

EVEBRIEF

Legal & Parliamentary

Volume 34(13) 24 September 2012

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EDITORIAL



Hilary Wescombe
Editor

This week we report on a rating case which will be of interest to the renewable energy industry. Industry Associations have long lobbied Government over the apparent anomaly that financial incentives received through Renewable Obligation Certificates serve to increase rating assessments of renewable energy plant, particularly in relation to fossil fuel plant. The Upper Tribunal were not asked to consider this thorny political issue but their decision did provide guidance on the treatment of ROCs in the valuation process, which will assist with the resolution of outstanding appeals on the 2005 and 2010 Rating List.

On the subject of renewable energy, developers are also keeping a close eye on the progress of Local Business Rate retention legislation through parliament. The proposal for Local Authorities to retain 100% of business rates income from new renewable power plants post April 2013 is seen as a clear fiscal incentive for Local Authorities to support planning applications in their jurisdictions.

A handwritten signature in cursive script that reads "Hilary Wescombe".

LOCAL GOVERNMENT

01 CLG Consultation

Technical Reforms to Council Tax – Empty homes premium: Calculation of council tax base Consultation Deadline for Comments: 22.10.12

The Local Government Finance Bill included provisions that will allow a billing authority to charge an empty homes premium of up to 50% of the council tax on a property that is left unoccupied and unfurnished for two or more years. Following a consultation on this subject in 2011 the Government confirmed its intention to proceed with the premium and to consult on possible exceptions to it – properties that would otherwise be liable for the premium, but which were subject to circumstances that meant it would not be appropriate for it to apply. This document sets out the Government's proposal on how the empty homes premium is to be included in the calculation of the council tax base.

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

LANDLORD & TENANT

02 High Court

New tenancy under Landlord and Tenant Act 1954, Part II – rent – whether market tenants entitled to rent reduction on account of income received by landlords from non-market commercial lettings

*EDWARDS & WALKDEN (NORFOLK) LTD V CITY OF LONDON CORPORATION
(2012) PLSCS 188 – Decision given 12.09.12

Facts: The tenants, who occupied stalls, shops and offices at Smithfield Market in London, applied to their landlord (CLC) for new business tenancies which would be granted at rents and on terms to be determined by the court under Part II of the Landlord & Tenant Act 1954. A large car park under the market was used by the tenants, CLC and by members of the public in return for a charge. CLC operated the market under the terms of the Metropolitan Meat and Poultry Market Act 1860. CLC contended that there should be a basic rent with a service charge varying from year to year to reflect the actual running costs of the market divided up between the tenants whereas the tenants proposed a simple rent with no service charge.

Point of dispute: The following preliminary issues were tried:

- i. whether the tenants were entitled to have their rents reduced on account of income received by CLC from the market buildings used for non-market purposes, including income from the car park and commercial offices let out to commercial tenants; and

- ii. whether the rents to be fixed by the court should be all-inclusive or exclusive, with the tenants' contribution to services covered by a separate service charge.

Held: The preliminary issues were determined in favour of CLC.

- i. The tenants' contention that the operation of the 1860 Act meant that the rents to be set in relation to new tenancies under the 1954 Act should be lower was flawed. CLC had acted lawfully in relation to their powers under the 1860 Act. As the market authority they were entitled to seek to make a profit, recover their costs or to minimise their losses. They could use the money from letting the commercial premises and car park charges to meet part of the expenditure on maintaining and operating the market, and equivalent sums which they received from the tenants as rent or service charges could be paid into CLC's general funds. There was no provision in any of the tenants' leases that the rent or service charge paid to CLC had to be treated as funds spent directly on market purposes. There was no statutory limitation in the 1860 Act (as amended by the City of London Act 1963) on the amount which CLC could charge its tenants e.g. only to charge as rent the sums required to maintain and operate the market after taking into account what it received from commercial lettings and car park charges.
- ii. Applying the guidance in the case of O'May v City of London Real Property Co. Ltd, CLC had shown that there were good and justified reasons for changing the payment structure under the new tenancies back to the original structure of a rent and variable service charge as contained in earlier leases between the parties. Current market practice supported the inference that adoption of a variable service charge to cover the provision of services by a landlord to a tenant in multi-occupied commercial premises was generally regarded as fair by both landlords and tenants.

