Legal & Parliamentary

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evebrief

Editorial

In addition to several items concerning non-domestic rates preparatory to the 2010 Rating Revaluation (see Rating section at 06 and the Regional supplement), we report at items 01 and 03 on two similar planning cases. The first is from the Court of Appeal and the second, the Administrative Court. Whilst the facts differed, both concerned the limitation period for enforcement action referring to s171(1) and (2) of the Town and Country Planning Act 1990, with both appellants erecting buildings that they hoped would, in the absence of enforcement action within the four-year rule, obtain planning permission as dwellings.

In the first case, planning permission was granted for the construction of a hay barn but although the building's external appearance was as such, it was fitted out internally as a three-bedroomed dwelling with all relevant utilities including bathrooms and kitchen. Since what had been built was not, internally and externally, a hay barn, it had been built in breach of planning and the four-year time limit applied.

It was, since December 2001 to August 2006 when the case came to trial, too late for the authority to take enforcement action.

However, for the Englishman who built on his land without planning permission, his faux castle was regrettably not to be his home. It seems the appellant's downfall was in finally removing the straw bales and tarpaulin, deliberately placed to conceal the construction of the new dwelling. Alas, the inspector was entitled to reach the conclusion that the activity of erecting and removing the straw bales amounted to "operations" relating to the building works and the four-year rule had not been satisfied. The dwelling had been built in breach of planning control and would have to be demolished. Not quite the "ta-dah!" result he was seeking.

Jeremy Dharmasena

GeraldEve

Planning

01

Court of Appeal

Lawful use certificate — planning permission granted for hay barn — building fitted out and used as a dwelling

* WELWYN HATFIELD BOROUGH COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2010) PLSCS 32 — Decision given 29.01.10

Facts: In 2001 WHBC granted X planning permission to build a hay barn. X always intended to use the building as a dwelling and internally it was fitted out as a three-bedroomed house. In 2006 X applied to WHBC for a certificate of lawful use on the ground that WHBC had not taken enforcement action within the four-year time limit laid down by s171B(2) of the Town and Country Planning Act 1990. WHBC refused the certificate arguing that the building was not a dwelling and accordingly the ten-year period under s171B(3) of the 1990 Act applied. The inspector appointed by the Sec of State allowed X's appeal against this decision, but that was reversed in the High Court. The judge held that the construction of the building had been lawful and since there had never been any intention to use it for any purpose other than as a dwellinghouse there had been no change of use; accordingly the four-year time limit did not apply.

Point of dispute: Whether the appeal of X and the Sec of State against the High Court decision would be allowed. They argued that the case fell within s171B(1) since permission had been granted for a hay barn and what had been built was a dwelling. Secondly, they submitted that there had been a change of use of the building to use as a dwellinghouse so the case also fell within s171B(2).

Held: The appeal was allowed.

(i) The court should not adopt a strained construction of the section as a reaction to X's deceit or out of concern that such conduct created for local planning authorities in enforcing planning control. The situation fell within s171B(2) as the building was permitted to be used for agricultural storage only and its use as a dwellinghouse was therefore a change of use in breach of planning control. It was not necessary to establish that there had been some actual use for agricultural storage. The four-year time limit for residential use applied and X was entitled to a lawful use certificate.
(ii) The physical and design features of X's building were those of a dwellinghouse, not a hay barn. Consequently the building had been constructed in breach of its permission, there had been a breach of planning control and the four-year time limit under s171B(1) applied. It was now too late for WHBC to take enforcement action against the construction of the building.

02

Administrative Court

Validity of planning application — whether defendant Sec of State entitled to determine requirements of valid application

***** NEWCASTLE UPON TYNE CITY COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2010) PLSCS 26 — Decision given 11.12.09

Facts: In 2008 a developer applied for planning permission to replace a derelict two-storey building with a much taller one. Under s62(3) of the Town and Country Planning Act 1990 the local planning authority (lpa) was entitled to require an application for planning permission to include "such particulars as they think necessary", and the 1995 GDPO required a valid application to contain the particulars or evidence required by the lpa under s62(3). In this case NTCC required a satisfactory site plan, and six further items from the "local list" including a daylight/sunlight survey, a bat survey, a wind assessment and information concerning views and a photo montage. The developer failed to provide this information and NTCC therefore considered its application to be invalid and did not consider it. The developer appealed to the Sec of State under s78 of the 1990 Act on the basis that NTCC had failed to respond to the application within eight weeks.

Point of dispute: Whether to allow NTCC's application to quash the Sec of State's decision that it could determine what matters were necessary for the planning application to be valid. NTCC argued that it was not for the Sec of State to second-guess an lpa on matters that were specified by statute to be for them to determine.

Held: The application was granted. An invalid application did not invoke the jurisdiction of the Sec of State in an appeal. An application was invalid if it did not contain the particulars or evidence required by lpa under s62(3) and it was for the lpa to decide what was necessary. It was not possible to appeal to the Sec of State against the lpa's decision to impose the requirements.

