EVEBRIEF

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TOWN AND PARISH COUNCILS TO HAVE RIGHT TO SUBMIT SUSTAINABLE COMMUNITIES ACT PROPOSALS

Ben Aldridge
Editor

Following a second invitation in December 2010 for local authorities to use the Sustainable Communities Act by submitting proposals for Government action or assistance, in 2012 the government consulted on extending powers to submit proposals to town and parish councils. At item 1 we report on the Government's response to that consultation. The proposals received overwhelming support, and the Government now proposes to take them forward, once again showing its commitment to localism.

At item 6 we report on the Government's response to its consultation on the recommendations set out in last year's External Review of Government Planning Practice Guidance. Accepting that the existing guidance suite needs reform and consolidation and in light of the positive responses to this consultation, the government is now considering the implementation of the majority of the Review Group's recommendations. Moves to reform planning guidance to ensure it is clear, up-to-date, coherent and accessible will be very welcome.

At items 17 and 18 we report on consultations into Crossrail 2 and for a Lower Thames Crossing, and as ever interested parties will wish to make their views known. Finally at item 16 we report on the Transport Committee's report on the inquiry into the Government's Aviation Strategy, which examines the case for expanding Heathrow.

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LOCAL GOVERNMENT

01 CLG – Response to Consultation

Sustainable Communities Act 2007: government response to consultation on proposal for extending powers to town and parish councils

On 15.12.10 local authorities were invited to consult residents of their areas to ask them how they would like to see their local area improved and to take appropriate action to make it happen. The Localism Act has given them far more freedom and flexibility to do this. If local authorities, having consulted and reached agreement with their local communities, find that a bureaucratic barrier prevents them from taking action, they can submit a formal 'proposal' under the Sustainable Communities Act 2007 asking government to remove the barrier through an online portal. This portal is also open to any individual person who wishes to ask the government to remove a barrier which may be stopping local action. This publication is the government response to the consultation which sought views on whether the existing arrangements for submitting such proposals are appropriate, or whether town and parish councils, as well as local authorities, should be able to submit proposals using the Sustainable Communities Act.

https://www.gov.uk/government/consultations/proposals-from-town-and-parish-councils-under-the-sustainable-communities-act-2007

LANDLORD & TENANT

02 High Court

Operation of break clause – whether lease entitling claimant to partial repayment of rent in respect of period after specified termination date

*MARKS AND SPENCER PLC V BNP PARIBAS SECURITIES SERVICES TRUST COMPANY LTD
(2013) PLSCS 108 – Decision given 16.05.13

Facts: The claimant was the tenant and the defendant the landlord of four floors in an office building which was demised for a term of years from 25.01.06 until 02.02.18. The lease was contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954. The claimant was obliged to pay rent and a car park licence fee by equal quarterly instalments in advance and there were provisions for payment of insurance and a service charge. The lease contained a break clause entitling the claimant to determine on 24.01.12 or 24.01.16. The claimants served a notice on the defendants in order to determine the lease on 24.01.12 and fulfilled the conditions specified in the clause.

Point of dispute: Whether the claimant was entitled to be repaid part of the rent paid in advance for the quarter paid in advance on 25.12.11 since the specified date for termination of the lease was in the middle of a quarter. The claimant argued that it should be repaid: (i) pursuant to an express term in the lease; (ii) pursuant to an implied term; or (iii) in restitution because there had been a total failure of consideration.

Held: The claim was allowed.

i. The lease contained no express provision for the claimant to receive back a part of the quarter's rent due and paid on 25.12.11.

ii. However, there was an implied term in the lease entitling the claimant to recover from the defendants, a part of the quarter's rent in relation to the period after 24.01.12. This implied term was necessary to give business efficacy to the lease which included the use of words "proportionately for any part of year" and specified that the quarterly payments were "instalments", even though no specific obligation on the lessor to repay part of the quarter's instalment after the break date was spelled out.

iii. The court did not consider it possible to say that the consideration for the quarter's rent on the last quarter day before the break date had totally failed.

