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Legal &  
Parliamentary

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# evebrief

## Editorial



*Hilary Wescombe*

More house price statistics (item 19) and although the UK average price fell by 13% in the year to April 2009 those looking for a return to price rises will be encouraged by the 1.1% increase between March and April compared with a rise of 0.4% over the same period last year. The 1.1% increase is broken down to an increase in average prices for terraced houses of 2.0%, semi-detached houses of 1.0%, flats 0.9% and detached houses 0.7%.

A Valuation Information Alert (item 25) has been issued by the RICS Valuation Group Board aimed at commercial property. This gives important guidance to valuers and lenders and relates to issues including rapidly moving markets and values in the future.

Finally, in *Thompson V Foy* (item 12) the claimant sought to set aside the deed of family arrangement and the deed of gift by which her daughter came to be registered as the proprietor of her home. The High Court decided that there had not been undue influence although she certainly seemed to have placed undue trust in her daughter who failed to pay the agreed half of the amount raised by a mortgage. The daughter also established ownership of an annex at the property and had only to repay a £20,000 loan from her mother.

**Hilary Wescombe**

# Planning

## 01

Administrative Court

### **Appeal against listed building enforcement notice — Planning (Listed Buildings and Conservation Areas) Act 1990 — adequacy of inspector's site visit**

\* FRY V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT  
(2009) All ER (D) 68 (Jun) — Decision given 05.05.09

**Facts:** F was served with a listed building enforcement notice in respect of certain works which he had carried out to a listed farmhouse. These works related to the installation of dormer windows. F appealed but following a site visit the inspector appointed by the Sec of State decided to uphold the notice taking the view that the "dormer additions" were inappropriate. F's arguments that (i) the dormers had previously been in existence; (ii) that the location of the dormers she had built were "exactly in line with the internal reveals"; and (iii) that the works constituted a "sympathetic restoration" of the farmhouse were rejected.

**Point of dispute:** Whether F's appeal against the inspector's decision to uphold the notice should be allowed. One of F's arguments was that the inspector's site visit had been inadequate.

**Held:** F's appeal was allowed. F had specifically requested the inspector to inspect the interior of the roof space as there was material relevant to the issue of the dormers and failure to do this meant that something which could have been a material consideration was ignored. It was not sufficient for the inspector to record evidence concerning what he was told about the roof space.

## 02

Administrative Court

### **Appeal against refusal of permission to supermarket extension — interpretation of local planning policy**

\* SAINSBURY'S SUPERMARKETS PLC V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT  
(2009) All ER (D) 63 (Jun) — Decision given 05.06.09

**Facts:** The local planning authority refused S's application for planning permission to significantly extend one of its supermarkets situated in an area which was due to be comprehensively redeveloped under the relevant policy in the local plan (Policy GS9A). This policy provided that proposals which were likely to prejudice the redevelopment or harm the vitality and viability of the main shopping area were not to be allowed. The inspector appointed by the Sec of State dismissed S's appeal on the grounds that if the new extension were permitted S would be less likely to continue negotiations to move its retail store to a new location and that the new extension would weigh against a compulsory purchase order being granted in respect of the site. He also expressed concern about setting a precedent for other similar piecemeal applications and their cumulative effect undermining the policy.

**Point of dispute:** Whether S's application to overturn the inspector's decision should be allowed. S argued that the inspector had misunderstood Policy GS9A, that he had not given sufficient reasons for his decision and that the decisions he had reached were not reasonably open to him.

**Held:** S's appeal against the inspector's decision was dismissed. Although the inspector was obliged to give reasons, that obligation did not amount to a duty to refer to every possible relevant consideration. The interpretation of Policy GS9A was a matter for the inspector, provided he adopted a meaning that it was reasonably capable of bearing; in this case he had adopted the only possible meaning of the policy. His reasoning had been adequate and intelligible.

## 03

Administrative Court

### **Change of use of listed building on employment site — appeal against refusal of planning permission as contrary to local plan policy**

\* R (ON THE APPLICATION OF PREM (ROOSTER) LTD) V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2009) PLSCS 177 — Decision given 09.06.09

**Facts:** PRL owned a site which had formerly been used for employment, including a listed building and a mill. The local planning authority refused PRL's application to construct Class B1 business premises and residential accommodation on the site and change the use of and convert the mill, the listed building (in respect of which it also applied for listed building consent) and other buildings into residential premises. On appeal the inspector allowed PRL's appeal against refusal of listed building consent.

**Point of dispute:** Whether PRL's application to quash the inspector's decision not to allow its appeal against refusal of planning permission should be allowed. The inspector considered that the development would be contrary to local development plan policies which provided that before employment use of employment sites, or former employment sites, could be abandoned the developer had to show that continued employment use was not sustainable and it was his view that PRL should have provided for more employment on the site. He also considered that there was no overwhelming need for residential housing in the area that outweighed the objectives of local plan policies, and that the proposed siting of the Class B1 business premises was unsatisfactory. PRL argued that the inspector had failed to give proper, adequate and intelligible reasons for his decision.

