

# EVEBRIEF

## Legal & Parliamentary

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### LOCAL AUTHORITY FAILURES SHOULD LEAD TO MORE HOUSING LAND BEING IDENTIFIED



Peter Dines  
Partner

In this edition, we report on the Budget. With the election soon upon us it was unlikely to be controversial. However, we particularly note the withholding of Housing and Planning Delivery Grant for those local authorities that do not provide a five-year supply of land for housing. This new provision coincides with the CLG's review of local authorities which confirms the failure of local authorities to meet the target of 90% compliance with this requirement (Item 31). This should result in renewed efforts by local authorities to identify land for housing in their emerging policy documents. Strategic Housing Land Assessments play a key role in policy formulation and we are particularly pro-active in this process on behalf of landowners and developers.

Other Budget matters which could help stimulate the housing market are the Stamp Duty exemptions and the reduction of regulatory cost on housing builders.

We also report on the recently published PPS 5, the new policy statement on Planning for the Historic Environment (Item 09). This is a key policy update which will have far reaching implications on real estate as it widens the net for matters which can be considered as being appropriate to conserve.

## 01 Budget

**The Budget was delivered on 24.03.10**

Key changes of interest to the property industry are as follows:

- Small business rate relief: For one year from October this year businesses occupying properties with a rateable value of less than £6,000 will be exempt from business rates and there will be discounts for businesses occupying premises with rateable values up to £12,000.
- Stamp duty: To help first time buyers all properties under £250,000 will be exempt from Stamp Duty Land Tax. However properties which are sold for more than £1m will now be subject to SDLT at 5%.
- Real Estate Investment Trusts (REITs) will be able to issue stock dividends as an alternative to cash.
- The announcement of a £120m fund for Accelerated Development Zone pilots in 2011 to "help support projects that deliver key infrastructure and commercial development."
- Increase in the Empty Property Relief threshold to £18,000 in 2010/11.
- Housing and Planning Delivery Grant will be withheld from councils that fail to produce satisfactory five-year land supply assessments.
- Regulatory costs on the house building industry are to be reduced.
- A Green Investment Bank is to be set up with a mandate to invest in low-carbon infrastructure. The Government will invest £1bn from the sale of infrastructure-related assets and will seek to match this with at least £1bn of private sector investment. Initially, this fund will focus on off-shore wind electricity generation.
- Climate change levy rates will be raised in line with inflation from 01.04.11.
- The standard rate of landfill tax will rise by £8 per tonne on 01.04.14. The aggregates levy will rise to £2.10 per tonne on 01.04.11.

**LANDLORD & TENANT**

## 02 Court of Appeal

**Disrepair claim – abuse of process**

\* HENLEY V BLOOM (2010) PLSCS 69 – Decision given 09.03.10

**Facts:** The appellant held a tenancy of a basement flat which suffered from damp. In 2002 the local council served notices on the respondent landlord requiring her to carry out specified repairs. Although the respondent obtained a report no work was done. Four years later the respondent sought possession of the flat. The possession proceedings were settled by a consent order under which the appellant would give up possession and the respondent agreed to pay him £16,000 plus £4,000 costs in full and final settlement of the appellant's claims for improvements he had carried out. The appellant vacated in 2007, having obtained an expert's report on the extent of the flat's disrepair and dampness, after which the respondent refurbished the flat. In 2008 the appellant claimed damages from the respondent for breach of his repairing obligations since 2001.

**Point of dispute:** Whether the appellant's appeal should be allowed against the ruling of the court below, which allowed the respondent's application to strike out the disrepair claim, on the following grounds: (i) the state of the property had been raised in the possession claim and in the terms of the eventual consent order, so it was an abuse of process to raise a subsequent disrepair claim; and (ii) a fair trial of the disrepair claim was impossible as the respondent could not obtain her own report into the condition of the flat at the relevant time.

**Held:** The appeal was allowed.

- Although the appellant could have brought the disrepair claim at the same time as the possession claim, as he had sufficient information at that time to do so, his disrepair claim was not an abuse of process. The possession proceedings had not addressed questions of whether the flat was out of repair and whether that was the respondent's liability. The issues in the disrepair claim were separate from those in the possession claim. The payment made by the respondent only related to the appellant's claims for improvements. It was also relevant that the respondent had brought the possession claim against the appellant – it was more difficult to argue that a later action was an abuse of process if the claimants in the two actions were not one and the same.
- The respondent could not unequivocally demonstrate that there was a substantial risk of a fair trial being impossible. The inequality between the parties would have to be substantial and significantly prejudicial and the disadvantage to the respondent in this case would not be substantial or extraordinary. The respondent had been aware of the disrepair problem and nothing could lead him to assume that the appellant had abandoned the possibility of making a claim in respect of it.

## PLANNING

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### 03 Statutory Instrument

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#### **SI 2010/566 The Planning Act 2008 (Commencement No 5 and Saving) Order 2010**

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Article 2 of this Order brings into force s224(3) of the Act (Community Infrastructure Levy: amendments) on 06.04.10. Article 3 brings into force on the same date the following provisions of the Act, in relation to England and Wales, insofar as they are not already in force:

- S189 (compensation where development order or local development order withdrawn);
- S190(4) of the Act (power to make non-material changes to planning permission – register of applications etc);
- S238 and Schedule 13 (repeals as specified in the Schedule to this Order); and
- Article 4 provides a saving, in relation to the coming into force of s189, for directions under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995, given before 06.04.10.

[http://www.opsi.gov.uk/si/si2010/pdf/uksi\\_20100566\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100566_en.pdf)

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### 04 Statutory Instrument

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#### **SI 2010/567 The Town and Country Planning (General Development Procedure) (Amendment) (England) Order 2010**

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This Order, which comes into force on 06.04.10, amends the 1995 Order ("the GDPO") which specifies procedures connected with planning applications and appeals to the Sec of State. The amendments concern design and access statements, publicity, time limits for appeals, and details that need to be included in the planning register.

[http://www.opsi.gov.uk/si/si2010/pdf/uksi\\_20100567\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100567_en.pdf)

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### 05 Statutory Instrument

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#### **SI 2010/568 The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2010**

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These Regulations, which come into force on 06.04.10, amend the 1990 Regulations in relation to the publicity of certain applications. Local planning authorities are required to publicise applications for listed building and conservation area consent and these Regulations extend the period for displaying a site notice from 7 to 21 days. Information about applications made on or after 01.10.10 will also have to be published on local authorities' websites.