PLANNING

03 Court of Appeal

Material considerations – redevelopment of railway station – report of advisory body not considered when planning application determined – whether local planning authority had failed to take into account a material consideration

*R (ON THE APPLICATION OF WATSON) V RICHMOND UPON THAMES LONDON BOROUGH COUNCIL
(2013) PLSCS 105 – Decision given 15.05.13

Facts: The appellant, W, was a member of a local residents' group which opposed plans to redevelop Twickenham railway station. The proposed works included demolishing the existing station building, replacing it with a new concourse with stairs and lifts to platforms, and constructing three tall buildings which would incorporate a number of flats as well as retail, professional and restaurant uses. The planning officers of the respondent local planning authority (RTLBC) reported favourably on the proposals. Although a report critical of the scheme had been prepared by the Twickenham Advisory Panel (TAP), a body formed to work with RTLBC on regeneration of the town, the officers advised that it was not material to consideration of the planning application since it had not been formally submitted to them. Copies of the TAP report were, however, distributed to RTLBC by the time that the planning committee met to consider the application. Planning permission for the development was granted in March 2012.

Point of dispute: Whether W's appeal against the decision of the court below, which had dismissed his application for judicial review of RTLBC's decision to grant planning permission, should be allowed. W argued that the planning officers' advice about the immateriality of the TAP report was incorrect and that RTLBC had thus failed to take into account a material consideration.

Held: The appeal was dismissed. It was surprising that the planning officers had advised members of the planning committee to leave the TAP report out of consideration and there was no clear explanation as to why it had not been summarised for members of the planning committee as part of the public and other representations. However, in all the circumstances of the case the failure of the planning committee to take the report into account did not amount to a breach of the statutory duty to have regard to material considerations as all the main points in the TAP report had been taken into consideration in any event. Nothing in the report affected the committee's conclusion that the proposal accorded overall with the development plan or the management plan policy on building height and there was not anything in it that could have affected the committee's assessment of the acceptability of the design and architectural approach of the proposed development, or undermined the view that there was significant local community support for the public benefits of the overall scheme. TAP did not have the status of a statutory consultee and those members of the public whose views had been taken into account in the TAP report had probably submitted their own representations directly to RTLBC.

04 Administrative Court

Appeal against enforcement notices – notices served by lpa outside statutory time limit – planning consultant serving appeal notices out of time – claimant challenging validity of notices – whether appeal provisions relating to enforcement notices requiring wide or narrow interpretation

*R (ON THE APPLICATION OF STERN) V HORSHAM DISTRICT COUNCIL
[2013] PLSCS 97 – Decision given 01.05.13

Facts: HDC, the defendant local planning authority, served two enforcement notices in respect of a barn owned and occupied by S alleging an unauthorised material change of use from agricultural and storage to residential, and requiring the reversal of certain alterations. Each notice was to take effect on 04.01.12 ("the specified date") in the absence of any appeal. In order to comply with s172(3)(b) of the Town and Country Planning Act 1990 the notices should have been served by 07.12.11, but they were not served until 09.12.11 which was less than 28 days from the specified date. The planning consultant employed by S to deliver the appeal notices, posted them on 03.01.12 with guaranteed next day delivery. They arrived on 04.01.12, but in order to comply with s174(3) they should have been sent electronically or delivered by hand on 03.01.12 meaning that they were served out of time.

Point of dispute: Whether to allow S's application for judicial review of the enforcement notices. S argued that they were not valid as they had not been served in accordance with s174(3) of the 1990 Act, or alternatively that HDC had acted unlawfully in refusing to withdraw them and re–issue new ones when this was drawn to their attention. HDC argued that the effect of s174(2)(e), read together with s285, was that the validity of an enforcement notice, once issued, could not be questioned on the grounds that it had not been served in accordance with s172(3).

Held: The application was allowed.

i. The words of s174(2)(e), in the context of the legislative scheme as a whole, had to be given a narrower meaning in order to achieve compatibility with Article 6 of the European Convention on Human Rights.

ii. The right to appeal against an enforcement notice was a central part of the statutory scheme. As the wider interpretation would be a very significant further restriction on an already tightly circumscribed right of appeal, the provisions should be interpreted in such a way as to avoid an unreasonable result.

iii. S had been substantially prejudiced by HDC's breach of duty and the notices should be quashed.

