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Legal &  
Parliamentary

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# evebrief

## Editorial



*Hilary Wescombe*

In its decision in the Pattle case, Item 14, the Lands Tribunal has clarified what has hitherto been something of a 'grey area' in compensation. Under 'Rule 6' of the six main rules of compensation (s5 of the Land Compensation Act 1961) compensation can be claimed for "disturbance or any other matter not directly based on the value of land"; the Tribunal held in this case that reduced or lost rental income from a property due to impending compulsory purchase is not directly based on the value of land and therefore that such loss is in principle compensatable under Rule 6.

Somewhat surprisingly though it then went two stages further by holding that, where part of an industrial estate was to be acquired, the entitlement to compensation for loss of rent extended to the part not being taken, and also that a claim could be made for loss of the increased rental income that the claimant would have earned from a redevelopment of the property that it had not carried out but would have carried out were it not for the threat of compulsory purchase. It was made very clear that a successful claim

would depend on the claimant being able to prove that a loss had in fact occurred, but some may nevertheless feel that the decision on loss of rent from a future development was perhaps a step too far.

In another surprising decision at item 07 we report on the case of English gypsies who moved on to agricultural land located in the Green Belt. The local planning authority submitted that, by placing caravans and vehicles on the site and erecting fencing and covering the ground in road building material, harm was being caused to the openness and appearance of the Green Belt. The Court ruled that it was not proportionate to grant an injunction requiring a return to agricultural use, begging the question: what would be required to warrant an injunction.

**Hilary Wescombe**

# Landlord & Tenant

## 01

High Court

### Rent assessment on renewal of lease of public house

\* BROOKER V UNIQUE PUB PROPERTIES LTD  
(2009) PLSCS 269 — Decision given 07.09.09

**Facts:** B was the tenant of a pub owned by UPP. The lease included a partial tie for beers to be purchased from UPP's nominated supplier. B made an unopposed application to renew the lease under Part II of the Landlord and Tenant Act 1954 following the expiry of the previous five-year lease by effluxion of time. The passing rent set in 2001 was £16,000 pa.

**Point of dispute:** How the new rent should be calculated. UPP's expert argued that the use of various comparables would provide a useful cross check on the assumptions made as to sales. Those could include comparing rent with turnover and data from comparable public houses. However, because the existing tenant's accounts would not be available to the hypothetical tenant the accounts that had been produced by B were of limited use. B's expert rejected the use of comparables and instead submitted that several adjustments had to be made in order to calculate the rent: (i) an adjustment in order to satisfy the prime principle that the tied tenants should not be financially worse off than if they were free of tie; and (ii) the application of a "value equation" which would calculate the tied rent as the product of the orthodox free-of-ties rent, less 100% of the extra profit that the landlord made by letting the property as a tied house.

**Held:** The court ruled in UPP's favour. The 1954 Act required the court to ask how much rent an incoming tenant would be willing to pay were the public house available to be let on the open market on the same terms as those in the new lease. A reasonable and objective assessment of the market rent that a hypothetical tenant would offer in the current market had to be made. B's approach was not representative of the approach that was normally used in the market. The primary method used in preparing a rental valuation for licensed properties was the adoption of the profits-test method of valuation, and the court would not prefer B's approach over existing usual professional practice. A hypothetical tenant would consider six factors: (i) the effect of the current economic crisis; (ii) the present difficulties in obtaining capital; (iii) the market-depressing effect of news of public house closures; (iv) the smoking ban; (v) the fact that free houses could be obtained and a tenant could expect to make more profit by buying beer on the open market rather than at a nominated supplier's prices; and (vi) the availability of free accommodation at this property. These factors would have adverse effect on the confidence of a prospective tenant. In this case the hypothetical tenant would bid a rent of £18,000 for the lease of this public house.

<http://www.eji.co.uk/Articles?Article.aspx?liArticleID=707121>

## 02

High Court

### Possession proceedings — Landlord claiming entitlement to possession

\* MEXFIELD HOUSING CO-OPERATIVE LTD V BERRISFORD  
(2009) PLSCS 273 — Decision given 05.10.09

**Facts:** B was the tenant of a residential premises. By 2008 B had rent arrears because her housing benefit was paid monthly in arrears but her rent was payable weekly in advance. MHC served notice to quit on B and brought possession proceedings on the grounds that the tenancy had been terminated by notice and was forfeit on account of arrears.