[http://www.opsi.gov.uk/si/si2010/pdf/uksi\\_20100568\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100568_en.pdf)

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### 06 Statutory Instrument

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#### **SI 2010/653 The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010**

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Wef 06.04.10 this Order makes certain amendments to the Town and Country Planning (Use Classes) Order 1987.

- Use Class C2A (secure residential institutions) is restated to clarify that it is not confined to Crown land;
- Use Class 3 (dwelling houses) is amended to remove from its scope certain small scale houses in multiple occupation; and
- a new Use Class is introduced (houses in multiple occupation). This covers use of a dwelling house as a house in multiple occupation as defined in s254 of the Housing Act 2004 – where tenanted living accommodation is occupied by persons as their only or main residence, who are not related and who share one or more basic amenities.

[http://www.opsi.gov.uk/si/si2010/pdf/uksi\\_20100653\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100653_en.pdf)

## 07 Statutory Instrument

**SI 2010/654 The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010**

This Order, which comes into force on 06.04.10, amends the 1995 Order ("the GPDO"). The GPDO grants planning permission for certain types of development, but it also contains provisions enabling local planning authorities to give directions to withdraw that permission in a local area ("Article 4 directions"). When an Article 4 direction is given specific planning permission is then required for development of that class in the area to which the direction applies. This Order substitutes new Articles 4, 5 and 6 in the GPDO.

- Article 4 changes the procedure relating to Article 4 directions so that lpas no longer require approval from the Sec of State for certain kinds of Article 4 direction. It makes provision for the giving of notice, representations to be taken into account and the date the direction comes into effect.
- The Order also sets out a procedure for Article 4 directions relating to certain categories of development where lpas consider that development would be prejudicial to their area or constitute a threat to the amenities of their area. In these circumstances an lpa can make an Article 4 direction with immediate effect.
- The Order also amends the GPDO to grant planning permission for some categories of development which previously required planning permission.

[http://www.opsi.gov.uk/si/si2010/pdf/uksi\\_20100654\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100654_en.pdf)

## 08 Statutory Instrument

**SI 2010/655 The Town and Country Planning (Compensation) (England) Regulations 2010**

Section 108 of the Town and Country Planning Act 1990 provides for the payment of compensation in certain cases where planning permission for development granted by a development order or local development order is withdrawn, and where on an application for planning permission for that development, the application is refused. Section 108(2A) and (3B) to (3D) limits the circumstances in which compensation is payable. These regulations, which come into force on 06.04.10, prescribe types of development for the purposes of s108(2A) and (3C) (Reg 2), prescribe the manner in which planning permission is to be withdrawn (Reg 3) and prescribe the manner, and maximum period, in which notice of withdrawal, revocation, amendment or directions is to be given (Regs 3 and 4).

[http://www.opsi.gov.uk/si/si2010/pdf/uksi\\_20100655\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100655_en.pdf)

## 09 CLG Planning Policy Statement

**Planning Policy Statement 5: Planning for the Historic Environment**

This statement sets out the Government's new planning policies on the conservation of the historic environment. It replaces PPG 15: Planning and the Historic Environment published on 14.09.94 and PPG 16: Archaeology and Planning published on 21.11.90. The new approach to the protection of the historic environment contains the following features:

- It aims to consolidate existing policy on all aspects of the historic environment.
- The level of protection afforded to designated historic features is not changed.
- The scope of protection afforded to the historic environment is widened. A new concept of the "heritage asset" is introduced which "embraces all manner of features" including buildings, landscapes and areas which are "positively identified as having a degree of significance meriting consideration in planning decisions". The policy contemplates the "identification" of such heritage assets both through the development plan process and during the decision-making process.
- There will be increased emphasis on the pre-application stage with a focus on better evaluation of the historic environment.
- The new policy is designed to promote an understanding of what is significant about heritage assets in order to facilitate a more effective analysis of potential impacts and their acceptability.
- More detail is provided on the concept of "setting" and the question of design.
- The document aims to provide more clarity on matters such as policy conflict and the balancing of benefit against harm, the preservation and enhancement of conservation areas and the proper approach to World Heritage Sites.
- Best practice within LPAs is encouraged.

<http://www.communities.gov.uk/publications/planningandbuilding/pps5>

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1514132.pdf>

## 10 CLG Consultation Paper

**Consultation on a Planning Policy Statement:  
Planning for a Low Carbon Future in a Changing Climate  
Deadline for Responses: 01.06.10**

This consultation seeks views and comments on the new draft planning policy which combines and updates the existing planning policy statements on climate change (PPS1 supplement) and renewable energy (PPS22). This new draft policy contains the planning framework for achieving the UK's greenhouse emissions targets and using more renewable and low carbon energy.

<http://www.communities.gov.uk/publications/planningandbuilding/ppsclimateconsultation>

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1499780.pdf>

## 11 CLG Consultation

**New Policy Document for Planning Obligations  
Deadline for Comments: 17.06.10**

This consultation seeks views on a new policy document on the use of planning obligations.

The Government announced in the December 2009 Pre-Budget Report that it would consult on a new policy document for planning obligations. This is required in the light of the introduction of the Community Infrastructure Levy (CIL) and reforms to planning obligations brought about by Final CIL Regulations 2010 which will come into force on 06.04.10.

In its final form, this policy document is intended to replace Circular 5/05: Planning Obligations, and it will form an annex to the new Development Management Planning Policy Statement on which the Government launched a consultation on 21.12.09. In the meantime, the policy in Circular 5/05 continues to apply.

