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Legal &  
Parliamentary

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# evebrief

## Editorial



*Steve Vile*

We have a number of interesting issues in this edition of Ewebrief varying from an important decision from the House of Lords on compulsory purchase to Japanese Knotweed.

Taking the House of Lords first at Item 23 we report on the decision in *Transport for London (London Underground Ltd) v Spierose Ltd*. The Court of Appeal allowed the compensation claim, for the extension to the East London Line, to be based on a valuation reflecting the planning authority's resolve to grant permission for a mixed use development, which would significantly have increased compensation. However, no valid certificate had been issued and the HoL held that it could be certain that it would have been for purposes of the valuation. Interestingly this planning application was made two years after Notice of Entry had been served, which illustrates the delays between the Notice and works actually commencing, involved in major infrastructure schemes such as this one and those properties blighted by Crossrail CPO's may throw up similar issues in the coming years.

At Item 13 we report on the consultation exercise for the introduction of the Community Infrastructure Levy. Whether, as the Minister for Housing says this becomes a "fairer, clearer, more legitimate and more predictable" method of extracting contributions from Developers remains to be seen.

Finally at Item 29 we report on plans by DEFRA and the Welsh Assembly to deliberately release into the countryside a Japanese aphid, known to devour Japanese Knotweed, which is widely acknowledged as a major environmental problem across Europe. However, this would be the first time such a solution has been tried in Europe and Japanese scientists are not convinced it is the answer, or that the authorities in the UK can confidently say this will be a "safe introduction with no unforeseen consequences". Unfortunately unlike badly drafted legislation, examples of which we have regularly reported on in Ewebrief, there will be no going back from this scheme.

# Landlord & Tenant

## 01

Upper Tribunal: Lands Chamber

### **Commonhold and Leasehold Reform Act 2002 — administration charges**

\* MEHSON PROPERTY CO LTD V PELLEGRINO  
(2009) PSCS 224 — Decision given 01.07.09

**Facts:** P owned a 999-year lease on an estate the freehold of which was owned by MP. P had concerns about the adequacy of the repairing covenant under the lease and MP agreed to enter into a deed of variation to remedy various matters in return for a payment of £500 and £350 plus VAT for legal fees incurred in executing the deed.

**Point of dispute:** Whether MP's appeal should be allowed against the ruling of the leasehold valuation tribunal that £350 plus VAT was a reasonable cost for the deed and ordering it to refund £500 to P. MP argued that the charges did not fall within the definition of an administration charge under s158 of, and para 1(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

**Held:** MP's appeal was allowed. A charge for entering into a deed of variation did not constitute an administration charge within para 1(1) of Schedule 11 to the 2002 Act. The landlord was charging not only for providing the document, but also for the substance of the variation which might put him into a less advantageous position than before. Accordingly, the LVT had no jurisdiction to treat as an administration charge any charges that MP made for the deed of variation and had not been entitled to consider the reasonableness of those charges or to reduce them.

# Planning

## 02

Court of Appeal

### **Caravans not in position on appeal site — inspector finding that Article 8 was not engaged — whether consideration of Article 8(2) would have affected the decision**

\*\* RAFFERTY V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT  
(2009) PLSCS 230 — Decision given 29.07.09

**Facts:** R was refused planning permission to station his caravans on some land which he owned. At the time of his appeal against that refusal he and his family were living in a caravan in a roadside layby. The inspector dismissed R's appeal on the grounds that considerations such as the need for gypsy sites generally in the area, and the need for stability for health and educational reasons did not outweigh the harm that the development would cause to the character and appearance of the area, and AONB. The inspector also found that because R did not live on the appeal site, dismissing his appeal would not interfere with his right of respect for his home and private life under Article 8 of the European Convention on Human Rights (ECHR).

**Point of dispute:** Whether to allow R's appeal against the decision of the judge at first instance to uphold the inspector's ruling. R contended that the inspector was incorrect to find that Article 8 ECHR was not engaged because he did not already live on the appeal site and that his decision had not taken into account the effect of refusal of planning permission on his right to private and family life. The judge held that the inspector had taken the correct approach, but even if that were not so and there was a wider interference with private and family life, it would have made no difference to his decision.

**Held:** R's appeal was dismissed. It was not correct to find that Article 8 was not in issue because R did not live on the appeal site. He and his family still had a home and private life that could be interfered with. By denying them a stable base for the caravan on land which they owned the refusal of planning permission infringed their Article 8 rights. However, even if the inspector had found that Article 8 was engaged, he would still have dismissed R's appeal because he had weighed as planning considerations all the factors that would have to have been weighed in carrying out the balancing exercise under Article 8(2). The fact that he had not appreciated that Article 8 applied did not alter the result.

## 03

Court of Appeal

### **Compulsory purchase powers — mixed use development — s226(1A) Town and Country Planning Act 1990 — whether cross-subsidy a material consideration under s226(1A)**

\*\* R (ON THE APPLICATION OF SAINSBURY'S SUPERMARKETS LTD V WOLVERHAMPTON CITY COUNCIL  
(2009) PLSCS 232 — Decision given 31.07.09

**Facts:** A potential development site was owned partly by SS, partly by the interested party and, as to the remainder, by WCC. Both SS and the interested party applied for and obtained outline permission for a mixed-use development from WCC.

