

EVEBRIEF

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INVESTMENT FOR GROWTH



Peter Dines
Editor

At item 23 we report on the Government's vision for the future investment in infrastructure in Britain. The Government plans to spend £100bn in infrastructure before the end of the decade. There is a commitment of £50bn in capital investment in 2015 from "roads to railways, bridges to broadband, science to schools" and a capital budget of £9.5bn for the Department of Transport each year until 2020. There is to be a 5.5 per cent real terms increase in capital provision for critical transport infrastructure.

Commentators have suggested that the increase in departmental capital budgets is much less than implied. But the recognition of the crucial part infrastructure has to play in our sustained economic recovery is important to many aspects of the property profession.

In commenting on the announcement, Mr Osborne said governments have all had the challenge of how to deliver infrastructure with the planning system as it is and clarified that "We are reforming planning and are also going to be setting out changes this week to infrastructure delivery in Whitehall. We're going to do our best to put it right."

These announcements, together with the associated action to follow, are evidence that the Treasury has recognised the substantial multiplying factor investment in an effective and efficient infrastructure will return to the British economy.

This positive approach is already seeing action by the public and private sectors as, for example, the M20 junction 10a is identified for a £28m boost and developers are gearing up to deliver on this catalyst for substantial commercial investment.



GERALDEVE

LANDLORD & TENANT

01 High Court

Defendant tenant erecting fully equipped steel making plant and mill on land under terms of lease – whether tenant entitled to remove the plant from the premises – claimant landlord seeking declaration of its ownership of legal and equitable interest in plant

*PEEL LAND AND PROPERTY (PORTS NO 3) LTD V TS SHEERNESS STEEL LTD
(2013) PLSCS 139 – Decision given 14.06.13

Facts: PLP was the landlord and SS the tenant of land which was demised for a term of 125 years from 01.09.68. Under the terms of the lease SS agreed to erect a new building which was a fully-equipped steel making plant and rolling mill and in clause 2(6) of the lease it covenanted: “not at any time during the said term to erect make or maintain or suffer to be erected made or maintained any building erection alterations or improvements nor to make or suffer to be made any change or addition whatsoever in or to the said premises save in connection with the use of the said premises for such industrial purpose as may from time to time be approved by the lessors...” SS claimed that it was entitled to remove large parts of the plant that it had installed in the demised premises as they were removable tenant’s fixtures or chattels. PLP disputed this, arguing that the situation was no different than if the landlord had constructed a fully-equipped steel plant to the tenant’s specification, using a third party contractor, in which case all the plant and equipment would belong to the landlord and could not be removed by the tenant.

Point of dispute: Whether PLP would be granted a declaration that it was the owner of the legal and equitable interest in the plant. This required the court to determine: (i) whether the items in dispute were chattels or fixtures; and (ii) whether clause 2(6) expressly removed SS’s right to remove tenant’s fixtures.

Held: Judgement was given for SS in part.

- i. A chattel is personal property while a fixture is something which was formerly a chattel and had become real property because it had “acceded to the realty” to which it was considered to be annexed. Some fixtures could be detached in which case they became chattels once more. There are separate tests to distinguish between a chattel and a fixture and to determine when a fixture can legally be removed by a tenant. Whether there has been sufficient annexation to the land is a question of fact in each case, and any question of a person’s intentions has to be judged objectively from the circumstances of the case. The terms of the lease might override the position under the general law so that an item which would otherwise be removable was agreed not to be removable. Applying these tests in this case produced the result that some of the items SS sought to remove were chattels and others were fixtures.

- ii. A provision in a lease which seeks to override a tenant’s entitlement to remove a tenant’s fixture must be very clear. A covenant by the tenant to install fixtures does not in itself prevent the tenant from removing such of them as are tenant’s fixtures. In this case it was not sufficiently clear from clause 2(6) that the removal of a tenant’s fixture was an alteration or a change “in or to the said premises”. The clause did not refer to fixtures and thus it did not regulate SS’s ability to remove tenant’s fixtures. SS was entitled to remove from the premises the items which the court had classified as chattels or removable tenant’s fixtures.

PLANNING

02 High Court

Planning permission granted for wind turbine – material consideration – whether defendant local authority imposing valid planning obligations – whether local authority making erroneous decision that no environmental impact assessment required

*R (ON THE APPLICATION OF HOLDER) V GEDLING BOROUGH COUNCIL
(2013) PLSCS 135 – Decision given 12.06.13

Facts: The defendant local authority, GBC, granted planning permission for a wind turbine on a farm situated in open countryside within the Green Belt. GBC adopted an environmental impact assessment (EIA) screening opinion in respect of the proposal. Permission was granted subject to the applicant giving three unilateral undertakings with regard to noise levels.

