

EVEBRIEF

Legal & Parliamentary

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NO END IN SIGHT



Hilary Wescombe
Editor

Item 14 is a case arising from fire damage to a shopping centre which was alleged to have been more severe than it should have been. The owner of the centre brought in an expert in 2006 and mediation took place in 2012. As it was unsuccessful the owners' expert asked to be released. The defendant resisted that application saying there was no good reason and that the owners were 'expert shopping'. After all, he was only 74 and wanting to retire with no end to the case in sight.

Item 10 concerns the modification of restrictive covenant imposed by a conveyance from the city council which limited the use of a building to a private dwelling house. The applicants purchased the house with a view to using it as a mosque for which planning permission was not required. The decision set out, among other things, that while the covenant gave the council practical benefits these were not sufficiently substantial. The covenant was held to restrict a reasonable use of the land despite considerable local opposition to the mosque. No doubt this local opposition will question the terms 'substantial' and 'reasonable'.

Item 13 summarises the GLA report on consumer expenditure and comparison goods floor space need in London. At 942,000 sq m net by 2036 this seems a huge figure but is actually significantly scaled back compared to the figures produced in 2009 due to a weak Europe, reduced domestic spending power and continuing growth of on-line sales. The report also forecasts the growth of larger retail centres and further decline of high streets.

A handwritten signature in black ink that reads "Hilary Wescombe".



GERALDEVE

LANDLORD & TENANT

01 Court of Appeal

Trespass by air-conditioning units installed on roof – damages

* EATON MANSIONS (WESTMINSTER) LTD V STINGER COMPANIA DE INVERSION SA
(2013) PLSCS 257 – Decision given 30.10.13

Facts: SCI was the lessee of two flats in a large London mansion block; EMW was the head lessee. In 2007 SCI installed air-conditioning apparatus on the roof of the building without EMW's consent. In proceedings between the parties, it was held both at first instance and on appeal that the presence of air-conditioning apparatus on the roof by SCI was a trespass since the roof belonged to EMW. SCI sold the flats in 2010.

Point of dispute: Whether EMW's appeal would be allowed against the High Court judge's award of £6,000 damages. The judge found that this was the sum that would have been agreed in hypothetical negotiations between the parties for the grant of a temporary licence permitting SCI to retain the units for the period of the trespass to March 2010. He rejected EMW's claim for aggravated or exemplary damages on the ground that these were designed to compensate a claimant for distress or injury to feelings which did not apply to a company. EMW contended that: (i) the relevant licence for the purpose of the hypothetical negotiations should have been a permanent licence for the remaining term of the leases; and (ii) the judge had erred in refusing to award aggravated damages.

Held: The appeal was dismissed.

- i. This was a case where the trespass was not a permanent one. In assessing damages, the court had to have regard to the actual period of the trespass and treat the parties as having negotiated for a licence on that basis. The claim in damages was not for the loss of an opportunity to negotiate a substantial fee for the grant of a long term right but was limited to recovering what SCI would have paid for the rights it had illegally obtained. The trespass had ceased in 2010 when it sold the flats and the purchasers had to negotiate their own permission.
- ii. Aggravated damages could not be awarded unless the defendant's conduct had injured some subjective feelings of the claimant, which excluded a claim by a company.

02 Guidance Note

Draft Tenants' Charter: Guidance note for discussion

This charter is aimed at landlords and tenants in the private rented sector. It sets out what tenants should expect from their landlords and what action to take if they find that they are paying hidden fees or suffering from poor standards of accommodation. The guidance relates only to Assured Shorthold Tenancies.

<https://www.gov.uk/government/publications/draft-tenants-charter-guidance-note-for-discussion>

03 Government Response to CLG Select Committee Report

Government response to the Communities and Local Government Select Committee Report: The Private Rented Sector

The Communities and Local Government Select Committee has recently conducted an inquiry into the private rented sector. Its report was published on 18.07.13. The Committee made 44 recommendations and the Government's response to each of these is set out in this document.