WCC agreed in principle that it would use compulsory purchase powers under s226 of the Town and Country Planning Act 1990 to facilitate one of the schemes, considering that either would bring appreciable planning benefits and improve the social, economic and environmental well-being of the city, as required by s226(1A). As SS and the interested party could not agree on which of them should develop the site WCC resolved to approve the interested party's scheme by making a CPO to facilitate it. WCC considered the advantage of that scheme to be that it would enable the development of a second site which the interested party owned and which it considered financially unviable to develop in isolation.

**Point of dispute:** Whether SS's application for judicial review of WCC's decision to proceed with the interested party's scheme should be allowed. SS argued that the advantage of securing the development of the second site was an immaterial consideration which WCC should not have taken into account when deciding in whose favour to exercise the compulsory purchase power.

**Held:** SS's appeal against the finding of the judge at first instance, that although the benefits of developing the second site were not benefits falling within s226(1A) of the 1990 Act, they were material considerations that WCC could properly take into account when deciding whether to make a CPO, was dismissed. The benefits of developing the second site could be considered under s226 (1A) when deciding whether to make a CPO under s226(1A); in effect s226(1A) broadened the issues that had to be taken into account by a local authority when deciding whether or not to make a CPO, as it was concerned with all the consequences that would flow from the redevelopment of the CPO site. In the CPO context financial viability and economic well-being were significant factors and in this case WCC was satisfied that facilitating the interested party's scheme would act as a catalyst for the redevelopment of the second site that would contribute to the economic, social and environmental well-being of the area. Authorities concerned with the lawfulness of planning conditions to secure off-site benefits, and which off-site benefits might fairly "relate" to a grant of planning permission, did not directly apply to a power to make CPOs under s226 of the 1990 Act as the statutory language was different. Under s226(1A) WCC were entitled to have regard to the proposed cross-subsidy of the second development.

## 04

High Court

**Refusal of retrospective planning permission for change of use from residential property to boys' school — whether planning authority entitled to injunction to restrain unlawful school use — whether prospects of success in outstanding planning appeal a matter to be taken into account in deciding application for injunction**

\* BARNET LONDON BOROUGH COUNCIL V ADLER  
(2009) PLSCS 239 — Decision given 31.07.09

**Facts:** A was running a boys' school attached to a synagogue in a semi-detached property. This use was in breach of planning permission and BLBC rejected A's application for retrospective planning permission on the grounds that noise, increased activity and disturbance arising from the use of the property as a school was harmful to the amenity of the area. An enforcement notice was issued in 2005, allowing 11 months for compliance. A's appeal to an inspector was dismissed and use of the property as a school was required to cease in April 2007. A did not comply and remained in correspondence with BLBC while trying to find an alternative site. A further planning application was refused in December 2008 by a narrow majority. In 2009 BLBC applied for an injunction to restrain the breach of planning control.

**Point of dispute:** Whether BLBC's application for an injunction should be allowed. A argued that the court should use its discretion to refuse it on the grounds that it would be disproportionate to close down the school pending the outcome of an appeal that it had lodged against the second refusal of planning permission. The decision on that appeal would be available by November 2009 and A considered that he had a reasonable chance of success.

**Held:** BLBC's application was granted. The authorities did not establish any general principle that injunctions that would otherwise be granted under s187B of the Town and Country Planning Act 1990 were not to be suspended by reference to the expected result or duration of the planning process. The possibility of a successful appeal against a refusal of planning permission was a factor that the court could take into account when deciding whether to grant an injunction under s187B but whether to give weight to this possibility, and how much, was for the court to decide in all the circumstances. In this case it was appropriate to grant the injunction notwithstanding the pending planning appeal given all the circumstances of the case, but it would be suspended until December 2009 so that arrangements could be made for the pupils to continue their education elsewhere.

## 05

CLR Statistical Release

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

In 2008 it is provisionally estimated:

- 79% of dwellings (including conversions) were built on previously developed land. This compares to 77% in 2007.
- New dwellings were built at an average density of 44 dwellings per hectare, unchanged from 2007.

In 2007:

- 2% of dwellings were built within the Green Belt (this figure is unchanged since 2004) and 5% of land changing to residential use (from any use) was within the Green Belt (unchanged since 2001).
- 9% of new 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/1299523.pdf>

## 06

CLG Study

### **Benchmarking the costs to applicants of submitting a planning application**

The aim of this study was to provide a "benchmark" for the typical financial costs associated with submitting a planning application. Nine different types of application were identified and the study aimed to produce benchmark costs for six applications within each of these categories.

