EVEBRIEF

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FRACKING AND OTHER ENERGY PROBLEMS

Tony Chase
Editor

In this edition we report on a number of matters relating directly or indirectly to energy supply and regulation. The High Court case reported at item 3 concerns the unsuccessful appeal by a local planning authority against the Secretary of State's decision to grant permission for three large wind turbines in an area where the setting of heritage assets could be adversely affected. A decision which promoted energy generation of a different type is reported at item 6; this relates to exploratory drilling for hydro-carbons – in connection with the controversial process of "fracking". The claimant, Europa Oil and Gas Ltd, successfully appealed against the Secretary of State's decision, after a public inquiry, to refuse permission for it to drill an exploratory borehole in a green belt area. This will certainly not be the last case relating to fracking that we will be reporting; it an issue which is presently much in the news and a difficult and contentious one for the Government to deal with, particularly in the south of England.

At items 15-19 we report on various measures which the Government is introducing to improve energy efficiency of buildings and reduce carbon emissions and energy costs. It is also keen to involve businesses and local communities in energy generating projects through the use of financial support and incentives (item 18). Finally, mitigation of the visual impact of electricity infrastructure in national protected landscapes is addressed in the latest National Grid publication (item 19). This will also continue to be an emotive issue: the energy requirements for new housing developments are ever-increasing, but the residents of those developments, amongst others, do not wish to see historic landscapes and views marred by overhead power lines, pylons and wind farms.

Tony Chase

GERALDEVE

LANDLORD & TENANT

01 CLG Letter

Tenancy deposit protection schemes

This letter considers the implications of the recent Court of Appeal decision in the case of Superstrike Ltd v Rodrigues. There are concerns that this decision means that where a deposit was taken for an assured shorthold tenancy before the introduction of the tenancy deposit protection scheme and continued as a statutory periodic tenancy after 06.04.07, the landlord should have protected the deposit at the start of the statutory periodic tenancy. This was not the intention of the legislation and the Government is urgently exploring whether new legislation is required to clarify the situation. It is also looking into whether the decision has implications for the situation where a deposit has been protected in an authorised scheme in relation to a tenancy begun after 06.04.07, but the fixed term has expired and the tenancy continues as a statutory periodic tenancy.

https://www.gov.uk/government/publications/tenancy-deposit-protection-schemes

PLANNING

02 High Court

Appeal against enforcement notice requiring complete removal of unauthorised building

*AHMED V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2013] All ER (D) 325 (Jul) – Decision given 16.07.13

Facts: In 2005 the appellant, A, was granted planning permission to demolish an existing property and to erect a three–storey building. However, the building that was erected differed in material respects from the approved plans and the lpa issued an enforcement notice requiring the unauthorised building to be demolished and restoration of the relevant parts of the previous building. A's appeal against the notice, on the grounds that the steps required in the notice were excessive and that retrospective consent should be granted for the building as constructed, was dismissed by an inspector appointed by the Sec of State.

Point of dispute: Whether A's appeal would be allowed against the inspector's decision. A contended that the requirement for complete demolition was over–enforcement for the purposes of s174(2)(f) of the Town and Country Planning Act 1990, and that the inspector had erred in law by failing to consider whether the breach of planning control could be rectified by partial demolition and remodelling to make the building conform with the 2005 permission. This required determination of whether A was required to raise this fall–back position in the form of an express application for a retrospective consent, pursuant to s174(2)(a) of the Act, or whether it was sufficient that that issue was raised as part of the appeal against excessive enforcement.

Held: The appeal was allowed. It was an established principle that if, on consideration of the submissions and following a site visit, it appeared to the inspector there was an obvious alternative to total demolition that would overcome the planning difficulties at less cost and disruption than total removal, he should consider it. In this case the inspector had overlooked the possibility of varying the order, as A had requested, and at the same time granting retrospective planning consent. The inspector should have considered whether to exercise his power to vary the notice and grant retrospective consent. Recourse to s177, which provided power to grant consent in respect of some of the matters the subject of an enforcement notice, and to s174(2)(a) of the Act was an obvious alternative course which would have overcome the planning difficulties at less cost and disruption and the inspector had erred in law by failing to consider this possibility.

