EVEBRIEF

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ECONOMICS FOR PLANNERS

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At item 14 we report on research undertaken by Roger Tym & Partners for a consortium including the BPF and DCLG. According to that research, which was commissioned on the back of concerns about current levels of development economics skills in the planning sector, planners and others involved in the planning process must receive better training in development economics.

It suggests an understanding of the development process, factors influencing viability and appraisal techniques should help those involved make informed decisions when preparing local plans and considering development projects. Whilst it does not recommend that planners should normally seek to become experts themselves (though it acknowledges some will require higher levels of training than others), it argues it is crucial they are properly equipped to commission and process advice they receive.

A plan to implement the recommendations set out in the report is now being drawn up by the consortium and this will no doubt be welcome news to developers, with potential benefits in terms of the speed of the planning process.

Elsewhere at item 21 we report on the Interim London Housing Design Guide which has been published by the LDA following last year's consultation process and a cost impact assessment. Whilst not dealing solely with space standards, those lie at its heart. The 'Parker Morris' standards were abolished in 1980; since then there have been no minimum space standards in the UK, and new homes in London are some of the smallest in western Europe.

Though initially the standards will apply to housing built on LDA land, from April 2011 they will also apply to schemes applying for funding from the London HCA, and it is ultimately intended that they will apply fully to private housing following adoption of the London Plan and translation of the standards to an adopted Housing SPG. The Guide will therefore be of interest to all developers active in London.

LANDLORD & TENANT

01 High Court

Construction of user covenant – subtenant in breach of covenant in appellant's underlease – whether appellant in breach of covenant

** ROADSIDE GROUP LTD V ZARA COMMERCIAL LTD
(2010) PLSCS 222 – Decision given 30.07.10

Facts: RG, the appellant, held an underlease of premises comprising a car showroom, petrol station, service garage and hard standing from ZC. The underlease contained a covenant "not to use the demised premises or any part thereof… for the parking of motor vehicles for sale on any forecourt". RG sublet part of the premises, including the car showroom and service garage to a subtenant who parked cars around the perimeter of the site. At first instance the county court judge found that RG was in breach of covenant, not accepting its argument that a covenant not to do something was not generally breached if the prohibited thing was done by a third party and not by the covenantor. RG also argued that there was a difference in the language used in the parking covenant, as the other covenants in the underlease prohibited the tenant both from doing certain acts and also from permitting them to be done.

Point of dispute: Whether RG's appeal should be allowed against the county court ruling. ZC argued that the judge's conclusion had been correct as, under s79 of the Law of Property Act 1925, a covenant was deemed to be made by the covenantor not only for itself but also for those deriving title under it unless a contrary intention was expressed.

Held: The appeal was allowed.

i. There was a well established distinction between covenants expressed in the active voice, such as "not to use", and those in the passive voice, such as "shall not be used". All the user covenants in the underlease were active ones which meant that RG did not purport to covenant on behalf of anyone apart from itself. The parking covenant was worded differently to the other covenants which suggested that it was meant to be narrower than the other covenants.

ii. Section 79 did not extend the parking covenant so as to make RG liable for the acts of its subtenant. This was because the parties had expressed the necessary "contrary intention", which displaced the effects of the section by making a clear distinction between the parking covenant and the other user covenants. RG was not liable for the actions of the subtenant in parking cars for sale.

02 High Court

Landlord opposing grant of new tenancy on s30(1)(f) Landlord & Tenant Act 1954 ground – whether landlord required to show requisite intention as at date of anticipated trial or date of summary judgment hearing

* SOMERFIELD STORES LTD V SPRING (SUTTON COLDFIELD) LTD (IN ADMINISTRATION)
(2010) PLSCS 221 – Decision given 04.08.10

Facts: SS was the tenant and SSC the landlord of premises under leases which expired in March 2008. In 2007 SS requested new tenancies under s26 of the Landlord & Tenant Act 1954. SSC served counternotices indicating that it would oppose the grant of new tenancies on the s30(1)(f) ground that it intended to demolish, reconstruct or carry out substantial works of construction to the demised premises. SS's application to the court for the grant of the new tenancies resulted in an order being made for trial of SSC's ground of opposition as a preliminary issue, but in Feb 2009 SSC went into administration. Permission was given under the Insolvency Act 1986 to continue proceedings with the trial date being anticipated sometime between March and May 2010. However, rather than wait for the trial SS applied for summary judgment, this application being dismissed in Oct 2009.

