

# EVEBRIEF

## Legal & Parliamentary

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### FURTHER DETAIL ON EMERGENCY BUDGET MEASURES FOR PROPERTY AWAITED



**Hilary Wescombe**  
Partner

Overshadowing the economy for some time the Emergency Budget has finally arrived and at item 01 we summarise the main property related measures. Rating measures include confirmation of legislation to waive unexpected and backdated rates levied on some businesses with newly assessed properties that were split from a larger property, particularly those with port premises. This concession amounts to around £175 million and includes refunding those businesses that have already made payments. Small business rate relief will be temporarily increased but unfortunately no change to the current empty rate regime is planned.

The rise in VAT is expected to damage the high street and the rise in CGT may deter buy to let investors but elsewhere there is a shortage of detail. For example an examination of stamp duty is promised together with an assessment of energy tax and a Green Investment bank proposal will be put forward.

Item 11 K/S Lincoln v CB Richard Ellis Hotels Ltd arises from the valuation of four hotels and supports the 'margin of error' approach in such negligence cases. The valuation provided was over £5 million in excess of the true valuation figure. The judge commented that the acceptable margin of error would depend on the property and could range from plus or minus 5% to 15% or in exceptional cases even higher. The court concluded that if it could be shown the valuation figure was within an allowable bracket a valuer would not be liable in negligence even if his methodology fell below the standard of a reasonable valuer. No doubt there will be more cases of this nature as a result of reduced property prices and no doubt continued pressure to examine the skill of the valuer in place of the margin of error.

A handwritten signature in cursive script, reading "Hilary Wescombe".

## BUDGET

### 01 Emergency Budget 22 June 2010

The following measures were announced which will be of interest to the property industry:

- The standard rate of VAT will increase from 17.5% to 20% from 04.01.11. No changes have been made to the VAT zero-rating for household essentials, nor to the reduced rate of VAT that applies to certain goods and services, which means that there is no rise in VAT on new build properties.
- Capital Gains tax will increase from 18% to 28% for higher rate tax payers from 23.06.10. Basic rate taxpayers will continue to pay 18% on gains. This rise will particularly hit buy-to-let investors and going forward may affect the supply of rented housing. The 10% CGT rate for entrepreneurial business activities will be extended from the first £2m to the first £5m of qualifying gains made over a lifetime.
- The Government is to examine whether changes to the rules on stamp duty land tax on high value property transactions are needed to prevent avoidance in this area. It will also review the stamp duty land tax relief for first time buyers. In the March 2010 Budget it was announced that from 06.04.11 an additional 5% rate of stamp duty land tax will be levied on residential transactions worth over £1m.
- Corporation Tax will be reduced from 28% to 24% over four years, with a 1% reduction being implemented from 01.04.11.
- Legislation is to be introduced to cancel backdated business rates bills eligible for the eight-year schedule of payments scheme, including businesses in ports, for newly assessed properties that were split from a larger rateable property. It is thought that the Government also intends to repay those who have already met their backdated liabilities. The level of small business rate relief in England will be temporarily increased for one year, from 1.10.10, giving full relief for eligible businesses occupying premises with RV up to £6,000 and tapering relief to £12,000 (March 2010 Budget).
- Regional Development Agencies are to be abolished and replaced by Local Enterprise Partnerships where these are demanded by business and locally-elected leaders. A White Paper this summer will consider options for business rate and council tax incentives that would allow local authorities to reinvest the benefits of growth into local communities, and the introduction of a simplified planning consents process in specific areas where there is need for business growth.
- A "Green Deal" for households is to be launched through legislation in the Energy Security and Green Economy Bill, to help individuals invest in home energy efficiency improvements, which would be paid for through savings in energy bills.

## LANDLORD & TENANT

### 02 Court of Appeal

#### Surrender by operation of law

\* QFS SCAFFOLDING LTD V SABLE  
(2010) PLSCS 166 – Decision given 17.06.10

**Facts:** Under a 2001 lease S demised a builders' yard to a company (LDC) which carried on demolition and scaffolding businesses from the property. LDC ran into difficulties and QFS was formed with a view to taking over the business. In 2006 LDC went into administration and joint receivers were appointed. QFC approached the receivers of LDC who executed a deed purporting to assign the lease of the premises to QFS. S later claimed possession of the property from QFS on the basis of surrender by operation of law. During the negotiations QFS had been in occupation of the premises as a tenant at will.

