EVEBRIEF

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SIMPLIFIED PLANNING AND AN UNCHARITABLE DECISION

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Editor

We report at items 07 and 23 on the key measures in the Growth and Infrastructure Act, which are intended to help to remove unnecessary bureaucracy that can hinder sustainable growth. The Act will do this through improving procedures and removing unnecessary processes or requirements so that the planning system is simpler and faster and supports sustainable growth. It also introduces economic measures to support growth, including the creation of a new optional 'employee-shareholder' status for companies to offer, and postponing the next business rates revaluation from 2015 to 2017 which the Government claims will assist businesses to grow

The planning system is at the centre of this initiative from Government. There is a perception that the system is anti-growth and the Act intends to make changes that will ensure that it works proactively and efficiently to promote sustainable development.

At items 21 and 22 we report on two potentially important court decisions on rateable occupation and charitable rates relief. In Woolway the Court of Appeal held that two offices several floors apart can comprise a single unit of occupation and can therefore be the subject of one rating assessment. The principle in the leading case from 1956, that a single 'hereditament' can comprise physically separate properties if their use is sufficiently functionally linked, still applies.

In the context of a modern office block however, the Court of Appeal held that there is no need to demonstrate functional linkage for separate floors to comprise a single unit of occupation. In the specific circumstances of the appeal property, the Tribunal had held that the direct access by lifts between the floors negated any argument for a disability allowance in the valuation, but in other circumstances an allowance may be merited due either to quantum or to the disadvantages of physical separation.

In the PSCT case the High Court determined that use of a property for transmitting messages from small electrical communications equipment did not constitute use 'wholly or mainly' for charitable purposes and did not therefore qualify for 80% charitable relief from rates. The arrangements entered into by PSCT are of significant potential benefit to property owners who would, if their properties remained unoccupied, have to bear the burden of empty rates. PSCT have indicated that they may appeal the decision, so it is a question of 'watch this space'.

Tony Chase

GERALDEVE

LOCAL GOVERNMENT

01 CLG Guidance

Council Tax empty homes premium: guidance for properties for sale and letting

The government has issued this guidance to assist local authorities in the decision making process for administering the empty homes premium which was introduced on 01.04.13. Billing authorities can charge this premium, of up to 50% of the council tax, on properties which have been unoccupied and unfurnished for two years or more.

https://www.gov.uk/government/publications/council-tax-empty-homes-premium

LANDLORD & TENANT

02 Court of Appeal

Service charges – whether recovery of costs for gas barred under s20B of Landlord and Tenant Act 1985 ("1985 Act") because costs not demanded within 18 months of being incurred

**OM PROPERTY MANAGEMENT LTD V BURR
[2013] PLSCS 93 – Decision given 03.05.13

Facts: The appellant, B, was the leaseholder of a property on a large housing estate. OMPM, the management company, was responsible for maintaining the communal facilities including a leisure centre and a gas heated swimming pool and could recover its costs through service charges paid by the leaseholders. Between 2001 and 2007 OMPM mistakenly received and paid gas bills from an energy company which did not in fact supply gas to the estate. In 2007 the correct company was identified. Having recovered the sums that it had mistakenly paid to the wrong company, OMPM paid £100,289 to the correct supplier, and then claimed that amount from the leaseholders in the 2008 service charge accounts, B's share being approximately £300.

Point of dispute: Whether B's appeal should be allowed against the decision of the Lands Chamber of the Upper Tribunal which held, reversing the decision of the Leasehold Valuation Tribunal in his favour, that the costs had not been incurred until either the date of the relevant invoice from the energy supplier or the date when that invoice was paid. Since both of these dates were less than 18 months before the service charge demand was made (s20B of the 1985 Act) it was necessary to decide which was correct.

Held: The appeal was dismissed. There was a distinction between a liability to pay and the incurring of costs; a liability had to crystallise before it became a cost. Section 19(2) of the 1985 Act supported the conclusion that costs were incurred only when they were paid or when an invoice or other demand was submitted by the service provider or supplier, rather than when the services were provided or the supplies made. Costs were not "incurred" within the meaning of ss18,19 and 20B of the 1985 Act on the mere provision of services or supplies to the landlord or management company. For the purposes of this case it was not necessary to decide whether they were incurred on the presentation of an invoice or on payment.

03 High Court

Service charges – right to information

*DI MARCO V MORSHEAD MANSIONS LTD
[2013] PLSCS 90 – Decision given 30.04.13

Facts: DM, the appellant, was the leaseholder of a flat in a block owned and managed by MML. Under the terms of DM's lease he was required to pay a service charge to MML. In 1994 MML's articles of association were amended to include article 16, which entitled MML to establish and maintain capital reserves, management funds and sinking funds in respect of its expenses and it also required members (who were the leaseholders) to contribute the amounts and in the manner approved by ordinary resolution from time to time. DM was not happy with the scheme and failed to pay his instalments on the due dates. His case challenging the scheme was rejected by the Court of Appeal. MML issued proceedings for rent with interest and two article 16 demands. DM counterclaimed, challenging the validity of using article 16 to deal with service charge matters and the use of the money raised without complying with the Landlord and Tenant Act 1985 which gives tenants rights to investigate and challenge service charges.

