

EVEBRIEF

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EDITORIAL



Steve Hile
Editor

At item 3 we report on the 'Loader' case which has taken its time to reach the Court of Appeal. The Appellant sought the requirement for the submission of an Environmental Assessment to apply to a very wide range of planning applications – those which have an effect that has a real prospect of influencing the outcome of the application for development consent.

Had this assertion by the anti-development lobby been accepted by the Court, very significant, unnecessary delay and cost would have been imposed on the development industry.

The judgment confirmed the correct test in respect of development requiring an Environmental Assessment, which is: Is the development likely to have significant effects on the environment? The question whether a project is likely to have significant effect on the environment is one of degree which calls for the exercise of judgment. Thus, remedial measures contemplated by conditions and/or undertakings can be taken into account to a certain extent.

Furthermore, the word 'significant' does not lay down a precise legal test. It requires the exercise of judgment, on technical or other planning grounds, and consistency in the exercise of that judgment in different cases. That is a function for planning authorities, under the guidance of the Sec of State, not the Courts.

There have been many vexatious challenges to development proposals on the basis that an Environmental Assessment is required, and many of these cases have awaited the outcome of Loader. One hopes that this puts to an end this particular method of stifling the development and growth required to provide the jobs and houses this country needs.

Steve Hile



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LOCALISM

01 CLG Publication

Policy statement for Part 2 of the Localism Act 2011

The Localism Act, which gained Royal Assent on 15.11.11, provides for a substantial shift of power away from central government and towards local people. Public authorities have been given more powers and freedoms to conduct their business and deliver services to the public and they must, therefore, accept responsibility for the consequences of their actions. Part 2 of the Localism Act is concerned with incentivising public authorities to comply with European law, in order to avoid financial sanctions. This policy statement aims to set out a fair, proportionate and reasonable approach for the use of Part 2.

<http://www.communities.gov.uk/publications/localgovernment/part2policystatement>

LANDLORD & TENANT

02 Court of Appeal

Forfeiture of lease – insurance rent

*PATEL V MRD PROPERTY DEVELOPMENTS LTD (2012) PLSCS 152 – Decision given 31.05.12

Facts: The respondent, MRD, owned the freehold of a property leased to the appellant, P. Under the terms of the lease P was required to pay a rent deposit of £50,000 and MRD was entitled to draw down from the deposit any sums necessary to satisfy arrears of rent. Notice in writing had to be served by MRD requiring payment of any arrears of rent and P had to maintain the deposit in the sum of £50,000. The lease contained a right of re-entry in the event of any breach of the lease by P. When the premises were destroyed by a fire considerable rent arrears had accrued and MRD drew down £20,000 from the rent deposit and asked P to make up that amount. Upon P's failure to do this MRD served a notice under s146 of the Law of Property Act 1925, re-entered the property and determined the lease. The county court refused to grant P a declaration that the lease was not forfeited by reason of unpaid arrears of rent.

Point of dispute: Whether P's appeal against the county court's decision would be allowed. P had argued that the arrears had wrongly included sums for insurance rent which had not been properly demanded and so were not due. MRD's argument that the insurance rent had been paid and did not form any part of the arrears which had led to the forfeiture of the lease had been upheld by the county court – although MRD had never made a formal demand for the insurance rent, the copy of the insurance renewal demand which contained a statement of the premium due and which had been provided to P, was sufficient notice that contributions had been made towards the insurance.

Held: P's appeal was dismissed. On the proper construction of the lease the provision of a copy of the insurance renewal notice constituted a written demand from MRD to P for the insurance rent. Since the lease did not state "...written demand made by the landlord of the tenant", it was enough that there was a document, the terms of which amounted to a demand for what was insurance rent. A reasonable person in P's position would have understood that the renewal notice was a sufficient written note of the amount due, that MRD was requesting payment, and that, taken together, this was a demand in writing for payment of the insurance rent. P had in fact paid the insurance rent and the county court had come to the correct conclusion.

