EVEBRIEF

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SOMETHING AND NOTHING FOR RATES

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Editor

In this edition we report on a number of interesting rating items. Item 13 concerns a Valuation Tribunal case heard by The President of the Tribunal, Professor Graham Zellick. In 2008 the Valuation Tribunal gave a decision on the 2005 rateable value of the subject premises. The Valuation Officer did not appeal, seek correction of a clerical error or apply for a review. At a later date he amended the assessment to take account of a physical change but at the same time he reviewed the assessment and increased it to correct inaccuracies in the areas of two hangars. The VO maintained that he is required to correct an error and that the ratepayer may appeal (again).

In his decision The President was extraordinarily clear in his criticism of the Valuation Officer. The VO committed an abuse of process in running a case challenging an earlier Tribunal decision, he sought to unilaterally overrule that judicial decision and he put the appellant to the trouble and expense of fresh proceedings at no risk of having to reimburse costs. Professor Zellick has delivered a clear message that he will not permit the authority and standing of the Tribunal to be undermined.

At item 16 we report the Government's consultation on a period of rates exemption for all newly built commercial property completed between 1/10/13 and 30/9/16. While any additional relief will be welcomed by affected ratepayers, the key words are "up to state aids limits" which restrict aid to €200,000 over a three year period. At €66,000 per year this scheme is hardly likely to encourage new large-scale development, especially for property companies with more than one scheme. The exemption is also at local authorities' discretion. Councils will be fully reimbursed but the discretionary nature of the relief will cause uncertainty.

GERALDEVE

LANDLORD & TENANT

01 Court of Appeal

Repairs – liability – responsibility of landlord to pay tenant damages

*GAVIN V COMMUNITY HOUSING ASSOCIATION LTD
[2013] PLSCS 120 – Decision given 24.05.13

Facts: The appellants were tenants of the ground floor and basement of two adjoining sets of commercial premises. The respondent landlord let the upper floors as flats. Each of the two leases to the appellants contained tenant's repairing covenants, but no corresponding covenant by the landlord to repair those parts of the building that it retained. The landlord was required to insure the premises.
The appellants fitted out the demised premises as a gallery space where they held exhibitions and other commercial events. However, between 2004 and 2005 the premises were damaged on several occasions by ingress of water and sewage from parts of the building retained by the respondent. The necessary repairs were paid for by its insurance. In October 2008 the respondent forfeited the leases for non–payment of rent. The appellants claimed a large sum in damages for losses that it had allegedly incurred as a result of the leaks.

Point of dispute: Whether the appellants' appeal would be allowed against the ruling of the court below where the judge held that the respondent was not liable for damages since it had acted reasonably once it was alerted to the damage, save for one three–week delay in April 2005 for which he awarded £100 damages which was insufficient to extinguish the rent arrears. The appellants contended that the court should imply a covenant into the leases to keep the retained parts of the building in repair at all times.

Held: The appeal was dismissed. The court had to consider whether the express scheme of repair or insurance imposed by the lease excluded any other form of liability in tort or in contract.
The appellants' case depended on establishing that: (i) a liability on the landlord to keep the retained parts in repair should be implied or imposed over and above the express terms of the leases; and (ii) the implied obligation to repair should be absolute, i.e. the landlord became liable regardless of whether it had, or should have had, notice of the defect. However, there were no grounds for attributing to the parties an intention to impose on the respondent a stricter implied obligation to repair defects in the demised premises than was already imposed by the law by reason of the respondent's control of the building. Although there was no express covenant to repair the remainder of the building in the lease this was covered by the insurance covenant which meant that the appellants were not left without a remedy in the event of the structure falling into disrepair. There was no need to alter the balance of the scheme by imposing either an implied or an absolute covenant to repair on the respondent.

02 High Court

Rent arrears under lease – defendant acting as surety – whether grant of licence for alterations to which defendant not a party released it from liability as surety

*TOPLAND PORTFOLIO NO 1 LTD V SMITHS NEWS TRADING LTD
(2013) PLSCS 126 – Decision given 06.06.13

Facts: The claimant was the landlord of premises under a lease which had been granted in 1981. In 2011 the lessee went into administration owing approximately £280,000 in rent and it was dissolved in August 2012. The claimant gave notice to the defendant, who acted as surety, that it would require it to be responsible for the rent and all other sums owing under the lease and that it would also be required to take a new lease for the remainder of the term.