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

## 07

CLG Report

### **Taking Forward the Government's response to the Killian Pretty Review: Progress Report**

This comprises a package of proposals to take forward implementation of the Killian Pretty recommendations to improve the planning application process, a progress report and three separate consultation papers (reported at items below). In addition to the overall summary the report contains three substantive annexes:

- Annex A: Towards a development management framework;
- Annex B: Options for a revised performance indicator: discussion paper; and
- Annex C: Update on action to take forward the Government's response to the Killian Pretty recommendations.

In its summary the report explains what has been done so far by the Government in pursuit of its aims, identifies specific proposals for consultation and outlines what it hopes to achieve during the next 12 months. Since March 2009, when the Government's response to the Killian Pretty review was published, the Government has pursued a programme of measures, divided into the following five categories:

- reducing the number of small scale developments that require a full planning application;
- making the planning application process more efficient;
- improving the quality of information available to users of the planning application system;
- improving local authority capacity and performance; and
- streamlining the national policy framework.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1300341.pdf>

## 08

CLG Consultation

### **Improving Permitted Development: Consultation**

#### **Deadline for Responses: 23.10.09**

This paper sets out the Government's proposals for changes to the planning system in relation to:

- non-domestic permitted development;
- non-domestic prior approval — an intermediate planning tier between permitted development and a planning application which requires limited information from applicants with regard to prospective developments, and where consent is deemed granted if the local planning authority does not object within a given time period;
- the procedure by which Article 4 Directions are made by local planning authorities; and
- regulation of hard-surfacing for certain non-domestic uses.

The paper is the Government's response to the Killian Pretty recommendation that the number of minor applications that require full planning permission should be substantially reduced

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

## 09

CLG Consultation

### **Streamlining information requirements for planning applications: Consultation**

**Deadline for Responses: 23.10.09**

This paper sets out the Government's proposals for changes to the information requirements for planning applications, following the recommendation in the Killian Pretty Review that there should be a more proportionate approach to information requirements, removing unnecessary ones, particularly for small scale householder and minor development. The proposals also seek to respond to the current economic downturn by reducing unnecessary administrative burdens on applicants and the amount of information that local planning authorities need to review when determining a planning application.

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

## 10

CLG Consultation

### **Publicity for planning applications: Consultation**

**Deadline for Responses: 23.10.09**

This consultation paper fulfils the Government's commitment to consult on the recommendation contained in the Killian Pretty Review on giving greater flexibility to local planning authorities to determine the best methods of notifying the public about planning applications. The Review recommended that local planning authorities should be given greater freedom over how they publicise new applications, and should no longer be required to publish notices in newspapers.

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

## 11

CLG Consultation

### **Policy Statement on Regional Strategies and Guidance on the establishment of Leaders' Boards: Consultation**

**Deadline for Comments: 30.10.09**

This consultation seeks views on the following:

- a new policy statement on the process of preparing, revising, implementing and monitoring Regional Strategies;
- draft Regulations to support the implementation of Part 5 of the Local Democracy, Economic Development and Construction Bill;
- draft guidance on the preparation of schemes for the establishment of Leaders' Boards; and
- draft supplementary guidance on undertaking sustainability appraisal of Regional Strategies.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1303429.pdf>

## 12

CLG Consultation

### **Consultation Paper on proposed amendments to Planning Policy Statement 25: Development and Flood Risk**

**Deadline for Comments: 03.11.09**

This consultation seeks views on various proposed amendments to clarify aspects of the spatial planning policy on development and flood risk. The proposals relate to how the "functional floodplain" should be identified with implications for essential critical infrastructure, including water and sewage treatment works, emergency services facilities, bulk storage facilities, and wind turbines. Under existing good practice guidance critical infrastructure such as electricity sub-stations and water treatment works that are in flood-risk areas have to be designed so as to be operational during floods. The Government now wants wind turbines and water and sewage treatment facilities to be classified as "essential utility infrastructure" which can be permitted in flood-risk areas provided that there are adequate measures in place to control pollution and manage sewage during flooding events. In practice this means that such facilities need to be designed and constructed to remain operational and safe for use in at least a one in 200 annual probability flood event. These amendments would mean that all new critical utility infrastructure would be treated in similar terms under PPS 25.

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

## 13

Consultation Paper

### **Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy: Consultation Deadline for Responses: 23.10.09**

This consultation seeks views on the Government's detailed proposals for the introduction of the Community Infrastructure Levy (CIL), including draft Regulations. CIL will be a new charge which local authorities will be empowered, but not required, to charge on most types of new development in their area in order to fund new infrastructure which is needed and identified in their plans. The Government considers that it is a fairer, clearer and more predictable way of seeking contributions from developers towards the costs of local infrastructure than the current system. CIL charges will be based on simple formulae which relate the size of the charge to the size and character of the development that is paying it. It is anticipated that CIL will improve predictability and certainty for developers as to what they will be asked to contribute; will increase fairness by broadening the range of developments that are asked to contribute; will allow the cumulative impact of small developments to be better addressed; and will enable important sub-regional infrastructure to be funded. The legislative basis for CIL is Part 11 of the Planning Act 2008 which enables the Sec of State to lay regulations before Parliament establishing CIL. This method will help to ensure that CIL is flexible and can evolve and develop over time in the light of practical experience in its use.

