

EVEBRIEF

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DEFENDING THE OLYMPICS



Tony Chase
Editor

The London 2012 Olympics are drawing to a close as we are finalising this edition, and the Government's and public's attention will now turn towards their legacy and lessons that can be learned from them for the future.

Understandably, there was great concern about the security situation before the commencement of the Games, but to the relief of the organisers, the participant athletes, residents and visitors to London they have passed so far without any major incidents. We report at item 24 a case which was heard shortly before the commencement of the Games concerning a challenge by the residents of a tower block in Leytonstone who objected to the siting of a ground-to-air missile system on the roof of their building. Their arguments that its presence would be a breach of their human rights under Article 8 of the European Convention on Human Rights, that they had not been adequately consulted beforehand and that a specially constructed gantry would have been a preferable option for siting the system were rejected. Decisions relating to national security are a matter for the Crown and should only be interfered with in exceptional circumstances, and as the Government has a duty to protect the realm any interference with the residents' Article 8 rights was found to have been proportionate.

The Mayor of London has recently published the Olympic Legacy Supplementary Planning Guidance (Item 7) to take forward Policy 2.4 of the London Plan which identified the potential of the Games to deliver fundamental economic, social and environmental change in east London. The Guidance also reaffirms the Mayor's commitment to close the deprivation gap between the Olympic Host Boroughs and the remainder of London. The key question will be whether this vision can be achieved and the necessary investment made in the current economic climate, but there is no doubt that all eyes will be on east London in the coming months and years. The legacy that the Games may leave in terms of their influence on the physical well-being of the UK's younger generation might well though be considered even more important in the long run.

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LOCAL GOVERNMENT

01 CLG Letter

Council Tax Information Letter 02/2012: Potential council tax discount on empty homes

This letter provides clarification on the proposed discounts for properties that are unoccupied and unfurnished.

- The Government intends to allow councils complete discretion over the level of council tax discount and the time-period for which it may apply to an empty home.
- A dwelling that has been unoccupied and substantially unfurnished for a continuous period of at least two years may be subject to an Empty Homes Premium of up to 50% on top of the full tax, if a billing authority decides to implement such a scheme.
- This change will not affect the basis of calculation of the New Homes Bonus, which uses a six-month threshold to distinguish between short-term and long-term empty properties.

<http://www.communities.gov.uk/publications/localgovernment/ctil022012>

LANDLORD & TENANT

02 High Court

Liability for rent following assignment

*E.ON UK PLC V GILESPOURTS LTD
(2012) PLSCS 17 – Decision given 31.07.12

Facts: The claimant, E.ON, held a headlease of shop premises on terms which prohibited assignment or underletting without the previous written consent of the landlord, not to be unreasonably withheld. G held a sublease of the property which stated that it must observe and perform the covenants in the headlease “so far as the same are not inconsistent with the terms hereof as if the same had been herein repeated and set out in full mutatis mutandis”. The sublease expressly incorporated the provisions of s196 of the Law of Property Act 1925 regarding the service of notices. In 2007 G’s parent company agreed to transfer G’s lease to a purchaser as part of a company sale and although licence to assign was requested by email the assignment was completed in late May 2008 before the licence was granted and without E.ON’s knowledge. The assignee went into administration leaving arrears of rent. When E.ON learned of the assignment it notified G, under s17 of the Landlord and Tenant (Covenants) Act 1995, of its intention to claim the outstanding rent from G as the former tenant.

Point of dispute: Whether G was liable for the arrears as tenant. Issues arose as to whether:

- On the construction of the sublease, any consent was required for the assignment;

- The headlessee was precluded from unreasonably delaying the giving of such consent; and
- The transfer had transferred the benefit and burden of the tenant’s covenants to the assignee notwithstanding that it had not been registered at the Land Registry.

Held: E.ON’s claim was allowed.

- Because of the words that appeared in the sublease, requiring performance of the covenants in the headlease, the sublease contained an obligation on G, imported from the headlease, not to assign the property without the previous written consent of the headlessee.
- Although consent was not to be unreasonably withheld, the sublease, by reference to the headlease, imposed no requirement that consent should not be unreasonably delayed. The sublease incorporated s196 of the 1925 Act which meant that service had to be effected in a manner permitted by that section, namely either by delivery to the landlord’s last known place of abode or business or by registered post. The request sent by email in May 2008 did not suffice for that purpose which meant that the application for consent had not been served on the headlessee.
- Even if there had been no requirement for consent to the assignment, G would still be bound by the tenant’s covenants in the sublease so as to make it liable for the arrears of rent. The assignment of the sublease triggered the requirement for it to be registered under s4 of the Land Registration Act 2002 and the failure to register resulted in the assignment of the legal estate becoming void. This meant that the legal estate reverted back to G who held it on bare trust for the assignee.