**Held:** PRL's application was dismissed. The inspector's reasoning had been proper, adequate and intelligible, and was neither inconsistent for irrational. This application did not involve a large scale housing development so it had not been necessary for the inspector to state exactly which assumptions or elements of available housing figures he had used in arriving at his conclusion that there was no overwhelming need for housing development in the area. The inspector's reasoning in his decision letter had been concise, but this was not a situation where he needed to express himself any more fully.

## 04

Statutory Instrument

### **SI 2009/1303 The Planning Act 2008 (Commencement No 1) (England) Order 2009**

Article 2 of this Order brings into force on 23.06.09, the following provisions of the Planning Act 2008 in relation to England, so far as they are not already in force:

- s188 local development orders: removal of requirement to implement policies; and
- s238 and Schedule 13 so far as they give effect to the repeals specified in the Schedule to this Order, which relate to local development orders

[http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20091303\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091303_en.pdf)

## 05

Statutory Instrument

### **SI 2009/1304 The Town and Country Planning (General Development Procedure) (Amendment) (No 2) (England) Order 2009**

This Order which comes into force on 23.06.09 amends the Town and Country (General Development Procedure) Order 1995 (GDPO). Article 2B of the GDPO makes provision in relation to the procedure for making local development orders (LDOs). As a consequence of a change to the Town and Country Planning Act 1990 Article 2 of this Order amends Article 2B of the GDPO to remove those provisions which required local development orders to implement policies in local development plans or development plan documents.

[http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20091304\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091304_en.pdf)

## 06

Statutory Instrument

### **SI 2009/1302 The Infrastructure Planning (National Policy Statement Consultation) Regulations 2009**

Part 2 of the Planning Act 2008 provides for the Sec of State to designate policy statements as national policy statements. These statements may set out national policy in relation to certain major infrastructure developments and for the purposes of the determination of applications for development consent under the Act. The Act sets out a number of consultation and publicity requirements which must be fulfilled before a statement can be designated as a national policy statement and these regulations, which come into force on 22.06.09, prescribe the persons whom the Sec of State must consult before designating a statement as a national policy statement under the Act.

[http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20091302\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091302_en.pdf)

## 07

RICS Research Report

### **Improving the capacity of the planning system in England and Wales: a view from the regions**

The aim of this research was to seek the views of senior practitioners and leaders in planning and development on the capability of the planning system to sustain its role in a changing environment. Literature and policy documents were reviewed and round-table discussions were held in five regions with senior stakeholders in new housing and regeneration schemes. The research identified five particular issues:

- the growing burden of documentation and evidence as the planning system seeks to become more democratic and transparent;
- the qualifications and continuing training of qualified planners and the ability of more senior practitioners to keep their skills up to date;
- problems of recruitment and retention of staff at local planning authorities;
- problems created by constantly changing planning policy and guidance from national government; and
- the need to address delays in the planning application process.

The report identifies a variety of possible solutions to these problems. including, for example, the establishment of a development control team within planning authorities, the establishment of informal hearings as a basis for mediation, especially for smaller applications, and the establishment of a two-tier system where a faster service would be available at a higher price.

<http://www.rics.org/NR/rdonlyres/FC5DFDBB-CF03-4ADE-BC00-5D773D53885C/0/MainreportImprovingthecapacityoftheplanningsystem.pdf>

## 08

CLG Statistical Release

### **Land Use Change Statistics (England) 2008 — provisional estimates (May 2009)**

This Statistical Release covers information on:

- changes on previously developed land;
- density of new buildings;
- changes within the Green Belt;
- changes within areas of high flood risk;
- land changing to residential use; and
- changes to developed uses

It is provisionally estimated that in 2008:

- 78% of dwellings (including conversions) were built on previously-developed land, compared to 77% in 2007.
- New dwellings were built at an average density of 46 dwellings per hectare, compared to 44 dwellings per hectare in 2007.

In 2007:

- 2% of dwellings were built within the Green Belt (unchanged since 2004) and 5% of land changing to residential use (from any use) was within the Green Belt (unchanged since 2001).
- 9% of dwellings were built within areas of high flood risk and 6% of land changing to residential use was within areas of high flood risk.

<http://www.communities.gov.uk/documents/statistics/pdf/1239798.pdf>

Planning decisions involve balancing:

- the needs and interests of individual constituents and the community, with
- the need to maintain an ethic of impartial decision-making on sometimes highly controversial proposals

The LGS's original *Probity in Planning* guidance note was published in 1997 but a more comprehensive ethical framework for local government was introduced following the Local Government Act 2000 and a revised national code of conduct for councillors was published in 2007. Each authority is required to adopt a local code of conduct that sets out rules governing the behaviour of its members. This guidance contains updated advice in the light of these changes, recognising councillors' ability to participate in discussions prior to the receipt of a planning application on behalf of their communities and to engage in spatial planning policy formulation. It provides advice on this following the Killian Pretty review's recommendations as well as advice on the avoidance of predetermination or bias in decision making.