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

Draft Regulations and Reference documents: <http://www.communities.gov.uk/documents/planningandbuilding/pdf/1301120.pdf>

## 14

CLG Publication

### **Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy: Consultation — Partial Impact Assessment**

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

## 15

CLG Guide

### **Cost awards in planning appeals (England): A guide for appellants**

This guide ties in with the changes made to the English planning system by the Planning Act 2008 and amendments to secondary legislation which came into force on 06.04.09. One party to an appeal may have to pay the other party's costs and this could be of relevance in connection with appeals to the Sec of State against a planning decision made by a local authority. The guide explains:

- what a costs award is;
- how an award of costs can arise;
- the procedures for applying for costs; and
- the considerations that are taken into account in deciding whether to make an award.

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

## 16

English Heritage — Living Draft

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

This "Living Draft" of the practice guide has been prepared by English Heritage at the request of CLG and the Department for Culture Media and Sport to support the implementation of Planning for the Historic Environment PPS 15, issued for consultation in July. The purpose of this guidance is to assist local authorities in implementing the Planning Policy Statement. The guidance provides advice, ideas and examples of practice as well as signposts to further information that may assist planning authorities, developers and communities to manage the historic environment.

[http://www.english-heritage.org.uk/upload/pdf/English\\_Heritage\\_PPS15\\_Consultation\\_Draft\\_Practice\\_Guide.pdf?1249315402](http://www.english-heritage.org.uk/upload/pdf/English_Heritage_PPS15_Consultation_Draft_Practice_Guide.pdf?1249315402)

## 17

English Heritage Guidance Note

### **The Protection & Management of World Heritage Sites in England**

World Heritage Sites are places of Outstanding Universal Value, defined in the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention). As a State party to this Convention the UK is required to protect, conserve, present and transmit to future generations its World Heritage Sites. The purpose of this guidance note is to support and amplify the Planning Circular for England on the Protection of World Heritage Sites. It explains what World Heritage Sites are in international and national contexts, the role of the UNESCO World Heritage Committee and World Heritage

Centre and the role of the UK Government. It sets out the importance of the planning system and sustainable community strategies in protecting and sustaining World Heritage Sites and explains the function of World Heritage Site Management Plans and the methods used to prepare them.

[http://www.english-heritage.org.uk/upload/pdf/English\\_Heritage\\_WHS\\_Planning\\_Circular\\_Guidance.pdf?1249315695](http://www.english-heritage.org.uk/upload/pdf/English_Heritage_WHS_Planning_Circular_Guidance.pdf?1249315695)

## Rating

### 18

Upper Tribunal (Lands Chamber)

#### **Whether coffee shop and bookshop within part of a church building used as a church hall and run by church volunteers exempt from rating as being part of church hall**

\*\* RICHARD EBURY (VO) V THE CHURCH COUNCIL OF THE CENTRAL METHODIST CHURCH  
RA/33/2007 — Before The President, George Bartlett QC — Decision made 07.07.09

**Property:** Café and Premises, Cornerstone Christian Books & Coffee Shop, Central Methodist Church, Saltergate, Chesterfield, two rooms in the Central Methodist building which were entered in the rating list as "Café and premises" at RV £4250. The Derbyshire Valuation Tribunal allowed the Church's appeal against that entry. The coffee shop was used for selling hot and cold drinks and light refreshments; no food was prepared on the premises. The room used as a shop sold Christian books, greetings cards, devotional items and so on. Cornerstone was set up as a non-profit making service to the community as part of the church's mission and service and was staffed entirely by church volunteers.

**Issue:** Whether the Valuation Officer's appeal against the decision of the Valuation Tribunal should be allowed.

**Held:** The appeal was dismissed. The underlying purpose of the both the coffee shop and bookshop was to promote Christian religion, as practised by Methodism, attendance at the church itself and involvement in its activities. The coffee shop and bookshop were part of the church hall and thus exempt from rating.

<http://www.landstribunal.gov.uk/judgmentfiles/j613/RA-33-2007.pdf>

### 19

Upper Tribunal (Lands Chamber)

#### **Non-Domestic Rating (Alteration of Lists and Appeals) Regulations 1993 — effective date for alteration in respect of retail warehouse premises**

\* JILL TUPLIN (VO) V FOCUS (DIY) LIMITED  
RA/41/2007 — Before the President, George Bartlett QC — Decision made 23.06.09

**Property:** Retail warehouse and premises, Unit 1, Richmond House Retail Park, Tyldesley Road, Atherton, Greater Manchester, belonging to F, the ratepayer. Following a proposal made on 30.03.04 the parties had agreed a variation to the 2000 list assessment of the warehouse from RV £315,000 to £195,000. The effective date of the reduction was limited to 01.04.03, the first day of the year in which the appeal was made. The ratepayer subsequently made a further proposal, citing a Valuation Tribunal decision on a much larger Big W retail warehouse, as a reason to believe the assessment to be inaccurate. The effect of a successful appeal would be that the reduced RV £195,000 could have been backdated to 01.04.00.

