EVEBRIEF

Legal & Parliamentary

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Steve Hile
Editor

POWERLESS TO SELL…

We have reported at item 20 the decision of the Upper Tribunal (Lands Chamber) on a claim, in which Gerald Eve's Head of Compensation gave evidence, for compensation for the impact of overhead power lines on the value of residential development land. The case rather turned on the particular circumstances – including the local planning authority's policy of resisting development under power lines and the expectation of both the planning authority and the landowner that there was a realistic prospect of securing the removal of the lines – but the decision is nevertheless of considerable interest and significance to those who deal with such claims or who own land similarly affected.

The landowner, as the claimant, entered into a contract to sell the land to a consortium of two national housebuilders at what was at that time the agreed market value, but conditional on the lines being removed. By the date at which the compensation was to be assessed, the value of the land had fallen considerably but the Tribunal agreed with the landowner that it was realistic to assume that the sale would have still gone ahead had the statutory wayleave to retain the lines not been granted and that the contract price therefore represented the value of the land to the claimant.

This represents a major departure from the usually-adopted 'Turris' approach of assessing compensation for overhead lines as a percentage of the land value, the main reason for the departure being the Tribunal's agreement that it was the loss of the contract price, and not a 'standard' percentage of land value, which established the true loss to the claimant.

Finally, it would appear that reductions in local authority funding are going to result in a further squeeze on the rate relief available to property owners and landlords. As we report at item 05 in our Regional Supplement, the Welsh Assembly are looking at increasing the level of empty property relief but at the expense of charitable relief. However, the London Assembly is consulting on increasing Small Business Rate Relief but funded through a reduction in empty rate relief available to landlords.

Steve Hile

GERALDEVE

LANDLORD & TENANT

01 Court of Appeal

Arrears of ground rent and service charge – promissory estoppel

*KIM V CHASEWOOD PARK RESIDENTS LTD
(2013) PLSCS 90 – Decision given 26.03.13

Facts: The appellant, K, held a 125–year lease of a flat under which he was liable to pay ground rent and a service charge. The respondent landlord, CPR, was a company which had been formed by the residents' association to acquire the previous landlord's leasehold interest. Before CPR was incorporated the residents' association had circulated a newsletter indicating that one of the benefits of participating in the scheme to acquire the headlease would be that ground rent would no longer be payable. After CPR had purchased the reversion, K refused to pay the service charges and ground rent due under the lease. He argued that CPR was estopped from claiming the ground rent because it had adopted the representation by the residents' association that the ground rent would not be payable following the acquisition of the headlease; he purported to rely on representations that, in exchange for contributing to the cost of acquiring the reversion, existing tenants would have the ground rent payable under their leases extinguished (the first representation); and the participating tenants would be granted new 999 year leases at no cost beyond a small fee (the second representation).

Point of dispute: Whether K's appeal would be allowed against the county court ruling that K had misunderstood the effect on his existing lease of the acquisition by CPR of the freehold and had not materially relied upon the first representation in order to establish a promissory estoppel binding on CPR.

Held: The appeal was dismissed.

i. In order to found a promissory estoppel the representation or promise had to be clear and unambiguous. Any reasonable reader of the newsletter circulated to residents would have regarded it as a statement of the potential benefits which could flow from owning the reversion rather than an unqualified promise of what CPR would do if it was successful in the purchase.

ii. The judge had found that K had not relied on either the first or the second representations.

iii. The generally accepted view was that promissory estoppel was usually only suspensory and that the representor could resile from his promise on reasonable notice, unless it would be unconscionable for him to do so. In this case the permanent nature of the equitable relief granted on the basis of promissory estoppel required the court to consider whether it was necessary to omit a ground rent provision from the new lease in order to satisfy the equity. As the amount involved was small K should not be treated differently from the other tenants who had paid to participate in the scheme. CPR was required to do no more than grant a new lease on its current standard terms.

02 Upper Tribunal: Lands Chamber

Service charge – whether appellants could recover cost of employing residential caretaker and notional market rent for basement flat from leaseholders

*CAREY–MORGAN V DE WALDEN
2013) PLSCS 67 – Decision given 14.03.13

Facts: The appellants held a headlease of a small block containing four flats and a maisonette. Although the nature of the building was such that a caretaker was not needed, a covenant in the headlease provided that the basement flat was not to be used other than as rent–free accommodation for a caretaker. The respondents held a long lease of the maisonette from the freeholder on terms that the appellants held the freeholder's rights, burdens and liabilities under the lease, until the headlease expired. Those rights included the right to employ such caretaking staff as it deemed necessary and to recover the costs of doing so from the respondents through the service charge, including the market rent of accommodation provided for the caretaker. Until 2008 the appellants did not retain a caretaker and the basement flat was let commercially but after the freeholder complained that they were in breach of covenant and threatened court proceedings the appellants employed a full–time caretaker to reside rent–free in the basement flat. They sought to recover the costs, including the market rent of the basement flat, from the lessees of the flats and the maisonette through the provisions in the leases for advance payment on account of estimated service charges.

Point of dispute: Whether the appellants' appeal would be allowed against the LVT's ruling that the lessees were liable only for the cost of employing a cleaner. While it was reasonable for a caretaker to be employed and provided with accommodation and for the lessees to be charged for that service, because of the appellants' powers under the headlease and the need to avoid a breach of covenant, s19(2) of the Landlord and Tenant Act 1985 meant that they could not recover all these costs in advance from the leaseholders.