Point of dispute: Whether to allow SS's appeal against the judge's finding that it had failed to establish that SSC would be unable to make out the ground of opposition – either at the date of the summary judgment or within a reasonable time afterwards. The main issue was the relevant date for determining SSC's intention. SS contended that it was the date of the summary judgment hearing, while SSC argued that the trial was the relevant date.

Held: SS's appeal was dismissed. The date of the hearing at which the necessary intention had to be shown was always the date of the substantive trial of the landlord's ground of objection. At a summary judgment hearing evidence was not tested for the purpose of a final determination. The essential nature of summary judgment was to determine whether a party had a real prospect of establishing its cause of action or defence at a future trial date: in a s30(1)(f) application, where it was necessary to show a reasonable prospect of being able to commence work by reference to a particular date, that date had to be determined by reference to the anticipated date of the trial. Any other conclusion could transform the balance of the regime from favouring the landlord to moving in the tenant's favour as he could advance the date at which the landlord's intention had to be shown simply by applying for a summary judgment.

PLANNING

03 High Court

Landlord withholding of consent for air-conditioning units on roof of block of flats

* EATON MANSIONS (WESTMINSTER) LTD V STINGER COMPANIA DE INVERSION SA
(2010) PLSCS 192 – Decision given 09.07.10

Facts: EMW's headlease in a block of flats which it managed contained a covenant against alterations to the external appearance of the building. SCI owned subleases of two of the flats and during the 1980s and 1990s it installed a number of air-conditioning units with associated pipework on the roof of the building. In 2006 it refurbished the flats and sought EMW's consent to replace the air-conditioning units. EMW in turn sought the freeholder's consent and, notwithstanding that the landlord expressly stated that the external roof space should not be used for any purpose not specifically agreed in writing nor for the installation of air-conditioning, SCI replaced the old air-conditioning units with new apparatus. In 2008 SCI again sought EMW's consent, this time for the retention of the new units and for the installation of two more, but, two days later, it installed the new units without having received consent.

Point of dispute: Whether EMW's claim for damages for trespass in respect of the air-conditioning units and associated pipework should be allowed. SCI argued that: (i) EMW had impliedly represented that it would not unreasonably withhold its consent to the installation of a reasonable amount of air-conditioning equipment; and (ii) it had unreasonably withheld its consent to the 2007 and 2008 units. EMW contended that it had not unreasonably refused consent since if it had given consent without recourse to the freeholder it might have put it in breach of the covenant against alterations in the headlease, and the freeholder had indicated that its consent would not be forthcoming due to its concerns about the feasibility of installing air-conditioning for all the flats in the building.

Held: EMW's claim was allowed. Neither EMW nor the freeholder had consented to the erection or retention of the apparatus on the roof. The freeholder's views on the situation could not be considered to be unreasonable and it had taken a consistent position since 2006. Given the freeholder's opposition it could not be argued that EMW's refusal of consent was unreasonable as the presence of the apparatus on the roof was potentially a breach of the covenant in the headlease. EMW was entitled to conclude that it was a breach and therefore it had not acted unreasonably in withholding consent for the retention of the air-conditioning units and pipework.

