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evebrief

Editorial



B. Aldridge

At item 20 we report on the London Housing Design Guide issued in early July for consultation. In the past, CABE has rated much of London's recently built housing as being of poor quality, and new homes in the capital are some of the smallest in Western Europe. Announcing the Guide, Boris Johnson described recently built homes in London as being "fit neither for Bilbo Baggins nor his hobbit friends".

This guidance seeks to promote excellence in both quality of design and sustainability, and will apply to publicly funded homes built in the capital from 2011. It consolidates existing design standards, reducing the number of requirements to be referred to for such schemes substantially. This simplification is clearly to be welcomed.

The Mayor is considering adopting the standards as an SPG to the London Plan, so they would ultimately apply to all new housing in London. As it is possible that they will add to the cost of development, developers may wish to consider how their proposals will be affected.

In the last edition of Evebrief at item 07 we reported on a consultation document regarding changes to the treatment of minor amendments to planning permission; CLG has now issued an

options study which we report on at item 13 and which considers the definition of "minor material" amendments and options for a workable new procedure for dealing with changes to planning permissions in these cases.

Potentially of interest to occupiers, item 18 reports on new regulations effective from 31 July which will in certain circumstances allow ratepayers to defer a proportion of their rates liability to future years, and item 19 reports on CLG's consultation on possible options for transitional arrangements arising from the 2010 non-domestic rating revaluation.

Finally, the decision of the House of Lords in the compulsory purchase case of Transport for London (London Underground Ltd) v Spierose Ltd was published on 30 July, just as this edition of Evebrief was being finalised. We will report in more detail in the next edition but in brief this reverses the Lands Tribunal and Court of Appeal decisions that, where land was considered to have a good prospect of obtaining planning permission in the absence of the scheme and the compulsory acquisition, that probability is to be treated for compensation purposes as a certainty.

Ben Aldridge

Landlord & Tenant

01

British Council of Offices (BCO) Guide

The Carbon Reduction Commitment — A Guide for Landlords and Tenants

This guide is intended to assist owners and occupiers of commercial property to plan how to implement the Carbon Reduction Commitment (CRC), the new legally binding emissions trading scheme that will apply to large businesses and public sector organisations wef April 2010. Even if owners and occupiers of property are not affected at the time when the scheme is launched, CRC is likely to affect the way that properties are bought and sold. The guide is divided into three sections:

- Section 1 provides general information on how CRC will operate, to whom it applies and the timeline for its introduction;
- Section 2 discusses how the cost of the CRC can be apportioned between landlords and tenants, though definitive guidance cannot be given as the legal position regarding its application, particularly in relation to existing leases, remains unclear. This section examines some of the more significant issues that landlords and tenants are likely to face and discusses some possible approaches to dealing with them; and
- Section 3 addresses some of the issues that are likely to arise on a change of ownership of a commercial building.

http://www.bco.org.uk/uploaded/CRC_Guide_A4_19th_June_2_9_1.pdf

Planning

02

Administrative Court

Challenge to policies in revised version of the East of England plan — s113(2) Planning and Compulsory Purchase Act 2004

* ST ALBANS CITY AND DISTRICT COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2009) All ER(D) 130 (Jul) — Decision given 20.05.09

Facts: A revision of the East of England plan was adopted by the Sec of State in May 2008. The plan contained policies ("the challenged policies") relating to development in respect of Hemel Hempstead, Welwyn Garden City, Hatfield and Harlow, towns situated within the "London Arc", a belt of land lying within the metropolitan Green Belt. The plan went through various drafts and in 2006 an environmental report was prepared, containing an "appraisal of alternatives" of policies for development then proposed in the area covered by the draft plan. However, when the draft plan was examined by the East of England Regional Assembly in public no further environmental report was provided for that purpose which addressed the challenged policies as adopted.

Point of dispute: Whether the policies which affected the towns at issue in the plan, but not the whole plan, should be quashed as being "outwith the appropriate power" as provided in Part 1 of the 2004 Act. In particular, the claimants argued that the Sec of State should have prepared and carried out a proper environmental assessment in relation to those policies before the plan was adopted.

Held: The claimants' application was allowed. The relevant EC Directive and Regulations required that reasonable alternatives to the challenged policies had to be identified, described and evaluated before a choice as to acceptable development was made and the 2006 environmental report had not done this. A decision had been made effectively to erode the metropolitan Green Belt in a sensitive area without considering possible alternatives. The challenged policies were outwith the appropriate power and should be quashed.

03

Administrative Court

Consent for advertisement replacing long standing previous display

* THOMAS (T/A RT PROPERTIES) V NATIONAL ASSEMBLY FOR WALES (2009) PLSCS 217 — Decision given 14.07.09

Facts: After it had erected a large internally lit advertisement on the end of a building, T applied for, and was refused, advertisement consent. The reason given for refusal was that the advertisement would have an adverse effect on visual amenity, to the detriment of the street scene and the character of the surrounding area. T's appeal to an inspector under Regulation 15 of the Town and Country Planning (Control of Advertisements) Regulations 1992 was dismissed. Statements had been served by T's agent in support of that appeal contending that the advertisement was a replacement for a virtually identical advertisement displayed without objection in the same position for at least ten years prior to the application.