Point of dispute: Whether the landlord's claims against the defendant would be allowed. The defendant argued that it had no liability since it had been released as surety by reason of a variation to the lease in 1987 when a licence for alterations was granted to which it had neither been a party nor consented to. The defendant claimed that the common law rule in Holme v Bruskill (1877–78) 3 QBD 95 operated so as to relieve it from liability. Under that rule a surety was discharged if the creditor agreed with the principal debtor to vary the terms of the contract guaranteed, unless the variation was self evidently insubstantial or would not prejudice the guarantor.

Held: The claim was dismissed.

i. The works permitted by the 1987 licence involved a wholesale expansion with the construction of a new garden centre. It was clearly open to the defendant to say that the bargain it had struck with the lessee in 1981 would not have extended to such an expansion.

ii. The changes made pursuant to the 1987 licence greatly increased the number of structures on the land, thereby leading to an increase in the scope of the repairing obligations. The increase of burdens on the tenant would necessarily increase the risk of default and the burden on the surety.

iii. Under the rule in Holme v Bruskill a surety was discharged entirely when the risk on the tenant is increased. The rule did not, as suggested by the landlord, operate to effect a discharge of only part of the surety's obligation.

iv. It was for the landlord to demonstrate that no substantial variation had been made or that any variation could not be prejudicial to the defendant. The licence had operated to vary the lease and the defendant was discharged from liability.

PLANNING

03 Court of Appeal

Classification of flood defences – whether sluice gates on Manchester Ship Canal were correctly designated as formal flood defences falling to be disregarded when assessing flood risk and designating flood zones

*R (ON THE APPLICATION OF MANCHESTER SHIP CANAL CO LTD) V ENVIRONMENT AGENCY
[2013] PLSCS 107 – Decision given 16.05.13

Facts: The respondents owned the Manchester Ship Canal, a navigable waterway, and also 300 acres of development land in its vicinity. The water level in the canal was controlled by several sets of sluice gates which allowed ships to pass along the canal through locks. The sluice gates automatically controlled the flow of water through the canal, but they could also be manually operated and opened in potential flood conditions. In 2010 the appellant, EA, decided to classify the sluices as formal flood defences, which meant that under the guidance in PPS 25 they fell to be disregarded when assessing flood risk. The flood risk was therefore assessed on the hypothetical assumption that the sluices would remain closed, with the result that the land adjacent to the canal was designated as flood zone 3, with a high probability of flooding, instead of flood zone 2, with medium probability, adversely affecting its value.

Point of dispute: Whether EA's appeal would be allowed against the decision of the judge in the court below to quash the designation. The judge found that EA had misinterpreted and misapplied PPS 25 and that the term "flood defences" in PPS 25 referred to formal flood defences and did not include structures such as sluice gates whose function was different, although they may assist in flood protection.

Held: EA's appeal was dismissed. PPS 25 defined flood defences as infrastructure intended to protect an area against flooding to a specified standard of protection with no distinction between formal and de facto flood defences – that was a distinction peculiar to EA's own policies. A formal flood defence was a structure the sole function of which was to limit the spread of flood water while a de facto flood defence was a structure the function of which was to aid normal operation, but which provided secure barriers to the flow of flood water. The EA had misconstrued its own policies by treating the sluices as having two primary functions and placing within the category of structures whose primary function was flood defence a structure whose functions in enabling navigation and preventing flooding it considered to be of equal significance. The sluices were de facto flood defences which were essential to the normal operation of the canal to enable navigation by ships along it. The canal could not operate unless it controlled the flow of water from rivers and other sources, whether that water would otherwise flood or not. The fact that it controlled or regulated the flow of water was not a basis for placing either the canal or its associated structure within the category of formal flood defences.

04 Court of Appeal

Application for planning permission for gypsy or traveller site

*DELANEY V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2013] PLSCS 118 – Decision given 23.05.13

Facts: The appellant, D, was refused planning permission to use land as a traveller site. Although the inspector found that there was an unmet need for gypsy sites in the area, which would not be met by the local councils planned provision, he found that D had no particular connections with the area or the site and concluded that there were no special circumstances to justify inappropriate development in the green belt.

Point of dispute: Whether D's appeal would be allowed against the decision of the court below to dismiss his application to quash the inspector's decision. D contended that the failure of the local council to carry out an assessment of the accommodation needs of gypsies and travellers in their area and to prepare a strategy to meet those needs was a material factor which should have weighed in his favour. The inspector should have given more weight to the absence of such a strategy and to the unmet need for gypsy and traveller site provision in the area, in the light of government guidance in Circular 1/2006.