**Point of dispute:** Whether QFS's appeal would be allowed against the county court's ruling that the lease had been surrendered by operation of law and order for possession in favour of S.

**Held:** The appeal was allowed. The lease had not been surrendered by operation of law. LDC had not acted in a way that was inconsistent with the continuance of the lease or which justified a conclusion that the lease had been impliedly surrendered. No legal distinction existed between an implied surrender or a surrender by operation of law. The circumstances had to be such as would make it inequitable for the landlord or the tenant to dispute that the tenancy had ended. It could not be said that LDC had assented to the grant of the tenancy at will and LDC had not acted inconsistently with the continuance of the lease. If the lease remained in being it was vested in QFS because of the deed of assignment.

03 High Court

**Exercise of break clause**

\* HOTGROUP PLC V ROYAL BANK OF SCOTLAND PLC (AS TRUSTEE OF SCHRODER EXEMPT PROPERTY UNIT TRUST) (2010) PLSCS 153 – Decision given 28.05.10)

**Facts:** RBS, which held a long leasehold interest in a building in Kensington Village, let two floors in the building to H for ten years from July 2005. The lease contained a break clause permitting H to terminate the lease after five years by giving the landlord not less than nine month's prior notice. The notice could be served in any way authorised under s196 of the Law of Property Act 1925, but Clause 14.2 of the lease stated that no notice would be "deemed to be validly served" unless a copy was also served on the property manager. The time for exercising the break clause expired in October 2009 and H served a notice on RBS in September, but no notice was served on the property manager until November.

**Point of dispute:** Whether H could break the lease. H contended that:

- i. The landlord had drafted the lease which should be construed contra proferentem i.e. against the interests of the party who imposed the terms in question.
- ii. No time was specified for service on the property manager, so timely service on the landlord, with service on the property manager within a reasonable time thereafter, would suffice unless time were made of the essence.

**Held:** H's claim was dismissed and it had failed to comply with the terms of the break clause. Time was of the essence for compliance with the break clause which could not be exercised unless the notice was properly served not later than October 2009. It had to be served on the property manager within the same time limit, in order to ensure that it was brought to their attention. Valid service would not be "deemed" unless the property manager had also been served with the notice. The wording of Clause 14.2 did not support the implication of a term that, unless time were made of the essence, notice had to be given within a reasonable time.

**PLANNING**

04 Court of Appeal

**Planning permission for bus route over land occupied by protected species – Habitats Directive – whether environmental impact assessment (EIA) should have been required for bus route**

\* R (ON THE APPLICATION OF MORGE) V HAMPSHIRE COUNTY COUNCIL (2010) PLSCS 160 – Decision given 10.06.10

**Facts:** HCC granted planning permission to build a bus route along a disused railway line that was home to a colony of bats and also badgers. By a narrow majority the planning committee resolved to grant permission, and by a majority of 7:5 it resolved to adopt a screening opinion that the proposal was not an EIA development. M, a local resident who objected to the development, applied unsuccessfully for judicial review to quash the planning permission on the ground that it was in breach of the Habitats Directive.

**Point of dispute:** Whether M's appeal would be allowed. The issues were

- i. The scope of Article 12(1)(b) and the meaning of "deliberate disturbance" of a protected species.
- ii. The scope of Article 12(1)(d) and whether it was necessary to consider indirect as well as direct effects on the deterioration or destruction of the bats' breeding sites or resting places.
- iii. Whether the planning committee had had due regard to the Habitats Directive.
- iv. Whether the planning committee had acted rationally in deciding not to treat the proposed bus route as an EIA development.