PLANNING

03 Court of Appeal

Environmental impact assessment

**R (ON THE APPLICATION OF LOADER) V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2012) PLSCS 147 – Decision given 29.06.12

Facts: A developer sought planning permission to redevelop a former bowls club to form a sheltered housing development for the elderly. The lpa refused permission but the Sec of State granted it on appeal. However, the inspector's decision was later quashed by consent because consideration had not been given to whether the development required an environment impact assessment (EIA) before planning permission was granted. The Sec of State made a negative screening direction determining that an EIA was not required for the development. L, who lived and worked in the area and objected to the proposed development, sought judicial review of the screening direction.

Point of dispute: Whether L's appeal against the dismissal of his judicial review application would be allowed. L's argument that the Sec of State had misdirected himself as to the meaning of "significant effects on the environment" in Article 2 of the EIA Directive had not been accepted by the court below. L contended that a significant environmental effect was one that had a real prospect of influencing the outcome of the application for development consent and had an autonomous meaning, while the Sec of State's contention was that the test was whether the development was likely to have significant effects on the environment.

Held: The appeal was dismissed and the correct test was that contended for by the Sec of State. Only if there had been a manifest error of assessment would the European Court of Justice intervene. L's proposed test did not accord with the overall purpose and tenor of the procedure initiated by the Directive, which contemplated a formal and substantial procedure for a limited range of Schedule 2 projects that were likely to have significant effects on the environment. To require it to be followed in all cases where the effect would influence the development consent decision would devalue the entire concept. In the present case the inspector had been entitled to conclude that the proposed redevelopment would not have significant effects on the environment.

04 Statutory Instrument

SI 2012/1645 The Infrastructure Planning (Waste Water Transfer and Storage) Order 2012

This Order, which came into force on 23.06.12, amends the Planning Act 2008 by adding the construction or alteration of infrastructure for the transfer or storage of waste water to the categories of infrastructure project which are nationally significant for the purposes of the Act.

<http://www.legislation.gov.uk/uksi/2012/1645/contents/made>

05 CLG Consultation

Streamlining information requirements for planning applications: Consultation **Deadline for Comments: 11.09.12**

This consultation invites views on three proposals relating to the information requirements in planning applications. These are:

- changes to secondary legislation regarding the information requirements for outline planning applications;
- a requirement that local authorities update their local lists of information requirements at least every two years; and
- proposed changes to the standard application form.

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

06 CLG Consultation

Statutory consultee performance and award of costs: Consultation **Deadline for Comments: 11.09.12**

This consultation proposes to amend guidance in Circular 03/09: Costs Awards in Appeals and Other Planning Proceedings in relation to statutory consultees and their advice at appeal. The Government is also announcing clarifications to the guidance in relation to local councils and their development plan, and in relation to ensuring evidence submitted at appeal is accurate and truthful. The five main statutory bodies will be required to report on, and be accountable for, their performance on dealing with planning applications as part of their individual Improvement Plans.

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

07 CLG Consultation

New opportunities for sustainable development and growth through the reuse of existing buildings: Consultation **Deadline for Comments: 11.09.12**

This consultation outlines the action that the Government is proposing in the following key areas:

- to create permitted development rights to assist change of use from existing buildings used for agricultural purposes to uses supporting rural growth;
- to increase the thresholds for permitted development rights for change of use between B1 (business/office) and B8 (warehouse) classes and from B2 (industry) to B1 and B8;
- to introduce a permitted development right to allow the temporary use for two years, where the use is low impact, without the need for planning permission;
- to provide C1 (hotels, boarding and guest houses) permitted development rights to convert to C3 (dwelling houses) without the need for planning permission; and
- to consider if any updates or amendments are needed to the existing descriptions within the use classes order.