Point of dispute: Inter alia, whether DM's appeal would be allowed against the striking out of his counterclaim for information under ss21 and 22 of the 1985 Act.

Held: This part of the appeal was allowed. The tenant had the right to apply to the court for the information which the landlord had to produce under ss21 and 22. Some of the judge's reasoning had been incorrect and the basis for striking out parts of the counterclaim could not stand.

04 Upper Tribunal: Lands Chamber

Determination of service charges

*TRIPLEROSE LTD V KHAN
[2013] PLSCS 86 – Decision given 23.04.13

Facts: K was the lessee of a flat under a 2008 lease between the freeholder, a management company, and K. It was a term of the lease that the freeholder would grant a headlease of the whole estate to the management company but that before this was done, or in the event of the headlease being terminated or the management company going into liquidation, the freeholder would carry out the management company's services under the lease, subject to receiving payment of the service charge. In 2009 the freeholder granted a headlease to the appellant, T, instead of to the management company. T was obliged to observe and perform the landlord's and management company's obligations contained in the tenants' leases. In March 2011 the management company went into liquidation and K applied to the LVT for a determination under s27A of the Landlord and Tenant Act 1985, as to the amount of service charge he was due to pay for the years 2009 to 2011.

Point of dispute: Whether T's appeal would be allowed against the LVT's decision that it was unable to determine how much service charge T was entitled to. It ruled that until the management company went into liquidation the service charges were payable to the company and after that they were due to T, but that it was unable to perform the exercise of apportioning the 2011 service charge between T and the management company.

Held: The appeal was allowed. As the management company had never been granted a headlease, the landlord remained responsible for carrying out the services and was entitled to receive service charges from K. Once T was granted the headlease it became entitled to the reversion expectant on K's lease and became "the freeholder" for the purposes of his lease. T then became subject to the obligations, and entitled to the rights that the landlord had previously possessed against K, including the obligation to provide services under the lease and the right to receive payment of the service charge. The LVT's conclusion that the management company was entitled to receive the service charge up to the date of its liquidation was incorrect and the matter should be remitted to the LVT to determine the payments due for the service charge years in question.

05 High Court

Application for consent to basement from management company – objections from neighbours – whether works would breach covenant for quiet enjoyment

*SHEBELLE ENTERPRISES LTD V HAMPSTEAD GARDEN SUBURB TRUST LTD
[2013] PLSCS 78 – Decision given 22.04.13

Facts: F was the freehold owner of a property situated at the top of a hill in Hampstead Garden Suburb which originally had been held under a long leasehold title but had been enfranchised under the Leasehold Reform Act 1967. HGST exercised a scheme of management, made and approved under the 1967 Act, which regulated the rights of owners of properties in the Hampstead Garden Suburb. F applied to HGST for permission to carry out extensive works to his property, including the construction of a single storey basement under part of the garden. Objections to the applications were raised by several neighbours, including SE who owned a 999 year lease of a property at the bottom of the hill from HGST as the freeholder; the lease contained a covenant for quiet enjoyment. HGST's planning committee took the view that the proposed extension was acceptable for a property in that location, subject to further investigation on ground water movement to ensure that the basement would not adversely affect the gardens below F's plot. In November 2012 HGST informed SE that, having considered expert advice, it was not in a position to delay issuing consent, which would be subject to various conditions.

Point of dispute: Whether to allow SE's application for an interim injunction to restrain HGST from granting consent until certain steps had been taken, including a basement impact assessment. HGST cross–claimed for summary judgment.

Held: The application was dismissed and the cross–claim for summary judgment allowed.

i. It was HGST's duty to consider the application in the light of the wider purposes of the scheme, not simply to confine its attention to issues of use, appearance and maintenance. This meant that the effect of the proposed works on the character and amenities of other parts of the suburb had to be taken into account – including issues relating to movement of ground water – but that did not necessarily mean that HGST should require a basement impact assessment; it could decide that such issues were better left to the local planning authority, because of expense, availability of suitable expertise and so on.

ii. The Court of Appeal decision in the case of Zenios v Hampstead Garden Suburb Trust Ltd [2011] confirmed that HGST was acting as a custodian of the public interest, in the sense of the public interest in the amenities of the suburb, when it decided whether or not to grant consent for an application under the scheme. The covenant for quiet enjoyment in SE's lease could not be relied upon so as to hinder the proper exercise of public duties in the public interest by a landlord in whom the freehold reversion might become vested at a later date. The present action was not the proper means to resolve this dispute and no grounds had been shown for interfering with HGST's decision–making process.