Held: The appeal was dismissed. The inspector had taken into account the local council's failure to make an assessment of need and had considered that the existence of an unmet need favoured a grant of permission; in this respect he had given considerable weight to the council's breach of statutory duty under s225 of the Housing Act 2004 and the implications of that for D. However, he had been entitled to conclude that that did not outweigh the other material considerations pointing against a further temporary permission on this particular piece of land. Paragraph 45 of Circular 1/2006 advised that a temporary permission might be justified where there was an unmet need for gypsy and traveller site provision in an area, but there was a reasonable expectation that new sites were likely to become available at the end of the period of temporary permission. The considerations in D's favour could not create a reasonable expectation that new sites were likely to become available when it had reasonably been concluded that they would not.

05 Statutory Instrument

SI 2013/1238 The Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2013

This Order, which came into force on 25.06.13, amended the 2010 Order.

- It amends the definition of "reserved matters".
- It reduces the number of planning applications that need to be accompanied by design and access statements.
- It introduces a new right of appeal against non–determination of a planning application where an applicant considers that the lpa requires particulars or evidence that do not meet the requirements set out in article 29(4(bb) of the 2010 Order.
- It amends article 20 which provides a list of the consultations in relation to which the duty to respond in s54 of the Planning and Compulsory Purchase Act 2004 applies.

http://www.legislation.gov.uk/uksi/2013/1238/contents/made

06 Statutory Instrument

SI 2013/1239 The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2013

These Regulations, which came into force on 25.06.13, amend the 1990 Regulations in relation to the content of design and access statements. The amendment removes the requirement for an explanation of the principles and concepts that have been applied to the scale, layout and appearance of the works to be carried out, and it is no longer necessary for the statement to explain how features which ensure access to the building will be maintained.

http://www.legislation.gov.uk/uksi/2013/1239/contents/made

07 CLG Guidance

Planning Act 2008: Infrastructure Planning (Fees) Regulations 2010

The aim of this guidance is to provide project applicants with advice on the fees payable to the Sec of State for the costs of processing an application for a Development Consent Order under the Planning Act. Amendments to the fee guidance were consequential upon the abolition of the Infrastructure Planning Commission and the subsequent bringing into force of the Infrastructure Planning (Fees) (Amendment) Regulations 2013. This guidance contains clarification and practical illustrations of how fees are calculated.

https://www.gov.uk/government/publications/planning-act-2008-infrastructure-planning-fees-regulations-2010

08 CLG Guidance

Planning Act 2008: application form

This guidance provides assistance to those who intend to apply for development consent for a nationally significant infrastructure project under the 2008 Act.

https://www.gov.uk/government/publications/planning-act-2008-application-form

09 CLG Government Response to Consultation

Streamlining the planning application process

This is the Government's response to the public consultation, conducted between January and March this year, on measures to streamline the planning process, including proposed changes to design and access statements, the validation stage and decision notices.

https://www.gov.uk/government/consultations/streamlining-the-planning-application-process

10 CLG Publication

Improving planning performance: criteria for designation

This document sets out the criteria which the Government intends to use to designate local planning authorities if their performance in handling planning applications falls below a satisfactory level, under the powers contained in s62B of the Town and Country Planning Act 1990.

https://www.gov.uk/government/publications/improving-planning-performance-criteria-for-designation

11 Government Response to Consultation

Planning performance and the planning guarantee

This document sets out the government's response to the consultation on tackling poor performance in the planning system, including its proposals for implementing s1 of the Growth and Infrastructure Act 2013 (which gives applicants the choice of submitting planning applications direct to the Sec of State where the local planning authority is underperforming) and measures to underpin the planning guarantee.

https://www.gov.uk/government/consultations/planning-performance-and-the-planning-guarantee

12 Letter from CLG Sec of State to Chief Executive of the Planning Inspectorate

Local planning and onshore wind

This letter sets out the Sec of State's intentions for planning practice guidance on onshore wind and compulsory pre–application consultation with local communities for more significant onshore wind applications.

- There will be a fivefold increase in the value of community benefits paid for by developers.
- The guidance will state that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities.
- Decisions should take into account the cumulative impact of wind turbines and properly reflect the increasing impact on (a) the landscape and (b) the local amenity as the number of turbines in the area increases.
- Local topography should be a factor in assessing whether wind turbines have a damaging impact on the landscape.
- Care should be taken to ensure that heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting.

https://www.gov.uk/government/publications/local-planning-and-onshore-wind

https://www.gov.uk/government/news/onshore-wind-communities-to-have-a-greater-say-and-increased-benefits

RATING

13 Valuation Tribunal for England

Valuation Officer's powers – material change of circumstances – correction to list – res judicata