PLANNING

03 Supreme Court

Revocation of planning permission – s97 Town and Country Planning Act 1990 – whether compensation payable to developer in event of revocation capable of being a material factor on reconsideration

**R (ON THE APPLICATION OF HEALTH AND SAFETY EXECUTIVE) V WOLVERHAMPTON CITY COUNCIL
(2012) PLSCS 172 – Decision given 18.07.12

Facts: WCC granted planning permission to a third party to construct four blocks of student accommodation on a site within 100m of a liquefied petroleum gas (LPG) facility. Because LPG is a hazardous substance WCC was under a statutory duty to consult the appellant (HSE) regarding the health and safety risks, but only carried out an online consultation. HSE was not notified of the grant of permission and work on the blocks commenced, but four months later it asked WCC to revoke or modify the permission under s97 of the 1990 Act. WCC refused this request. HSE sought judicial review of the grant of planning permission and the decision not to revoke it. Although he found the permission to be unlawful the judge did not quash it, and held that WCC had acted lawfully in refusing to revoke it. The Court of Appeal took a different view, holding that WCC had acted unlawfully in refusing to consider exercising its s97 power and ordering WCC to reconsider the matter.

Point of dispute: Whether HSE's appeal would be allowed against the Court of Appeal's majority decision that WCC could take into account the compensation that it might have to pay to the third party in the event of revocation, which was capable in law of being a material factor.

Held: The appeal was dismissed. As a matter of general principle a public authority, when deciding whether to exercise a discretionary power to achieve a public objective, was entitled and required to take into account the cost to the public of doing so. This approach was also required under s97. In deciding whether revocation was "expedient" the authority had to have regard to the development plan and other "material considerations" and that wording could encompass the cost consequences of revocation. S97 created a specific statutory power to buy back a permission previously granted – cost or value for money was relevant to that consideration.

04 Administrative Court

Appeal against refusal of planning permission for development of two dwellings in woodland

*PNH (PROPERTIES) LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) PLSCS 168 – Decision given 18.07.12

Facts: PNH sought planning permission to erect two dwellings within an area of woodland that it owned. An earlier application for a development of three dwellings had been dismissed by the Sec of State on appeal in 2009. PNH appealed to the Sec of State against the Ipa's refusal of permission for the development, contending that the second proposed development would not be detrimental to the overall character of the woodland, and that any adverse effects would be outweighed by the benefit of a positive management plan for the remainder of the woodland which would be the subject of a planning obligation under s106 of the Town and Country Planning Act 1990. However, as drafted the s106 deed bound only the application site and not the remainder of the woodland.

Point of dispute: Whether to allow PNH's application to quash the inspector's decision to dismiss the appeal against refusal of permission. PNH contended that the inspector had: (i) erred in his approach to the planning obligation; (ii) failed to raise the issue of enforceability with PNH, the claimant, contrary to the requirements of procedural fairness; and (iii) failed to have proper regard to the earlier appeal decision or to give proper reasons for departing from it.

Held: The application was dismissed.

- i. The inspector had correctly concluded that there was no guarantee that the mitigation measures laid down in the planning obligation would be accomplished. It was expressed so as to bind only the application site but required activities to be carried out on the remainder of the woodland – if that were sold into different ownership then the planning obligation would not apply to it.
- ii. There was no procedural unfairness in the way in which the inspector had dealt with the enforceability issue. The inspector's decision in relation to the planning obligation had ultimately depended on his finding that the same woodland management benefits could be achieved without the development.
- iii. The inspector had not failed to take into account the earlier appeal decision. The new application had been designed in a way that PNH hoped would address the previous inspector's concerns regarding detriment to the character of the area – he had found that the proposed development under the new application was also detrimental and unacceptable. This was a conclusion he was entitled to reach and he had explained his reasons for doing so.



05 Administrative Court

Reasons for refusal of planning permission

*PROUDFOOT PROPERTIES V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) PLSCS 173 – Decision given 20.07.12

Facts: The owner of PP owned a site that previously had been used for intensive pig-rearing, but PP had given the local council an undertaking to cease that use in the light of the council's concerns about the site's continued suitability for it. PP alleged that this undertaking was part of a deal under which the council had agreed to permit an alternative development on the site, but permission for a development consisting of six houses with triple garages was refused. PP appealed against that decision arguing that the council's refusal to grant permission was unreasonable, in breach of the agreement, and contrary to the site owner's right to peaceful enjoyment of his possessions under Article 1 of the First Protocol to the European Convention on Human Rights.