Point of dispute: Whether the claimant’s application to quash the decision to grant planning permission should be allowed. The claimant contended:

- i. that GBC had erroneously accepted the planning officer’s report that various matters should not be treated as material planning issues;
- ii. that the planning obligations were invalid and GBC’s acceptance of the applicant’s unilateral undertakings, rather than imposing planning conditions was unlawful; and
- iii. that the screening opinion disclosed an error of law as GBC had not looked beyond certain thresholds which indicated the types of case in which an EIA was more likely to be required, instead of actually analysing the need for an EIA.

Held: The application was dismissed.

- i. The decision maker had to decide for himself what matters he would take into account. The choice of material considerations had to be rational and the weight to be attached to these was also a matter for the decision maker, subject to Wednesbury unreasonableness. In the present case there was nothing to preclude an officer from giving guidance and advice to the planning authority as to what the material considerations were in relation to the specific proposal which it was considering.
- ii. The purpose of the planning obligations in this case had been to ensure that the proposed development did not give rise to unacceptable noise levels. The restriction or obligation that had been imposed was not a personal one having no, or insufficient, connection to the use of the land. The undertaking which had been entered into was in precise terms and readily enforceable. The appropriateness of one form of enforcement as against another in a case such as this was not a matter for judicial review.
- iii. A screening opinion did not have to involve a detailed assessment of factors relevant to the grant of planning permission. It involved only a decision as to whether an EIA needed to be undertaken at all. The court should not impose too high a burden on planning authorities in relation to what was no more than a procedure intended to identify the relatively small number of cases where the development was likely to have significant effects on the environment

03 High Court

Sequential test – planning obligations

*TELFORD AND WREKIN BOROUGH COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2013) PLSCS 145 – Decision given 14.06.13

Facts: In July 2011 a developer applied to the claimant Ipa for planning permission to demolish some existing structures and erect a new food store on land in Shropshire. The council failed to determine the application in time and the developer appealed to the Sec of State. The council resolved that it would have refused planning permission in any event as it was supporting a competing site. The inspector appointed by the Sec of State allowed the developer's appeal and granted permission for the development.

Point of dispute: Whether the council's application to quash the inspector's decision would be allowed. The council argued that the inspector had erred, inter alia, by:

- i. concluding that an alternative site closer to the town centre was not sequentially preferable to the application site, in accordance with the sequential test contained in the National Planning Policy Framework;
- ii. failing to reach an express conclusion whether the alternative site could be discounted from consideration as not being available, suitable or viable;
- iii. failing to acknowledge that national policy no longer contained a sequential greenfield/brownfield test at the time of her decision; and
- iv. allowing the appeal having found that the planning obligations relating to the funding of off-site highway works did not comply with the Community Infrastructure Regulations 2010 which limited the use of planning obligations.

Held: The application was dismissed.

- i. It was open to a decision maker to conclude that one or more sites were sequentially equal. Sequential superiority was not simply a matter of working out how far two competing sites were from the town centre; many permutations of factors could justify a finding that one site was discernibly sequentially superior to another. The inspector's approach to comparing the two sites had not been incorrect and her conclusions should not be interfered with.
- ii. The inspector was not obliged to reach a final conclusion as to whether the alternative site could be discounted from consideration within the sequential test as not being available, suitable or viable. It had been reasonable for her to proceed on the basis that the alternative site complied with all three requirements so that the central issue was whether or not the alternative site was sequentially superior.
- iii. The inspector had not erred in assuming that the greenfield/ brownfield issue formed part of the sequential test relating to the policy of promoting town centres.
- iv. The inspector had been entitled to discount the off-site highway works obligation as not fulfilling the regulatory requirements, but still consider that the remaining merits of the application were sufficient to justify allowing the appeal.