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



08 CLG Summary of Responses to Consultation

National Planning Policy Framework: Summary of consultation responses

Consultation on the draft National Planning Policy Framework, which was published on 27.03.12, closed on 17.10.11. This document is the summary of responses to the consultation.

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

09 CLG Impact Assessment

National Planning Policy Framework: Impact assessment

This is the final stage Impact Assessment of the National Planning Policy Framework which was published on 27.03.12.

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

10 CLG Summary of Responses to Consultation

Relaxation of planning rules for change of use from commercial to residential: Summary of consultation responses and the Government's response to the consultation

In April 2011 the Government published a consultation paper seeking views on granting permitted development rights to change use of buildings from commercial to residential use. This report summarises the responses that were received to that consultation.

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

RATING

11 Administrative Court

Non-domestic rates – unoccupied property – elapse of six-month rate-free period for unoccupied warehousing – whether storage of documents in small part of warehouse constituted rateable occupation

**MAKRO PROPERTIES LTD V NUNEATON AND BEDWORTH BOROUGH COUNCIL
(2012) PLSCS 150 – Decision given 28.06.12

Facts: The appellant had a lease of a warehouse for its cash-and-carry business. In June 2009 when the business ceased it cleared and vacated the premises and surrendered the lease. The combined effect of s45 of the Local Government Finance Act 1988 and Regulations 3 to 5 of the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008 was that unoccupied warehouse-type hereditaments were subject to rates at the same level as the full occupied rate, save for a rate-free period of six months after the property first became empty; however, a further six-month rate-free period could be triggered if there was an intervening period of at least six weeks' rateable occupation. Between November 2009 and January 2010 the appellant stored pallets of documents at the premises with a view to creating six weeks of rateable occupation, but the documents only took up 2% of the floor space in the warehouse.

Point of dispute: Whether the short period of storage use of the premises constituted rateable occupation. The district judge had held that there was no rateable occupation since the occupation of a minuscule part of the property for document storage was de minimis and had no commercial or business benefit to the appellants save for the avoidance of rates liability.

Held: The appellants' appeal against the ruling of the district judge that there was no rateable occupation was allowed. The elements of rateable occupation were: (i) actual occupation or possession that was exclusive to the purposes of the occupier; (ii) occupation that was of value and benefit to that occupier; and (iii) occupation that was not too transient in nature. The appellant's intention in placing documents in the premises was to incur liability for rates for a short period in order to avoid a longer period of liability – this amounted to an intention to occupy in fact, not merely to give a semblance of occupation. That occupation did not fall to be disregarded as de minimis. The proper approach was to consider both the use of the property and the intention behind it. Evidence of intention together with only slight use could lead to an inference of occupation. The documents being stored were valuable and the appellant had a legal obligation to keep them so it could not be said that the storage use was of no practical benefit. Ratepayers were entitled to organise their affairs so as to avoid paying rates and they were entitled to go in and out of occupation for that purpose.

REAL PROPERTY

12 High Court

Parking spaces for block of flats – whether right to park forming part of demise under leases or existing as easement – whether leaseholders entitled to an injunction to prevent interference with right to park

*KETTEL V BLOOMFOLD LTD
(2012) PLSCS 153 – Decision given 25.05.12

Facts: K and others were leaseholders of eight flats in an estate of which B was the freeholder. Each flat had the use of a designated parking space and the lease provisions demised the flat “TOGETHER with” the rights set out in a schedule, including “The right of vehicular access to and egress from the Car Parking Space and the sole right to use the Car Parking Space for the parking of a taxed car or motorbike”. B reserved the right to construct further buildings on the estate. B proposed to build another block of flats over the existing parking spaces and fenced off the area of the new building.

Point of dispute: Whether the leaseholders should be granted their application for an injunction to prevent B’s proposed development. They contended that the designated parking space formed part of the demise under each lease and that B could not build on the spaces. It was common ground that if that submission failed then the right to park in a designated space should be characterised as an easement appurtenant to the demise of the relevant flat. B argued that it had the right to require the leaseholders to use other parking spaces in place of those originally allocated to them.