PLANNING

06 Court of Appeal

Proposal to construct biomass renewable energy plant fuelling combined heat and power plant (CHP) – Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 ("the EIA Regulations") – screening opinion – whether further opinion required when CHP located to separate site

*R (ON THE APPLICATION OF BURRIDGE) V BRECKLAND DISTRICT COUNCIL
[2013] PLSCS 76 – Decision given 19.04.13

Facts: The interested party, X, applied to BDC for planning permission to construct a biomass renewable energy plant and a combined heat and power (CHP) plant. The renewable energy plant would produce "biogas" to fuel the CHP plant which would convert it into heat and electricity for the National Grid. The development fell within the EIA Regulations but BDC issued a screening opinion indicating that the development was not likely to have significant effects on the environment. Later X decided to relocate the CHP plant to another site with an underground gas pipeline running between the two, but BDC did not issue new screening opinions in respect of the revised proposals and resolved to grant planning permission for each of the sites.

Point of dispute: Whether B's appeal would be allowed against the decision of the judge in the court below who dismissed her application for judicial review of the planning permissions. B contended that BDC should have issued new screening opinions that considered the combined effect of the two applications. The judge found that although functionally inter–dependent, the two developments were not part of the same development, that the CHP site was too small to require a screening opinion, and that the original screening opinion was sufficient with regard to the renewable energy plant site.

Held: The appeal was dismissed.

i. The two applications formed a single project: they were functionally inter–dependent and one could not sensibly be implemented without the other. Both applications had to be taken into account together when deciding whether a screening opinion was necessary.

ii. The planning permissions should however be upheld because BDC had undertaken an informal screening assessment of both applications together. The judge had been entitled to accept a statement from the planning officer that splitting the two parts of the development would not have resulted in a different EIA outcome.

07 Act of Parliament

Growth and Infrastructure Act 2013

This Act received Royal Assent on 25.04.13.

It is intended that the Act and its associated measures will encourage growth and sustainable development by:

- enabling work to start on major infrastructure projects which have previously been held up by regulatory barriers;
- speeding up the roll out of super–fast broadband service to more rural communities;
- enabling reconsideration of economically unviable s106 agreements which are holding up development of new housing sites;
- enabling 15,000 new affordable homes to be delivered from new capital funding and the infrastructure guarantee;
- simplifying the planning system by reducing the amount of information required in connection with a planning application; removing overlapping development consent regimes which meant that multiple extra permissions from different government agencies were required; and allowing planning applications to be considered by the Planning Inspectorate where a local council has consistently failed to consider applications on time;
- creating a new employment status of "employee shareholder" that will give individuals the opportunity to share in the potential rewards of a company; and
- reforming the town and village greens legislation by the removal of an overlapping consent process from the registration system.

http://www.legislation.gov.uk/ukpga/2013/27/contents/enacted

08 Statutory Instruments

SI 2013/935 The Regional Strategy for the South West (Revocation) Order 2013
SI 2013/934 The Regional Strategy for the North West (Revocation) Order 2013
SI 2013/933 The Regional Strategy for the West Midlands (Revocation) Order 2013

The regional planning tier has been abolished by the Localism Act 2011. W.e.f. 20.05.13 these Orders revoke the Regional Strategies for the South West, the North West and the West Midlands, together with all directions that saved policies contained in structure plans in the corresponding areas as part of the transitional provisions under Schedule 8 to the Planning and Compulsory Purchase Act 2004.

http://www.legislation.gov.uk/uksi/2013/935/contents/made

http://www.legislation.gov.uk/uksi/2013/934/contents/made

http://www.legislation.gov.uk/uksi/2013/933/contents/made

09 Statutory Instrument

SI 2013/982 The Community Infrastructure Levy (Amendment) Regulations 2013

These Regulations, which came into force on 25.04.13, amend the 2010 CIL Regulations. Inter alia, they provide as follows:

- They make provision in relation to Mayoral Development Corporations and allow the Mayor of London to prepare a charging schedule in anticipation of such a Corporation becoming the charging authority for an area within Greater London;
- A development granted permission, by a community right to build order (a type of neighbourhood development order), could be liable to the CIL;
- A duty is placed on charging authorities to pass some CIL funds to local councils where some or all of a chargeable development takes place in an area for which there is a parish or community council;
- In England, where there is a neighbourhood development plan in place, or permission was granted by a neighbourhood development order (including a community right to build order) the charging authority must pass 25% of the CIL funds to the parish councils in whose area the chargeable development takes place. Where there is no neighbourhood development plan this amount is 15%, subject to a cap of £100 per household in the parish council area per year. Parish or community councils (in Wales) have discretion to decide that some or all of these funds should remain with the charging authority;
- The charging authority is able to recover funds from the local council in circumstances where the local council have misapplied the CIL by not using it to support the development of its area or by using for another purpose;
- Where a chargeable development takes place in an area for which there is not a parish or community council the charging authority has wider spending powers in relation to those parts of its area for which there is not such a council; and
- The neighbourhood funding element of the CIL will not impact on the relationship between CIL and agreements reached under s106 of the Town and Country Planning Act 1990.