<https://www.gov.uk/government/publications/the-private-rented-sector-government-response-to-the-communities-and-local-government-select-committee-report>

PLANNING

04 Court of Appeal

Lawfulness of grant of planning permission

*R (ON THE APPLICATION OF LANNER PARISH COUNCIL) V CORNWALL COUNCIL
(2013) PLSCS 254 – Decision given 25.10.13

Facts: In November 2011 CC granted planning permission for a development of 25 affordable housing units on a greenfield site outside the village of Lanner near to Redruth. In reaching their decision, CC took into account the draft local plan whose policy was to discourage affordable housing development outside towns and villages, with the exception of small schemes of no more than 12 houses, to meet local need. In their stated reasons for granting the permission, CC indicated that the development was in accordance with that policy.

Point of dispute: Whether LPC's appeal would be allowed against the decision of the judge in the court below, who dismissed its application by way of judicial review to quash the grant of planning permission on the grounds that CC had misunderstood and misapplied the draft local plan policy. The judge found that CC was aware that the development did not accord with the policy in the draft local plan, but had lawfully exercised its discretion to approve the development notwithstanding non-compliance, and had had sufficient evidence of housing need to take this stance. In the meantime, CC issued a new grant of planning permission for the development, the validity of which was not disputed.

Held: The appeal was dismissed. Although it had not been adopted, the policies of the draft local plan were still material considerations. The weight that CC's planning committee accorded to them was a matter for them; however, it was clear from the planning officer's report and CC's stated reasons for the decision, which were public documents, that they had misunderstood the policy as they had treated it as favouring the grant of permission when in fact it did the contrary. CC should not have been permitted to rely on evidence that contradicted those official documents; additionally, the judge should not have accepted such evidence in preference to CC's own official records. However, since the November 2011 planning permission was no longer operative, it was not appropriate to quash it. The remedy of a quashing order was a discretionary one which the court would not make if it served no useful purpose. Additionally, CC had sufficient information about local housing needs for it to grant the permission in November 2011.

05 Administrative Court

Conditions in planning permission for retail park containing restrictions on non-food sales – claimant seeking certificate of lawfulness of proposed use or development including food – whether inspector misconstruing restrictive condition attached to planning permission – whether Sec of State acting consistently

*ROYAL LONDON MUTUAL INSURANCE SOCIETY V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2013) PLSCS 242 – Decision given 16.10.13

Facts: The 1999 planning permission for a retail business park contained a condition confining sales to specified bulky goods and a restriction relating to non-food sales to ensure that the scheme did not impact on the town centre. RLMIS applied to the Sec of State for a certificate of lawfulness of proposed use or development for all the units for the sale of any goods, including food, within Class A1 of the Town and Country Planning (Use Classes) Order 1987 ("the Use Classes Order"). This was refused on the grounds that the condition was valid and restricted sales to non-food and bulky goods.

Point of dispute: Whether to allow RLMIS's application to quash the Sec of State's decision upholding the lpa's refusal to issue the certificate. It contended that: (i) the inspector had misconstrued the condition attached to the grant of permission and its wording was insufficient to exclude the uses set out in Class A1 of the Use Classes Order; and (ii) the Sec of State had breached his duty to act consistently as a different inspector working on a case at the same time had granted a certificate of lawful development on a similar condition finding that it did not impliedly exclude the operation of the 1987 Order.

Held: The application was dismissed.

- i. As a general rule a planning permission was to be construed together with any conditions and the express reasons for imposing them. To exclude the operation of the Use Classes Order, a condition had to be imposed in clear and unequivocal terms, and in this case the disputed condition imposed a clear restriction on non-food sales. The wording was clear enough impliedly to exclude the operation of the Use Classes Order and the inspector had been correct to come to that conclusion.
- ii. The interpretation of the condition was a matter of law and the inspector had reached the right conclusion; a decision to a different effect in another case would not have made any difference to her decision. Although the inspectorate could make a general check for outstanding appeals near to the appeal site, these two cases were in different local authority areas and concerned a certificate of lawful existing use and one of lawful proposed use.