Held: The leaseholders’ claim was allowed.

- i. The right to use a car parking space could not be construed as a demise of that space.
- ii. An easement for parking was not excluded by the facts of the case. The right to park did not leave B without any reasonable use of the land so as to render its ownership illusory.
- iii. The right to build reserved for B could not be construed so as to permit the entire destruction of the right to park on the designated space, as would occur if all the parking spaces were built over. The leaseholders could object to a building on the grounds that it would interfere with specific rights expressly granted to them.
- iv. B could not require the leaseholders to use alternative parking spaces. The terms of the easement granted to the leaseholders did not expressly or by implication, permit variation of the servient land.

- v. The fencing off of the parking spaces had already substantially interfered with the leaseholders’ rights and the construction of the new building would interfere with them further. The grant of an injunction was discretionary but it would be the normal remedy for interference with property rights and only in exceptional circumstances should an injunction be refused and damages awarded in lieu. The fact that B was offering alternative parking spaces did not justify refusing an injunction. It could not be said that the leaseholders were acting unreasonably in seeking to enforce their rights. An injunction was the appropriate remedy.

CONTRACT

13 High Court

Repudiatory breach of contract

*AMPURIUS NU HOMES HOLDINGS LTD V TELFORD HOMES (CREEKSIDE) LTD
(2012) PLSCS 156 – Decision given 04.07.12

Facts: The defendant company was established by a property developer and a bank for the purposes of carrying out a joint venture commercial and residential development in south east London. The development, which was to comprise four blocks around a piazza, was to be funded by the bank. The defendant acquired the site in 2007 and in October 2008 it entered into an agreement with the claimant company concerning completion of the development and the grant to the claimant of long leases of commercial units in the four blocks. The target dates set for completion were July 2010 for the first two blocks and February 2011 for the third and fourth. The defendant was to procure that the works were carried out with due diligence and use reasonable endeavours to procure their completion by the target dates, or as soon as reasonably possible thereafter. The claimant paid a deposit of £421,309. Funding for the second phase was conditional on the defendant achieving pre-sales of at least 85 residential units, but owing to difficulties in the financial markets at that time, a launch event in August 2008 achieved only four pre-sales. By March 2009 sufficient pre-sales had still not been achieved and the defendant stopped work on the third and fourth blocks. In November, the claimant advised the defendant that it considered the cessation of the works on these blocks to be a repudiatory breach of contract. Protracted negotiations between the parties failed to resolve the matter and the claimant terminated the contract in October 2010.



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Point of dispute: Whether to allow the claimant's claim for damages. It contended that:

- i. it had been induced to enter into the contract by the defendant's fraudulent or negligent misrepresentations that funding for the development was in place or not a matter of concern; and
- ii. the defendant was in repudiatory breach of contract.

Held: The claim was allowed in part.

- i. The defendant had not misrepresented the position regarding the financing of the development. Its representation that funding was in place would not imply that no conditions were attached as most large-scale bank funding carried conditions. Notwithstanding the disappointing pre-launch event, the defendant had not been negligent since the extent of the financial crisis had not become apparent at that time.
- ii. The defendant was liable for repudiatory breach of contract. The concept of due diligence connoted both due care and due assiduity and expedition and the deliberate cessation of work on two of the four blocks in the development was not consonant with due diligence. It had breached its obligation to use reasonable endeavours to procure completion by the target dates since it had deliberately stopped work on the third and fourth blocks, and this cessation of work was so substantial as to defeat the commercial purpose of the venture. The fact that the claimant had engaged in prolonged negotiations with the defendant with a view to resolving the issue did not mean that it had subsequently affirmed the contract.
- iii. The claimant could recover its deposit but was not allowed further damages. On the balance of probabilities it would not have made sufficient a profit from the contract such as to enable it to recoup the expenditure that it claimed.