<http://www.lga.gov.uk/lga/aio/1940404>

## Real Property

### 10

Court of Appeal

#### **Easement — right of way — whether interference with visibility splay amounted to derogation from grant**

\* CARTER V COLE

(2009) PLSCS 163; (2009) 21 EG 103 — Decision given 20.05.09

**Facts:** In 2000 the respondents sold a plot of land to the appellants but retained a small area containing a natural spring water well which was leased to a company for 20 years from 1996. The lease included a right of way from the spring water land over the land that was sold to the respondents to the main road in order to access a bottling plant. The right permitted access by lorries as permitted under the relevant planning permission. The temporary planning permission under which the bottling facility operated contained a condition as to the provision of a visibility splay at the junction with the main road for the purposes of highway safety. In 2001 the appellants erected fencing and planted shrubs on part of the land forming the visibility splay. An application for permanent planning permission was refused on the grounds that the existing sight lines made access to the bottling plant potentially dangerous and that they were unlikely to be improved since the respondents did not control the necessary land. The lessee decided to relocate and exercised an option to break its lease in 2005.

**Point of dispute:** Whether the appellants' appeal should be allowed against a finding of the court below that they were liable to restore the visibility splay and pay damages to the respondents on the grounds that the blocking of the visibility splay sight lines amounted to a derogation from the grant of the right of way. The appellants contended that it had not been their act of interference with the splay that had derogated from the right of way, but the planning authority's insistence that the respondents were not in a position to control the splay.

**Held:** The appeal was allowed in part. (i) Interference with the visibility splay amounted to a derogation from grant. When the right of way was granted both parties had been aware of the condition in the planning permission that was then in force. What was granted, and could not be derogated from, was a right of access for lorries necessitating a splay as contemplated by both parties. The respondents did exercise control over the land in the sense that they had a right of way for commercial vehicles, including lorries, from which the appellants had no right to derogate, which meant that the appellants could not interfere with the splay. (ii) The judge had been entitled to grant a mandatory injunction requiring reinstatement of the splay as without it the spring water land could not be put to any commercial use. (iii) The amount of damages was reduced to take into account the fact that fresh evidence indicated that no further permission for a bottling plant would be granted although office use was a possibility.

## 11

High Court

### **Easement for electricity cables — whether defendants obliged to execute a deed granting an easement to electricity undertaker to lay cables**

\* WILLIAM OLD INTERNATIONAL LTD V ARYA  
(2009) PLSCS 138 — Decision given 20.04.09

**Facts:** In 2005 WOI purchased a plot of land on which it intended to build an office block. The transfer contained an express grant of an easement for the passage of various utilities through the vendor's retained adjoining land, which was later sold to A. Exercising its rights under the easement WOI dug a trench across A's land in which conduits for gas and electricity cables were laid. A dispute arose over the connection of WOI's building to the electricity supply and the electricity company required a separate easement in its favour by a deed of grant from A. A was unwilling to execute the deed save as part of an overall settlement of a claim which WOI had brought against him for damages.

**Point of dispute:** Whether WOI's claim that A was obliged to execute the deed of easement would be allowed. WOI argued that he must execute it since that right arose ancillary to the express easement it had been granted, either as being reasonably necessary to its use or by implication. WOI contended that it had been contemplated that it would build an office building on its land and it would have been an impermissible derogation from grant for the vendor to refuse to execute the deed of grant, and that A was in no better position than the vendor.

**Held:** WOI's claim was dismissed.

- (i) The easement carried no implied positive obligation upon the servient owner to execute a deed in terms satisfactory to the statutory undertaker. An easement essentially required the servient owner to refrain from impeding the dominant owner's use of a right, but it could not generally impose a positive obligation.
- (ii) Nor could a right of the kind argued for by WOI arise under the principle of non-derogation from grant. That was an essentially negative principle which prohibited a vendor of land, who knew that a purchaser was intending to use it for a specific purpose from doing something which would hinder that contemplated purpose. The principle could not be used to compel a grantor to enter into contractual or proprietary relations with a third party.