06 Administrative Court

Redevelopment of Earls Court – Validity of opportunity area joint supplementary planning document (SPD)

*WEST KENSINGTON ESTATE TENANTS AND RESIDENTS ASSOCIATION V HAMMERSMITH AND FULHAM LONDON BOROUGH COUNCIL (2013) PLSCS 237 – Decision given 09.10.13

Facts: A major redevelopment of the Earl's Court area was planned which would include regeneration of a large area of land and buildings. The claimant resident associations (RA) represented 1700 people who lived on the estates who opposed the redevelopment and they challenged the Earl's Court and West Kensington Opportunity Area Joint Supplementary Planning Document ("SPD") which had been adopted by HFLBC in March 2012. The Mayor of London, on behalf of the Greater London Authority, had indicated his intention to adopt the SPD as supplementary planning guidance.



Point of dispute: Whether RA's application would be allowed. RA contended that:

- i. the SPD should have been prepared as an area action plan under Regulation 6 of the Town and Country Planning (Local Development) (England) Regulations 2004;
- ii. when HFLBC adopted the SPD they had erred in their approach to the provision of affordable housing and, in particular, the use they made of a study of economic considerations, the "Estates Regeneration Economic Appraisal" ("EREA");
- iii. the SPD did not conform with the development plan in its provisions for social housing; and
- iv. the SPD ought to have been subject to strategic environmental assessment ("SEA") and complied fully with the SEA regime, but it did not.

Held: The application was allowed in part.

- i. When HFLBC had adopted the SPD, the development plan process had already achieved the identification of the relevant area of significant change; the identification of the opportunity area or the housing estates as an area of significant change had occurred in the development plan. Therefore the SPD was a supplementary planning document, not an area action plan, and HFLBC could not be said to have acted irrationally since they had not set out to produce such a plan. HFLBC had not been obliged to produce an area action plan for the opportunity area or any part of it and the SPD had fulfilled its role in providing guidance supplementary to the development plan without usurping the role of the plan.
- ii. HFLBC had not erred in its approach to the provision of affordable housing. The development plan policies were flexible with regard to affordable housing and they put the onus on a developer to satisfy the decision-maker that his project would not be worth his while if more affordable housing had to be provided, as well as any other benefits or infrastructure whose cost he would be expected to bear.
- iii. The guidance in the SPD relating to housing, affordable housing and social rented housing was wholly consistent with the policies of the London Plan and HFLBC's core strategy.
- iv. SEA had been undertaken both for the core strategies and for the SPD. The SEA conducted for the SPD had been an adequate and lawful assessment sufficient to complement the SEA undertaken for the London Plan and the core strategies. However, there was a defect in its approach to the statutory requirements and the claim would succeed to the extent of requiring HFLBC to issue a statement complying with the requirements of the SEA.

07 CLG Publication

Department for Communities and Local Government memorandum: post legislative scrutiny Planning Act 2008

Government departments are required to carry out a review of any legislation between three and five years after it comes into force to determine whether it is working as envisaged and to inform the development of future legislation. This memorandum provides the Communities and Local Government Departmental Select Committee with the Department's post legislative scrutiny assessment of the Planning Act 2008, reflecting the changes that were made to that Act made by the Localism Act 2011 and the Growth and Infrastructure Act 2013.

<https://www.gov.uk/government/publications/department-for-communities-and-local-government-memorandum-post-legislative-scrutiny-planning-act-2008>

08 CLG Invitation letter

Sustainable Communities Act 2007: invitation to town and parish councils

The Sustainable Communities Act 2007 gave local authorities the power to submit proposals about any social, economic and environmental improvements that they would like introduced in their areas. Following the extension of this power to town and parish councils from 14.10.13, this letter invites them to submit proposals under the Act giving these councils the opportunity to engage with their local communities and to ask them what improvements they would like to be made.

<https://www.gov.uk/government/publications/sustainable-communities-act-2007-invitation-to-town-and-parish-councils>

09 Government Response to Consultation

Community Infrastructure Levy – consultation on further Regulatory Reforms

CIL was introduced in 2010 and the current package of proposed amendments aims to improve the way in which it operates and to ensure that its potential as a fair and efficient means of ensuring that new developments contribute to essential supporting infrastructure is fully realised. Having regard to the results of this consultation the Government is now taking steps to implement regulatory amendments in line with the majority of proposals as set out in the consultation document, including the proposed exemption from CIL for self-build homes.