**Point of dispute:** Whether B had an assured tenancy protected under the Housing Act 1988 or whether the tenancy was excepted as MHC was a fully mutual housing co-operative association within the meaning of the Housing Associations Act 1985.

**Held:** MHC's appeal was allowed. MHC satisfied the exceptions under the 1985 Act. The tenancy was a common law tenancy and could be terminated by contractual notice. Rent arrears or the rent basis were irrelevant.

## 03

High Court

### **Opposition to grant of a new tenancy of business premises**

\*\* SOMERFIELD STORES LTD V SPRING (SUTTON COLDFIELD) LTD  
[2009] PLSCS 282 — Decision given 12.06.09

**Facts:** SS was a tenant of a supermarket in Sutton Coldfield. At the expiration of the lease SS applied for a new lease under Part II of the Landlord and Tenant Act 1954. Prior to going into administration the landlord opposed the claim under s30(1)(J) as it intended to redevelop the property.

**Point of Dispute:** The administrators indicated they wanted time to put together a viable scheme and sought a deferment of proceedings. SS applied for permission to continue its claim.

**Held:** SS's application was allowed. The court had to consider whether or not the defendant or the administrators in its place intended to redevelop the premises. The claimant was not a creditor but nonetheless had a right to have its application heard without undue delay. The onus was on the defendant to show that there was an intent to redevelop before s30(1)(J) of the 1954 Act could be invoked. It would be wrong to withhold permission to continue proceedings where it was virtually common ground that the defendant did not intend to redevelop the premises in issue.

## Planning

## 04

Statutory Instrument

### **SI 2009/2573 The Planning Act 2008 (Commencement No 3) Order 2009**

Article 2 of this Order brought into force on 01.10.09 paragraphs 24 to 27 of Schedule 1 to the Planning Act 2008. The effect of this, together with s240(6) of the Act, is that those paragraphs, which make amendments to various enactments so as to insert references to the Infrastructure Planning Commission, will be in force for the UK.  
[http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20092573\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092573_en.pdf)

## 05

Statutory Instrument

### **The Planning (Listed Buildings and Conservation Areas) (Amendment No 2) (England) Regulations 2009**

These regulations come into force on 02.11.09 and amend the Planning (Listed Building and Conservation Areas) Regulations 1990 (SI 1990/1519) by substituting schedule 4 to the 1991 Regulations to reflect the fact that the Sec of State is now responsible for approving the lists of buildings of special architectural or historic interest under s1 of the Planning (Listed Buildings and Conservation Areas) Act 1990.  
[http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20092711\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092711_en.pdf)

## 06

Competition Commission

### **Groceries Market Investigation — Remittal of the Competition Test by the Competition Appeal Tribunal**

In its final report on the supply of groceries by retailers in the UK, the Competition Commission (CC) recommended that a competition test be applied to grocery retail planning applications. Tesco challenged the lawfulness of the CC's decision to recommend the adoption of the test. The Competition Appeal Tribunal referred the matter back to the CC who in a new decision concluded that the competition test, with the addition of a de minimis threshold, would be a proportionate and effective remedy for the adverse effect on competition found in relation to highly concentrated local areas.  
[http://www.competition-commission.org.uk/inquiries/ref2009/groceries\\_remittal/pdf/final\\_decision.pdf](http://www.competition-commission.org.uk/inquiries/ref2009/groceries_remittal/pdf/final_decision.pdf)

## 07

High Court

### Enforcement of Planning Control

\*\* BRENTWOOD BOROUGH COUNCIL V BALL AND OTHERS  
[2009] PLSCS 274 — Decision given 08.10.09

**Facts:** The defendants were English gypsies who purchased a plot of agricultural land in the area of the claimant local planning authority located in the Metropolitan Green Belt. The site was subject to two enforcement notices dated 05.02.01 and upheld on appeal in August 2001, requiring, inter alia, the removal of all touring caravans from the site, the cessation of use for residential purposes and reinstatement to agricultural condition. On 10.04.09 the defendants moved on to the site with their families and created a continuous roadway down the middle of the site using 30-50 loads of road building material and earth moving equipment. Six pitches, earth works and timber and concrete fencing was constructed. The authority applied for an injunction requiring the defendants to remedy alleged breaches of planning control and enforcement notices.