## 12

High Court

### **Undue influence — proprietary estoppel**

\*\* THOMPSON V FOY  
(2009) PLSCS 166 — Decision given 20.05.09

**Facts:** The claimant was a widow who had shared her house with her daughter (the defendant) and her daughter's family for some years. The claimant allowed the defendant to build a self-contained extension at her own expense in which she lived with her family and the claimant acknowledged that the extension belonged to the defendant. The family decided to move to Spain. It was agreed that the claimant would give the house to the defendant who would raise a mortgage of £400,000 on it, rent it out, give £200,000 to the claimant and use the balance to buy a property in Spain. The claimant loaned £20,000 to the defendant for the deposit on the Spanish property but decided not to move there herself. The mortgage company released the monies to the defendant who then informed the claimant that she could not pay her the £200,000 due to adverse tax implications. A dispute arose, the house was not rented out and when the mortgage payments fell into arrears TMB repossessed the house and obtained judgment against the defendant.

**Point of dispute:** (i) Whether the deed of family arrangement and deed of gift by which the defendant came to be registered as the proprietor of the property should be set aside on the grounds of undue influence, and whether her interest in the property took priority over TMB's registered charge as an overriding interest. (ii) Whether the defendant had a beneficial interest in the property based on proprietary estoppel because of the improvements that she had carried out. (iii) Whether the claimant was estopped from denying TMB's charge over the property since she had consented to the mortgage.

**Held:** (i) The claim was dismissed. The claimant had not discharged the evidential burden of proving undue influence, which she was legally obliged to do. She would have to prove that she had placed trust and confidence in her daughter, that her daughter acquired ascendancy over her and that the transaction needed explanation. In this case the relationship of trust between the claimant and the defendant was not total — the claimant appreciated that she was taking a risk and the only kind of trust in play was that of a daughter keeping her promise to her mother. (ii) Even if the transaction could have been set aside on the grounds of undue influence the claim did not crystallise until after the defendant had misappropriated the mortgage monies, so TMB's position would not have been affected. In any event, the claimant had agreed that the defendant could raise money on the security of a legal charge and could not thereafter assert her overriding interest in priority to the charge. (iii) The defendant was entitled to a beneficial interest in the house based on proprietary estoppel, a doctrine based on three elements: (a) a representation or assurance made to the person relying on the estoppel; (b) reliance on it; and (c) detriment to that person as a consequence of that (reasonable) reliance. Promissory estoppel requires clear and unequivocal representation but proprietary estoppel does not. In this case the evidence was sufficiently strong for the court to infer that a mutual understanding arose because the claimant had told the defendant that if the defendant built the extension it would belong to her.

## 13

Lands Tribunal

### **Modification of restrictive covenants — building scheme**

\* CLARKE V MURPHY

(2009) PLSCS 165 — Decision given 12.05.09

**Facts:** C, who owned the freehold of a house which formed part of a development of nine similar detached properties built between 1957 and 1958 fronting onto an access road, known as One Tree Lane, obtained planning permission to demolish her house and replace it with three dwellings. The 1957 conveyance between the developer and C's predecessor in title contained a restrictive covenant prohibiting such a development, which was expressed to benefit "the remainder of the Vendor's One Tree Meadow Estate...or any part or parts thereof". The conveyances of all the properties in the development contained similar covenants.

**Point of dispute:** Whether C's neighbours were entitled to object to C's application, under s84 of the Law of Property Act 1925, to discharge or modify the covenant. As a preliminary issue the question arose as to which neighbours could object, since, although it was accepted that those people who lived in houses built after C's could, as those properties formed part of the "Vendor's retained land" at the time of the 1957 conveyance, the remainder were only entitled to the benefit of the covenant if it could be proved that a building scheme existed under which the restrictive covenants in each conveyance were mutually enforceable by each of the owners against any of the others.

**Held:** The preliminary issue was determined in favour of the objectors. The requirements for finding that a building scheme existed were met: (i) There was a common vendor from which the owners of the relevant properties derived title. (ii) Before selling any of the plots the vendor had laid out the estate to show the access road and nine separate plots each containing a separate dwelling. There was a standard form of conveyance for selling each plot and the vendor had intended to impose the same restrictive covenants on every plot. (iii) The restrictions had been intended by the vendor to benefit all the plots that were to be sold — evidenced by the small scale of the estate, the short time frame of construction and subsequent sales, the fact that the developer had no intention to retain any land on the estate, the nature of the restrictive covenants, which were clearly intended to benefit other plots on the estate rather than any land retained by the developer, and the identical nature of the conveyances of the nine plots. The objectors were entitled to the benefit of the restrictive covenants given by C's predecessor in title in respect of that property.

**Adverse possession**

\* PICTON V SOUTH NORTHAMPTONSHIRE COUNCIL  
(2009) PLSCS 172 — Decision given 22.05.09

**Facts:** Under a 2006 compulsory purchase order (CPO) SNC acquired an area of undeveloped land which it intended to develop for housing. The land within the CPO included an area formerly occupied by a water tower adjoining P's property. Since 1975 P had used the land between the legs of the water tower for keeping chickens and growing vegetables; they had also made a vehicular access to the land and parked a van and boat on it. In 1992 P had conceded that they had no claim to ownership of the land, this concession having been made in order to secure the cancellation of a notice served on them (as an owner or occupier of the land in question) by SNC requiring the demolition of the water tower. The water tower was in fact demolished in 2000 by SNC at P's behest.