The following are areas where the Government is responding to views submitted by taking forward regulatory amendments with variations from the consultation proposals:

- extending the vacancy test to cover buildings that have been in use for a continuous period of six months in the last three years;
- extending the proposal to allow credit where CIL has already been paid and the proposed development is changed;
- exempting highway agreements relating to the trunk road network drawn up by the Highways Agency, Transport for London or Welsh Ministers from proposals to restrict the use of highway agreements;
- not extending the consultation period on the draft charging schedule from four to six weeks;
- continuing to enable authorities to determine at their own discretion how to consult on any amendments to their Regulation 123 lists;
- not replicating in the levy regulations, in relation to “in kind” payments, the EU procurement limits applied in other regulations; and
- exempting residential extensions and annexes from the levy.

<https://www.gov.uk/government/consultations/community-infrastructure-levy-further-reforms>

REAL PROPERTY

10 Upper Tribunal: Lands Chamber

Modification of restrictive covenant to permit use of dwellinghouse as a mosque and madrasah

**RE TRUSTEES OF THE GREEN MASJID AND MADRASAH'S APPLICATION
(2013) PLSCS 243 – Decision given 17.09.13

Facts: The applicants acquired the freehold of a property in Birmingham which they wished to use as a mosque and madrasah school. A restrictive covenant, originally contained in a 1967 conveyance from the city council, limited the use of the premises to a private dwellinghouse or for various professional practices, this covenant being for the benefit of so much of the council's “adjoining or adjacent land ... as is capable of being benefited thereby”. Nearby properties which the council owned included a community centre, a common and an adjacent property let to a tenant as well as other residential properties in neighbouring streets. In 2009 the council indicated that planning permission was not needed for the proposed change of use, but it subsequently refused to vary the covenant. The applicants nonetheless proceeded to use the property as a mosque and madrasah and the council's application for an injunction was stayed pending determination of the s84(1) Law of Property Act 1925 application to modify the restriction.

The applicants relied upon the grounds in s84(1)(aa) that the covenant impeded a reasonable use of the land and did not secure to the council any practical benefits of substantial value or advantage. They argued that the mosque was needed to cater for a large number of Muslim residents in the area and that their property was the only suitable and available one.

Point of dispute: Whether the application to modify the restrictive covenant would be allowed. The council argued that the use of the premises gave rise to traffic and parking problems and noise complaints. The applicants contended that the purpose of the restriction was not to protect the public interest but to benefit the council's adjoining and adjacent land which was unaffected by their use of the property.

Held: The application was allowed.

- Local authorities could have the benefit of a restrictive covenant as owners of the land to which it was annexed. The fact that the council retained extensive land holdings in the vicinity of the applicants' land was not sufficient to give their objection the status of having been made by a custodian of the public interest. The council's objection had to be considered in terms of the land that was specified as having the benefit of the covenant. The expression “adjacent” in the context of the covenant required a degree of proximity that was limited to those properties that were capable of benefiting from the restriction. As the council's main concern was on-street parking and this affected the properties which they owned in nearby streets, these should also be regarded as adjacent land with the benefit of the covenant.
- The restriction impeded the reasonable use of the applicants' land. That use was in accordance with local planning policy and the fact that it was very unpopular with local residents did not mean that it was unreasonable. Although the restriction did secure practical benefits to the council in respect of some of its adjoining and adjacent properties by preventing the parking of additional cars on-street at times when the property was being used as a mosque or madrasah, those practical benefits were not of substantial value or advantage. The grounds in s84(1)(aa) were made out.
- It was not appropriate for the tribunal to exercise its discretion to refuse modification on the grounds of the applicants' wilful breach of covenant. Their conduct was mitigated by two factors: (i) the applicants were charitable trustees using the property to satisfy what they saw as an urgent need for a place of religious worship; and (ii) in the absence of legal advice they had made a common mistake of assuming that because their application for planning permission had been granted, the request to modify the covenant would also be allowed, particularly in view of the fact that the planning authority and the beneficiary of the covenant were one and the same. The covenants would be modified to allow the property to be used as a mosque and madrasah, subject to various conditions about noise and parking.