03

Administrative Court

Planning permission for telecommunications mast — whether inspector allowing appeal against refusal of permission failing to have regard to material consideration

***** R (ON THE APPLICATION OF COX) V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2010) PLSCS 35 — Decision given 02.02.10

Facts: A telecommunications operator sought planning permission to erect a mast and base station 24 metres away from C's home. C had concerns about the effects of microwave radiation on his daughter, who had suffered a brain injury. The application was accompanied by a statement from its consultants and included a declaration of conformity with the International Commission on Non-Ionising Radiation Protection (ICNIRP) guidelines. The statement drew attention to a site specific summary of radio frequency electromagnetic energy levels (RF EME) around the base station attached at Appendix C. Following C's objection to the application the operator supplied a Specific Point Estimate of levels at C's home which set out an estimate level that was 170 times less than the ICNIRP reference level. This was communicated to C in an email from the lpa's planning officer. C objected to the application on health grounds and addressed the planning committee regarding his concerns. However, although the application was refused, this was on conservation grounds and health matters were not referred to in the decision. The inspector appointed by the Sec of State allowed the operator's appeal against the refusal of permission, having conducted a site visit. In her decision she referred to conservation and environmental issues and, with regard to health aspects, stated that as ICNIRP guidelines had been met pursuant to PPG8, it would not be necessary for the lpa to consider further the health aspects of the proposal.

Point of dispute: Whether C's appeal against the inspector's decision, under s288 of the Town and Country Planning Act 1990, would be allowed. It was argued that the inspector's decision was flawed since she had failed to have regard to a material consideration or made an error of fact, as she was not provided with Appendix C which contained information that would be material to her decision.

Held: C's application was dismissed. A substantive challenge under s288 was limited to a point of law only. A mistake of fact giving rise to unfairness was a separate head of challenge in an appeal on a point of law. In this case the inspector had had regard to all material considerations and the conclusion she had arrived at was correct. There had been no error of fact. Nothing in the evidence suggested that the assessment in Appendix C was wrong or inconsistent with the statement made by the operator. The omission of Appendix C did not have the effect of making the statement by the operator that the emissions would be within the guidelines potentially misleading and the non-disclosure of that document had not resulted in unfairness to C.

04

Administrative Court

Enforcement notice — appellant concealing new dwelling behind straw bales and seeking to rely on expiry of limitation period for enforcement action

***** R (ON THE APPLICATION OF FIDLER) V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2010) PLSCS 37 — Decision given 03.02.10

Facts: In 2002 F built a new dwelling on his land without planning permission. He concealed it behind straw bales covered with a tarpaulin which he had deliberately erected in order to hide the building and his intention was to take advantage of the rule in s171B of the Town and Country Planning Act 1990 under which no enforcement action can be taken in respect of a building erected in breach of planning control after the end of a period of four years beginning with the date on which the building operations were substantially completed. The straw bales and tarpaulin were removed in 2006 and the local planning authority issued enforcement notices requiring demolition of the dwelling. An inspector appointed by the Sec of State dismissed F's appeal against the notices on the grounds that the building operations included erecting and removing the straw bales and tarpaulin which had been deliberately placed in order to conceal the new house and to enable F to take advantage of the four-year rule, which meant that the building operations were not substantially completed until the straw bales were removed.

Point of dispute: Whether F's appeal against the inspector's decision would be allowed.

Held: The appeal was dismissed. Nothing in the 1990 Town and Country Planning Act justified reaching a conclusion that the activity of erecting and removing straw bales could not form part of the overall building operations. The term "operations" in s55(1) was capable of covering a wide range of activities and could be contrasted with "works" which had a more restricted meaning when linked to the expression "building". The inspector had been right to consider all the evidence and to make findings of fact based on the totality of the building operations contemplated by F. It was also crucial that F knew about the four-year rule and deliberately set out to construct his house in a clandestine fashion in order to take advantage of it.

05

CLG Guidance

Planning Act 2008: Guidance related to procedures for compulsory acquisition

The Planning Act, which received Royal Assent on 26.11.08, provides for a faster and fairer development consent system for nationally significant transport, energy, water, waste-water and waste infrastructure projects. The Act makes provision for the Government to designate national policy statements (NPS) which will establish the national case for infrastructure development and set the policy framework for decisions on applications for nationally significant infrastructure projects. It also establishes a new independent body, the Infrastructure Planning Commission (IPC) which will take responsibility for examining applications for development consent for nationally significant infrastructure planning applications and determining them where a relevant NPS is in place. The Act also provides that an order granting development consent can authorise the compulsory acquisition of land, a significant departure from the Town and Country Planning system. This document provides guidance to the promoters and the IPC when drafting, examining and deciding an order which grants both development consent and authorises the compulsory acquisition of land. Its aim is to help promoters and the IPC understand the powers of the Planning Act, how they can be used to best effect and the administrative procedures involved.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/guidancecompulsoryacquisit.pdf

06

CLG Consultation

Detailed proposals and draft regulations for the introduction of the Community Infrastructure Levy — Summary of responses

This consultation exercise, which concluded on 23.10.09, invited views on the generality of the Government's proposals to 54 specific questions. A range of stakeholders responded to the consultation. Of these, 49% were from local authorities; 18% from developers and infrastructure providers; 8% planning specialists and legal experts; 7% from voluntary and community sector; and 18 from other sources.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/infrastructurelevyresponse.pdf

07

Guidance

Planning Act 2008: guidance for the examination of applications for development consent for nationally significant infrastructure projects