**Point of dispute:** Whether P had acquired possessory title to part of the land which was the subject of the CPO and could therefore succeed in its claim for compensation from SNC.

**Held:** P's claim was dismissed. They had not established that they had been in possession of the land for the necessary 12-year period. Their use of the land was only occasional and casual and they had lacked the necessary intention to possess it. The land on which P kept their chickens included the water tower, for which they had disclaimed any responsibility. P was only interested in occupying the surface of the land that was not occupied by the legs of the tower. P sought a share of the development value of the water tower site and other land owned by SNC to the west, but that value only became realisable through demolition of the tower, which P had been unwilling to do themselves.

## Compensation

**Claimant seeking compensation on assumption that planning permission would have been granted for development in no-scheme world — five development options — correct approach under statutory provisions and no-scheme rule**

\*\* URBAN EDGE GROUP LTD V LONDON UNDERGROUND LTD  
(2009) PLSCS 181 — Before The President, Mr George Bartlett QC — Decision given 04.06.09

**Facts:** UEG claimed compensation in respect of the compulsory acquisition of commercial premises for the purpose of extending the London Underground system. The premises adjoined certain properties that had been the subject of a Lands Tribunal compensation decision, upheld by the Court of Appeal, in the case of *Spirerose Ltd v Transport for London (2008) EWCA Civ 1230* when it was held that compensation for the compulsory acquisition of land could be assessed on the assumption that planning permission would have been granted if it was probable that, in the no-scheme world, such permission would have been granted, even though under ss15-16 of the Land Compensation Act 1961 such an assumption did not have to be made. UEG based its compensation claim on five development options which it contended would have received planning permission in the no-scheme world.

**Point of dispute:** The determination of preliminary issues as to the assumptions that should be made under the 1961 Act or the no-scheme rule in order to determine the development prospects as at the relevant valuation date of December 2001. The acquiring authority contended that assumptions set out in s16(2) relating to an area allocated for a use in the "current development plan" applied only to plans prepared under the 1947-62 Town and Country Planning Acts which made express provision for such allocation, but that those assumptions did not apply to "second-generation" plans prepared under the Town and Country Planning Act 1990, such as the unitary development plan governing UEG's property.

**Held:** The preliminary issues were determined as follows:

- (i) Section 16(2) of the 1961 Act was not confined to development plans prepared under the 1947 and 1962 Acts.
- (ii) Although there were policies favouring employment uses in UEG's area, the area was not primarily allocated for such uses and accordingly its property did not fall within an "area allocated" for such uses within s16(2).

- (iii) Consequently, the question of whether planning permission might reasonably have been granted for development for the specified use fell to be determined under the no-scheme rule: *Spirerose* applied. The tribunal had to consider whether as at the valuation date planning permission would on the balance of probabilities have been granted. There was no reason why a claimant could not advance a claim on the basis of more than one development for which it contended that planning permission would have been granted.
- (iv) Where a planning permission was to be assumed the assumption to be made was of a planning permission in force at the valuation date.
- (v) In determining the likelihood of planning permission being granted for UEG's land, it was not permissible to take into account the effect of the development of other land in the vicinity since it would have been carried out in the no-scheme world. The physical state and use of the land in the vicinity of UEG's land, including the *Spirerose* land, should be taken to be as they were at the valuation date.
- (vi) Applying these principles it could reasonably be expected that in the no-scheme world planning permission would have been granted for the first two of the development options put forward by UEG. Its land should be valued on the assumption that such permission had been granted as at the valuation date.

## Housing

### 16

Mayor of London's Consultation Paper

#### **The London Housing Strategy**

**Deadline for Responses: 31.08.09**

The London Housing Strategy sets out the Mayor's vision for housing in London. It is designed to respond to the current challenges facing the housing market: falling house prices, rising unemployment and developers facing difficulties in delivering new homes. The priority of the Strategy is to address these problems but it is also concerned with tackling the housing challenges which continue to face London: the unaffordability of home ownership, increased overcrowding, homelessness and the problems of an ageing housing stock.

<http://www.london.gov.uk/mayor/housing/strategy/docs/london-housing-strategy09.pdf>

### 17

RICS Residential Property Journal

#### **Affordable Housing: Where to from here?**

This publication contains a number of articles on issues relating to, inter alia, affordable housing, the state of the housing market, regeneration, the new Property Standards Board codes, discrimination in property dealings, and the new RICS HomeBuyer Report.