<http://www.communities.gov.uk/publications/planningandbuilding/planningobligationsconsultation>

## 12 CLG Guidance

**Planning Act 2008: Guidance for local authorities**

This guidance is aimed at local authorities involved in the new regime for examining and determining nationally significant projects (NSIPs) eg major power stations. The role of local authorities in the new regime will include:

- Consulting with promoters on Statements of Community Consultation (where a proposed development will fall within the local authority area)
- Responding to the promoter's pre-application consultation
- Reporting to the Infrastructure Planning Commission on pre-application consultation
- Preparation of agreements under s106 of the Town and Country Planning Act 1990
- Preparation of local impact reports and making representations to the IPC on a proposed NSIP
- Approval of matter subsequent to a NSIP being granted development consent, such as detailed designs or schemes to mitigate adverse impacts
- Monitoring and enforcement

<http://www.communities.gov.uk/publications/planningandbuilding/planningguidancelocal>

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1521327.pdf>

## 13 CLG Guidance

**Community Infrastructure Levy Guidance**

This guidance is concerned with charge setting and charging schedule procedures for the new Community Infrastructure Levy.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1518612.pdf>

## 14 CLG Publication

**Development Management Policy Annex: Information requirements and validation for planning applications**

This statement, which takes effect from 06.04.10, sets out the Government's policy on the information which must be provided in support of planning applications to enable Ipsas to determine their validity. Further guidance on information requirements, design and access statements and the standard application form is set out in a guidance document called Guidance on Information Requirements and Validation, available via the CLG website. Circular 02/2008, Standard Application Form and Validation and s3 of Circular 01/2006, on Design and Access Statements, are cancelled wef 06.04.10. Section 2 of Circular 01/2006, on the information requirements for outline planning applications, remains in force.

<http://www.communities.gov.uk/publications/planningandbuilding/developmentannexinfo>

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1505418.pdf>

## 15 CLG – Letter to Chief Planning Officers

**Implementing some key Killian Pretty Recommendations**

This letter to local authorities advises on the changes to the planning application process in England resulting from recent statutory changes, principally in relation to:

- publicity for planning applications;
- information requirements on planning applications; and
- permitted development rights and directions restricting permitted development rights.

Associated statutory instruments take forward a number of other changes to the planning application and appeals process which have been consulted on but are not directly related to the Killian Pretty review.

<http://www.communities.gov.uk/publications/planningandbuilding/letterkillianrecommendations>

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1506699.pdf>

## 16 CLG Research Report

**Towards a more efficient and effective use of Strategic Environmental Assessment and Sustainability Appraisal in spatial planning**

Sustainability Appraisal (SA) was made a statutory requirement for Regional Spatial Strategies (RSSs) and Local Development Documents (LDDs) under the Planning and Compulsory Purchase Act 2004. At the same time the European Directive on Strategic Environmental Assessment (SEA), which is concerned with assessment of the effects of certain plans and programmes on the environment and also applies to RSSs and many LDDs came into force. The Government published guidance on SA of RSSs and LDDs which incorporated the requirements of the Directive. This project considers how efficient and effective SA and SEA are with the aim of:

- improving efficiency in the way that SA/SEA processes are applied to plans and programmes;
- considering how effective SA/SEA are in influencing plan outcomes and in increasing public involvement; and
- considering whether any changes are needed to CLG guidance on local spatial planning.

<http://www.communities.gov.uk/publications/planningandbuilding/towardsmoreefficient1>

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/15130101.pdf>

## 17 CLG Report

**Review of the call-in process**

This review considers the call-in process, from referral of a planning application to Government Offices, to the eventual determination of the case by the Sec of State, and makes recommendations about how the process can be speeded up and made more economical.

<http://www.communities.gov.uk/publications/planningandbuilding/reviewcallin>

## 18 CLG Study

**The Incidence, Value and Delivery of Planning Obligations in England in 2007-08: Final Report**

This study, which updates two previous ones, provides information on the number and value of planning obligations agreed in England in 2007-08, and examines the delivery of planning obligations agreed in previous years.

<http://www.communities.gov.uk/publications/planningandbuilding/planningobligationsreport>

## 19 CIG Statistics

**Planning Applications: December Quarter 2009 (England)**

These statistics were released on 26.03.10. In the December quarter 2009:

- The number of planning applications received by district level planning authorities increased by around 0.5% compared to the December 2008 quarter.
- The number of applications decided decreased by 9% compared with the same quarter a year earlier.
- Decisions on planning applications for residential developments decreased by 19% in the December quarter 2009 compared with the corresponding quarter in 2008. Decisions on major residential developments fell by 20% over the same period.
- The percentage of major applications determined within the 13 week target was 71% in the year ending December 2009 compared with 72% in the 12 months ending December 2008.
- Authorities that undertake county level planning activity determined 379 applications, an increase of 5% on the previous year.

<http://www.communities.gov.uk/publications/planningandbuilding/planningapplicationsq42009>

## 20 CLG Publication

**Community Infrastructure Levy: An overview**

This document explains the key features of the new Community Infrastructure Levy, which is to be introduced on 06.04.10 through the Community Infrastructure Levy Regulations 2010. It explains the key features of the new charge, its rationale, purpose and how it will work in practice. Guidance on specific aspects of establishing and running a CIL regime will be issued at a later date.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1503577.pdf>

**RATING**

## 21 CLG Information Letter

**Business Rates Information Letter (5/2010): Interest Rates and Backdating of Small Business Rate Relief (SBRR)**

- The Non Domestic Rating (Payment of Interest) Regulations 1990 provide that the rate of interest payable on refunds of overpaid rates, arising from alterations to the rating list, should be set for any year at one percentage point below the standard rate at 15 March (or the next business day) in the preceding year. On 15.03.10 the standard rate was 0.5% and the rate of interest to be applied for 01.04.10 to 31.03.11 is 0%.
- The Business Rates Information Letter issued on 09.12.09 announced the removal of the requirement for ratepayers already receiving SBRR to reapply for the relief at the 2010 Revaluation. This letter clarifies that the new provisions do not change the existing rules governing the timing of new applications for SBRR which are set out in Article 3(4) of The Non-Domestic Rating (Small Business Rate Relief) (England) Order 2004 (SI 2004/3315) (as amended).

<http://www.communities.gov.uk/publications/localgovernment/bril052010>

<http://www.communities.gov.uk/documents/localgovernment/pdf/1513124.pdf>

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## LEASEHOLD REFORM

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22 High Court

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**Enfranchisement – appellant landlord granting long lease of basement caretaker’s flat to nominee company – whether lease void – s19(1) Leasehold Reform, Housing and Urban Development Act 1993 (“1993 Act”)**

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\* PANAGOPOULOS V EARL CADOGAN  
(2010) PLSCS 79 – Decision given 15.03.10

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**Facts:** EC owned the freehold of a building containing five flats and a basement caretaker’s flat. Three of the five qualifying tenants (P) served notice to acquire the freehold of the building under s13 of the 1993 Act. EC’s counternotice, under s21, sought no leaseback of any part of the building. P applied to the leasehold valuation tribunal under s24 to determine the terms of the acquisition. Subsequently EC notified P of its intention to grant a lease to a nominee of the basement caretaker’s flat. P objected maintaining that such a grant would be void by virtue of s19 of the 1993 Act. In March 2008 EC formally granted the lease of the basement flat and the adjacent light well to a company associated with it for a term of 999 years at a peppercorn rent. P issued proceedings to determine the effect of s19 of the 1993 Act with regard to the new lease.

