EVEBRIEF

Legal & Parliamentary

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Gemma Dow
Editor

NEW BALLS PLEASE… OR PRESERVATION OF THE PAST?

For the planners, building surveyors and conservationists, we have a handful of cases in this edition relating to historic buildings and efforts to preserve the past. Item 4 relates to the redevelopment of Undershaw, Sir Arthur Conan Doyle's former home which had been Listed more for its literary associations than for architectural merit. In this case a planning application had been accepted for one scheme and then another application was submitted by another party. The court found that the existence of another, more acceptable, scheme did not in itself provide a legitimate reason for refusing permission for something which would normally be acceptable. However, it was found that this did not apply in the case of heritage assets and the matter should have been referred back to the committee as the optimum viable use for 'Undershaw' was as a single private dwelling.

At Item 5 we report on a case on the provision of funding for the controversial redevelopment of part of the Grade II* listed Crystal Palace Park which was on the Heritage at risk register due to the deterioration in the park's condition, and the case at item 6 relates to the retrospective planning application for reconstruction of a historic barn.

Continuing the Building Surveying theme, item 18 reports on the High Court judgement on a 'Right to light' case and items 14 and 15 report some of the changes and responses to the consultation paper on the Building Regulations Competent Person self certification schemes.

There are no real surprises in the Housing Market Bulletin at item 13 – little has changed but at least there has been no further decline. On the plus side, inflation and unemployment have slightly fallen, although we are still 'officially' in a recession.

Hopefully Andy Murray will give us something to smile about at Wimbledon. If not we can always pin our hopes on the Olympic team...

Gemma Dow

GERALDEVE

LOCALISM

01 CLG Consultation

Proposals from town and parish councils under the Sustainable Communities Act 2007: Second Round Invitation Deadline for Comments: 05.09.12

On 15.12.10 the Sec of State issued a second invitation to local authorities under the Sustainable Communities Act 2007, inviting councils to consult people on how they would like to see their local area improved and to take appropriate action to make this happen. If councils, having consulted and reached agreement with their local communities, find that a bureaucratic barrier prevents them from taking action they can submit a formal "proposal" under the Sustainable Communities Act 2007 asking the Government remove the barrier through an online portal. This portal is also open to any individual who wishes to ask the Government to remove a barrier which is stopping local action. This consultation seeks views on whether the existing arrangements for submitting "barrier busting" proposals are appropriate, or whether town and parish councils should also be able to submit proposals using the Sustainable Communities Act, as well as local authorities.

http://www.communities.gov.uk/publications/localgovernment/scaconsultation2012

LANDLORD & TENANT

02 Upper Tribunal: Lands Chamber

Service charge demands

*BEITOV PROPERTIES LTD V MARTIN
(2012) PLSCS 128 – Before: The President, Mr George Bartlett QC – Decision given 08.05.12

Facts: BP was the landlord and M the tenant of a residential flat in respect of which there were unpaid service charges. The matter was transferred to the LVT which determined the matter exercising its powers under s27A of the Landlord and Tenant Act 1985. The question arose as to whether a written demand for the outstanding sums complied with s47(1) of the Landlord and Tenant Act 1987 because the demands had been served by BP's managing agent and contained the agent's address rather than the landlord's. The LVT determined that the sums were not due.

Point of dispute: Whether BP's appeal against the LVT's decision would be allowed. BP contended that where the name of the landlord was correctly given, the address of the landlord's agent was sufficient for compliance with s47(1). It submitted that the landlord was entitled to specify any address with which it had a sufficient connection and at which it could receive communications, such as that of its managing agent.

Held: The appeal was dismissed. The statutory requirement to provide the landlord's address as well as its name was for the purpose of assisting in the process of identification. The address of BP's managing agent was not the landlord's address because it was neither its registered office, nor an address from which it carried on business.

03 Upper Tribunal: Lands Chamber

Order for appointment of manager

*EAGLESHAM PROPERTIES LTD V JEFFREY
(2012) PLSCS 129 – Before: HH Judge Karen Walden–Smith – Decision given 24.05.12

Facts: J, the respondent was a leaseholder in a block of flats owned by the appellant, EP. The leaseholders, who were concerned about the manner in which the block was being maintained and managed, served a preliminary notice on EP under s22 of the Landlord and Tenant Act 1987 indicating that they intended to apply to the LVT for the appointment of a manager and subsequently they made that application under s24. The LVT made an interim management order for 12 months from June 2009. The appointed manager was to submit a progress report after 11 months and appear at a hearing on a date to be confirmed. The leaseholders did not apply to fix a hearing date within the 12–month period since they had assumed that the LVT would set the date. EP's managing agent wrote to the leaseholders informing them that EP had instructed it to take over managing the block since the management order had lapsed. J contacted the LVT to fix a hearing.