Held: The appeal was allowed. The LVT had to take a two–stage approach: first, asking whether the appellants were entitled to recover for those matters under the terms of their lease, and, if they were, secondly, asking whether s19(2) rendered it unreasonable to include estimated sums in respect of them within the estimated service charges on account. The appellants were entitled to employ a full-time caretaker and it had been prudent of them to do this in order to avoid the headlease being forfeited for breach of covenant. With regard to the second question, s19(2) did not operate to make it unreasonable to include an amount for those costs in the estimated service charge on account because the factors relevant to reasonableness included the need to avoid forfeiture proceedings and were not confined to what was reasonably needed for the day–to–day running of the building. The appellants were not limited to recovering the cost of employing a cleaner and they could also include a sum for the notional market rent of the basement flat.

03 Upper Tribunal: Lands Chamber

S35 Landlord and Tenant Act 1987 – Variation of leases – Service charge provisions

*BRICKFIELD PROPERTES LTD V BOTTEN
(2013) PLSCS 69 – Decision given 14.04.13

Facts: The appellant's predecessor in title (BP) owned the freehold of seven blocks of flats. The flats were let on long leases at low rents. Under the service charge provisions in the leases BP could recover the costs of repairing and maintaining the buildings. The proportion that each lessee was required to pay was based on the flat's rateable value and when added together, the freeholder recovered 100% of the costs. In 2006, qualifying tenants acquired the freehold of one of the buildings. The freeholder continued to be responsible for maintaining the remaining six blocks, but because of the way the proportions were calculated could only recover 85.55% from its lessees and it proposed that the leases in the remaining six blocks should be varied so that it could recover 100% of its costs once more. In 2010, the freeholder granted 100 year headleases of the six blocks to the appellant who applied to the LVT under s35 of the 1987 act to vary the leases, with the new proportions being backdated to the 2006 transfer of the seventh block.

Point of dispute: Whether the appellant's appeal would be allowed against the LVT's ruling that the variation of the leases under s35 could not be backdated since the appellant, or the freeholder before it, could have applied for variation at any point in the past several years.

Held: The appeal was allowed. There was nothing in the statute to prevent a variation relating to service charge payments from taking effect retrospectively and the LVT had jurisdiction to order the variation to take effect from the transfer date in 2006 and, on the facts of the case, it had erred in not exercising its jurisdiction. The lessees had been aware from an early date of the prospective application to the LVT. They had enjoyed the provision of services and there was no justification for them receiving an unexpected windfall. The leases should be varied from the 2006 transfer date.

04 Technology and Construction Court

Breach of repairing covenants – claimant landlord seeking damages against defendant in respect of cost of remedial works

*SUNLIFE EUROPE PROPERTIES LTD V TIGER ASPECT HOLDINGS LTD
(2013) PLSCS 96 – Decision given 07.03.13

Facts: The claimant landlord owned combined office and retail premises in Soho which were let to the defendants under full repairing leases. The tenancies came to an end in November 2008 and, following preparation of a schedule of dilapidations by a chartered surveyor, the claimants commenced proceedings against the defendants seeking damages in the sum of £2.172m for breach of the repairing covenants. Although it was common ground that the defendants were in breach of the covenants, the defendants contended that even if they had carried out remedial works to an extent sufficient to discharge their obligations, the claimant would still have needed to carry out nearly all the work that it had in fact carried out. The claimant submitted that it was claiming less than the amount it had actually spent, and that its claim represented the cost of the work necessary to put the building into the condition in which it should have been left by the defendants.

Point of dispute: Whether the claim would be allowed.

Held: The claim was allowed in part.

i. A tenant could perform his covenants in the manner that was least onerous to him and such performance was the starting point for any assessment of damages. A tenant was obliged to return the building in good and tenantable condition, but not with new equipment. The standard of repair expected was to be judged by reference to the condition of the fabric of the building, equipment and fittings at the time of the demise. The tenant was not entitled, nor obliged, to make any material alteration to the building.
ii. If the requirement to put and keep the premises and fixtures in good and tenantable condition involved the replacement of plant that was beyond economic repair the tenant was obliged to replace it on a like for like or nearest equivalent basis. A claim by a landlord for the cost of repairs was subject to general rules that he could not recover for a loss which, by acting reasonably, he could have avoided, and he could not recover the cost of remedial work that was disproportionate to the benefit obtained. By contrast, when remedial work was necessary because of a tenant's breach of its repairing covenants, the fact that a landlord had carried out more extensive work than was caused by the breach did not of itself prevent him from recovering the cost of such work as would have been necessary to remedy the breach.
iii. Where prevailing market conditions at the expiry of a lease meant that upgrading works needed to be carried out to ensure that the building was let to the appropriate type of tenant, a tenant who was in breach of its repairing covenant was not liable for the costs of any work to remedy the breach to the extent that such work would be rendered abortive by the need to refurbish the building.
iv. Applying these principles the claimant was awarded £1,353,254.

PLANNING

05 Administrative Court

Appeal against refusal of permission for conversion of garage – whether conversion conflicting with development plan policy prohibiting loss of off–street parking save in exceptional circumstances

*WESTMINSTER CITY COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2013) PLSCS 91 – Decision given 23.03.13

Facts: In 2011 an application was made to WCC, the claimant, for planning permission to convert the second of two garages forming part of a mews property in London W2 into living accommodation. The first garage had already been incorporated into the house pursuant to a 2002 permission which included a condition that the second garage should not be used other than for garaging private motor vehicles. This condition had been imposed because the development plan policy for the area did not permit the loss of any permanent off–street residential parking, save in exceptional circumstances. The 2011 application sought the extension of the sitting room over the whole of the ground–floor level which would leave the property with no off–street parking. On appeal against WCC's refusal of permission, the applicant undertook to execute a deed which would operate as a planning obligation under s106 of the Town and Country Planning Act 1990, in which he would agree not to apply for an on–street parking permit in respect of the property. The inspector allowed the appeal and granted permission.