**Held:** The appeal was dismissed.

- i. Article 12(1)(b) was concerned with deliberate disturbance of "the species", not with individual specimens of that species. The disturbance had to affect the conservation status of the species at population level.
- ii. Indirect effects had to be considered. The loss of potential breeding sites or resting places did not contravene Article 12(1)(d) if the ecological functionality was safeguarded as it would be in this case.
- iii. The planning committee had had due and sufficient regard to the requirements of the Habitats Directive so far as they might be affected by the proposed development. The loss of foraging habitats did not go against Article 12(1)(b) which was concerned with protecting the species, not conserving their natural habitats. With regard to Article 12(1)(d) the judge should have taken indirect effects into account; the felling of trees that were potential breeding sites was not sufficient.
- iv. The planning committee had not acted irrationally in deciding not to treat the proposal as an EIA development. The members had to exercise their independent judgment on the significance of the effects and the fact that views could reasonably differ was demonstrated by the way in which the votes were cast. It could not be said that the decision was irrational.

05 Administrative Court

**Potential impact of further hot food takeaway shop in the area would have on the promotion of healthy eating at nearby secondary school – held this was a material consideration**

\* R (ON THE APPLICATION OF COPELAND) V TOWER HAMLETS BOROUGH COUNCIL  
(2010) All ER (D) 72 Jun – Decision given 11.06.10

**Facts:** The applicant, C, lived close to a secondary school and a grocery shop. M, the leaseholder of the shop, sought permission to change its use to a hot food takeaway shop. The school operated a policy which promoted healthy eating. The planning officer considered the material before him in favour of and against the application and recommended that permission be granted. In his report he stated that the presence of a school nearby and the fact that it operated a healthy eating policy were not material considerations when considering whether permission should be granted. The planning committee took the view that planning permission should be granted, subject to conditions.

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

**Held:** The grant of planning permission would be quashed as the local authority had acted unlawfully. The planning officer's report contained the advice that the presence of a school nearby and the fact that it operated a healthy eating policy were not material considerations when considering whether planning permission should be granted – this was a clear direction to members of the planning committee to disregard the point, and gave the impression that it should not be given any weight at all. This was not correct which negated any subsequent discussion on the point.

06 Administrative Court

**Council's appeal against grant of permission for housing on Greenfield site – whether planning condition inappropriate as means of securing affordable housing**

\* LEEDS CITY COUNCIL V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT  
(2010) PLSCS 165 – Decision given 17.06.10

**Facts:** LCC refused outline planning permission for a 40-dwelling development on a 1.06 ha greenfield site near Leeds. LCC took the view that although the site had been allocated for residential development in the long term there was a sufficient supply of brownfield land that could be redeveloped for housing and that the development of a greenfield site would compromise the regeneration of urban areas of the city. In reaching this decision LCC had regard to guidance on housing supply in PPS 3, the regional spatial strategy (RSS) and the Leeds unitary development plan. The inspector appointed by the Sec of State allowed the applicant's appeal against the refusal of permission taking the view that the release of this site was unlikely to compromise the continuing achievement of brownfield targets and would contribute to the requirement in PPS 3 for a five-year supply of deliverable sites. A condition of the permission provided that the development should not commence until a scheme for the provision of affordable housing had been submitted to and approved in writing by the local planning authority.

**Point of dispute:** Whether LCC's challenge to the grant of permission would be allowed. LCC contended that:

- i. The inspector had failed to have regard to relevant planning policies, including the core approach of the RSS requiring housing development to be in towns and cities and the UDP requirement for on-site green space.
- ii. The planning condition was inappropriate as the necessary financial contribution from the applicant for the affordable housing would have to be secured by a s106 agreement; and
- iii. Such a condition should not be used to require a developer to undertake such an obligation.

**Held:** LCC's claim was dismissed.

- i. The core approach of the RSS did not require all new housing development to take place in towns and cities. The inspector had noted correctly that PPS3 required favourable consideration to be given to applications where a local authority could not demonstrate an up-to-date five-year supply of deliverable sites. He was entitled to regard this factor as being determinative of the appeal, which did not mean that he had failed to have regard to other relevant matters.