The authority applied for an injunction requiring B to remedy alleged breaches of planning control and enforcement notices and bring to an end their use of agricultural land as a residential caravan site.

**Point of Dispute:** Whether the defendants had engaged in a substantial, well organised, deliberate and criminal breach of planning control. The defendants accepted they were in breach of planning law but challenged the authority's characterisation of their conduct.

**Held:** The application was dismissed as it was not proportionate to grant an injunction requiring the defendants to cease their residential use of the site and return it to agricultural use.

## 08

High Court

### Permission for Development

\* THE RIVER CLUB V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT AND ANOTHER  
[2009] All ER (D) 66 (Oct) — Decision given 07.10.09

**Facts:** RC submitted an application for planning permission to make alterations to its fitness studio located within the club grounds and within the 'Metropolitan Open Land'. The application was refused by the local planning authority on the grounds that the development was contrary to planning policy and it was in an unsuitable location. RC appealed to the Sec of State making representations as to the use of the fitness studio and the financial impact on the club. The Inspector concluded there were no "very special circumstances" and planning permission was refused. RC applied to the High Court seeking an order quashing the Inspector's decision.

**Point of Dispute:** Whether the Inspector's decision should be quashed on the basis that it was flawed and that he had misapplied the policy, in particular para 3.2 of Planning Policy Guidance 2: "...inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show any permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations".

**Held:** The application was allowed. "Any other harm" was not constrained to harm which affected the Green Belt only but included "inappropriate harm" and some other harm. This allows a decision maker to measure the level of "harm" caused by a particular development against the benefits. The Inspector's decision was flawed as he had not stated that he had considered the cumulative position in respect of the circumstances which RC had relied upon as "very special circumstances".

# Rating

## 09

Upper Tribunal (Lands Chamber)

### **Rating valuation on National Sports Centre, contractors test and whether deduction to be made for £10m lottery grant**

\*\*\* PAUL STUART ALLEN (VO) V ENGLISH SPORTS COUNCIL/SPORTS COUNCIL TRUST COMPANY  
(2009) UK UT 187 (LC) — Decision given 25.09.09

**Property:** The National Sports Centre at Bisham Abbey, Buckinghamshire which provides sports training facilities for elite athletes. The Centre was substantially reconstructed and extended, with 93.9% of the total costs provided by a grant from lottery funds.

**Point of Dispute:** The ratepayers' agent sought to exclude the totality of the grant element from the costs of construction forming the basis of a contractors cost valuation, on the grounds that the hereditament could not be provided without grant because there was no landlord willing to build it knowing that there was no tenant who was sufficiently revenue funded to be able to afford the rent. The Valuation Tribunal had deducted some of the costs on the basis that a hereditament could be built, because of the availability of grant aid, to standard or size, or offering facilities, for which there is little or no demand.

**Held:** The contractor's basis seeks to determine the annual value of the hereditament by reference to the effective capital value of the buildings, reaching by this means the rent that the tenant and the landlord would agree in a hypothetical transaction. There was no justification for reducing the rental value on the basis that it was more than the market could or would bear, because there was no market in the general sense. The basis of the contractors test is that instead of paying rent for the actual hereditament, the hypothetical tenant could build an alternative. In such circumstances, it would be unrealistic to expect the substitute building to receive lottery funding, if it has already been given to the actual hereditament. The LT found that matters bearing on the amount the tenant would be prepared to pay are subsumed in the prescribed decapitalisation rate. There should be no deduction of grant in ascertaining construction costs.

## 10

CLG Business Rates Information Letter

### **Business Rates Information Letter (13/2009): 2010 Revaluation and Business Rate Supplements**

This letter covers the following:

- 2010 Revaluation — Rateable value thresholds, transitional relief scheme, and publication of draft rating lists.
- Business Rate Supplements — Royal Assent and BRS Regulations.