03 CLG Publication

Dealing with rogue landlords: A guide for local authorities

The practice of placing vulnerable people, often immigrants tempted to enter the UK by false promises of work and accommodation, in overcrowded or poor quality accommodation can have a huge impact on neighbourhoods, increasing refuse, noise and in some cases antisocial behaviour, and the purpose of this best practice guidance is to address this situation. It has been produced by the Housing and Immigration Ministries in order to offer guidance to local authorities on how to deal with the problem of rogue landlords and 'beds in sheds'.

<http://www.communities.gov.uk/publications/housing/roguelandlordsguide>

04 CLG Publication

Advice on dealing with squatters in your home

This advice, which has been produced jointly by the Department for Communities and Local Government and the Ministry of Justice, informs property owners about the new law which came in on 01.09.12, which made squatting in a residential building a criminal offence, punishable by imprisonment or a fine. The advice contains information about the new offence and the procedures for regaining possession of properties from squatters.

<http://www.communities.gov.uk/publications/housing/advisesquatters2012>

PLANNING

05 Administrative Court

Gypsies – change of use – AONB – upholding of enforcement notice – whether Sec of State having regard to immaterial consideration

*SEARLE V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2012) EWHC 2269 (Admin) – Decision given 16.08.12

Facts: The claimants, who were gypsies, owned land in an area of outstanding natural beauty on which they kept horses. The lpa issued an enforcement notice alleging that there had been a change of use of the land with the siting of two mobile homes and a caravan on it, and a stable block was being used for residential purposes. When the claimants appealed against the notice, their claim for permanent planning permission was rejected, but the inspector recommended that they should be given temporary permission as there was an absence of suitable pitches for travellers and gypsies in the area. However, the Sec of State disagreed with that recommendation and dismissed the claimants' appeal on the grounds that the harm that would result from the grant of even temporary planning permission was unacceptable.

Point of dispute: Whether the claimants' appeal against the Sec of State's decision would be allowed. The claimants contended that:

- i. the Sec of State had had regard to his intention to withdraw and revoke the national planning guidance for gypsy and traveller sites in Circular 01/2006 which was an immaterial consideration;
- ii. the Sec of State had erroneously departed from the inspector's assessment of harm without conducting a site visit himself; and
- iii. the Sec of State had erred in giving a different reason for refusing temporary planning permission from that advanced by the lpa without giving the claimants an opportunity to answer it.

Held: The appeal was dismissed.

- i. A prospective change to planning policy was capable of being a material consideration – there was no reason why an intention to revoke a circular could not lead to reduced weight being given to it.
- ii. On the evidence it could not be said that it had been necessary for the Sec of State to make a site visit before departing from the inspector's assessment of harm. The claimants had not shown that the decision to determine the appeal without visiting the site was unreasonable or irrational.
- iii. The Sec of State had been entitled to rely on a different reason for rejecting the grant of temporary permission from that advanced by the lpa. The parties had all made their own respective submissions on the whole question of the extent of the harm caused to the area, whether by a grant of a permanent or a temporary permission, and it was for the Sec of State to make his own planning judgment on them.

06 High Court

Contaminated land condition attached to planning permission

*R (ON THE APPLICATION OF GAWTHORPE) V SEDGEMOOR DISTRICT COUNCIL
(2012) All ER (D) 101 (Aug) – Date of hearing 29.06.12

Facts: The claimant, G, owned a property adjacent to a site where planning permission for 14 new dwellings had been applied for. The environmental health officer (EHO) had advised that the site might be contaminated and that in cases where contamination was shown to exist, a detailed scheme showing the appropriate remedial measures ought to be submitted and approved before planning permission was granted. That advice reflected guidance produced by the Sec of State. The planning officer's report recommended that permission should be given and no condition regarding the possible contamination was proposed.

Point of dispute: Whether to allow G's application for judicial review of the decision to grant permission without imposing a condition addressing the need for a site investigation and possible remedial matters.

Held: The decision to grant planning permission had been unlawful and a declaration would be made to that effect. No reasonable planning authority would have granted planning permission without a condition addressing the contaminated land issues in the face of advice from the Sec of State and their own EHO.