Point of dispute: Whether T's appeal against the inspector's decision should be allowed. T argued that the inspector had failed to provide any reasons for rejecting an important part of his case, namely, the fact that an advertisement had existed in situ for many years prior to the application. The inspector's analysis of the character of the area and the effect of the advertisement on it did not acknowledge that uncontested history. The question was also raised as to whether the inspector could have reached a conclusion on whether a deemed consent for the display existed and, if so, whether he should have reached a decision to that effect.

Held: T's application was granted. The inspector should have dealt with the central point of T's case, namely the fact of the previous advertisement, the absence of objections to it and the similarity of the old advertisement and the new one. Since he had not explained why these points were not favourable to T's application he had not sufficiently reasoned the case and because his decision prejudiced T it could be quashed. Unless the issue of deemed consent was raised by a claimant an inspector would not bring it up. The inspector had not been asked to determine whether a deemed consent was in place and was under no obligation to consider the point for the mere reason that it was asserted in a statement served in support of the application for an express permission that an advertisement might have been in place for many years.

04

Administrative Court

Quashing of permission for a development comprising the construction of non-food comparison goods retail and leisure units

* R (ON THE APPLICATION OF STAMFORD CHAMBER OF TRADE & COMMERCE) V SOUTH KESTEVEN DISTRICT COUNCIL (2009) All ER (D) 158 (Jul) — Decision given 15.07.09

Facts: SKDC granted conditional permission for a development, described as the construction of non-food comparison goods retail and leisure units, in Stamford, Lincs. The planning officers had recommended permission be granted but the conditions attached to the permission granted by the development control committee were not in the same terms as those suggested by the officers. Conditions 9 and 18 were concerned with restricting floorspace while condition 17 dealt with transport arrangements for the development site. The claimants applied for judicial review of the committee's decision to grant permission for the development.

Point of dispute: Whether the decision to grant permission for the development should be quashed. The claimants alleged that the officers' report considered by the committee contained factual inconsistencies and was incomprehensible in parts. They argued that the planning committee had been presented with misleading material by the officers and that the committee had failed to identify the square meterage for non-bulk comparison goods which could properly be allowed in the development. It was also argued that condition 17 would be very difficult to enforce.

Held: The decision to grant permission was quashed. The approach adopted by the officers with regard to floorspace to be made available for non-bulk comparison goods had contained errors. Although the conditions in the permission were not in exactly the same terms as those suggested by the officers, the committee had erred in adopting the officers' erroneous approach. The committee had been given a false picture and had been misled. The point taken by the claimants on condition 17 was found to have been made out and that condition could not be justified.

05

Administrative Court

Planning permission for wind turbines — whether inspector should have considered possible alternative sites

* DERBYSHIRE DALES DISTRICT COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2009) All ER (D) 180 (Jul) — Decision given 17.07.09

Facts: In July 2007 DDDC refused C's application for planning permission to erect a number of wind turbine generators. On appeal the inspector appointed by the Sec of State overturned that decision and granted conditional planning permission. The inspector came to the conclusion that although the proposal conflicted with development plan policy in some respects, those conflicts were outweighed by the benefits of renewable energy that would be supplied. The inspector also stated that it had not been necessary to consider alternative sites for the proposal.

Point of dispute: Whether DDDC's application for an order quashing the inspector's decision would be allowed. DDDC argued that the inspector had erred in not considering the possibility of alternative sites for the proposal.

Held: DDDC's application was dismissed. There was nothing in the principles established by case law which required inspectors to have regard to alternative sites, nor was there anything in the Town and Country Planning Act 1990 on the subject. The question of alternatives could be left to the inspector as a matter of planning judgment.

06

Statutory Instrument

SI 2009/1901 The Planning (Hazardous Substances) (Amendment) (England) Regulations 2009

These Regulations, which come into force on 01.10.09, implement Article 12 of Directive 96/82/EC, as amended, on the control of major accident hazards involving dangerous substances in relation to town and country planning in England.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091901_en.pdf

07

Planning Policy Statement

Planning Policy Statement: Eco-towns — A supplement to Planning Policy Statement 1

This PPS on eco-towns supplements PPS1. It sets out a range of minimum standards which are more challenging than would normally be required for new development. Their purpose is to ensure that eco-towns are exemplars of good practice, provide a showcase for sustainable living and allow Government, business and communities to work together to develop greener, low-carbon living. The design of eco-towns should take full account of their impact on local eco-systems, mitigating negative impacts as far as possible and maximising opportunities to enhance their local environments.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/pps-ecotowns.pdf>