14 High Court

Breach of warranty of authority

*GREENGLADE ESTATES LTD V CHANA
(2012) PLSCS 164 – Decision given 12.07.12

Facts: The second defendant was a firm of chartered surveyors and auctioneers. At one of its auctions in September 2009, one of the lots comprised seven subtenanted flats in a large detached house owned by the first defendant. The lot failed to reach its reserve price of £670,000 but immediately after the auction a representative of the claimant approached the auctioneer with a view to purchasing it by private treaty. A sale at the price of £670,000 was agreed, a memorandum of sale was completed and signed by the claimant and the second defendant on behalf of the vendor. A deposit of 10% of the purchase price was paid and the contractual date for completion was ten days later. The first defendant denied having authorised the sale of the property, the sale was not completed and the first defendant failed to respond to a notice to complete served by the claimant. In proceedings for specific performance the first defendant alleged that he had not been a party to the sale agreement and that a third party had made it using his identity in order to obtain moneys by fraud. The claimant joined the second defendant to the proceedings claiming damages for breach of warranty of authority. The parties agreed that the specific performance claim should be dismissed and judgment was entered against the second defendant on the breach of warranty claim.

Point of dispute: While the parties agreed that the proper award of damages was the value of the property, less the agreed price, they differed as to the correct valuation date.

Held: Damages for breach of warranty of authority should put the claimant in the same position as if the warranty had been accurate and the sale had been authorised by the owner of the property. The appropriate measure of damages was therefore the value of the property, less the agreed price. Although the logical date for valuation was the agreed completion date, damages could be assessed at a later date where it was just to do so and there was authority for the proposition that the valuation date might be postponed for so long as the claimant had reasonably continued to seek completion of the sale. In the circumstances, it had been reasonable for the claimant to continue to pursue alternative claims against both defendants, and accordingly it was just to value the property as at the date of the trial.

HOUSING

15 Homes & Communities Agency (HCA) Bulletin

Housing Market Bulletin – June 2012

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

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

House prices remain steady, although there is evidence that the market in London and the surrounding areas is strengthening and that markets elsewhere are weaker. The number and value of loans extended for house purchases is similar to a year ago.

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

16 HCA Guidance

Guidance on housing viability, local plans and national framework published

The Local Housing Delivery Group (which was established as a collaboration between local government and housebuilders in order to help address the current housing crisis) has published its dual review of Local Plan viability testing and local standards in new housing development. The Group's report, *Viability Testing Local Plans – Advice for planning practitioners* is a resource for local authorities to help ensure their local plans are viable and deliverable. The Planning Inspectorate has welcomed this advice as an approach which will help enable local authorities to meet their obligations under the NPPF when their plans are examined. The Group has also published an interim report, *A Review of Local Standards for the Delivery of New Homes*, which concludes that there is significant scope for simplification of the standards regime and recommends a Government backed review and consolidation of existing local housing standards.

<http://www.homesandcommunities.co.uk/news/lghb>

17 CLG Housing Survey

English Housing Survey: Household Report 2010–11

This is the detailed report of findings from the survey relating to households, and builds on results reported in the English Housing Survey Headline Report published in February 2012.

The English Housing Survey Homes Report 2010, formally known as the Housing Stock Report, was published at the same time on 05.07.12.

The English Housing Survey began in April 2008 bringing together two former DCLG housing surveys – the English House Condition Survey and the Survey of English Housing. The report includes the following findings:

- The largest tenure type in 2010–11 was owner occupation, with 14.45 million households (66 per cent). This continued a slight downward trend from a peak of 14.79 million households in owner occupation (71 per cent) in 2005. The private rented sector continued to increase in size, to 3.62 million households (17 per cent).
- Owner occupiers buying with a mortgage made average weekly mortgage payments of £143. This compared to average weekly rent payments of £160 made by privately renting households, and £79 by social renters.
- Households living in poverty were more likely to live in homes that had significant outstanding repairs and damp problems than households who were not living in poverty.
- The majority of households were satisfied with their local areas and their accommodation. However, although the majority of people felt their areas had not changed much over the previous two years, across all tenures, they were more likely to say their local area had got worse than better.

