and 113,236 design stage certificates were issued up to 31.03.12;
- 16% of homes with post construction certificates and 28% per cent of those with design stage certificates were built for the private sector, the remainder having been built for the public sector;
- The majority of the certificates issued since April 2007 at design stage (77%) and at post construction stage (85%) have been awarded a three star rating; and
- For the quarter January – March 2012 the average energy efficiency (SAP) rating of new homes was 79.4 in England and 80.3 in Wales. This is a decrease of 3.0 points for England and 1.4 points for Wales compared to the same quarter in 2011.

http://www.communities.gov.uk/publications/corporate/statistics/codesustainablesapq12012

TRANSPORT

23 London First publication

Crossrail 2: Supporting London's growth

In October 2011 London First established a working group, chaired by the former Transport Sec Andrew Adonis, to examine the need for additional transport capacity to meet future demand and support London's continued competitiveness. In particular, the group was tasked with assessing the case for a large–scale intervention in the form of Crossrail 2 and with considering what kind of scheme it should be; to this end it held a series of discussions with TfL, Network Rail, the GLA, HS2 Ltd and others on the future challenges facing London's transport networks and how these might be addressed. This paper sets out the working group's initial conclusions on the need for Crossrail 2 and identifies a number of key principles that should underpin further work.

http://www.londonfirst.co.uk/documents/120515_Crossrail_2_–_Supporting_London's_growth_report.pdf

GENERAL

24 College of Estate Management Publication

Sustainable Buildings: Smart, Green and People–Friendly

This paper discusses ways in which the next generation of "smart" buildings will facilitate better working environments and higher standards of green design.

http://www.cem.ac.uk/OurResearch/ReportsAndPublications/ResearchPapers.aspx?id=1778

25 Centre for Cities Report

Making the Grade – the impact of office development on employment & city economies

The Centre for Cities is a research and policy institute which works with cities, business and Whitehall to develop and implement policy that supports the performance of urban economies.
The change in the structure of the UK's economy from being principally manufacturing based to a services based one means that the provision of office space is very important for the future economic growth of its cities, but this report finds that some of Britain's most successful cities have not seen large increases in office space supply, notwithstanding high demand. It explores patterns of office development by looking at the case studies of two large cities, Bristol and Manchester, and two smaller ones, Cambridge and York, to gain a better understanding of how the office development market differs in these places. It concludes that there is a bias towards larger cities in the office development industry, as smaller cities are viewed as too risky to invest in, an attitude which could limit their growth in the future.

http://www.bco.org.uk/research/researchreports/detail.cfm?rid=186&cid=0

26 Committee on Climate Change report

How local authorities can reduce emissions and manage climate risks

There is currently no requirement for local authorities to take action on climate change. This coupled with limited funding means there is a significant risk that local authorities will not develop and implement sufficiently ambitious low–carbon plans. This report emphasises the crucial role councils have in helping the UK meet its carbon targets and preparing for the impacts of climate change, outlining specific opportunities for reducing emissions and highlighting good practice examples from a number of local authorities. The Committee recommends that a statutory duty and/or additional funding is needed to ensure local authorities have stronger incentives to act.

http://www.theccc.org.uk/reports/local–authorities

GERALDEVE

27 Report

Thames Tunnel – Summary report on phase two consultation

The purpose of the Thames Tunnel project is to reduce substantially the amount of untreated sewage which enters the River Thames when the existing sewerage system exceeds its capacity.
The proposed new tunnel will capture the untreated sewage before it enters the river, bringing long–term benefits for the environment and people who use the river. The report on phase two consultation is in three parts:

- The summary report, a non–technical summary of the feedback that has been received;
- The main report which provides an overview of the supportive and neutral feedback comments, together with objections, issues and concerns raised; and
- The supplementary report which sets out in comprehensive detail all the feedback and comments received.

This document is the summary report.

http://www.thamestunnelconsultation.co.uk/doclib/summary–report–on–phase–two–consultation/

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THE SUNDAY TIMES 100 BEST COMPANIES TO WORK FOR 2012

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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 2012/165 The Town and Country Planning (Development Management Procedure) (Scotland) Amendment Regulations 2012

These Regulations, which will come into force on 01.07.12, amend the 2008 Regulations by inserting a definition of 'historic battlefield' and introducing a requirement upon a planning authority to consult the Scottish Ministers in certain cases where an application for planning permission is made for development which may affect an historic battlefield.
This requirement will only apply to applications made on or after 01.08.12.

http://www.legislation.gov.uk/ssi/2012/165/contents/made

HOUSING

02 Statutory Instrument

SSI 2012/151 The Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2012

These Regulations, which will come into force on 01.07.12, make certain amendments to the 2005 Regulations which prescribe the information that must be provided and the fees that are payable in relation to landlord registration.

http://www.legislation.gov.uk/ssi/2012/151/contents/made

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GENERAL

03 Scottish Government consultation

Consultation on the licensing of caravan sites in Scotland Deadline for Comments: 13.08.12

This paper seeks views on ways in which the licensing of caravan sites in Scotland can be improved in order to help protect the welfare of permanent residents. The Scottish Government is principally concerned with improving standards on sites where residents live permanently, but views are sought on the types of sites that should be covered by any new licensing regime.