04 Court of Appeal

Interpretation of planning permission for supermarket

* R (ON THE APPLICATION OF MIDCOUNTIES CO-OPERATIVE LTD) V WYRE FOREST DISTRICT COUNCIL
(2010) PLSCS 218 – Decision given 29.07.10

Facts: WFDC granted planning permission for the construction of a supermarket on the outskirts of a town in the centre of which MCL operated a supermarket. The permission was granted "in accordance with the application" which had sought permission for a store with "floorspace for retail trading" of 2,403 sq m, "nett sales" of 2,919 sq m and a gross external measurement of 4,209 sq m. The permission included a condition imposing maximum floorspace allocations of up to 4,209 sq m gross external and 2,919 sq m nett retail sales.

Point of dispute: Whether MCL's appeal would be allowed against the High Court's finding that the figures of 2,403 sq m and 2,919 sq m in the application documents did not conflict: the lower figure would be the area used for actual sale and display of goods, while the higher one was the largest area to which the public could have access. MCL queried the meaning of the planning permission, arguing that permission for more retail space had been granted than had been applied for.

Held: MCL's appeal was dismissed. It was clear that the intended selling space granted by the planning permission, together with the s106 agreement entered into by the parties, was 2,403 sq m. A planning permission should not be construed in the same way as a commercial document, but given the meaning that a reasonable reader would give to it, who could see only the permission and any documents incorporated by reference. An ambiguity in the permission would not render it void for uncertainty. There was a rational explanation for the disparity between 2,403 sq m and 2,919 sq m and the judge had been entitled to give it a sensible meaning. On the face of it, the amount of selling space was controlled by reference to the 2,919 sq m figure. Although it would appear that this could be construed as meaning that the area of selling space could be increased to more than 2,403 sq m with the amount of space to which the public had access being reduced correspondingly, the s106 agreement restricted the use of the development for the "sale and display of goods including the checkouts and the customer counters" to no more than 2,401 sq m and this dealt with the difficulty.

05 Court of Appeal

Scheme of delegation

* R (ON THE APPLICATION OF FRIENDS OF HETHEL LTD) V SOUTH NORFOLK DISTRICT COUNCIL
(2010) PLSCS 219 – Decision given 30.07.10

Facts: This case concerned an application for planning permission to erect three wind turbines on a site in Norfolk, a proposal to which FHL, a company formed by local residents, objected. The planning officer's report recommended the application be approved. SNDC's north-west area planning committee voted five:three against the application but referred the matter to the full planning committee for determination pursuant to SNDC's scheme of delegation. This provided an area planning committee could not make a decision contrary to the recommendation of the development control services manager unless at least two-thirds of its membership agreed, failing which the matter had to be referred to the full planning committee. The committee approved the application and planning permission was issued subject to conditions.

Point of dispute: Whether to allow FHL's appeal against the decision of the court below, on FHL's application for judicial review of the permission on a number of grounds, that there was no basis for quashing the permission. FHL argued that: (i) the judge had erred in concluding that the voting requirement in SNDC's decision making procedure, was authorised by s101 of the Local Government Act 1972; and (ii) SNDC had failed to consult English Heritage as required by Circular 01/01 and regulation 5A of the Planning (Listed Buildings and Conservation Areas) Regulations 1990, which it should have done due to the presence of a number of Grade II listed buildings in the area.

Held: The appeal was allowed.

(i) Paragraph 44(1) of the 1972 Act, applying para 39(1) of Schedule 12, provided that all questions arising before a committee or subcommittee to which powers had been delegated in accordance with s101 should be decided by a majority vote. The delegation arrangements could not lawfully override para 39(1) and provide, in effect, that a decision to grant or refuse planning permission contrary to the recommendations of the head of planning services could be taken by a two-thirds majority. If that step was unlawful, the reference to the planning committee was also invalid and it would not have the power to determine the application. The two-thirds majority voting requirement for the area committee was unlawful and the planning permission had to be quashed.

(ii) If the assessment in the environmental statement was accepted, the settings of a number of Grade I and Grade II listed buildings would be affected and English Heritage should have been consulted. The proper course was to quash the permission.