04 High Court

Certificate of lawful use for unrestricted aviation activities at aerodrome – whether inspector erred in concluding that permission for flight testing did not constitute unrestricted aviation activities

*DUNSFOLD PARK LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2013) PLSCS 157 – Decision given 03.07.13

Facts: DP, the claimant, was the long lessee of land and buildings which had previously been used as an aerodrome. In 1951 planning permission had been granted for the repair, re-erection and flight testing of aircraft, but after 2003 the site was in multiple occupation and used for a wide variety of commercial and industrial activities under various conditional temporary planning permissions. One of these included the assembly, repair and flight testing of aircraft, a temporary permission which was extended in 2005 with a condition that no aircraft should be flown to or from the site except by employees, customers or companies associated with the site. In March 2011 DP's application for a certificate of lawful use under s191(1)(a) of the Town and Planning 1990 in relation to existing uses on the site, including unrestricted aviation activities, was refused by the lpa.

Point of dispute: Whether to allow DP's application for an order to quash the inspector's dismissal of its appeal against the lpa's refusal to issue a certificate of lawful use. The inspector had found that the conditions attached to the earlier permissions governed aviation activities in such a way as to deny DP's entitlement to the certificate, and that DP's use of the aerodrome since it went into occupation in 2002 fell outside the scope of the 1951 permission. That permission did not include a use of the airfield for unrestricted aviation activities.

Held: The application was refused. The 1951 permission did not permit general and unrestricted aviation activities and the only flights which it allowed were testing ones. The inspector had been correct in saying that flight testing was a narrower concept than unrestricted aviation activity. The purpose of s191 was to invite a specific answer to a specific question, namely whether a defined existing activity was lawful, which in this case translated into determining whether the activity was permitted by an identified planning permission. The court stated, per curiam, that questions relating to the future use of this aerodrome would be better answered in the context of a planning application or appeal rather than within the narrow parameters of a s191 application.

05 High Court

Outline planning permission for supermarket – whether local authority erring in law in failing to follow earlier decision refusing permission for similar project – application for judicial review granted

*R (ON THE APPLICATION OF MID COUNTIES CO-OPERATIVE LTD) V FOREST OF DEAN DISTRICT COUNCIL
(2013) PLSCS 161 – Decision given 04.07.13

Facts: The claimant Co-Op owned and operated a supermarket in Cinderford town centre, Gloucestershire. In March 2012 the defendant local authority, FDDC, granted outline planning permission to a developer for the demolition of existing buildings and construction of a retail store on an out-of-town site. In 1999 the Sec of State had refused an application for outline permission for a store on that site, following a recommendation by his inspector after a ten day public inquiry.

Point of dispute: Whether the Co-Op's application for judicial review to quash the 2012 decision would be allowed. The Co-Op argued that the FDDC had failed to consider the importance of consistency with the earlier decision of the Sec of State that planning permission should not be granted because any benefits secured via a s106 planning obligation would not be sufficient to outweigh the "very serious harm" to the vitality of the town centre and it had failed to provide reasons for departing from that earlier decision.

Held: The application was granted.

- i. A previous appeal decision was capable of being a material consideration and a decision was material unless it was distinguishable. Like cases should be decided in a like manner to achieve consistency in the appellate process.
- ii. In this case FDDC's duty was to give summary reasons, not detailed reasons as required in an inspector's report. It was material that the studies commissioned and relied on by FDDC had not addressed the impact of an out-of-centre supermarket on the town centre's vitality and viability or the improved linkages that would be required. The planning officer had not properly analysed the 1999 decision in his report and the report did not make it clear whether there was any clear reason on the basis of need to distinguish the present decision from the 1999 one.

06 Statutory Instrument

SI 2013/1479 The Planning Act 2008 (Nationally Significant Infrastructure Projects) (Electric Lines) Order 2013

This Order, which came into force on 17.06.13, amends s16(3) of the Planning Act 2008 to provide two new categories of electric line installation which are no longer considered nationally significant infrastructure projects and which are therefore subject to the consents process under the Electricity Act 1989 rather than the 2008 Act.

<http://www.legislation.gov.uk/ukxi/2013/1479/contents/made>

07 Statutory Instrument

The Growth and Infrastructure Act 2013 (Commencement No.2 and Transitional and Saving Provisions) Order 2013

W.e.f. 19.06.13 this Order brought into force s20 of the Growth and Infrastructure Act 2013 ("the Act") for the purposes of enabling the Sec of State or Scottish Ministers to make regulations about the procedure for varying consent in respect of electricity generating stations which have been granted under s36 of the Electricity Act 1989.

On 25.06.13 this Order brought the following provisions of the Act into force:

- s2(7) which amends the power of the Sec of State to appoint persons to determine planning appeals and connected matters;
- s3 which broadens the Sec of State's power to award costs at CPO inquiries; and
- s10 and Schedule 3 which change the current regime of periodic reviews of mineral planning permissions under Schedule 14 of the Environment Act 1995.