05 Administrative Court

Tree Preservation Order – claimants applying to challenge TPO – whether land constituting public open space – Commons Registration Act 1965

*NORBROOK LABORATORIES LTD V CARLISLE CITY COUNCIL
[2013] PLSCS 105 – Decision given 08.05.13

Facts: Land occupied by the claimants had formerly been used for quarrying, but over time had turned into an area of woodland. The claimants applied to the Forestry Commission for felling permission and a woodland regeneration grant in order to fell the unmanaged woodland and replant with native species. Upon being consulted about this application the defendant council (CCC) served a provisional woodland TPO which meant that no trees could be cut down without CCC's prior consent.

Point of dispute: Whether the claimants' application for an order to quash the TPO would be allowed. The main issue in the case was whether the land was "public open space" for the purposes of the Forestry Act 1967 – if it was, any woodland management of the land fell outside the Forestry Commission's jurisdiction. The claimants argued that it was not public open space because any rights of free access conferred on the inhabitants of the district by an Article 5 scheme made by CCC under the Commons Act 1899 in 1915, had been extinguished, or had lapsed by reason of their non–registration and/or non–registration of rights of common under the Commons Registration Act 1965

Held: The application was dismissed.

i. Article 5 was not intended to confer on residents of the district and neighbourhood rights of common or any similar rights. Had it purported to do so it would have been ultra vires.

ii. When construing Article 5 and the scheme as a whole, regard had to be had to the fact that the enabling legislation did not authorise CCC to make a scheme which had the effect of conferring rights of common on the residents of the district and neighbourhood. The purpose of the Article 5 right was to entitle inhabitants to walk over the common, to play games and to enjoy other kinds of recreation on it. There had been no intention to create a new right of common or a similar right.

iii. A right of free access over land was conceptually very different from a right of common. A public right of access created for the specific purpose of ensuring access to an open space for the benefit of the public and the neighbourhood could not be extinguished save by clear words or inescapable implications. Neither was the court persuaded that the land ceased to be common land by reason of the non–registration of the rights of common under the 1965 Act, or that because the land was registered as waste land of a manor (under s22(1)(b)) rather than land subject to rights of common (under s22(1)(e)) meant that the right of access conferred by Article 5 was thereby extinguished or could not survive.

iv. The non–registration of the rights of common over the land and their automatic lapse by reason of s1(2)(b) of the 1965 Act did not have the effect that the land ceased to be common land. The registration of the land under the 1965 Act as common land was deemed by s10 to be conclusive evidence of the fact that it was common land. CCC's conclusion that the land was public open space for the purposes of s9 of the Forestry Act 1967 was correct. The public had a right of access to it which meant that any woodland management was outside the Forestry Commission's jurisdiction.

06 CLG Response to Consultation

Government response to the external review of government planning practice guidance consultation and report

On 21.12.12 the government announced the publication of the report of the External Review of Government Planning Practice Guidance led by Lord Taylor of Goss Moor and a consultation on the Review Group's findings. This consultation sought views on, inter alia:

- the overall recommendations of the Review Group;
- a reduced set of essential practice guidance in the format recommended;
- the role and responsibilities of ministers and Chief Planner in deciding what to include within practice guidance and its implementation;
- charging planning professionals for an additional service involving immediate notification of every revision to the practice guidance;
- whether the new web–based resource should be clearly identified as the unique source of Government Planning Practice Guidance;
- the recommended timescales for cancellation of practice guidance and new/revised guidance being put in place;
- the recommendations for cancellation of existing practice guidance documents;
- the recommended priority list for new/revised practice guidance; and
- additional ideas for improving and/or streamlining planning practice guidance.

The consultation closed on 15.02.13. This document sets out the Government's response and next steps towards implementation.

https://www.gov.uk/government/consultations/review-of-planning-practice-guidance

RATING

07 High Court

Liability for non–domestic rates – non–charitable bluetooth tenant – appeal against magistrates' decision that tenant in rateable occupation

**SUNDERLAND CITY COUNCIL V STIRLING INVESTMENT PROPERTIES LLP
[2013] EWHC 1413 (Admin) – Date of decision: 24.05.13

Property: Unit G7, Phoenix Towers Business Park, Sunderland, a business unit designed as a warehouse and used for furniture storage until January 2006. After that SIP paid empty property rates until the unit was divided into two hereditaments in 2010. One of those remained empty until May 2011 when SIP leased the premises to a company called Complete Mobile Marketing Limited (CMML) which used them for the purpose of locating a bluetooth box for the transmission of Crimestoppers messages. This activity continued for 43 days until July 2011.