06 High Court

Residential property – Whether enforcement notice valid

WESTMINSTER CITY COUNCIL V DAVENPORT
(2010) PLSCS 228 – Decision given 30.07.10

Facts: D occupied a London property. Planning permission had been granted to use the property for diplomatic purposes, subject to a condition that on termination of that use, the property should be used for residential or some other previously approved use. WCC considered the condition had been breached, resulting in loss of housing and affecting neighbouring residential amenity, and it issued a planning enforcement notice on the owner and D in 2006. In 2010 an interim injunction was obtained under s187B Town and Country Planning Act 1990 following complaints from neighbouring residents that non-residential and commercial activities continued to take place at the property.

Point of dispute: Whether WCC's application to make the injunction permanent should be allowed. D argued that the injunction should be discharged on the ground that the enforcement notice was null since it neither correctly identified nor properly assessed any actual or apprehended breach of planning control. He further argued that hiring out one's home for activities such as parties, filming and fashion shows could be consistent with and ancillary to ordinary residential use and that a large London town house such as this would always have been used for entertaining purposes.

Held: WCC's application was allowed. The enforcement notice informed the recipients what had been done wrong and how it could be remedied, and was therefore valid. As it had not been quashed the landowner had to comply. Though WCC had advised D he could apply for a change of use or certificate of lawfulness for any existing or proposed use, no planning permission had been applied for to use the premises for uses other than residential in the intervening period. WCC had established the enforcement notice had been breached and the obligations imposed by the interim injunction ignored. Planning control could not be enforced without a permanent injunction prohibiting commercial or non-residential use of the property.

07 High Court

Appeal against grant of planning permission for wind turbine development

* HULME V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2010) All ER (D) 95 Aug – Decision given 19.08.10

Facts: H owned land near a site on which a planning permission had been granted on appeal for a development comprising wind turbines, electricity transformers and a control building. H's challenge to the decision to grant permission under s288 TCPA 1990 was refused and the matter was remitted to the Sec of State for reconsideration. Following a public inquiry the inspector resolved to grant permission for the development, subject to conditions, finding that there would be no significant impact on bat species and that there was no overriding conflict between the visual impact of the development and relevant structure plan policies.

Point of dispute: Whether to allow H's application under s288 of the 1990 Act challenging the inspector's findings. H submitted that the inspector had erred in law in making his findings.

Held: H's application was dismissed. The adequacy of reasons in an inspector's decision had to be assessed by reference to whether the decision left room for genuine doubt, and the weight to be attached to matters of planning judgment and material considerations were within the exclusive remit of the Sec of State or the planning authority. In this case there was no deficiency of reasoning in the decision letter. The inspector had carried out an analysis of the proposed development. Insofar as the conflict was concerned, the inspector had concluded that this was outweighed by policies supporting renewable energy proposals. He had also considered EU legislation and correctly concluded that the wind turbines would not pose a threat to the bat population.

08 High Court

Breach of planning condition

* BROADLAND DISTRICT COUNCIL V TROTT
(2010) PLSCS 230 – Decision given 28.07.10

Facts: T, a property developer, obtained permission to build 30 flats in the garden of his house, conditional upon submitting a scheme of landscaping for approval by BDC prior to commencement of development. As part of that scheme T proposed to fence off part of the development site to form a garden for residents of the flats. It subsequently became clear that this land was not being made available to residents but had been incorporated into T's private garden. BDC issued an enforcement notice, requiring the land to be incorporated into the flat development. T appealed against the enforcement notice. In the inspector's decision letter, he found the enforcement notice to be unclear and used his powers to vary parts of that notice so as to ensure that the land in question was made available as an amenity for the residents of the flats. However, T continued to treat the land as part of the garden to his house. BDC applied for an injunction under s187B of the Town and Country Planning Act 1990, restraining T from preventing the residents of the flats enjoying the land.

Point of Dispute: Whether the application for an injunction should be granted. T argued that: (i) planning control had not been breached and the proceedings were misconceived; (ii) the enforcement notice was null and void because a breach of planning control had not been identified; (iii) interference with private rights was not justified as there was insufficient planning harm; and (iv) BDC had interfered with private law arrangements between T and the lessees of the flats that did not include express rights over the affected land.