**WEST LONDON AERO CLUB V HAZEL (VO)
Appeal No: 035510474737/165N05 Before: The President, Professor Graham Zellick QC – Date of decision 05.06.13

Facts: In March 2008 the Berkshire Valuation Tribunal heard an appeal concerning the RV in the 2005 Rating List of White Waltham Aerodrome, near Maidenhead. The appeal was successful and the VO's assessment was reduced. In October 2009 the ratepayer sought a reduction in the proposed RV in the draft 2010 list on the ground of a material change of circumstances (MCC), namely the removal of two portacabins. The VO accepted this, but at the same time reviewed the rateable value of the whole hereditament, not only in the draft 2010 list, but also in the 2005 list as he had identified an error (attributable to himself) in the 2008 decision which meant that in the VO's view the RV in the 2005 list should be substantially increased.

Point of dispute: Whether a VO, when informed of a MCC, can exercise his power to correct what he considers to be an error in the valuation (apart from the MCC) where that valuation in the list has previously been determined by a valuation tribunal. The answer to this question required consideration of the principle of res judicata.

Held: The tribunal accepted the appellant ratepayer's case, that the VO could not do this. A VO cannot reassess or revalue a hereditament during the life of a rating list where a Valuation Tribunal has determined the RV except on the basis of a material change of circumstances or one of the other grounds specified in NDR Reg 4(1) and then only to reflect the MCC or other grounds. The President heavily criticised the VO's case as being "as clear–cut an example of abuse as it is possible to imagine" and added "to countenance the Valuation Officer's argument would be subversive of the rule of law, an affront to justice, repugnant to the statutory framework, and evince contempt for the Tribunal by the losing party in the proceedings."

14 Divisional Court

Magistrates' liability order – whether order could be set aside as premises sublet and summons not properly served

*CHOWDHURY V WESTMINSTER CITY COUNCIL
(2013) PLSCS 133 – Decision given 11.06.13

Facts: C, the appellant, carried on a business from premises in central London through a limited company which was liable to pay business rates to WCC. After March 2009 the company ceased trading and the premises were sublet on a series of short term tenancies. When the company failed to pay the rates WCC obtained three liability orders from the magistrates' court against C and the company. As the premises were sublet, C was unaware that the hearing, at which the liability orders were made, was taking place.

Point of dispute: Whether the fact that a defendant had no knowledge of a hearing in a magistrates' court at which a liability order was made against him, because he had sublet the premises to which the summons was sent and was no longer in occupation, amounted to a substantial procedural error so that the magistrates could set it aside. WCC argued that as Regulation 13(2)(d) of the Non–Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 referred to service at "a" place of business rather than "the" place of business of the person in question, any place of business of C's would suffice. In this case C was carrying on business at the premises by collecting rent from the tenants.

Held: The appeal was allowed in part. The question to be answered was whether the order had ever been properly made at all, which raised the question of whether the premises had in fact been a place of business of C's at the relevant time. Premises which were leased out could not be described as "a place of business of the landlord" for the purposes of Regulation 13(2)(d) without further evidence as to whether, for example, he had collected the rent there.

15 Upper Tribunal (Lands Chamber)

Rating of petrol filling station in motorway service area – whether to be rated as separate hereditament – paramountcy of occupation

**ESSO PETROLEUM COMPANY LTD V WALKER (VO)
RA/45/2011 Date of decision: 07.03.13 with Costs Addendum dated 10.06.13

Facts: The appeal related to the rating of a petrol filling station forming part of, but separated from, the remainder of the Maidstone Motorway Service Area (MMSA). The main areas of the MMSA were let by Esso to Roadchef and R constructed the facilities. The remainder comprised the petrol filling station which was retained by Esso but operated by Roadchef under an agency agreement.

Issues: Whether the petrol filling station comprised a separate hereditament for rating purposes, as argued by Esso, or whether it comprised part of a single MMSA assessment as found by the VT and supported by the VO.

Findings: Esso's appeal was allowed against the VT's determination that the petrol filling station formed part of a single MMSA assessment. Esso was in occupation of its retained land on which it had built buildings, tanks and pumps, with the process of retailing undertaken by Roadchef being substantially under Esso's direction. However, the day to day management was in the hands of Roadchef who were therefore also regarded as occupiers, raising the question as to which was the paramount occupier. The essential test of paramountcy being control, then on the facts of the case Esso's control was paramount as the degree of control exercised by Roadchef did not interfere with the occupation of the premises by Esso for the purpose for which it occupied them. The petrol filling station comprised a separate rateable hereditament.