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07 Statutory Instrument

SI 2012/2167 The London Legacy Development Corporation (Planning Functions) Order 2012

The London Legacy Development Corporation ("the LLDC") was established for the purpose of regenerating the Olympic Park and surrounding areas. This Order, which comes into force on 01.10.12, makes the LLDC the local planning authority for the whole of its area ("the planning functions area") in relation to all types of development for the purposes of Part 3 of the Town and Country Planning Act 1990. The following orders are revoked by this Order:

- The London Thames Gateway Development Corporation (Planning Functions) Order 2005;
- The Olympic Delivery Authority (Planning Functions) Order 2006;
- The London Thames Gateway Development Corporation (Planning Functions) (Amendment) Order 2006; and
- The London Thames Gateway Development Corporation (Planning Functions) (Amendment) Order 2011.

These revocations mean that the London Thames Gateway Development Corporation and the Olympic Delivery Authority cease to be the local planning authorities in relation to the types of development and for the purposes specified in those Orders for their areas. The planning functions concerned will be exercised, in the planning functions area, by the LLDC. Outside of the planning functions area, the planning functions concerned will revert to the London Borough councils which, but for these Orders, would be the local planning authorities.

<http://www.legislation.gov.uk/ukxi/2012/2167/contents/made>

08 Statutory Instrument

SI 2012/2257 The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2012

This Order, which comes into force on 01.10.12, amends the 1995 Order. Class F of Part 3 of the 1995 Order permits buildings used as shops, or for financial and professional services, to change to a mixed use incorporating a single residential flat, subject to conditions. Class G permits such mixed use buildings to revert back to single use. This Order amends Classes F and G to extend the permitted development right and reversion to a mixed use incorporating up to two residential flats.

<http://www.legislation.gov.uk/ukxi/2012/2257/contents/made>

09 Statutory Instrument

SI 2012/2274 The Town and Country Planning (Development Management Procedure) (England) (Amendment No. 2) Order 2012

The Town and Country Planning (Development Management Procedure) (England) Order 2010 ("the DMPO") specifies procedures connected with applying for planning permission in England. This Order, which comes into force on 01.10.12, amends Article 18 of DMPO which concerns replacement permissions to which certain provisions of the DMPO do not apply. The effect of the amendment is to substitute a new date, 01.10.10, on or before which the original planning permissions must have been granted, the effect of this being to bring a new 12 month cohort of planning permissions within the scope of the provisions.

<http://www.legislation.gov.uk/ukxi/2012/2274/contents/made>

10 Statutory Instrument

SI 2012/2275 The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2012

These Regulations amend the 1990 Regulations and also come into force on 01.10.12. Under the 1990 Regulations in certain cases the requirement to supply a design and access statement does not apply. As with SI 2012/2274, these Regulations also bring a new 12 month cohort of consents within the scope of the provisions.

<http://www.legislation.gov.uk/ukxi/2012/2275/contents/made>

11 CLG Publication

Dealing with illegal and unauthorised encampments: A summary of available powers

The aim of this summary is to inform local authorities of the powers that are available to them to help remove illegal and unauthorised encampments on public and private land. It complements the 2006 Guide to effective use of enforcement powers – Part 1: Unauthorised encampments.

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

RATING

12 Upper Tribunal (Lands Chamber)

Valuation of hydro–electric power station – receipts and expenditure basis – income from sale of Renewable Obligation Certificates

**NPOWER RENEWABLES LIMITED V DAVID GRACE (VO)
[2011] UKUT 230 (LC) Case No: RA/24/2008
Before: The President, George Bartlett QC and P R Francis FRICS –
Decision given 13.08.12

Facts: This was an appeal against a decision of the Valuation Tribunal to increase the 2005 List assessment of £520,000 to £720,000 w.e.f. 01.04.05. It concerned the valuation of a hydro power station at Dolgarrog in North Wales which was assessed on the receipts and expenditure method of valuation. The station had been altered in 2002/3 to ensure that the full electricity output from the station qualified for Renewable Obligation Certificates (ROC), a subsidy scheme operated by the Government to incentivise renewable energy in the UK.

