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evebrief

Editorial



Steve Hile

As this is the first edition of Evebrief for 2008 I would like, on behalf of the Evebrief team, to wish all our readers a healthy and prosperous New Year.

Despite appearances, Government does not shut down over the holiday period and as you will see has been busy publishing the results of numerous consultation exercises and putting new matters out for consultation.

We report at item 12 the Government's response to the consultation exercise on 'modernising' Empty Rate Relief, that is in much the same way they have 'modernised' other taxes! There were no real surprises in the paper, although it should be noted that listed properties will retain their 100% relief from rates when empty. There was no word on anti-avoidance measures and whilst it is too much to hope that they have abandoned this as a bad idea, there is some hope that they will at least take their time before introducing further legislation.

At item 18 we report on the changes to Stamp Duty for zero-carbon emission homes that comes into effect in April. On its own it will have little impact on the environment or market but it is a step in the right direction.

Finally whilst on environmental matters it is worth noting that only 10% of readers now receive Evebrief in hard copy. If you would be happy to receive it electronically please email us at evebrief@geraldve.com. It is worth remembering that back issues are always available on our website.

Steve Hile

Government

01

CLG Consultation

The New Place Survey

Deadline for Responses: 08.02.08

This consultation invites comments on the Government's proposals for a new survey to be undertaken by local authorities. This will replace the Best Value User Satisfaction Survey, as well as the Planning, Benefits and Library surveys. As part of the new performance framework for local government, a new national indicator set has been announced which will be introduced from April 2008. The aim of this is to provide a single set of indicators reflecting national priorities across government and it replaces Best Value Performance Indicators.

<http://www.communities.gov.uk/documents/localgovernment/pdf/612732>

Landlord & Tenant

02

Court of Appeal

Dilapidations – measure of damages

**** RAVENGATE ESTATES LTD V HORIZON HOUSING GROUP LTD**

(2008) PLSCS 1 – Decision given 19.12.08

Facts: RE was the freehold owner of a building in Streatham, London SW16 part of which comprised six flats which were let to HH, a housing association. In the lease the demised property was described as "the rear section of the ground floor, the rear section of the first floor and the whole of the second and third floors." When HH's lease expired RE obtained vacant possession and planning permission to redevelop the flats and some of the associated airspace by building up from the flat roof of the second floor and on the area of the second and third floor balconies to produce a total of 14 flats. RE brought proceedings against HH for dilapidations. HH contended that the cost of remedial works would exceed the amount by which the value of the reversion had been diminished by the disrepair and that the damages should be capped at the latter amount in accordance with s18(1) of the Landlord & Tenant Act 1927; any potential purchaser would wish to redevelop the property in accordance with the planning permission and would therefore not require any reduction in price because of the disrepair. RE also submitted that notional development of the airspace could not be taken into account since the airspace fell outside HH's demise.

Point of dispute: Whether RE's appeal should be allowed against the lower court judge's ruling that damages should be capped at £61,349, a figure which was less than half the sum claimed by RE. The judge had ruled that the airspace was excluded from the demise but that it was appropriate to have regard to the prospects of redeveloping it in order to assess the diminution in value to the reversion. On appeal issues arose as to: (i) whether the airspace was included in the demise; and (ii) the effect of the potential development on the damages to be awarded.

Held: RE's appeal was dismissed.

- (i) On the correct construction of the lease the relevant airspace was included in the demise. The plans were intended to denote not only the volume occupied by the flats but also the volume occupied by the balconies and the airspace between the second floor roof up to the third floor roof level. The inference from the plans was that the entire volume of the building was intended to be included in the demise.
- (ii) The judge had been correct to find that any purchaser of the building would buy it with a view to redevelopment. Such a purchaser would not expect a reduction for the majority of the repairs. Therefore, the diminution in the value of the reversion caused by the disrepair was less than the cost of the repairs and that was the appropriate measure of damages.