03 High Court

Appeal against grant of planning permission for wind turbines – whether inspector had misunderstood the concept of "substantial harm" – s66(1) of the Planning (Listed Buildings Conservation Areas) Act 1990

*BEDFORD BOROUGH COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2013] All ER (D) 380 (Jul) – Decision given 26.07.13

Facts: Following a public inquiry an inspector appointed by the Sec of State granted planning permission for three large wind turbines. The inquiry concluded that the benefits from granting permission for the turbines were sufficient to outweigh any harm to the landscape. In deciding what amounted to "substantial" harm the inspector applied a stringent test and found that the harm to the setting was less than substantial. Carrying out a balancing exercise he granted permission for the turbines subject to conditions.

Point of dispute: Whether to allow the lpa's application to quash the decision to grant permission for the turbines. The lpa argued that in considering any impact on the setting and significant heritage assets, the inspector had misconstrued or misapplied the relevant planning policy in terms of what constituted substantial harm and had also failed to give special regard to the desirability of preserving the settings of affected listed buildings as required by s66(1) of the Planning (Listed Buildings Conservation Areas) Act 1990.

Held: The application was dismissed. It could not be said that the inspector had misconstrued the concept of substantial harm. The test was stringent and there were two ways for testing whether any harm which may be of significance could qualify as "substantial" – first, through demolition or destruction of the asset, and secondly, through direct or indirect impact on the building. The inspector had applied the correct approach, and he did not need directly to refer to s66(1).

04 High Court

Challenge to grant of permission for housing development – housing land requirement – public participation

**STRATFORD ON AVON DISTRICT COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2013] All ER (D) 394 (Jul) – Decision given 18.07.13

Facts: In October 2012 the Sec of State granted outline planning permission for housing on a site. His decision was based on a report prepared by an inspector that the housing land requirement for the district over a 20–year period was between 11,000 and 12,000 homes. The lpa applied to quash that decision contending that the inspector had unlawfully: (i) determined a housing requirement for the district which did not comply with national policy contained in the NPPF, as the housing land requirement was only 8,000 homes; and (ii) failed to take into account the UK's obligations pursuant to the 1998 Aarhus Convention on access to information, public participation in decision–making and access to justice in environmental matters and failed properly to apply national guidance in relation to emerging plans ("the guidance").

Point of dispute: Whether the decision to grant permission would be quashed. This required determination of: (i) whether the inspector had erred in determining the housing requirement; and (ii) whether the inspector had properly applied the Aarhus Convention and the guidance.

Held: The lpa's application was dismissed.

i. In order to assess unmet housing need the inspector had to assess housing requirements on the basis of the evidence before him. He had come to the conclusion that the lpa's figure of 8,000 had not been sufficiently evidence based, and that, on all the evidence before him, the requirement for the 20–year period was 11,000-12,000. His reasons for that assessment were found to be adequate.

ii. The inspector had conducted his analysis properly and lawfully. The guidance and the Aarhus Convention required the decision–maker to make a planning assessment of the application taking into account the emerging plan in accordance with the NPFF and the guidance. The inspector's analysis, his approach to the NPPF and the guidance and his conclusion were unimpeachable. Interested members of the public had had every opportunity to participate in all aspects of the development plan and changes to it and the decision–making process.

05 Administrative Court

Planning permission granted for development of green belt site – whether regard was had to development plan – whether adequate reasons for decision given

*TRURO CITY COUNCIL V CORNWALL COUNCIL
[2013] PLSCS 199 – Decision given 13.08.13

Facts: The defendant, CC, granted planning permission for the development of a substantial green field site to include housing, a park and ride facility, a household waste and recycling facility, car parking and other works. TCC, the claimants, had objected to the development on the grounds that it was premature and would result in the loss of high quality agricultural land, that it would adversely impact on the vitality of Truro city centre and would be in conflict with the development plan.

Point of dispute: Whether to allow TCC's application for judicial review of the decision to grant permission for the development. Its arguments were that CC had:

i. failed to comply with their duty under s38(6) of the Planning and Compulsory Purchase Act 2004 to have regard to the development plan;

ii. not given adequate reasons for the grant of permission; and

iii. erred in failing to refuse planning permission on the grounds of prematurity.