Points of Dispute:

- 1) What value should be attributed to the ROC income at the Antecedent Valuation Date (AVD) of 01.04.03, in particular the recycle pot element of the ROC income.
- 2) On the basis that a receipts and expenditure valuation model was based upon a five year cash flow forecast, what was the correct timing of the ROC income to be incorporated in the valuation.
- 3) All other aspects of the receipts and expenditure valuation had been prior agreed by the parties.

Held:

- 1) The total ROC price at AVD was £47 per Mw hour, amended thereafter for the fiveyear forecast period.
- 2) The appellant's view on timing of ROC income receipts was preferred. The ROC income would be received one month after the ROC was issued, but the recycle pot element would not be received until the financial year post generation.

Editor's Comment: This is an important decision for the assessment of renewable energy plants and will generally be welcomed by the industry. It concerned a very specific point on the extent, and timing, of income from Renewable Obligation Certificates. It is likely to have an impact on the assessment of many renewable power plants including onshore wind and biomass, as well as hydro.

If you have any queries about this case please contact Gerald Eve partner Keith Norman – knorman@geraldeve.com

13 CLG Business Rates Information Letter

Business Rates Information Letter (08/2012): New Burden – Business Rates Deferral Scheme 2012/13

The 29.11.11 Autumn Statement announced a business rate deferral scheme for 2012/13 to be administered on a similar basis as the 2009/10 deferral scheme. This scheme allows ratepayers to spread the RPI increase in bills for 2012/13 over three years and the relevant legislation is contained in the Non–Domestic Rating and Business Rate Supplements (Deferred Payments) (England) Regulations 2012/994.

<http://www.communities.gov.uk/publications/localgovernment/bril82012>

LEASEHOLD REFORM

14 Court of Appeal

Leasehold enfranchisement – Leasehold Reform, Housing and Urban Development Act 1993 – Deferment rate

**TRUSTEES OF SLOANE STANLEY ESTATE V CAREY–MORGAN (2012) PLSCS 187 – Decision given 03.09.12

Facts: On a collective enfranchisement of a 1920s mansion block in Kensington, London SW3, the Upper Tribunal determined that the premium payable by the nominee purchasers to the freeholders should be £2,961,613. In reaching that decision it considered:

- i. The appropriate deferment rate to apply when valuing the freehold reversion to six flats in the block held on leases with less than five years unexpired. The Tribunal determined that the formula in *Earl Cadogan v Sportelli* should not be applied but that the rate for reversions of less than five years should be the appropriate net rental yield for the property, in this case, 3.25% based on evidence of net rental yields derived from evidence of comparable lettings; and
- ii. Whether hope value could be awarded for the prospect of selling new leases to the tenants of four non–participating flats with unexpired terms of 4.74 years, and another with 70.25 years unexpired. The Tribunal held that hope value could be taken into account in respect of non–participating flats so far as it was attributable to the lessees seeking new leases on the open market rather than pursuant to any statutory right under the Act. It took the view that hope value should be calculated as a percentage of marriage value derived from evidence as to the likelihood of non–participating tenants coming forward, before the expiry of the current lease, to negotiate for an extended lease. It applied percentages of 20% for the four non–participating flats with unexpired terms of 4.74 years and 10% for the flat with 70.25 years unexpired.



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Point of dispute: Whether the appellant purchasers' appeal against the Upper Tribunal's decision would be allowed. On the deferment rate issue they raised a new point contending that it was wrong to assume that the freeholder would be entitled to vacant possession of the relevant flat at the end of the unexpired term of the lease as the tenant might be entitled to remain in possession under Schedule 10 to the Local Government and Housing Act 1989 and that therefore the Sportelli deferment rate should be applied.

Held: The appeal was dismissed.