Planning

03

Court of Appeal

Deemed consent for advertising hoardings – Town and Country (Control of Advertisement) Regulations 1992

** R (ON THE APPLICATION OF CLEAR CHANNEL UK LTD) V SOUTHWARK LONDON BOROUGH COUNCIL
(2007) PLSCS 260 — Decision given 13.12.07

Facts: In 1991 SLBC granted a two-year permission to CC's predecessor in title to retain seven advertising hoardings on land at St George's Circus, London SE1. By 1998 the display consisted of eight hoardings in different positions from before and at a higher level off the ground than the original display. SLBC considered that the displays had a damaging visual effect upon the area and served notices requiring their removal.

Point of dispute: Whether the hoardings enjoyed deemed consent under regulation 6(1) of and class 14 of schedule 3 of the Town and Country Planning (Control of Advertisements) Regulations 1992. Class 14 provided that a deemed consent would exist for "an advertisement displayed with express consent, after the expiry of that consent" and subject to the same conditions, provided that the site had been "continually used for the purpose since the expiry of the express consent". CC submitted that there was either a deemed consent for the hoardings or, if not, that there was a "right to revert" to the original display.

Held: CC's appeal was dismissed against the decision of the lower court judge to refuse judicial review of SLBC's notices requiring removal of the hoardings. The judge had found that a deemed consent under class 14 arose only where the site had been used continually to display advertisements in accordance with the express consent and not where the display had changed substantially, and that although one part of the site was being used lawfully that was not enough to maintain deemed consent in respect of the rest of the site. Accordingly he held that there was no deemed consent for most of the current display and no right to revert to the original configuration. There was no general right to revert within the law governing deemed consent. To enjoy deemed consent the seven hoardings had to fall within the description in class 14, ie advertisements displayed with express consent, and the express consent had been for the retention of the display that had been on the site at the time of the grant. For a deemed consent under regulation 6(1) and class 14 for a new hoarding it would have to be shown that the site had been used continually for the purpose for which express consent had been granted since that time.

04

Planning Policy Statement

Planning Policy Statement: Planning and Climate Change – Supplement to Planning Policy Statement 1

Planning Policy Statements (PPS) set out the Government's national policies on different aspects of spatial planning in England. This PPS on climate change supplements PPS1 by setting out how planning should contribute to reducing emissions and stabilising climate change and take into account the unavoidable consequences. It does not, however, seek to assemble all national policy relevant or applicable to climate change, and should be read alongside the national PPS/G series. Where there is any difference in emphasis on climate change between the policies in this PPS and others in the national series this PPS takes precedence.
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/614742>

05

CLG Consultation Paper

Consultation Paper on new Planning Policy Statement 4: Planning for Sustainable Economic Development **Deadline for Responses: 17.03.08**

This consultation paper seeks comments on a draft Planning Policy Statement on sustainable economic development. It has been developed in response to recommendations made in the *Review of Land Use Planning* by Kate Barker published in December 2006, a commitment made in the White Paper *Planning for a Sustainable Future* published in May 2007 and the proposals set out in the *Review of sub-national economic development and regeneration* published in July 2007.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/614685>

06

CLG Consultation Paper

Review of "Call-In" Directions **Deadline for Responses: 31.03.08**

This consultation fulfils the commitment contained in the Planning White Paper published on 21.05.07 to consult on measures intended to reduce the Sec of State's involvement in casework. The proposed changes will be achieved without amending either primary or secondary legislation and will take the form of directions contained within Departmental Circulars. In 2006-07 786 planning applications were referred to Government Offices as a result of directions. 36 of these referred applications were subsequently called in to be decided by the Sec of State following public inquiry, together with 15 further applications that were brought to Government Offices' attention by third parties. Although this means that of the 650,000 planning applications submitted each year in England less than 0.01% are called for a decision by the Sec of State, it is considered that some elements of the current directions appear to be an unnecessary burden in terms of financial and staffing resources for local planning authorities and Government Offices as well as causing uncertainty and delay for developers.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/callindirections>

07

CLG Guidance

The Validation of Planning Applications – Guidance for local planning authorities