Point of dispute: Whether EP's appeal would be allowed against the decision of the LVT to extend the interim appointment pursuant to its power of variation or discharge under s24(9).

Held: The appeal was allowed.

i. The leaseholders should have served a fresh preliminary notice under s22. There were no circumstances in this case to justify the LVT with dispensing with the requirement to do this (S22(3)).

ii. The LVT had lacked jurisdiction to vary the June 2009 management order. Once the interim order had lapsed and the management of the block had reverted back to the freeholder, through their managing agent, there was no jurisdiction to extend the original order, even if there were good reasons for doing so. Such an order would have to be a new one requiring service of a preliminary notice under s22.

PLANNING

04 Administrative Court

Listed building

**GIBSON V WAVERLEY BOROUGH COUNCIL
(2012) PLSCS 123 – Decision given 30.05.12

Facts: The interested party applied to WBC for planning permission and listed building consent to redevelop a Grade II listed house near Haslemere and convert it into five townhouses with garages. The house, Undershaw, had been the home of Sir Arthur Conan Doyle and had been listed for its literary associations rather than for its architectural merit. A number of objections to the redevelopment scheme were received, including from G, the claimant, an author and editor of books on Sir Arthur Conan Doyle and the director of the Undershaw Preservation Trust. In June 2010 WBC's planning committee voted to approve the interested party's application, having been advised by the planning officer that there was another pending application to reconvert the house (which for some years had been used as a hotel) back to a single dwelling. In September 2010 the formal decision notice for the interested party's scheme was issued, but in August WBC had also granted planning permission for the single–house application.

Point of dispute: Whether to allow G's claim for judicial review of WBC's decision to grant planning permission for the interested party's redevelopment scheme. G argued that the single–house application and the permission for it were material considerations, in the light of which the interested party's application should have been referred back to the planning committee before they finally issued their decision notice.

Held: The claim was allowed. The well–established principle that land could be developed in any way that was acceptable for planning purposes, and the existence of another more acceptable scheme not itself providing a legitimate reason for refusing permission, did not necessarily apply in the case of heritage assets. PPS 5 referred to a presumption in favour of conservation and required the public benefit of a proposal in securing the optimum viable use of a heritage asset to be weighed against any significantly harmful impact: viability was measured not just in terms of viability for the owner but also for conservation of the asset. The optimum viable use for Undershaw was as a single private dwelling house and this should have been drawn to the planning committee's attention. The grant of planning permission on the single–house application was a new material consideration and in the light of it the planning officer should have referred the interested party's scheme back to the committee for reconsideration.

05 Administrative Court

S106 Agreement – provision of funding for regeneration of heritage site

*ELIOTT V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) PLSCS 127 – Decision given 12.06.12

Facts: The second defendant sought planning permission in respect of its proposals for regenerating the Grade II* listed Crystal Palace Park which was on the Heritage at Risk Register owing to the deterioration in the park's condition and that of several buildings within it. The regeneration strategy was to be completed in three phases at an estimated cost of £68m. A proportion of this funding was to come from residential redevelopment on parts of the park, some of which was designated as metropolitan open land. The Sec of State, who determined the planning application himself, accepted the planning inspector's recommendation that planning permission should be granted because of special conditions that outweighed the presumption against development of metropolitan open land; these were partly the contribution that the development would make to the local council's regeneration plans. However, the planning inspector proposed the imposition of conditions aimed at ensuring that capital contributions generated from the housing development were used for park improvement works, while the Sec of State, who was concerned that such payments would breach the principle of taxation without statutory support, decided to require a planning agreement under s106 of the Town and Country Planning Act 1990.

Point of dispute: Whether E's application to quash the grant of planning permission would be allowed. E argued:

i. that the Sec of State had been wrong in regarding the planning inspector's conditions as unlawful; or, alternatively,

ii. that if the conditions were unlawful then the same result could not legitimately be achieved by means of a s106 agreement since that would be a device to circumvent the law.