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- ii. At the outline stage it was understandable that the inspector had not determined how much on-site green space there should be. This would be considered when the layout of the development was known, at the reserved matters stage.
  - iii. The use of a planning condition to secure affordable housing provision had not been inappropriate and was consistent with government guidance in Circular 11/95. The condition did not amount to a requirement to enter into a s106 planning obligation.
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#### 07 CLG Planning Policy Statement

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##### PPS 3 – Housing

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As a first step towards its proposed wholesale reform of the planning system the Coalition Government has published a new version of PPS3 which makes two important changes to the previous version:

- Annex B to the PPS contains a series of definitions, including the definition of “previously developed land”. Specified uses in built up areas, such as parks and allotments, are excluded from the definition and this list of exceptions now includes residential garden land. The purpose of this change is to prevent “garden grabbing” and remove policy support for development in large gardens.
- The national indicative minimum density for housing, which was previously 30 dwellings per hectare, has been removed. The density target was first introduced in PPG 3 in 2000 when councils were encouraged to build new houses at a density of 30-50 dwellings per hectare and at higher densities in city and town centres. PPG3 was revised in 2006 at which time the minimum density target was reduced to 30 dwellings per hectare. Councils will now be able to exercise their own discretion to decide the density at which new housing should be built.

<http://www.communities.gov.uk/publications/planningandbuilding/pps3housing>

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#### 08 CLG Letter to Chief Planning Officers

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##### Letter to Chief Planning Officers: New Powers for Local Authorities to Stop 'Garden Grabbing'

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This letter refers to the changes to PPS 3 outlined in item 07 above. It is emphasised that it is for local authorities and communities to take the decisions that are best for them and to decide for themselves the best locations and types of development in their own areas. Local Planning Authorities and the Planning Inspectorate are expected to have regard to this new policy when preparing development plans and, where relevant, to take it into account as a material consideration when determining planning applications.

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/1615265.pdf>

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#### 09

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##### Country Land & Business Association (CLA) Publication Planning for Change in the Countryside

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In the foreword to CLA's “position statement” Judith Norris, the Chairman of the CLA Planning Working group states: “The wide-ranging rural interests of the CLA membership brings many of its members into contact with the planning system, but they find it hard to understand, cumbersome, lacking in transparency and riddled with policy that seems to fly in the face of rural interests”.

The statement identifies four areas of concern:

- Policy;
- Complexity;
- Resourcing; and
- Proportionality.

It comes to the conclusion that the system does not need to be totally overhauled, but that those working in it need to understand the rural economy and the important role that it plays within the national economy. The planning system must provide for a stable and flexible regime that can deliver quicker, less expensive decisions whilst taking a balanced approach to the concept of sustainable development by:

- Promoting and encouraging a mix of development in rural areas;
- Providing for a sufficient infrastructure of employment sites, housing, transport, public and private services to support the long-term sustainability of rural communities, recognising that environmental stewardship is best achieved with the willing and active commitment of landowners and land managers; and
- Recognising the changes in land use that will occur as the implications of climate change become more apparent.

[http://www.cla.org.uk/policy\\_docs/CLA\\_Planning\\_for\\_Change.pdf](http://www.cla.org.uk/policy_docs/CLA_Planning_for_Change.pdf)

**RATING**

10 Statutory Instrument

**SI 2010/1507 the Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 2010**

These Regulations, which came into force on 3.6.10, amend Schedule 1A to the 1989 Regulations which was inserted by the 2009 Regulations and makes special provision in relation to the collection of certain backdated liability to non-domestic rates. Schedule 1A provides that, subject to certain criteria being satisfied, where a ratepayer is subject to back dated liability that has not already been discharged, the billing authority and the ratepayer can agree to reschedule payment of the liability that accrued in the period between the effective date of the amendment to the rating list and the date the amendment was actually made, over a period not exceeding eight years. These Regulations give the ratepayer and the billing authority the power to agree that instalments of the payment of the backdated liability shall be deferred until on or after 1.4.11.