08

CLG Consultation Paper

Planning Act 2008: Consultation on examination procedures for nationally significant infrastructure projects

Deadline for Comments: 05.10.09

This consultation relates to a group of draft regulations and guidance documents that set out the procedures for examinations on nationally significant infrastructure projects, fees that will be payable to the Infrastructure Planning Commission (IPC) when an application for development consent is made, and matters which the IPC should take into account in any decisions relating to an order granting development consent.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1282289.pdf>

09

CLG Consultation Paper

Consultation paper on a new planning policy on Development and coastal change

Deadline for Comments: 30.10.09

This consultation seeks views on new draft planning policy on managing the impacts of physical changes to the coast on development. That policy aims to strike the right balance between economic prosperity and reducing the consequences of coastal change on communities. Strong planning policy to manage coastal flooding is already in place (PPS 25). However, planning decisions relating to coastal erosion risks are made by reference to PPG 20, which was published in 1992 and which adopts a highly precautionary approach, restricting development in all areas at risk of coastal erosion, with sometimes adverse effects upon the social and economic viability of a community. The consultation forms part of a wider package of actions to deliver sustainable coastal risk management, including Defra's Consultation on Coastal Change Policy.

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

10

CLG Consultation Paper

Consultation paper on a new Planning Policy Statement 15: Planning for the Historic Environment

Deadline for Responses: 30.10.09

This document invites comments on a new planning policy statement (PPS) on planning for the historic environment. The White Paper *Heritage Protection for the 21st Century*, published in March 2007, set out the Government's intentions to reform some aspects of the heritage protection system upon the following principles:

- the need to develop a unified approach to the historic environment;
- maximising opportunities for inclusion and involvement; and
- supporting sustainable communities by putting the historic environment at the heart of an effective planning system.

It is intended to replace PPG 15 and PPG 16 published in 1994 and 1990 respectively and reflects a more modern integrated approach, embracing all of the historic environment, rather than distinguishing between buildings and archaeology as was previously the case. It defines the historic environment in terms of heritage assets to be conserved and enhanced in accordance with a set of common principles in proportion to their significance.

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

11

English Heritage (EH) Consultation

PPS Planning for the Historic Environment: Historic Environment Planning Practice Guide

Deadline for Responses: 30.10.09

This draft Practice Guide published by EH provides explanations and guidance to assist Local Authorities in implementing the policies set out in PPS 15: Planning for the Historic Environment (see item 10 above), which is currently being consulted upon by CLG. It will replace existing guidance contained in PPG15 and PPG16. After the consultation, it is intended that the Practice Guide will be published jointly by CLG, the Department of Culture, Media & Sport, and EH in parallel with the new PPS 15.

http://www.english-heritage.org.uk/upload/pdf/English_Heritage_PPS15_Consultation_Draft_Practice_Guide.pdf?1248951791

12

CLG Report

Renewable Energy Capacity in Regional Spatial Strategies: Final Report

This research was commissioned to establish what is known about the potential renewable energy capacity in England, as delivered through regional spatial strategies. Its findings will be used to inform the planning elements of the final UK Renewable Energy Strategy (RES). It identifies all policies and targets relating to renewable energy in both published RSSs and those under review in all nine English regions. The progress being made towards renewable energy targets for 2010 and 2020 are considered and a large delivery gap identified particularly in respect of the latter. Current 2020 targets are set well below those required to deliver the 30-35% renewable electricity envisaged by that time in the draft RES. This research confirms the suggestion of the RES that a ten-fold increase in the amount of renewable electricity produced is needed in most regions to move from the current position to the UK's envisaged commitments under the EU Renewable Energy Directive.

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

13

CLG Study

Minor material changes to planning permissions: Options study

This study was conducted by WYG Planning & Design on behalf of the Department of Communities and Local Government to consider options for a more proportionate approach to minor material changes to planning permissions. The study arose from the 2008 Killian Pretty Review (KPR) which identified a lack of flexibility to address small scale changes to approved schemes and highlighted two requirements of a more streamlined approach to minor material changes:

- a definition of "minor amendment" — KPR suggested that a set of qualitative criteria could be used to judge whether an amendment fell within the definition of "minor"; and
- a streamlined and efficient process for dealing with "minor amendments".

This study focuses on those two key issues of definition and process.

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

14

Impact Assessment

Impact Assessment: Planning Act 2008 — Town and Country Planning

The Planning Act 2008 takes forward many key elements of the planning white paper, Planning for a Sustainable Future, published in May 2007. The Act contains three main elements, dealing with:

- Nationally Significant Infrastructure Projects;
- Community Infrastructure Levy; and
- Town and Country Planning reform.

This document is a composite of separate Impact Assessments, each of which deals with costs and benefits of specific measures in the Act relating to Town and Country Planning reform. Those measures collectively seek to improve the Local Development Framework process, address climate change, make the application process more efficient and effective, and improve the appeal process.