**Issues:** The VO argued that the proposal was invalid because:

- the Big W decision was not reasoned and therefore could not lead the appellant to believe its unit was incorrectly assessed;
- Big W was not comparable;
- the proposal did not state the reason why the proposer considered the RV to be wrong in the light of the VT decision — therefore no causative link had been established; and
- the List RV could not be claimed to be wrong because the List RV at the date of the proposal was the agreed one of £195,000, the same figure contended for by the appellant in the proposal.

**Held:** The Upper Tribunal (Lands Chamber) disagreed with each of these contentions and allowed the appeal, commenting, inter alia:

- it was irrelevant that the Big W VT decision was not reasoned if the reduced assessment supported the appellant's claim to be overvalued;
- it was for the VT to judge whether the Big W was sufficiently comparable to the appeal hereditament for the appellant to form the view that its RV may be relevant; and
- the proposal was directed at the RV on 01.04.00 which was deemed to be inaccurate.

<http://www.landstribunal.gov.uk/judgmentfiles/j609/RA-41-2007.pdf>

## 20

CLG Publication

### Help with business rates bills

This leaflet explains the procedures for taking advantage of the Government's rates deferral scheme.

<http://www.communities.gov.uk/documents/localgovernment/pdf/1295520.pdf>

## 21

CLG Guidance

### Business Rates Deferral Scheme: Administrative Guidance

The Chancellor announced on 31.03.09 that the Government would enable businesses to defer payment of a proportion of the increase in their 2009-10 business rates bills with the deferred payments being paid in 2010-11 and 2011-12. This announcement was clarified further in the Budget on 22.04.09 when it was announced that ratepayers could defer 60% of the increase in their 2009-10 rates bills caused by the RPI adjustment to the non-domestic rates multiplier and the end of the transitional relief scheme for the 2005 revaluation period. The Government hopes that by allowing ratepayers to defer a portion of the increase in their 2009-10 bill stemming from the RPI adjustment and the end of the transitional relief scheme, businesses should be better able to manage cash flow in the current difficult economic times.

<http://www.communities.gov.uk/documents/localgovernment/pdf/1295407.pdf>

## 22

CLG Business Rates Information Letter (BRIL)

### BRIL 11/2009: The Business Rates Deferral Scheme

The necessary regulations to implement the business rates deferral scheme were published on 03.07.09 and can be found at <http://www.opsi.gov.uk/si/sis06-07>. They came into force on 31.07.09 at which point ratepayers could start applying for deferral. This BRIL concerns the next steps to implementation.

<http://www.communities.gov.uk/documents/localgovernment/pdf/1295559.pdf>

## Compulsory Purchase

## 23

House of Lords

### Assessment of compensation — reasonable prospect of planning permission for mixed-use development at valuation date — whether Lands Tribunal entitled to assume as matter of law that permission would have been granted — whether only "hope value" to be taken into account

\*\*\* TRANSPORT FOR LONDON (LONDON UNDERGROUND LTD) V SPIREROSE LTD  
(2009) UKHL 44: (2009) WLR (D) 273 — Decision given 30.07.09

**Facts:** The land in question comprised a small printing works owned by S. Notice of the acquiring authority's application for a statutory order in respect of its proposed scheme for the East London Line Extension was published in 1993 and the order made in 1997. Notice of entry was served in 2001. In 2003 S applied to the local planning authority for a certificate of alternative development under s17 of the Land Compensation Act 1961, specifying a mixed-use redevelopment. The planning authority resolved to grant permission but no valid certificate was issued and the valuation for the purposes of the compensation claim went ahead without one. In the Lands Tribunal it was ruled that the land should be valued on the basis that permission would actually have been obtained rather than on the basis of "hope value".

**Point of dispute:** Whether TFL's appeal against the Court of Appeal's decision, which upheld the Land's Tribunal's ruling, should be allowed.

**Held:** TFL's appeal was allowed and the Lands Tribunal and Court of Appeal decisions were overturned. Where permission for the redevelopment of S's land would on the balance of probability have been granted as at the valuation date the Lands Tribunal had not been entitled to value the land on the basis that permission would actually have been granted rather than on the basis of "hope value". Development potential is to be valued by discounting for future uncertainties and arriving at a "hope value", based on the likelihood of planning permission being granted.

## Tort

### 24

Technology and Construction Court

#### **Land reclamation scheme involving excavation and transportation of contaminated materials — claimants born during reclamation period with birth defects — whether Council liable for breaches of duty or public nuisance**

\*\* CORBY GROUP LITIGATION V CORBY BOROUGH COUNCIL  
(2009) PLSCS 236 — Decision given 29.07.09

**Facts:** The claimants, who were all born between 1987 and 1999 with birth defects, brought group litigation against CBC alleging negligence, breach of statutory duty under the Environmental Protection Act 1990 and public nuisance in respect of the reclamation of an extensive industrial site, formerly a British Steel plant. The works had been extensive, involving the demolition of structures, the construction of new roads and sewers, diversions and finishing works. The claimants contended that their birth defects had resulted from their pregnant mothers inhaling harmful substances generated by the reclamation works. It was common ground that CBC, as owners of the site, owed a duty of care to the claimants and their mothers to avoid causing them injury while carrying out the works.