[http://www.opsi.gov.uk/si/si2010/pdf/uksi\\_20101507\\_en.pdf](http://www.opsi.gov.uk/si/si2010/pdf/uksi_20101507_en.pdf)

This statutory instrument is the subject of a **CLG Business Rates Information Letter (7/2010): Introduction of regulations to take forward the 24 May Chief Secretary's Announcement – Moratorium on repayments on certain backdated business rates liabilities until 31 March 2011**

<http://www.communities.gov.uk/documents/localgovernment/pdf/1601622.pdf>

**TORT**

11 Technology and Construction Court

**Negligence – valuation of hotel – whether defendant reaching valuation within permissible bracket of error**

\*\*K/S LINCOLN V CB RICHARD ELLIS HOTELS LTD  
(2010) PLSCS 156 – Decision given 24.05.10

**Facts:** The claimants, who were special purchase vehicles set up to acquire hotels in England, engaged CBREH to value a number of hotels. The leases of the hotels did not contain rent review clauses but instead set out an arrangement for payment of a higher rent which would be assessed by reference to turnover. Any shortfalls in turnover would be taken into account which meant that the rent might not increase for some years. Although CBREH's valuations referred to the shortfall provision, its forecasts for when the rents would increase under the arrangement did not take it into account. The claimants contended that CBREH's valuations had been too high and sought damages in negligence.

**Point of dispute:** Whether CBREH were liable in negligence. The claimants argued:

- i. CBREH owed a duty of care, which it had breached, not to misstate in its valuation reports any matter that it might have considered when undertaking the valuation exercise, including the operation of the shortfall provision.
- ii. Failures in CBREH's method of valuation rendered it liable in negligence, regardless of whether its valuations came within a permissible bracket.
- iii. In any event, the valuations were outside the permissible bracket.

**Held:** The claim was dismissed. CBREH owed a duty of care, which it had breached in its forecasts as to when the hotels might generate surplus rent since these ignored the effect of the shortfall provision. However, although CBREH had made a negligent misstatement regarding rental growth, the claimants knew that there would not be any medium-term rental growth because of the shortfall provision and they had not relied on the misstatements. The claimants had been advised about the shortfall provision and understood it, so it could not be argued that CBREH's error had caused the loss claimed. Although a valuer could be in breach of duty by falling below the standard of a reasonable valuer in his methodology, he would not be liable in negligence if it could be shown that, notwithstanding the error, the valuation figure was within a permissible bracket.

## CONTRACT

12 High Court

### Repudiatory breach of contract

\* DOMINION CORPORATE TRUSTEES LTD V DEBENHAMS PROPERTIES LTD  
(2010) PLSCS 151 – Decision given 27.05.10

**Facts:** The claimants (DCT) were long leaseholders of a shopping centre and in 2007 they entered into an agreement for lease with the defendant (DPL) for several units which were being added onto the centre. The lease would be granted once DCT had finished the construction works and DPL the fitting out works. DCT would pay £900,000 to DPL in three tranches, the second of which was due within ten working days of the “access date”, defined as the date on which DCT notified DPL that its construction works were completed. Clause 19 provided that either party could terminate the agreement by notice if “either party shall in any respect fail or neglect to observe or perform any of the provisions of the Agreement”. DCT failed to pay the second tranche within the required period after the access date owing to difficulties with the building contractors. The following day DPL served a notice to terminate the agreement. DCT disputed its right to terminate and tried to persuade DPL to accept late payment or an extended rent free period. DPL refused which DCT regarded as repudiation of the agreement which they elected to accept so as to terminate the agreement.

**Point of dispute:** Whether DCT were entitled to damages for wrongful termination of the agreement. DPL argued that it was not because:

- i. Clause 19 entitled it to terminate in the event of any breach.
- ii. Time was of the essence, so failure to pay the second tranche within the time limit amounted to a repudiatory breach.
- iii. The breach had been repudiatory in all the circumstances.

**Held:** DCT’s claim was allowed.

- i. A party could only terminate a contract on the ground of breach by the other party if the term breached was a condition, or if the term breached deprived the innocent party of all its benefit from the contract. The courts are reluctant to interpret a termination clause as allowing a party to bring a contract to an end for any breach, however minor it is. Clause 19 meant that a party could terminate in the event that the other party had failed or neglected to observe or perform a provision in the contract in such a way that it amounted to repudiatory breach.
- ii. Time was not of the essence with regard to the second tranche payment. Remedy for this breach was provided for in the agreement as it contained a provision for payment of interest on late payments.
- iii. The circumstances of the breach did not make it repudiatory in nature. DCT had made it clear they were not going to be able to pay the second tranche on time due to the difficulties they were encountering, but they had made it clear that they were committed to the agreement and the project.