TORT

11 Court of Appeal

Negligence – causation – whether local authority negligent in failing to take steps to prevent damage to property from poplar tree roots

*ROBBINS V BEXLEY LONDON BOROUGH COUNCIL (2013) PLSCS 244 – Decision given 17.10.13

Facts: R owned a semi-detached house in a row of properties backing onto a park owned by BLBC. Along the boundary of the park there was a line of poplar trees, approximately 30m from the rear of the houses. In September 2003, R noticed damage to the rear of her property. Although BLBC ordered the trees to be crowned in July 2004 and again in 2005 this was not done and R's property suffered further damage in the summer of 2006. Following extensive crown reduction much less damage occurred the following summer. R's claim in damages against BLBC for negligence in failing to prevent the poplar trees from causing damage was allowed. The judge found that by 1998 it was foreseeable that R's property could be damaged by the poplar roots and thereafter it should have carried out a programme of cyclical 25% crown reduction every three to four years.

Point of dispute: Whether BLBC's appeal against the judge's decision should be allowed. BLBC argued that the judge had not asked the correct questions when establishing whether there had been a breach of duty and causation.

Held: The appeal was dismissed. It was common ground that as from 1998 BLBC was under a duty to take such steps as were reasonably required to prevent damage being caused to R's property by the poplar tree roots. The duty was not to undertake any specific programme of works and the programmes mentioned by the judge were just various possible ways in which the council could have discharged its duty. Having found that BLBC's breach of duty consisted of doing nothing, the judge then had to ask what would have happened if it had done something, and what they would in fact have done. The judge had correctly applied the causation test to the breaches of duty that he held to have been established.

CONSTRUCTION

12 British Council of Offices Report

Building Information Modelling (BIM) for Commercial Office Buildings

BIM is transforming how buildings are designed, constructed and operated. The greatest value presently being realised from BIM in the commercial office sector is through de-risking construction. The BIM process delivers fully coordinated design at an earlier point in the construction process, significantly reducing uncertainty and allowing faster construction with less waste of material and time. The document is available for purchase or download by BCO members.

<http://www.bco.org.uk/Research/Publications/Building-Information-Modelling-for-Commercial-Office-Buildings.aspx>

LONDON

13 Greater London Authority (GLA) Report

Consumer Expenditure and comparison Goods Floorspace Need in London – Summary Report October 2013

Government policy in the National Planning Policy Framework requires the GLA and boroughs to assess the overall need for additional floorspace for economic uses, including retail and leisure development. This study assesses the scale and nature of consumer expenditure in London for comparison goods retail, convenience goods retail, and other expenditure, including leisure, over the period from 2011 to 2036. It focuses on strategic requirements for comparison goods retail floorspace need in London. The report forecasts a rise in comparison goods retail expenditure in London from £18.566 billion in 2011 to £39.202 billion in 2036.

- Taking into account growth in consumer expenditure and the move towards internet/ multi-channel retail purchasing, it is estimated that London will need an additional 2.2 million sq m of comparison goods retail floorspace to 2036, or 942,000 sq m net after taking into account vacant space.
- Taking into account current committed developments, London still has a gross need for an additional 1.6 million sq m of comparison goods retail floorspace to 2036, or 370,000 sq m net.

The results of this study will make a direct contribution to potential further alterations to the London Plan. The detailed consumer expenditure estimates and comparison goods retail floorspace need estimates will inform the work of the Outer London Commission, Supplementary Planning Guidance on Town Centres and the Central Activities Zone, and provide the strategic context for town centre and retail policies in London boroughs' Local Plans.

<http://www.london.gov.uk/priorities/planning/publications/consumer-expenditure-and-comparison-goods-retail-floorspace-need>

GENERAL

14 Technology and Construction Court

Shopping centre suffering serious fire damage – expert shopping – whether claimants to be allowed to appoint new expert

*BMG (MANSFIELD) LTD V GALLIFORD TRY CONSTRUCTION LTD (2013) PLSCS 255 – Decision given 24.10.13

Facts: BMG owned a large shopping centre which was badly damaged by a fire in October 2004. It argued that the fire spread much further than it should have done, and consequently caused more damage due to inadequate fire protection in the roof space and eaves canopies. The first defendant, GTC, was a design-and-build contractor which engaged a firm of architects (“the second defendant”) to perform its design obligations. BMG engaged S, an architectural expert, whose report was disclosed to GTC on a without prejudice basis in November 2006. The claim form was not issued until October 2010 and, following an unsuccessful mediation in May 2012, S notified BMG that he no longer wished to act as their expert.