Section 87 of the Planning Act 2008 provides that when making any decision about how an application is to be examined the examining authority must have regard to any guidance issued by the Sec of State on how applications for development consent for nationally significant infrastructure projects (NSIP) are to be examined. This guidance is provided for the examining authority, when carrying out their function of examining applications for development consent for NSIPs.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/guidanceexaminationprocedure.pdf

08

CLG Final Impact Assessment

Community Infrastructure Levy

The CIL policy objective is to better resource public authorities to deliver infrastructure by simplifying the way contributions are made by developers and mitigating the pooling failure that results because the cumulative impact of individual developments necessitates infrastructure, which individual developers lack the incentive or resources to fund by themselves. CIL provides a fairer, faster, more predictable and more transparent system of securing developer contributions which preserves incentives to develop. This policy is to be implemented on 06.04.10 and will be enforced by charging authorities, replacing the current system of planning obligations known as s106 agreements. A formal evaluation will be held five years after regulations come into force. The CIL is a voluntary mechanism that will empower local authorities to levy a standard charge on most types of new development and to fund the infrastructure needed to support development in their area.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/infrastructurelevyresponse.pdf

09

Planning Act 2008: The Infrastructure Planning (Fees) Regulations 2010 — Guidance

The Infrastructure Planning Commission (IPC), will take decisions on applications for development consent within a framework of National Policy Statements. Applicants will pay fees to cover the IPC's costs of processing casework and these are set out in the Infrastructure Planning (Fees) Regulations 2010 (see item 10 below). This note provides non-statutory guidance and worked examples to aid interpretation of those Regulations.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/infrastructurefeesguidance.pdf

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There are a number of related regulations, contained in Statutory Instruments, all of which come into force on 01.03.10, as follows:

- **SI 2010/101 The Planning Act 2008 (Commencement No 4 and Saving) Order 2010**
  http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100101_en.pdf
- **SI 2010/102 The Infrastructure Planning (Interested Parties) Regulations 2010**
  http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100102_en.pdf
- **SI 2010/103 The Infrastructure Planning (Examination Procedure) Rules 2010**
  http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100103_en.pdf
- **SI 2010/104 The Infrastructure Planning (Compulsory Acquisition) Regulations 2010**
  http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100104_en.pdf
- **SI 2010/105 The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010**
  http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100105_en.pdf
- **SI 2010/106 The Infrastructure Planning (Fees) Regulations 2010**
  http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100106_en.pdf

Rating

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Statutory Instrument

SI 2010/134 The Business Rate Supplements (Administrative Expenses) (England) Regulations 2010

The Business Rates Supplements Act 2009 gives county councils, district councils in areas where there is no county council, and the Greater London Authority the power to levy a supplement (BRS) on the national non-domestic rate wef 01.04.10. These Regulations, which come into force on 02.03.10, make provision for billing authorities to recover the administrative expenses (ie the costs of collection and recovery) of a BRS.
http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100134_en.pdf

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Statutory Instrument

SI 2010/140 The Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations 2010

These Regulations, which come into force on 01.04.10, amend the 2003 Regulations in relation to non-domestic rating demand notices. New explanatory notes are substituted for those in Parts 1 and 3 of Schedule 2 to the 2003 Regulations to take account of the changes to non-domestic rating that will take effect from 01.04.10. In particular, the notes have been changed by:

- updating the information contained in the notes titled "Rateable Value" and "Non-Domestic Rating Multiplier" to take account of the revaluation of non-domestic properties on 01.04.10;
- replacing the "Transitional Arrangements" note with a new one called "Revaluation 2010 and Transitional Arrangements" to take account of the 2010 revaluation and to explain the transitional arrangements for the new valuation period (01.04.10 to 31.03.15);
- updating the information about small business rate relief to take account of changes being made to the thresholds for relief and to the application requirements wef 01.04.10;
- inserting a new note to take account of changes to demand notices which will occur where ratepayers have deferred payment of part of their 2009/10 rates bill under the 2009/10 rates deferral scheme; and
- removing the note entitled "Schedule of Payments for Certain Backdated Liability" as that scheme does not apply to demand notices served on or after 01.04.10.

http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100140_en.pdf

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Statutory Instrument

SI 2010/187 The Business Rate Supplements (Collection and Enforcement) (England) Regulations 2010

These Regulations, which come into force on 04.03.10 make provision about the collection and enforcement of Business Rate Supplements, so that Billing Authorities can collect and enforce BRS as part of the Non-Domestic Rate collection and enforcement process.

http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100187_en.pdf

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CLG Business Rates Information Letter

Business Rates Information Letter 02/2010 confirmation of NDR multipliers for 2010-11

Following the approval of the Local Government Finance Report (England) 2010-11 by the House of Commons on 3 February 2010, the Sec of State has calculated the non-domestic rating multipliers for England for 2010-11. Billing authorities are advised in this letter that:

- The non-domestic rating multiplier is 41.4p; and
- The small business non-domestic rating multiplier is 40.7p.

http://www.communities.gov.uk/documents/localgovernment/pdf/1463697.pdf

Compensation

15

Upper Tribunal: Lands Chamber

Compulsory purchase — prospects of obtaining planning permission for land in no-scheme world — correct approach to assessment of hope value

****** PERSIMMON HOMES (MIDLANDS) LTD V SEC OF STATE FOR TRANSPORT
(2010) PLSCS 28 — Decision given 22.12.09

Facts: Pursuant to a 2000 CPO the acquiring authority acquired land for the purpose of constructing a bypass around a village in Bedfordshire. Entry was taken in January 2001, the relevant valuation date. The land in question formed part of a larger site for which planning permission had been granted to PH for a mixed use development, subject to a condition excluding the relevant land from the development.