<http://www.communities.gov.uk/publications/corporate/statistics/ehs201011householdreport>



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COMPULSORY PURCHASE

18 Administrative Court

Compensation – certificate of alternative development – whether s 38(6) of Planning and Compulsory Purchase Act 2004 applying to determination of appropriate alternative development under s 17 of Land Compensation Act 1961 – claim allowed in part

**HARINGAY MEAT TRADERS LTD V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2012) PLSCS 145 – Decision given 27.06.12

Facts: The claimant, HMT, owned a building in Stratford, East London, that housed a meat packing and distribution business with a nightclub above. In 2005 the site was the subject of a compulsory purchase order (CPO) as part of the site for the 2012 Olympic Games. HMT applied under s17 of the Land Compensation Act 1961 for a certificate of alternative development certifying that, in the absence of the acquisition scheme, planning permission would have been granted in respect of its site for a building up to 15–storeys in height containing commercial and residential or hotel development with basement car parking. The local borough council granted a certificate in respect of development for B1 and B2 business and general industrial development use and Class B8 storage and distribution use. The council refused to certify the other A1 to D2 uses included in HMT’s application. The Sec of State upheld the council’s decision, its inspector having proceeded on the assumption that any development should accord with the development plan unless material considerations indicated otherwise. In relation to A1 and A3 uses he found that these would be confined to small pockets of development that could be disregarded for the purposes of issuing a certificate and he cited government guidance in para 8 of Appendix P to Circular 06/2004.

Point of dispute: Whether HMT’s application to quash the certificate under s21 of the 1961 Act would be allowed. The Sec of State relied on s38(6) of the Planning and Compulsory Purchase Act 2004 in support of the inspector’s approach, but HMT argued that s38(6) did not apply to a determination under s17 of the 1961 Act. HMT relied on s17(7) to the effect that incompatibility of a use class with the development plan was not, in itself, a reason for treating it as inappropriate.

Held: The claim was allowed in part.

i. The matter had to be considered in the same way as if a planning application had been made. Normal planning principles would apply with the consequential application of s38(6) of the 2004 Act i.e. the determination had to accord with the plan unless material considerations indicated otherwise. The same considerations applied to a s17 case – both s17(7) of the 1961 Act and s38(6) of the 2004 Act enabled the decision-maker to depart from the requirements of the development plan where appropriate, but only in accordance with normal planning principles.

ii. The inspector had erred in his approach to para 8 of Appendix P to Circular 06/2004. A use could not be disregarded for s17 purposes simply because it was small in relation to the area to which the general policies of the development applied. What mattered was whether those uses would be acceptable as a significant element of the development of the site. The question was whether, notwithstanding the lack of support for such uses in the relevant policies, there were significant and insuperable planning objections to the particular development.

On the evidence, a small food supermarket might have been made available on the site and such a use could have been acceptable as a significant element in the development of the site. The inspector had given no reasons why there would have been insuperable planning objections to that particular development. The certificate would not, however, be quashed just because of that error, as the body responsible for the acquisition under the CPO had given an undertaking that in any proceedings for assessment of compensation it would accept that planning permission would have been granted for the ground floor of the building envisaged by the certificate for one or more of Classes A1 or A3 and a crèche with Class D1.

ENVIRONMENT

19 The Wildlife Trusts and TCPA guidance

Planning for a Healthy Environment

This practical guidance for planners on green infrastructure and biodiversity contains advice on how green infrastructure and wildlife can be protected and enhanced through Local Plan policies and development management decisions.