**Point of dispute:** Whether any of CBC's breaches of duty or public nuisance might realistically have caused the birth defects.

**Held:** The claim was allowed. CBC had been negligent and breached their statutory duty which led to extensive dispersal of contaminated materials between 1985 and 1997. The standard of care required to be exercised by CBC was to be judged by reference to standards that were known or reasonably ascertainable at the time and the knowledge then available. It was sufficient if it was reasonably foreseeable at the time that the dispersal of toxic substances from the site could cause harm or damage to embryos or foetuses. Generally, an employer would not be liable for the negligence of its independent contractors, but where an employer engaged others to carry out work that involved special danger to another then the employer could be liable for the negligence of its contractor. A party would have committed a public nuisance if, by its unlawful act, it had endangered the life, health or safety of the public. B allowing toxic material to escape and spread onto public highways endangered the health of the public. A claimant had the burden of proving on the balance of probabilities that the injuries had been caused by proven breaches of duty or public nuisance.

## Housing

### 25

CLG Statistical Release

#### **House Price Index — June 2009**

The latest UK house price index statistics were released by Communities and Local Government on 11.08.09. Key points are as follows:

- UK house prices were 10.7% lower than in June 2008;
- the mix-adjusted average house price in the UK stood at £191,423 in June 2009 (not seasonally adjusted);
- UK house prices rose by 2.6% in the quarter ending June 2009. This compares with a fall of 3.8% in the previous quarter, ending March 2009;
- annual average house prices fell in England by 10.7%, in Wales by 12.2%, in Scotland by 7.1% and in Northern Ireland by 23%; and
- annual average house prices paid by first time buyers in June 2009 were 11.7% lower than a year ago, by comparison average house prices paid by former owner occupiers were 10.3% lower.

<http://www.communities.gov.uk/documents/statistics/pdf/1308918.pdf>

### 26

CLG Statistical Release

#### **Housing and Planning Key Facts — August 2009**

This quick reference leaflet is published quarterly and contains a snapshot of the main housing and planning data. Detailed housing and planning data can be found in the live tables.

<http://www.communities.gov.uk/documents/statistics/pdf/1306850.pdf>

## 27

Commission for Architecture and the Built Environment (CABE) Publication

### **Space in new homes — What residents think**

This research summary supports the case for more space in private homes, to ensure that they are functional, flexible and fit for purpose. Drawing on detailed research, it shows that many residents do not believe that the space provided in their homes is sufficient for basic everyday activities. This has implications for storage of personal possessions, the arrangement for furniture, food preparation, recycling, socialising in the home, privacy, social equity and adaptability. This research will be of interest to housebuilders, registered social landlords, local authorities and The Homes and Communities Agency.

<http://www.cabe.org.uk/files/Space-in-new-homes-what-residents-think.pdf>

## 28

Homes and Communities Agency (HCA) Statistical Publication

### **Monthly Housing Market Bulletin — 30 July 2009**

This bulletin provides HCA staff with the latest information on housing market trends, the economy and the housebuilders' industry.

- House prices have begun to see relative stability over the past few months but are still 21% lower than their August 2007 peak (Halifax).
- Residential development land values have also begun to stabilise after seeing substantial falls from 2007 peaks and rose by 2.1% in Q2 2009 (Knight Frank).
- Mortgage approvals are starting to rise but are still very low by historic standards.
- Largely due to the lack of mortgage finance, transactions in England and Wales remained 42% down on the previous year (land Registry) and a sustained significant upturn in house prices and transaction volumes remains unlikely until there is a significant improvement in the availability of mortgage finance, and the wider economy.
- The UK continued to be in severe recession with GDP falling by 0.8% in Q2 2009 after falling by 2.4% in Q1 2009 and unemployment reaching 7.6%, its highest for over ten years.

[http://www.homesandcommunities.co.uk/housing\\_market\\_research](http://www.homesandcommunities.co.uk/housing_market_research)

## 29

RICS Publication

### **RICS Housing Market Survey July 2009**

The key points to emerge from this survey are as follows:

- buyer enquiries continue to grow strongly, but at a slightly slower pace than in June;
- the new instructions net balance is now in positive territory for the first time in more than two years; and
- price expectations are improving a little.

The seasonally adjusted net price balance of surveyors reporting rising rather than falling prices remained negative in July at -8% compared to -18% in June. The latest survey provides evidence that activity in the housing market is improving, albeit from historic lows.