Point of dispute: Whether the WCC's application to quash the inspector's decision would be allowed.

Held: The claim was allowed. The inspector had been wrong to take the view that the undertaking was a valid s106 planning obligation as it did not meet any of the requirements of the section. The undertaking was purely personal to the property owner; it did not run with the land and was not capable of being registered as a local land charge. The development plan policy should have been at the centre of the inspector's focus and he had failed to refer expressly to it or to state the exceptional reasons for justifying the loss of the existing off–street parking space.

06 Administrative Court

Refusal of planning permission for residential development – Sec of State accepting inspector's recommendation to dismiss claimant's appeal against refusal – whether Sec of State erring in failing to consider ministerial statement issued after close of inquiry but before decision made

*OXFORD DIOCESAN BOARD OF FINANCE V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2013] PLSCS 66 – Decision given 11.04.13

Facts: In 2010 the claimant applied for planning permission for a residential development of 175 dwellings near to a village. The development plan included the Wokingham Borough Core Strategy, adopted in January 2010, whose vision was based on locating new housing in high quality strategic development locations with good transport links and excellent infrastructure. The lpa refused permission, and in 2011 an inspector dismissed the claimant's appeal against that refusal. The claimant brought a claim under s288 of the Town and Country Planning Act 1990 to quash the inspector's decision but, following an inquiry, the Sec of State agreed with the inspector's conclusions, his report being dated 30.03.11.

Point of dispute: Whether the Sec of State should, in reaching his decision, have considered a ministerial statement, "Planning for Growth", which was issued on 23.03.11 by the Minister of State for Decentralisation. That statement referred to the Chancellor of the Exchequer's call for action on growth, to rebuild Britain's economy, saying that the "planning system has a key role to play in this, by ensuring that the sustainable development needed to support economic growth is able to proceed as early as possible". Although conceding that the inspector was not required to take this statement into account as it was made after the public inquiry had closed, the claimant argued that the Sec of State should have done, since his decision was made two months after the statement was issued.

Held: The claimant's application was granted.

i. The court came to the conclusion that, on the balance of probabilities, the ministerial statement had erroneously been overlooked when the decision letter was written.

ii. The ministerial statement had potential relevance to housing development and thus it was a material consideration. This was not a case where the material consideration was so trivial that it did not affect the decision in question.

iii. The court rejected the Sec of State's submission that he was not required to take the statement into account on the grounds that it did not apply to this case as the inspector had found that the development was not sustainable. All decision makers were required to have regard to it, and they then had to decide to what extent it affected the decision to be made based on the facts of the particular planning application.

07 Statutory Instrument

SI 2013/798 The Neighbourhood Planning (Referendums) (Amendment) Regulations 2013

These Regulations, which came into force on 06.04.13, make provision for the conduct of additional "business referendums" held under paragraph 12(4) of Schedule 4B to the Town and Country Planning Act 1990 in order to approve a neighbourhood development plan or a neighbourhood development order. These additional referendums are required for a neighbourhood area which has been designated as a business area and are in addition to the residential referendum for the area.

http://www.legislation.gov.uk/uksi/2013/798/contents/made

08 Statutory Instrument

SI 2013/830 The Town and Country Planning (Temporary Stop Notice) (England) (Revocation) Regulations 2013

Section 171E of the Town and Country Planning Act 1990 enables a local planning authority to issue a Temporary Stop Notice (TSN) if they think that there has been a breach of planning control and that it is expedient that the activity is stopped immediately.
Section 171F(1)(b) enables the Sec of State to prescribe descriptions of activities which are not prohibited by a TSN and circumstances in which the carrying out of an activity is not prohibited by a TSN. These Regulations, which come into force on 04.05.13, revoke the 2005 Regulations. This means that the stationing of a caravan occupied by a person as his main residence is now an activity which can be prohibited by a TSN.

http://www.legislation.gov.uk/uksi/2013/830/contents/made

09 CLG Consultation

Community infrastructure levy further reforms
Deadline for Comments: 28.05.13

This consultation seeks views on further regulatory reforms to the community infrastructure levy. The consultation covers a range of amendments to the regulations related particularly to rate setting and the operation of the levy in practice.

https://www.gov.uk/government/consultations/community-infrastructure-levy-further-reforms

10 Department for Business Innovation & Skills Publication

Implementation of the Penfold Review of Non–Planning Consents – Progress Update, March 2013

In November 2011 the Government set out a programme of action to implement this review. The aim of the programme is to minimise the burden of complying with non–planning consents through:

- Abolishing unnecessary non–planning consents and simplifying others;
- Reforming the remits and working practices of the public bodies granting or advising on non–planning consents;
- Setting a clear timescale for deciding non–planning consent applications; and
- Making it easier to apply for non–planning consents.