**Point of dispute:** Whether EC’s appeal should be allowed against the county court’s finding that the lease was caught by the anti-avoidance provisions in s19.

**Held:** EC’s appeal was dismissed. The lease was void as it consisted of a caretaker’s flat which constituted common parts as defined in s101(1) of the 1925 Act and therefore fulfilled the conditions of s19(1) (a) (ii) of the 1993 Act. A flat that housed a caretaker who looked after the building at the relevant date constituted a common part within the statutory definition irrespective of whether the obligation under the leases required the caretaker to be resident. P needed to acquire the flat for the proper management and maintenance of the common parts since if they did not acquire the interest under the lease they would not be able to use the flat to accommodate a caretaker. The court also took the view that the light-well constituted a common part since it was entirely enclosed within the building.

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## REAL PROPERTY

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23 Court of Appeal

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**Proprietary Estoppel**

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\*\* LESTER V WOODGATE  
(2010) PLSCS 71 – Decision given 09.03.10

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**Facts:** In 2004 the appellants purchased a property at auction with outline planning permission and subsequently constructed a house on the land. The auction particulars referred to a disputed easement that was a right of way on foot and with wheelbarrows along a path which crossed the defendants’ property and led to the public highway. The route was created in 1980 and surfaced in part with a concrete ramp. By 1999 much of the ramp had collapsed and its surface removed and part had been recreated as a parking space, meaning that the right of way had been substantially interfered with. The appellants sought a mandatory injunction against the respondents requiring reinstatement of the ramp, an injunction to prevent parking, and damages. The respondent S argued that the appellants’ predecessor in title had acquiesced in the destruction of the ramp and resurfacing of the parking space so it would be inequitable, by reason of laches or equitable estoppel, for the appellants to seek to enforce the 1980 right of way. In the county court the recorder found that the removal of the ramp was a nuisance which was being perpetuated by the respondents continuing to use the parking space. However, the appellants were barred from seeking equitable relief because the respondents’ predecessor in title had relied on the acquiescence of the appellants’ predecessor by selling his property to the respondents without notice of any pending dispute over the use of the parking space. Nominal damages for nuisance were awarded.

**Point of dispute:** Whether the appellants’ appeal against the recorder’s findings would be allowed. The respondents also cross-appealed against the damages award.

**Held:** The appeal was dismissed and the cross-appeal allowed.

- i Laches was a general equitable defence that barred the grant of equitable relief where the claimant had been guilty of undue delay in asserting its rights. It would not extinguish a claimant's legal rights or bar enforcement by, for example, common law damages.
- ii Equitable estoppel depended on the making of a representation or promise concerning the enforcement of property or contractual rights in circumstances that made it unconscionable for the promisor to go back on his promise. In the event of proprietary estoppel being established the equity could be satisfied by granting permanent property rights over the estate of the party bound by the estoppel, and these would bind successors in title. Proprietary estoppel was conventionally based on a representation by words or conduct, but could be founded on a landowner's acquiescence and each case had to be looked at on its own facts.
- iii In this case, the defence of proprietary estoppel had been made out. The acceptance of the situation by the appellants' predecessor in title meant that the defendants' predecessor could use the car parking space with no concern for the 1980 right of way and that was what he took into account when he considered his replies to preliminary enquiries on selling his property. The recorder was correct to find that there had been sufficient assurance to found an estoppel.
- iv The nominal damages award was wrong in principle. The appellant's claim was dismissed on a defence of equitable estoppel thus barring the grant of an equitable remedy and the enforcement of the legal right. Continued use of the parking space could not therefore be an actionable nuisance and no action for damages could lie.

24 Court of Appeal

#### **Purchaser failing to comply with notice to complete – Specific performance**

\* NORTH EASTERN PROPERTIES LTD V COLEMAN (2010) PLSCS 87 – Decision given 19.03.10

**Facts:** In October 2007 NEP entered into 11 contracts to sell 11 flats it was building to C. A discount of 10% from the standard price was agreed as part of the pre-contract negotiations, 8% of this being recorded in the contracts as a "builder's incentive" while at C's request the remaining 2% was to be invoiced as a finder's fee. The contracts incorporated the standard conditions of sale and an "entire agreement" clause. Completion was to take place no later than ten working days after notice was sent to C that each property was finished. In May 2008 NEP failed to comply with a notice to complete served on it by C, and two months later NEP advised C that construction was finished. A subsequent notice to complete served on C by NEP was not complied with.

**Point of dispute:** Whether C's appeal would be allowed against the judge's finding in the court below that NEP was entitled to specific performance of the contracts. C contended that they were not obliged to complete because:

- the contracts were void and unenforceable since they did not contain all the agreed terms, (s2 of the Law of Property (Miscellaneous Provisions) Act 1989) as they omitted any reference to the 2% finder's fee; and
- NEP's failure to complete the flats within a reasonable time and to comply with C's notice to complete entitled C to rescind the contracts.

**Held:** C's appeal was dismissed.

- Section 2 only applied to expressly agreed terms of the sale of the land, rather than the terms of a simultaneous contract eg for the sale of a chattel or the provision of a service which formed part of the same commercial transaction. If the performance of the land sale were conditional on other elements of the bargain the use of separate documents containing the terms would fall foul of s2. In this case the 2% finder's fee agreement formed part of a composite transaction and the effect of the "entire agreement" clause was that the performance of the land contracts was not conditional on the performance of the finder's fee agreement. That was a personal obligation of NEC and a personal right of C in return for finding willing purchasers and it formed no part of the individual land contracts.
- C had not been entitled to rescind the contract because of NEC's failure to comply with their notice to complete. Time for completion of the sale under each of the 11 contracts did not begin to run until the period for completion had arisen, which depended on when each flat was completed.

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 25 Court of Appeal
 

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**Claim for adverse possession of land forming part of a highway**


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\*R (ON THE APPLICATION OF SMITH) V LAND REGISTRY (2010) PLSCS 25 – Decision given 10.03.10

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**Facts:** For more than 12 years S had lived in a caravan located on an unmetalled byway. In 2007 he applied to the Land Registry to be registered as its owner on the ground that he had acquired title by adverse possession. The local highway authority opposed the application arguing that the land was shown as a highway open to all traffic in the definitive map and statement for the area. The Registrar refused S's application on the ground that the land was a highway.