<http://www.communities.gov.uk/documents/localgovernment/pdf/1348215.pdf>

## 11

Statutory Instrument

### **SI 2009/2613 The Valuation Tribunal for England (Membership and Transitional Provisions) (Amendment) Regulations 2009**

These Regulations, which came into force on 01.10.09, correct an error in regulation 5(1)(b) of the 2009 Regulations. That provision currently disqualifies a person from membership of the Valuation Tribunal for England (VTE) after 01.10.09 if the person or their spouse or civil partner is a member of the Valuation Tribunal Service or of its staff. The amendment made by these regulations limits disqualification to persons who are, or whose spouse or civil partner is, a member of the VTE's staff.

[http://www.opsi.gov.uk/si/si2009/pdf/uksi\\_20092613\\_en.pdf](http://www.opsi.gov.uk/si/si2009/pdf/uksi_20092613_en.pdf)

# Leasehold Reform

## 12

Leasehold Valuation Tribunal

### **Leasehold enfranchisement — landlords seeking absolute covenants against redevelopment in transfer — whether benefiting and materially enhancing value of landlords' other property**

\* ACKERMAN V MOONEY

(2009) PLSCS 266 — Decision given 11.09.09

**Facts:** In 2008 the applicants served notices of claim on the respondent landlords to acquire the freehold of two adjacent properties under the Leasehold Reform Act 1967. The properties formed part of a family estate which was partly owned and managed by the respondents as trustees. Over the years other estate properties had been sold and many in the same road had, with the estate's consent, been converted into flats or hotels or demolished and replaced with modern blocks of flats. The respondents admitted the applicants' right to acquire the freeholds but sought to include absolute covenants in the transfer which would mean that the properties could not be redeveloped without the respondents agreeing to waive them.

**Point of dispute:** The terms that should be included in the transfer. The applicants contended that absolute covenants against redevelopment would not benefit the respondents' retained properties or materially enhance their value, as required by s10(4) of the Leasehold Reform Act 1967. They submitted that (i) the changed nature of the area meant that covenants of the kind sought by the respondents were no longer suitable; (ii) both the properties were nearing the end of their useful lives; and (iii) the purpose of acquiring the freehold was in order to demolish the properties and replace them with a single block of flats.

**Held:** The issue was determined in favour of the respondents. The imposition of the covenants would materially enhance the value of the application properties and would not be unreasonable within s10(5).

- (i) A "material" enhancement for the purposes of the 1967 Act was one that was significant and more material than nominal. There was a distinction between planning control under relevant legislation and control by restrictive covenant and the former was not a matter of general impression and it was not necessary to provide valuation evidence of an exact figure.
- (ii) A landlord had to show that the covenant it sought to impose would benefit and materially enhance the value of its particular property. This meant that the respondents had to satisfy the test with regard to properties they owned under the trust and not by reference to a wider estate. The land to be benefited by the imposition of the covenant should be clearly identified in the transfer.
- (iii) With regard to each application the proposed covenants would materially enhance the value of the respondents' other application property. The application properties faced each other, so each affected the other. A covenant that restricted the development of one would enhance the value of the other.

<http://www.egi.co.uk/Articles/Article.aspx?liArticleID=707059>

## 13

Upper Tribunal: Lands Chamber

### **Leasehold enfranchisement — collective enfranchisement — purchase price — whether higher deferment rate justified for increased risk of obsolescence and growth rate variation in non-prime areas — appropriate percentage of hope value for non-participating flats**

\*\* CULLEY V DAEJAN PROPERTIES LIMITED

(2009) PLSCS 260 — Decision given 07.09.09

**Facts:** The appellant, Culley, was the nominee purchaser on a collective enfranchisement for a purpose built block of four flats constructed in the 1930s in the London Borough of Hillingdon. Two tenants were participating in the enfranchisement and two were not. Each flat lease had 65 years unexpired at the valuation date in February 2006. The LVT followed guidance in the Lands Tribunal decision in Earl Cadogan v Sportelli in applying a deferment rate of 5%. It made no allowance for hope value. The Court of Appeal and House of Lords subsequently gave additional judgements in Sportelli establishing that hope value was payable for non-participating flats.