On 25.06.13 the Order brought into force the following provisions of the Act for the limited purpose of making regulations:

- s13 which makes provision about statements and maps deposited and declarations lodged under s31(6) of the Highways Act 1980 in order to negate an intention to dedicate way as highway; and
- s15 which inserts new sections 15A and B into the Commons Act 2006 to provide for a landowner in England to deposit a statement and map for the purpose of bring to an end any recreational use as of right on the land to which the statement relates.

The Order brings into force on 31.07.13 the following provisions of the Act:

- s20 enabling applications to vary consents in respect of electricity generating stations which have been granted under s36 of the 1989 Act to be made from that date; and
- s21(1) to (3) concerning consents for overhead electric lines.

<http://www.legislation.gov.uk/ukxi/2013/1488/contents/made>

08 CLG Impact Assessment

Streamlining information requirements for planning applications: impact assessment

This impact assessment is concerned with the Government's proposed measures to reduce the information requirements for planning applications and considers their likely costs, benefits and impact.

<https://www.gov.uk/government/publications/streamlining-information-requirements-for-planning-applications>

09 CLG Response to consultation

Streamlining information requirements for planning applications: government response

This consultation, which was issued in July 2012, sought views on a number of proposals to reduce the amount of information that applicants are asked to provide with planning applications. This document summarises the responses that were received to each of the broad proposals, which were based on three broad themes:

- Outline planning applications;
- Local information requirements; and
- Standard application form: agricultural land declarations and ownership certificates.

<https://www.gov.uk/government/consultations/streamlining-information-requirements-for-planning-applications>



10 CLG publication – outcome of consultation

Major infrastructure planning: extending the regime to business and commercial projects: summary of responses and government response

On 06.09.12 the Government published its package of reforms to housing and planning to help create better conditions for economic growth. This included a commitment to extend the nationally significant infrastructure regime to business and commercial projects which has been met with the passing of the Growth and Infrastructure Act 2013. The extension of the regime will enable developers to “opt-in” to the nationally significant planning regime where the projects are of national significance. This means that a decision will be made within 12 months from the start of the examination and the Development Consent Order automatically removes the need to obtain several consents that would otherwise be required for the development e.g. planning permission, Green Belt consent, Listed Building consent and Ancient Monument consent. The detail of these proposals was the subject of a consultation which was published on 22.11.12 and closed on 07.01.13. This document sets out the Government’s response to the consultation responses and the next steps towards implementation.

<https://www.gov.uk/government/consultations/nationally-significant-infrastructure-planning-extending-the-regime-to-business-and-commercial-projects>

HOUSING

11 Homes & Communities Agency Bulletin

Housing Market Bulletin, June 2013

This HCA bulletin provides the latest information on trends in the housing market and economy. In June:

- house prices and affordability ratios (house prices to earnings) continued to rise;
- transaction numbers were steady;
- first time buyers accounted for a relatively high proportion of mortgage lending;
- unemployment levels remained stable at around 2.5 million;
- GDP figures showed that the UK returned to growth in the first quarter of 2013; and
- inflation levels, although above target, remained steady.

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

12 CLG Report

English Housing Survey 2011 to 2012: headline report

In April 2008 the English House Condition Survey was integrated with the Survey of English Housing to form the English Housing Survey (EHS). This report contains the headline findings from the fourth round of reporting of the EHS. The report is split into two sections. Section 1 is concerned with the profile of households including:

- tenure;
- demographic and economic characteristics of households;
- rents and housing benefit;
- recent movers;
- mortgage difficulties; and
- overcrowding and under-occupation.

Section 2 provides an overview of the housing stock in England including:

- age;
- size and type of home;
- energy efficiency of the housing stock;
- decent homes; and
- homes affected by damp and mould.