Held: The claim was dismissed.

i. There were two methods for achieving the desired funding result, either the conditions proposed by the inspector or a s106 agreement. The second route was preferred as that enabled the Sec of State to achieve his objectives without the need for taking a view on whether the conditions were prevented by planning policy. It was rational for him to form the view that the s106 agreement was a reliable mechanism for securing the benefit that he wanted to achieve.

ii. There were no other grounds for impugning the Sec of State's decision.

06 Administrative Court

Reconstruction of historic barn

*VALLIS V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) All ER (D) 38 (Jun) – Decision given 12.03.12

Facts: The claimant, V, sought retrospective planning permission for the reconstruction of a barn which was of potential historical significance. V's first appeal to an inspector appointed by the Sec of State ("the first inspector") against refusal of permission was allowed on the grounds that there were very special circumstances (PPG 2). The district council challenged this decision and another inspector ("the second inspector") appointed by the Sec of State overturned that decision and upheld the validity of an earlier enforcement notice.

Point of dispute: Whether V's appeal against the second inspector's decision would be allowed. V submitted that the second inspector had expressly decided that the original features of the barn were not a material consideration at all, or alternatively his reasons for attaching no weight to them were wrong in law because he failed to take into account PPS 5 (Planning for the Historic Environment) which required an inspector to consider whether features were heritage assets and what weight should be attached to their retention.

Held: V's appeal was allowed. A second inspector had to consider carefully the reasons put forward by the first inspector, and if he reached a different conclusion his reasons for doing so had to be explained. The second inspector's reasoning had been inadequate and there had been an error of law because his decision did not refer to PPS 5 which required the inspector to consider whether the features were heritage assets and what weight should be attached to their retention. Secondly, the reasons given in the decision were wrong in law.

07 Greater London Authority Consultation

Early Minor Alterations to the London Plan
Deadline for Comments: 31.07.12

These early minor alterations to the London Plan are aimed at ensuring that the Plan is fully consistent with the National Planning Policy Framework (NPPF – published in March 2012). This revised early minor alterations document also incorporates the early minor alterations that were issued for consultation in February and it is anticipated that both sets will be considered together by an independent planning inspector at an examination in public to be held in November/December.

http://www.london.gov.uk/publication/early–minor–alterations–london–plan

08 RICS Publication

Capturing planning gain? The transition from S106 to the Community Infrastructure Levy

The Community Infrastructure Levy (CIL), which came into force in April 2010, allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their area which can be used to fund infrastructure that is needed as a result of the development. This research explores the issues arising in the transition to the new system. The main findings include the following:

- Most local authorities have welcomed CIL, with a scaled back s106, and are planning to introduce a CIL within the next three years;
- Whilst seen as a positive change, there is still much uncertainty about CIL – how to develop the evidence base and how to determine an appropriate charging schedule, how to use s106 alongside the CIL and how to collect the CIL funds;
- Although it is intended to simplify the system, it is becoming apparent that the CIL with a scaled back s106 will be complicated to develop, implement and collect;
- Local authorities are keen to share knowledge about the implementation of the CIL;
- There are concerns about the economic viability of charging a CIL and the impact on development, particularly where values vary within a district;
- There is particular concern in London about how the Mayoral CIL will impact on viability as it will be charged along with individual Borough CILs and s106;
- There is concern that there will be a funding gap for providing infrastructure as CIL will not meet all costs and that expectations of what the CIL can deliver are unrealistic;
- There is much uncertainty about the interface between s106 and the CIL and concern that less affordable housing will be secured through s106 once the CIL is implemented; and
- Many local authorities appear to consider that the CIL system will be very complicated, even though it is intended to simplify the planning process.

http://www.rics.org/site/scripts/download_info.aspx?fileID=12094

RATING

09 Upper Tribunal: Lands Chamber

Rating of separate floors in modern office block where occupied by same company

**APPEAL BY PETER ROBIN WOOLWAY (VO)
[2012] UKUT 165 (LC) – UTLC Case Number: RA/24/2010; [2012] PLSCS 137
Before: The President, George Bartlett QC – Decision given 11.06.12

Property: Tower Bridge House, Level 2 and Level 6, St Katherine's Way, London E1 1AA, two floors in a modern city office block which were not next to each other but both occupied by the same firm of accountants. The VO had entered them in the rating list as separate hereditaments but the Valuation Tribunal for England determined that they should be entered as a single hereditament with an end allowance to reflect the disadvantage of their separation within the building.