## Issues:

- (i) C argued a higher risk premium should be applied for the subject property given the higher degree of potential obsolescence than the Sportelli properties and that a higher deferment rate should therefore apply.
- (ii) C also argued a property would become obsolete when a purchaser viewed the value of the site for redevelopment.
- (iii) As regards hope value, the appellant contended for a figure of 5% of marriage value for the non-participating flats, while the respondent argued for 20%.

**Held:** The appeal was dismissed, the respondent's cross appeal was allowed in part.

- (i) As regards deferment rate, the question was whether there were particular features not fully reflected in the vacant possession value. What mattered was the view that the market would take account of such features (ie prospective movement of house prices or potential obsolescence) in considering an investment in the reversion. A purchaser of the reversion would be interested simply in capital appreciation. There was no evidence to suppose that non-prime property prices were in general more volatile than prime properties in the course of a property cycle. Short term fluctuations in different areas were not such as to justify a higher deferment rate in the instant case.
- (ii) A building did not become obsolete for deferment rate purposes when it was worth more as a redevelopment site than as a standing house under the approach of a s9(1) valuation in accordance with the Leasehold Reform Act 1967. If there was a possibility that the reversion would be to a higher site value the investment would be more attractive therefore reducing the appropriate deferment rate. The property had no particular features that differentiated the degree of obsolescence from the generality of properties and the LVT's application of the 5% deferment rate was upheld.
- (iii) Two matters were to be borne in mind in determination of hope value. Firstly, hope value was likely to be greater if the proportion of non-participating flats was relatively large. Secondly, it would be smaller if the unexpired terms were particularly long. The unexpired terms in the instant case were 65 years, and 50% of the lessees were not participating, and so the appropriate figure for hope value was 10% of marriage value.

## Compensation

### 14

Upper Tribunal (Lands Chamber)

#### **Compensation for loss of rent due to impending compulsory purchase**

\*\*\* PATTLE V SEC OF STATE FOR TRANSPORT  
ACQ/7/2007 — Decision given 14.09.09

**Facts:** The claimant obtained planning permission for redevelopment of industrial premises at Northfleet Industrial Estate, Kent with 20 new units for Class B1 and B2 use but with a condition prohibiting construction of permanent buildings or structures on a triangle of approximately 0.045ha within the limits of deviation for construction of the Channel Tunnel Rail Link. The triangle was subsequently compulsorily acquired for that scheme.

**Point of dispute:** Whether compensation was properly payable in principle, under s5(6) Land Compensation Act 1961, for losses suffered prior to, but due to the prospect of, compulsory acquisition as follows:

- i) substantially reduced rental income from the letting of existing units on the land to be acquired;
- ii) reduced rental income from the letting of the existing units on the retained land; and
- iii) loss of rental income from the redevelopment which the claimants contend that they would have completed by 1996 on the land taken and the retained land in the "no scheme world".

The claimants contended that the losses were recoverable under s5(6) as compensation for "any other matter not directly based on the value of land". The Sec of State contended that: (i) the losses did not constitute "disturbance" and therefore the principle of compensation for losses due to impending compulsory acquisition in accordance with *Director of Buildings and Land v Shun Fung Ironworks Limited* (1995) did not apply, and that rental income could not be said to be "any other matter not directly based on the value of land"; (ii) even if the principle in *Shun Fung* applied, this would not enable compensation to be recovered for loss of rent on land not proposed to be acquired; and (iii) compensation must reflect the state of the land at the valuation date, ie not redeveloped, and that the post-redevelopment income was hypothetical and involved undertaking risk. The Tribunal was also asked to clarify whether, where part of a parcel of land is taken, it may be appropriate to assess compensation for the value of the land taken and severance and injurious affection to retained land by means of a straight "before and after", approach rather than assessing the two separately.