16 CLG Consultation

Business Rates: new build empty property technical consultation Deadline for comments: 26.07.13

The Chancellor announced in his Autumn Statement on 05.12.12 that the Government intended to exempt all newly built commercial property completed between 01.10.13 and 30.09.16 from empty property rates for the first 18 months, up to state aids limits. This document sets out the Government's proposals for delivery of that policy and seeks views on them. The consultation is focused on the detailed and technical issues concerning the implementation of the policy rather than the wider scope of the exemption.

https://www.gov.uk/government/consultations/business-rates-new-build-empty-property-technical-consultation

LEASEHOLD REFORM

17 Court of Appeal

Collective enfranchisement – property in central London – whether premium payable on enfranchisement should include prospect of reconversion to single house on merger of two intermediate interests

**CRAVECREST LTD V TRUSTEES OF WILL OF THE SECOND DUKE OF WESTMINSTER
(2013) PLSCS 136 – Decision given 19.06.13

Facts: C were the tenants of flats in a large converted house in London SW1 who exercised their right to collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993. The landlords admitted the tenants' right to acquire the first respondents' freehold interest plus two intermediate leasehold interests, a headlease of the entire property owned by GEB and an overriding leasehold interest in the second and third floors owned by VI. It was agreed that the property, if vacant, had potential development value for the possibility of reconverting the building back to a single dwelling and developing the roof space into a fourth floor. C's leases had only a few days to run at the valuation date and, absent the claim for collective enfranchisement, the development value could only be realised through a deal between GEB and VI. The LVT determined a premium payable on enfranchisement of £6.928m comprising £2,190 for the freehold, £3.741m for the headlease and £3.184m for the overriding lease. Those figures accounted for the development value being shared between GEB and VI. C appealed to the Upper Tribunal, which upheld the LVT's decision, subject to a 5% allowance for risk. C appealed again to the Court of Appeal.

Point of dispute: Given that the statutory valuation provisions in Schedule 6 require a separate valuation of each intermediate leasehold interest, whether it was correct to assume, in the light of the other statutory valuation assumptions, that the hypothetical purchaser of one interest would assume a second almost immediate deal with the owner of the other interest, and vice versa, the effect being to release the development value and to increase the enfranchisement price above the underlying investment value.

Held: The appeal was dismissed. If C's leases had expired before they exercised their right to collective enfranchisement, the respondents and the headlessee could have enjoyed the full development potential of the property. Also, in a situation where there were no intermediate leases between C's leases and the freehold when the enfranchisement claim was made, the price would have reflected the fact that the freeholder would have been in a position to start redeveloping the property almost immediately. There was no reason why C should be in a better position under the 1993 Act as a result of GEB's and VI's interests. It was not part of the social policy underlying the legislation to confer on tenants of flats in a building not only the right to acquire the freehold and intermediate leases but to do so at a price that ignored completely the value attributable to development value if those interests, or some of them, were vested in the same person. The UT had been entitled to make its valuation on the assumption of a hypothetical two–stage open market purchase, where the same hypothetical purchaser acquired first one, then the other, of the intermediate interests. A hypothetical purchaser of the overriding lease would not limit his bid merely to the investment value of the lease exclusive of any development potential.

Editor's note: Julian Clark, a Partner at Gerald Eve, advised the landlord (Grosvenor) at the Leasehold Valuation Tribunal and the Upper Tribunal (Lands Chamber).

HOUSING

18 Homes and Communities Agency Bulletin

HCA Monthly Housing Market Bulletin, 28 May 2013

The HCA bulletin provides the latest information on trends in the housing market and the economy.

- Average house prices have risen over the past year, but the main impetus for this is coming from London.
- The UK economy returned to growth in the first quarter of 2013.
- Inflation is still above target levels although now falling.
- Unemployment levels remain stable at around 2.5 million.

http://www.homesandcommunities.co.uk/sites/default/files/our-work/housing_market_bulletin_may_2013.pdf

COMPENSATION

19 Court of Appeal

Claim for compensation for mining subsidence – s3 Coal Mining Subsidence Act 1991 – validity of notice

*NEWBOLD V COAL AUTHORITY
[2013] PLSCS 115 – Decision given 23.05.13

Facts: The three respondents were brothers who owned the freehold of a large 18th century mansion which had suffered from subsidence as a result of coal mining activities in its vicinity. They claimed compensation from the appellant, CA, for the cost of the remedial works. The standard form notices were completed on their behalf by a firm of engineering consultants, but in the relevant box on the form only the first respondent was named as the claimant, although an attached note on ownership named all three respondents as freeholders and referred to "the current owners" in the plural. CA argued that the notices were invalid as they had not been given by "the owner" of the property within the meaning of s3(1), but only by the first respondent instead of all three.