Issue: Whether SIP was entitled to a 6 month rate free period after CMML vacated the premises. The council (SCC) argued that it was not as there had been no rateable occupation of the premises because: (i) the use of the 1,500 sq m warehouse to house just one bluetooth box was de minimis; and (ii) the premises had not been used for the purpose for which they were constructed and described in the rating list, i.e. as a warehouse. The magistrates' decision in favour of SIP was the subject of this appeal by SCC, which turned on the issue of what was meant by "occupation".

Held: SCC's appeal was dismissed. CMML's occupation of the hereditament amounted to rateable occupation for the following reasons:

i. They had occupied the hereditament for the purpose of the permitted user;

ii. The fact that the nature of their undertaking was such that, once they had identified the optimum location for their equipment, they did not need to "use" more than a minute fraction of the area which the premises encompassed did not prevent their occupation being rateable occupation;

iii. The intended use, although slight in terms of the extent of the space occupied, did give rise to actual occupation and surmounted the de minimis hurdle; and

iv. It was not relevant that the nature of the use to which CMML put the hereditament was different from that which was described in the rating list.

08 Upper Tribunal (Lands Chamber)

Method of valuation for hotel and conference centre with low occupancy rates

*HOLDEN VALE (CONFERENCE CENTRE) LTD V ANDREW WHITEHEAD (VO)
RA/56/2012 – Date of decision: 16.05.13

Property: 35 bedroom hotel with associated restaurant and conference facilities in a semi–rural position 15 miles north of Manchester.

Issues: Whether, as argued by the appellant ratepayer, the hereditament should be valued using a full receipts and expenditure (R&E) method due to its "exceptional" nature, or using the valuation scheme agreed by the Valuation Office with the hospitality industry.

Decision: The fact that the hotel achieved low occupancy rates was not a reason to depart from the scheme and the principal reason why a full R&E valuation resulted in a lower valuation was the high wages and salaries the appellant had built into his valuation and the inclusion of owners' salaries, which for a small family run hotel would normally form part of the tenant's share of the divisible balance.

09 Upper Tribunal (Lands Chamber)

Rating of a concierge room appurtenant to an estate of houses

*THE COLLECTION (MANAGEMENT) LTD V JACKSON (VO)
RA/7/2011 – Date of decision: 16.05.13

Facts: The property comprised a concierge room described in the rating list as 'offices and premises' serving a high class estate of 15 houses known as 'The Collection.' The appellant sought deletion of the entry arguing that it was domestic property under s.66(1) Local Government Finance Act 1988 on the basis that it was an appurtenance to The Collection, as being within the same curtilage and as such, it would pass on a conveyance of The Collection without separate mention. The VO submitted that it was the individual houses not The Collection as a whole that were the relevant premises and the concierge room could not be regarded as appurtenant to any one of the houses; nor could it be appurtenant to The Collection because it was occupied by Harrods Estates Limited for the purpose of its business as managing agents and the activities of the concierge went beyond what could reasonably be described as 'domestic help.'

Issues:

i. To what property used wholly for the purpose of living accommodation must the concierge room be appurtenant for the purposes of s.66(1)(b), The Collection or an individual house?

ii. Was the concierge room an "other appurtenance" to such property?

Decision:

i. The Tribunal noted that it was not simply that each house was used wholly for the purposes of living accommodation but that other land within The Collection outside the houses such as the vehicular access ramp, communal gardens and plant room were also used for purposes wholly ancillary to occupation of the houses as living accommodation. Clearly that other land was a "yard, garden, outhouse or other appurtenance" which belonged to, or was enjoyed with, the houses and was therefore domestic property. The fact that each house may have its own curtilage did not prevent this other land from lying within the collective curtilage of the 15 houses. It followed that the concierge room, provided that it satisfied the rest of s.66(1), could be appurtenant to the 15 houses collectively so long as it lay within their collective curtilage.

ii. On the basis that:

   a. physically The Collection was a coherent whole bounded by gates and walls;

   b. within the physical boundary all the land and facilities wholly served the residential accommodation;

   c. the concierge room lay entirely within the physical boundary;

d. the concierge room was small, subservient in size terms to the residential accommodation and its use related to the residential accommodation; and

e. on any transfer of the freehold of The Collection, it would pass without mention with the rest of the land and buildings (as it had on transfer to the Appellants in 2010) the Tribunal concluded the concierge room was within the curtilage of the 15 houses collectively.