Held: The application was dismissed.

i. It was apparent that CC had been aware of the primacy of the development plan and its conflict with the proposals in the planning application was recognised. If the development plan was not to be followed because there were material considerations for not doing so, those considerations had to be clearly set out together with the weight attached to them and the reports had done this.

ii. Where, as in this case, members of the committee had followed their officers' recommendation and there was no indication that they had disagreed with the reasoning in the report leading to the recommendation, a relatively brief summary of reasons would be adequate. The duty of the lpa was to provide reasons for granting planning permission, not to repeat all of the main issues in the report and set out how each had been resolved.

iii. CC had not erred on how it had approached the issue of prematurity. It had followed the correct guidance, considered the emergent and existing development plan position and concluded that little weight could be attached to either.

06 High Court

Application for planning permission for development comprising the construction and use of an exploratory drill site for the drilling of one exploratory borehole and subsequent short term testing for hydrocarbons

*EUROPA OIL AND GAS LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNEMENT
[2013] All ER (D) 352 (Jul) – Decision given 25.07.13

Facts: In December 2008 the claimant, EOG, applied for a temporary three–year planning permission for the construction and use of an exploratory drill site for the drilling of one exploratory borehole and subsequent testing for hydrocarbons. The lpa refused permission for the development and the Sec of State dismissed EOG's appeal against that refusal. EOG appealed against that decision and a public local inquiry was held by an inspector appointed by the Sec of State. The inspector identified the main issues – whether the development amounted to inappropriate development in a green belt area and issues of openness and purposes of the green belt. The inspector dismissed the appeal concluding that the development would amount to "inappropriate" development.

Point of dispute: Whether to allow EOG's application for an order quashing the Sec of State's decision to refuse permission for the development.

Held: The application was allowed. The inspector had erred in failing to find that the development was "mineral extraction" and that mineral extraction included exploration. Further, in relation to the temporary nature of the development and the weight to be given to that fact, the inspector had made a material error which might well have affected the outcome.

07 CLG Consultation

Greater flexibilities for change of use: consultation Deadline for Comments: 15.10.13

Reflecting the advice contained in the Portas Review which called for more flexibility for change of use on the high street, the proposals contained in this consultation are aimed at supporting the government's priorities for making better use of existing buildings, supporting high streets and rural communities, providing new housing, developing more free schools and contributing to the provision of childcare for working families. The five proposed new permitted development rights on which views are sought are changes of use:

- from shops and financial and professional services to a dwellinghouse;
- of agricultural buildings up to 150 square metres to residential use;
- from retail to banks and building societies;
- from offices, hotels, residential and non–residential institutions and leisure and assembly uses to nurseries providing childcare; and
- of agricultural buildings up to 500 square metres to a new state funded school or nursery.

https://www.gov.uk/government/consultations/greater-flexibilities-for-change-of-use

08 Government Press Release

Driveway tax

The Government intends to publish new guidance which will discourage local councils from introducing a new parking tax on people's driveways and parking spaces. Households have started renting out surplus off–street parking spaces near town centres, train stations and sports grounds, but some councils are requiring them to apply for planning permission for "change of use" with an application fee of £385 and threatening fines of up to £20,000 if households do not apply. New guidance on change of use will make provision for renting driveways. Whether an application for change of use is needed will depend on individual circumstances and each case will have to be assessed on its own merits in order to avoid situations where a garden is changed into a car park or showroom without permission.

https://www.gov.uk/government/news/pickles-takes-on-town-halls-new-driveway-tax

09 CLG Statistics

Local planning authority performance tables

These tables present data on the performance of local planning authorities against the published criteria for assessing under–performance under s62B of the Town and Country Planning Act 1990. The tables provide information on the speed and quality of decisions on applications for major development, for both district matter and county matter authorities.

https://www.gov.uk/government/statistical-data-sets/local-planning-authority-performance-tables

LEASEHOLD REFORM

10 Upper Tribunal (Lands Chamber)

Leasehold Enfranchisement – flat – deferment rate – whether Zuckerman addition for management applicable to a well–run block in prime central London – held Zuckerman addition not applicable to such a building or at all

**VOYVODA V GROSVENOR WEST END PROPERTIES
[2013] UKUT 0334 (LC) – Decision given 25.07.13

Facts: The appellant, V, exercised his right to acquire a lease extension of a flat in a purpose–built 1950s block in London W1. The parties agreed that a deferment rate of 5% – which included an addition of 0.25% to reflect the management risks associated with flats in accordance with the decision in Earl Cadogan v Sportelli (2007) – be used to value the competent landlord GWEP's long leasehold interest. They also accepted the decision of the LVT to add a further 0.5% deferment rate for the intermediate leaseholder's (32GSL) interest to reflect the fact that it was a reversion to a mid–term lease rather than a freehold or very long lease, and that any additional adjustment beyond the 0.5% uplift was not necessary.