Issue: Whether the VO's appeal against the Valuation Tribunal's decision would be allowed. The VO contended that the two floors were separate hereditaments and that there was no evidence to justify an end allowance.

Decision: The VO's appeal was allowed in part. Although the two floors in the same occupation were not next to each other they should be treated as a single hereditament for rating purposes. The communication between the floors was through the common parts of the building and from the occupier's point of view there was no practical difference between floors that are next to each other and ones that are separated – in the President's words: "To treat as a single hereditament floors next to each other that are in the same occupation but as separate hereditaments floors in the same occupation that do not adjoin each other does not, in my view, properly reflect the realities of occupation in a modern office block." On the other point of the appeal the VO's appeal was allowed. There was no justification for making an end allowance to make up for the small inconvenience of the floors being separated as there was a fast lift service in the building.

LEASEHOLD REFORM

10 Court of Appeal

Collective enfranchisement – abuse of process

*WESTBROOK DOLPHIN SQUARE LTD V FRIENDS LIFE LTD (2012) PLSCS 118 – Decision given 18.05.12

Facts: The respondent owned the freehold of a site with 1,223 flats. The tenants served an initial notice under s13 of the Leasehold Reform, Housing and Urban Development Act 1993 on the freeholder, claiming to acquire the freehold and nominating the appellant as the purchaser. The respondent served a counternotice which identified six grounds on which the tenants' claim was not admitted. The appellant issued a claim for a declaration that the tenants were entitled to exercise a right of collective enfranchisement, but shortly before the trial it issued a notice of discontinuance on the ground that property values had fallen since the date of the initial notice. It later issued a second notice containing a different date, proposed price and manner of signature.

Point of dispute: Whether to allow the appellant's appeal against the high court's decision to strike out its second application. The court had held that the appellant required permission to make it because it arose out of substantially the same facts as the first application, which had been discontinued, and that permission under CPR 38.7 should not have been given since the second application amounted to an abuse of process.

Held: The appeal was allowed. Under s13(8) and (9) of the 1993 Act the tenants could withdraw from an initial notice at any time, after which they could not serve another one for a year, but after that they were free to do so. Section 29 specifically contemplated the discontinuance of an application brought on an initial s13 notice – the right to serve successive notices necessarily carried with it the right to make successive applications to the court. CPR 38.7 had no application to the second proceedings. Given that the 1993 Act gave tenants the right to serve a second notice at any time after a year had expired following withdrawal of the first notice, it could not be an abuse of the court's process to make a second application. When enacting the 1993 Act it could not have been Parliament's intention that CPR 38.7 could be invoked to cut down on the statutorily conferred right on tenants to serve, pursue and enforce an initial notice, provided that it was not precluded by s13(8) or (9).

11 Upper Tribunal: Lands Chamber

Collective enfranchisement – value of parking spaces

*SINCLAIR GARDEN INVESTMENTS LTD V 2 MEDINA VILLAS LTD
[2012] PLSCS 132 – Decision given 29.05.12 – Before: HH Judge Karen Walden–Smith

Facts: The appellant, SGI, owned the freehold of a property containing six flats let on long leases and which was the subject of a collective enfranchisement claim under the Leasehold Reform, Housing and Urban Development Act 1993. Part of SGI's reserved property included three parking spaces to the rear of the property which were not demised with any of the leases. Rights of access and egress over the reserved property and the right to use it in common with the lessees and occupiers of all the flats were included in the individual leases, but vehicles were not permitted to be left on the reserved property.

Point of dispute: Whether SGI's appeal would be allowed against the finding of the LVT that a valuation of £1,150.15 should be given to the parking spaces. This figure was reached by deferring the value of the parking spaces (which, if they were capable of being sold with immediate effect, would be £24,000) at a rate of 5% to the end of the unexpired term of the leases. The LVT found that the spaces could not be sold since the leaseholders had acquired a right to park on them, either by prescription or by estoppel. SGI argued that the LVT had erroneously relied on the principles of prescriptive rights and estoppel without conducting any proper analysis of the legal requirements for the accrual of such rights.