**Held:** Compensation was payable in principle under all three heads claimed: (i) The "value of land" in the second limb of s5(6) LCA1961 should be interpreted as meaning the market value as defined in s5(2). (ii) There is no reason in principle why prospective acquisition of part of the land may not be a cause of loss of rent on the whole of the land; losses under the second limb of s5(6) do not necessarily have to be sustained only on the land eventually acquired. (iii) The calculation of compensation under s5(6) is different from the calculation of market value under s5(2) — it involves assessing losses which would not have been sustained in the no scheme world and the land does not therefore have to be assumed to be in the same state. The payment of compensation under this third head would however be subject, as always, to the burden of proof, and the claimant may have difficulty in proving the cause and extent of losses relating to a development not yet undertaken. As regards the "before and after" valuation method there was no reason, as a matter of law, why this should not be used but it would have to show, on the evidence, that it produced a valuation that satisfied the statutory requirements.

## 15

Upper Tribunal (Lands Chamber)

### **Compensation under Part I Land Compensation Act 1973 — whether claim out of time when reference to Lands Tribunal posted within the statutory six-year limitation period but received outside it**

\*\* CHRISTOPHER O'DONOVAN V MANCHESTER (RINGWAY) AIRPORT PLC  
LCA/269/2008 — before the President, George Bartlett QC — Decision given 26.08.09

**Property:** One of over 200 houses in the vicinity of Manchester Airport in respect of which claims were made and referred to the Lands Tribunal under Part I Land Compensation Act 1973 for depreciation caused by noise arising from the use of Runway 2 at the airport.

**Point of dispute:** Whether or not the claim was statute-barred as being out of time. Under s9(1) Limitation Act 1980 an action to recover a sum by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued. For claims under Part I LCA 1973 the "cause of action" occurs on the "first claim day" — 12 months from the date on which the public works to which the claim relates were first used — and referring a claim to the Tribunal is taken to be commencement of action to recover the compensation. In this case, the first claim day was 06.02.02; the claimant posted the reference form to the Tribunal by recorded delivery on 05.02.08 and it was received on 07.02.08, after expiry of the six-year period.

**Held:** Proceedings in the Lands Tribunal for a claim for compensation are "brought" when reference of the dispute is made, and reference is made by sending a notice of reference to the Registrar, as stated in Rule 10(1) of the Lands Tribunal Rules 1996. There is nothing in the rules to suggest that the reference is not made until it has been received by the Tribunal. Accordingly the claim was not out of time.

## Housing

## 16

CLG Publication

### **Fifteen years of the Survey of English Housing: 1993-94 to 2007-08**

The Survey of English Housing (SEH) ran for 15 years from 1993-94 until 2007-08, when it merged with the English House Condition Survey (EHCS) to form the new English Housing Survey (EHS). In 2009 CLG commissioned the National Centre for Social Research (NatCen) to produce SEH15, a dataset which combines key data at household level from each of fifteen annual SEH datasets. This report presents some initial analysis based on the SEH15 dataset with the aim of bringing the dataset to the attention of the research community, to highlight the type of analysis that can be undertaken and point users to relevant contacts and the range of supporting materials that are available.

<http://www.communities.gov.uk/documents/statistics/pdf/1346239.pdf>

## 17

CLG Publication

### **English House Condition Survey — 2007 Annual Report**

This is the last of the English House Condition Survey publications in a series that began with reports every five years from 1971 to 2001 followed by annual reports from 2003. From 2008 annual assessments of the condition and energy efficiency of the housing stock will be reported through the English Housing Survey. The 2007 results relate to fieldwork carried out between April 2006 and March 2008 and are presented at the mid-point position of April 2007. They are based on a sample of 16,217 dwellings and 15,604 households and cover housing stock, — amenities and accessibility, condition of housing stock, energy performance and disparities in housing conditions.

<http://www.communities.gov.uk/documents/statistics/pdf/1346262.pdf>

## 18

GLG Publication

### **Housing in England 2007-08**

This report is mostly based on information from the 15,622 households who were interviewed for the Survey of English Housing (SEH) in the year to March 2008. In addition to the tables derived from SEH the report also includes some tables that have been constructed using data from the Labour Force Survey (LFS) or the Family Resources Survey (FRS). It contains data on the following subjects:

- trends in tenure and cross tenure topics, such as household type, income, accommodation, nationality and car ownership;
- new and recently moved households;
- owner occupiers and second homes;
- social renters;
- private renters;
- households in deprived areas; and
- attitudes to local area and tenants' views of their landlords.