The inspector also decided that planning permission should be refused on grounds relating to incompatibility with development plan policy, impact on an area of outstanding natural beauty, lack of accessibility and highway safety issues. The inspector stated that the owner's personal circumstances were insufficient to outweigh the harm of the proposed development.

Point of dispute: Whether PP's application to quash the inspector's decision should be allowed. PP argued that the inspector had given inadequate reasons for his conclusions regarding human rights and personal circumstances.

Held: The claim was allowed. The personal circumstances of the site owner, namely closure of the pig-rearing unit in the belief that he would be given permission for alternative development on the site, were capable of being a material consideration to which direct effect could be given in an exceptional case. The inspector needed to inform the parties whether he accepted PP's submissions as to the reason for closure of the pig-rearing unit, since that issue was central to its case on personal circumstances and human rights. The failure to give adequate reasons had caused substantial prejudice to the claimant since it could not properly assess its prospects of a successful legal challenge to the inspector's decision without knowing the evidential basis on which it was made. PP would continue to make applications for planning permission in respect of the site and was placed at a disadvantage by not knowing whether the inspector had accepted or rejected its belief, which lay at the heart of those applications, that the council had entered into an agreement with the site owner. The fact that relevant planning policies pointed strongly against the development did not obviate the need for the inspector to give adequate reasons.

06 RTPI News Release

Local Plan Delivery in England

In March local councils were given 12 months from the publication of the National Planning Policy Framework (NPPF) to put in place up-to-date local plans, after which time planning applications will be determined according to the NPPF. Recognising the importance of good local plans being adopted in time, the RTPI has announced an initiative to identify and remove barriers to councils getting their local plans adopted. To this end the RTPI has announced the steps that it intends to take, as follows:

- Making contact with DoH, BIS, DEFRA and CLG regarding the fullest participation of statutory bodies, including utility companies, in the local plan process.
- The promotion of local plan making to meetings of local authority chief executives at regional and national level.
- Working with Local Enterprise Partnerships to alert them to the importance of supporting local plans.
- Working with its regional branches and networks to showcase best practice on local plan production.
- Working with Government with the aim of ensuring that the Government considers the impact of new guidance on plan production. The RTPI will work with other bodies to ensure that all involved in local plan making are apprised of the support mechanisms available to assist the rapid adoption of local plans.

<http://www.rtpi.org.uk/briefing-room/news-releases/rtpi-calls-for-action-on-local-plans/>

07 Mayor of London Planning Guidance

Olympic Legacy Supplementary Planning Guidance (OLSPG)

The significant public sector investment in the Queen Elizabeth Olympic Park and the Lea Valley to prepare for the 2012 Olympic and Paralympic Games is seen as a catalyst for tackling "decades of underinvestment" across east London. Policy 2.4 of the Mayor's London Plan identifies the potential of the Games to deliver fundamental economic, social and environmental change in east London, and describes it as "London's single most important regeneration project for the next 25 years". The Plan also confirms the Mayor's commitment to use the Games and its legacy to secure "Convergence" by closing the deprivation gap between the Olympic Host Boroughs and the rest of London. The Mayor estimates that the OLSPG area has the potential to provide around 32,000 new homes and 1.35 million square metres of new and improved commercial floorspace, and confirms Metropolitan Stratford as a focus for regeneration and change. The OLSPG sets out the Mayor's vision for the area which will make it one of the most attractive places in London to live and work, including improving connectivity into the new Queen Elizabeth Olympic Park and creating new family housing and schools.

<http://www.london.gov.uk/publication/olympic-legacy-supplementary-planning-guidance>

08 CLG Statistics

Planning Applications: January to March 2012 (England)

The latest national statistics on Planning Applications were released on 27.07.12. In the period January to March 2012, compared with the quarter ended March 2011, authorities undertaking district level planning in England:

- received 120,900 applications for planning permission, an increase of 1%;
- decided 100,400 planning applications, 4% higher;
- granted 81,500 permissions, an increase of 4%;
- decided 4% more residential applications.