- i. The ground of appeal concerning the 1989 Act should be dismissed. Before giving its final decision the Tribunal had set out its provisional view as to how the deferment rate should be calculated and the appellants had accepted that approach. Since Sportelli gave guidance as to the deferment rate for unexpired terms of 20 years or more, and this case concerned unexpired terms of 4.74 years, the court could not hold as a matter of law that the Sportelli rate should be applied. The Upper Tribunal had reached the correct valuation for the block as a whole, notwithstanding that it had arrived at this by placing values on individual elements in the valuation.
- ii. The tribunal had been entitled to offer guidance as to the deferment rate in the case of reversions of less than five years. Since the effect of the 1989 Act had not been considered the guidance might have to be qualified in a case where the party raised an issue concerning the possible application of that Act at the end of the unexpired term of the leases.
- iii. Hope value could be taken into account as part of the value of the freehold pursuant to Para 3 of Schedule 6 to the 1993 Act, so far as it was attributable to the possibility of non-participating tenants seeking new leases of their respective flats by negotiation, rather than as of right under the Act. The tribunal had made no error of law in choosing the percentages of marriage value that it had applied to reflect hope value. It had explained why it should not apply a "blanket rate" and the percentages it had selected for hope value were open to it on the evidence.

HOUSING

15 RICS Publication

RICS UK Housing Market Survey, July 2012

Four main trends were identified:

- The seasonally adjusted net price balance turned slightly more negative in July from -22 to -24 i.e. 24% more surveyors reported falling rather than rising prices. However, 61% of all respondents reported unchanged prices for the three months up to July;
- Activity slowed further in July. There was a decline in the number of new vendor instructions whilst demand remained broadly flat;

- London remains the only region recording rising prices; and
- The outlook for the next three months remains broadly unchanged with sales expectations turning slightly more positive and price expectations falling further into negative territory. The longer term 12 month outlook shows a marked deterioration in both sales and price expectations.

http://www.rics.org/site/scripts/news_article.aspx?newsID=2788

16 House Builders Federation Report

Housing Pipeline Report, Q2 2012

- Approvals for 24,872 homes were granted during this quarter – a significant fall on the previous quarter (36,761).
- The number of permissions granted in Q2 of 2012 was the lowest number since 2009 and less than half the number granted in the same quarter of 2007.
- Fewer homes are being built in England than at any time since the 1920s – just over 100,000 a year, compared to a projected need for 240,000, over and above the historic shortfall.

<http://www.hbf.co.uk/media-centre/news/view/housing-planning-permissions-slump-to-three-year-low/>

17 RICS Housing Market Survey

RICS UK Housing Market Survey August 2012

- Headline indicators were little changed from July's survey when measured on a seasonally adjusted basis, notwithstanding the distraction of the Olympic Games.
- The net price balance was slightly less negative with a reading of -19 compared to -23 in July.
- Prices were unchanged in the three months to August.
- Although the sales to stock ratio rose slightly from July, it has effectively shown little change since the spring.
- At national level the price trend is broadly flat. The only part of the country where the RICS net price balance is in positive territory is in London, where house prices have risen by 6% over the past 12 months.
- The number of new buyer enquiries has fallen for the fourth consecutive month.

http://www.rics.org/site/scripts/download_info.aspx?fileID=12383

TORT

18 Technology and Construction Court

Tree root damage – liability of local council in negligence

*ROBBINS V BEXLEY LONDON BOROUGH COUNCIL
(2012) PLSCS 183 – Decision given 16.08.12

Facts: The claimant, R, owned a 1930s semi-detached house which backed onto a park owned by the defendant council, BLBC. Sometime between 1935 and 1945 a line of poplar trees had been planted along the boundary of the park running parallel with the back of R's garden. In September 2003 cracks appeared in the back wall of R's house and notwithstanding the removal of a large magnolia tree which grew two metres away from the back of the house, further significant damage occurred in the summer of 2006. In September that year some of the poplars, including the one nearest to R's property, were severely pruned after which R noticed that the amount of movement occurring in the rear extension of her house was much reduced.

Point of dispute: Whether R's claim for damages would be allowed. R alleged that BLBC had been negligent in failing to take steps to prevent damage occurring to her property as a result of the presence of the poplar trees. Engineering and arboricultural experts agreed that the cracking and movement to the rear of R's property had been caused by seasonal volume changes in the subsoil caused by the extraction of moisture by vegetation, but questions arose as to which vegetation had caused the damage and whether BLBC had negligently failed to take steps to prevent the damage.