Held: SGI's appeal was dismissed.

i. The terms of the leases expressly prohibited the right to park and no such right could arise by implication. The LVT had erred in finding that a right to park had accrued by prescription or estoppel in the absence of any specific evidence to support such a conclusion.

ii. However, the LVT was correct in concluding that the parking spaces had no immediate value. There was an implied right to stop, load and unload and to make use of that part of the reserved premises laid out as parking spaces and this right would be interfered with if the parking spaces were sold to a third party. It followed that the value of £24,000 for the reserved property should be deferred for the remainder of the unexpired term.

COMPENSATION

12 Upper Tribunal: Lands Chamber

Compensation for pipe–laying works preventing implementation of planning permission for residential development

*EADEN HOMES LTD V DWR CYMRU CYFYNGEDIG (WELSH WATER)
[2012] PLSCS 133 – Decision given 06.06.12 – Before: The President, Mr George Bartlett QC

Facts: The claimant, EH, claimed compensation under the Water Industry Act 1991 in respect of a sewer laying project carried out by the compensating authority on land at Trearddur Bay, Anglesey, in 2004. EH claimed that the works prevented it from implementing a planning permission for residential development on its land and argued that it was entitled to £3.37m for depreciation in the value of the land and consequential losses. The planning permission in question was granted in 1983 pursuant to a standard form application. A box ticked on the form indicated that full permission was sought and permission was granted for "Layout and detailed plans for the erection of 45 dwellings and layout for a further 38 plots". The permission contained a condition requiring a detailed layout plan to be submitted to, and approved by, the council in respect of the latter part of the development. A preliminary issue was tried as to the nature of the planning permission.

Point of dispute: Whether, as contended by the compensating authority, the permission was outline only so far as the 38 plots were concerned. These were on the part of the land principally affected by the pipeline works. If the permission was outline only an application for approval of reserved matters should have been made within three years and the authority contended that since this had not been done the outline permission had lapsed. EH argued that a full permission had been granted and that it was entitled to erect 38 dwellings so long as it first complied with the condition requiring submission of a detailed plan.

Held: The preliminary issue was determined as follows: 1983 permission was not a hybrid permission granting full permission for 45 of the dwellings and outline permission for the other 38 dwellings. This conclusion was supported by the conditions attached to the permission, including one that the development should be commenced within five years under s41 of the Town and Country Planning Act 1971 in respect of a full planning permission. Outline permission could only be granted for a building. EH succeeded in establishing that there was a full planning permission, but this was only for the layout of the houses and not their erection. This decision will be adverse to it when the compensation claim is settled.

HOUSING

13 Homes and Communities Agency Bulletin

Housing Market Bulletin, May 2012

The Housing Market Bulletin provides up to date information on the housing market, the economy and the housebuilding industry. It includes information on house price changes (Halifax, Nationwide, the Land Registry and RICS), housing market forecasts, housing starts and completions (DCLG and key housebuilders), mortgage trends and overall information on the state of the economy. Key points for May include the following:

- The housing market remains steady with London continuing to have the strongest housing market. However most indices recorded falls in house prices: the Land Registry, whose data is the most comprehensive, recorded that house prices in England and Wales were down by 0.3% in April compared to March, and by 1.0% over the year;
- The UK is now officially in recession, growth having been negative for the second consecutive quarter;
- UK Bank Rate remained at 0.5%;
- Inflation has fallen slightly, but remains above target levels; and
- Although unemployment is falling slowly it remains high in comparison with long term averages.

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

14 Local Government Association (LGA) Survey

New Housing Developments Survey 2012

The purpose of this survey was to promote a better understanding of attitudes to new housing developments at local level and to identify potential barriers to housing delivery and how these might be addressed. It was conducted against a backdrop of significant reform to councils' housing and planning roles: the Localism Act, the draft National Planning Policy Framework and the shift to self–financing for councils who own their stock. The survey, which was conducted in February – March this year, was sent to a random sample of one in four frontline councillors in England and Wales and received a response rate of 17%. Questions were asked about councillors' perception of the level of opposition to housing development in their areas, their perception of what barriers there are to new housing development, how new housing development could be made more acceptable and steps that councils had taken to promote new housing development. A summary of the key findings is included.

http://www.local.gov.uk/web/guest/housing–the–nation/–/journal_content/56/10171/3592914/ARTICLE–TEMPLATE

CONSTRUCTION

15 CLG Summary of Responses to Consultation

Building Regulations Competent Person Self–certification Schemes: Consultation – Summary of responses