Point of dispute: Whether BMG’s application to the court for permission to call evidence from a fresh expert architect would be allowed. GTC resisted the application as it considered that no good reason had been shown for S wishing to withdraw as an expert other than merely a personal preference, and that there had been “expert shopping” to which the appropriate response was to require disclosure of all the former expert’s undisclosed reports as a condition for permission to call the new expert.

Held: The application was granted.

- i. It was not unreasonable for an expert who wished to retire to ask to be relieved of his duties in a case which had gone on for many years and which did not have a foreseeable end in sight.
- ii. CPR 35.4(1) provided that no party could call an expert or put in evidence an expert report without the court’s permission. The court had power to grant permission on condition that BMG disclosed any previous reports they had obtained from S. It did not necessarily matter whether the former expert was instructed to prepare a report before the issue of proceedings or after it.
- iii. The disclosure of such documents as solicitors’ attendance notes or telephone calls with the expert which recorded the substance of his opinions were privileged and there would have to be a very strong case to justify a condition that these should be disclosed in addition to any reports or draft reports by the expert. This was not a case of “expert shopping” and there was no evidence that the new expert had been approached at any time before S had asked to be released from the case. This was not a case where the court was prepared to order disclosure of all attendance notes in which S’s opinions on any matter in issue had been recorded. However, BMG would be ordered to disclose any other report or document provided by S in which he had expressed opinions or indicated the substance of his opinions.

- iv. The evidence of the new expert was admissible in relation to the claim against the second defendant architect because he was an architect.

15 College of Estate Management (CEM) Research Paper

Grey Water for UK Housing

This research report examines the case for grey water recycling – re-using “grey water” from showers, baths and wash basins. The report argues that this could make a major contribution towards cutting water consumption in the UK, but as grey water recycling systems are currently expensive and not widely used it calls on the Government and water companies to do more to explain the benefits and importance of grey water recycling to the public.

<http://www.cem.ac.uk/research/reports-publications/grey-water-for-uk-housing.aspx>

16 British Council of Offices Report

Property Data Report 2013

This document which sets out key facts about the commercial property sector is available for purchase or can be downloaded by BCO members.

http://www.bco.org.uk/Research/Publications/Property_Data_Report_2013.aspx

17 Defra Publication

The National Flood Emergency Framework for England

The Environment Agency’s national assessment of flood risk (updated in August 2013) indicates that:

- one in six homes in England is at risk of flooding;
- over 2.5 million properties are at risk of flooding from rivers or the sea in England, of which half a million are at significant risk;
- one million of these properties are also vulnerable to surface water flooding and a further 2.8 million properties are susceptible to surface water flooding alone; and
- some communities also face significant risk of groundwater flooding and water from failed or overflowing reservoirs.



The concept of a National Flood Emergency Framework was promoted by Sir Michael Pitt in his report on the summer 2007 floods with the purpose of providing a policy framework for flood emergency planning and response. It brings together information, guidance and key policies and is a resource for all involved in flood emergency planning at national, regional and local levels. The Framework aims to:

- ensure that delivery bodies understand their roles and responsibilities;
- give everyone involved in an emergency flooding situation a common point of reference;
- establish clear thresholds for emergency response arrangements;
- place proper emphasis on the multi-agency approach to managing flooding events;
- provide clarity on the means of improving resilience and minimise the impact of flooding events;
- provide a basis for individual responders to develop and review their own plans; and
- be a long-term asset that will provide the basis for continuous improvement in flood emergency managements.

<https://www.gov.uk/government/publications/the-national-flood-emergency-framework-for-england>

18 Design Council Publication

A design-led approach to infrastructure

This guidance document relates to Nationally Significant Infrastructure Projects (NSIPs) for energy, transport, water, waste water and waste as defined in the Planning Act 2008. Schemes are deemed nationally significant once they are above a certain threshold in terms of size, energy output or capacity. Large infrastructure projects are often subject to a prolonged pre-construction process during the design, consultation and planning stages and strong local opposition often holds up projects.