Held: R's claim was allowed. BLBC had been on notice that roots from their trees in the park were causing damage to other properties in R's road since 1998, and it was therefore reasonably foreseeable that any house in the road was at real risk from subsidence caused by one or more of the poplars extracting moisture from the clay soil beneath the foundations. The poplar tree nearest to R's property had been the major contributor to the extraction of moisture from the clay beneath the foundations of her house during the summer of 2006, and BLBC should have embarked on a programme of crown reduction from early 1998. On the evidence, it had placed orders for that work to be done in 2004/2005 and had it been carried out before the summer of 2006 the damage would not have occurred. The onus was on BLBC, having been found to be in breach of duty, to show that even if they had acted with reasonable care the damage would probably still have occurred, but it adduced no evidence to support this.

CONSTRUCTION

19 College of Estate Management Research Report

A New Regime in UK Construction Adjudication?

Following concerns from the construction industry about delays in payment, the Government undertook to review the way in which the adjudication and payment provisions of the Housing Grants, Construction and Regeneration Act (HGCRA) 1996 were working. This paper reviews the changes that the Local Democracy, Economic Development and Construction Act 2009 have made to the 1996 Act, and includes commentary where these changes have had an effect on adjudication practice.

<http://www.cem.ac.uk/research/reports-publications/a-new-regime-in-uk-construction-adjudication.aspx>

ENVIRONMENT

20 Consultation document

Building a better environment: Our role in development and how we can help Deadline for Responses: 19.10.12

This consultation document, which has been published by the Environment Agency, Natural England and the Forestry Commission, is aimed at developers but will be of interest to all those involved in the development process, for example, architects, town planners, surveyors, engineers, landscape architects and consultants. It contains an overview of these agencies' role in development and when they need to be contacted, initial advice on how to manage the environmental impact and opportunities of a development, signposting to further information and links to consents and permits.

<http://www.environment-agency.gov.uk/research/planning/142517.aspx>

GENERAL

21 Bill of Parliament

Infrastructure (Financial Assistance) Bill

The Treasury has published legislation which will enable the Government to guarantee up to £40bn of investment in infrastructure, and up to £10bn in new homes. This Bill gives statutory backing to the UK Guarantees programme announced in July and the housing guarantee schemes announced on 6 September. The Government is fast-tracking the legislation to ensure it can take forward detailed discussions with eligible commercial parties as soon as possible and subsequently provide suitable forms of guarantee.



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The scope of the Bill covers the transport, energy, communications and environmental sectors set out in the National Infrastructure Plan as well as the wider housing sector. The Bill received its second reading in the House of Commons on 17.09.12.

http://www.planningportal.gov.uk/general/news/stories/2012/sep12/130912/130912_6

22 British Council of Offices Publication

Property Data Report 2012

This annual publication contains important factual information about commercial property, a sector which plays a crucial role in the economy by providing spaces for work, leisure and retail activities. Larger than the banking, leisure, communications and transport sectors, commercial property is also a significant investment asset for the pensions industry. This fully updated property report includes information on property debt and the sustainability of the sector.

<http://www.bco.org.uk/research/researchreports/detail.cfm?rid=193&cid=0>

23 British Council of Offices (BCO) Research Report

Cycling and the Modern Workplace

The success of Team GB at the Olympics and Bradley Wiggins in the Tour de France has resulted in an increased level of interest in cycling. The BCO conducted an online survey of its members and others to examine the importance of cycling to the modern worker and to consider whether cycling facilities are becoming more important in the workplace. The results of the survey showed that the demand for workplace cycling facilities, such as showers and facilities for drying wet cycle gear, is increasing and for some people are a deciding factor in choosing a job.

<http://www.bco.org.uk/research/researchreports/detail.cfm?rid=194&cid=0>

24 BCO Research Report

Change for the Good – Identifying Opportunities from Obsolescence

The aim of this research report is to identify the main drivers of obsolescence over the next five years and to identify the various strategic approaches to managing obsolescence for owners, developers and property companies.