13 High Court

### Loss of chance – whether claimant entitled to damages on basis that more sub-purchasers of flats in newly constructed block would have completed if defendant’s completion notices had been served earlier

\* REGENCY FLATS LTD V BOATPORT LTD  
(2010) PLSCS 159 – Decision given 09.06.10

**Facts:** The defendant was building two blocks of flats on a riverside development in East London. In June 2006 the claimant agreed to purchase one of the blocks, comprising two towers and 171 flats, for £43.5 million, with the intention of selling the individual flats to sub-purchasers. The defendant would serve completion notices on the claimant when each flat was “finished” which meant that: (i) it had been constructed to a point where a tenant could take up full beneficial occupation; (ii) the common parts provided reasonable access to and egress from the flat; (iii) the common parts on the ground floor of the block and the floor on which the flat was located had been finished, save for final finishes. Completion could not be required before December 2008. At completion the defendant would grant either the claimant or a nominated sub-purchaser a lease of the flat. If the nominated sub-purchaser failed to complete the claimant was obliged to take the lease. In 2006 and 2007 the claimant found sub-purchasers for most of the flats and 152 paid deposits. In January 2009 the defendant served completion notices in respect of 69 flats in the north tower, but 57 sub-purchasers failed to complete.

**Point of dispute:** Whether the claimant could succeed in its claim for damages against the defendant. It contended that the flats in the north tower had been “finished” by November 2008 and that the two month delay in serving the notices had caused it loss because in the prevailing economic situation this had increased the number of sub-purchasers who failed to complete.

**Held:** The claim was dismissed.

- i. The word “block” in the agreement meant the entire block, not just the north tower so no flat could be deemed “finished” until the whole of the ground floor, serving both the north and south towers had been completed, save for final finishes. The ground floor works were not completed until January 2009, the lift access, which was needed for flats over second floor level, was not finished until then and not all the works had been carried out to the flats that were required to enable them to be occupied. The defendant had complied with its obligations regarding the service of completion notices.

- ii. The claimant could not establish the loss it claimed. Even if liability had been established the claimant could not show that there was a real or substantial chance of any additional sub-purchasers completing even if the completion notices had been served by November 2008. The significant drop in value of the flats by November 2009 was relevant – they had fallen in value by more than 10% since the last quarter of 2008 which meant that the sub-purchasers would be better off financially by forfeiting their deposits rather than proceeding with the purchase. Sub-purchasers could not be required to complete before December 2008 and given the state of the market it was unlikely that they could have been persuaded to complete early.

## HOUSING

### 14 HCA Statistics

#### Monthly Housing Market Bulletin – 28 May 2010

This bulletin provides HCA staff with the latest information on housing market trends, the economy and the housebuilding industry. The main points of interest are as follows:

- Halifax predicts that house prices will be flat for the remainder of 2010 and many economists believe that the market will remain weak due to the forthcoming spending cuts in the emergency Budget.
- The economy remains fragile with unemployment still high at 8%.
- Transaction volumes have continued to rise with a 30% increase in the number of properties sold in England and Wales in the year to January 2010, according to the Land Registry.
- Housing starts have risen in the last year, but in Q1 2010 they were still 49% below their Q1 2007 peak.
- According to Nationwide UK house prices rose by 1% in April and prices are now 10.5% higher than a year ago, but 10% below their October 2007 peak.
- However, the Halifax finds that UK house prices fell by 0.1% in April but rose by 6.6% in the year to April.
- According to Rightmove the average asking price for property rose by 0.7% in May and by 4.3% in the year to May.

<http://www.homesandcommunities.co.uk/public/documents/MonthlyHousingBulletinMay2010.pdf>

### 15 CABE Research projects

#### Housing Standards

Following on from HCA's public consultation on a framework for national design and quality standards, which closed on 17.06.10, CABE has commissioned five new research projects into housing and space standards:

- Mapping existing housing standards – describing the history, development and application of current standards.
- Mapping space standards for the home – comparing space standards commonly used in England over the last 60 years.
- Space standards: the benefits – reviewing the benefits of minimum space standards for new homes.
- Dwelling size survey – studying the space provided in 200 private homes in England.
- Applying housing standards – London case studies. This looks at five proposals for housing schemes against the proposed London guidance.