As part of its drive to provide a quicker, more predictable and more efficient planning service the Government is introducing a new standard electronic application form for applications for planning permission made under the Town and Country Planning system and Listed Building Area consent regime. New information requirements are also being introduced for the validation of planning applications by local planning authorities. The Government intends to amend the Town and Country (General Development Procedure) Order 1995 to introduce a mandatory standard application form and associated information requirements for validation of applications from 06.04.08. This new guidance, which is designed to support the use of the standard application, outlines the information that should be supplied with planning applications specified in local lists. It implements s42 of the Planning and Compulsory Purchase Act 2004 and reflects Planning Policy Statements since March 2005.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/582764>

08

CLG Report

The Road Ahead: Final Report of the Independent Task Group on Site Provision and Enforcement for Gypsies and Travellers

The Government set up a Task Group on Site Provision and Enforcement in 2006 in the face of public concern about problems related to unauthorised encampments and developments by Gypsies and Travellers. At the same time, Gypsies and Travellers themselves were suffering disadvantage, with their education and health outcomes far poorer than for the settled community. The Group was established in order to try to find answers to the following questions:

- Why is it so difficult to take action against sites which cause such serious problems?
- What can be done to make the process faster and more effective?

This report covers the following areas:

- the national policy framework;
- enforcement action;
- site provision; and
- tackling social exclusion — the role of leadership and engagement

<http://www.communities.gov.uk/documents/housing/pdf/roadahead.pdf>

09

CLG Publication

Lawful Development Certificates — A User's Guide

The system of "lawful development certificates" enables local planning authorities, when the appropriate conditions are satisfied in each case, to grant a certificate which states that:

- an existing use of land, or some operational development, or some activity which is being carried on in breach of a planning condition, is lawful; or
- a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful

The purpose of this guide is to assist people who may be thinking of applying for a lawful development certificate or wishing to appeal against a planning authority's decision on an application for a certificate.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/600164>

10

CLG Report

Tackling overcrowding in England: An action plan

This report considers the effects that poor housing and overcrowding have upon the living standards of a family, children's educational development and their well-being. It outlines the measures that the Government has taken to date to alleviate overcrowding in some London boroughs, as well as the pathfinder schemes that it is proposing to undertake.

<http://www.communities.gov.uk/documents/housing/pdf/10.pdf>

11

CLG Statistics

Planning applications – Quarter three 2007, July to September 2007

In the third quarter of 2007 district planning authorities in England received 166,000 applications for planning permission, an increase of 6% compared with the corresponding quarter in 2006. All regions saw an increase in the number of applications received compared with the same quarter in 2006. The largest increases were seen in London (11%), East Midlands, the South East and Yorkshire and the Humber (all 6%). 159,000 planning applications were determined during this period, 3% higher than in the same quarter last year. Again, the largest increase was seen in London (8%).

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/602275>

Rating

12

CLG Response to Consultation

Modernising Empty Property Relief – Summary of consultation replies and Government response

The consultation paper "Modernising Empty Property Relief" invited views on detailed proposals for changes to the system of rating for unoccupied non-domestic properties. This followed the passing of the Rating (Empty Properties) Act 2007, which gives effect to the Government's reforms to relief from business rates in respect of empty properties, as announced in the 2007 Budget. The deadline for receipt of comments was 01.10.07 and this document summarises the responses to that consultation and sets out the Government's decisions on taking forward the detailed implementation of the reforms.

<http://www.communities.gov.uk/publications/localgovernment/mepresponse>

Construction

13

Transposition Note

Transposition Note for European Parliament and Council Directive 2002/91/EC of 16.12.02 on The Energy Performance of Buildings

This Transposition sets out the way in which Articles 3-6 of the Directive are to be implemented through the Building and Approved Inspectors (Amendment) Regulations 2006 in England and Wales only.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/144026>

14

CLG Consultation Paper

Energy Performance Certificates for Private Marketed Sales of Dwellings: Validity Period of Certificates Deadline for Comments: 06.03.08

The purpose of Energy Performance Certificates (EPCs) is to enable consumers to know how energy efficient their new home is and to ensure that they act upon the recommendations contained in the certificate. At present an EPC must not be more than ten years old but the Government is keen to shorten this time limit. The purpose of this consultation is to acquire evidence to support the argument for a shorter period between certificates. The consultation contains models of a range of options for the length of time for which an EPC should remain valid: three months, one year, three years, five years or seven years.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/593754>