<http://www.bco.org.uk/research/researchreports/detail.cfm?rid=188&cid=0>

25 RICS Report

Impacts of flooding on SMEs and their relevance to Chartered Surveyors

There have been a number of major flood events in the UK in recent years and the UK Environment Agency has identified that about 5.2 million properties in England (about one in six) are at risk of flooding. The impacts of flooding can be particularly devastating for small and medium-sized enterprises (SMEs) and recent flood events have established how costly flooding events can be to this sector. A recent RICS survey notes that although many chartered surveyors would like to work in the area of flood risk assessment and adaptation, they are conscious of gaps in their competency, knowledge and understanding. This project investigated how chartered surveyors can bridge the gap in providing professional flood advice to SMEs.

http://www.rics.org/site/scripts/download_info.aspx?fileID=12357

26 CLG Publication

Our Town First: Future High Street X-Fund – Prospectus

As part of the Government's response to the Portas Review, it has announced details of this £1 million fund to reward areas delivering the most effective and innovative plans to revitalise their town centres. This prospectus invites nominations for schemes that have been implemented since May 2011. Nominations must be received by 06.12.12.

<http://www.communities.gov.uk/publications/regeneration/x-fundprospectus>

27 Design Council Publication

A Design Wayfinder

Design now has an important role to play in the planning system, in terms of both plan and decision making, and the NPPF published in March, made it clear that achieving design quality is an important part of good planning. This Design Wayfinder aims to help authorities, developers and communities make the case for good design by identifying sources of guidance and best practice on good design and setting out the type of analysis that will be required when deciding whether a proposed development is acceptable.

<http://www.designcouncil.org.uk/publications/Design-Wayfinder/>

28 RICS Rural Market Survey

RICS Rural Market Survey H1 2012

- Demand for commercial farmland is expected to remain very strong.
- Prices for farmland are higher than a year ago.
- There is strong demand from commercial farmers amid tight supply conditions.
- Price expectations are elevated in the commercial sector, but flat in the “lifestyle” sector.

http://www.rics.org/site/scripts/download_info.aspx?downloadID=8963&fileID=12377

GERALD EVE'S UK OFFICE NETWORK

Gerald Eve LLP is an independent firm of chartered surveyors and property consultants, employing more than 330 staff across the UK.

We provide a comprehensive range of services to our private and public sector clients — including more than 40 per cent of the FTSE100 — covering agency, corporate property management, professional and transaction-based advice.

Our philosophy is to serve clients by identifying opportunities and solving problems relating to property through the provision of high quality, thoroughly researched cost effective advice.

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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.

Contact details

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Gerald Eve Research

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 Assembly Government Publications

Responses to the Development Delivery Consultation 2012

This consultation ran from March to June 2012 and sought views on the efficacy of current processes in delivering development, and invited ideas for delivering development and infrastructure.

<http://www.scotland.gov.uk/Publications/2012/08/6558>

Consultation Findings

<http://www.scotland.gov.uk/Publications/2012/09/5868>

Analysis of Consultation Responses Main Report

<http://www.scotland.gov.uk/Publications/2012/09/7170>

02 Scottish Assembly Government Publication

Responses to the Consultation on the General Permitted Development Amendment Order 2012

The 2012 consultation on the General Permitted Development Amendment Order sought views on a number of changes to certain existing permitted development rights e.g. hill tracks/private ways, local authority development, caravan sites, temporary uses, and new permitted development rights, eg electric vehicle charging points, extensions to offices and hospitals, schools, universities etc pavement cafés.

<http://www.scotland.gov.uk/Publications/2012/08/5210>

Consultation Findings

<http://www.scotland.gov.uk/Publications/2012/09/2886>

Analysis of Consultation Responses Main Report

<http://www.scotland.gov.uk/Publications/2012/09/3943>



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03 Scottish Assembly Government Publication

Responses to the Consultation on Miscellaneous Amendments to the Planning System 2012

This consultation included proposed amendments to planning requirements on pre-application consultation, the advertising of planning applications, restrictions on delegating council interest cases to planning officers for decision, as well as a number of more technical amendments.

<http://www.scotland.gov.uk/Publications/2012/08/1764>

Consultation Findings

<http://www.scotland.gov.uk/Publications/2012/09/3111>

Analysis of Consultation Responses Main Report

<http://www.scotland.gov.uk/Publications/2012/09/9618>

04 Scottish Assembly Government Publication

Responses to Development Plan Examination Consultation 2012

These responses relate to the Development Plan Examination consultation which ran from March until June 2012. The consultation sought views on how the development plan process is operating and on four possible options to improve the process:

- improving current practice;
- greater discretion to depart from the Reporter's recommendations;
- restrict the scope of the examination; or
- remove the independent examination from the process.