Point of dispute: Whether CA's appeal would be allowed against the ruling of the Lands Chamber of the Upper Tribunal in favour of the respondents. It held that a reasonable recipient of the notice would have understood that the insertion of only one respondent's name as the claimant was an error and that the notice was actually given by all three of them.

Held: The appeal was dismissed.

i. Where the wrong person was named in the notice the statutory remedy available under the 1991 Act might be lost. The notice could not be construed as given by another person unless it was obvious to the recipient that both the wrong name had been substituted in error and who the actual giver of the notice was. Looking at the 2007 and 2009 damage notices and asking who gave them, and bearing in mind who was able to give such a notice, the proper conclusion was that the three respondents gave the notices as the freeholders of the property with the first respondent being named only as a matter of convenience.

ii. It would depend on the construction of the statute whether strict or "adequate" compliance with its requirements was necessary. A notice would be valid so long as it adequately provided the information required by the 1991 Regulations. The two damage notices provided adequate information to CA since they identified the property, the damage it had suffered and identified the three respondents as the owners of the freehold and therefore competent to give a notice under s3.

CONSTRUCTION

20 CLG Impact Assessment

The Building (Amendment) Regulations 2013: authorisation of new extended competent person schemes

The aim of extending self–certification schemes is to ensure that work under the Green Deal is as inexpensive as possible whilst ensuring that it complies with relevant requirements in the Building Regulations. This impact assessment sets out the costs to authorise two new Competent Person Scheme operators and the extension of scope of one existing Competent Person Scheme operator for existing types of work.

https://www.gov.uk/government/publications/the-building-approved-inspectors-and-charges-amendment-regulations-2013-authorisation-of-new-extended-competent-person-schemes

ENVIRONMENT

21 Department for Environment Food & Rural Affairs Response

The Government Response to Parliamentary Scrutiny of the Draft National Policy Statement for Hazardous Waste

The National Policy Statement (NPS) will be used by the Sec of State as the basis for decisions on development consent applications for hazardous waste infrastructure that fall within the definition of a Nationally Significant Infrastructure Project (NSIP) as defined in the Planning Act 2008. As well as providing a framework for the Sec of State, the NPS also provides guidance for potential developers, in particular advising on what needs to be included in their assessment of the potential impacts of a particular project. It is likely that the NPS will be reviewed every five years. The draft NPS was published for consultation between July and October 2011 and this document is the government's response to the Environment, Food and Rural Affairs Committee's report on the draft NPS.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205575/pb13926-hazardous-waste-efra-response-20130606.pdf

22 Department for Environment Food & Rural Affairs – National Policy Statement

National Policy Statement (NPS) for hazardous waste: A framework document for planning decisions on nationally significant hazardous waste infrastructure

This NPS sets out the Government's policy for nationally significant infrastructure in the hazardous waste sector. It relates to England only. The thresholds are set out in the Planning Act 2008 and the following types of projects are included:

- Construction of facilities in England where the main purpose of the facility is the final disposal or recovery of hazardous waste and the capacity is expected to be more than 100,000 tonnes per year in the case of the disposal of hazardous waste by landfill or in a deep storage facility, or more than 30,000 tonnes per year in any other case; and
- The alteration of a hazardous waste facility where the alteration is expected to have the following effect:

  i. in the case of the disposal of hazardous waste by landfill or in a deep storage facility, to increase by more than 100,000 tonnes per year the capacity of the facility; or

  ii. in any other case, to increase by more than 30,000 tonnes per year the capacity of the facility.

https://www.gov.uk/government/publications/hazardous-waste-national-policy-statement

TRANSPORT

23 Independent Transport Commission (ITC) Report

Flying into the Future: Key issues for assessing Britain's aviation infrastructure needs

This report is based on the submissions received by the ITC in response to its Call for Evidence during Autumn 2012. Its key findings include the following:

- The report identifies the crucial importance of good aviation connectivity for the UK economy and jobs, and the importance of maintaining investment in aviation infrastructure if the UK is to preserve investment from growing economies such as India and China, recognising the capacity constraints on both long–haul and short–haul travel, particularly in South East England;
- Short haul connectivity could be improved by developing regional airports.; and
- The UK must continue to host a top–tier European hub airport meaning an airport with significantly more capacity than Heathrow today. Alternative suggestions such as two small hubs, or connecting different airports as a "virtual hub" are rejected since they would not compete effectively and would leave the UK increasingly dependent on connections via third country hubs in order to reach global destinations.