15

CLG Report

Report on Carbon Reductions in New Non Domestic Buildings – Report from UK Green Building Council (UK-GBC)

The publication of the Code for Sustainable Homes sets out targets to achieve radical emissions reductions from new homes, and the purpose of this project was to add to the understanding of whether similar targets in the non-domestic sector can be set and achieved and on what timescale. The research, which was carried out by UK-GBC, attempted to find answers to the following questions:

- What is the total energy use in non-domestic buildings?
- Is it feasible to reduce the carbon emissions resulting from this energy use down to zero?
- What would be the estimated cost of these carbon emissions reductions?
- Over what timescale could zero carbon new non-domestic buildings be achieved?

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/carbonreductionsreport>

Housing

16

Call for Evidence

Matthew Taylor Review on Rural Economy and Affordable Housing Planning and land use to support sustainable rural communities – Deadline for Evidence 07.03.08

Matthew Taylor, MP for Truro & St Austell, has been invited to conduct an independent review into how land use and planning can better assist rural businesses and deliver affordable housing to support sustainable rural communities. The review will consider how these issues can effectively be tackled, building on the work and evidence of previous reviews. It will be used to advise Government and a report will be prepared for the Minister of State for Housing and the Sec of State for the Environment, Food and Rural Affairs around July 2008. Matthew Taylor is seeking views and proposals from a wide range of people and organisations, such as regional and local government, parish councils, housing and planning professionals, social and private housing developers, landowners, rural businesses, rural communities and others with an interest in this work.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/614580>

17

Commission for Architecture and the Built Environment (CABE) Publication

A sense of place: What residents think of their new homes

This is a report on a survey which was carried out in the autumn of 2006 into the views of 643 residents living in 33 new developments. These developments were the same ones as were assessed during the recent phase of CABE's recent housing audit which exposed the poor urban design of many new developments. However, this picture is incomplete without knowing the views of residents and the purpose of this study is to assist those who are involved in developing housing to better understand how the quality of a place impacts on residents' attitudes and experiences. The main finding was that although residents were overwhelmingly satisfied with the homes they had bought, they were much less so with the neighbourhoods.

<http://www.cabe.org.uk/AssetLibrary/10948.pdf>

Taxation

18

Statutory Instrument

SI 2007/3437 The Stamp Duty Land Tax (Zero-Carbon Homes Relief) Regulations 2007

These Regulations, which came into force on 07.12.07, provide relief from stamp duty land tax in accordance with s58B and s58C of the Finance Act 2003 on the first acquisition of a dwelling which is a zero-carbon home.

http://www.opsi.gov.uk/si/si2007/pdf/uksi_20073437_en.pdf

Environment

19

Statutory Instrument

SI 2007/3538 The Environmental Permitting (England and Wales) Regulations 2007

These Regulations, which come into force on 06.04.08, replace the system of waste management licensing in Part II of the Environmental Protection Act 1990 and the Waste Management Licensing Regulations 1994 and the system of permitting in the Pollution Prevention and Control (England and Wales) Regulations 2000 with a new system of environmental permitting in England and Wales.

http://www.opsi.gov.uk/si/si2007/pdf/uksi_20073538_en.pdf

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Defra Publication

Noise maps

Defra has published a series of maps showing environmental noise around 18 airports in England. The mapping, which was carried out during 2006-07 in line with the EU's Environmental Noise Directive, gives details of daytime and night-time noise levels at each airport as well as noise levels around each site on an average day in 2006. The maps will be used to draw up action plans to address the noise climate around each airport and will include descriptions of the measures that will be taken to reduce environmental noise.

<http://www.gnn.gov.uk/Content/Detail.asp?ReleaseID=339369&NewsAreaID=2>

Real Property

21

Court of Appeal

Notice to complete

* EYESTORM LTD V HOPTONACRE HOMES LTD
(2007) PLSCS 269 — Decision given 19.12.07

Facts: In June 1995 E and HH, a developer, entered into an agreement under which E would purchase 14 flats that HH was to build at a total price of £2.25m. It was agreed that before the contractual completion date E could sub-sell individual flats at a price which exceeded the scheduled price. However, at the contractual completion date it had to purchase any flats that it had not managed to sell. E was not able to find purchasers for the sub-sales and refused to proceed with the agreement or to pay the balance of the deposit. HH told E that it proposed to protect its position by marketing the flats itself, but in September 1995 the parties agreed to extend the completion date, E paid the balance of the deposit and HH agreed to cease marketing the flats. However, E still did not achieve any sub-sales and HH served a notice to complete with which E did not comply. HH thereupon proceeded to rescind the contract and forfeited E's deposit of £112,750.