Point of dispute: How compensation should be assessed. This depended on whether it was likely that planning permission would have been granted for the land in the absence of the bypass and how such a possibility fell to be valued. A further issue was whether any deduction from the compensation should be made in respect of betterment under s261 of the Highways Act 1980 on the basis that the land retained by PH would not have obtained the planning permission it did without the bypass and thus had "benefited by the purpose" for which the relevant land was acquired within the meaning of s261.

Held: Preliminary rulings were given.

(i) The correct approach to the assumption of planning permission in the no-scheme world was that, unless it was certain that planning permission would have been granted, compensation should be assessed on the basis of hope value — "Spirerose v Transport for London" applied. Since the prospects of obtaining planning permission did not remain static over time hope value had to be assessed by reference to the hope that existed at the relevant valuation date. The prospects had to be determined on a "cancellation assumption", assuming that the scheme was cancelled but everything else was as it was at the valuation date. The application of the cancellation assumption to the assessment of hope value was not inconsistent with the House of Lords' approach in "Spirerose". In this case if the scheme were cancelled, the condition attached to the planning permission would not have been sustainable which would have allowed development to take place on the relevant land.

(ii) Although planning permission had been granted to PH for development over a significantly larger area than would have been the case in the no-scheme world a deduction for betterment should not be made under s261 because there was no clear and direct dependency between the value of the retained land and the purpose of the acquisition. The planning permission could be implemented in respect of the retained land even if the bypass did not proceed.

Real Property

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Court of Appeal

Adverse possession of part of tidal river bed

***** PORT OF LONDON AUTHORITY V ASHMORE
(2010) PLSCS 36 — Decision given 04.02.10

Facts: PLA, a statutory body with responsibility for conserving the tidal Thames, applied to the Land Registry for first registration of the Thames riverbed and foreshore, which vested in it insofar that it did not vest in a third person. A, who owned a sailing barge which since 1983 had been moored in the same place on the river, objected claiming that he had acquired title by 12 year's adverse possession to the part of the riverbed and foreshore on which his barge came to rest at low tide. A preliminary issue was tried as to whether it was possible for the owner of a vessel that was moored in a particular place on a tidal river to acquire title to the bed by adverse possession where the title was unregistered and the vessel rested on the bed or foreshore at low tide.
PLA conceded that title to the bed of a tidal river could, in principle, be acquired by adverse possession. The judge determined the issue in A's favour, on the basis of a statement of agreed facts between the parties, indicating that his decision only applied to a vessel moored next to a riverbank. He made a declaration that it was possible for the owner of a vessel moored in a particular place on a tidal river to acquire title by adverse possession to the riverbed or foreshore for the footprint of the vessel where title had not been registered and where the vessel rested on the bed or foreshore at low tide.

Point of dispute: Whether PLA's appeal against the judge's decision would be allowed. PLA argued that adverse possession of the riverbed would only have been possible if the vessel could not float off at high water if it were released from its moorings.

Held: The appeal was allowed. The declaration made by the judge could not stand as it did not truly reflect what he had decided. It purported to extend to vessels moored anywhere in a tidal river, not just adjacent to a river bank. A decision on assumed facts that were neither definitive nor exhaustive could not be determinative of the outcome of a trial. PLA did not dispute that it was possible in appropriate circumstances to acquire title by adverse possession of the foreshore and riverbed by reason of mooring. The question of whether A had acquired such title on the actually established facts needed to be determined at a trial, and this case was not suitable for a preliminary issue.

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High Court

Contract for sale where failure to complete by specified date — claimant seeking specific performance

***** MULFORD HOLDINGS & INVEST LTD V GREATEX LTD
(2010) PLSCS 34 — Decision given 27.01.10

Facts: MHI entered into an agreement with G to purchase a property. It paid the deposit under the terms of the contract but failed to complete by the specified date and did not comply with G's notice to complete. G notified MHI that it intended to rescind the contract and keep the deposit. The parties then entered into negotiations that were expressly stated to be "without prejudice" and "subject to contract". G agreed that the original contract should be dissolved, but that it would sell the property to MHI under a new contract and that the deposit it had retained would be used against the purchase price. The sale did not proceed as G considered that MHI was not in a position to proceed immediately and it sold the property to a third party.

Point of dispute: MHI brought an action for specific performance of the new contract arguing that there was an enforceable contract; alternatively, that G was estopped from denying the conveyance under which MHI would receive back its original deposit. G argued that there had been no new contract since the parties had proceeded on the basis that all negotiations were "subject to contract" and it could therefore withdraw from them at any point.

Held: MHI's application to strike out G's defence was dismissed. G's cross-application to strike out MHI's claim was allowed.

(i) There was no enforceable agreement between the parties. After the original contract was dissolved all the negotiations between the parties were subject to contract and no final agreement was made.
(ii) G was entitled to strike out MHI's claim. There was no evidence that the transaction was to proceed unless and until contracts had been exchanged, nor that MHI had acted to his detriment on any of G's representations.
(iii) There was nothing in the evidence to indicate that the deposit should be released on the ground of exceptionality and the fact that the property might have been sold to a third party for a higher price did not bring it within the exceptionality test.