**Point of dispute:** Whether S's application for judicial review of the Registrar's decision would be allowed.

**Held:** S's appeal against the ruling of the court below, which disallowed S's claim, was dismissed. There was no authority for the proposition that the title to land occupied by a highway could be acquired by adverse possession. Where a public right of way existed the land would automatically vest in the highway authority by virtue of s263(1) of the Highways Act 1980 and adverse possession against the highway authority would not be possible unless the right of way were extinguished. It was not possible to extinguish a public right of way by adverse possession as a squatter could only acquire the title of the owner whom he had dispossessed. The 12-year limitation period contained in the Limitation Act 1980 applied only to actions to recover land, not to rights of way. In any event, public rights are overriding interests by virtue of the Land Registration Act 2002 such that any title a squatter might acquire would be subject to the right of way on registration. A squatter could not, therefore, legally terminate the public's right of passage by occupying land forming part of the highway.

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**CONTRACT**


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 26 High Court
 

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**Damages for breach of contract**


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\* NG V ASHLEY KING (DEVELOPMENTS) LTD (2010) PLSCS 82 – Decision given 11.03.10

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**Facts:** In 2003 N bought a house from AKD, a developer, which N later alleged was unsaleable owing to its poor construction. AKD agreed to repurchase the house for £380,000 and on the following day N entered into an agreement to buy the house next door from S for the same price. Completion of each contract was to take place 28 days after written notice from the seller to the buyer. AKD failed to complete and N sought to recover damages for breach of contract.

**Point of dispute:** Whether N's appeal would be allowed against the court's ruling that although N could forfeit AKD's deposit and should receive payment from AKD as damages for the deposit that he had paid to S, a total of £78,000, these deposits had to be offset against any other damages in respect of each transaction to which N was entitled. N argued that if a vendor was required to bring the amount of the deposit into account it would be deprived of its unrestricted contractual right to the deposit if the buyer failed to complete.

**Held:** N's appeal was dismissed. The purpose of an award of damages was to compensate the injured party for the wrong it had suffered by placing that party in the position that it would have been in had the contract been performed. Generally, if an injured party had benefited as well as suffered as a result of the breach it had to give credit for the benefit against the loss suffered.

## TORT

27 High Court

### Professional negligence of surveyor acting for mortgagee in buy-to-let transaction

\* SCULLION V BANK OF SCOTLAND PLC (T/A COLLEYS)  
(2010) PLSCS 89 – Decision given 18.03.10

**Facts:** In 2002 S bought a two-bedroomed flat from a developer as a buy-to-let investment. On the application form the purchase price/estimated value was stated to be £353,000 and S applied for a mortgage of £283,000. The defendant (C), a firm of surveyors, provided S with a valuation report which stated that the open market value of the property was £353,000 and the achievable rent £2,000 pcm. S's monthly mortgage payment was £1,440. In fact, the total consideration he paid on completion was only £300,000 due to various discounts from the developer. Following completion S could only let the property for half of C's monthly predicted rent and in May 2006 he sold it for £270,000.

**Point of dispute:** Whether C was liable to S for damages for the loss that he had suffered on his investment as a result of C's overvaluation of the purchase price and the achievable rental value. C denied liability arguing as follows:

- i it did not owe S a duty of care under the principles established by the House of Lords in *Smith v Eric S Bush (a firm)* (1989) 1 EGLR 169;
- ii any such duty was excluded by the disclaimer on the mortgage application form;
- iii it was entitled to raise the defence of *ex turpi causa* (whereby a claimant was unable to pursue a cause of action if it arose in connection with his own illegal act) because S had made fraudulent representations regarding the price of the property to the mortgage lender;
- iv S had not in fact relied on the valuation; and
- v the valuation had not been negligent.

**Held:** S's claim was allowed.

- i a valuer had to appreciate that a decision to purchase a modest buy-to-let property would depend on the accuracy of the valuation report and the anticipated rental value to ensure that the transaction was self-financing;
- ii C relied on the small print disclaimers in the application form, and these had not been brought to S's attention. In any event C had not discharged the burden of showing that it would be fair and reasonable to rely on the disclaimer clauses in the circumstances of the case;
- iii the defendant had failed to establish that S was debarred from pursuing his claim under the doctrine of *ex turpi causa* as it had not shown that S had deliberately misled the mortgage provider;
- iv S had relied on the defendant's report. The losses suffered by S from accepting the mortgage offer and completing the purchase were a result of C's valuation report; and
- v C's valuation of £353,000 considerably exceeded the maximum value that any competent and careful valuer would have attributed to the property. A competent valuer would not have simply accepted the purchase price notified to him at face value and would have checked that no discounts were being given by the developer.

## HOUSING

28 RICS Publication

### RICS housing market survey, February 2010

This survey showed surveyors generally to still be positive on price movements in residential property, but less so than in January.

- The seasonally adjusted net balance of respondents reporting increasing rather than declining price fell to 17% in February, from 31% in January.
- New buyer enquiries and new instructions have rebounded from depressed January levels, but the latter more strongly. The improvement has yet to translate into actual transactions.
- Activity is expected to rise over the coming months after the recent lull, with surveyors also anticipating that prices will continue to edge upwards.

[http://www.rics.org/site/download\\_feed.aspx?fileID=6082&fileExtension=PDF](http://www.rics.org/site/download_feed.aspx?fileID=6082&fileExtension=PDF)

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29 HCA Statistical Publication

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### Monthly Housing Market Bulletin – 23 February 2010

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

- House prices continued to rise in January according to the Nationwide and the Halifax though prices remain 15% below their August 2007 peak according to the Halifax.
- There has been a 90% rise in mortgage lending over the past year according to the Council of Mortgage Lenders which has contributed to the recent rise in house prices. However, it should be noted that mortgage lending was temporarily boosted in December by buyers trying to complete transactions before stamp duty returned to its previous level.
- According to Rightmove, sellers boosted their asking prices by 3.2% in January, trying to take advantage of the upturn in the market.
- Inflation is now running at 3.5%, and unemployment is 7.8%.