Point of dispute: Whether E's appeal should be allowed against the lower court's decision that it could not succeed in its claim for damages and return of its deposit. E argued that HH had not been entitled to serve a notice to complete since it was itself in breach of contract by marketing the flats before and after the September agreement. The judge rejected E's arguments that relied upon an implied term in the original June 1995 agreement and its claim that the September agreement gave rise to an estoppel in its favour.

Held: E's appeal was dismissed. The judge should not have entertained a new and unpleaded case based upon an implied term in the June agreement. The September agreement was void since it purported to vary the terms of the June agreement as to the completion date and it did not comply with s2 of the Law of Property (Miscellaneous Provisions) Act 1989. Any reliance on estoppel would fail as being inconsistent with s2. There was no identifiable legal basis upon which E could assert that HH's marketing activities constituted a breach of contract and no evidence had been put forward to show that those activities had caused E any loss.

22

Court of Appeal

Tree Preservation Order – local planning authority refusing permission to fell tree – whether other remedies relevant

** PERRIN V NORTHAMPTON BOROUGH COUNCIL
(2008) PLSCS 3 – Decision given 19.12.07

Facts: P's house had been damaged by root encroachment from an oak tree growing in his neighbour's garden. The tree was protected by a tree preservation order (TPO) and NBC refused permission to fell the tree, a decision which was upheld on appeal to the Sec of State. P sought a declaration that he was entitled to fell the tree pursuant to s198(6)(b) of the Town and Country Planning Act 1990 which provides that a TPO should not apply to the cutting down, uprooting, topping or lopping of any trees in so far as any of those actions were necessary for the prevention or abatement of a nuisance. NBC's argument was that felling the tree was unnecessary since underpinning P's house would abate the nuisance.

Point of dispute: Whether NBC's appeal should be allowed against the lower court's ruling that, when determining for the purposes of s198(6)(b) whether the cutting down, uprooting, topping or lopping of a tree was necessary for the prevention or abatement of a nuisance, it was irrelevant that other possible works could prevent or abate the same nuisance.

Held: NBC's appeal was allowed. The judge's construction of s198(6)(b) did not give proper weight to the word "necessary". To determine the minimum that needed to be done to a tree in order to prevent or abate a nuisance the question first had to be asked whether anything at all needed to be done to it. The phrase "so far as may be necessary" in s198(6)(b) should be read as "if and so far as necessary", which would ensure that a tree should remain protected unless there was a real need to lift that protection.

Contract

23

High Court

Option agreement

* COMMISSION FOR THE NEW TOWNS V TERRACE HILL (STOCKTON) LTD
(2008) PLSCS 2 — Decision given 21.12.07

Facts: CNT owned a large area of land that was subject to a regeneration scheme. It entered into an agreement with TH, a developer, granting TH a three year option to develop part of the land for general business use, to construct an office development, a research and development facility, or a high-tech manufacturing facility. The option could not be exercised until TH had submitted to CNT its building works plans, which had to be approved by CNT, and it had obtained outline permission. The option period was to commence on the date upon which CNT notified TH that those conditions had been fulfilled or the date upon which notice ought to have been served, if earlier. CNT wrote to TH on 05.10.04 confirming that the requisite conditions had been satisfied, thus triggering the commencement of the option period. However, TH took the view that it was not triggered until 28.03.07 when CNT served a formal notice stating that the 2004 letter was to be treated as its notice.

Point of dispute: Whether CNT's application to the court for a ruling that the option period had expired should be allowed.