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

15

Planning Portal Advice

Improving the quality of advice to planning system users

The purpose of this guide, aimed at local planning authorities, is to outline the benefits of implementing links to Planning Portal (a service provided by the Department of Communities and Local Government) to improve the quality of their planning websites. The document was compiled following extensive research into the information needs of planning customers and provides helpful advice on the variety and implementation of effective links to the Planning Portal's content.

<http://www.planningportal.gov.uk/uploads/lpalinks.pdf>

16

Homes & Communities Agency Good Practice Note

Investment and planning obligations: responding to the downturn

This note has been produced for staff and partners of the national housing and regeneration agency. It is based on existing policy guidance and aims to stimulate affordable home building during the recession which has seen the viability of many housing schemes reduced as a result of falling land values and house prices. It sets out the approach which the HCA will take to assist local authorities to meet immediate housing need and also to ensure that, when the upturn begins, a recovering market is not hampered by lapsed consents, or delays due to re-applications. It reiterates the HCA's commitment to flexibility and acknowledges that this may include higher levels of investment in the short term, but cautions that a lack of financial viability alone will not mean simply replacing s106 requirements with HCA funding. It concludes that a collaborative approach is essential to success.

http://www.homesandcommunities.co.uk/public/documents/Investment_and_planning_good_practice_note.pdf

17

Planning and the Gender Equality Duty

The Gender Equality Duty came into force in 2007 and places a duty on all public authorities to promote gender equality and remove gender discrimination. This study examines how the legislation is shaping planning and regeneration policy and practice. The key points that emerge are that:

- there is a lack of awareness of how gender issues are directly relevant to planning policy and practice;
- more needs to be done to promote the need to consider gender issues in planning related policy and practice and it needs to be recognised as a legal requirement for all public bodies;
- tools such as Equality Impact Assessments would enable gender to be more effectively embedded into planning decision making; and
- strategic use of the Gender Equality Duty and greater consideration of gender in planning would result in improved outcomes for the public at large.

Summary:

http://www.rics.org/NR/ronlyres/4A3E90E5-783F-4300-9F97-C71609E0B2BD/0/fibre_gender_and_planning_summary_may_2009.pdf

Full:

http://www.rics.org/NR/ronlyres/4DEB837F-2C51-4CA7-ABAD-FC813717EB15/0/fibre_gender_and_planning_full_may_2009.pdf

Rating

18

Statutory Instrument

SI 2009/ 1597 The Non-Domestic Rating (Deferred Payments) (England) Regulations 2009

These Regulations, which came into force on 31.07.09, amend the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 and the Non-Domestic Rating (Collection and Enforcement) (Central Lists) Regulations 1989 to make special provision in relation to the collection of non-domestic rates for the financial year beginning 01.04.09. The existing Regulations provide for annual rates liability to be discharged in instalments, but under the existing scheme, these are payable during the financial year to which the demand for payment relates. These Regulations amend the existing Regulations to provide that, where they satisfy certain conditions, ratepayers subject to non-domestic rates in the financial year 2009/10 can defer a proportion of the liability to the years beginning 01.04.10 and 01.04.11.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091597_en.pdf

19

CLG Consultation Paper

The transitional arrangements for the non-domestic rating revaluation 2010 in England — Consultation paper **Deadline for Responses: 23.09.09**

This consultation is concerned with the transitional arrangements which will be introduced to phase in large changes in individual rates bills arising from the non-domestic rating revaluation 2010 in England. It sets out details of the four options currently under consideration for the scheme, together with considerations relevant to each, and indicates the Government's current preference. Views are invited on the options set out.

<http://www.communities.gov.uk/documents/localgovernment/pdf/1276708.pdf>

Housing

20

Mayor of London Consultation

London Housing Design Guide

Deadline for Responses: 30.09.09

This guide addresses the challenges of providing housing for London's population and seeks to encourage development which combines efficiency in land-use with the environmental benefits of well-designed, well-managed housing built to higher densities. It is envisaged that the guidance will form the basis of minimum standards for design of publicly subsidised new build housing across London, and considers six key areas of design which developments will need to deal with, being:

- outdoor spaces;
- mix of housing size, type and tenure;
- entrances and circulation areas, car parking, waste and cycle stores;
- space standards;
- comfort; and
- climate change.

Views are sought on the standards set out in the guide.

<http://www.london.gov.uk/mayor/publications/2009/docs/housing-design.pdf>

21

National Housing and Planning Advice Unit (NHPAU) Publication

Public Attitudes to Housing 2009

This is the NHPAU's third annual survey of the public's attitudes on the affordability of housing in England. The main points to emerge from the survey are that:

- affordability remains a significant issue, due to tighter mortgage lending, notwithstanding falling house prices;
- housing is less accessible for first time buyers than it was two years ago;
- there is concern about the impact on young adults who cannot afford to get onto the housing ladder and have to live with their parents; but
- despite these concerns, support for building more homes is low, especially among homeowners.