In the year ending March 2012, district level planning authorities:

- received 477,800 applications, 1% fewer than for the year ending March 2011;
- decided 434,900 planning applications, a decrease of 1% on the previous year;
- granted 354,100 permissions, slightly less than in the previous year;
- decided 57% of major applications in 13 weeks, 71% of minor applications and 82% of others in 8 weeks – about 5% fewer across the board than in the previous year; and
- made 3% fewer residential decisions.

<http://www.communities.gov.uk/publications/corporate/statistics/planningapplicationsq12012>

RATING

09 Administrative Court

Non-domestic rates– occupation for charitable purposes – whether units attracting charitable exemption from rates under s45A(2) of the Local Government Finance Act 1988

*PRESTON CITY COUNCIL V OYSTON ANGEL CHARITY (2012) PLSCS 170 – Decision given 19.07.12

Facts: OAC, a charity which promoted the welfare of offenders and various classes of disadvantaged persons, was granted a licence to occupy commercial units in a former mill building for charitable purposes only. Although the licence was expressed to be personal to OAC, it could sublet the units provided that the sub-licensed parts were used for charitable services. Most of the units remained unoccupied, apart from one which was sub-licensed to another charity for use as a charity shop.

Point of dispute: Whether the council's appeal would be allowed against the refusal of the magistrates to issue liability orders in respect of its demands for unoccupied rates. The magistrates held that the units were exempt from the rates by virtue of s45A(2) of the Local Government Finance Act 1988 since the ratepayer was a charity and, when next in use, the hereditament would be "wholly or mainly used for charitable purposes (whether of that charity or of that and other charities)". The council appealed contending that a property would only be zero-rated under s45(2) if it appeared that the property would next be occupied and used by the owning charity itself.

Held: The appeal was dismissed. The rating regimes for occupied and unoccupied property were different – the focus for occupied properties was on occupation while that for unoccupied properties was ownership. On the ordinary meaning of the words used in s45A(2) the hereditament did not have to be wholly or mainly used by the ratepayer charity when next in use – if Parliament had intended another meaning that would have been made clear. However the next use had to be for charitable purposes that included the specific charitable objects of the currently – owning charity.

10 Upper Tribunal (Lands Chamber)

Rating of shop premises – list inaccuracy – material change of circumstances – effective date

** WILLIAM BRUCE GOULBORN V OWAIN WYNN COWELL (VO) UTLC Case Number: RA/27/2011 – Member AJ Trott FRICS – Amended decision given 27.07.12

Facts: 4, Sussex Street, Rhyl, Denbighshire, a ground floor lock up shop, was entered in the 2005 local non-domestic rating list with a RV of £5,300. The list was altered by the Valuation Officer on 08.08.06 to RV £9,600 wef 23.03.06 because there was a material change of circumstances (MCC) from that date, being an improvement in the area. The Valuation Officer also used the alteration to correct a significant error in the original 'compiled list' RV. Had there been no MCC the effective date of the correction could have been no earlier than the date of the Valuation Officer's alteration. The Valuation Tribunal reduced the entry to RV £8,200 wef 23.03.06, following which the Valuation Officer made a further alteration on 25.09.07, to RV £8,200.

Issue: Whether the ratepayer's appeal against the Valuation Tribunal's determination would be allowed. In its original decision in November 2011 (see Ewebrief Volume 34(01) item 13) the Upper Tribunal held that the effective date for the alteration of the list for the MCC was 23.03.06 but that the effective date for the alteration to correct the inaccuracy in the compiled list was 25.09.07. The Valuation Officer sought permission to appeal to the Court of Appeal, but as an alternative invited the Upper Tribunal to set aside its decision under rule 54 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010.



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Decision: The Upper Tribunal set aside part of its previous decision and issued a revised determination, dismissing the ratepayer's appeal. Where there is a composite alteration to an entry in the list that involves both the MCC and a correction of an inaccuracy in the originally compiled list, the effective date should be the date of the MCC. When giving effect to such an MCC the Valuation Officer, given his duty to maintain an accurate list under s41 of the Local Government Act 1988, must value the hereditament in accordance with the provisions of Schedule 6 of that Act, namely a value that will also correct any inaccuracy that existed in the original compiled list entry. The RV should be altered to £8,200 wef 23.03.06.

11 CLG Consultation

**Business Rates Retention: Technical Consultation
Deadline for Comments: 24.09.12**

This consultation seeks views on a range of detailed and technical issues concerning the transition from the current formula grant system and the initial implementation of the business rates retention scheme from April 2013. It focuses particularly on how the Government proposes to calculate local authority start-up funding allocations and baseline funding levels.