This paper summarises the progress that has been made to date with progressing this Review, including the following:

- English Heritage, the Environment Agency, the Health and Safety Executive, the Highways Agency and Natural England have published improvement plans setting out their remit for sustainable development and steps to improve their working practices in response to statutory consultations;
- Legislation is progressing through Parliament to simplify heritage protection, improve the operation of rights of way consents and stopping up orders within the planning system, remove two redundant energy consents and to prevent the town and village green registration system stopping or delaying planned development; and
- Draft legislation has been published to simplify the environmental development consent regime.

https://www.gov.uk/government/publications/penfold-review-of-non-planning-consents-implementation-progress-update-march-2013

11 CLG Statistical Release

Planning applications in England: October to December 2012

Between October and December 2012:

- There were 106,200 applications for planning permission, 5% fewer than during the corresponding quarter of 2011;
- 103,600 planning applications were decided, again 5% fewer than in the last quarter of 2011; however
- 4% more residential applications were decided, compared to the December quarter of 2011.

In the year ending December 2012 district planning authorities:

- Received 461,300 applications, 3% fewer than in 2011;
- Decided 425,000 planning applications, 1% fewer than in 2011;
- Granted 346,300 permissions, 1% fewer than in 2011 – overall, 87% of decisions were granted;
- Decided 57% of major applications in 13 weeks, 685 of minors and 81% of others in 8 weeks; and
- Decided 1% more residential decisions compared to the year ending December 2011.

https://www.gov.uk/government/publications/planning-applications-in-england-october-to-december-2012

12 Government Publication

Changes to Temporary Stop Notices

This document sets out the policy background to the Government's intention to revoke SI 2005/206 which limits where local authorities may use Temporary Stop Notices in respect of unauthorised caravans used as main residences. (See item 08 above).

https://www.gov.uk/government/consultations/changes-to-temporary-stop-notices-consultation

13 Department of Energy and Climate Change – Response to Consultation

Consultation on the amendment to the electric lines above ground threshold in the Planning Act 2008

When the Planning Act 2008 came into force on 01.03.10 it became apparent that the new threshold meant that consent had become necessary for a number of works to electric lines above ground to be submitted to the Planning Inspectorate under the full process of the Act. The Government considers that it is disproportionate for applications for such minor works to be scrutinised under the Planning Act regime, which is intended to apply to major infrastructure projects. Between October and November 2012, a consultation was conducted on an amendment to the 2008 Act on the definition of an electric line above ground as a "national significant infrastructure project" (NSIP). The proposed amendment would mean applications for consent for works to high voltage power lines of less than two kilometres in length and uprating of the nominal voltage of existing lines would be made under s37 of the Electricity Act 1989 instead of the Planning Act 2008.
Most respondents approved the proposals in principle, although a number wished the length criterion to be 15 kilometres and some respondents argued for exclusion of work to any existing line from the 2008 Act. The government is not convinced that there is sufficient evidence to substantively change the amendments to the definition of an NSIP as set out in the Consultation, but it has made some changes on the definition of uprating the nominal voltage of an existing line in the light of consultation responses.

https://www.gov.uk/government/consultations/amending-the-threshold-for-high-voltage-overhead-power-lines-planning-act-2008

RATING

14 Court of Appeal

Council tax – rateable occupation – whether appellant occupier of floating vessel in rateable occupation of hereditament such that property included in list – whether occupation having sufficient degree of permanence

*REEVES (LISTING OFFICER) V NORTHROP
[2013] PLSCS 72 – Decision given 17.04.13

Facts: The appellant, N, and his family lived in a former Thames tugboat that had been fitted out to provide domestic accommodation. In 2008 they moved the boat from Bristol to a riverside position in Chivenor, North Devon, where there was no established residential mooring. The vessel was secured by lines to the riverbed on which it rested at low tide in a pit that N had dug to ensure that it lay flat. There were no sewerage or other land services, apart from a hose pipe to refill water tanks. In 2010, R entered the vessel into the council tax valuation list but the valuation tribunal deleted the entry on N's appeal against the entry. The tribunal found that N's occupation of the area of riverbed and riverbank on which the vessel was moored lacked the necessary degree of permanence to qualify as a rateable hereditament.

Point of dispute: Whether N's appeal would be allowed against the decision of the High Court judge, who reversed the tribunal's decision. The judge decided that the vessel met the first three tests of rateable occupation:

i. N and his family were in actual occupation of the vessel on an area of the riverbed;
ii. the occupation was exclusively for their own purposes; and
iii. the occupation had been of value to them.

In considering the fourth test of sufficient permanence, it was relevant that the vessel had remained in the same place for more than two years.

Held: The appeal was dismissed. The relevant legislation was contained in the Local Government Finance Act 1992, which referred back to the General Rate Act 1967. As well as the first three requirements of actual occupation, the occupation also had to have the character of permanence. The occupier must have put down some roots, not be a wayfarer merely "passing by". The intention of the occupier was of relevance and the fact that N had dug a pit in which the vessel could lie was indicative of the permanence of the mooring. The duration of N's occupation for two years was the single most important factor and the valuation tribunal had erred in failing to recognise this. The vessel had been correctly entered in the valuation list.

15 Statutory Instrument

SI2013/737 The Non–Domestic Rating (Levy and Safety Net) Regulations 2013

These Regulations, which came into force on 27.03.13, form part of the system of local retention of non–domestic rates established by Schedule 7B to the Local Government Finance Act 1988. They make provision for calculating whether the Sec of State is required to make a safety net payment to an authority and the amount of such a payment. They also provide for calculating whether an authority is required to make a levy payment to the Sec of State for a year and, if so, the amount of that payment.

http://www.legislation.gov.uk/uksi/2013/737/contents/made

16 Statutory Instrument

SI 2013/694 The Council Tax and Non–Domestic Rating (Demand Notices) (England) (Amendment) Regulations 2013

These Regulations, which came into force on 18.04.13, make amendments to the 2003 Regulations in relation to the contents of demand notices for non–domestic rates.

http://www.legislation.gov.uk/uksi/2013/694/contents/made

HOUSING

17 Housing Market Bulletin

HCA Monthly Housing Market Bulletin, 28th March 2013

The Housing Market Bulletin provides up-to-date information on the housing market, the economy, and the housebuilding industry. Drawing information from several different sources it includes:

- House price changes from house price indices such as Nationwide, Halifax, the Land Registry and RICS;
- House price forecasts;
- Housing starts and completions (from DCLG); and
- Mortgage trends and information about the overall economy.