<http://www.scotland.gov.uk/Publications/2012/08/5455>

Consultation Findings

<http://www.scotland.gov.uk/Publications/2012/09/5257>

Analysis of Consultation Responses Main Report

<http://www.scotland.gov.uk/Publications/2012/09/8635>

05 Scottish Assembly Government Publication

Responses to Consultation on Fees for Planning Applications 2012

These responses relate to the Fees for Planning Applications consultation which ran from March until June 2012. The consultation sought views on draft regulations setting out a new fee structure and level for planning applications in Scotland.

<http://www.scotland.gov.uk/Publications/2012/08/4996>

HOUSING

06 Scottish Assembly Government Publications

Consultation on the Charging of Premiums in the Private Rented Sector – Responses **Charging of Premiums in the Private Rented Sector –** **Analysis of Consultation Responses – Research Findings**

Under current legislation it is an offence to require payment of any premium (in addition to the rent and a refundable deposit of no more than two months' rent) as a condition of the grant, renewal or continuance of a protected tenancy (s82, Rent (Scotland) Act 1984); however, there is confusion around what a premium is and whether some fees charged to tenants are reasonable and should be permitted.

This consultation was concerned with three potential options to clarify the law on premiums in the private rented sector. When fully commenced, s32 of the Private Rented Housing (Scotland) Act 2011 will change the law by amending the definition of 'premium', and by giving Ministers powers to outline in secondary legislation what charges will be allowed in connection with the grant, renewal or continuance of a protected tenancy. The consultation sought views on three potential options for progressing work in this area:

- Almost three quarters of respondents supported the option which would involve amending and publicising the definition of a premium through a customer focused communications exercise;
- One quarter of respondents supported the option which would involve developing secondary legislation in order to specify charges that should not be classed as a premium, along with maximum allowable amounts for each charge; and
- The option to develop secondary legislation to specify the charges without a maximum allowable amount was the least favoured.

<http://www.scotland.gov.uk/Publications/2012/04/2045>

<http://www.scotland.gov.uk/Publications/2012/08/9232>

07 Scottish Government Statistical Publication

Housing statistics for Scotland 2012: Key Trends Summary 2011–12

This document provides a summary of the updated Housing Statistics for Scotland web tables, which present comprehensive data on housing activity in Scotland. These interactive tables present data up to 2011–12 (for annual data), 30.6.12 (for social sector new build and affordable housing quarterly series) or 31.3.12 for other quarterly series. The tables include information on new housing supply, public sector stock and house sales, local authority housing management, supported housing and houses in multiple occupation.

<http://www.scotland.gov.uk/Publications/2012/08/2103>

GENERAL

08 Scottish Government Publication

Scottish Government's Proposals for a New Tribunal System in Scotland: Consultation Report

This consultation report provides an analysis of the responses to the Scottish Government's proposals for tribunal reform.

The consultation on this subject was published on 23.03.12 and posed six questions on which views were specifically sought.

<http://www.scotland.gov.uk/Publications/2012/08/1747>

NORTHERN IRELAND

PLANNING

09 Statutory Instrument

The Planning (General Development) (Amendment) Order (Northern Ireland) 2012

This Order, which came into force on 19.09.12, amends the 1993 Order. The changes may be summarised as follows:

- The number of copies of forms, plans and drawings that need to accompany applications for planning permission and applications for approval of reserved matters are reduced from six to three;
- The scope of permitted development within the curtilage of industrial buildings and warehouses is expanded; and
- New Parts 33 to 36 are added to Schedule 1 to the 1993 Order:
 - i. Part 33 permits the demolition of buildings, subject to certain limitations for buildings in Areas of Townscape and Village Character;
 - ii. Part 34 describes classes of permitted development for shops, financial and professional services;
 - iii. Part 35 describes classes of permitted development for office premises; and
 - iv. Part 36 describes classes of permitted development for schools, colleges universities and hospitals.

<http://www.legislation.gov.uk/nisr/2012/329/contents/made>