http://www.scotland.gov.uk/Publications/2012/05/6927

04 Scottish Government consultation

Consultation on a policy on architecture and placemaking for Scotland: 2012

Deadline for Comments: 07.09.12

The aim of this consultation is to inform the future shape of architecture policy in Scotland. It identifies four key themes around which the policy on architecture and placemaking could contribute to the future shape of Scotland:–

- Supporting sustainable growth;
- Shaping Scotland's future;
- Embedding built environment design into wider policy agendas and ensuring public and private sector buy–in; and
- Recognising the cultural value of architecture, urbanism and heritage.

http://www.scotland.gov.uk/Publications/2012/05/8766

WALES

HOUSING

05 Welsh Assembly Government White Paper

Homes for Wales – A White Paper for Better Lives and Communities

This paper sets out the Welsh Assembly Government's proposals for new legislation and other non–legislative action to help provide new affordable housing and improve the existing stock. The Government intends:

- to increase the supply of new homes:
  a) by 7,500 new affordable homes, of which 500 will be co–operative homes and 500 will be built on surplus public sector sites; and
  b) by bringing 5,000 empty properties back into use;
- to improve the quality of existing homes including their energy efficiency through the Welsh Housing Quality Standard and other mechanisms;
- to do more to prevent homelessness and improve housing services to vulnerable people; and
- to end family homelessness by 2019.

http://wales.gov.uk/docs/desh/consultation/120521whitepaperen.pdf

NORTHERN IRELAND

RATING

06 Statutory Instrument

NISR 2012/217 The Valuation Tribunal (Amendment No. 2) Rules (Northern Ireland) 2012

The 2007 Rules regulate the exercise of the rights of appeal to the Northern Ireland Valuation Tribunal ("the Tribunal") and prescribe the practice and procedure in relation to the proceedings before the Tribunal.

These Rules, which come into force on 25.06.12, amend the principal Rules in consequence of the introduction of a right to appeal to the Tribunal against a building completion notice where that decision concerns a building which is, or when next in use is likely to be, used wholly for the purposes of a private dwelling.

http://www.legislation.gov.uk/nisr/2012/217/contents/made

CONSTRUCTION

07 Statutory Instrument

NISR 2012/187 The Building Regulations (1979 Order) (Commencement No. 3) Order (Northern Ireland) 2012

This Order provides for the coming into operation on 15.05.12 of Articles 8 and 12 of the Building Regulations (Northern Ireland) Order 1979. Article 8 allows a district council to approve any particular type of building matter as may be prescribed as complying with particular requirements of building regulations. Article 12 grants a district council the power to require tests to be carried out to ensure conformity with building regulations, or to carry out those tests itself. A dispute between the council and any person over the reasonableness of any tests imposed by the council, or over a council's decision regarding payment for the tests, may be determined by a court of summary jurisdiction.

http://www.legislation.gov.uk/nisr/2012/187/contents/made

08 Statutory Instrument

NISR 2012/186 The Building Regulations (2009 Amendment Act) (Commencement No. 2) Order (Northern Ireland) 2012

This Order provides for the coming into operation on 15.05.12 of sections 4(b), 5, 8 and 13 of the Building Regulations (Amendment) Act (Northern Ireland) 2009.

- s4(b) permits the Department to provide guidance in relation to compliance with the Building Regulations.
- s5 sets out procedures under which guidance with respect to the requirements of building regulations is to be prepared and published.
- s8 permits the Department to prescribe a period within which a district council may issue a contravention notice.
- s13 removes the definition of "rack rent" from The Building Regulations (Northern Ireland) Order 1979.
- This Order also provides for the coming into operation on 31.10.12 of sections 4(a) (removal of the deemed to satisfy provision) and 14 (Repeals) of the 2009 Act.

http://www.legislation.gov.uk/nisr/2012/186/contents/made

09 Statutory Instrument

NISR 2012/192 The Building Regulations (Northern Ireland) 2012

These Regulations, which will come into force on 31.10.12, revoke and replace with amendments, the Building Regulations (Northern Ireland) 2000 and all subsequent amending Regulations. They impose certain functional or performance requirements in relation to:

a) the construction of any building and certain services and fittings in conjunction with any building;

b) the structural alteration or extension of any building; and

c) any building undergoing a material change of use.

The Regulations will not apply in relation to work which has been completed, or for which plans have been deposited with a district council, before 31.12.12.

The main changes that have been introduced include the following:

- Buildings exempt from the regulations have been extended to include those used for purposes of national security.
- The number of cases of material change of use has been expanded.
- The number of matters for which an application is not required has been extended.
- The requirements of Part F (Conservation of fuel and power) have been extended.
- The Part G (resistance to the passage of sound) regulations have been extended.
- The Part K (Ventilation) regulations have been extended.
- The Part L (Combustion appliances and fuel storage systems) regulations have been extended.
- A new regulation has been included in Part P (Sanitary appliances, unvented hot water storage systems and reducing the risk of scalding) to ensure that hot water temperature is not excessive.

http://www.legislation.gov.uk/nisr/2012/192/contents/made