[http://www.rics.org/Practicareas/Property/Residential/Market/hms\\_r\\_july09\\_110809.htm](http://www.rics.org/Practicareas/Property/Residential/Market/hms_r_july09_110809.htm)

## Environment

### 30

#### **Consultation on the possible release of a biocontrol agent to control Japanese knotweed**

##### **Deadline for Responses: 10.10.09**

Defra and the Welsh Assembly Government are seeking views on the possible release of an insect, a psyllid species *Aphalara itadori*, as a control for Japanese knotweed, *Fallopia Japonica*. Japanese knotweed is an invasive plant which has spread widely in the UK after it was introduced as a garden plant in the early 19th century. It now causes significant environmental damage and imposes high control costs on land managers, developers and gardeners. The consultation is aimed at all those with an interest in the impact of this plant on the natural and built environment, including the horticulture industry, landscape managers and contractors and people interested in the control of invasive species. If it is approved the release of this organism will be the first use of a non-native insect species to control a plant species in the UK and Europe.

<http://www.defra.gov.uk/corporate/consult/japanese-knotweed/consultation-document.pdf>

## 31

Commission for Architecture and the Built Environment (CABE) Publication

### **Open space strategies: What local authority decision makers need to know**

The purpose of this leaflet is to explain to local authority decision makers what an open space strategy is and the tangible benefits of producing one. This leaflet accompanies another CABE space publication — Open space strategies: best practice guidance — which reflects the latest thinking on the role of open space in improving the quality of people's lives and features case studies of recent innovation, progress and success from across England.

<http://www.cabe.org.uk/files/open-space-strategies-leaflet.pdf>

## Construction

## 32

CLG Consultation

### **Recast of the Energy Performance of Buildings Directive**

**Deadline for Responses: 02.10.09**

This consultation concerns the proposed re-cast of the Energy Performance of Buildings Directive which seeks to clarify and simplify certain aspects of the Directive, strengthen some of its provisions and give the public sector a leading role in promoting energy efficiency.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1301240.pdf>

## General

## 33

RICS Publication

### **RICS Global Commercial Property Survey — Q2 2009**

This survey reports the following trends during the second quarter of this year:

- the pace of decline in capital values has slowed down;
- transaction activity continued to drop, but at a slower rate than during the first quarter;
- rentals continued to decline world over, but particularly in Singapore, Ukraine and Spain;
- confidence on future rental values is particularly low in North America and Western Europe, there being no expectation of improvement in rents being seen in the short term;
- tenant demand remains in negative territory; and
- prices are projected to fall further in most markets.

[http://www.rics.org/NR/rdonlyres/04EE0E32-7034-492D-860F-BA50F3101BB6/0/gps\\_q2\\_2009.pdf](http://www.rics.org/NR/rdonlyres/04EE0E32-7034-492D-860F-BA50F3101BB6/0/gps_q2_2009.pdf)

# 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.

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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.

### Contact details

If you require full details of any of the cases presented in this publication, or would like to discuss them in further detail, please contact our specialists:

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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

Scottish Government Publication

#### **A guide to the planning system in Scotland**

This guide, aimed at the general public, explains how the planning system in Scotland works and how to apply for planning permission.

<http://www.scotland.gov.uk/Resource/Doc/280699/0084576.pdf>

#### 02

Scottish Government Planning Circular

#### **Planning Circular 9/2009 Withdrawal and Replacement of the Memorandum of Guidance on Listed Buildings and Conservation Areas**

The last Memorandum of Guidance on Listed Buildings and Conservation Areas was published in August 1998 and brought into effect by the Scottish Office Development Department Circular No 13/1998. That Circular has now been formally withdrawn and the policy elements of the Memorandum have been superseded by the development of the Scottish Government's Scottish Historic Environment Policy. The detailed guidance provided by the Annexes to the Memorandum is superseded by Historic Scotland's "Managing Change in the Historic Environment" guidance note series. The purpose of this Circular is to confirm that Scottish Planning Policy 23 (published in 2008) and the guidance note series are the relevant documents for planning authorities to consider in connection with applications for conservation area consent, listed building consent and applications which affect the historic environment and the setting of individual elements within the historic environment.

<http://www.scotland.gov.uk/Resource/Doc/280045/0084327.pdf>

## 03

Scottish Government Consultation

### **Consultation on high hedges and other nuisance vegetation**

**Deadline for Responses: 13.11.09**

It is perceived that neighbourhood disputes about high boundary hedges have been exacerbated in recent years by two factors, the increased density of urban areas, and the availability of low cost and often fast growing hedges which are sometimes not properly maintained over the years. Various possible options are considered in this paper:

- doing nothing — no Government action;
- the promotion of existing remedies such as mediation;
- strengthening and supplementing existing remedies with research, guidance, and title conditions; and
- providing a legislative solution by utilising or extending existing provisions or introducing new ones.

For each option the practical result of its adoption is described, the outcomes it would deliver outlined and the perceived advantages and disadvantages analysed.