Housing

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CLG Housing Statistical Release
House Price Index — December 2009

- UK house prices were 2.9% higher than in December 2008 and 0.8% higher than in November 2009 (seasonally adjusted).
- The mix-adjusted average house price in the UK stood at £200,307 in December 2009.
- House prices rose by 2.9% in the quarter ending December 2009.
- Annual average house prices rose in England by 3.0%, in Scotland by 3.8% and Wales 1.0% but fell in Northern Ireland by -6.0%.

http://www.communities.gov.uk/documents/statistics/pdf/1469429.pdf

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CLG Consultation
General consents for licensing schemes under Parts 2 and 3 of the Housing Act 2004
Deadline for Comments: 12.03.10

The Housing Act 2004 introduced a new national mandatory HMO (Houses in Multiple Occupation) licensing regime which came into force in April 2006 with the aim of improving control on larger higher risk HMOs. It was recognised that the problems of poor management and facilities existed elsewhere in the private rented sector and the Act therefore introduced a discretion for local authorities to license other types of HMO and privately rented property. Discretionary licensing schemes are currently subject to approval by the Sec of State and the purpose of this consultation is to seek views on a move towards general consent for discretionary licensing regimes. A range of options is set out for introducing general consent for local authorities in England to establish and operate discretionary licensing schemes under Parts 2 and 3 of the Housing Act 2004.
http://www.communities.gov.uk/documents/housing/pdf/1446853.pdf

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Homes & Communities Agency Statistical Publication
Monthly Housing Market Bulletin — 29.01.10

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

- House prices continued to rise in December according to both the Nationwide and Halifax, although according to the Halifax prices are 15% below their August 2007 peak.
- Mortgage lending has increased by 66% over the past year, according to the Council of Mortgage Lenders, but is still at about half its pre-credit crisis levels.
- In the year to September 2009 transaction levels rose by 29%.
- The outlook is unclear and many economists predict a double dip in house prices once the Bank of England's rate rises from its current record low of 0.5% or the supply of properties for sale increases.
- The house price to earnings ratio remained above its long-run average of 4.0 at 4.7 in December, according to the Halifax.
- The UK officially came out of recession in Q4 2009 with GDP having risen by 0.1% and unemployment fell slightly in the three months to November to 7.8%

http://www.homesandcommunities.co.uk/public/documents/Monthly-Housing-Bulletin-Jan10.pdf

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HM Treasury Consultation Paper
Investment in the UK private rented sector
Deadline for Responses: 28.04.10

The Government is committed to increasing the supply of housing and improving affordability and has introduced a wide range of measures for reform of the planning system and to develop a more flexible and responsive housing market in order to focus on this objective. However the recent housing market downturn has had a significant impact on housing supply. The Private Rented Sector (PRS) plays a critical role in the housing system, helping to meet growing demand and providing a flexible tenure choice. In particular its contribution to new build supply has been significant in recent years. This Treasury consultation paper is concerned with the economic drivers of investment in the PRS and whether the sector will continue to be responsive to changing demand pressures, or whether it is likely to be constrained by lack of investment.
http://www.hm-treasury.gov.uk/d/consult_investment_ukprivaterentedsector.pdf

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CLG Consultation Response

The private rented sector: professionalism and quality — consultation: Summary of responses and next steps

In May 2009, Communities and Local Government published a consultation paper setting out the Government's response to the 2008 Rugg Review (a review of the Private Rented Sector (PRS) in England) and seeking views on its long term strategy for PRS. The consultation closed on 07.08.09. This document provides an update on the key proposals in the paper and sets out the Government's next steps and plans for further work with stakeholders. The document also includes a summary of responses to the consultation.

http://www.communities.gov.uk/documents/housing/pdf/1454870.pdf

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Housing Supply and Planning Controls: The impact of planning control processing times on housing supply in England

This research considers the length of time that it took to obtain planning consent to develop major housing sites (ten or more homes) in 2005 and 2006 in England. The focus of the report on sites as opposed to individual planning applications is important as it is these which generate new housing. Some of the findings are:

- development control costs local authorities, strategy agencies and applicants together around £3bn a year;
- determination of planning permissions takes significantly longer than the 13-week planning application target in most cases
- slow and uncertain development control limits start-ups of new housing providers and constrains the ability of existing ones to expand

http://www.communities.gov.uk/nhpau/keypublications/research/planningapproval/

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CLG Statistical Publication

Housing and Planning Key Facts — February 2010

This publication contains data on a number of housing and planning topics including:

- housing stock;
- house building;
- household estimates and projections;
- housing market and house prices;
- rents, lettings and tenancies;
- homelessness;
- overcrowding;
- social housing sales;
- affordable housing supply;
- repossessions;
- energy performance;
- planning activity; and
- land use change.

http://www.communities.gov.uk/publications/corporate/statistics/keyfactsfebruary2010

Construction

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CLG — Advisory Letter to Council Chief Executives

Informing Building Control Bodies about the withdrawal of structural design standards (British Standards) and updating Approved Documents A and C

This letter contains information about the introduction of a suite of new British Standards (BSs) for structural design, based on European Standards often called the Eurocodes, and the associated withdrawal by British Standards Institution in March 2010 of conflicting BS design standards, some of which are referenced in the Building Regulations Approved Documents, particularly