<http://www.communities.gov.uk/documents/507390/pdf/1276407.pdf>

22

CLG Statistical Release

House Price Index — May 2009

- UK house prices were 12.5% lower than in May 2008.
- The mix-adjusted average house price in the UK stood at £188,991 (not seasonally adjusted).
- UK house prices fell by 0.4% in the quarter ending May 2009. This compares with a fall of 4.8% for the quarter ending February 2009.
- Annual average house prices fell by 12.8% in England, by 8.8% in Wales, by 6.9% in Scotland and by 23.2% in Northern Ireland.
- Annual average house prices paid by first time buyers in May 2009 were 14.8% lower than a year ago. By comparison, average house prices paid by former owner occupiers were only 11.6% lower.

<http://www.communities.gov.uk/documents/statistics/pdf/1281070.pdf>

Contract

23

High Court

Estate agent's commission — construction of agreement — claimant gaining control of building by acquiring shares in parent company — whether agreement with claimant covered the actual transaction

** ESTAFNOUS V LONDON & LEEDS BUSINESS CENTRES LTD
(2009) PLSCS 203 — Decision given 15.06.09

Facts: E, an estate agent who was based in a building owned by LLBC, entered into a written agreement with LLBC to sell the property to one of his clients, K. It was agreed that on completion LLBC would pay commission to E. In the event the property was not sold to K, but K acquired shares in LLBC's parent company giving him control of the building.

Point of dispute: Whether E was entitled to £2m commission from LLBC. LLBC argued the obligation to pay commission had not been triggered as the property had not in effect been sold. E contended that on a true construction of the agreement, this was sufficient to qualify as a purchase, but if not email correspondence between E and LLBC had varied the agreement so as to cover a sale of shares. LLBC argued that such a variation would be unlawful as it was contrary to the Companies Act 1985.

Held: E's claim was dismissed. E had introduced K as an intending purchaser of the property, but on its true construction the agreement did not cover the events that had happened. Under the agreement commission became payable on the purchase of the building and K had not completed a purchase of a legal estate in land. It had purchased shares that gave him control of the building, which was a different transaction from the purchase of land. There was nothing in the correspondence between the parties to indicate that the agreement had been varied. However even if it had been, it would not have breached the provisions of the 1985 Act.

Real Property

24

High Court

Constructive Trust

* BAYNES CLARKE V CORLESS
(2009) PLSCS 207 — Decision given 08.07.09

Facts: BC and C owned neighbouring properties in a gated development comprising three detached houses. The developer, AEL, owned the estate road and a grass verge to the west ("the amenity land"). BC and C assumed they would eventually acquire that portion of the estate road and the amenity land adjacent to their houses, but AEL granted rights of way over the road in the hope that it would be able to acquire some further adjacent land for development. Ultimately this did not happen and when the third house was sold it included part of the amenity land opposite it. The remainder, together with the estate road, was acquired by C.

Point of dispute: Whether BC should be granted a declaration that C held the amenity land on a constructive trust for the owners of all three houses on such terms as the court thought fit. BC contended that there was an agreement, arrangement or understanding that negotiations should have taken place with AEL to purchase the amenity land on behalf of all the residents.

Held: BC's claim was dismissed. They had not made out their claim to a constructive trust of the amenity land. To create a constructive trust there had to be an agreement between the parties, with less than contractual certainty but with, at the least, express accord. Conduct alone would not be sufficient although conduct could lead a court to infer that the parties had reached a consensus. Though insufficient by itself, unconscionable behaviour was also a necessary condition. To be enforceable there had to be a clear agreement on the basic details of the arrangement. It was essential that the circumstances made it inequitable for the acquiring party to retain the property for itself in a manner that was inconsistent with the arrangement. To succeed in this case BC would have to show that they had relied on the alleged agreement, arrangement or understanding by, for example, staying out of the market or committing expenditure they would not otherwise have committed.

25

Upper Tribunal: Lands Chamber

Application to discharge restrictive covenant — Section 84(1)(a) Law of Property Act 1925

* RE ABERTAWNE BRO MORGANNWG NHS UNIVERSITY TRUST'S APPLICATION
(2009) PLSCS 218 — Decision given 23.06.09

Facts: The land in question was purchased by the applicant's predecessor in title from the local parish council in 1938 pursuant to an agreement which contained a restrictive covenant preventing the construction or use of any building on the land other than as a maternity clinic without the vendor's consent. Originally the clinic was a centre for the distribution of milk to new mothers and a point of contact with community based midwives, but in later years its use declined. The applicant closed the clinic in 2005 and sought to sell it. The objector, who owned a park to the rear of the clinic, wished to buy the clinic and use it as a dental surgery. A higher bid was received from a religious organisation wanting to change its use to a church and the applicant applied to discharge the restrictive covenant in order to make this possible.