<http://www.wildlifetrusts.org/news/2012/07/06/planning-healthy-and-natural-environment>

GENERAL

20 Centre for Cities report

Hidden Potential: Fulfilling the economic potential of mid-sized cities

This report addresses the problems faced by mid-sized cities, arguing that although they have performed well in recent years their future growth could be held back unless their key economic weaknesses are addressed. The Government has announced its intention to extend its City Deals programme beyond England’s core cities and this report examines how mid-sized cities, such as Sunderland, could use this process to tackle their problems. Recommendations of the report include the following:

- Mid-sized cities should co-ordinate their efforts and call for a “mid-sized cities investment fund” rather than specific deals being negotiated with each city,
- A fund of £500 million should be created using money from the European Structural Fund, the Growing Places fund and private sector funding;
- Mid-sized cities should address deficiencies in the provision of city centre office space by managing empty public sector office space; and
- To support the reconfiguration of their urban cores mid-sized cities should consider preparing bespoke proposals to Government around transport and skills development.

<http://www.centreforcities.org/midsizedcities>

21 Independent Panel on Forestry Report

Independent Panel on Forestry – Final Report

This report calls for England's woods and forests to be revalued for all the benefits they provide which include areas for recreation, clean air, clean water, and habitats for wildlife. Forests also lock up carbon, provide shade and can help reduce flooding while wood is the raw material for timber frame buildings, furniture, flooring, fuel, and paper. The report calls for a revival of a woodland culture that appreciates how important trees are for people, for nature and the economy. The report also makes clear that the Panel believes the public forest estate is a national asset, which should remain in public ownership and it recommends an evolution of the Forestry Commission. The new organisations should have greater financial freedoms and investment to generate greater benefits for people, nature and the economy.

<http://www.defra.gov.uk/forestrypanel/reports/>

22 RICS Survey

RICS Commercial Market Survey Q2 2012

- Occupier demand falls back modestly while available space continues to rise.
- Rent expectations continue to decline although central London offices remain a notable exception.
- Demand from investors is largely unchanged, but capital value expectations weaken further.

00 RICS Chart Book

RICS UK Economy & Property Market Chart Book – July 2012

- The RICS expects 2012 GDP growth to average 0.3%
- The Bank of England is likely to deliver another £50bn of quantitative easing at the next meeting
- Sentiment in the property sector is slipping. The latest RICS Housing Market Survey showed a worsening trend in price expectations with the agreed sales net balance showing its second consecutive negative reading. Data from the British Bankers' Association indicates that the number of mortgage approvals for house purchase in May slipped to its lowest level in more than a year.

http://www.rics.org/site/scripts/download_info.aspx?fileID=12173

23 CLG Publication

Unlocking growth in cities: city deals – wave 1

The Government is committed to unlocking the full growth potential of Britain's cities. This requires a shift in the powers that are available to local leaders and businesses, and in order to do this a programme of City Deals has been launched. The aim of these is to:

- Give cities the powers and tools they need to drive local economic growth;
- Unlock projects or initiatives that will boost their economies; and
- Strengthen the governance arrangements of individual cities.

To date deals have been completed with Greater Birmingham and Solihull, Bristol and the West of England, Greater Manchester, Leeds City Region, Liverpool City Region, Nottingham, Newcastle and Sheffield City Region. These cities have estimated that the first wave of deals will create 175,000 jobs over the next 20 years and over 37,000 new apprenticeships.

<http://www.communities.gov.uk/publications/regeneration/growthcitieswave1>



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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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One of our key roles at Gerald Eve Research is to communicate with our clients and others; to inform them, for example, on our latest thinking on topical issues such as legal matters and the implications for broader property market trends.