<http://www.communities.gov.uk/documents/statistics/pdf/1346249.pdf>

## 19

Homes and Communities Agency (HCA) Statistical Publication

### **Monthly Housing Market Bulletin — 29 September 2009**

This bulletin provides HCA with up to date information on housing market trends, the economy and the housebuilders' industry.

- The housing market: both Halifax and Nationwide recorded house price rises in August, but according to Halifax are still 19.4% lower than their August 2007 peak.
- The Land Registry records that house prices fell in England and Wales by 0.1% in August and by 9.4% in the year to August, while the number of properties sold in England and Wales fell by 17% in the year to June 2009.
- The house price to earnings ratio, a key affordability measure, has fallen from a peak of 5.84 in July 2007 to an estimated 4.39 in August 2009.
- Ernst & Young and Jones Lang LaSalle predict that house prices will continue to fall in 2010.
- The number of loans agreed for house purchases has started to increase again. More loans were agreed in July 2009 than in July 2008, the first time in two years that lending was higher than a year earlier.

<http://www.homesandcommunities.co.uk/public/documents/Monthly-Housing-Bulletin-Sept09.pdf>

## 20

Discussion Paper for the Smith Institute, the Town and Country Planning Association (TCPA) and PricewaterhouseCoopers  
**Mind the Gap — Housing Supply in a Cold Climate**

This paper addresses the problem of the widening gap between the demand for housing and the supply of new homes, particularly affordable ones. It is estimated that by next year there will be a shortfall of one million homes and the situation is being exacerbated by the current dearth of mortgages and the economic downturn. It is estimated that 250,000 new homes need to be built each year to match annual population growth and at an even higher rate if England's ageing housing stock is to be replaced. The report is the outcome of seven roundtables on housing supply that were held in the spring and summer of 2009. Organised by the Smith Institute and the TCPA these involved over 100 people from across the housing sector, including housing associations, house builders, planners, campaign organisations and civil servants. A number of recommendations are made about steps that need to be taken by the Government in order to address the problem. These include:

- the need to maintain public intervention and investment in both private and affordable housing at current levels;
- the need for more action to boost mortgage availability and help for credit-worthy buyers, especially first-time buyers;
- releasing more land for development;
- accelerating the release of public land;
- giving more support to local authority land deals;
- giving more support to encourage the private rented sector, including tax incentives; and
- ensuring that councils have the skills and expertise they need for new council building, which should not prejudice the supply of privately built or housing association homes.

[http://www.smith-institute.org.uk/pdfs/housing\\_report.pdf](http://www.smith-institute.org.uk/pdfs/housing_report.pdf)

## Construction

### 21

CLG Publication

#### **Fire Performance of Escape Stairs Guidance Document**

This document presents a description of a standardised test method for a range of different stair geometrics.  
<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1350886.pdf>

## General

### 22

CLG Publication

#### **London 2012 Olympic legacies: Conceptualising legacy, the role of CLG and the regeneration of East London**

This study is concerned with what constitutes a successful Olympics legacy and suggests ways in which CLG might organise its work so as to maximise the probability that a successful legacy is achieved for the Lower Lea Valley and East London.  
<http://www.communities.gov.uk/documents/thamesgateway/pdf/1345197.pdf>

## 23

Defra Publication

### **Safeguarding our Soils — A Strategy for England**

Soil is a fundamental resource providing many essential services including food production, water management and support of valuable biodiversity and ecosystems. As a large store of carbon it also plays a vital role in the fight against climate change. England's soils have degraded over the last 200 years due to intensive agricultural production and industrial pollution. They continue to face three main threats:

- Soil erosion by wind and rain.
- Compaction of soil which reduces agricultural productivity and water infiltration and increases flood risk through higher levels of runoff.
- Organic matter decline, reducing soil quality, affecting the supply of nutrients necessary for plant growth, and increasing emissions into the atmosphere.

This Strategy outlines the Government's approach to safeguarding England's soils for the long term. It will guide policy development across a range of relevant areas and sets out practical steps that need to be taken to prevent further degradation.