Points of dispute: The single point of appeal was V's contention that – following the decision in Zuckerman v Trustees of Calthorpe Estate (2011) – the deferment rate used when valuing 32GSL's reversion in what was agreed to be a well run block of flats in prime central London should be increased by a further 0.25% to reflect management risks in addition to those considered in Sportelli, attributable to the onerous nature of the 2003 service charge regulations. At the time of the Zuckerman decision, the Court of Appeal in Daejan Investments Ltd v Benson (2011) had determined that failure to adhere to the consultation requirements might lead to a landlord failing to recover expenditure on major works.

Held: V's appeal was dismissed. The Supreme Court in Daejan reversed the decision by the Court of Appeal that substantial sums expended on particular repairs were largely irrecoverable in the event of a breach by the landlord of the 2003 service charge regulations (see Evebrief, Volume 35(04) 18.03.13, item 1). Although a landlord might well have to bear the tenants' costs of challenging a landlord's application for dispensation, the risk to the landlord had been reduced to that of not being able to recover the margin between the costs he believed the tenants should pay for the works proposed and a reasonable assessment of the extent and costs of those works. Accordingly, although there remains an element of management risk, it was determined that level is adequately covered by the uplift in the deferment rate which was established in Sportelli. The deferment rate determined by the LVT should stand.

Editor's note: Gerald Eve's Partner Julian Clark gave evidence for GWEP at the Leasehold Valuation Tribunal and the Upper Tribunal (Lands Chamber).

HOUSING

11 CLG Report

Housing standards review: towards more sustainable homes

The Challenge Panel are four independent advisers from across the construction sector who were commissioned by the Government to review the current system of building regulations and standards for housing in England and to advise on how the regulatory system could be improved to make it work more efficiently. This report sets out the Panel's views on the current system, their aspirations for the review and their response to the outcomes of the Housing Standards Review process and working group proposals.

https://www.gov.uk/government/publications/housing-standards-review-towards-more-sustainable-homes

12 CLG Consultation

**Housing standards review consultation
Deadline for Comments: 22.10.13**

This consultation seeks views on the results of the 2012 review of building regulations and housing standards (item 11 above). This review was a major investigation into the building regulations framework and voluntary housing standards with the aim of rationalising the large number of codes, standards, rules, regulations and guidance with which the house–building industry must comply.

https://www.gov.uk/government/consultations/housing-standards-review-consultation

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13 HCA Statistics

House building in England: April to June 2013

Key points from the latest release are:

- Seasonally adjusted house building starts in England are estimated at 29,510 in the June quarter 2013, 6% higher than the previous quarter;
- Completions (seasonally adjusted) are estimated at 27,270 in the June quarter of this year, 9% higher than the previous quarter;
- Private enterprise housing starts (seasonally adjusted) were 7% higher in the June quarter 2013 than the previous quarter, while starts by housing associations were 3% lower;
- Seasonally adjusted private enterprise completions increased by 11% and housing association completions by 3% from the previous quarter;
- Seasonally adjusted starts are now 73% above the trough in the March quarter 2009 but 40% below the March quarter 2007 peak; completions are 44% below their March quarter 2007 peak; and
- Annual housing starts totalled 110,530 in the 12 months to June 2013, up by 7% compared with the year before; annual housing completions in England totalled 106,820 in the 12 months to June 2013, 9% lower than the previous 12 months.

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

CONSTRUCTION

14 CLG Report

Code for sustainable homes: case studies volume 4

This publication contains examples of a fourth set of case studies on how new homes built using the code for sustainable homes have been designed, planned and built and how well they work for their occupants. The code, which is not mandatory, was introduced in 2007 and aims to reduce carbon emissions from new homes and create homes which are more sustainable. These eight case studies have all been built to level 4 of the code – none of the previous case study publications having included code level 4 schemes.

https://www.gov.uk/government/publications/code-for-sustainable-homes-case-studies-volume-4

ENERGY

15 Statutory Instrument

2013/1959 The Building Regulations &c. (Amendment) (No 2) Regulations 2013

Parts 2 and 3 of these Regulations, which will come into force on 6.4.14, amend the Building Regulations 2010 to insert provisions relating to target fabric energy efficiency ("TFEE") rates and new dwellings.