<http://www.scotland.gov.uk/Resource/Doc/281919/0085199.pdf>

## Housing

### 04

Scottish Government Circular

#### **Circular 8 — Houses in Multiple Occupation: guidance on Planning Control and Licensing**

This Circular, which replaces Circular 4/2004, contains guidance on the provision and management of houses in multiple occupation (HMO) through the planning system, as well as advice on the interface between the HMO licensing scheme and the planning system.

<http://www.scotland.gov.uk/Resource/Doc/280245/0084426.pdf>

## Environment

### 05

Scottish Statutory Instrument

#### **SSI 2009/266 The Environmental Liability (Scotland) Regulations 2009**

These regulations, which came into force on 24.06.09, implement Directive 2004/35/CE of the European Parliament and Council on environmental liability with regard to the prevention and remedying of environmental damage. They apply to environmental damage to protected species, natural habitats, water and land and provide that for certain economic activities where there is an imminent risk of environmental damage the responsible operator must take steps to prevent it. Where damage has occurred the responsible operator must prevent further damage.

[http://www.opsi.gov.uk/legislation/scotland/ssi2009/ssi\\_20090266\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/ssi2009/ssi_20090266_en_1)

### 06

Consultation Paper

#### **Renewable Energy: Changes to the Renewables Obligation (Scotland) Order 2009: Consultation**

**Deadline for Responses: 29.10.09**

The Renewables Obligation (Scotland), or ROS, came into force on 01.04.02 and is the key means through which the Scottish Government is pursuing its renewable energy objectives. It operates by obliging electricity suppliers to ensure that a specified proportion of any energy which they supply to customers in Scotland comes from eligible renewable resources. The Scottish Government's Renewables Action Plan, published in June 2009 sets out the Government's commitment to achieving in Scotland the EU target that 20% of primary energy demand should be met from renewable sources by 2020. The ROS is mirrored by almost identical obligations covering suppliers in England and Wales and in Northern Ireland. The Scottish Government is keen to maintain consistency between the UKROs and it proposes, subject to this consultation, to implement the same changes to the ROS.

<http://www.scotland.gov.uk/Publications/2009/08/07092158/2>

# WALES

## Planning

07

Welsh Assembly Government Consultation

**Conservation Principles, Policies and Guidance for the sustainable management of the historic environment in Wales**  
**Deadline for Responses: 30.10.09**

In this document Cadw, the historic environment division of the Welsh Assembly Government, sets out its proposed approach to decision making and offers guidance about all aspects of the historic environment. Six conservation principles underly the Welsh Assembly's proposed policy for managing its historic environment. These are based on those developed by English Heritage and published in 2008. Conservation Principles will inform Cadw's approach to the management of the historic environment as a whole, including the community engagement, learning and access issues addressed under Principle 3. The associated Policies and Guidance will specifically guide Cadw in applying Conservation Principles to its role in the development process and in managing historic sites in its care. Local authorities, property owners, developers and their advisers are urged to use Conservation Principles in their decision making. The principles are as follows:

- significant places will be managed to sustain their values;
- understanding the significance of places is vital;
- the historic environment is a shared resource;
- everyone will be able to participate in sustaining the historic environment;
- decisions about change must be reasonable, transparent and consistent; and
- documenting and learning from decisions is essential.

<http://wales.gov.uk/docs//drah/consultation/090709conservationprincipleseng.pdf>

# NORTHERN IRELAND

## Planning

08

Development Management Statistics Northern Ireland

**2008/09 Annual Statistical Bulletin (April 2008 to March 2009)**

This bulletin contains figures on planning applications received, withdrawn, decided, and approved, as well as performance on processing planning applications in relation to various targets. There are statistical tables on applications received and decided by type of application, by Local Government District, by Assembly Constituency Area, and by type of development.

[http://www.planningni.gov.uk/index/news/news\\_other/about-stats-annual-bulletin-0809-1.pdf](http://www.planningni.gov.uk/index/news/news_other/about-stats-annual-bulletin-0809-1.pdf)

## Construction

09

Statutory Rule of Northern Ireland

**SR 2009/272 The Building Regulations (2009 Amendment Act) (Commencement) Order (Northern Ireland) 2009**

This Order provides for the coming into operation on 31.08.09 of ss1,2 3, 4(c) and 10 of the Building Regulations (Amendment) Act (Northern Ireland) 2009. Section 1 introduces a new definition of low or zero carbon systems in the Building Regulations (Northern Ireland) Order 1979. Section 2 requires district councils to take account of the desirability of preserving the character of protected buildings in carrying their functions under building regulations. Section 3 amends the 1979 Order to require nomination to the Buildings Regulations Advisory Committee to come from "persons" rather than "bodies". Section 4(c) expands Article 5(5) of the 1979 Order to allow building regulations to be made for the purposes of preserving or enhancing the environment and to promote sustainable development. Section 10 creates a new offence of knowingly or recklessly submitting false or misleading information for the purposes of securing building regulations approval.

[http://www.opsi.gov.uk/sr/sr2009/pdf/nisr\\_20090272\\_en.pdf](http://www.opsi.gov.uk/sr/sr2009/pdf/nisr_20090272_en.pdf)