[http://www.rics.org/NR/rdonlyres/F153576B-C23F-4984-A6B8-E6E0DA9206A9/0/ResMarApr09\\_web.pdf](http://www.rics.org/NR/rdonlyres/F153576B-C23F-4984-A6B8-E6E0DA9206A9/0/ResMarApr09_web.pdf)

### 18

FIBRE Series Research Report (Findings in Built and Rural Environments)

#### **Permanent and Transitory Components in Local Housing Market Dynamics**

This research considers the questions of how house prices vary over time and between different areas of cities. A study was made of the behaviour of house prices over a 23-year period in the city of Aberdeen in order to ascertain the economic factors that affect house prices and how they affect different kinds of neighbourhood.

<http://www.rics.org/NR/rdonlyres/8B603B41-C009-4C0C-A3EC-CCCFC20B0D618/0/FIBREPermanentandtransitorycomponentsinlocalhousingmarketdynamics.pdf>

## 19

CLG Statistical Release

### House Price Index — April 2009

- UK house prices were 13% lower than in April 2008.
- The mix-adjusted average house price in the UK stood at £189,215 in April 2009 (not seasonally adjusted).
- Annual average house prices fell in England by 13.2%, in Wales by 10.3%, in Scotland by 8.6% and in Northern Ireland by 22.8%.
- Annual average house prices paid by first time buyers in April 2009 were 16% lower than a year ago. By comparison average house prices paid by former owner occupiers were 11.9% lower.

<http://www.communities.gov.uk/documents/statistics/pdf/1247222.pdf>

## 20

RICS Publication

### Housing Market Survey UK — May 2009

The main points to emerge from this survey are:

- New buyer enquiries increased at a faster rate during May;
- Instructions to agents fell again leaving stocks down by more than one third on a year ago; and
- The fifth consecutive rise in sales to stock ratio suggests that the pricing environment is improving.

[http://www.rics.org/NR/rdonlyres/F0CA11E6-25FC-42D9-9DF1-0834976C69E8/0/hms\\_0509.pdf](http://www.rics.org/NR/rdonlyres/F0CA11E6-25FC-42D9-9DF1-0834976C69E8/0/hms_0509.pdf)

## Construction

### 21

#### RICS Construction Market Survey UK — First quarter 2009

- All sectors experienced declines in workloads.
- Skills shortages for trades persons remain unchanged at a low level.
- Confidence remains mixed — employment expectations deteriorated fractionally, profit expectations fell more notably but there was a slight improvement in workload expectations.

<http://www.rics.org/NR/rdonlyres/CE7DE632-ACF7-489E-989D-3F431BFEF2C1/0/RICSConstructionMarketSurveyQ12009.pdf>

## General

### 22

Statutory Instrument

#### SI 2009/1393 The Land Registration (Proper Office) Order 2009

This Order, which comes into force on 01.10.09 and replaces the 2008 Order, designates particular offices of the land registry as the proper office for the receipt of specified descriptions of application under the Land Registration Act 2002.

[http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20091393\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091393_en.pdf)

## 23

RICS Research Report

### **Ethics for Surveyors: An Educational Dimension, Commercial Real Estate Practice and Professional Ethics**

This research, which was carried out by the College of Estate Management, investigates professional ethics within multi-disciplinary commercial real estate practices. In particular, it examines the potential for conflict between agency and professional services and how large firms deal with ethical dilemmas which may arise. The perceptions of professional ethics amongst new surveyors are considered, together with the expectations of large commercial and real estate firms. The aim of the research is to promote an understanding of the ethical issues, dilemmas and methods of establishing corporate ethical standards facing surveyors in a global profession and to assess the appropriateness of incorporating education on professional ethics and ethical dilemmas within pre-qualification education.

[http://www.cem.ac.uk/research/files/Ethics\\_For\\_Surveyors-An\\_Educational\\_Dimension.pdf](http://www.cem.ac.uk/research/files/Ethics_For_Surveyors-An_Educational_Dimension.pdf)

## 24

RICS Research Report

### **Valuing Heritage Assets — Final Report**

This report summarises the results of research carried out by Kingston University on behalf of the RICS and HM Treasury. The report seeks to explore issues surrounding the valuation of heritage assets within the balance sheets of both public and private sector organisations. It provides a background to the treatment of such assets within standard accounting practice and proposals to review and alter their treatment. The definition and classification of heritage assets are reviewed and the conclusion arrived at that definitions should be reviewed to recognise that some forms of heritage assets are irreplaceable and should be designated as "National Treasures", whilst others could be capable of substitution. It concludes that there is a rationale for treating National Treasures differently from other heritage assets within a valuation and accounting framework.