The key points to note are:

- House prices are rising gradually, the main impetus coming from London;
- Transaction numbers are steady;
- Mortgage lending is rising;

- UK growth fell back into negative territory during the fourth quarter of 2012;
- Although above target levels inflation is steady; and
- Unemployment levels continue to fall.

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

18 CLG Publication

Household Interim Projections, 2011 to 2021, England

The latest national statistics on the projected number of households in England and its local authority districts to 2021 were published on 09.04.13. The figures in this release were based on the 2011–based interim sub–national population projections published by the Office for National Statistics in September last year and they replace the 2008–based household projections released in November 2010. The main points are as follows:

- The number of households in England is projected to grow to 24.3 million by 2021, an increase of 2.2 million (10%) over 2011, or 221,000 households per year;
- These projections represent a decrease in household size from 2.36 to 2.33 in ten years;
- Households of couples (with or without other adults) are projected to grow by around 87,000 per year on average, equating to 40% of the total increase in households between 2011 and 2021;
- 67% of the increase in households between 2011 and 2021 is projected for households with no dependent children;
- There will be more of an increase in the number of households headed by older people than those headed by younger age groups; and
- The number of households is projected to grow between 5 and 10% in nearly half of all local authority districts in England.

https://www.gov.uk/government/publications/household-interim-projections-2011-to-2021-in-england

LEASEHOLD REFORM

19 Upper Tribunal (Lands Chamber)

Collective Enfranchisement – house – freehold purchase price – whether LVT double counted a premium to reflect property's location in value per square foot – whether LVT failed to make allowance for development risk, planning risk and planning costs – appeal allowed in part

*JACKSON V KEEPERS AND GOVERNORS OF THE FREE GRAMMAR SCHOOL OF JOHN LYON
[2013] UKUT 052 (LC) – Decision given 18.02.13

Facts: 101 Hamilton Terrace, London NW8 – a freehold enfranchisement claim in which the LVT determined the issues in dispute, including the unimproved freehold value, the development value through the potential of the roof and ground floor extensions and the relativity to be adopted between freehold and leasehold values. The permitted grounds for appeal related to the amount per square foot which should be used to determine the freehold value and whether certain matters had been taken into account in determining the development value.

Points of dispute:

i. Freehold value. A larger number of comparable sales was introduced as evidence at the UT by the tenant's valuer, which had not been included in the LVT hearing, who used an averaging exercise on a basket of evidence, as opposed to a more detailed analysis of a selection of comparables.

ii. Development value. The LVT rejected the Landlord's argument that there was potential for a ground floor extension. The potential development value was restricted to a loft extension. The tenants argued there was no allowance for development risk, planning risk or the costs of obtaining planning permission.

Held:

i. The appeal regarding the freehold value was dismissed and the LVT's decision on this was not disturbed. It followed from there that there was no need to adjust the gross development value.

ii. It was accepted the development value for a loft extension should be considered, while taking into account a purchaser would not be willing to pay the full amount of any uplift or net development value. It was decided a deduction of 20% from GDV would adequately reflect both development and planning risk.

COMPENSATION

20 Upper Tribunal (Lands Chamber)

Compensation for overhead electricity line

*** ARNOLD WHITE ESTATES LTD V NATIONAL GRID ELECTRICITY TRANSMISSION PLC
[2013] UKUT 005 (LC) – Decision given 19.03.13 – Before The President George Bartlett QC and NJ Rose FRICS

Facts: AWE was the freehold owner of a site part of which was oversailed by a 400kv electricity line held by NGET on a contractual wayleave. Planning permission was granted for residential development of the whole site but with a condition preventing development of the land in a 54m corridor under and to either side of the overhead line, and requiring that land to be laid out and maintained as open space, until the line was removed. In 2007, AWE entered into a contract to sell to a developer the land outside the 54m corridor and the sale was subsequently completed. On the same date AWE also entered into a contract with the same developer to sell the land comprising the 54m corridor at a price of £5,361,246 plus RPI indexing up to the date of payment, with the contract being conditional on removal of the overhead line. The rationale for the width of the corridor and the separate contract was that this would enable the subsequent sale and development of the corridor land, in the event that removal of the line were secured, without delaying the sale or development of the remainder of the site. In 2008 AWE terminated the contractual wayleave and served notice requiring removal of the line, but NGET exercised its right to retain the line under the provisions of the Electricity Act 1989 whilst it applied to the Sec of State for a statutory wayleave – which was granted, following an inquiry, on 21.06.10, for a term of 15 years. AWE then claimed compensation, under Schedule 4 para. 7 of the 1989 Act, for loss or damage due to the grant of the statutory wayleave.