The Tribunal found that the concierge provided security and controlled access to the site as well as providing additional services to the occupiers of the dwellings. These functions were not dissimilar to those of a porter and accordingly it was concluded that the concierge room was appurtenant to the living accommodation at The Collection.

The appeal was allowed and the entry relating to the concierge room ordered to be deleted from the non-domestic rating list.

COMPULSORY PURCHASE

10 Administrative Court

Validity of compulsory purchase order – s23 Acquisition of Land Act 1981

*MARGATE TOWN CENTRE V SEC OF STATE FOR LOCAL GOVERNMENT
[2013] PLSCS 101 – Decision given 02.05.13

Facts: The first claimant, MTC, purchased the site of a former amusement park in 2005. In 2011 the local authority made a CPO to acquire the site and this was confirmed by the Sec of State who accepted the planning inspector's report. The claimants sought to challenge that decision by an application under s23 of the Acquisition of Land Act 1981, being "persons aggrieved" by the order.

Point of dispute: Whether the claim would be allowed. The claimants alleged that the inspector had erred in his findings as follows:

i. that the defendants had the necessary funding in place to carry out the works;

ii. regarding the operational viability of the proposals;

iii. that it was necessary for the local authority to acquire all the land; and

iv. that he had given a material misdirection with regard to a cinema on the site.

Held: The claim was dismissed.

i. A challenge under s23 of the 1981 Act was not an opportunity for a review of the merits of an inspector's decision and the court could only interfere if the minister had gone outside his statutory powers or had not complied with any statutory requirement.

ii. The court concluded that the claimants had not established that there had been any failure on the part of the inspector to give adequate reasons for his decision. The conclusions he had come to were ones that were reasonably open to him on the evidence before him.

iii. There was no basis for concluding that the inspector had made any errors of law. His conclusion was a planning judgement lawfully open to him on the basis of the available evidence.

iv. There had not been any disproportionate interference with the claimants' human rights. The evidence had demonstrated that there was a compelling case in the public interest for a CPO which balanced against the private rights of the claimants.

REAL PROPERTY

11 High Court

Section 15 Land Registration Act 2002 – gypsy occupying land as squatter in adverse possession – planning permission granted for use of land as private gypsy and traveller site – whether claimant entitled to declaration of entitlement to lodge caution against first registration of land

*TURNER V CHIEF LAND REGISTRAR
(2013) PLSCS 116 – Decision given 24.05.13

Facts: T was a gypsy who had resided in his caravan as a squatter in adverse possession on a piece of unregistered land since October 2007. In October 2012 T was granted planning permission to use the site as a private gypsy and traveller site. Before his successful appeal against refusal of permission, T's application to the registrar to register a caution against first registration in respect of the land under s15 of the Land Registration Act 2002 had been unsuccessful.

Point of dispute: Whether, following his successful planning appeal, T was entitled to a declaration that he was entitled under the 2002 Act to lodge a caution against first registration by virtue of his interest in the land. In order to do this, he had to fall within one of the categories in s15(1). T's argument was that he fell within s15(1)(a) as the owner of a qualifying estate. The registrar accepted that T had an estate in land but that it was a freehold estate so that registration of a caution was precluded by s15(3)(a)(i).

Held: T's application was dismissed. The only estate in land which T could have was an "estate in fee simple absolute in possession" i.e. a freehold. Lodging a caution was therefore precluded by s15(3)(a), and nor did T satisfy s15(3)(b). As against the paper owner of land a squatter who has been in adverse possession for 12 years has a good title and although the 2002 Act could have allowed a person in T's position to apply to lodge a caution against first registration, it did not do so.

HOUSING

12 CLG Publication

House building in England – January to March 2013

The latest national statistics on house building in England were released on 16.05.13.