Approved Document A (Structure). The structural Eurocodes are a set of standardised European design standards which provide a common approach to structural design across the EU. They are intended to remove potential barriers to trade that exist when countries have different design standards.
http://www.communities.gov.uk/documents/planningandbuilding/pdf/1454859.pdf

Environment

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Administrative Court
New ferry on established route failing to take account of EC Habitats Directive for protective sites

* R (ON THE APPLICATION OF AKESTER AND ANOTHER (ON BEHALF OF THE LYMINGTON RIVER ASSOCIATION)) V DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS
(2010) PLSCS 50 — Decision given 16.02.10

Facts:
The second defendant (W) was the statutory harbour authority for the ferry terminal at Lymington Pier operating certain ferry routes. In February 2009 they introduced a new class of ferry. The surrounding salt marshes and mud flats were designated as part of a wetland of international importance. The claimants on behalf of LRA applied for judicial review of that decision on the basis it had been made and implemented in breach of a Council directive on the conservation of natural habitats. They also contended DEFRA had failed to properly implement the Habitats Directive preventing W from introducing the new class of ferry. Article 6 provided a form of development regime stipulating what "plans and projects" that would negatively affect sites might or might not be permitted by a "competent authority".

Points of dispute:
Whether:

(i) the proposal to introduce the new class of ferry was a plan or project under the Habitats Directive;
(ii) there was competent authority within the directive;
(iii) appropriate assessment of the effect of the ferries on the protected sites had not been carried out; and
(iv) the directive had not been effectively transposed into UK law by February 2009.

Held:

(i) The introduction of the new class of ferry was a project within the ambit of the Habits Directive.
(ii) The competent authority was the second defendant (the harbour authority) who was obliged to have regard to the requirements of the Habitats Directive.
(iii) The position of the second defendant as competent authority was analogous to that of the planning authority and they had failed to recognise it had to carry out the appropriate assessment. The decision allowing the introduction of the new class ferries was fatally flawed and therefore unlawful.
(iv) The Habitats Directive had not been fully and properly transposed into UK law.

General

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CLG Consultation
Proposed changes to publication of statistics on land use change, commercial and industrial floor space and town centre/retail development
Deadline for comments: 14.04.10

The Department for Communities and Local Government currently publishes quarterly statistics on 'Land Use Change' and annual statistics on 'Commercial and Industrial Floorspace' and 'Town Centres/Retail Statistics'. This consultation asks for reviews on the frequency of publication:

- Land Use Change Statistics — reduce from quarterly to annual publication.
- Commercial and Industrial Floorspace and Town Centre/Retail Development Statistics — various options of coverage and frequency of publications.

http://www.communities.gov.uk/documents/planningandbuilding/pdf/1471255.pdf

28

CLG Statistical Release
Land Use Change Statistics (England) 2008 — provisional estimates (January 2010)

This release provides the third revised estimates for 2008 of changes on previously-developed land and the average density of new dwellings. It covers information on:

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

In 2008 it is provisionally estimated:

- 80% of dwellings (including conversions) were built on previously-developed land, compared to 77% in 2007;
- new dwellings were built at an average density of 43 dwellings per hectare;
- 2% of dwellings were built within the Green Belt (unchanged since 2004) and 7% of land changing to residential use (from any use) was within the Green Belt (an increase from 5% in 2007); and
- 9% of dwellings were built within areas of high flood risk and 6% of land changing to residential use was within areas of high flood risk.

http://www.communities.gov.uk/documents/statistics/pdf/1447933.pdf

29

English Heritage Report
Refurbishing Historic School Buildings

In recent years there has been a significant increase in the amount of capital funding made available for school buildings with the result that many schools have been remodelled, refurbished or rebuilt. There are over 5,000 listed school buildings in England (although not all of these are still in use as schools) and heritage considerations should therefore play an important role in the decision making process about how and where capital investment is spent. This report argues that refurbishing rather than replacing historic school buildings can create minimal disruption, be cost and time effective, and create inspirational and modern learning environments. The case studies examined consider the issues involved and identify general principles that can be applied elsewhere.
http://www.english-heritage.org.uk/upload/pdf/Schools-refurb.pdf?1265190939

30

Report by Natural England and the Campaign to Protect Rural England
Green Belts: a greener future

This report compiles, for the first time, information on the state of the Green Belt and compares it with other areas of England. It reviews the nature of Green Belt land and the benefits that it delivers, calling for the benefits and services provided by Green Belt land to be enhanced and for all major towns and cities to be surrounded by areas of recognisable and well maintained natural environment. The summary document identifies opportunities to achieve this.
http://naturalengland.etraderstores.com/NaturalEnglandShop/ne196 (for main report)
http://naturalengland.etraderstores.com/NaturalEnglandShop/NE236 (for summary)

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THE SUNDAY TIMES 100 BEST COMPANIES TO WORK FOR 2009

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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
www.odpm.gov.uk
www.dft.gov.uk
www.inlandrevenue.gov.uk
www.hmso.gov.uk
www.egi.co.uk
focus.focusnet.co.uk
www.newlawonline.com

Abbreviations

The following abbreviations are used in evebrief:

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

The star system

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

*** Essential reading on the point of law or valuation with which the case is concerned, because it adds to, or clarifies or changes, the law.