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EVEBRIEF

Legal & Parliamentary

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SCOTLAND

PLANNING

01 Scottish Government Circular

Houses in Multiple Occupation: Guidance on Planning Control and Licensing

The purpose of this Circular is to give guidance on the provision and management of houses in multiple occupation (HMO) through the planning system, as well as on the interface between the HMO licensing scheme and the planning system. This revised Circular takes into account the commencement of provisions contained in the Private Rented Housing (Scotland) Act 2011, namely that local authorities can now consider issues of overprovision in determining HMO applications and that there is a discretionary link between the planning and licensing systems in operation.

<http://www.scotland.gov.uk/Publications/2012/06/4191>



GERALDEVE

HOUSING

02 Scottish Government Consultation

Homes that don't cost the earth: a consultation on Scotland's Sustainable Housing Strategy
Deadline for Comments: 28.09.12

This Housing Strategy sets out the government's vision for warm, high quality, affordable, low carbon homes and a housing sector that helps to establish a low carbon economy across Scotland. A route map to 2030 sets out the steps that need to be taken. The Strategy's objectives are to:

- deliver a step-change in provision of energy efficient homes to 2030 through retrofit and new build, as promised in the Infrastructure Investment Plan;
- ensure that no-one in Scotland has to live in fuel poverty, as far as practicable, by 2016;
- make a full contribution to Climate Change Act targets; and
- enable the refurbishment and house-building sectors to contribute to and benefit from Scotland's low carbon economy and to drive Scotland's future economic prosperity.

<http://www.scotland.gov.uk/Publications/2012/06/8390>

CONSTRUCTION

03 Statutory Instrument

SSI 2012/209 The Building (Scotland) Amendment Regulations 2012

These Regulations, which come into force on 9.1.13, amend the 2004 Regulations and implement in part the requirements of Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings. Regulation 2(2) amends Regulation 17 of the 2004 Regulations to require an inspection report including recommendations for cost-effective improvements to be provided following inspections of air-conditioning systems.

Regulation 2(3) amends the limitation to standard 6.9(c) of Schedule 5 to provide that this standard will only apply to certain public buildings with a floor area greater than 500 square metres.

<http://www.legislation.gov.uk/ssi/2012/209/contents/made>

04 Statutory Instrument

SSI 2012/208 The Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012

These Regulations amend the 2008 Regulations which transposed the provisions of Directive 2002/91/EC of the European Parliament and of the Council on the energy performance of buildings. Following the recasting of the 2002 Directive in 2010 the 2012 Regulations partially transposed Article 11 of the 2010 Directive and these Regulations transpose the further provisions of the 2010 Directive that require legislative changes to the 2008 Regulations. That Directive lays down the requirements for energy performance certificates, including their contents and when a certificate is required to be issued and displayed. The majority of these Regulations will come into force on 01.10.12 but Regulations 6, 11, 16 and 18 will come into force on 09.01.13 and Regulation 20, which makes changes to the 2012 Regulations before they are due to come into force on 01.10.12, comes into force on 30.09.12.

<http://www.legislation.gov.uk/ssi/2012/208/contents/made>

GENERAL

05 Scottish Government publication

Getting the best from our land. A land use strategy for Scotland. Progress Statement 2012

This is the first annual Progress Statement for Scotland's Land Use Strategy. It sets out how the proposals and milestones set out in the Land Use Strategy Action Plan are being delivered and provides the future monitoring framework for the Strategy.

<http://www.scotland.gov.uk/Publications/2012/06/4649>

WALES

GENERAL

06 Welsh Government Report

City Regions Final Report

An advisory group set up in November 2011 was given the task of considering and reporting on the potential role of "City Regions" in future economic development and prosperity in Wales. The group's main objective was to determine whether a city region approach appeared more likely to deliver jobs and prosperity for Wales than current approaches to economic development. The report contains 22 recommendations covering an array of issues relating to city regions in Wales.

<http://new.wales.gov.uk/topics/businessandconomy/publications/120711cityregions/?jsessionid=0QnLQGyBLJvT8C30RCnkvhGKZqCwDvXVJBLGT4wjhyz35hGWNLFy!-278964247?lang=en>