<https://www.gov.uk/government/publications/english-housing-survey-2011-to-2012-headline-report>

13 EHS Bulletin

English Housing Survey bulletin: issue 9

This is the ninth issue of the English Housing Survey bulletin. It covers key findings from the English Housing Survey household report 2011–2012 and English Housing Survey homes report 2011. These reports, together with accompanying live tables, were published on the DCLG website on 10.07.13, and cover a wide range of topics relating to both the physical condition of homes and the circumstances of their occupants. Key findings include the following:

- the decline in the number of owner occupied households continued in 2011–12. The steady increase in the number of private rented households also continued;
- private renters spend more on their rent than owner occupiers spend on mortgage payments;

- the overall rate of overcrowding was 3% (643,000 households);
- the overall rate of under-occupation has increased to 37%, with owner occupiers having a much high rate of under-occupation (49%) than social or private renters;
- there were an estimated 967,000 vacant homes in England in 2011–12;
- the profile of the housing stock in England varies considerably by tenure; and
- between 2001 and 2011 the overall energy efficiency rating of English housing stock increased significantly.

<https://www.gov.uk/government/publications/english-housing-survey-bulletin-issue-9>

14 Government Report

English Housing Survey 2011: Homes Report

This is the annual report on the state of England's housing stock in 2011. It includes information on amenities, services, the local environment, disrepair and dampness, dwelling safety and energy performance.

<https://www.gov.uk/government/publications/english-housing-survey-2011-homes-report>

15 CLG Report

English Housing Survey: Households Annual Report on England's households, 2011 to 2012

This annual report on households in England covers themes such as housing needs, housing moves, and vulnerable and disadvantaged groups.

<https://www.gov.uk/government/publications/english-housing-survey-2011-to-2012-household-report>

16 CLG publication

English Housing Survey technical advice note: survey overview and methodology – 2011 to 2012 update

This note provides an overview of the survey methodology and describes how the data collection was conducted for interview, physical survey components and response rates achieved. Other technical advice notes cover the sampling and weighting process, data quality and the creation and modelling of derived measures for analysis.

<https://www.gov.uk/government/publications/english-housing-survey-technical-advice>

17 Government publication

English Housing Survey: data security strategy and arrangements – July 2013

This document contains details about the data security strategy for conducting the English Housing Survey, including the steps that are taken to ensure respondent anonymity, how data are handled and how any intentional or unintentional disclosure of information that would enable households to be identified is prevented.

<https://www.gov.uk/government/publications/english-housing-survey-data-security-strategy-and-arrangements>

18 Government Report

English Housing Survey Homes Report 2010

This is the annual report on England's housing stock in 2010. It includes information on amenities, services, the local environment, disrepair and dampness, dwelling safety and energy performance.

<https://www.gov.uk/government/publications/english-housing-survey-homes-report-2010>



REAL PROPERTY

19 Court of Appeal

Delay in completion – whether delay amounting to repudiatory breach of contract entitling respondents to rescind

*URBAN I (BLONK STREET) LTD V AYRES
(2013) PLSCS 159 – Decision given 05.07.13

Facts: In January 2007 A contracted to purchase an apartment in a development being constructed by U and paid a deposit. No completion date was specified in the contract but U was to send written notice to A when the apartment was finished with completion to take place ten days later. The contract incorporated the Standard Conditions of Sale (4th ed). It was originally envisaged that the development would be finished by December 2008 and A's mortgage offer expired at the end of that month. Following various delays the target date for completion moved to February 2009, but A's mortgage lender refused to renew its 90% loan-to-value mortgage offer. In March 2009 A wrote to U purporting to terminate the contract for unreasonable delay; U did not accept that the contract was at an end, and in July gave notice to A that the development was finished. When A did not then complete U served a notice to complete in September 2009 requiring completion in ten days.

Point of dispute: Whether U's appeal would be allowed against the ruling of the judge in the court below that it should return A's deposit on the grounds that there had been such an overall delay as to amount to a repudiation of the contract by U which entitled A to refuse to complete.

Held: The appeal was allowed. If a contract for the sale of land did not specify a completion date then a term would be implied that completion would take place within a reasonable time. It was important to identify the contractual completion date and the judge had failed to do this. In the event of failure to complete on the contractual completion date the contract could be brought to an end on the service and expiry of a notice to complete. In a situation where A had not served a notice to complete it could only terminate the contract when: (i) it ceased to be equitable to grant specific performance to U; (ii) the delay had become such as to deprive A of substantially the whole benefit they were intended to have under the contract; or (iii) U was in anticipatory breach by showing that it had no intention of carrying out the contract or would only do so in a manner that was inconsistent with its contractual obligations. Although A had lost the chance of a 90% mortgage because of the delay beyond the end of 2008, that was before the contractual completion date at a time when there had been no unreasonable delay in completing the construction of the apartment – before February 2009 there had been no unreasonable delay in completing the development. In March 2009 U was still trying to complete the development so was not in anticipatory breach of contract at that time and A was not entitled to terminate the contract by his letter of that date. The contract remained in existence until the expiry of U's notice to complete of September 2009. A was himself in breach of contract for failing to complete in September 2009.