Point of dispute: Whether the restrictive covenant should be discharged. The objector withheld its consent on the grounds that the property should continue to benefit the community by providing medical services but the applicant argued that the covenant had become obsolete. The applicant also disputed whether the covenant envisaged by the 1938 agreement had ever been entered into, and, if so, whether it touched and concerned the objector's land to enable it to enforce the covenant.

Held: The application was allowed. It was possible to infer from the terms of the agreement and subsequent construction and use of the clinic that the covenant had been entered into. The covenant's primary intention was to maintain the clinic and, secondarily, it was to benefit the vendor's retained land. The objector had the benefit of the covenant at common law. However the original purpose of the covenant could no longer be served in any meaningful way as a result of changes in the provision of healthcare. The only user specified by the covenant was that of a maternity clinic and as its purpose could no longer be achieved the covenant was obsolete and should be discharged pursuant to s84(1)(a) of the Law of Property Act 1925.

Environment

26

Noise nuisance — Section 79(1) Environmental Protection Act 1990

* ELVINGTON PARK LTD V YORK CITY COUNCIL
(2009) PLSCS 220 — Decision given 20.07.09

Facts: EP occupied an airfield which it used for flying light aircraft without complaint by nearby residents. However complaints were received when it was used for motor car testing and racing and YCC issued noise abatement notices under s79(1) of the Environmental Protection Act 1990. The notices required EP to abate the nuisance and take steps to prevent the noise, but did not define those steps. Both the crown court and district dismissed EP's appeals against the notices.

Point of dispute: Whether the noise abatement notices should be set aside on the grounds that (i) they should have specified the steps necessary to prevent the noise (the invalidity issue); and (ii) if that were not the case, it was irrational of YCC not to set out those steps (the irrationality issue).

Held: EP's appeal was allowed. If an abatement notice required not merely the abatement of noise, but also steps to be taken, the notice had to specify those steps, otherwise it was invalid. In any event, neither party's expert could clarify what work had to be done to abate the nuisance. The experts' views undermined the argument of irrationality because, if they did not know what steps needed to be taken to abate the noise, then it could not have been irrational for YCC to fail to specify those steps.

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Statutory Instrument

SI 2009/1900 The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2009

These Regulations, which come into force on 10.08.09, amend the 2007 Regulations which implement Articles 7 and 10 (which deal with energy performance certificates and independent experts respectively) of Directive 2002/91/EC of the European Parliament and of the Council on the Energy Performance of Buildings. The amendments concern disclosure of energy performance certificates and recommendation reports, and display of energy certificates.

http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091900_en.pdf

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Defra Consultation

Consultation on Draft Noise Action Plans — Environmental Noise (England) Regulations 2006, as amended **Deadline for Comments: 04.11.09**

This consultation seeks views on draft noise action plans for first round agglomerations (defined as large urban areas with populations in excess of 250,000 and population densities exceeding 500 persons per square kilometre), major roads and major railways (both outside first round agglomerations). The plans identify important areas from strategic noise mapping and describe the process to be followed to determine whether further noise mitigation measures might be carried out in those areas in the context of sustainable development. The draft noise action plan template for agglomerations also describes the proposed process for identifying and managing quiet areas with the aim of preserving environmental noise quality.

<http://www.defra.gov.uk/corporate/consult/noise-action-plan/consultation-document.pdf>

29

Defra Consultation

Consultation on secondary legislation for England and Wales under the Marine and Coastal Access Bill: Part 4 Marine Licensing **Deadline for Comments: 22.09.09**

The purpose of this consultation is to seek views on the detailed workings of the key parts of the marine licensing regime that would be established under the Marine and Coastal Access Bill to control activities carried on in the marine environment such as aggregate dredging and construction works. It sets out general principles and proposed approach to: marine licence applications and decision making; appeals against decisions; and exemptions. Feedback will assist in developing secondary legislation to follow the bill dealing with those areas in detail.

<http://www.defra.gov.uk/corporate/consult/marine-bill/consultation.pdf>

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Department of Energy and Climate Change Publication

UK Low Carbon Transition Plan

This Plan sets out how the UK intends to meet its stated aim of cutting emissions by 34% of 1990 levels by 2020. It is estimated that by 2020:

- more than 1.2 million people will be in green jobs;
- seven million homes will have benefited from whole house makeovers and more than 1.5 million households will be supported in producing their own clean energy;
- around 40% of electricity will be from low-carbon sources: renewables, nuclear and clean coal;
- the UK will be importing 50% less gas than it otherwise would; and
- the average new car will emit 40% less carbon than it does now.

http://www.decc.gov.uk/en/content/cms/publications/lc_trans_plan/lc_trans_plan.aspx#1

General

31

CLG Circular

Circular 07/09: Protection of World Heritage Sites

This Circular contains updated policy guidance on the level of protection and management required for World Heritage Sites, of which there are 28 in the UK (18 in England). It explains the Government's objectives for protection of World Heritage Sites, the principles underpinning those objectives, and the actions necessary to achieve them. It replaces paragraphs 2.22-2.23 and 6.35-6.37 of PPG15 (Planning and the Historic Environment).