A design-led approach that takes geographical context into account will ensure that these projects sit well in their surroundings allaying local community concerns. The design guidance is based on ten design principles which are intended to help NSIP applicants design successful proposals, as set out in the criteria for good design in the National Policy Statements. NSIPs must make design an integral part of the planning process and demonstrate that good design and the concerns of communities and stakeholders have been taken into account in the planning process.

http://www.designcouncil.org.uk/Documents/Documents/Publications/DEC_Cabe_Guidance_A4.pdf

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Abbreviations

The following abbreviations are used in evebrief:

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

The star system

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

- *** Essential reading on the point of law or valuation with which the case is concerned, because it adds to, or clarifies or changes, the law.
- ** Noteworthy case which does not significantly alter the law or which relates to a relatively obscure point.
- * Interesting but non-essential reading.

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EVEBRIEF

Legal & Parliamentary

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SCOTLAND

PLANNING

01 Consultation

Draft Scottish Planning Policy – “Sustainability and Planning” Deadline for Comments: 16.12.13

A review of Scottish Planning Policy was announced in the Scottish Parliament in September 2012 with the aim of bringing the policy up to date, focus it on sustainable economic growth and with an emphasis on place making. Following consultation on the draft SPP between April and July 2013, the Scottish Government is now considering replacing the Draft SPP principal policies on “sustainable economic growth” and “sustainable development” with a principal policy on “Sustainability and Planning” and introducing a presumption in favour of sustainable development into the SPP.

<http://www.scotland.gov.uk/Publications/2013/10/3406>

WALES

PLANNING

02 Letter to Chief Planning Officers

Mobile Infrastructure Project (MIP): Information for planning services

MIP is a UK wide infrastructure project for the provision of mobile mast infrastructure. The project is being supported by the four main mobile network operators to ensure that they will all install their equipment on each MIP mast. This letter to Chief Planning Officers provides information about the potential implications of MIP for the planning services in Wales.

<http://new.wales.gov.uk/topics/planning/policy/dear-cpo-letters/mobine-infrastructure-project-letter/?lang=en>



GERALDEVE

CONSTRUCTION

03 Statutory Instrument

WSI 2013/2621 The Building (Amendment No. 2) (Wales) Regulations 2013

These Regulations, which come into force on 14.11.13, amend the 2010 Regulations substituting a new Schedule 3 in relation to Wales. Schedule 3 now includes additional bodies able to register persons authorised under the self-certification scheme provided by Regulations 12 and 20 of the 2010 Regulations.

<http://www.legislation.gov.uk/wsi/2013/2621/introduction/made>

ENVIRONMENT

04 Welsh Government Consultation

Environment Bill – White Paper Deadline for Comments: 15.01.14

This Paper sets out the Welsh Government's proposals for the Environment (Wales) Bill which will contain the legislative framework for managing Wales' natural resources. The bill includes proposals for a new area-based planning approach to natural resource management. The White Paper sets out the government's intended proposals on the following:

- providing a more integrated statutory framework for the sustainable management of natural resources;
- ensuring that Natural Resources Wales has the legislative tools to help enable them to implement integrated natural resource management;
- legislative provision to enable improvements in resource efficiency; and
- provisions to streamline and clarify a number of existing regulatory regimes.

<http://new.wales.gov.uk/consultations/environmentandcountryside/environment-bill-white-paper/?lang=en>

NORTHERN IRELAND

PLANNING

05 Planning Bill

Ministerial Statement on the Planning Bill

The Environment Minister announced on 22.10.13 his decision not to move the Planning Bill to Further Consideration Stage either now or in the future. The Minister confirmed that he had listened to and fully considered the views of a number of stakeholders on the Bill. He detailed his legal, procedural and evidential concerns on the amendments made at Consideration Stage in respect of Economically Significant Planning Zones and the restriction of the right to judicial review certain planning decisions. Having reflected at length on the intent of the Bill, the purpose of the significant amendments and the legal advice obtained by his predecessor, the Minister announced that he had decided not to move the Bill to Further Consideration Stage. The Minister also reiterated his commitment to continue to reform the planning system.

http://www.planningni.gov.uk/index/news/news_policy/smt-news-22.htm