Held: CNT's claim was allowed. On a proper construction of the agreement the option period was the period of three years from the date upon which TH received CNT's letter of 05.10.04. CNT's failure to serve a formal notice until 2007 could not by itself prevent the option period from running if, as was the case, the conditions for its commencement had been satisfied. TH had failed to establish an estoppel in defence of CNT's reliance on its letter of 2004 as marking the commencement of the option period.

General

24

CLR Publication

Taking forward the Review of Sub-National Economic Development and Regeneration

The Government's review of sub-national economic development and regeneration, now known as the sub-national review or SNR, aims to help maximise prosperity in all parts of England by stimulating economic growth and improving housing supply. In order to deliver these improvements, the SNR sets out a number of structural reforms, which will:

- strengthen the role of local authorities in economic development, including a new statutory economic assessment duty;
- support effective collaboration by local authorities across functioning economic areas, eg by establishing Multi Area Agreements or Economic Development Companies;
- streamline the regional tier and introduce single regional strategies with the RDAs designated as the regional planning bodies;
- give regions a greater say in the distribution of funding in each region, through a second, extended regional funding allocations exercise; and
- sharpen the focus of central government on sub-national devolution

This document provides an update on progress in implementing the SNR in advance of publication of a full consultation document.
<http://www.communities.gov.uk/documents/citiesandregions/pdf/621858>

The third sector: The crucial role for the new local performance framework**Climate change and sustainability: The crucial role of the new local performance framework**

The new local performance framework is concerned with improving quality of life and providing better public services. It focuses on improving outcomes through shared endeavour, between local and central government, and between local partners. It is hoped that the framework will enable local citizens to have a greater influence on how services are delivered and outcomes achieved. Central and local government recognise that local communities are increasingly concerned about the impact of climate change and the need to adopt a sustainable approach to the use of natural resources. At the same time it is recognised that local people can feel that their actions will make little difference in tackling these issues. These notes are intended to support local communities in making the most of the new local performance framework and key guidance and other documents that have recently been published. They are not statutory or technical guidance and do not replace published or consultation documents.

<http://www.communities.gov.uk/documents/localgovernment/pdf/621274>
<http://www.communities.gov.uk/documents/localgovernment/pdf/621209>

Development Plan Progress

Adopted

TendringDistrict LP

11.12.07

Gerald Eve's UK office network

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Evebrief has been established for over 25 years. It is a summary of the latest statutory and legal cases affecting the property industry and is widely regarded in the industry as the most comprehensive document of its type.

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www.odpm.gov.uk
www.dft.gov.uk
www.inlandrevenue.gov.uk
www.hmso.gov.uk
www.egi.co.uk
focus.focusnet.co.uk
[www.newLawonline.com](http://www.newlawonline.com)

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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Gerald Eve Research

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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Legal &
Parliamentary

Volume 30(01) 14 January 2008

evebrief

SCOTLAND

Planning

01

Consultation Paper

Draft Regulations on the Planning Hierarchy

Deadline for Responses: 21.03.08

This paper invites comments on the proposed hierarchy for planning in Scotland so as to provide a more proportionate approach to dealing with planning applications. The Planning etc (Scotland) Act 2006 contains the main legislative framework for the hierarchy by setting out the three categories into which all developments requiring planning permission will be allocated:

- national development;
- major development; and
- local development

National developments will be set out in the National Planning Framework, and the Act gives Scottish Ministers powers to make regulations to describe the classes of major and local development. The draft regulations in this consultation aim to define major developments with the remainder being classed as local developments.

<http://www.scotland.gov.uk/Resource/Doc/206469/0054872.pdf>

02

Consultation Paper

Draft Regulations on Development Plan Examinations

Deadline for Responses: 04.04.08

In the new development regime introduced by the Planning etc (Scotland) Act 2006 examinations are intended as the principal means of independently testing the issues arising from representations on proposed strategic development plans (SDPs) and local development plans (LDPs). Under the Act examinations must be held into all proposed SDPs and LDPs where there are outstanding representations. The draft regulations attached to this consultation paper are made under the new s12(3) and s19(5) to the Act and relate to the following;

- how examination costs and overheads will be met;
- the procedures to follow at examinations; and
- what is to be assessed in examinations and what matters may be referred to in making the assessment