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

12 CLG Guide

Business Rates Retention: A step-by-step guide

This document provides a guide to how the business rates retention scheme will be set up and will operate, including how the central and local share will operate and how levy and safety net payments will be calculated.

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

13 CLG Guide

A Plain English Guide to Business Rates Retention

The purpose of this guide is to explain why the Government is changing the system, how the new scheme will work in practice and what the changes will mean to residents, businesses, charities, councils and developers.

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

14 CLG Information Letter

Business Rates Information Letter (07/2012): Technical Consultation on Business Rates Retention

This letter covers:

- publication of technical consultation and supporting documents; and
- publication of a revised pooling prospectus for local authorities. This details the requirements for those local authorities who are seriously considering pooling, setting out a detailed timetable which includes a "cooling off" period for authorities to consider whether or not they wish to proceed with pooling following the publication of the draft Local Government Finance Report.

<http://www.communities.gov.uk/publications/localgovernment/bril72012>

15 CLG Technical Paper

Government Resource Review: Proposals for business rates retention – Technical paper on Tax Increment Financing and New Development Deals

The Government's business rates reforms will give all local authorities access to Tax Increment Financing (TIF), enabling them to borrow against future business rates to invest in growth. TIF is a finance mechanism which allows local authorities to use anticipated future tax receipts to support upfront investment in their local area. This technical paper sets out the Government's policy on TIF and how it will work within the new local rates retention scheme.

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

REAL PROPERTY

16 Court of Appeal

Interference with right of way

*ZIELENIEWSKI V SCHEYD
[2012] All ER (D) 93 (Jun) – Decision given 19.06.12

Facts: The claimant had the benefit of a right of access to a field; the erection of a wall and fence alongside the strip made it much narrower, and the claimant was no longer able to use his older-style baler which made small bales of hay. The strip was, however, wide enough for a modern baler which makes large round bales to pass along it.

Point of dispute: Whether the claimant's appeal would be allowed against the ruling of the judge in the court below that there had been no substantial interference with his right of way.

Held: The appeal was allowed. Not every interference with a right of way is actionable. The owner of the right could only object to activities which substantially interfered with the exercise of the defined right in the way in which he reasonably required to exercise it for the time being. The question of whether the owner was reasonable to require his right of way to be exercised in a particular way was to be addressed by reference to convenience rather than necessity. If an obstruction interfered with a particular mode of exercise of the right which it was neither unreasonable nor perverse for the owner to insist upon, then the obstruction would be an actionable interference even if there remained other reasonable ways of exercising the right which most people would prefer. The judge in the court below had failed to address the evidence that there had been a substantial interference in the form of an obstruction which had rendered a particular reasonable use of the agricultural right of way to the field either impossible or seriously inconvenient. The existence of an alternative and widely used method of baling hay in the field using more modern machinery which was able to traverse the strip was irrelevant.

HOUSING

17 HCA Bulleting

Housing Market Bulletin – July 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 main house price indices including Nationwide, Halifax, the Land Registry and the Royal Institution of Chartered Surveyors
- Housing market forecasts
- Housing starts and completions as reported by the Department for Communities and Local Government and updates on key housebuilders
- Mortgage trends and overall economy information

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

TORT

18 Court of Appeal

Award of damages for subsidence allegedly caused to property by neighbouring tree roots

*BERENT V FAMILY MOSAIC HOUSING
(2012) PLSCS 167 – Decision given 13.07.12

Facts: B owned a Victorian house in a mature tree-lined street. The neighbouring property, which was owned by FMH, had a mature tree in its front garden and the local authority was responsible for two mature trees on the pavement outside B's house. B brought proceedings for nuisance and negligence against FMH and the local authority ("the respondents") due to damage caused to her property by the encroachment of tree roots from 2003 to 2011 which undermined its foundations. At first instance the judge concluded that the respondents had not been in breach of duty in failing to remove the trees before the autumn of 2010, but awarded B damages in the sum of £5,000 for distress, inconvenience and loss of amenity on the basis that the trees should not have been retained after that date.

Point of dispute: Whether B's appeal would be allowed against the judge's ruling that the respondents were not liable for the 2003–04 damage until they were given notice of it, and that the damage to her property was not reasonably foreseeable. The respondents cross-appealed against the level of the damages award.