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

32

CLG Publication

Eco-towns: Location decision statement

This note sets out the background and a summary of the assessment made of location put forward at the current stage of the eco-towns programme. *The Eco-Towns — living a greener future* consultation paper was issued in April 2008 and the draft Planning Policy Statement listed 11 locations that were being considered for inclusion in the programme. The locations where potential to meet the sustainability and deliverability requirements for successful development as an eco-town have been shown, and are included in the PPS, are:

- Whitehill-Bordon;
- Rackheath (Norwich);
- North West Bicester; and
- St Austell.

With the exception of Middle Quinton, where no decision is being taken at this time, other locations need further work to resolve outstanding deliverability issues, or do not show the potential to meet the requirements of successful development as eco-towns at this stage. Some regional bodies will be reviewing potential eco-town options, alongside other development options, as part of their current preparation of proposals for new regional plans.

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

33

CLG Guidance

Gypsy and Traveller Site Management Good Practice Guide

This guidance is directed at local authorities or registered social landlords developing a site for the first time and at those already managing socially rented sites, or private sites where pitches are rented out. It encourages a positive, realistic and practical approach to issues that can arise in the management of sites, especially where they are old and have suffered from under-investment for many years, or where the behaviour of some residents is impacting on others. It is intended to provide an index of good practice, which, if followed, can prevent problems arising or continuing.

<http://www.communities.gov.uk/documents/housing/pdf/1284475>

34

CLG Report

Progress Report on Gypsy and Traveller Policy

This is the first annual report to Parliament on Gypsy and Traveller issues. It concludes the current position on site delivery remains unsatisfactory and that local authorities need to increase the pace at which suitable locations for Gypsy and Traveller sites are identified. The Government considers that with strong leadership at local level authorities could make rapid progress in addressing what is, in numerical and land-use terms, a relatively small level of need. Identifying more suitable locations for authorised sites would help to reduce the number of unauthorised encampments which tend to create tensions between the settled community and Gypsies and Travellers.

<http://www.communities.gov.uk/documents/housing/pdf/1284500>

35

The Mayor's Outer London Commission: Interim Conclusions

The Mayor of London set up the Outer London Commission to:

- ascertain the extent to which Outer London could contribute to the economic success of London as a whole;
- identify the factors holding it back from making a contribution; and
- make recommendations on policies and mechanisms which will enable it to do so.

Its interim conclusions are, inter alia, that:

- Outer London does have the potential to contribute more strongly to the growth of London;
- the drive to boost economic prosperity across the suburbs should focus on attracting new business and customers to existing town centres and other business locations, rather than on a few large growth hubs;
- improvements to connectivity and movement in London are crucial, with improvements to orbital movement felt to be especially important; and
- quality of life is a key concern for businesses and residents.

The Commission's main report is expected to be submitted in the autumn.

<http://www.london.gov.uk/olc/docs/interim-conclusions.pdf>

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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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evebrief

SCOTLAND

Planning

01

Scottish Government Circular

Scottish Planning Series Circular 4 2009: Development Management Procedures

This Circular describes the new requirements for processing planning applications covered by the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008 (SSI 2008/432) and the relevant provisions of the Town and Country Planning (Scotland) Act 1997 as amended by the Planning etc (Scotland) Act 2006. It deals mainly with the new application procedures in force from 03.08.09, although procedures concerning pre-application consultation with communities have been in force since 06.04.09 insofar as they relate to applications to be made on or after 03.08.09. It also provides guidance on the following statutory instruments which are due to come into force on 03.08.09:

- The Town and Country Planning (Charges for Publication of Notices) (Scotland) Regulations 2009;
- The Planning etc (Scotland) Act 2006 (Development Management and Appeals) (Saving, Transitional and Consequential Provisions) Order 2009; and
- The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2009.

<http://www.scotland.gov.uk/Resource/Doc/278370/0083656.pdf>

02

Scottish Government Circular

Scottish Planning Series Circular 5 2009: Hierarchy of Developments

The hierarchy for planning in primary legislation was introduced by The Planning etc (Scotland) Act 2006 in order to ensure that applications are dealt with in an appropriate manner according to their scale and complexity. Part 3 of s5 of the 2006 Act inserts a new s26A into the Town and Country Planning (Scotland) Act 1997 which defines the three categories in the hierarchy of development to which all developments will be allocated:

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

This Circular accompanies The Town and Country (Hierarchy of Development) (Scotland) Regulations 2009 which came into force on 06.04.09.