[http://www.homesandcommunities.co.uk/public/documents/MonthlyHousingBulletinFeb2010\\_1.pdf](http://www.homesandcommunities.co.uk/public/documents/MonthlyHousingBulletinFeb2010_1.pdf)

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30 CLG Statistical Release

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### House Price Index – January 2010

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This release includes data based on mortgage completions during January 2010. The key points are as follows:

- UK house prices were 6.2% higher than in January 2009 and 2.2% higher than in December 2009 (seasonally adjusted).
- The mix-adjusted average house price in the UK stood at £207,159 in January 2010 (not seasonally adjusted).
- UK house prices rose by 4.8% in the quarter ending January 2010. This compares with a smaller rise of 2.3% for the quarter ending October 2009 (seasonally adjusted).
- Annual average house prices rose in England by 6.6%, by 7.1% in Scotland and by 1.3% in Wales. They fell in Northern Ireland by 13.7%.
- Annual average house prices paid by first time buyers in January 2010 were 8.9% higher than the previous year. Average prices paid by former owner occupiers were 5.2% higher.
- Annual average house prices paid for new properties in January 2010 were 2.1% lower than a year ago. Average house prices paid for pre-owned dwellings were 6.8% higher.

<http://www.communities.gov.uk/documents/statistics/pdf/1505306.pdf>

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31 CLG Report

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### Five-year housing land supply coverage in England

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This report presents the findings of the Planning Inspectorate's checks of local planning authorities five year housing land supply assessments of deliverable sites.

<http://www.communities.gov.uk/publications/planningandbuilding/fiveyearhousing>

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1515960.pdf>

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## CONSTRUCTION

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32 Statutory Instrument

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### SI 2010/719 The Building and Approved Inspectors (Amendment) Regulations 2010

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These Regulations amend the following:

- The Building Regulations 2000;
- The Building (approved Inspectors etc) Regulations 2000;
- The Building and Approved Inspectors (Amendment) Regulations 2009; and
- The Building (Amendment No 2) Regulations 2009.

They are concerned, inter alia, with exemptions for conservatories and porches from the energy efficiency requirements of the Building Regulations, the duty to provide information about a building's ventilation system and its maintenance, notifications to local authorities of target emission rates, carbon monoxide alarms and categories of work that are exempt from the requirement to notify local authorities when carried out by members of self-certification schemes.

[http://www.opsi.gov.uk/si/si2010/pdf/uksi\\_20100719\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100719_en.pdf)

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## 33 CLG Circular

**Circular 03/2010: The Building Act 1984, The Building Regulations 2000: Amendments relating to Parts F, G, J, Energy Efficiency and Competent Persons Self-Certification Schemes**

This Circular draws attention to the Building and Approved Inspectors (Amendment) Regulations 2010 (SI 2010/719) (see item 32). The amendments made to the Building (Approved Inspectors etc) Regulations 2000 and some of the amendments to the Building Regulations 2000 take effect on 01.10.10. The remaining amendments to the Building Regulations 2000 take effect on 06.04.10. This Circular:

- draws attention to the amendments and explains the changes they make to the Building Regulations 2000, the Building (Approved Inspectors etc) Regulations 2000, the Building and Approved Inspectors (Amendment) Regulations 2009 and the Building (Amendment No 2) Regulations 2009;
- explains the transitional provisions;
- announces the approval and publication of an amended Approved Document G (Sanitation, hot water safety and water efficiency); and
- announces further provisions for self-certification.

<http://www.communities.gov.uk/publications/planningandbuilding/circular032010>

## 34 CLG Research Report

**Code for Sustainable Homes: A Cost Review**

This report presents the findings of research in 2009 to update and enhance existing cost data for achieving different performance levels under the Code for Sustainable Homes. The report updates Cost Analysis of The Code for Sustainable Homes: Final Report, published in July 2008, which reported on Code cost data research undertaken in 2007. An update to the Code is due later this year to maintain alignment with amended building regulations and to incorporate feedback on current guidelines received from stakeholders within the construction industry.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1501290.pdf>

**HIGHWAYS**

## 35 High Court

**Obstruction of a public footpath**

\* HERRICK V KIDNER  
(2010) PLSCS 52 – Decision given 17.02.10

**Facts:** H constructed a gateway across a public footpath, comprising three brick and stone pillars flanked by brick fly walls. Between the first and second pillars there was an iron pedestrian gate and between the second and third pillars electronically controlled double gates. The highway authority issued two notices under s143 of the Highways Act 1980 requiring H to remove the gates. H did not comply and the authority threatened enforcement action but subsequently H was informed that the gates would not be removed if they remained unlocked and preferably open. In the meantime K served a notice under s130A(1) of the 1980 Act requesting the Highways Authority to take steps to remove the obstruction. K also applied to the magistrates' court for an order requiring H to remove the gateway (s130B(1)).

**Point of dispute:** Whether H's appeal against the findings of the Crown Court would be allowed. These were that (i) there had been no lawful authority for the gates, and (ii) parts of the structure were on the footpath and significantly interfered with the exercise of public rights of way. The court ordered the highway authority to remove certain parts of the gateway and to erect a fingerpost.

**Held:** H's appeal was dismissed. The statutory purpose of s130A-D was to enable members of the public to compel a highway authority to protect the public's rights to use a footpath and to act against any perceived obstructions. The Crown Court had interpreted the legislation correctly and had been correct in its conclusion that parts of the gateway impinged upon the footpath such that public rights of way were significantly interfered with. To be entitled to make an order under s130B the court had to be satisfied that the obstruction was without lawful authority and that the powers conferred by ss143, 149 or 154 of the 1980 Act were exercisable in respect of it. The highway authority had no power to grant such lawful authority by its letter stating that the gates could be kept closed but unlocked, but in any event any purported authority given in that letter had subsequently been withdrawn. The Crown Court did not have power to order removal of part only of the obstruction and it should have made an order in respect of the whole structure that obstructed the footpath.

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 36 UK Green Building Council Report
 

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**Sustainable Community Infrastructure – Final Report**


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Key recommendations of this report include the following:

- Local authorities should develop “Sustainability Option Plans” to identify opportunities to deliver joined-up sustainable community infrastructure and work in partnership with the private sector to supply this.
- Public sector buildings should be required, where available and viable, to connect to existing or planned community heat networks, to provide an “anchor load” of demand and large businesses should be encouraged to do the same.
- The “allowable solutions” mechanism should be used as a way of providing capital to support the delivery of heat infrastructure. (The Government has stated that developers will be able to invest in so-called allowable solutions in order to meet the required standard when constructing new zero-carbon buildings.