Statistics in this release present figures on new build housing starts and completions in England. The latest statistics report on the period January to March 2013. Key points from the latest release are as follows:

- seasonally adjusted house building starts in England are estimated at 27,370 in the March quarter 2013, 4% higher than in the previous quarter;
- it is estimated that there were 24,900 completions (seasonally adjusted) in the March quarter 2013, 8% lower than the previous quarter;
- private enterprise housing starts (seasonally adjusted) were 7% higher in the March quarter 2013 than the previous quarter, whilst starts by housing associations were 1% higher;
- seasonally adjusted private enterprise completions decreased by 7% and housing association completions fell by 9% from the previous quarter;
- seasonally adjusted starts are now 62% above the March 2009 quarter trough, but 44% below the March quarter 2007 peak; completions are 49% below their March quarter 2007 peak; and
- there were 101,920 annual housing starts in the 12 months to March 2013, 3% fewer compared with the year before; annual housing completions in England totalled 108,190 in the 12 months to March 2013.

https://www.gov.uk/government/publications/house-building-in-england-january-to-march-2013

CONSTRUCTION

13 Statutory Instrument

SI 2013/1105 The Building (Amendment) Regulations 2013

These Regulations, which amend the 2010 Regulations, came into force on 03.06.13. Regulation 3(2) contains a procedural amendment to Regulation 11 of the 2010 Regulations. The amendment arises as a consequence of transposition of Articles 2, 6, 7, 9 and 11 of EU Directive 2010/31/EU on the energy performance of buildings. The regulation amends the reference to Regulation 29 and adds Regulations 23(1)(a), 25A and 29A to the list of building regulations that cannot be relaxed or dispensed with under ss8(1) to (5) of the Building Act 1984. The floor area qualification previously in Regulation 11(3)(b) is also removed. Various new bodies are added to the list of bodies which are able to register authorised persons under the self–certification scheme.

http://www.legislation.gov.uk/uksi/2013/1105/contents/made

14 Circular

Circular 01/2013: The Building Act 1984, Building (Amendment) Regulations 2013

This Circular:

- draws attention to the amendment to Regulation 11 of the Building Regulations 2010; and
- announces the authorisation of new and extended competent persons schemes.

https://www.gov.uk/government/publications/the-building-act-1984-building-amendment-regulations-2013-circular-012013

15 CLG Publication

Code for sustainable homes and energy performance of buildings: cumulative and quarterly data for England, Wales and Northern Ireland up to end of March 2013

The latest official statistics on the code for sustainable homes and average energy efficiency (SAP ratings) were released on 24.05.13. They show the number of dwellings that have been certified to the standards set out in the "Code for sustainable homes: technical guidance".

https://www.gov.uk/government/publications/code-for-sustainable-homes-and-energy-performance-of-buildings-data-march-2013

TRANSPORT

16 House of Commons Select Committee Report

Aviation Strategy

This report by the Transport Committee examines the case for expanding Heathrow airport. It recognises that there is a specific capacity problem at Heathrow and that this situation has been ongoing for over a decade. The Committee does not believe that the construction of a new hub airport in the Thames Estuary to the east of London is the correct solution, due to significant potential impacts on wildlife, the amount of investment in infrastructure that would be required and the fact that it would only be viable if Heathrow airport was closed down, a proposition which it does not consider to be acceptable. The Committee also considers that new runways distributed across a number of airports will not provide a long–term solution to the specific problem of capacity at the UK hub airport and it recommends that the Government should permit Heathrow to expand with the construction of a third, and maybe even a fourth, runway. The report also calls for ministers to develop a coherent strategy to improve rail and road access to all of the UK's major airports.

http://www.parliament.uk/business/committees/committees-a-z/commons-select/transport-committee/news/as-report---substantive/

17 Transport for London Consultation

Crossrail 2 consultation
Deadline for comments: 02.08.13

Transport for London and Network Rail are seeking the views of Londoners and people living in the South East on Crossrail 2. Crossrail 2 replaces the earlier scheme which was known as the Chelsea–Hackney Line. Crossrail 2 aims to help relieve congestion on both national and TfL rail networks and support economic development in and around London.

http://www.tfl.gov.uk/corporate/projectsandschemes/27405.aspx

18 CLG Consultation

Options for a new Lower Thames Crossing
Deadline for Comments: 16.07.13

This consultation invites views on the preferred location for additional road–based river crossing capacity in the Lower Thames area. Responses to this consultation will form part of the evidence base that government will use to decide where the new crossing should be situated. The locations being considered are:

- Option A: at the site of the existing A282 Dartford–Thurrock crossing;
- Option B: connecting the A2 with the A1089;
- Option C: connecting the M2 with the A13 and the M25 between junctions 29 and 30; and
- Option C variant: connecting the M2 with the A13 and the M25 between junctions 29 and 30, and additionally widening the A229 between the M2 and the M20.

https://www.gov.uk/government/consultations/options-for-a-new-lower-thames-crossing

19 Government Consultation

HS2 Draft Environmental Statement
Deadline for comments: 11.07.13

This consultation invites comments on the environmental impacts assessed along the Phase One London to West Midlands line of the route, as well as the measures that have been identified for managing and reducing them.

http://www.hs2.org.uk/draft-environmental-statement/document-library

ENERGY

20 Department for Energy and Climate Change (DECC) publication

Guide to using the Green Deal Plan Tool

This document is a guide to using the Green Deal Plan Tool. This has been procured and developed by DECC, using the domestic and non–domestic Energy Performance Certificate Registers provided by Landmark Information Group. It enables the disclosure information for Energy Performance Certificates for buildings in England and Wales to be created.

https://www.gov.uk/government/publications/guide-to-using-the-green-deal-plan-tool

21 Department for Energy and Climate Change (DECC) publication

Green Deal: OFT/ DECC joint guidance for providers

DECC and the Office of Fair Trading have collaborated to produce this joint guidance for Green Deal providers. It outlines the circumstances in which providers should suspend the collection of payments upon receipt of a disclosure and acknowledgment complaint.

https://www.gov.uk/government/publications/green-deal-oft-decc-joint-guidance-for-providers

22 Department for Energy and Climate Change publication

Green Deal affordability assessments: OFT/DECC joint guidance

This document updates the guidance on affordability assessments which is to be found in Annex 1 of the Green Deal Provider Guidance. This guidance has been produced in conjunction with the Office of Fair Trading and applies solely to Green Deal Plans which will be regulated under the Consumer Credit Act 1974.

https://www.gov.uk/government/publications/green-deal-affordability-assessments-oftdecc-joint-guidance

GENERAL

23 Statutory Instrument

SI 2013/1169 The Tribunal Procedure (First–tier Tribunal) (Property Chamber) Rules 2013

Part 1 of the Tribunals, Courts and Enforcement Act 2007 established a new tribunal structure comprising a First–tier Tribunal and an Upper Tribunal. Functions of existing tribunals have been transferred into these Tribunals and assigned to chambers within the new tribunals. These Rules, which come into force on 01.07.13, will govern the practice and procedure to be followed in the First–tier Tribunal in cases which broadly relate to residential and leasehold property, housing conditions, agricultural land and drainage and land registration. Jurisdiction over such cases has been conferred on the tribunal as from 01.07.13 by the Transfer of Tribunal Functions Order 2013. They replace the rules and procedure regulations which previously applied in relation to England in the following tribunals:

- Rent Assessment Committees;
- Rent Tribunals;
- Residential Property Tribunals;
- Leasehold Valuation Tribunals; and
- Agricultural Land Tribunals.

They also replace the procedure rules which previously applied to the Adjudicator to HM Land Registry.

http://www.legislation.gov.uk/uksi/2013/1169/contents/made

24 Statutory Instrument

SI 2013/1179 The First–tier Tribunal (Property Chamber) Fees Order 2013

This Order, which comes into force on 01.07.13, specifies the matters dealt with in the Property Chamber of the First–tier Tribunal for which fees are payable. It lists the types of proceedings which attract a fee, identifies the point at which the fee is payable, the person liable to pay such fee and the amount of the fee.

http://www.legislation.gov.uk/uksi/2013/1179/contents/made

25 Statutory Instrument

SI 2013/1199 The Upper Tribunal (Lands Chamber) Fees (Amendment) Order 2013

This Order will come into force on 01.07.13 and amends the 2009 Order. Where a case is transferred from the Property Chamber of the First–tier Tribunal to the Lands Chamber of the Upper Tribunal the fees payable under the First–tier Tribunal (Property Chamber) Fees Order 2013 continue to apply instead of the fees payable under the Upper Tribunal (Lands Chamber) Fees Order 2009.