<http://www.scotland.gov.uk/Resource/Doc/278390/0083657.pdf>

03

Scottish Government Circular

Scottish Planning Series Circular 6 2009: Planning Appeals

Part 3 of the Planning etc (Scotland) Act 2006 introduced important changes to the way in which the planning appeal system will work in Scotland to ensure that examination procedures are proportionate and efficient, that the appeal process is transparent and fair and that decisions are both robust and based upon a review of the original proposals considered by the planning authority. It accompanies The Town and Country Planning (Appeals) (Scotland) Regulations 2008, which come into force on 03.08.09. These Regulations set out the detailed statutory procedures for planning appeals within the framework of the primary legislation. This Circular provides an overview of the new planning appeal procedures, explaining how the two sets of requirements from the Act and the Regulations fit together.

<http://www.scotland.gov.uk/Resource/Doc/278295/0083628.pdf>

04

Scottish Government Circular

Scottish Planning Series Circular 7 2009: Schemes of Delegation and Local Reviews

Part 3 of the Planning etc (Scotland) Act 2006 introduced a number of important changes to the planning appeal system in Scotland. These include provisions covering new schemes of delegation for local developments and the opportunity for the applicant to seek a review of a decision by the planning authority in certain circumstances where an appeal to Scottish Ministers would no longer be available. This Circular accompanies the Town and Country Planning (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2008, which set out the detailed requirements within the primary legislation framework, and this Circular explains how the two sets of requirements fit together and provides an overview of the new regulatory requirements.

<http://www.scotland.gov.uk/Resource/Doc/278868/0083935.pdf>

Housing

05

Scottish Government Consultation

Private Housing Issues: Housing Bill Consultation

Deadline for Responses: 27.09.09

This consultation deals with the Scottish Government's proposals to include some private housing issues in the forthcoming Housing (Scotland) Bill, with the aim of assisting local authorities to enforce existing legislation more effectively. They have arisen from the Government's review of landlord registration and other comments on the registration system, suggestions for changes to the licensing of houses in multiple ownership (HMOs), and points raised during implementation of the powers in the Housing (Scotland) Act 2006 for local authorities to deal with disrepair in privately owned houses.

<http://www.scotland.gov.uk/Resource/Doc/278604/0083694.pdf>

WALES

Planning

06

Planning Policy Wales — Consultation

(Draft) Technical Advice Note 6 — Planning for Sustainable Rural Communities

Planning Policy Wales sets out the Welsh Assembly Government's land use planning policies in respect of supporting sustainable rural communities. MIPPS 01/2006 Housing and TAN 2 Planning and Affordable Housing provide planning policy and guidance in relation to this TAN and must be read alongside it. The aim of this TAN is to provide practical guidance on the delivery of sustainable rural communities, including rural economies, rural housing, rural services and rural agriculture.

<http://wales.gov.uk/docs/desh/consultation/090715drafttan6consultationen.pdf>

NORTHERN IRELAND

Planning

07

Statutory Rule for Northern Ireland

SRNI 2009/256 The Planning (Fees) (Amendment) Regulations (Northern Ireland) 2009

These Regulations, which come into force on 03.08.09, amend the 2005 Regulations which prescribe fees payable to the Department of the Environment in respect of applications made under the Planning (Northern Ireland) Order 1991. Planning fees are increased by approximately 15% overall and a number of minor changes are made to the wording of regulation 14 of the 2005 Regulations dealing with fees for applications for consent to display advertisements.

http://www.opsi.gov.uk/sr/sr2009/nisr_20090256_en_1

http://www.opsi.gov.uk/sr/sr2009/pdf/nisr_20090256_en.pdf

http://www.opsi.gov.uk/sr/sr2009/em/nisrem_20090256_en.pdf (Explanatory Memorandum (PDF 129kb))

08

Planning Service Consultation Paper

Reform of the Planning System in Northern Ireland: Your chance to influence change

Deadline for Responses: 02.10.09

The reforms proposed in this paper represent the most far-reaching changes to the planning system in Northern Ireland for over 30 years. The proposals are set within the context of the Review of Public Administration which will see responsibility for the majority of planning functions move from the Planning Service to 11 new councils. The paper also sets out certain related issues on which the Department of the Environment seeks views, including the criminalisation of development without planning permission, developer contributions and enhancing the capacity of the planning system. The reforms are set in the context of the overall objective of improving Northern Ireland's economy and cover the following areas:

- planning policy;
- the provision of an up-to-date development plan system to operate within a two-tier planning system;
- development management with a three-tier hierarchy of development so that greater resources can be directed to applications with economic and social significance;
- appeals and third party appeals;
- enforcement and criminalisation;
- developer contributions; and
- enabling reform eg culture changes, capacity, funding, engaging communities, audit and inspection arrangements.

http://www.planningni.gov.uk/index/news/news_consultation/consultation_paper-final_draft080709.pdf

09

Planning Service Statistical Bulletin

Development Management Statistics Northern Ireland 2008/09 Fourth Quarterly Statistical Bulletin (January to March 2009)

This Bulletin contains statistics on all types of planning applications received and decided, residential applications and performance on processing planning applications.

http://www.planningni.gov.uk/index/news/news_other/quarterly_publication_0809_q4_v1.pdf