Held: The appeal was dismissed and the cross-appeal allowed in part. The test was whether the trees were an effective and substantial cause of the damage. It was necessary to consider whether there was a real and substantial risk or chance that something like the event that happened might occur and whether the reasonable man would have taken the steps necessary to eliminate that risk. In this case there was not enough evidence to suggest that the respondents should before 2003–04 have identified the three trees as posing a risk to B's house of a nature and extent which imposed on them a duty to take preventative or remedial action, over and above the regime of tree management that was already in place. The £5,000 award of damages was excessive – damages in cases of distress, inconvenience, loss of amenity etc. were intended to provide modest compensation and the benchmark of £200 per annum which had been established in a 2006 ruling should be adhered to.



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19 Court of Appeal

Liability for negligence

*ALEXANDER V FRESHWATER PROPERTIES LTD
(2012) PLSCS 176 – Decision given 27.07.12

Facts: A was injured when she caught one of her fingers in the front door of the block of flats where she lived and it had to be partially amputated. The first appellant (FP) was the landlord and occupier of the building and accordingly responsible for the upkeep of the common parts. The second appellant (X) was a building contractor engaged to carry out a programme of refurbishment to the building, including removing, polishing and replacing the exterior handles on the front door. A brought proceedings against FP and X alleging breach of duty under the Occupiers' Liability Act 1957 and negligence. At first instance both appellants were found to have been negligent and liability was apportioned as to 25% to FP and 75% to X, but A herself was found to have been 25% responsible for the accident.

Point of dispute: Whether the appellants' appeal against the ruling of the lower court would be allowed. FP also contended that it had delegated responsibility for the safe performance of the refurbishment work to X so that it had discharged its duty of care under s2(4)(b) of the 1957 Act.

Held: The appeal was allowed in part. The court was fully justified in its decision that both X and FP had been negligent. In the circumstances X should have foreseen the possibility of an injury occurring and fixed a temporary handle to the door. FP had also been negligent as it should have realised that there was 'an accident waiting to happen'. FP was personally negligent as it had failed to take such steps as it ought reasonably to have taken in order to satisfy itself that the work on the door had been properly done and the judge had been entitled to hold that FP was in breach of its duty under s2(1) of the 1957 Act. Regarding the question of apportionment of liability the judge's decision had not been correct as he appeared to have based it on who was responsible for carrying out the work rather than on who was responsible for the existence of the danger. Although X was responsible for removing the handle that did not provide a satisfactory basis for finding that X was significantly more responsible for what had happened than FP. Liability should be apportioned equally between them.

CONSTRUCTION

20 British Council of Offices Research Report

NBS National Construction Contracts & Law Survey 2012

The key findings of this new survey into contracts and legal issues undertaken by NBS are that the number of disputes in the UK construction industry has not yet reduced and partnering has still not been widely adopted in spite of the Government's efforts. The most common disputes are evidently between the client and the main contractor about extensions of time and valuation of variations. The research also highlighted the ongoing use of bespoke contracts rather than standard forms. Although standard contracts are still used in the majority of cases, almost one quarter of projects undertaken by those questioned used bespoke documentation. Undertaken by NBS with the help of the membership of more than 20 industry bodies, the survey is the most wide-ranging independent review of contractual and legal issues throughout the industry to date.

<http://www.bco.org.uk/research/researchreports/detail.cfm?rid=190&cid=0>

ENVIRONMENT

21 Defra Information Note

Designation of structures and features for flood and coastal erosion risk management purposes – Information note

This note is concerned with the statutory designation of structures and other features (natural or man-made) as defined by the Flood and Water Management Act 2010 and the implications for Designating and Responsible Authorities in England and Wales. It sets out recommendations on practical considerations to enable designations to be made, recorded and managed effectively in the interests of flood and coastal erosion risk management.

<http://www.defra.gov.uk/publications/2012/07/20/pb13804-fcerm-info/>

22 Committee on Climate Change Progress Report

Climate change – is the UK preparing for flooding and water scarcity?

During the first half of 2012 the UK has suffered from both drought and flooding. Although it is not possible to attribute these current weather events to climate change, the latest climate models indicate that extremes of the kind seen this year are likely to become more common in the future. The Government's Climate Change Risk Assessment published earlier this year identified increasing frequency of floods and increased pressure on water resources as two of the most significant climate risks facing the country now and in the future. This report is the Adaptation Sub-Committee's latest assessment on how well the country is preparing for climate change. It uses national indicators to show that the country has become more exposed to future flood risk through continued development in floodplains and paving over of front gardens, while climate change combined with population growth is likely to increase the risk of water scarcity.