<http://www.cabe.org.uk/publications/housing-standards>

### 16 RICS Guidance Note

#### Valuation of land for affordable housing

This guidance, which applies to England and Wales and is effective from 01.06.10, aims to assist the valuer in the approach to the valuation of affordable housing development land. It focuses on the valuation of land for the affordable housing element of a scheme. The valuation of affordable housing land is a complex subject and requires a high level of expertise. There are two approaches:

- Comparison with the sale price of land for comparable development; or
- Assessment of the value of the completed scheme and deduction of the costs of development (including developer's profit) to arrive at the underlying land value – the residual method.

A valuation would normally rely on both techniques with the comparable method being used mainly as a "reality check". The degree to which either or both are used depends upon the nature of the development being considered, the certainty about the costs and factors that relate to affordable housing and the complexity of the issues involved.

This document can be purchased for £30 from RICS. Go to [http://www.ricsbooks.com/productInfo.asp?product\\_id=18397](http://www.ricsbooks.com/productInfo.asp?product_id=18397)

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 17 CLG Statistical Release
 

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### House Price Index – April 2010

- UK house prices were 10.1% higher in April 2010 than a year earlier, and 0.4% higher than in March 2010.
- The mix-adjusted average house price in the UK stood at £207,516 in April 2010 (not seasonally adjusted).
- In the quarter ending April 2010 UK house prices rose by 0.9%. This compares with a rise of 4.8% for the previous quarter (ending January 2010).
- Annual average house prices rose in England by 10.9%, in Scotland by 2.2% and in Wales by 11.3%. In Northern Ireland they fell by 8.9%.
- The average price paid for a house by first time buyers in April 2010 was 12.2% higher than a year ago, while average prices paid by former owner occupiers was only 9.3% higher.
- Annual average prices paid for new properties were 7.6% higher than a year ago and for pre-owned dwellings they were 10.3% higher.

<http://www.communities.gov.uk/documents/statistics/pdf/1614420.pdf>

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 18 CABE Publication
 

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### Improving the design of new housing – What role for standards?

This paper examines the importance of good design in new housing and the benefits that good design can confer. It argues that good design matters for people's well-being and that it can add to both the social and economic value of housing; it is fundamental to how well places work – road layouts that prioritise pedestrians, the provision of safe and attractive public places, and building at an appropriate density to support local services. Benefits of good housing design include:

- Improved social well-being, quality of life and a community's sense of pride in its neighbourhood;
- Public health benefits;
- Increased property values; and
- Reduction in crime levels.

CABE's housing audits indicate that one in three new homes are so poor that they should not have been granted planning permission e.g. family housing with no play areas for children, windows looking onto blank walls and large expanses of tarmac. Only one in five new schemes was rated as "good" or "very good".

<http://www.cabe.org.uk/files/improving-the-design-of-new-housing.pdf>

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## ENERGY

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 19 Centre for Alternative Technology – Report
 

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### Zero Carbon Britain 2030 – A New Energy Strategy

This paper aims to provide political and economic solutions to the challenges presented by climate change and outlines how the UK can be transformed into an efficient, clean, prosperous zero-carbon society. The report covers energy, transport, land use, the built environment and industry.

<http://www.zerocarbonbritain.org/>

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## GENERAL

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 20 College of Estate Management Publication
 

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### The Value of Built Heritage

This paper examines the divide which exists between conservationists and commercial interests and the perennial conflict between the needs of economic development and the preservation of the historic environment. The following questions are examined:

- What aspects of our built heritage should be regarded as "valuable" and why.
- What value the built heritage adds to society.
- How valuable built heritage is both in absolute terms and in relative terms compared to alternatives such as redevelopment.
- How "value" should be defined.

The purpose of this academic review is to examine how the value of heritage has been viewed in the past in order to better understand how to address these questions in the future.