http://www.legislation.gov.uk/uksi/2013/1959/contents/made

16 CLG Consultation

Next steps to zero carbon homes: allowable solutions Deadline for Comments: 15.10.13

Recognising that it will not always be cost–effective, affordable or technically feasible for house builders to reduce all carbon emissions through on–site measures such as fabric insulation, energy efficient services and/or renewable energy generation (e.g. solar panels), this consultation sets out, and seeks views and further evidence on, the main principles, price cap and processes for the delivery of 'allowable solutions' – off–site projects or measures that reduce carbon emissions – which house builders may support in order to achieve the zero carbon homes standard.

https://www.gov.uk/government/consultations/next-steps-to-zero-carbon-homes-allowable-solutions

17 CLG Impact Assessment

Proposed Changes to Part L of the Building Regulations: impact assessment

The aim of these proposed changes is to reduce carbon emissions and to help reduce energy costs by introducing regulations which are implemented at the point of construction to "lock in" efficient design and reduce energy/heat demand and future retrofit costs. The regulations will also set energy efficiency standards when building work is carried out to existing properties.

https://www.gov.uk/government/publications/changes-to-part-l-of-the-building-regulations

REAL PROPERTY

18 House of Commons Energy and Climate Change Committee Report

Local Energy

This report suggests that businesses, co-operatives, local authorities, schools and housing associations should be given financial support to install medium sized renewable energy generating systems such as solar arrays, wind turbines and district heating systems, because of the benefits that these projects can bring to communities and the whole country. The report includes discussion of:

- the benefits of giving local communities a stake in local energy projects;
- the potential barriers to implementing local energy projects;
- the support schemes which would act as an incentive to developing medium sized projects (10–50 Megawatt range); and
- the identification by local authorities of suitable areas for renewable energy development.

http://www.parliament.uk/business/committees/committees-a-z/commons-select/energy-and-climate-change-committee/news/local-energy-substantive/

19 National Grid Publication

Visual Impact Provision

The new price controls and incentives which have been agreed between National Grid and Ofgem, the electricity and gas markets regulator, for the period April 2013 to March 2021 include provision of £500 million for electricity transmission owners to mitigate the visual impact of existing electricity infrastructure in nationally protected landscapes. National Grid is responsible for mitigating the impact on National Parks and AONBs. This policy document sets out how it intends to achieve its objectives, including identifying a set of guiding principles, creating a Stakeholder Advisory Group which would consist of a group of stakeholders with national remits for England and Wales, and ways that it could engage with other stakeholders. Examples of how the fund could be used include:

- rerouting or rationalising existing lines;
- using alternative pylon designs, such as the T pylon;
- landscaping enhancements;
- screening substations or overhead lines from key public viewpoints; and
- replacing existing overhead lines with underground cables.

http://www.talkingnetworkstx.com/downloads.aspx

20 High Court

Right of way – whether tenant using right of way outside scope of grant

**BRITISH MALLEABLE IRON COMPANY LTD V REVELAN (IOM) LTD [2013] PLSCS 202 – Decision given 06.08.13

Facts: BMIC was the freehold owner of the only vehicular access into an industrial estate owned by R. BMIC had granted R a right of way, over the road for so long as the site was used for industrial units or for such other use to which it consented. The grant also provided that the entrance gates were to be kept closed (other than for access and egress) between the hours of 18.00–06.30 Monday to Friday and at all times on Saturdays, Sundays and bank holidays. One of R's tenants operated a six day a week warehousing business involving delivery of parts at short notice, including on Saturdays.

Point of dispute: Whether R should be granted its application for summary judgment in respect of BMIC's claim for an injunction restraining them from using the right of way on Saturdays and for damages. BMIC alleged that the use made by R of the right of way was outside the purposes permitted on the true construction of the deed and/or it was excessive. R alleged that the BMIC had no reasonable prospect of success if the matter were to go to trial.