Point of dispute: The principal issues in dispute were:

i) whether, as contended by AWE, the compensation should be based on the price which it would have received under the sale contract for a sale completed on 21.06.10 (which was agreed as £5,829,477), i.e. had the statutory wayleave not been granted;

ii) alternatively whether, as contended by NGET, the loss of the contract price was too remote and the compensation should be based on a percentage diminution in the market value of the corridor land – which it contended should be no more than 12.5% in accordance with the decision in Turris Investments Ltd v CEGB (1981) which in practice was still followed as the usual basis for compensation for overhead lines and produced a figure of £399,482; and

iii) the deduction to be made to reflect either such value that the land might have notwithstanding that it could not be developed (as argued by AWE) or the value due to the prospect of removal of the lines, or a further compensation entitlement, after expiry of the statutory wayleave in 15 years' time (as argued by NGET) – AWE valued the land and the deduction on this basis at £1, and NGET argued for a deduction of approximately £151,000 giving a net compensation figure of £250,000.

Held: Compensation was awarded in the sum of £5,829,477 as claimed by AWE on the basis that:

i) AWE was entitled to receive the purchase price under the contract when the line was removed, which therefore represented the value of the land to AWE, and the loss was therefore not too remote; and

ii) the cost of laying out and maintaining the land as open space exceeded the value of the land for recreational or paddock use plus any 'hope value' for the prospect of removal of the lines or further compensation after 15 years, and the value on that basis was accepted as £1.

Editor's Note: Gerald Eve's Partner Tony Chase gave expert valuation evidence on behalf of AWE.

REAL PROPERTY

21 Court of Appeal

Rectification of register

*DAY V DAY
(2013) PLSCS 94 – Decision given 27.03.13

Facts: When her husband died in 1976 a property vested in the settlor by survivorship. In 1985 the settlor executed a general power of attorney in favour of a solicitor who executed a conveyance as her attorney, conveying the property from the settlor to the settlor and her son, as beneficial joint tenants. In her will the settlor appointed the appellant and the respondent as her executors and directed that the property be sold and the sale proceeds divided equally between them. When the settlor died the respondent became the sole legal and beneficial owner of the property by survivorship. The appellant brought proceedings for rectification of the conveyance, arguing that the settlor's intention had been for the property to provide security to obtain a mortgage in order to provide funds for the respondent. It had not been intended that the respondent would obtain a beneficial interest in it.

Point of dispute: Whether the appellant's appeal would be allowed against the finding of the court below that the conveyance could not be rectified as it had been executed by the solicitor on the settlor's behalf, rather than by the settlor. The solicitor had acted within the scope of his authority which meant there was no ground for rectification.

Held: The appeal was allowed.

i. The doctrine of rectification was concerned with mistaken implementation of intention. It was the settlor's intention and its implementation, not the scope of the solicitor's authority, which were in issue.

ii. It was the actual authority of the principal that was relevant, not the agent's apparent or ostensible authority. Although the agent's ostensible authority might make a transaction binding on the principal, even where it did not coincide with the principal's intention, there was no reason why such apparent authority should throw any light on the right to rectification.

iii. It could be inferred that the respondent had instructed the solicitor, on the settlor's behalf, to structure the transaction so that the property could be used as security to enable the respondent to raise funds. The transfer of the beneficial interest to the respondent went beyond those instructions.

iv. The recorder in the court below having found that it was not the settlor's actual intention to confer any beneficial interest on the respondent, the evidential burden passed to the respondent to show that such intention was negated by some different overriding intention on her part. It was impossible on the facts for the respondent to do this.

22 County Court

Concurrent registration – rectification – respondent opposing rectification on grounds of adverse possession

PARSHALL V HACKNEY
(2013) PLSCS 95 – Decision given 26.03.13

Facts: For many years a small piece of disputed land had been part of 29 Milner Street, Chelsea, London SW3 (the appellant's property). However, when in 1986 the respondent's parents purchased No 31, the land registrar erroneously included the disputed land in the title to that property. The appellant applied to rectify the register so as to include the land within the title to No 29. The respondent opposed the application on the ground that she had acquired possessory title to the disputed land under the Limitation Act 1980 by virtue of 12 years adverse possession by her predecessors in title which meant that the appellant's cause of action was statute–barred. Alternatively, the respondent claimed to have an easement of parking over the disputed land. The High Court upheld a decision of the deputy adjudicator to the Land Registry that possessory title to the disputed land had been acquired by the owners of No 31, even though, throughout the relevant period, the persons claiming to be in adverse possession of it had been registered as the proprietors.

Point of dispute: Whether appellant's second appeal on the issue would be allowed. Permission to appeal for a second time was granted on the ground that it raised an important point of principle involving the separation of legal and beneficial ownership in relation to adverse possession.

Held: The appeal was allowed.

i. For the 1980 Act to apply a right of action to recover possession of the land had to have accrued to the paper title owner and the person claiming possessory title had to have been in adverse possession of the disputed land for more than 12 years. There was no adverse possession by the owners of No 31 since they had registered title to the land.

ii. Both the parties had a registered title to the disputed land. This mistaken concurrent registration had to be rectified by order in accordance with the procedures laid down in the Land Registration Act 1925. There was no time limit for the owners of No 29 to get the mistake rectified. In this case there were no circumstances from which a separation of legal title and beneficial ownership of the disputed land could be inferred or implied. Subject to rectification of the register by order, both parties had a good legal and beneficial title to the disputed land conferred by registration.

iii. The machinery provided by the 1925 Act had to be used to establish the true title to registered land.

iv. No easement to park could be acquired by a person who was, during the relevant period of user, the registered owner of both the dominant tenement (no 31) and the servient tenement (the disputed land).