[http://www.rics.org/NR/rdonlyres/BA9C3A3B-A2D5-4AE8-825F-4506DAD9A2E9/0/543\\_Valuing\\_HeritageFinalversion.pdf](http://www.rics.org/NR/rdonlyres/BA9C3A3B-A2D5-4AE8-825F-4506DAD9A2E9/0/543_Valuing_HeritageFinalversion.pdf)

## 25

RICS Guidance

### **Valuation Information Alert — Guide to Lenders and Valuers when conducting Loan Security Valuation Reviews**

This Information Alert is aimed primarily at commercial property and gives guidance to both valuers and lenders on the advice that can be provided when conducting loan security reviews in circumstances when values are changing rapidly. It recognises that in the current economic climate there may be a need for valuers to provide advice on the outlook of a property's value, as well as establishing the current market value. The guidance is particularly relevant to valuations for secured lending.

<http://www.rics.org/NR/rdonlyres/AB68FD11-5FDD-4BCF-BC6E-FDAC953CE737/0/ValuationInformationAlertLoanSecurityValuationReviewsJune09.pdf>

## 26

Woodland Trust Research Paper

### **Impacts of nearby development on the ecology of ancient woodland**

This research commissioned by the Woodland Trust highlights the potential impacts of building developments on the ecology of adjacent ancient woodland sites in the UK. These impacts arise when developments are built too close to these sites and cause long term ecological damage to irreplaceable habitats.

<http://www.woodlandtrust.org.uk/en/campaigns/woodwatch/neighbour-hell/Pages/neighbours-hell-summary.aspx>

# Gerald Eve's UK office network

Gerald Eve LLP is an independent firm of chartered surveyors and property consultants, employing more than 330 staff across the UK.

We provide a comprehensive range of services to our private and public sector clients — including more than 40 per cent of the FTSE100 — covering agency, corporate property management, professional and transaction-based advice.

Our philosophy is to serve clients by identifying opportunities and solving problems relating to property through the provision of high quality, thoroughly researched cost effective advice.

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Evebrief has been established for more than 30 years. It is a summary of the latest statutory and legal cases affecting the property industry and is widely regarded in the industry as the most comprehensive document of its type.

### Useful web links

[www.ukonline.gov.uk](http://www.ukonline.gov.uk)  
[www.odpm.gov.uk](http://www.odpm.gov.uk)  
[www.dft.gov.uk](http://www.dft.gov.uk)  
[www.inlandrevenue.gov.uk](http://www.inlandrevenue.gov.uk)  
[www.hmso.gov.uk](http://www.hmso.gov.uk)  
[www.egi.co.uk](http://www.egi.co.uk)  
[focus.focusnet.co.uk](http://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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# evebrief

## SCOTLAND

### Planning

#### 01

Statutory Rule

#### **SR 2009/212 The Town and Country Planning (Inquiries Procedure) (Scotland) Amendment Rules 2009**

These Rules, which come into force on 03.08.09, amend the 1997 Rules and the Town and Country Planning Appeal (Determination by Appointed Person) (Inquiries Procedure) (Scotland) Rules 1997 such that those Rules do not apply to inquiries held in connection with appeals whose procedure is regulated by the Town and Country Planning (Appeals) (Scotland) Regulations 2008 or appeals in relation to the discharge of planning obligations and good neighbour agreements.

[http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi\\_20090212\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090212_en.pdf)

#### 02

Statutory Rule

#### **SR 2009/213 The Town and Country Planning (Temporary Stop Notice) (Scotland) Regulations 2009**

These regulations come into force on 03.08.09 and provide that the stationing of a caravan on land is an activity not prohibited by a temporary stop notice in circumstances where the caravan is stationed on the land immediately before the temporary stop notice is issued and where it is occupied at that time by a person as his or her main residence.

[http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi\\_20090213\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090213_en.pdf)

## 03

Statutory Instrument

### **SSI 2009/219 The Planning etc (Scotland) Act 2006 (Commencement No 9) Order 2009**

To the extent that they are not already in force, this Order brings ss6 to 10 (other than s7(3)), 12 to 15, 16(b), 17 to 22 (other than s20(3)), 25, 26, 54(3) to (10), (13) and (17)(a)(i) and 56 of and the Schedule (partially) to the Planning etc (Scotland) Act 2006 into force on 03.08.09 for all purposes.

[http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi\\_20090219\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090219_en.pdf)

## 04

Statutory Instrument

### **SSI 2009/220 The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009**

These regulations come into force on 03.08.09 and make various miscellaneous amendments to the following regulations:

- The Town and Country Planning (Appeals) (Written Submissions Procedure) (Scotland) Regulations 1990;
- The Town and Country Planning (Enforcement of Control) (No 2) (Scotland) Regulations 1992;
- The Town and Country Planning (Appeals) (Scotland) Regulations 2008;
- The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008;
- The Town and Country Planning (Development Planning) (Scotland) Regulations 2008; and
- The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008

[http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi\\_20090220\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090220_en.pdf)

## 05

Statutory Instrument

### **SSI 2009/221 The Environmental Impact Assessment (Scotland) Amendment Regulations 2009**

These regulations, which come into force on 03.08.09, amend the 1999 Regulations to take account of changes made to the Town and Country Planning (Scotland) Act 1997 by the Planning etc (Scotland) Act 2006 of the replacement from 03.08.09 of the provisions relating to procedures and time limits set out in the Town and Country Planning (General Development Procedure) (Scotland) Order 1992 by the provisions of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008.