** Noteworthy case which does not significantly alter the law or which relates to a relatively obscure point.

* Interesting but non-essential reading.

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evebrief

SCOTLAND

Planning

01

Statutory Instrument

SI 2010/27 The Town and Country Planning (General Permitted Development) (Domestic Microgeneration) (Scotland) Amendment Order 2010

This Order comes into force on 08.03.10 and amends the 1992 GPDO to extend permitted development rights to free standing wind turbines and air source heat pumps on or within the curtilage of a dwellinghouse and building containing flats, subject to certain limitations and conditions.
http://www.opsi.gov.uk/legislation/scotland/ssi2010/pdf/ssi_20100027_en.pdf

02

Statutory Instrument

SI 2010/32 The Building (Scotland) Amendment Regulations 2010

These Regulations come into force on 01.10.10 and amend the "principal regulations" of certain works not requiring a building warrant, the regulations setting out the standards applicable to the design and construction of buildings and the standards relating to conversions.
http://www.opsi.gov.uk/legislation/scotland/ssi2010/pdf/ssi_20100032_en.pdf

03

Statutory Instrument

SI 2010/35 The Council Tax (Dwellings) (Scotland) Regulations 2010

These Regulations come into force on 01.04.10 and make provisions as to whether parts of combined heat and power stations are included or excluded in the definition of dwelling for the purposes of Council Tax in Scotland, and consequently that those included in the definition of a dwelling to not attract liability for non-domestic rates.
http://www.opsi.gov.uk/legislation/scotland/ssi2010/pdf/ssi_20100035_en.pdf

04

Statutory Instrument

SI 2010/38 The Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2010

This Order specifies the Lands and Heritages to be valued within the fixed line telecommunications industry. Where these would otherwise be treated as justified separate entries in two or more valuation rolls, they are to be treated as one entry in the valuation roll for Renfrewshire in respect of each operator.
http://www.opsi.gov.uk/legislation/scotland/ssi2010/pdf/ssi_20100038_en.pdf

05

Statutory Instrument

SI 2010/37 The Non-Domestic Rating (Rural Areas and Rateable Value Limits)(Scotland) Amendment Order 2010

This Order comes into force on 01.04.10 and amends the 2005 Order to increase the Rateable Value limit prescribed by Ministers in article 3 of that Order.
http://www.opsi.gov.uk/legislation/scotland/ssi2010/pdf/ssi_20100037_en.pdf

06

Statutory Instrument

SI 2010/36 The Non-Domestic Rate (Scotland) Order 2010

Coming into force on 01.04.10 this Order prescribes a rate of 40.7 pence per pound as the non-domestic rate to be levied throughout Scotland in respect of the financial year 2010-11.
http://www.opsi.gov.uk/legislation/scotland/ssi2010/pdf/ssi_20100036_en.pdf

07

Statutory Instrument

SI 2010/40 The Transfer of Property etc (Scottish Court Service) Order 2010

Coming into force on 01.04.10 and provides for the transfer of certain property and liabilities of Scottish Ministers to the Scottish Court Service in connection with the establishment of the SCS, providing administrative support for the Scottish Courts.
http://www.opsi.gov.uk/legislation/scotland/ssi2010/pdf/ssi_20100040_en.pdf

08

Statutory Instrument

SI 2010/43 The Non-Domestic Rates (Levying) (Scotland) Regulations 2010

These regulations come into force on 01.04.10 and will make provision for the amount payable as non-domestic rates in the financial year 2010-11.
http://www.opsi.gov.uk/legislation/scotland/ssi2010/pdf/ssi_20100043_en.pdf

09

Statutory Instrument

SI 2010/44 The Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Regulations 2010

These regulations, which come into force on 01.04.10, make provision to reduce the amount payable as non-domestic rates in respect of subjects in Scotland used solely for the generation of renewable heat or power (or both). They apply from the start of the 2010-11 financial year.
http://www.opsi.gov.uk/legislation/scotland/ssi2010/pdf/ssi_20100044_en.pdf

10

Statutory Instrument

SI 2010/49 The Town and Country Planning (Limit of Annual Value) (Scotland) Order 2010

This Order prescribes £30,000 as the limit of annual value relating to the circumstances in which Authorities may be obliged to purchase interests of owner occupiers affected by planning proposals, replacing the previous limit of £28,000. It comes into force on 01.04.10.
http://www.opsi.gov.uk/legislation/scotland/ssi2010/pdf/ssi_20100049_en.pdf

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Scottish Planning Policy

This SPP, published this month, is a statement of Scottish Government policy on land use planning and contains:

- the Scottish Government's view of the purpose of planning;
- the core principles for the operation of the system and the objectives for key parts of the system;
- statutory guidance on sustainable development and planning under s3E of the Planning etc (Scotland) Act 2006;
- concise subject planning policies, including the implications for development planning and development management; and
- the Scottish Government's expectations of the intended outcomes of the planning system.

http://www.scotland.gov.uk/Resource/Doc/300760/0093908.pdf

12

Planning Circular 1/2010: Planning agreements

This Circular, published in January this year, sets out Scottish government policy on the use of agreements made under s75 of the Town and Country Planning (Scotland) Act 1997. It provides guidance on the circumstances in which such agreements should be used and how they can be efficiently concluded. The circular draws on the findings of research projects commissioned by the Scottish Government, published in 2004 and 2008, and a stakeholder workshop held at the end of 2008, to provide guidance on the processes for determining the need for, and negotiation of, planning agreements.
http://www.scotland.gov.uk/Resource/Doc/300295/0093714.pdf