ENERGY

23 Department of Energy and Climate Change Guidance

Guidance for Green Deal Providers and landlords entering into Green Deal Plans during void periods with the intention that the Plan will be transferred to a consumer tenant

This document aims to provide information for Green Deal Providers and landlords where they are considering entering into a Green Deal Plan during a void period between tenancies with the intention that a consumer tenant will become responsible for making payments under the Plan when the property is let.

https://www.gov.uk/government/publications/guidance-for-green-deal-providers-and-landlords-entering-into-green-deal-plans-during-void-periods-with-the-intention-that-the-plan-will-be-transferred-to-a-consumer-tenant

LONDON

24 London Assembly Government Publication

Open for Business – Empty Shops on London's High Streets

In the past two years the number of empty shops has risen by 5% to 3,400. Outer London high streets are particularly struggling because of the state of the economy and because people increasingly shop at out–of–town centres and online. This report, prepared by the London Assembly Open for Business Economy Committee, sets out a package of emergency and longer term measures to address the problem of closing and empty shops in London in the hope of reversing the decline and bringing empty shops back into use. The proposals include the following:

- London–wide support to renegotiate rents;
- An expansion of small business rate relief paid for through a reduction in landlord's rate relief on empty properties;
- A new register of owners of vacant shops in order to make landlords more easily traceable;
- Changing planning rules so boroughs can address the rise in the number of pawnbrokers – up 94.8% since January 2010 – betting shops and payday loan shops; and
- Pop–up and interim uses for empty shops.

http://www.london.gov.uk/mayor-assembly/london-assembly/publications/open-business-empty-shops-londons-high-streets

GENERAL

25 Court of Appeal

Section 15 of the Commons Act 2006 – whether a tidal beach could be registered as a town or village green

*R (ON THE APPLICATION OF NEWHAVEN PORT AND PROPERTIES LTD) V EAST SUSSEX COUNTY COUNCIL (2013) PLSCS 92 – Decision given 27.03.13

Facts: In 2010 ESCC registered West Beach at Newhaven as a town or village green pursuant to s15 of the Commons Act 2006. The original application for registration was made by the town council, supported by considerable evidence that the beach had been used by local inhabitants as of right for lawful sports and pastimes for at least 20 years until April 2006, at which time the respondent company, NPP, which owned and operated Newhaven Port, fenced off public access to the beach claiming that the seawall was in a dangerous condition. The only objector to the registration was NPP and after a non–statutory public inquiry, at which an inspector appointed by ESCC recommended to the commons and village green registration panel that the application be approved, NPP was granted judicial review of the decision to register the beach.

Point of dispute: Whether ESCC's appeal against the grant of judicial review would be allowed. The court had to consider the following questions:

i. whether a tidal beach could be a town or village green;

ii. whether use of the foreshore was subject to the rebuttable presumption that it was by permission of the Crown or its successor in title;

iii. whether the beach was registrable on the facts relating to its use;

iv. whether the byelaws rendered use of the land precarious and not as of right; and

v. whether the lack of a right of access precluded use of the land as of right.

Held: By a majority of 4:1 ESCC's appeal was allowed.

i. Section 15 of the Commons Act 2006 did not contain the definitional link with elements of the traditional village green which had been present in s22 of the Commons Registration Act 1965.

ii. The judge's reasoning had been flawed. Registration as a town or village green did not depend on actual or presumed grant or an actual or implied dedication, but on use of a specified character over a specified period. If Parliament had wished to preclude registration of land as a town or village green on grounds of incompatibility with the landowner's statutory functions it would have included express provision to that effect.

iii. Neither the absence of any general common law right in respect of use of the foreshore for recreational purposes, nor the history of tolerance of such use, precluded a finding that recreational use of a particular beach was use as of right, if such a finding was otherwise justified by the evidence.

iv. Whilst on their proper construction the relevant byelaws impliedly permitted the public to access the harbour and engage in various sports and activities, they did not confer any right to do so. On the inspector's findings of fact there had been nothing by way of display or enforcement of the byelaws during the relevant 20 year period to indicate that use of the beach was subject to the permission of the landowner.

v. There had been ample evidence to justify a finding of use of the beach as of right, irrespective of whether a right of access to it had been established.

26 TCPA Publication

Building a lasting legacy: A guide to creating new garden cities and suburbs

This guide has been designed to assist local planning councillors and officers in bringing forward Garden City style plans for well–designed and inclusive communities which deliver the future homes and jobs needed in their localities.

http://www.tcpa.org.uk/resources.php?action=resource&id=1132

27 Law Commission Consultation Paper

Conservation Covenants
Deadline for Comments: 21.06.13

A conservation covenant is a voluntary agreement between a landowner and responsible body (such as a charity, public body, local or central Government) to do or not to do something on their land for a conservation purpose. Examples would include an agreement to maintain a woodland and allow public access over it, and to refrain from using certain pesticides on native vegetation. The aim of these agreements is that they should be long–lasting, continuing after the landowner has parted with the land, to ensure that its conservation value is protected for the public benefit. This paper considers and invites comments on the following issues:

- Who should be able to create a conservation covenant?
- What should a conservation covenant be for?
- Should there be public oversight of a new statutory scheme?
- How should conservation covenants be created and recorded?
- How should a conservation covenant be managed?
- What should be the consequences of a breach of a conservation covenant?
- When and how should a conservation covenant be modified or be brought to an end?
- Could any existing statutory covenants be replaced by a system of conservation covenants?