20 High Court

Ownership of hedge forming boundary – boundary line delineated by T-marks on plan attached to conveyance

*AVON ESTATES LTD V EVANS
(2013) PLSCS 144 – Decision given 13.06.13

Facts: AE, the claimant, owned a mobile home park. The adjoining farm was owned by the defendant, E. The properties were originally in common ownership until 1955 when the farm was conveyed to E's predecessor. The boundary between the two properties was delineated on a plan attached to the 1955 conveyance which showed "T" marks on the side of the then retained land, now the park. There was no reference to these "T" marks in any other part of the conveyance.

Point of dispute: Whether AE's claim would be allowed that the T marks on the plan indicated that the boundary feature, in this case a large hedge, was intended to be owned by the owners of the land on the side on which the T marks appeared, i.e. the park. AE contended that this would also include a strip of land on the far side of the centre line of the growers sufficient to accommodate a reasonable growth of hedge. E argued that there was no rule of law that T marks on the plan invariably indicated ownership of the feature referred to.

Held: AE's claim was dismissed. No single meaning or default meaning established by the evidence or authority could be attached to T marks where a meaning could not be ascertained by reference to the body of the conveyance or other admissible material. On the evidence the boundary established by the 1955 conveyance was a line between the centres of the growers of the hedge, as they had existed at that date. In the absence of any remaining growers from that time the best evidence of where the boundary was in 1955 would be the plan as it currently existed.

TORT

21 Technology and Construction Court

Professional negligence – surveyors – duty of care

*IGLOO REGENERATION (GENERAL PARTNER) LTD V POWELL WILLIAMS PARTNERSHIP
(2013) PLSCS 150 – Decision given 24.06.13

Facts: The claimants were institutional purchasers of a historic mill in Leeds which had been converted into offices. The first claimant entered into the contract to purchase the building on behalf of the fourth claimant as its general partner. The second claimant had set up a company to fund the purchase and the property was eventually transferred into its name. The third claimant was a property development manager whose duties included instructing the defendant firm of surveyors (PWP) to carry out a survey of the mill. The building survey, carried out by an employee of PWP, reported that although some cracking had occurred in piers at ground floor level the main body of the brickwork was able to perform its loadbearing function. Contracts were exchanged in June 2003, but by 2005 the cracks had enlarged and substantial repairs were necessary in order to bring the building up to full office standards.

Point of dispute: Whether the court would award damages to the claimants on the basis that PWP had been professionally negligent in failing to recognise the risk of compression failure in the piers.

Held: The claim was dismissed.

- i. PWP owed a duty of care to the fourth claimant which was the prime mover behind and investor in the acquisition and as it legally functioned as a partnership all the partners were parties to the litigation. The third claimant acted as an agent for and on behalf of the fourth claimant when it retained PWP and therefore the contract of retainer was between PWP and the fourth claimant. PWP also owed a duty of care to the first claimant, but not to the third claimant as it was only an agent, nor to the second claimant whose existence was not known about at any material time by PWP.
- ii. A professional is required to exercise the skill and care to be expected of an ordinary competent professional in that field. Such a professional would be liable for damage caused by his or her advice if it was such as no member of the profession who was reasonably well-informed and competent would have given. The level of advice would depend upon the type of client with whom the professional was dealing. The standard of care to be expected of a professional man also had to be considered on the basis of events as they occurred in prospect, not in retrospect.
- iii. On the evidence in this case PWP could not be criticised for having fallen below the requisite standard of care. On the balance of probabilities PWP had exercised all the reasonable care and skill to be expected of surveyors retained to do what PWP had been retained for. It had not failed to exercise the reasonable care and skill to be expected of surveyors and engineers in connection with their inspections, advice and reporting in relation to the property.

GENERAL

22 Administrative Court

Registration of town or village green (TVG) – application by interested party to have land registered as TVG not made in proper form within statutory time limit – whether application out of time

*CHURCH COMMISSIONERS FOR ENGLAND V HAMPSHIRE COUNTY COUNCIL
(2013) PLSCS 163 – Decision given 10.07.13

Facts: The claimants owned land in Hampshire which it wished to develop. It was asserted by the interested party that for a period of at least 20 years a significant number of local inhabitants had used the land as of right for the purpose of lawful sport and other pastimes and she applied to have the land registered as a TVG under s15(1) of the Commons Act 2006. The interested party asserted that the period of user as of right came to an end when the claimants erected a fence during the week ending 13.07.03. Section 15(4) of the 2006 Act required any application to be made within five years of the date on which the user as of right was brought to an end. The application was submitted on 30.06.08, but it was not in proper form. The defendants, HCC, allowed time for the application to be put into proper form, but that did not happen until over a year later on 20.07.09.