This report is a summary of the responses to the Building Regulations Competent Person Self–certification Schemes consultation paper which was published in September 2009.

http://www.communities.gov.uk/publications/planningandbuilding/competentschemeanalysis

16 CLG Impact Assessment

Changes to the Conditions of Authorisation for Building Regulations Competent Person Self–certification Schemes: Final impact assessment

This is the final stage Impact Assessment on proposed changes to the administrative conditions of authorisation for the operation of Building Regulations Competent Person Self–certification Schemes in England. The current system is thought to lack consistency due to the way in which it has evolved over time to cover different types of building work, meaning that there are different conditions for similar schemes. It is also thought that compliance with the Building Regulations could be improved.

http://www.communities.gov.uk/publications/planningandbuilding/conditionscompetentperson

REAL PROPERTY

17 Upper Tribunal: Lands Chamber

Discharge of restrictive covenant – s84(1)(a) of the Law of Property Act 1925

*RE COOMBES AND ANOTHER'S APPLICATION
[2012] PLSCS 138 – Before: Mr Andrew J Trott FRICS – Decision given 12.06.12

Facts: The applicants purchased a Grade II* listed country house and associated outbuildings from the objector in 2002. The conveyance contained restrictive covenants which prevented the land from being used for any purpose other than residential and imposing limits on further residential development. These covenants were stated to be for the benefit of the remainder of the estate "only while the same is retained by the Transferor and/or his wife and/or linear descendants and/or any person holding on trust for him or them". The objector sold most of the rest of the estate to an unrelated third party in 2008 and retained for himself two small pieces of woodland and the site of the remains of a Grade II listed chapel, part of which contained a family burial ground, about five hundred metres to the east of from the main house. Having obtained planning permissions for redevelopment, including the conversion of some of the outbuildings into holiday units, the applicants applied to the Lands Tribunal to discharge or modify the restrictive covenants under s84(1) of the Law of Property Act 1925.

Point of dispute: Whether the application would be allowed. The objector's objection related mainly to the amenity of the chapel grounds. The issue was whether the restrictive covenants had become obsolete, so that they could be discharged under s84(1)(a), by reason of the onward sale of the estate.

Held: The application was allowed. A covenant would be obsolete under s84(1)(a) where it was no longer possible for it to serve its original purpose by reason of changes to the character of the property or the neighbourhood or other circumstances of the case that the tribunal deemed to be material. The objector now only owned a fraction of the original estate and no dwellings or other complete buildings. The sale of the estate to a third party who could not take the benefit of the covenants was a material change of circumstances for the purpose of ground (a). Most of the restrictions did not protect the amenity of the burial ground, which was a ruin and had not been visited by the objector for many years, and they would be discharged. A restriction that controlled the eastward extent of any development would be adequate and this one would be retained.

18 High Court

Easements – right to light – prescription – Section 3 Prescription Act 1832

*CGIS CITY PLAZA SHARES 1 LTD V BRITEL FUND TRUSTEES LTD
[2012] PLSCS 130 – Decision given 13.06.12

Facts: The claimant owned a 1980s nine–storey office building in Birmingham opposite which was a 20–storey building owned by the defendant. The claimant brought proceedings claiming a prescriptive easement of light under s3 of the Prescription Act 1832 so as to prevent the defendant from redeveloping its property in such a way as would block the light to the windows on the north east façade of the claimant's building. The defendant resisted the claim, relying on a proviso to s3 and arguing that the claimant's enjoyment to light was "by some consent or agreement expressly made or given for that purpose". A 1967 conveyance of part of the defendant's property had contained a clause permitting building on the defendant's property "notwithstanding that any such building may interfere with light or air now or at any time enjoyed by buildings being erected on any adjacent or neighbouring land owned by or vested in the Corporation" (the Corporation of Birmingham was the claimant's predecessor in title).

Point of dispute: Whether the claim would be allowed. The issue was whether the authorisation in the 1967 conveyance continued irrespective of who owned the claimant's property – the defendant took the view that this was the correct interpretation and that as a matter of construction it bound the Corporation's successors in title, which would mean that the proviso to s3 would apply.