<http://www.ukgbc.org/site/news/show-news-details?id=224>

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 37 Court of Appeal
 

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**Undue Influence**


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\* FIRST PLUS FINANCIAL GROUP PLC V HEWETT  
(2010) PLSCS 92 – Decision given 24.03.10

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**Facts:** H lived with her husband, their three children and her mother in a house that had been purchased in the joint names of the three adults. The husband accrued substantial debts on his credit cards and was unable to meet the interest payments on these as well as the mortgage payments and regular outgoings. He persuaded H to agree to a charge over the property to secure a loan of £38,000 from the respondent (F) claiming that this was the only way to avoid losing the family home and promising that he would make the repayments. The charge was granted in January 2004 by which time the husband had started an affair. He subsequently left H and obtained a divorce, at the same time he lost his job and became bankrupt. H acquired a beneficial interest in the house for £1 but could not keep up the repayments. In 2008, when the amount owing had reached almost £60,000, F brought possession proceedings.

**Point of dispute:** Whether H's appeal should be allowed against the county court ruling granting F a possession order and a money judgment. H had argued that she was not bound by the charge because her consent to it had been obtained by undue influence or misrepresentation on her husband's part.

**Held:** H's appeal was allowed. A finding of undue influence does not depend on a finding that the victim did not make her own decision or that her will and intention was overborne. A conscious exercise of will could be vitiated by undue influence. H had placed a sufficient degree of trust and confidence in her husband to give rise to an obligation of candour and frankness on his part which meant that he should have disclosed the affair. H had agreed to her husband's request to charge the property as a means of saving them from his creditors and thereby being able to maintain a stable family life to which they both contributed. The affair was a material fact disclosure of which would have affected H's decision to agree to the charge.

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## GENERAL

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38 Defra Consultation

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**Consultation on proposed regulations on representations and objections under Schedule 1A to the National Parks and Access to the Countryside Act 1949 as inserted under Schedule 19 to the Marine and Coastal Access Act 2009**  
**Deadline for Responses: 14.06.10**

The Marine and Coastal Access Act ("the Act"), which received Royal Assent on 12.11.09, includes at Part 9 provision for improving access to the English Coast. Section 302 of the Act inserts new sections into the National Parks and Access to the Countryside Act 1949 which cover the coastal access report that Natural England must prepare under s51 of the 1949 Act proposing a coastal long-distance route and the associated coastal margin. The Act also introduces a new Schedule 1A to the 1949 Act – this provides a process for representations to be made concerning Natural England's coastal access proposals, an objections procedure by persons with a relevant interest in affected land and for the referral of those objections to an appointed person. This consultation seeks views on the proposed regulations under Schedule 1A.

<http://www.defra.gov.uk/corporate/consult/coastal-access2010/index.htm>

<http://www.defra.gov.uk/corporate/consult/coastal-access2010/20100322-consult-condoc.pdf>

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39 CABE Report

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### Urban green nation

This report presents findings from two pieces of research commissioned by CABE Space to assess the state of Britain's urban green space and how it impacts on people's health and well-being. CABE has assembled an inventory of more than 16,000 individual green spaces with the aim of filling the gap in information highlighted by the Urban Green Spaces Taskforce in 2002. There is currently no comprehensive, nationwide source of information about the quantity, quality and use of urban green spaces in England and this study aims to bring together all the data from the research that has been done to date.

<http://www.cabe.org.uk/publications/urban-green-nation>

<http://www.cabe.org.uk/files/urban-green-nation-summary.pdf>

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40 CABE Report

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### Ordinary places

This paper considers how ordinary places can achieve the same level of resurgence as has been enjoyed by many of England's flagship cities in recent years. CABE has established a network of local design advisers who have been asked to consider what would make the biggest difference to the quality of places across the country.

<http://www.cabe.org.uk/files/ordinary-places.pdf>

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### Useful web links

[www.communities.gov.uk](http://www.communities.gov.uk)  
[www.opsi.gov.uk](http://www.opsi.gov.uk)  
[www.homesandcommunities.co.uk](http://www.homesandcommunities.co.uk)  
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[www.rics.org](http://www.rics.org)  
[www.scotland.gov.uk](http://www.scotland.gov.uk)  
[www.wales.gov.uk](http://www.wales.gov.uk)  
[www.landtribunal.gov.uk](http://www.landtribunal.gov.uk)  
[www.lands-tribunal-scotland.org.uk](http://www.lands-tribunal-scotland.org.uk)

### 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

## Legal & Parliamentary

Volume 32(05) 6 April 2010

- 01 Scotland – Planning
- 02 Wales – Planning
- 04 Wales – Rating
- 05 Northern Ireland – Planning
- 07 Northern Ireland – Rating

### SCOTLAND

#### Planning

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- 01 Planning Advice Note
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#### **PAN 1/2010 Strategic Environmental Assessment of Development Plans**

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This note contains advice on how the requirements of the Environmental Assessment (Scotland) Act 2005 can be met within the development planning process. It is specifically aimed at development planners who are embarking on the preparation of new development plans and who may already have some prior knowledge of the SEA process.

<http://www.scotland.gov.uk/Resource/Doc/306466/0096206.pdf>

### WALES

#### Planning

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- 02 Statutory Instrument
- 

#### **WSI 2010/450 The Planning (Hazardous Substances) (Amendment) (Wales) Regulations 2010**

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These Regulations, which came into force on 19.03.10, implement in relation to Wales, Article 12 of Directive 96/82/EC on the control of major accident hazards involving dangerous substances (the Sevesco II Directive). Article 12 requires that the objectives of preventing major accidents and limiting the consequences of such accidents are taken into account in land-use policies.

[http://www.opsi.gov.uk/legislation/wales/wsi2010/pdf/wsi\\_20100450\\_mi.pdf](http://www.opsi.gov.uk/legislation/wales/wsi2010/pdf/wsi_20100450_mi.pdf)

03 Welsh Assembly Government Planning Division  
– Consultation Draft

### Study to Examine the Planning Application Process in Wales

In December 2008 the Welsh Assembly Government announced a review of the planning application process in Wales, and at the same time it was announced that a research project to inform that review would be undertaken. The review was to focus on the role of the planning application process in fostering economic recovery whilst making sure that decisions met the Assembly Government's clear commitment to sustainable development. This research project was led by GVA Grimley who split the review into two stages – the examination of the process and the presentation of results and recommendations.