http://www.legislation.gov.uk/uksi/2013/982/contents/made

10 Statutory Instrument

SI 2013/1101The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013

This Order, which comes into force on 30.05.13, amends the 1995 Order. The main changes are as follows:

- Until 30.05.16 larger home extensions can be built under permitted development rights. Neighbouring owners must be notified in advance and their objections, if any, must be taken into account by the local authority;
- Schools can build higher fences or walls next to a highway;
- The size of floor space in business premises which may change use from use classes B1 or B2 to use class B8, or from use classes B2 or B8 to use class B1 is increased from 235 square metres to 500 square metres;
- A new Class J is inserted into Part 3 of Schedule 2 to the 1995 Order. This is a temporary new permitted development right allowing change of use from offices to dwellings. It will expire on 30.05.16 and is subject to exemptions;
- A new Class K is inserted into Part 3 enabling various types of building to change use to use as a state–funded school, subject to local planning authority approval of highway and other matters;
- A new Class M is inserted into Part 3 which grants permitted development rights to allow existing agricultural buildings to change use to a flexible use falling within use class A1, A2, A3, B1 B8, C1 or D2. No more than 500 square metres of floor space in the building can be converted to a new use under the new right. Before the development implementing the change of use starts, the local planning authority must be notified, and if the change of use related to more than 150 square metres of floor space the new permitted development right is subject to prior approval by the local planning authority in relation to transport and highways, noise impact, contamination and flooding;
- The amount by which an industrial, warehouse or office building may be extended or increased in size under permitted development rights is doubled until 30.05.16; and
- The amount by which a shop, catering, professional or financial services establishment may be extended or altered is also doubled until 30.05.16. The exclusion of development within two metres of the boundary of the curtilage is removed during the same period except in relation to premises adjoining residential properties.

http://www.legislation.gov.uk/uksi/2013/1101/contents/made

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11 Statutory Instrument

SI 2013/1102 The Town and Country Planning (Compensation) (England) Regulations 2013

W.e.f. 30.05.13 these Regulations amend and consolidate the 2012 Regulations. The Regulations are made under s108 of the Town and Country Planning Act 1990 which provides for the payment of compensation to land owners in certain cases where planning permission for development granted by a development order, local development order or neighbourhood development order is withdrawn, and where, on an application for planning permission for that development, the application is refused or permission is granted subject to conditions. The Regulations specify the permitted development rights in respect of which compensation is only payable where planning applications are made within 12 months beginning on the date the directions took effect.

http://www.legislation.gov.uk/uksi/2013/1102/contents/made

12 Statutory Instrument

SI 1124 The Growth and Infrastructure Act 2013 (Commencement No. 1 and Transitional and Saving Provisions) Order 2013

- This Order brings into force on 09.05.13 s1 of, and Schedule 1 to, the Growth and Infrastructure Act 2013, to enable the Sec of State make subordinate legislation under the provisions which that section and Schedule insert into the Town and Country Planning Act 1990.
- The Order brings into force on 25.06.13 s8 of the Act enabling the Sec of State to give general consent to local authorities to dispose of land held for planning purposes.
- Sections 22 to 25 and s27 of the Act are also brought into force on 25.06.13.

http://www.legislation.gov.uk/uksi/2013/1124/contents/made

13 CLG Guidance

Community Infrastructure Levy: Guidance

This Guidance note was issued by the Sec of State under s221 of the Planning Act 2008 and replaces the guidance which was issued in March 2010.

https://www.gov.uk/government/publications/community-infrastructure-levy

14 CLG Guidance

Planning Act 2008: examination of applications for development consent

The 2008 Planning Act created a new development consent regime for nationally significant infrastructure projects in the fields of energy, transport, water, waste water and waste. The Localism Act in 2011 made significant changes to this regime with the abolition of the Infrastructure Planning Commission and the transfer of responsibility for decision making to the Secretary of State. This guidance is concerned with the examination of applications for development consent under the Planning Act and is directed primarily at the Examining Authority which is appointed by the Secretary of State. Its aim is to promote best practice, to ensure consistent application of examination procedures and to promote fairness, transparency and proportionality.

https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent

15 CLG Guidance

Planning Act 2008: associated development applications for major infrastructure projects