[http://www.cem.ac.uk/uploadedFiles/Our\\_Research/Value-of-built-heritage.pdf](http://www.cem.ac.uk/uploadedFiles/Our_Research/Value-of-built-heritage.pdf)

21 CABE Publication

**Ordinary Places**

This paper examines how better quality buildings and public spaces can help improve the lives of people living in ordinary places. In straitened economic times it is feared that these places will struggle to prosper and become shabbier and dirtier as local management budgets are cut, leading to an unbridgeable gulf between the best and worst places to live. CABE wants to open up a debate to ensure that the best choices are made and about using the design process as a problem-solving tool. CABE identifies four reasons why it is important to care about ordinary places:

- i. They are where most people spend most of their time and they therefore have a great influence on the quality of life.
- ii. Our economic future depends on the skills, networks and social capital that they will generate.
- iii. They have an important role to play in mitigating the effects of climate change.
- iv. Better use needs to be made of existing buildings and public spaces.

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

22 Centre for Cities – Research paper

**Private sector cities: A new geography of opportunity**

This paper argues that England's cities will be the key centres for future growth, but that in order to unlock their potential and increase private sector growth the Government will need to adopt a radical new approach to economic development. Globalisation and technological change have given some cities the opportunity to grow through private sector investment while others are no longer capable of generating enough private sector jobs to support the people living in them. It is argued that rather than attempting to "rebalance the economy" the Government should work with the tide of change so as to allow cities that are doing well to expand further, thus helping businesses and workers to take advantage of the opportunities being generated. This would have wide ranging implications, including significant expansion of buoyant cities that are experiencing strong private sector growth and more realistic development of cities which are struggling to create enough jobs for their workforces.

<http://www.centreforcities.org/privatesectorcities>

23 English Heritage Publication

**Understanding Place: An Introduction**

This document, which is aimed at local planning authorities, regeneration agencies, developers and agents introduces the concept of historic characterisation and its application in spatial planning. Historic characterisation is the term given to a range of approaches to identifying and interpreting the historic dimension of the present day landscape of a given area. Different approaches can be used on their own or in combination depending on the purpose, scope and scale of a project.

<http://www.helm.org.uk/upload/pdf/Understanding-Place-intro.pdf?1276676237>

**Understanding Place – Historic Area Assessments: Principles and Practice**

Historic Area Assessment is one of the approaches used to understand the historic environment. It has been developed to assist planners, historic environment specialists, communities, developers and others in evaluating the historic environment to understand how the past is encapsulated in today's landscapes, to explain how their present form has been reached and to distinguish their more distinctive elements. This document outlines the key benefits of this approach and offers quite detailed guidance on how to carry out assessments. A number of case studies are examined.

<http://www.helm.org.uk/upload/pdf/UP-HAA-PP.pdf?1276671415>

**Understanding Place: Historic Area Assessments in a Planning and Development Context**

This guidance, which explains how to undertake Historic Area Assessments, complements the "Principles and Practice" paper.

<http://www.helm.org.uk/upload/pdf/UP-HAA-DC.pdf?1276675726>

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24 English Heritage Publication

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### **Flooding and historic buildings**

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This guidance is directed at assist people who occupy, own or manage historic buildings which are threatened by flooding. It contains advice on preventative measures as well as on the inspection, conservation and repair of such buildings after a flooding event. It replaces the first edition published in 2004 after the 2000-01 floods, since when there has been further significant flooding, particularly in 2007 when more than 40,000 homes and 75,000 businesses were affected, and in Cumbria in 2009.

[http://www.helm.org.uk/upload/pdf/Acc\\_Flooding\\_Guidance.pdf?1276675581](http://www.helm.org.uk/upload/pdf/Acc_Flooding_Guidance.pdf?1276675581)

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25 Commission for Rural Communities – Report

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### **High ground, high potential – a future for England’s upland communities: Summary report**

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This Inquiry investigates how upland communities and economies need to be equipped so as to enable them to realise their full potential and contribute to national prosperity. It is argued that rather than looking at these parts of England as areas of severe disadvantage they should be considered as areas of significant environmental, cultural and social value and opportunity. This report provides an overview of the challenges faced by upland communities, the opportunities they have and possible solutions.

<http://ruralcommunities.gov.uk/wp-content/uploads/2010/06/CRC115-uplands-executive.pdf>

# GERALD EVE'S UK OFFICE NETWORK

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

### Useful web links

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

### Abbreviations

The following abbreviations are used in evebrief:

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

### The star system

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

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

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