<http://dataroom.gvagrimley.co.uk/welshconsultation/documents/draft.pdf>

### RATING

04 Statutory Instrument

### WSI 2010/682 The Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010

This Order, which comes into force on 01.04.10, amends the definition of “domestic property” in the Local Government Finance Act 1988. A building or self-contained part of a building is not domestic property for the purposes of Part 3 (non-domestic rating) of the Act if:

- For a period of at least 12 calendar months following assessment it will be available for letting commercially, as self-catering accommodation, for periods totalling 140 days or more; and
- In the 12 calendar months prior to assessment –
  - i It has been available for letting commercially, as self-catering accommodation, for periods totalling 140 days or more; and
  - ii It has been so let for periods which amount in total to 70 days or more.

[http://www.opsi.gov.uk/legislation/wales/wsi2010/pdf/wsi\\_20100682\\_mi.pdf](http://www.opsi.gov.uk/legislation/wales/wsi2010/pdf/wsi_20100682_mi.pdf)

## NORTHERN IRELAND

### PLANNING

05 Statutory Instrument

### SRNI 2010/67 The Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2010

These Regulations, which came into force on 01.04.10, implement Directive 2006/21/EC (the Mining Waste Directive) of 15.03.06 on the management of waste from extractive industries and amend Directive 2004/35/EC (the Waste Framework Directive).

[http://www.opsi.gov.uk/sr/sr2010/pdf/nisr\\_20100064\\_en.pdf](http://www.opsi.gov.uk/sr/sr2010/pdf/nisr_20100064_en.pdf)

06 Northern Ireland Executive Announcement

### Reform of Northern Ireland's planning system

Northern Ireland's Environment Minister, Edwin Poots, has confirmed that the Northern Ireland Executive has approved measures to bring about wide-scale reforms of the planning system. The changes will affect almost every aspect of the planning system and at the same time the majority of planning functions are to be transferred to local government. The most important elements of the proposed reform package are as follows:

- A new, more streamlined local development plan system which will enable district councils, communities and developers to work together on plans.
- Performance agreements, pre-application community consultation and pre-determination council hearings to improve efficiency, provide greater certainty about timescales and enhance transparency and openness.
- Expansion of the list of statutory consultees to ensure that relevant statutory bodies are consulted by planning authorities.
- A new regime of development management, to make the planning application process more responsive to different types of proposals to help deliver development, improve efficiency in determining applications and enhance community involvement in the process.

These proposals were the subject of a public consultation between 06.07.09 and 02.10.09.

**RATING****07 Statutory Instrument****SRNI 2010/63 The Rates (Deferment) Regulations (Northern Ireland) 2010**

These Regulations came into force on 01.04.10 and provide that, subject to certain preconditions being satisfied, the Department of Finance and Personnel may enter into an agreement with an eligible person for the deferment of the payment of domestic rates. An eligible person is a person who is both the occupier and owner of a hereditament in respect of which domestic rates are payable and:

- a who, on 1 April in the rating year in which the agreement is entered into, has attained the qualifying age for state pension credit; or
- b is the partner of a person mentioned in para (a) or the surviving partner of a person who had made an earlier agreement with the Department under these Regulations in respect of the same hereditament.

Certain conditions must be satisfied before an agreement can be entered into:

- a the capital value shown in the capital value list for the hereditament should not be less than £50,000;
- b subject to certain exceptions, the hereditament should be the only or principal residence of an eligible person, who has attained the qualifying age for state pension credit on 1 April in the rating year in which the agreement is entered into; and
- c a condition that the value of the beneficial interest of eligible persons in the hereditament should not less than 40% of its market value – this condition does not apply in the case of a surviving partner of a person who had made an earlier agreement in respect of the same hereditament.

[http://www.opsi.gov.uk/sr/sr2010/pdf/nisr\\_20100063\\_en.pdf](http://www.opsi.gov.uk/sr/sr2010/pdf/nisr_20100063_en.pdf)

**08 Statutory Instrument****SRNI 2010/66 The Rate Relief (Low-Carbon Homes Scheme) Regulations (Northern Ireland) 2010**

These Regulations came into force on 01.04.10 and provide that the first occupier of a newly-constructed dwelling-house which is a low-carbon home or a zero-carbon home shall not be chargeable for rates for a period of two years in the case of a low-carbon home and for a period of five years in the case of a zero-carbon home, such period to commence not later than 31.03.13 in the case of a low-carbon home, and not later than 31.03.16 in the case of a zero-carbon home.

[http://www.opsi.gov.uk/sr/sr2010/pdf/nisr\\_20100066\\_en.pdf](http://www.opsi.gov.uk/sr/sr2010/pdf/nisr_20100066_en.pdf)

**09 Statutory Instrument****SRNI 2010/67 The Rate Relief (Energy Efficiency Homes Scheme) Regulations (Northern Ireland) 2010**

These Regulations, which came into force on 01.04.10, introduce a new one-off reduction in rates for owner-occupiers who make certain energy efficiency improvements to their home.

[http://www.opsi.gov.uk/sr/sr2010/pdf/nisr\\_20100067\\_en.pdf](http://www.opsi.gov.uk/sr/sr2010/pdf/nisr_20100067_en.pdf)

**10 Statutory Instrument****SRNI 2010/104 The Valuation Tribunal (Amendment) Rules (Northern Ireland) 2010**

The 2007 Rules regulate the exercise of rights of appeal to the Northern Ireland Valuation Tribunal and prescribe the practice and procedure in relation to proceedings before the Tribunal. These Rules, which come into force on 09.04.10, amend the 2007 Rules in consequence of the introduction of a right of appeal to the Northern Ireland Valuation Tribunal against the result of a review by the Department of Finance and Personnel of:

- a decision made by it in relation to an application for a rate reduction under the Rate Relief (Energy Efficiency Homes Scheme) Regulations 2010 (SRNI 2010/67); or
- a decision made by it in relation to an application for rate relief under the Rate Relief (Low-Carbon Homes Scheme) Regulations (Northern Ireland) 2010 (SRNI 2010/66).

[http://www.opsi.gov.uk/sr/sr2010/pdf/nisr\\_20100104\\_en.pdf](http://www.opsi.gov.uk/sr/sr2010/pdf/nisr_20100104_en.pdf)