Held: The claim was dismissed.

i. The preferred construction of the 1967 conveyance was that the authorisation given to the defendant's predecessor in title related to the enjoyment of light by a building which was then standing on neighbouring, adjacent or adjoining land owned or vested in the Corporation at that time. It was more probable that the words in the conveyance were intended to identify the buildings by reference their physical status or location rather than by reference to their ownership from time to time.

ii. The right to build on the defendant's property was not limited to a right against the Corporation alone. The enjoyment of light by the claimant's property had therefore continued to subsist by virtue of the permission granted by the 1967 conveyance. It followed that the light had been enjoyed by some consent or agreement expressly made or given for that purpose with in the proviso to s3, with the consequence that no absolute or indefeasible prescriptive right could arise under that section.

TORT

19 High Court

Professional negligence – access to garden square in Knightsbridge

*HERRMANN V WITHERS LLP
(2012) PLSCS 125 – Decision given 30.05.12

Facts: The claimant, H, instructed the defendant firm of solicitors to act for them in connection with the purchase of a £6.8m terraced house in Knightsbridge. The terrace led into a garden square. The sales particulars for the property and information supplied by the vendor's solicitor indicated that the owners of the house enjoyed access to the communal garden in the square, although the legal basis for this was unclear. W advised H that he had the right to use the garden pursuant to the Kensington Improvement Act 1851: its view was that since the term "square" in the Act included a "terrace", that indicated that properties on a terrace that formed the "neck" to the square were intended to enjoy the right to use gardens. After completion H was refused a key to the garden by those responsible for managing it and he instructed another solicitor to advise on this issue. In May 2009 the garden managers offered to grant H a 50 year licence for £25,000 but this offer was refused.
H brought a claim in the High Court that the refusal to give him a key was an actionable interference with his right to use the garden, but this was dismissed, the judge ruling that his property was not one of the houses "in and encompassing" the square within the meaning of s51 of the 1851 Act.

Point of dispute: Whether H could succeed in his claim for damages against W. H argued that W had been negligent in failing to appreciate or advise him of the risk that the 1851 Act did not extend to the property and in failing to inform him about the unsatisfactory nature of the information received from the vendors on that issue.

Held: H's claim was allowed in part.

i. Although W could not be criticised for its view that the property was within the scope of the 1851 Act, it should have concluded that there was serious doubt as to whether it fell within the Act. W should not, therefore, have advised H in unequivocal terms that he would have a right to enter and use the garden and H should have been warned that there was scope for argument on the matter.

ii. On the evidence H would not have proceeded with his purchase of the property had he been properly advised about the situation regarding the garden.

iii. H had failed to mitigate his loss by accepting a licence to use the garden in return for £25,000, which was a relatively small sum compared to the likely uplift in value that it would confer on the property.

iv. Where a claimant failed to mitigate it could not recover more than the loss that it would have sustained had it done so. H's award of damages would include £25,000 for the cost of the licence, £10,000 for legal costs and £65,000 which represented the difference in value between the property with a statutory right to use the garden and its value with a 50–year licence.

v. H was further entitled to his costs of instructing another solicitor to advise in relation to access to the garden up to May 2009.

vi. Damages of £2,000 were also awarded for loss of amenity and disappointment.

ENERGY

20 Joseph Rowntree Foundation Report

Wind energy and justice for disadvantaged communities

This report considers the ways in which communities should benefit from wind–farm developments in their areas as a means of redressing the adverse impacts that wind farms have on them. It argues, inter alia, that:

- urgent action is needed to ensure that investment in renewable energy infrastructure benefits the communities affected;
- community benefit funds should redress the harms caused to communities, not just foster acceptance of a scheme;
- introducing local policies can increase the level of community benefits that wind energy developers provide; and
- a proportion of community benefit funds should be channelled into local–owned renewable energy projects.

http://www.jrf.org.uk/publications/wind–energy–disadvantaged–communities

21 UK Renewable Energy Roadmap Report

Offshore Wind Cost Reduction Task Force Report

The most important challenge to overcome to ensure that offshore wind fulfils its potential is cost. In July 2011 the Government established the UK Renewable Energy Roadmap, an industry–led taskforce whose remit is to produce a path and action plan to reduce the cost of energy to £100/MWh by 2020 (equivalent to 10 pence per unit). This report highlights a number of areas where industry action can lead to significant cost reduction, including through building alliances, strengthening the supply chain and fostering innovation. Its conclusions are founded on detailed evidence provided largely by The Crown Estate's analytical work.

http://www.decc.gov.uk/en/content/cms/meeting_energy/wind/offshore/owcrtf/owcrtf.aspx