Held: R's application was granted.

i. In construing the grant of a right of way the court had to identify the meaning objectively conveyed by the deed of grant to a reasonable person having the background knowledge available to the parties at the time when it was executed. However, where a document was available to the public, extrinsic evidence not readily available to third parties should not be allowed to affect the conclusion that a reasonable reader would reach as its meaning. (Cherry Tree Investments Ltd v Landmain Ltd [2012] 2 EGLR 141). R's title to the industrial estate was registered which meant that a copy of the deed of grant was filed at the Land Registry; the rights it granted therefore fell within the Cherry Tree principles.

ii. On the facts, it was clearly not the case that the gates had to be closed at all times on Saturdays, Sundays and bank holidays because the words "other than for access and egress" applied to those times. There was no basis for construing "access and egress" as limited to "fairly infrequent use by staff and management", and nor was there any quantitative limit on the amount of use in the grant.

iii. There was no reasonable prospect that BMIC's claim would succeed and summary judgment was given to R.

21 Court of Appeal

Nuisance – flooding from the highway during periods of heavy rainfall – highway authority's duty of care

*VERNON KNIGHT ASSOCIATES V CORNWALL COUNCIL [2013] PLSCS 205– Decision given 30.07.13

Facts: VK's property adjoined a highway, near to a dip in the road where water collected during periods of heavy rainfall; if the water was not carried away by drains it would overflow onto VK's property. A series of drains, gullies and catchpits constructed by CC, the highway authority, in the dip was sufficient to remove the excess water, but only if the gratings were kept clear. In November 2006 and September 2008 VK's property suffered extensive flood damage from water which ran off the highway during heavy rainfall after the gratings became blocked.

Point of dispute: Whether CC's appeal would be allowed against the finding of the court below that it was liable to pay damages to VK in nuisance and negligence and because it was in breach of its duty to maintain the highway under s41(1) of the Highways Act 1980. The judge found that: (i) CC's system for identifying flooding hotspots was flawed and there was no standard procedure for them to be checked by maintenance teams during bad weather; (ii) despite those flaws the system had worked in the past because the person who checked the area around VK's property had performed the necessary checks on his own initiative; but (iii) his failure without any reasonable explanation or excuse to perform any checks on the occasion of the 2006 and 2008 incidents amounted to a breach by CC of its duty to VK as an adjoining landowner.

Held: CC's appeal was dismissed.

- A landlord owed a "measured duty" in both negligence and nuisance to take reasonable steps to prevent natural occurrences on his land from causing damage to neighbouring properties.
- To determine the measured duty the court had to consider what was fair, just and reasonable as between two neighbouring landowners, having regard to all the circumstances, such as the extent of the foreseeable risk, the available preventive measures, the costs of such measures and the resources of both parties.
- Relevant factors in this case included: (i) most of the floodwater came from a third party's land; (ii) CC was an adjoining owner only because it was a highway authority, and had many competing demands on its resources; (iii) CC had an adequate system in place; (iv) R had caused or contributed to the flood damage by failing to clear the gratings itself.
- The judge had taken all the relevant factors into account. He had properly highlighted the most significant ones and had been entitled to treat as critical the fact that on two occasions the person responsible for clearing the drains had failed to attend the hotspot during exceptionally heavy rainfall. Notwithstanding the pressures on local authorities, the measured duty on CC required it to take reasonable steps to keep the drainage installation functioning properly. While there were limits that could be expected from local authorities in relation to flood prevention, the standard of care that the judge had applied in this case was not too high.

LONDON

22 GLA Publication

Using Local Powers to Maximise Energy Efficiency Retrofit Toolkit

This toolkit has been produced as the result of the Mayor of London's project to work with boroughs in order to identify the best way of using local powers to maximise energy efficiency retrofit in London. Despite the significant benefits of energy efficiency retrofit (making homes cheaper to heat reduces fuel poverty and its health impacts while energy efficiency projects can regenerate entire communities) London has struggled to attract retrofit funding. The aim of this toolkit is to help London's councils identify and implement solutions to help attract investment and delivery for energy efficiency measures.

http://www.london.gov.uk/priorities/environment/publications/using-local-powers-to-maximise-energy-efficiency-retrofit#sthash.yc2ycbut.dpuf

23 GLA Publication

Guidance on greenhouse gas accounting and reporting for the construction industry

To limit further climate change in London and globally, the Mayor has set a target to reduce London's Scope 1 and Scope 2 CO2 emissions by 60% of 1990 levels by 2025. Construction works, particularly refurbishment, are a central focus of the GLA's "Delivering London's Energy Future: The Mayor's climate mitigation and energy strategy". This report has been framed as a series of recommendations accompanied by supporting information which, if followed, will improve the ease and consistency of the account and reporting of embodied emissions within the construction sector.