Section 115 of the Planning Act 2008 provides that, in addition to the development for which development consent is required under Part 3 of the Act, consent may also be granted for associated development. This guidance is designed to help those who intend to make an application for development consent under the Planning Act to determine how the provisions of the Act in respect of associated development apply to their proposals. It is also intended to inform others with an interest in such applications.

https://www.gov.uk/government/publications/planning-act-2008-associated-development-applications-for-major-infrastructure-projects

16 CLG Consultation

Mobile Connectivity in England
Deadline for Responses: 14.06.13

This consultation sets out the government's proposals to boost the roll–out of mobile and mobile broadband services, including 4G, which is seen as essential to encouraging business growth and job creation. The proposals will speed up the regulatory process for mobile and mobile broadband infrastructure and maximise the use of existing sites and the sharing of infrastructure between operators.

http://www.planningportal.gov.uk/general/news/stories/2013/may13/090513/09052013_1

17 CLG Consultation

Mobile connectivity in England: technical consultation Deadline for Comments: 14.06.13

This consultation sets out the government's proposals to change the planning regulations which are slowing down the roll–out of 4G in England, as follows:

- amend Part 24 of the Town and Country Planning (General Permitted Development) Order 1995 to grant increased permitted development rights for quicker installation of communications infrastructure;
- update the Electronic Communications (Conditions and Restrictions) Regulations 2003 with complementary changes to installing communications infrastructure; and
- update and clarify both sets of regulations in order to reflect technology changes and remove ambiguity.

https://www.gov.uk/government/consultations/mobile-connectivity-in-england

18 CLG Impact Assessment and Summary of Responses

New opportunities for sustainable development and growth through the reuse of existing buildings: impact assessment

This impact assessment examines the impact of measures being brought forward on 30.05.13 to relax the planning regulations, including allowing agricultural buildings to be converted to other uses which support rural growth, allowing temporary alternative uses for a range of buildings for up to two years and increasing the size thresholds for permitted development rights for change of use of commercial buildings. Other changes include relaxation in rules to enable more buildings to change their use to a state funded school. A summary of responses to the government's consultation on these measures has also been published.

https://www.gov.uk/government/publications/reusing-existing-buildings-permitted-development-rights-impact-assessment

https://www.gov.uk/government/consultations/reusing-existing-buildings-permitted-development-rights

19 CLG Impact Assessment and Maps

Relaxation of planning rules for change of use from offices to residential: impact assessment

This assessment considers the impact of the introduction of new development rights to allow changes from B1(a) office use to C3 residential uses without the need for planning permission. These rights will be limited to a period of three years. 36 maps show the areas which are exempt from this new permitted development right – these are mainly in London, but parts of Oxford, Manchester, Stevenage, Ashford and Hampshire are also affected.

https://www.gov.uk/government/publications/change-of-use-from-offices-to-residential-impact-assessment

https://www.gov.uk/government/publications/areas-exempt-from-office-to-residential-change-of-use-permitted-development-right-2013

20 CLG Impact Assessment and Summary of Responses

Extending permitted development rights for homeowners and businesses: impact assessment

This assessment examines the impact of the measures being introduced to extend permitted development rights for homeowners and businesses. For a period of three years homeowners will be permitted to build larger single storey extensions without the need for planning permission and the permitted development thresholds for extensions to retail premises have been extended. A new neighbours' consultation scheme is being introduced for larger home extensions. These measures will come into force on 30.05.13. A summary of responses to the government's consultation on these measures has also been published.

https://www.gov.uk/government/publications/extending-permitted-development-rights-for-homeowners-and-businesses-impact-assessment

https://www.gov.uk/government/consultations/extending-permitted-development-rights-for-homeowners-and-businesses-technical-consultation

RATING

21 Court of Appeal

Business rates – whether two separated floors in modern office building occupied by ratepayer comprise single hereditament – whether each floor comprises separate hereditament

***WOOLWAY (VO) V MAZARS LLP
[2013] PLSCS 73 – Decision given 17.04.13

Facts: The ratepayer M, a firm of accountants, occupied the second and sixth floors in a modern office building under separate leases. The appellant VO entered each of the two floors in the rating list as a separate hereditament as he considered that different floors in the same occupation could only be listed as a single hereditament if they were adjacent to each other. The Valuation Tribunal accepted M's proposal to merge the two entries w.e.f. November 2007, finding that the two floors were within the same curtilage and that there was an essential functional link between them.

Point of dispute: Whether the VO's appeal would be allowed against the decision of the Upper Tribunal (Lands Chamber) (UT) which upheld the Valuation Tribunal's ruling. The UT took the view that contiguity between the floors was of no practical significance where there was a lift to travel between all the floors in the building.