http://www.legislation.gov.uk/uksi/2013/1199/contents/made

GERALD EVE'S UK OFFICE NETWORK

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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

Legal & Parliamentary

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SCOTLAND

PLANNING

01 Statutory Instrument

SSI 2013/154 The Town and Country Planning (Control of Advertisements) (Scotland) Amendment Regulations 2013

These Regulations, which come into force on 30.06.13, amend the 1984 Regulations. They relate to appeals relating to decisions regarding consents to display advertisements and to appeal in relation to discontinuance notices and enforcement notices served in relation to the display of advertisements.

http://www.legislation.gov.uk/ssi/2013/154/contents/made

02 Statutory Instrument

SSI 2013/155 The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013

These Regulations, which come into force on 30.6.13, make provision for the manner in which applications for planning permission, for approvals required by a condition imposed on a grant of planning permission in principle and for certificates of lawful use and development under the Town and Country Planning (Scotland) Act 1997 are to be made. These Regulations apply to all applications made on or after 03.08.09 and to a limited extent in respect of applications made before that date but not determined by then.

http://www.legislation.gov.uk/ssi/2013/155/contents/made

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03 Statutory Instrument

SSI 2013/156 The Town and Country Planning (Appeals) (Scotland) Regulations 2013

These Regulations come into force on 30.06.13 and make provision for appeals to the Scottish Ministers under the following legislation:

- Sections 47 75B, 75F, 130, 154, 169 and 180 of the Town and Country Planning (Scotland) Act 1997; and
- Sections 18 and 35 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

http://www.legislation.gov.uk/ssi/2013/156/contents/made

04 Statutory Instrument

SSI 2013/157 The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013

W.e.f. 30.06.13 these Regulations make provision in connection with the preparation and content of schemes of delegation under s43A(1) of the Town and Country Planning (Scotland) Act 1997 and the procedure for reviews held by virtue of s43A(8) of the Act. They replace and revoke the 2008 Regulations.

http://www.legislation.gov.uk/ssi/2013/157/contents/made

CONSTRUCTION

05 Statutory Instrument

SSI 2013/143 The Building (Miscellaneous Amendments) (Scotland) Regulations 2013

These Regulations, which will come into force on 01.10.13, amend the 2004 Regulations and the Building (Forms) (Scotland) Regulations 2005 ("the forms regulations"). Regulation 2 amends Schedule 5 to the 2004 Regulations (building standards applicable to design and construction) in relation to the following:

- automatic fire suppression systems in schools;
- accommodation for solid waste storage in flats and maisonettes;
- water efficiency fittings for dwellings; and
- the requirement for school buildings containing classrooms to have to meet specified levels of sustainability.

The forms regulations are amended so that the relevant forms refer to fire safety design summaries.

http://www.legislation.gov.uk/ssi/2013/143/contents/made

06 Responses to Scottish Assembly Government consultation

Consultation Responses to the review of energy standards and guidance within Scottish building regulation (Lower carbon buildings)

These responses relate to the Scottish Government's consultation on proposals to amend s6 of the Technical Handbooks to reduce energy demand and carbon dioxide emissions from buildings.

http://www.scotland.gov.uk/Publications/2013/05/1161

07 Scottish Assembly Government Publications

Review of the Building (Scotland) Regulations 2004: Technical Handbooks – Sections 7 (Sustainability), 3 and 4, 2 (Fire), and 0 (General) – The Scottish Government Response

These documents are the Scottish Government's responses to the review of the Building (Scotland) Regulations 2004: Technical Handbooks.

http://www.scotland.gov.uk/Publications/2013/05/8888

http://www.scotland.gov.uk/Publications/2013/05/9434

http://www.scotland.gov.uk/Publications/2013/05/1960

http://www.scotland.gov.uk/Publications/2013/05/8107

GENERAL

08 Scottish Government Publication

The Land Reform Review Group's Call for Evidence: Analysis of Responses

This report for evidence provides an analysis of the responses to the Call for Evidence by the Scottish Government's Land Reform Review Group. This was launched on 04.10.12 and closed on 11.01.13.

http://www.scotland.gov.uk/Publications/2013/05/4519