http://lawcommission.justice.gov.uk/consultations/2317.htm

28 CLG Publication

The future of high streets

This report summarises the progress that has been made to date in connection with the Government's programme to revitalise Britain's high streets, including details of what has been achieved during the last year. Plans for work to be done going forward are also set out.

https://www.gov.uk/government/publications/the-future-of-high-streets

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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

Legal & Parliamentary

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SCOTLAND

RATING

01 Statutory Instrument

SSI/113The Valuation (Postponement of Revaluation) (Scotland) Order 2013

This Order, which came into force on 28.03.13, amends s37(1) of the Local Government (Scotland) Act 1975 to postpone the next year of non–domestic rating revaluation to 2017–2018. As a result, it also revokes the Valuation (Postponement of Revaluation) (Scotland) Order 1982 which provided that the quinquennial revaluations should run from 1985–86.

http://www.legislation.gov.uk/ssi/2013/113/contents/made

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WALES

PLANNING

02 Welsh Government Consultation

Strategic Environmental Assessment: Environmental Report, Rural Development Plan for Wales 2014–2020
Deadline for Comments: 25.05.13

The consultation invites comments on the Strategic Environmental Assessment (SEA) Environmental Report for the 2014 – 2020 Rural Development Plan for Wales.

The SEA is being carried out in accordance with the requirements of the SEA Directive (2001/42/EC) and The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004 (WSI 2004/1656 (W.170)). This consultation is being undertaken in conjunction with the ongoing conversation on CAP Reform and the public consultation on the Rural Development Plan 2014–2020: Next Steps which was launched by the Deputy Minister on 30.01.13.

http://new.wales.gov.uk/consultations/environmentandcountryside/130328senrdp/;jsessionid=C290B4B49BFD358B2D01403F930249C3?status=ope%3Fforce%3Dcy&lang=en

03 Welsh Government Consultation

Draft industrial and commercial sector plan
Deadline for Comments: 20.06.13

Comments are invited on this draft plan which covers products and waste generated by industrial and commercial businesses. The plan considers waste prevention, preparing for reuse, recycling and treatment, and waste disposal.

http://new.wales.gov.uk/consultations/environmentandcountryside/industrial-commercial-sector-plan/;jsessionid=E739CBF09588F0A8B1514B5467A7A038?lang=en

04 Letter from the Department for Housing and Regeneration

Community Infrastructure Levy: Affordable housing and 'meaningful' amount

This letter:

- Clarifies that affordable housing is not included within the remit of the Community Infrastructure Levy (CIL) and that local planning authorities should continue to consider best practice in using s106 agreements to help develop affordable houses; and
- Clarifies what constitutes a “meaningful” proportion of CIL to be passed to neighbourhoods (in Wales this will mean Community Councils) by local authorities. The UK Government has decided that 15% of CIL revenues in Wales should be passed on to Community Councils.

http://new.wales.gov.uk/topics/planning/policy/dear-cpo-letters/cil-affordable-housing-and-meaningful-amount/?lang=en

RATING

05 Welsh Government Consultation

Business Rate Relief for Charities, Social Enterprises and Credit Unions – Recommendations from an independent report to the Welsh Government
Deadline for Comments: 19.06.13

This consultation paper follows on from recommendations of the Business Rates Task and Finish Group which was established in 2011 to review aspects of the business rates system in Wales. Their latest report is a follow up on previous recommendations specifically around charitable relief and empty property rates.

Key recommendations, on which comments are invited, include:

- Any business which takes up new occupation of a property, which has been vacant for 12 months or more, would enjoy rate relief of 50% for the first year of occupation;
- A business occupying a retail property in a town centre that has been vacant for 12 months or more would enjoy 50% rate relief for two years. In addition, social enterprises might have this 50% rate relief extended beyond two years at the discretion of the local authority; and
- The amount of rate relief available for larger charity shops occupying premises of higher rateable value be restricted to an upper RV limit of £36K and that other thresholds should be introduced as follows:

a. The full, mandatory rate relief of 80% will be available on properties with a rateable value (RV) up to £12K (the current upper limit for Small Business Rate Relief). All charity shops will receive 80% rate relief on the first £12,000 of the RV;

b. Charity rate relief will then be reduced from 80% to 50% on the next £24K of rateable value, i.e. up to a maximum RV of £36K. All charity shops will receive 50% rate relief on the next £24,000 of the RV;and

c. For RVs in excess of £36K we recommend that the business rate relief falls to zero.

http://wales.gov.uk/docs/det/consultation/130423brrcharityconsultationen.pdf

CONSTRUCTION

06 Statutory Instrument

WSI 2013/747 The Building Regulations &c. (Amendment) (Wales) Regulations 2013

W.e.f 28.03.13 these Regulations amend the 2010 Building Regulations and the Building (Approved Inspectors etc.) Regulations 2010. The Regulations contain, inter alia, new provisions regarding completion certificates, buildings which are occupied before work is completed, energy performance of buildings, bodies that are authorised under the self–certification scheme, and certificates given by approved inspectors.

http://www.legislation.gov.uk/wsi/2013/747/contents/made

NORTHERN IRELAND

PLANNING

07 Statutory Instrument

NSI 2013/96 The Planning (General Development) (Amendment) Order (Northern Ireland) 2013

This Order, which comes into force on 30.04.13, amends the 1993 Order so as to omit Part 23 from the definition of operational land. It also deals with the amendment to and introduction of certain classes of permitted development described in Schedule 1 to the 1993 Order and in respect of which no specific application for planning permission is needed.

http://www.legislation.gov.uk/nisr/2013/96/contents/made