[http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi\\_20090221\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090221_en.pdf)

## 06

Statutory Instrument

### **SI 2009/222 The Planning etc (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009**

This Order, which comes into force on 03.08.09, makes saving, transitional and consequential provisions in relation to the commencement of various provisions of the Planning etc (Scotland) Act 2006.

[http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi\\_20090222\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090222_en.pdf)

## Rating

## 07

Statutory Instrument

### **SSI 2009/196 The Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment (No 2) Order 2009**

This Order, which comes into force on 01.07.09, amends the 2005 Order to reflect the change in name of Transco plc to National Grid Gas plc.

[http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi\\_20090196\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090196_en.pdf)

# Environment

08

Statutory Instrument

## **SSI 2009/202 The Radioactive Contaminated Land (Scotland) Amendment Regulations 2009**

These regulations, which come into force on 26.06.09, modify the 2007 Regulations in relation to radioactive contaminated land other than land contaminated by a nuclear occurrence. They provide for the Scottish Environment Protection Agency to determine whether such land is "contaminated land". They also modify the definition of "substance" contained in the 2007 Regulations.

[http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi\\_20090202\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090202_en.pdf)

# WALES

## Planning

09

Planning Policy Wales — Technical Advice Note

### **Technical Advice Note 12: Design**

This Technical Advice Note (TAN) should be read in conjunction with Planning Policy Wales which sets out the land use planning policies of the Welsh Assembly Government. It aims to equip those involved in the design of development with advice on the following:

- how "Promoting sustainability through good design" may be facilitated through the planning system; and
- the preparation and validation of mandatory design and access statements

<http://wales.gov.uk/docs/desh/policy/090601tan12en.pdf>

10

Welsh Assembly Consultation Paper

### **(Draft) Technical Advice Note 22: Planning for Sustainable Buildings**

**Deadline for Comments: 31.07.09**

Chapter 2 of Planning Policy Wales sets out the Assembly Government's land use planning policies for planning a sustainable future. The "Planning for Sustainable Buildings" Ministerial Interim Planning Policy Statement (MIPPS) (01/09) details a new national planning policy on sustainable building standards (a new s2(12) of Planning Policy Wales). This TAN explains how to apply the policy, and covers:

- sustainable buildings standards;
- reducing carbon emissions by using the energy hierarchy which sets out steps in building design that reduce emissions in the most effective manner;
- preparing development proposals to deliver sustainable building standards;
- the role of local planning authorities;
- planning conditions and obligations; and
- setting local requirements for sustainability on certain sites

<http://wales.gov.uk/docs/desh/consultation/090507tan22consultationen.pdf>

# Housing

## 11

Statutory Instrument

### **WSI 2009/1260 The Housing (Replacement of Terminated Tenancies) (Successor Landlords) (Wales) Order 2009**

Part 2 of Schedule 11 to the Housing and Regeneration Act 2008 provides, in certain circumstances, that where tenancy of a dwelling-house ends following service of a possession order but the tenant continues to live in the dwelling-house, then a new tenancy is treated as arising between the ex-landlord and the ex-tenant on the commencement date. This Order which comes into force on 20.05.09, provides for Part 2 to apply to successor landlord cases in Wales. Such a case arises where the ex-landlord's interest in the dwelling-house was transferred to another person after the original tenancy ended but before "the commencement date" and on that date belongs to the initial transferee or a subsequent transferee. A new tenancy will be treated as arising between the successor landlord and the ex-tenant.

[http://www.opsi.gov.uk/legislation/wales/wsi2009/pdf/wsi\\_20091260\\_mi.pdf](http://www.opsi.gov.uk/legislation/wales/wsi2009/pdf/wsi_20091260_mi.pdf)

# NORTHERN IRELAND

## Planning

### 12

Planning Guidance

#### **Guidance on Renewing Planning Permission and Starting Development**

This guidance is concerned with re-applying for planning permission under draft PPS21. If a planning approval has yet to be implemented and is due to expire in the near future, it is still possible to re-apply for planning permission under draft PPS21 if any of the following apply:

- the permission relates to a replacement dwelling;
- the permission is for an infill dwelling;
- the permission relates to a dwelling on a farm which is sited to cluster with existing buildings on a farm;
- the permission was granted in connection with a non-agricultural business; or
- the permission was granted on the basis of the applicant's personal circumstances

Planning permission will only be granted for any of the above if the same circumstances prevail and the application site offers the same or better level of integration as the previous approval.

<http://www.planningni.gov.uk/index/advice/common-advice-renewal-and-starting-development.htm>