<http://www.scotland.gov.uk/Resource/Doc/206761/0054928.pdf>

03

Consultative Draft

Scottish Planning Policy SPP 3 Planning for Housing

Deadline for Responses: 31.03.08

SPP3: Planning for Housing was first published in February 2003 to provide policy direction on the provision of well-located, high-quality new housing through the planning system, including the provision of a sufficient supply of land and the creation of quality residential environments. However, since its publication there have been indications that SPP 3 has not been as effective as intended, particularly with regard to releasing sufficient land for housing. There have been persistent difficulties in bringing forward land for housing identified in local plans and the resultant delays in the construction of new houses illustrate the continuing problems facing local authorities and house builders. The Scottish Government has proposed a national goal to increase the rate of new housing supply to at least 35,000 houses every year by the middle of the next decade. Revising SPP 3 provides the opportunity to address these ongoing problems. The key objectives of the SPP are to provide policy guidance on the following:

- identification of housing need and demand on a more aspirational, but consistent, basis;
- allocation of sufficient appropriate land to meet identified need and demand for housing, including affordable housing, across all tenures and mechanisms to ensure houses are built;
- creation of high quality residential environments; and
- interface between planning control and licensing of Houses in Multiple Occupation

<http://www.scotland.gov.uk/Resource/Doc/208259/0055239.pdf>

04

Scottish Government Discussion Document

National Planning Framework for Scotland 2 – Discussion Draft and Participation Statement

The first National Planning Framework (NPF) was published in April 2004 and set out a strategy for Scotland's development to 2025. The Planning etc (Scotland) Act 2006 amended the Planning (Scotland) Act 1997 to put the Framework on a statutory footing. The legislation places duties on Ministers to prepare the Framework with the objective of contributing to sustainable development and to review it every five years. The second National Planning Framework (NPF2) will guide Scotland's spatial development to 2030. It takes forward the spatial aspects of the Scottish Government's policy commitments on sustainable economic growth and climate change and focuses strongly on the priority of improving Scotland's infrastructure. Scottish Ministers are committed to ensuring that a full range of stakeholders and the public are involved in its preparation and the Participation Statement, which was last updated in December last year, summarises how and when this will be achieved.

<http://www.scotland.gov.uk/Resource/Doc/208174/0055210.pdf>

<http://www.scotland.gov.uk/Resource/Doc/207830/0055124.pdf>

<http://www.scotland.gov.uk/Resource/Doc/208140/0055205.pdf>

05

Report

Town Centre and Retailing Methodologies Final Report

SPP8 Town Centres and Retailing, published in 2006, sets out the Scottish planning policy framework for town centres and retailing. The SPP identifies a range of techniques that can be used to support planning for town centres and retailing and indicates that updated guidance for these techniques, notably for each of the town centre health checks, town centre strategies and retail impact assessment, will be published in the form of a Planning Advice Note (PAN). This research provides the basis for the preparation of the PAN for these town centre and retailing techniques. It aims to:

- identify and assess existing methodologies;
- recommend and illustrate standard approaches;
- present recommendations and associated justification; and
- produce the recommended text for a Planning Advice Note

<http://www.scotland.gov.uk/Resource/Doc/207964/0055170.pdf>

General

06

Scottish Executive Consultation

Consultation on the role of a Scottish Futures Trust in infrastructure investment in Scotland

Deadline for Comments: 14.03.08

The Scottish Government considers that reform of Private Finance Initiative is essential to providing the infrastructure that Scotland needs in order to improve its economic performance. This paper sets out its plans for a better model for public procurement — the Scottish Futures Trust under which excess profits made from traditional PFI funding will be directed back into communities while greater partnership, improved management and better value borrowing will help to secure savings for taxpayers.

<http://www.scotland.gov.uk/Resource/Doc/207695/0055103.pdf>

07

Scottish Executive Publication

Firm Foundations: The Future of Housing in Scotland

The Scottish Government's vision for the future of housing in Scotland has four elements:

- increasing the supply of housing across all tenures;
- improving the choice of housing available to those on lower incomes;
- building housing developments that contribute to the creation of sustainable, mixed communities; and
- providing social housing that provides better value for public expenditure

This document sets out the ways in which the Scottish Executive intends to realise this vision.