<http://www.theccc.org.uk/reports/adaptation/2012-progress-report/>

ENERGY

23 CLG Publication

Investigation into overheating in homes: Literature review
Investigation into overheating in homes: Analysis of gaps and recommendations

The literature review examines whether overheating is occurring in new and existing dwellings and whether or not retrofitting/ refurbishing existing dwellings is likely to increase the risk of overheating. A further report in the same series identifies the main gaps in the literature on overheating in homes and recommends areas where further work would be of value.

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

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

GENERAL

24 Administrative Court

Judicial review of decision to deploy ground-to-air missiles on roof of East London tower block as part of security plan for the 2012 London Olympics

**R (ON THE APPLICATION OF HARROW COMMUNITY SUPPORT LTD) V SEC OF STATE FOR DEFENCE
 (2012) PLSCS 166 – Decision given 10.07.12

Facts: As part of a comprehensive security plan to protect the 2012 Olympic Games from terrorist attack the Sec of State took the decision to site a ground-to-air missile system on the roof of a residential tower block in Leytonstone, chosen due its proximity to the Olympic site and unimpeded all round views. The landlord of the block granted a lease to the Sec of State and a leaflet was distributed to residents in late April 2012 which contained detailed information about the installation and explained that its presence would make the tower block safer due to the presence of military personnel.

Point of dispute: Whether the application of the residents' association, HCS, for judicial review of the decision to site the missiles on the roof would be allowed. It contended that (i) the residents had not been adequately consulted; and (ii) their rights under Article 8 of the European Convention on Human Rights (ECHR) had been breached. It further argued that a specially constructed gantry tower should have been used instead of the tower roof.

Held: The residents' application was dismissed. Decisions relating to national security and the armed forces were for the discretion of the Crown and should not be interfered with by the court unless the relevant power had been exceeded or the decision was not made in good faith. Neither factor applied in this case. The residents' suggested alternative of a gantry was unfeasible and the missile plan had been conscientiously assessed and approved at the highest level. A failure to consult on matters of military deployment and national security was not unfair, and the Sec of State had voluntarily engaged with the community and the residents. Under Article 2 of ECHR the government had a duty to defend the realm and national security and any interference with the residents' Article 8 rights had been proportionate. Their grounds of challenge were unarguable in both law and fact and they should in any case have acted much more promptly in bringing their claim.



25 CLG Guide

Re-imagining urban spaces to help revitalise our high streets

The Portas Review highlighted the need for high streets to evolve to ensure that they can offer a viable and interesting alternative to internet and out of town shopping. This report argues that the spaces between roads and buildings – squares, open spaces, pedestrian thoroughfares and green spaces – need to be utilised more imaginatively and, using case studies, it describes ways to do this which can help to revitalise high streets and town centres.

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

26 Design Council Publication

Power to transform

This report argues that the Design Council can help people use design in practical ways to transform communities, business and the environment for the better. Referring to case studies it aims to demonstrate how the power of design can make a positive impact on the quality of people's lives by creating things that are both aesthetically pleasing and useful.

<http://www.designcouncil.org.uk/publications/power-to-transform/>

27 Design Council Publication

Design in neighbourhood planning

The role of design in delivering sustainable development and improving the quality of place for communities is emphasised in the National Planning Policy Framework. This document outlines the strategies that community groups can use to embed design in neighbourhood planning.

<http://www.designcouncil.org.uk/publications/Design-in-neighbourhood-planning/>

28 RICS Survey

Latest RICS Global Commercial Property Survey Q2 2012 – Real estate hit by worsening economic outlook

The RICS's Global Commercial Property Survey is a quarterly guide to the developing trends in the commercial property investment and occupier market. Respondents were asked to compare conditions during the three months up to the end of June with the previous three months. Key findings include the following:

- Sentiment was more downcast in Q2, especially in European economies due to the ongoing euro area crisis
- Canada is one of the strongest countries with most indicators suggesting that real estate activity is continuing to rise there
- The rental outlook deteriorated in the majority of markets with tenant demand increasing in fewer than half of the responding countries
- Property development starts rose at the fastest pace in Malaysia and Brazil and were scarcest in Europe
- On the investment side demand was strongest in Canada, while Japan and China also saw demand rise. Availability of finance for investment continues to tighten in the euro area

http://www.rics.org/site/scripts/download_info.aspx?fileID=12212

29 Defra Guide

Obtaining flood insurance in high risk areas

Finding insurance cover for properties that have suffered from flood damage in the past, or which are located in neighbourhoods where there is a history of flooding or which are identified as flood risk areas, can prove to be difficult. The aim of this guide is to provide information that will help people who own such properties obtain suitable insurance. It explains how to get specialist help and provides tips on how to reduce the impact of flooding, while the last section of the guide provides useful information on key organisations.