The report suggests that the most likely sites for an improved hub are Heathrow, Stansted or the Thames Estuary. It recognises that any decision will be contentious and that the Airports Commission and the Government will need to balance many factors. Four major issues are indentified:

- If the new hub is developed at Stansted or in the Thames Estuary, Heathrow will need to close which would have major implications;
- Costs and charges for passengers are likely to be significantly higher if the new hub is built in the Thames Estuary;
- Building a major new hub would require urban development on the scale of a town the size of Peterborough for a four–runway hub; and
- Noise is the biggest issue, particularly for Heathrow.

http://www.theitc.org.uk/69_ITC_releases_Airports_report.html

TORT

24 High Court

Professional negligence – whether claim in tort statute–barred – s14A(4)(b) Limitation Act 1980

BRITANNIA ASSETS (UK) LTD V ROGER WARD ASSOCIATES LTD (2013) PLSCS 134 – Decision given 14.06.13

Facts: In 2003 RWA, the defendant, advised BA, the claimant, that it did not require planning consent to demolish a number of large fuel tanks on a site which it owned and that the site could be let out for general storage and distribution. The tanks were immediately demolished, but in 2006 the local council made it clear that retrospective planning permission for the change would be needed. BA never applied for permission and was served with enforcement notices in 2007. A lengthy series of appeals and further notices ensued with final permission to appeal being refused in July 2012. In June 2010 BA brought a claim in negligence against RWA in respect of its 2003 advice. RWA applied to strike out the claim on the basis that it was time–barred. BA accepted that its claim in contract was time-barred, but argued that its claim in tort was not, as it had not had the requisite knowledge to bring the claim, for the purposes of s14A(4)(b) of the Limitation Act 1980, until the planning situation had been resolved.

Point of dispute: Whether RWA's appeal would be allowed against the decision of the court below, which dismissed its strike–out application in respect of BA's tort claim.

Held: The appeal was allowed. The actual damage had occurred in 2003, when BA had removed the tanks, which meant that the claim, being brought more than six years from the date of breach or damage, was statute–barred unless BA could establish that it had lacked the necessary knowledge until less than three years before it brought its proceedings so as to come within s14A(4)(b). The onus was on the claimant to advance a proper case under the section and BA had failed to do this. The relevant knowledge for the purposes of the section was knowledge in broad terms of the facts on which the claimant's complaint was based. BA had not advanced any evidence as to its levels of knowledge, or as to how and why it lacked the necessary knowledge before the final resolution of the planning process. Section 14A(4)(b) required evidence of a claimant's actual state of knowledge and in this case BA had not shown any evidence which it could use to prove that it did not know of essential facts until less than three years before the proceedings had commenced. On the facts, the claimant appeared to have had the requisite knowledge in 2006, but in any event not later than 2007.

LONDON

25 Publication by the Mayor of London

2020 Vision – The Greatest City on Earth

This document presents Boris Johnson's ambitions for London. Following the success of the 2012 London Olympics and the boost that this has given to foreign investment in London he sees it as a city that can look outwards to the world and the future with growing confidence. The following are some of the subjects considered in this report:

- "Opportunity Areas";
- current and future transport projects;
- the challenges of a rapidly growing population;
- economic growth;
- the need for improvements in education;
- apprenticeship opportunities for young people;
- new housing projects;
- regeneration;
- tackling crime;
- improving air quality;
- tree planting;
- encouraging entrepreneurs; and
- competition.

http://www.london.gov.uk/priorities/business-economy/publications/2020-vision-ambitions-for-london

GENERAL

26 Judicial Review

Changes to Civil Procedure Rules

As from 01.07.13 the Civil Procedure (Amendment No. 4) Rules 2013 will come into force bringing into effect the following changes to the Civil Procedure Rules:

- Time limits for bringing a claim are reduced from three months to six weeks in planning cases and to 30 days in procurement cases;
- The introduction of a £215 court fee 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;
- The removal of the right to reconsideration of a refusal of permission to bring a Judicial Review in cases where the application is certified as totally without merit by the Judge on consideration of the application on the papers; and
- If a planning permission was granted prior to 01.07.13 the Judicial Review time limit will continue to be three months, but any planning decisions granted after the introduction of the rules on 01.07.13 will be subject to the new six week time limit.