<http://www.scotland.gov.uk/Resource/Doc/201716/0053780.pdf>

WALES

Rating

08

Statutory Instrument

SI 2007/3354(W.296) The Non-Domestic Rating (Unoccupied Property) (Amendment) (Wales) Regulations 2007

Wef 01.04.08 these Regulations amend the 1989 Regulations so that only qualifying industrial hereditaments which have been unoccupied for a continuous period not exceeding six months are excluded from liability for non-domestic rates under s45 of the 1988 Act. Under regulation 2(2)(g) all hereditaments shown in a non-domestic rating list with a rateable value of less than a specified amount, currently £1,500, are excluded from liability for non-domestic rates under s45 of the 1988 Act. These Regulations increase the limit to £2,200 for the purpose of a hereditament shown in a list compiled on or after 01.04.08. http://www.opsi.gov.uk/legislation/wales/wsi2007/pdf/wsi_20073354_mi.pdf

Housing

09

Statutory Instrument

WSI 2007/3229 The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (Wales) Regulations 2007

These Regulations came into force on 05.12.07 and contain provisions relating to the duties of managers:

- to provide information to occupiers;
- to take safety measures;
- to maintain water supply and drainage;
- to maintain gas and electricity supplies;
- to maintain common parts, fixtures, fittings and appliances;
- to maintain living accommodation; and
- to provide waste disposal facilities

The duties of occupiers of HMOs are also set out (Regulation 11).
http://www.opsi.gov.uk/legislation/wales/wsi2007/wsi_20073229_en_1

Environment

10

Statutory Instrument

WSI 2007/3371(W.298) The Clean Neighbourhoods and Environment Act 2005 (Commencement No 3) (Wales) Order 2007

This Order brings into force on 18.01.08 further provisions of the Clean Neighbourhoods and Environment Act 2005 in relation to Wales, including in particular a number of paragraphs in Schedule 4 to the Act. http://www.opsi.gov.uk/legislation/wales/wsi2007/pdf/wsi_20073371_mi.pdf

NORTHERN IRELAND

Planning

11

Department of the Environment Policy Advice

Control of Development in Airport Public Safety Zones

This document contains the Government's general policy advice on Public Safety Zones (essentially the area at the end of an airport runway) and sets out the planning controls which will apply to development within these zones in Northern Ireland. It was prepared by the Department of the Environment in close consultation with the Department for Regional Development and the Department for Transport and incorporates policy guidance produced by the Department for Transport throughout the UK by local and regional authorities with powers to control development and to restrict the use of land.

http://www.planningni.gov.uk/AreaPlans_Policy/public_safety_zones/airport_public_safety_zones_final.pdf

12

Consultation Paper

Environmental Impact Assessment of Reserved Matters Applications

Deadline for Responses: 11.02.08

This paper sets out the Department of the Environment's proposals for amending the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 to take account of two related judgments of the European Court of Justice in the cases of *R v London Borough of Bromley ex parte Barker* and *Commission v UK*. The essence of these judgments is that where development consent comprises a multi-stage consent process (such as in an application for outline planning permission, where following outline consent, application has to be made to the planning authority for approval of certain reserved matters) the requirements of the Environmental Impact Assessment (EIA) must be applicable at the later stage. The draft regulations are attached to this paper as an Annex. As well as providing for EIA to be carried out at reserved matters stage for outline planning applications they provide for EIA to be applied in relation to conditions attached to certain full planning permissions, which require the submission of certain detailed matters and their approval by the planning authority before the development can proceed.

http://www.planningni.gov.uk/Corporate_Services/Consultation_Documents/eia_consultation_paper.pdf

13

Department of the Environment Consultation Paper

Draft Planning Policy Statement 18 Renewable Energy

Deadline for Responses: 21.03.08

Draft PPS 18 sets out the Department of the Environment's planning policy for development that generates energy from renewable resources. The PPS also contains policy provisions on the application of the principles of Passive Solar Design in new development.

http://www.planningni.gov.uk/AreaPlans_Policy/PPS/pps18/pps18_draft.pdf