<http://www.defra.gov.uk/publications/2012/07/19/pb13082-flood-insurance/>

30 Mayor of London Report

World Cities Culture Report 2012

The World Cities Culture Report 2012 was commissioned by the Mayor of London and the London Cultural Strategy Group in partnership with nine of the cities featured in the report. The biggest international survey of its kind, it has collected a large quantity of data on the scope and impact of the cultural assets and activities that are produced and consumed in 12 major cities and demonstrates that culture is seen as important as finance and trade and sits at the heart of public policy.

<http://www.london.gov.uk/publication/world-cities-culture-report-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

LANDLORD & TENANT

01 Scottish Government Publication – Responses to Consultation

Consultation on the Introduction of a Tenant Information Pack in the Private Rented Sector – Responses

A consultation was held from February to May 2012 on the proposed introduction into the private rented sector of a tenant information pack. Opinion was sought on what should be contained within the pack, what the pack should look like, and how it would work in practice. This document contains the responses received from individuals and organisations willing to make them public

<http://www.scotland.gov.uk/Publications/2012/06/6791>

LOCAL GOVERNMENT

02 Scottish Government Consultation

Consultation on Council Tax Charges on Long-term Unoccupied Homes Deadline for Comments: 05.10.12

The Scottish Government is keen to encourage owners of empty homes to bring them back into use to increase the supply of housing in Scotland and to tackle the blight on communities where empty homes are not properly maintained. It is therefore proposing to give councils the power to increase council tax charges on certain long-term empty homes. The main proposed changes are to:



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- allow councils to impose an increase of up to 100% of the relevant council tax rate for homes that have been empty for one year or longer;
- allow councils to offer a discount of between 10% and 50% for homes which are unoccupied for less than a year;
- allow councils to apply different rates of discount or increase in different parts of their area, or to increase council tax charges the longer a home has been empty;
- require councils not to impose a council tax increase for two years after a home has become unoccupied where it is being actively marketed for sale or let – these owners would still pay council tax, but would receive a discount of between 10% and 50%; and
- define a long-term unoccupied home as one which has been unoccupied for 12 months or longer, either furnished or unfurnished.

<http://www.scotland.gov.uk/Publications/2012/07/9137>

GENERAL

03 Scottish Government Publication

Overview of Evidence on Land Reform in Scotland

The purpose of this paper is to provide an overview of the evidence available on the implementation and progress of the Land Reform (Scotland) Act 2003 to date, and to highlight some of the key issues that may be worth considering in its forthcoming review.

<http://www.scotland.gov.uk/Publications/2012/07/3328>

WALES

ENVIRONMENT

04 Statutory Instrument

WSI 2012/1692 The Designation of Features (Notices) (Wales) Regulations 2012

Under s30 and Schedule 1 of the Flood and Water Management Act 2010, the Environment Agency, local flood authority or an internal drainage board may designate structures or environmental features that affect a flood or coastal erosion risk, though they may not necessarily have been designed or constructed for that purpose. Once designated, the owner of the designated feature cannot alter, remove or replace it without consent from the responsible authority. These Regulations provide for minimum notice periods for such consent.

<http://www.legislation.gov.uk/wsi/2012/1692/contents/made>

05 Welsh Statutory Instrument

WSI 2012/1819 The Designation of Features (Wales) (Appeals) Regulations 2012

These Regulations, which came into force on 11.07.12, provide a right of appeal against: (i) designations and enforcement notices under Schedule 1 to the Flood and Water Management Act 2010; and (ii) related decisions made under paragraphs 6 and 9 of that Schedule.

<http://www.legislation.gov.uk/wsi/2012/1819/contents/made>

GENERAL

06 Welsh Government Report

Welsh City Regions Final Report

An advisory group was set up in November 2011 tasked with considering and reporting on the potential role of “City Regions” in future economic development and prosperity in Wales.

The group considered evidence from businesses, academics, local government, citizens and other interested parties. The report contains 22 recommendations covering a wide range of issues.

<http://wales.gov.uk/topics/businessandconomy/publications/120711cityregions/?lang=en>

NORTHERN IRELAND

PLANNING

07 Statutory Instrument

NISR 2012/293 The Planning (Fees) (Amendment) Regulations (Northern Ireland) 2012

These Regulations will come into force on 22.10.12 and amend the 2005 Regulations by increasing planning fees by approximately 2% overall.

<http://www.legislation.gov.uk/nisr/2012/293/contents/made>