13

Statistical Bulletin Housing Series

Affordable Housing Securing Planning Consent 2008/09

This summary presents key statistics from the third survey of Planning Authorities on the amount of affordable housing provision granted planning consent during the 2008/09 financial year and the three previous years covered by the survey. The survey records information on all affordable housing provision through the planning system, whether by public subsidy or from developer contributions. The following are the main findings:

- It is estimated that 6,767 affordable housing units were granted planning consent during 2008/09, 1% lower than the previous year but 1% higher than the three-year average.
- There are wide variations between local authorities with the highest numbers of consents being granted in Glasgow (1,170 units), followed by Highland (722 units).
- Most planning authorities gave consent for a few hundred units, with only nine giving consent to less than 50 affordable units in 2008/09.

http://www.scotland.gov.uk/Resource/Doc/285180/0086636.pdf

14

Statistical Bulletin Planning Series

Scottish Vacant and Derelict Land Survey 2009

This bulletin presents a summary of results from the 2009 Scottish Vacant and Derelict Land Survey, the only national data source for vacant and derelict land. The following are the main points to emerge:

- There were 10,863 hectares of derelict and urban vacant land recorded in the 2009 survey, of which 2,640 hectares (24%) were urban vacant and 8,224 hectares were derelict (76%).
- Since 2002 there has been an increase of 217 hectares in the total amount of derelict and urban vacant land recorded in the survey. This is attributable to the land that has been brought back into productive use or removed due to naturalisation being balanced by a small number of large sites falling out of use.
- Since 2002 an average of 580 hectares of derelict and urban vacant land was brought back into use each year.
- North Lanarkshire has the highest recorded amount of derelict and urban vacant land with 14% of Scotland's total, followed by Glasgow City (12%) and North Ayrshire (12%) in third place.

http://www.scotland.gov.uk/Resource/Doc/300183/0093690.pdf

WALES

15

Statutory Instrument

SI 2010/77 The Council Tax (Alteration of Lists and Appeals) (Amendment) (Wales) Regulations 2010

These regulations, which come into force on 01.04.10, provide that where an alteration to the list is made to correct an inaccuracy of the valuation band as being too high, then the alteration has effect from the later of the day on which the list was compiled and the day six years earlier than the day on which the alteration is entered in the list.
http://www.opsi.gov.uk/legislation/wales/wsi2010/pdf/wsi_20100077_mi.pdf

Rating

16

Statutory Instrument

SI 2010/146 The Valuation for Rating (Plant and Machinery) (Wales) (Amendment) Regulations 2010

These Regulations, which come into force on 01.04.10, amend the 2000 Regulations by inserting a new Regulation 2A. Regulation 2 of the 2000 Regulations provides that the classes of plant and machinery listed in the Schedule are to be treated as part of a non-domestic hereditament and therefore relevant to its value for the purposes of rates. Any other plant and machinery present at the hereditament is not relevant to its value. Regulation 2A provides that where plant and machinery which is otherwise relevant to a hereditament's value has microgeneration capacity, that capacity is not relevant to the value. This new provision applies to any plant and machinery installed on or after 01.04.10 and has effect between the date of installation and the date of the first five-yearly compilation of rating lists of non-domestic hereditaments thereafter.

http://www.opsi.gov.uk/legislation/wales/wsi2010/wsi_20100146_en_1

NORTHERN IRELAND

Rating

17

Statutory Rule of Northern Ireland

SR2010/21 The Rates (Social Sector Value) (Amendment) Regulations (Northern Ireland) 2010

Under the 2007 Regulations a person is chargeable to rates in respect of a domestic property owned by the Northern Ireland Housing Executive or a housing association listed in Schedule 1 on the basis of a social sector value rather than on the basis of the property's rateable capital value. In determining a social sector value the Department of Finance and Personnel is under a duty to ensure that the amount of rates chargeable is such proportion of any rent payable in respect of the property as the Department considers appropriate. These Regulations, which come into force on 01.04.10, substitute a new list of housing associations in Schedule 1 to the 2007 Regulations in consequence of certain housing associations having amalgamated, ceased to exist or changed their name.

http://www.opsi.gov.uk/sr/sr2010/pdf/nisr_20100018_en.pdf

18

Statutory Rule of Northern Ireland

SR2010/18 The Rates (Amendment) Regulations (Northern Ireland) 2010

Schedules 1 and 2 to the Rates Regulations (Northern Ireland) 2007 provide for the determination of the product of a capital value rate and a NAV rate of one penny in the pound for the purpose of ascertaining the product of a district rate to be paid to a district council by the Department of Finance and Personnel. These Regulations amend Schedules 1 and 2 to the 2007 Regulations so as to extend to the 2010/11 financial year the provision that the loss on collection of rates be calculated as if any allowance made under Article 21 of the Rates (Northern Ireland) Order 1977 in respect of any hereditament owned by the Northern Ireland Housing Executive was 10% instead of 15%.

http://www.opsi.gov.uk/sr/sr2010/pdf/nisr_20100021_en.pdf