Held: The appeal was dismissed. The definition of a hereditament was contained in s115 of the General Rate Act 1967, but was circular as defining it by reference to its liability for rating and to the contents of the rating list. It referred to a "unit of such property" but this was a reference to a separate item of rateable property shown in the list and did not assist in defining what the separate item was. The geographical or physical test laid down in the decision of Gilbert (VO) v S Hickinbottom & Sons Ltd [1956] 2 QB 40 remained important and the UT had applied a physical test to floors within a single building and the hereditament could be "ringed around on a map" within the geographical approach in Gilbert. On the facts of the case two floors in the occupation of a single ratepayer could not legitimately be distinguished on practical grounds or in terms of the value of the occupation. The contiguity test was not decisive and it was relevant that access between floors was possible only through the common parts by a swift lift service. The two non–contiguous floors constituted a single hereditament.

22 High Court

Liability of charity for non–domestic rates – three appeals heard together – whether district judge applying correct or wrong approach to whether premises used wholly or mainly for charitable purposes

**PUBLIC SAFETY CHARITABLE TRUST V MILTON KEYNES COUNCIL
PUBLIC SAFETY CHARITABLE TRUST V SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL
CHESHIRE WEST AND CHESTER BOROUGH COUNCIL V PUBLIC SAFETY CHARITABLE TRUST
(2013) PLSCS 103 – Decision given 14.05.13

Facts: PSCT was a charity which had taken leases of commercial premises for nominal or peppercorn rents and subject to a short notice period of around seven days. PSCT arranged for a small broadcasting transmitter to be placed at each of the premises. This was connected to the power supply and provided free Wifi to anyone within its range and broadcasted free messages on crime prevention and public safety to willing participants who were in range with a Bluetooth enabled mobile phone. Apart from the presence of these transmitters, which were occasionally maintained, the premises were otherwise unused. PSCT claimed relief from liability for non–domestic rates on the basis that it was a charity in occupation of a relevant hereditament and that the hereditament was wholly or mainly used for charitable purposes within s43(6)(a) of the Local Government Finance Act 1988.

Point of dispute: In the first two cases PSCT appealed against the magistrates' orders that it was liable to pay non–domestic rates. In the third case the local council appealed against the magistrates' decision to reject the liability order. The main question for the court was whether the words "wholly or mainly used" in s43(6) related to the amount of actual use of the hereditament or the purpose of the use of the hereditament.

Held: PSCT's appeals were dismissed and the council's appeal was allowed. The meaning of the words used in s43(6) was apt to cover not only consideration of the purpose of the use but also the extent or amount of the actual use. The district judge had been entitled to take account of, and place weight upon, the extent to which the premises were used. The decision of Kenya Aid Programme v Sheffield City Council [2013] EWHC 45 (Admin) was followed. The intention of Parliament was to grant charities relief from liability for non–domestic rates where a charity was making extensive use of a building for charitable purposes, rather than leaving them predominantly unused. It was appropriate to consider the extent of the use, not just the purpose of the use. There was no basis for reading the words used in s43(6) as limited to consideration of the actual extent of occupation by the ratepayer.

23 Act of Parliament

The Growth and Infrastructure Act

This Act received Royal Assent on 25.04.13. The provisions relating to rating include the following:

- The next rating revaluation will not take place until 01.04.17;
- Further revaluations will take place at five yearly intervals thereafter;
- The current 2010 rating revaluation assessments will be used to calculate rates bills until 31.03.17;
- The Uniform Business Rate will continue to be uprated for 2015/16 and 2016/17 in line with the Retail Prices Index; and
- The revaluations in Scotland and Wales which had been planned for 2015 have also been postponed until 01.04.17.

LEASEHOLD REFORM

24 Court of Appeal

Enfranchisement of house – whether premises a house "reasonably so called" within s2(1) Leasehold Reform Act 1967

*HENLEY V COHEN
[2013] PLSCS 91 – Decision given 02.05.13

Facts: In 2004 the appellants acquired the residue of a 99–year lease, granted in 1935, of premises forming part of a 1920s parade of shops. The ground floor of the building was used as a greeting card shop, while the first floor had been used as a storeroom in conjunction with the next door property throughout the term of the lease. The only access to the first floor was internally from the next door property. In 2008 the appellants blocked up the access and converted the first floor into a flat, accessed via an external metal staircase. The purpose of carrying out these works was to adapt the first floor for living in with a view to seeking enfranchisement of the property under Part 1 of the Leasehold Reform Act 1967, but the respondent landlord had expressly refused consent to the works. The appellants' claim to acquire the freehold of the premises was met with a counternotice in which the respondent disputed their right to enfranchise.

Point of dispute: Whether the appellants' appeal would be allowed against the decision of the judge in the court below who dismissed their claim for enfranchisement. The judge held that the building did not qualify as it was not a house "reasonably so called" within the second limb of the definition of "house" in s2(1) of the 1967 Act: the ground and first floors were independent units without internal communication and with separate entrances; there was no history of residential occupation until shortly before the notice to enfranchise was given; and that the conversion works had been carried out in breach of covenant.