Point of dispute: Whether, as contended by the claimants, the five year limitation meant that the application was out of time and therefore invalid, or whether, on the true construction of the 2006 Act and the Commons (Regulation of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 the application once amended was to be regarded as having been made in time.

Held: The claim was dismissed.

- i. The Commons Act 2006 had been parliament's third attempt to devise a fair and acceptable scheme for the registration of TVGs and was the means of balancing the rights of landowners and local residents.
- ii. The 2007 regulations provided that an application had to be made on a particular form which specified what had to be contained in it. Any application had to be stamped and recorded, but there was nothing in the wording of the regulations to indicate that the court should decide that a corrected application could not have retrospective effect.
- iii. There should have been a provision in the 2007 regulations requiring notice to be given to a landowner. This would enable landowners to press the registration authority to ensure that the applicant was only given a reasonable time to put the application in order. It followed that a corrected application could have retrospective effect.



iv. One of the claimant's arguments was that the period allowed by HCC for the application to be put into proper form had been excessive and that the interested party had taken too long to make the necessary amendments. However, although the claimant had been aware of the application it had not pressed for an earlier resolution, nor had it informed HCC that it considered the delay unreasonable. They could not now complain that the long period before the application was put into order had been unreasonable.

23 HM Treasury Command Paper

Investing in Britain's future

This paper sets out the Government's vision for the future of Britain's infrastructure and a fully costed and detailed plan of how it intends to achieve its aims. Containing chapters on new road building, expansion of the rail network, energy, science and innovation, housing and digital communications it is effectively the Government's long-term plan for building, repairing and renewing Britain's key infrastructure.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209279/PU1524_IUK_new_template.pdf

24 Statutory Instrument

SI 2013/1590 The Flood and Water Management Act 2010 (Commencement No.2, Transitional and Savings Provisions) (England) Order 2013

This Order brings into force on 30.07.13 Article 3 of the Flood and Water Management Act 2010 which amends the Reservoirs Act 1975 to introduce a new legal framework relating to the safety of raised reservoirs.

<http://www.legislation.gov.uk/uksi/2013/1590/contents/made>

25 CLG Consultation

Registration of new town or village greens: proposed amendments to the Commons Act 2006 **Deadline for comments: 19.08.13**

Section 15 of the Commons Act 2006 sets out the circumstances in which applications can be made to commons registration authorities to register land as a town or village green. The system for making such applications has been reformed by the Growth and Infrastructure Act 2013 by inserting a new s15C and Schedule 1A into the Commons Act. The right to apply to register land as a town or village green no longer applies where a "trigger" event related to the development of the land occurs and becomes exercisable again if a corresponding "terminating" event occurs. During the Parliamentary stages of the Growth and Infrastructure Act it was announced that the Government intended to include certain additional trigger and terminating events in Schedule 1A. This consultation explains these events and seeks views on them.

<https://www.gov.uk/government/consultations/registration-of-new-town-or-village-greens-proposed-amendments-to-the-commons-act-2006>

26 Government Publication

The future of high streets: progress since the Portas Review

This report, published one year after the Portas Pilots were launched, summarises the progress that has been made on the high streets and the next phase in their future. It outlines what the Government and other organisations have done to support the high street, how the 27 Portas Pilots have tackled their local challenges and sets out the next steps for the future of the high street.

<https://www.gov.uk/government/publications/the-future-of-high-streets-progress-since-the-portas-review>

27 College of Estate Management Research Report

Defining a Profession: Core Competencies for Sustainability

This paper examines which key knowledge and skills building industry professionals need to deliver sustainability most effectively in the built environment.

<http://www.cem.ac.uk/research/reports-publications/defining-a-profession-core-competencies-for-sustainability.aspx>

28 House of Commons – Environment, Food and Rural Affairs
Committee Report

Managing Flood Risk

The UK has experienced very high rainfall in the last two years which has led to a series of flood events which have had major impacts on many communities. The 2007 summer floods cost at least £4bn and caused several deaths and the Pitt Review which was conducted afterwards made recommendations on improving, monitoring and responding to flood risk. It is predicted that the severity and frequency of these events will increase in future years.