http://www.london.gov.uk/priorities/environment/publications/guidance-on-greenhouse-gas-accounting-and-reporting-for-the#sthash.mDtQux0M.dpuf

TRANSPORT

24 Department for Transport publication

Briefing on the government's ambition for cycling

In its 2013 Spending Review, the Government announced a significant package of investment in the transport network reflecting its long–term commitment to tackle congestion, unlock development and support growth. Investing in cycling is a key part of its wider programme and considerable sums have already been allocated to it. On 12.08.13 it was announced that an additional £114m would be invested in cycling and the Government has also announced policy commitments to cycle–proof roads, increase the number of children cycling to school and investigate the creation of a new long–distance cycleway. This briefing document provides further detail about each of these elements.

https://www.gov.uk/government/publications/cycling-governments-ambition-and-funding

GENERAL

25 Centre for Social Justice (CSJ) Report

Turning the Tide: Social justice in five seaside towns

This report examines how social breakdown has affected five seaside towns: Rhyl, Margate, Clacton–on–Sea, Blackpool and Great Yarmouth. The rise in cheap travel to foreign destinations in the 1970s hugely affected Britain's "bucket and spade" holiday destinations, which suffered permanent loss of business and jobs. On the key measures of poverty i.e. school failure, teenage pregnancy, addiction, fatherlessness and lone parenting, and unemployment, some of these resorts now have problems which are as severe as deprived inner city areas. Low property prices have led to them being used to house vulnerable groups such as children in care and ex–offenders. Low income groups such as pensioners and young unemployed people have also moved in and there are high levels of houses in multiple occupation. This report outlines details of some of the work that charities, schools and councils are doing to try and deal with these problems and considers further measures that need to be taken to help these towns recover. The CSJ will revisit these themes as part of its Breakthrough Britain II research.

http://www.centreforsocialjustice.org.uk/publications/turning-the-tide-social-justice-in-five-seaside-towns

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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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One of our key roles at Gerald Eve Research is to communicate with our clients and others; to inform them, for example, on our latest thinking on topical issues such as legal matters and the implications for broader property market trends.

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EVEBRIEF

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SCOTLAND

PLANNING

01 Scottish Assembly Government Circular

(Draft) Planning Circular: The relationship between the statutory land use planning system and marine planning and licensing

This Circular explores the links between the marine and terrestrial planning system, including related regimes such as marine licensing and consenting for offshore energy generation, ports and harbours development, and aquaculture and provides guidance about joint working.

http://www.scotland.gov.uk/Publications/2013/07/6666

02 Scottish Assembly Government Consultation

Planning Scotland's Seas: Draft Sectoral Marine Plans for Offshore Renewable Energy in Scottish Waters: Consultation Paper
Deadline for Comments: 13.11.13

These Plans represent the Scottish Ministers' proposed spatial policy for the development of commercial scale offshore renewable energy at a national and regional level. A marine planning approach has been used, giving consideration to the resources and key constraints before applying social, economic and environmental assessments to inform the development of options contained within the Draft Sectoral Marine Plans.

http://www.scotland.gov.uk/Publications/2013/07/8702

GERALDEVE

NORTHERN IRELAND

PLANNING

03 Statutory Instrument

NISR 210 The Planning (General Development) (Amendment No.2) Order (Northern Ireland) 2013

This Order which comes into force on 30.08.13 amends the 1993 Order by:

- providing that the 1993 Order cannot grant planning permission for development falling within the scope of the EIA Regulations unless the Department of the Environment has determined that the proposed development is not EIA development; and
- amending by substitution Part 6 of Schedule 1 to the 1993 Order. The main changes are an increase of the size limitation of permitted development rights for agricultural buildings from 300m2 to 500m2 and the introduction of new permitted development rights for anaerobic digesters on agricultural units.

http://www.legislation.gov.uk/nisr/2013/210/contents/made

04 Northern Ireland Assembly Government Consultation

(Draft) 'Living Places' An Urban Stewardship and Design Guide for Northern Ireland
Deadline for Comments: 31.10.13

This guide aims to establish key principles behind good place making, and to inform and inspire all those involved in the process of managing and designing urban places with a view to raising standards across Northern Ireland. The focus of the guide is urban areas recognising the wider economic, cultural and community benefits of achieving excellence in the stewardship and design of cities, towns, villages and neighbourhoods.

http://www.planningni.gov.uk/livingplaces