Held: The appeal was dismissed. Whether premises were a house reasonably so called required an assessment of the entire situation. The county court judge had done this. He had not applied the wrong test or reached the wrong result. The appellants' premises were neither adapted for residential use, nor had they ever been used as such until the conversion was carried out shortly before serving their notice under the 1967 Act. The first floor was a subsidiary part of the building and it had been used for non–residential purposes in connection with the next door property for over 70 years.

Per curiam: In view of the above, it was not necessary to decide whether, if the conversion work had made the premises a "house", the appellants would have been disentitled from enfranchising by reason of having carried out the works in breach of covenant. However, the appeal judges concluded that the works had been carried out in breach of covenant and that the appellants were not entitled to rely on those unauthorised works to assert that part of the premises had been "adapted for living in". The law would not allow the appellants to enforce a right which they had acquired by committing a wrong.

HOUSING

25 CLG Guidance

S106 affordable housing requirements: review and appeal

The Growth and Infrastructure Act 2013 inserts new sections 106BA, BB and BC into the Town and Country Planning Act 1990 to introduce a new application and appeal procedure for the review of affordable housing obligations on planning permissions on the grounds of viability. This guidance provides information for applicants and local authorities on the purpose and scope of this measure. The legislation has introduced the right for developers to apply to the local planning authority to modify affordable housing requirements set out in s106 agreements where the requirements have made the development economically unviable. A developer will need to demonstrate that the current affordable housing obligation makes the scheme unviable in current market conditions, and the revised proposal should "deliver the maximum level of affordable housing consistent with viability and the optimum mix of provision". Annex B sets out the procedures for applications to the local planning authority (under s106BA) and for appeals to the Planning Inspectorate (under s106BC).

https://www.gov.uk/government/publications/section-106-affordable-housing-requirements-review-and-appeal

26 CLG Statistical Release

Dwelling stock estimates in England: 2012

The headlines of this publication are these:

- As at 31.03.12 there were an estimated 23.1 million dwellings in England, 0.59% more than the previous year;
- 19 million of these were privately owned and the remainder were socially rented; and
- Between March 2011 and March 2012 the social rented stock increased by 12,000 dwellings and the private stock increased by 113,000 dwellings.

https://www.gov.uk/government/publications/dwelling-stock-estimates-in-england-2012

27 Homes and Communities Statistical publication

Housing Market Bulletin, April 2013

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

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

The following are the key points from the latest bulletin:

- National house prices have risen slightly during the year to March 2013;
- London continues to provide the main impetus for the rising figures;
- Transaction numbers are steady;
- Mortgage lending is increasing;
- New construction orders were 11.2% higher in the last quarter of 2012 than in the last quarter of 2011;
- The UK economy returned to growth in the first quarter of 2013;
- Inflation levels are above target, but steady; and
- Unemployment levels continue to fall gradually.

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

28 Policy Exchange Report

Housing and Intergenerational Fairness

This report is Policy Exchange's contribution to retirement housing provider Hanover's Hanover@50 debate on the future of housing for older people. The report calls for more bungalows to be built for older people which will help them to downsize, thus freeing up more family sized homes for younger families.

http://www.policyexchange.org.uk/publications/category/item/housing-and-intergenerational-fairness

ENERGY

29 House of Commons Energy and Climate Change Committee Report

The Impact of Shale Gas on Energy Markets

Although shale gas production in the UK could enhance its energy security and boost tax revenues, this report considers that it is too early to say whether it will reduce energy prices. Domestic shale production in the US means that it now has the cheapest gas market in the world, but the situation is quite different in that country where federal subsidies, a favourable regulatory regime, low population density and mineral rights for landowners have allowed the shale gas industry to flourish. The report points out that shale drilling in the UK faces very different factors, including a sceptical public: the impact of drilling on local communities could include visual and noise intrusion and impact of lorries travelling to and from sites. The report recommends that communities affected by shale gas development should receive some tangible material benefit beyond those which can be negotiated through s106 planning agreements.

http://www.parliament.uk/business/committees/committees-a-z/commons-select/energy-and-climate-change-committee/news/shale-gas-report-published/

GENERAL

30 English Heritage Guidance

Easy Access to Historic Landscapes

This guide, which replaces the 2005 version, is aimed at property owners and managers to help them provide easier access for visitors, whatever their age or level of ability, with the main focus being on providing better access for people with disabilities. The guide will also be of interest to designers, planners and others who are working on opening up historic sites to a wider audience.

http://www.helm.org.uk/guidance-library/easy-access-historic-landscapes/

31 Ministry of Justice – Response to Consultation

Reform of Judicial Review: the Government response

At the end of last year the Government conducted a consultation exercise on a package of measures to stem the growth in applications for judicial reviews. Over 250 responses were received and the following reforms are to be taken forward:

- Time limits for bringing a claim will be reduced from three months to six weeks in planning cases and to 30 days in procurement cases;
- A new fee is to be introduced for an oral renewal hearing, where the claimant does not accept a refusal of permission on the papers, and asks for the decision to be reconsidered at a hearing (an "oral renewal"); and
- Removal of the right to an oral renewal where the case is assessed as totally without merit on the papers.