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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

LANDLORD & TENANT

01 Scottish Government Publication

A Place to Stay, A Place to Call Home: A Strategy for the Private Rented Sector in Scotland

This Strategy sets out the Scottish Government's vision and strategic aims for the private rented sector. Its aim is to improve and grow this sector with a more effective regulatory system which will target tougher enforcement action and attracting new investment.

http://www.scotland.gov.uk/Publications/2013/05/5877

ENVIRONMENT

02 Scottish Assembly Government – Response to consultation

Responses to the Consultation on Proposals for an Integrated Framework of Environmental Regulation

This consultation, which ran between May and August 2012, sought views on:

- Changes to the structure of environmental protection legislation in order to create a new, integrated framework for permissions (licences, permits, rules etc.) which SEPA uses to control activities which could harm the environment; and
- Changes to the enforcement tools (sanctions such as fines or enforcement undertakings) which the Scottish Environment Protection Agency uses to deter non–compliance.

This document contains the Scottish Government's responses to that consultation.

http://www.scotland.gov.uk/Publications/2013/06/3535

GERALDEVE

WALES

PLANNING

03 Welsh Government Consultation

Consultation on Draft Technical Advice Note (TAN) 23 Economic Development
Deadline for Comments: 05.09.13

This draft TAN 23 provides further guidance on economic development to support Planning Policy Wales Chapter 7 Economic Development. It must be considered by local planning authorities when they prepare Local Development Plans and decide planning applications. The guidance covers the following:

- planning economic development at a strategic level;
- working with neighbouring authorities and relevant stakeholders;
- identifying and assessing economic benefits of development proposals; and
- establishing an evidence base to help prepare economic development policies for LDPs.

http://new.wales.gov.uk/consultations/planning/economic-development-technical-advice-note-consultation/?lang=en

04 Welsh Assembly Government Research

Research into the Review of the Planning Enforcement System in Wales

This research has been commissioned by the Welsh Assembly Government in order to inform the review of the planning enforcement system in Wales. The objectives of the research were to:

- gather evidence on possible measures which could be made to improve the effectiveness and efficiency of the enforcement system within the current and future legislative context;
- present a selection of case studies to test the possible measures; and
- make recommendations in order to deliver a more efficient and effective enforcement system in Wales.

This research forms part of a wider review of the Welsh planning system to assist the Welsh Government in developing an evidence base to inform a Welsh Planning Bill. The White Paper and draft Planning Reform Bill are scheduled for Winter 2013.

http://wales.gov.uk/docs/desh/research/130612enforcement-review-research-en.pdf

GENERAL

05 Welsh Assembly Government Paper

Economic renewal: a new direction

Following extensive consultation the Welsh Government has developed this policy the aim of which is to target its resources to tackling wide systemic issues in the Welsh economy, investing in infrastructure, skills and improving the conditions within which businesses operate. The policy marks a fundamental shift away from direct support to companies to focusing on creating a better environment for private businesses and the third sector to succeed.

http://new.wales.gov.uk/topics/businessandeconomy/publications/economicrenewal/?lang=en

NORTHERN IRELAND

PLANNING

06 Department of the Environment Planning Policy Statement

Planning Policy Statement (PPS) 16: Tourism

Tourism makes an important contribution to the Northern Ireland economy in terms of revenue generation, the provision of employment opportunities and the potential that it creates for economic growth. In 2011 8% of Northern Ireland's jobs were in tourism and leisure while in the same year an estimated 1.45 million overseas visitors spent at least one night in Northern Ireland, spending £368 million. Tourism also helps to support local suppliers, services and facilities, to improve Northern Ireland's assets and infrastructure and supports its culture and heritage. This final version of PPS 16 follows the public consultation which was carried out in November 2010. It sets out the Department's planning policy for tourism development, including the main areas of tourist accommodation and tourist amenities. It also contains policy for the safeguarding of tourism assets from development that may adversely impact on the tourism value of an environmental asset.

http://www.planningni.gov.uk/index/news/news_policy/planning_policy_statement_tourism.htm

ENVIRONMENT

07 DoE Consultation

Consultation on Proposals for an Environmental Better Regulation Bill
Deadline for comments: 24.07.13

The Environmental Better Regulation White Paper published by the Department of the Environment and the Economy in 2011 outlined a range of proposals to reduce regulatory burdens and sought views from interested parties on those proposals. This consultation focuses on proposals for new primary legislation as the first phase of an ambitious programme of regulatory reform, including the following:

- an integrated environmental permitting regime to cover all activities currently regulated by NIEA;
- rationalisation of powers of entry and associated powers (inspection and investigation); and
- simplification of the current complex and fragmented scheme of environmental offences.

http://www.doeni.gov.uk/better_regulation