GENERAL

22 CLG Research Report

Parades to be proud of: Strategies to support local shops

Recognising the importance of parades of shops to local areas, this report has been commissioned to bring together strategies that have been used to improve these parades since these might be useful for other locations. The research aims to:

- set out the latest data about how parades of shops are faring;
- identify strategies that might help parades of shops; and
- signpost businesses, landlords, local authorities, communities and other interested parties to useful tools.

http://www.communities.gov.uk/publications/regeneration/paradesstrategies

23 CLG Research Report

Parades of shops: Towards an understanding of performance and prospects

The objective of this research paper is to draw together existing evidence to contribute towards an understanding of the characteristics and performance of neighbourhood parades of shops and to provide some guidance on the policy themes that could support future local and national initiatives to maximise their contribution to local growth. The report supplements the work recently undertaken by Mary Portas on High Streets.

http://www.communities.gov.uk/publications/regeneration/paradesperformance

24 RICS Publication

UK Economy & Property Market Chart Book – June 2012

This publication considers the current economic outlook and examines the question of whether a case can be made for new stimulus measures aimed at the construction and housing sectors.

http://www.rics.org/site/scripts/download_info.aspx?fileID=12050

25 Business in the Community and British Council of Shopping Centres (BCSC) Project

Retail Development Investment Framework

Recognising the crucial role that investment in town centres and high streets plays in building healthy, successful and inclusive towns and cities and that sustainable development must be at the heart of any investment strategy, this project aimed to develop a tool to enable investors, local government and community groups to assess the socio–economic impacts of retail developments. Case studies were carried out with John Lewis Partnership, Asda and Dransfield Properties to test the application of the tool.

http://www.bitc.org.uk/community/community_footprint/investment_framework.html

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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

LOCALISM

01 Scottish Government Consultation

A consultation on the proposed Community Empowerment and Renewal Bill Deadline for comments: 29.08.12

This consultation sets out a range of ideas designed to meet the aims of the proposed Community Empowerment and Renewal Bill: to support communities to achieve their own goals and aspirations through taking independent action and by having their voices heard in the decisions that affect their area.

http://www.scotland.gov.uk/Publications/2012/06/7786

CONSTRUCTION

02 Statutory Instrument

SSI 2012/190 The Energy Performance of Buildings (Scotland) Amendment Regulations 2012

These Regulations, which come into force on 01.10.12, make certain technical amendments to the 2008 Regulations, which require the production of energy performance certificates when buildings are to be sold or rented out.

http://www.legislation.gov.uk/ssi/2012/190/contents/made

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TAXATION

03 Scottish Government Consultation

Taking forward a Scottish Land and Buildings Transaction Tax Deadline for Comments: 30.08.12

The Scottish Parliament will have new financial powers from 2015 over taxes on land and property transactions and on disposal to landfill. This consultation is the first of three dealing with these devolved powers and seeks views on the Scottish Government's proposals for a Land and Buildings Transaction Tax for Scotland to replace the current UK Stamp Duty Land Tax from April 2015.

http://www.scotland.gov.uk/Publications/2012/06/1301

WALES

PLANNING

04 Statutory Instrument

WSI 2012/1346 The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2012

This Order, which came into force on 18.06.12, amends Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 ("the 1995 Order") which confers permitted development rights in respect of certain development. Article 2(3) of this Order substitutes a new Part 40 of Schedule 2 to the 1995 Order and confers permitted development rights for the installation of specified types of microgeneration equipment on or within the curtilage of dwellinghouses or flats subject to certain criteria. It amends Class A of Part 40 to introduce permitted development rights to install solar PV or solar thermal equipment on flat roofs and introduces three new classes of permitted development rights: to install an air source heat pump (Class G), a stand alone wind turbine (Class H) and an anemometry mast (Class I).

http://www.legislation.gov.uk/wsi/2012/1346/contents/made

05 Welsh Assembly Government Press Release

New guidance to help speed up planning in Wales

The Welsh Government has issued a new practice guide which aims to encourage local planning authorities and applicants to sit down together and discuss their proposals in detail before any planning application is formally submitted. The purpose of this is to help improve the quality of applications, to reduce the time that it takes to deal with them and to avoid the cost and time implications of having to submit a series of applications.

http://wales.gov.uk/newsroom/planning/2012/120530newguidance/?lang=en&status=clposed