These changes aim to tackle delays and reduce the burden of Judicial Review by filtering out weak, frivolous and unmeritorious cases at an early stage, while ensuring that arguable claims can proceed to a more speedy conclusion.

https://consult.justice.gov.uk/digital-communications/judicial-review-reform

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THE SUNDAY TIMES 100 BEST COMPANIES TO WORK FOR 2012

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Evebrief has been established for more than 30 years. It is a summary of the latest statutory and legal cases affecting the property industry and is widely regarded in the industry as the most comprehensive document of its type.

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Abbreviations
The following abbreviations are used in evebrief:

BLD	Lexis Nexis Butterworths (internal abbreviation)
EG	Estates Gazette
EGLR	Estates Gazette Law Reports
EWCA	England & Wales Court of Appeal
EWHC	England & Wales High Court
P&CR	Property, Planning and Compensation Reports
PLSCS	Property Law Service Case Summaries

The star system
Cases are marked with one, two or three stars as follows:

*** Essential reading on the point of law or valuation with which the case is concerned, because it adds to, or clarifies or changes, the law.

** Noteworthy case which does not significantly alter the law or which relates to a relatively obscure point.

* Interesting but non-essential reading.

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EVEBRIEF

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SCOTLAND

PLANNING

01 Scottish Government Consultation

Draft Scottish Planning Policy for Consultation
Deadline for Comments: 23.07.13

The SPP is a statement of Scottish Government policy on how nationally important land use planning matters should be addressed across the country. A review of the SPP was announced in September last year. It directly relates to the following matters:

- the preparation of development plans;
- the design of development; and
- the determination of planning applications and appeals.

http://www.scotland.gov.uk/Publications/2013/04/1027

02 Scottish Government Consultation

National Planning Framework 3 – Main Issues Report and Draft Framework
Deadline for Comments: 23.07.13

The NPF provides the framework for the spatial development of Scotland and the third NPF (NPF3) will set out the Government's development priorities over the next 20–30 years. The Main Issues Report sets out the Government's preferred options as well as reasonable alternatives.

http://www.scotland.gov.uk/Publications/2013/04/2377

GERALDEVE

03 Scottish Government Consultation

A Joint Consultation on a Historic Environment Strategy for Scotland and the Merger of Historic Scotland and the Royal Commission on the Ancient and Historical Monuments of Scotland (RCAHMS)
Deadline for Comments: 31.07.13

This consultation seeks views on the development of a long term strategy for Scotland's historic environment, the delivery of which will be lead and supported by a new public body.

http://www.scotland.gov.uk/Publications/2013/05/1373

GENERAL

04 Act

High Hedges (Scotland) Act 2013

This Act received Royal Assent on 02.05.13 and makes provision about hedges which interfere with the reasonable enjoyment of residential properties.

http://www.legislation.gov.uk/asp/2013/6/contents/enacted

WALES

CONSTRUCTION

05 Welsh Assembly Government Consultation

Building Control System and Approved Document supporting Regulation 7
Deadline for Comments: 21.06.13

This consultation concerns:

- proposed changes to the Building (Approved Inspector) Regulations 2010;
- proposed amendments to the Approved Document supporting Regulation 7; and
- a proposal to remove the Warranty Link Rule.

http://new.wales.gov.uk/consultations/planning/building-control-system/;jsessionid=531C6D991237D33A929E933AE29A92AE?lang=en

NORTHERN IRELAND

PLANNING

06 Department of the Environment Consultation

Consultation on Proposed Changes to Planning Fees
Deadline for comments: 14.06.13

The main proposals are as follows:

- reduced fees for applications to renew planning permission;
- the introduction of a revised methodology for calculating fees for mixed use applications;
- the removal of the fee exemptions for resubmitted applications for Certificates of Lawful Use or Development and consent to display advertisements;
- the correction of an anomaly in the existing fee for two or more dwellinghouses;
- zero fee for applications made by non–profit making organisations relating to the provision of community facilities (including sports grounds) and playing fields; and
- the introduction of a revised methodology for calculating fees for minerals, gas and waste applications.

http://www.planningni.gov.uk/index/news/news_consultation/common_news_consultation_proposed_changes_to_planning_fees_april_2013.htm