<http://www.defra.gov.uk/environment/quality/land/soil/documents/soil-strategy.pdf>

## 24

Sec of State for Communities and Local Government

### **Government Response to the House of Commons Communities and Local Government Committees Report "Market Failure? — Can the traditional markets survive?"**

The response of the Select Committee's report considers the Government's policies on support for small business, town centres, devolution of power and policy frameworks for planning and regeneration. It is agreed that CLG should take on a co-ordination function across interested departments.

<http://www.official-documents.gov.uk/document/cm77/7721/7721.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.

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

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

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

### Useful web links

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

### Abbreviations

The following abbreviations are used in evebrief:

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

### The star system

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

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

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### Gerald Eve Research

One of our key roles at Gerald Eve Research is to communicate with our clients and others; to inform them, for example, on our latest thinking on topical issues such as legal matters and the implications for broader property market trends.

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Legal &  
Parliamentary

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# evebrief

## SCOTLAND

### Planning

#### 01

Consultation

#### **Scottish Planning Policy — Proposed Policy Changes Consultation**

**Deadline for Responses: 12.11.09**

The Scottish Government is preparing a consolidated Scottish Planning Policy (SPP) which brings together the existing National Planning Policy Guideline (NPPG) and Scottish Planning Policy (SPP) series. Since the publication of the draft consolidated SPP two significant pieces of legislation have been passed by the Scottish Parliament which have implications for national planning policy: the Flood Risk Management (Scotland) Act 2009 and the Climate Change (Scotland) Act 2009. Changes to national planning policy to reflect this new legislation need to be incorporated into the final SPP and an assessment of the effects of the proposed changes is required as part of the strategic environmental assessment. The additional policy changes being proposed relate to:

- the requirement for planning authorities in the central belt to consider the potential for onshore gas extraction when preparing development plans;
- alterations to the policy on national high amenity single use business sites; and
- a revised coastal planning policy.

<http://www.scotland.gov.uk/Resource/Doc/286460/0087209.pdf>

## 02

Scottish Planning Policy Document

### **Scottish Planning Policy Environmental Report Annex A: Supplementary Strategic Environmental Assessment of proposed changes to the Draft Scottish Planning Policy**

The draft consolidated SPP was published on 01.04.09 and the consultation period ended on 24.06.09. A strategic environmental assessment of the proposed policy changes set out in the draft consolidated SPP was carried out and consultee views on the Environmental Report, and on the SPP in the light of its content, are now being taken into account as part of the process of finalising the SPP. This supplementary assessment is required because the Scottish Parliament has subsequently passed two significant pieces of legislation giving rise to some additional policy changes on which an environmental assessment is required. (See item above).

<http://www.scotland.gov.uk/Resource/Doc/286452/0087208.pdf>

## Environment

### 03

Statutory Instrument

#### **The Rural Development Contracts (Rural Priorities) (Scotland) Amendment (No 3) Regulations 2009.**

These regulations which come into force on 7 November 2009 amend the Rural Development Contracts (Rural Priorities) (Scotland) Regulations 2008 which provide for the payment of aid to be made available by the Scottish Ministers from the Scotland Rural Development Programme 2007-13 to any person who enters into an undertaking to carry out activities relevant to at least one of the rural priorities set out in schedule 2.

[http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi\\_20090335\\_en.pdf](http://www.opsi.gov.uk/legislation/scotland/ssi2009/pdf/ssi_20090335_en.pdf)

## General

### 04

Statistics Publication Notice

#### **School Estate Statistics 2009**

This document contains the results of the Scottish Government's collection of certain core facts about the School Estate.

<http://www.scotland.gov.uk/Resource/Doc/287793/0087787.pdf>

## NORTHERN IRELAND

### Rating

#### 05

Rating

#### **The Rate Relief (Amendment) Regulations (Northern Ireland) 2009**

These regulations which come into force on 09.11.09 amend the Rate Relief (General) Regulations (Northern Ireland) 2007 to take account of amendments to the Housing Benefit Regulations and make equivalent amendments to the Rate Relief (Qualifying Age) Regulations (Northern Ireland) 2007.

[http://www.opsi.gov.uk/sr/sr2009/pdf/nisr\\_20090339\\_en.pdf](http://www.opsi.gov.uk/sr/sr2009/pdf/nisr_20090339_en.pdf)