In December 2012 the Environment, Food and Rural Affairs Committee announced an inquiry into the effectiveness of the Government's flood risk management policies and this report follows a number of previous reports on flooding, including its 2010 report Future Flood and Water Management Legislation and the Draft Water Bill report published in February. While this report welcomes the additional capital funding for flood defences which will help to promote economic growth, it considers that the funding increases announced in July's Spending Round do not meet rising flood risk. The report:

- criticises the Government for failing to secure significant private sector funding for new flood defences;
- warns that current funding allocations do not adequately protect agricultural land, posing a risk to the security of UK food production; and
- recommends that central government provides funds for local authorities to repair flood damage to roads and other infrastructure.

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/environment-food-and-rural-affairs-committee/news/managing-flood-risk-report/>



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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

GENERAL

01 Scottish Assembly Government publication – Policy Statement

Creating Places – A policy statement on architecture and place for Scotland

Scotland's new policy statement on architecture and place aims to set out the comprehensive value good design can deliver. The document contains an action plan setting out the work that will be taken forward with the aim of achieving positive change.

The statement is in four parts:

1. The value of architecture and place;
2. Consolidation and ambition;
3. A strategy for architecture and place; and
4. Resources, communications and monitoring. This part includes a link to on-line information and resources relating to architecture and place at www.creatingplacescotland.org. This website is the main means of communicating on policy implementation and charting on-going progress.

<http://www.scotland.gov.uk/News/Releases/2013/06/architecture240613>



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02 Scottish Natural Heritage Commissioned Report

Research and guidance on restoration and decommissioning of onshore wind farms

In 2010 Scottish Natural Heritage (SNH) published guidance on good practice during wind farm construction (GPDWC) which was aimed at wind farm developers, construction companies and contractors working on wind farm sites, consultants and advisors supporting the wind farm industry, planning officers working on wind farm applications, statutory consultees such as SNH, Scottish Environment Protection Agency and others with an interest in wind farm construction and those responsible for the regulation of wind farms under relevant environmental protection and pollution prevention legislation. SNH intends to add to GPDWC with a chapter on Restoration and Decommissioning Plans for Onshore Wind Farms. SLR Consulting Ltd was commissioned by SNH to undertake background research to further develop understanding into the environmental impacts and considerations for restoration and decommissioning in order to support this new guidance.

http://www.snh.org.uk/pdfs/publications/commissioned_reports/591.pdf

03 Scottish Government Publication

National Review of Town Centres: External Advisory Group Report: Community and Enterprise in Scotland's Town Centres

This is an independent report containing detailed recommendations for revitalising Scotland's town centres. It contains a number of proposals including the following:

- A "town centre first" principle whereby public bodies will consider how they can support town centres before considering development elsewhere;
- Working with housing providers to bring empty town centre properties back into use as affordable housing;
- Focusing on town centres when reviewing current business rates incentivisation schemes;
- A recommendation that public bodies should consider the impact of proposals to relocate services out of town centres; and
- Broadening the appeal of town centres with a mix of leisure, public facilities and homes.

<http://www.scotland.gov.uk/Publications/2013/07/7250>

WALES

GENERAL

04 Welsh Assembly Government Consultation

Consultation on the draft Policy Statement for Protected Landscapes in Wales
Deadline for Comments: 20.09.13

The purpose of this statement is to set out the Welsh Government's strategic policy framework for Areas of Outstanding Natural Beauty and National Parks in Wales. It replaces "Policy Statement for the National Parks and National Park Authorities in Wales" (March 2007). This statement now includes the five AONBs as a comprehensive policy statement on the statutory designated landscapes in Wales.

<http://new.wales.gov.uk/consultations/cultureandsport/landscape/?lang=en>

NORTHERN IRELAND

PLANNING

05 Department of the Environment Consultation

(Draft) Supplementary Planning Guidance: Anaerobic Digestion (NI)
Deadline for Comments: 09.09.13

This SPG provides additional advice and guidance specific to Anaerobic Digestion to complement the background information already set out in the Best Practice Guidance to PPS18. It has been drawn up taking account of similar material available for other parts of the UK and the Republic of Ireland.

http://www.planningni.gov.uk/index/policy/supplementary_guidance/spg_other/ad_draft.htm