Held: The application was granted. Under s171A of the 1990 Act, failure to comply with any condition subject to which planning permission had been granted constituted a breach of planning control. The planning permission was subject to a condition that development should not commence until a landscaping scheme had been submitted and approved by BDC and since the development had commenced without any such submission and approval, there had been a breach of planning control. The enforcement notice was not null and void. It complied with the requirements of the Act, it had not been quashed on appeal and the inspector had the power to correct or vary it to allege non–compliance with the landscaping condition. Persistent non-compliance by T and his companies with the enforcement notice made it equitable that BDC should be granted an injunction.

09 CLG Consultation

The Town and Country Planning (Environmental Impact Assessment) Regulations 2010 – Consultation on draft regulations
Deadline for Comments: 25.10.10

This consultation is concerned with the consolidation of the 1999 Environmental Impact Assessment Regulations, explaining amendments for screening changes and extensions, as well as the requirement for the competent authority to provide reasons for screening decisions. Since the 1999 EIA Regulations came into force they have been amended several times to take account of case law and amendments to the European EIA Directive.
Further changes are required now to take account of the latest case law and the aim is to consolidate the Regulations at the same time in order to make them more accessible, as well as including some other limited amendments.

http://www.communities.gov.uk/publications/planningandbuilding/eiaregs2010consult

10 English Heritage Guidance

Guidance on making Article 4 Directions

Although minor domestic alterations and extensions can usually be carried out without permission under the General Permitted Development Order (GDPO), circumstances can arise when unrestricted use of these development rights can harm heritage assets. In such circumstances Policy HE4.1 of Planning Policy Statement 5 (PPS5) advises local planning authorities (lpas) to consider using Article 4 directions in circumstances when the exercise of permitted development rights would undermine its underlying aims regarding the historic environment.

This note updates previous English Heritage advice on making Article 4 directions following the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010, which came into force on 06.04.10, and explains how to implement the new procedures to ensure that the historic environment is protected.

http://www.helm.org.uk/upload/pdf/Article-4-Directions.pdf?1281325681

11 CLG Technical Guidance

Permitted Development for Householders

This CLG guidance is designed to help understand the changes made to the Town and Country Planning (General Permitted Development) Order 1995 by the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008. It replaces earlier guidance which was produced primarily for planning professionals. The new guidance is designed to be used by anyone who wants to understand more about the detailed rules on permitted development and the terms used in those rules. The document explains the rules on permitted development for householders, what they mean and how they should be applied in particular sets of circumstances.

http://www.planningportal.gov.uk/uploads/100806_PDforhouseholders_TechnicalGuidance.pdf

12 Planning Officers Society Advice Note

Responding to Nationally Significant Infrastructure Projects

This note aims to assist authority planners brief themselves and prepare elected members on the new regime for nationally significant infrastructure projects (NSIPS). It offers advice on (inter alia) putting in place project management arrangements, securing the necessary resources to deal with the proposal, and developing the proposal through to submission.

http://www.planningofficers.org.uk/media/www/documents/Advice-Note-on-Responding-to-Nationally-Significant-Infrastructure-Projects_final_180810.pdf

13 Biodiversity Planning Toolkit

Biodiversity Planning Toolkit

The toolkit is an interactive online resource which has been developed by the Association of Local Government Ecologists in partnership with a range of conservation and planning organisations. Its aim is to help users incorporate biodiversity into the planning system and new development. It is an ongoing project with comments being invited on the existing content.

http://www.biodiversityplanningtoolkit.com/

14 Study

Training in Development Economics: Equipping the planning sector with skills to manage deliverability and viability

This study, produced by Roger Tym & Partners, focuses on the skills and training needs of the planning sector to assist in addressing 'deliverability' in plan-making and 'viability' in development management. It:

- sets out the reasons that training in development economics is necessary;
- identifies groups requiring training and competencies required;
- reviews current provision; and
- examines the scope of new training, considering options and proposals for its delivery.

http://www.bpf.org.uk/en/files/bpf_documents/P1981_Training_in_Development_Economics_Final.pdf

COMPENSATION

15 Upper Tribunal: Lands Chamber

Part I Land Compensation Act 1973 – Whether three year time limit under s19(3) is incompatible with European Convention of Human Rights

* THOMAS V BRIDGEND COUNTY BOROUGH COUNCIL (2010) UKUT 268 (LC) – LT Case No: LCA/354/2009 – Decision given 29.07.10

Facts: T and others owned and lived in dwellings close to a relief road which was first opened for public use on 9 July 2002 and adopted by BCBC on 29 June 2006. The claimants wished to claim compensation under Part 1 LCA 1973 for diminution in the value of their homes due to the physical effects of the use of the new road but were barred from doing so under s19(3) of the Act as the road was not adopted within three years of first being open to public traffic.

Point of dispute: Whether s19(3) of the Act amounted to a statutory bar on their right to compensation and was therefore incompatible with Article 1 of the First Protocol to and/or Article 6 of the European Convention of Human Rights. The former provides that every person is entitled to peaceful enjoyment of his possessions; the latter provides that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal. The claimants further argued that, if their primary assertions were correct, s19(3) could be interpreted under s3 of the Human Rights Act 1998 so as to be compatible with their rights and to allow their claims for compensation to proceed.

Held: The aim of the provisions of Part 1of the 1973 Act was to mitigate the decrease in value of homes by the giving of compensation; the decrease in value would be suffered whether compensation under the Act was paid or not, and the compensation provisions did not amount to "possessions" within the meaning of Article 1. Article 6(1) was not engaged in this case; if a claim for compensation under the 1973 Act arises then there is provision for it to be determined by an independent tribunal, but once the three year time limit under s19(3) has elapsed there is no claim to determine. Accordingly s19(3) is not incompatible with rights under either Article 1 or Article 6.

16 Upper Tribunal (Lands Chamber)

Leave to apply for a certificate under s17 Land Compensation Act 1961

* KINGSLEY V THE HIGHWAYS AGENCY
(2010) UKUT 309 (LC) – LT Case Number: ACQ/262/2010 – Decision given 19.08.10

Facts: Agricultural land owned by K was affected by the HA's trunk road proposals and K served a blight notice, which was accepted on 23.10.07, in relation to the whole of the site. On 05.09.2000 K applied to the lpa for a certificate of appropriate alternative development under s17 Land Compensation Act 1961.
On 14.12.2000 a certificate was issued for redevelopment, subject to conditions, although the HA claimed not to have become aware of it until it was faxed to them on 02.01.2001, by which time it was too late to appeal that decision. The HA was concerned that the certificate may not reflect the council resolution upon which it was based, but did not apply for judicial review and negotiations as to compensation continued. In November 2003 K and the HA signed a letter of agreement that if the matter was referred to the Tribunal in the future the HA would not rely on any statutory limitation defence. Shortly thereafter, K sent a notice of reference form to the Tribunal and K sought confirmation that a reference would be accepted in the future though technically out of time. The HA was not given notice of that reference. By January 2010 no agreement had been reached on compensation and K once again contacted the Tribunal and the reference was entered, with the date of the notice of reference being treated as 24.11.03. The HA submitted an application for a s17 Certificate on 06.01.2010 but was not aware of the reference to the Lands Tribunal which had been made in 2003.

Points of dispute: Whether the HA's application for leave to apply for a s17 Certificate would be granted. HA argued that: (i) it was not aware of the reference to the Tribunal until after its application had been made; (ii) K had not disclosed at any stage that he had given notice of reference; and (iii) the certificate issued in December 2000 was demonstrably flawed.

Held: The application was refused. The HA was seeking to achieve a s17 Certificate in more limited terms than that granted in 2000. However, in determining compensation, the Tribunal had to assume the grant of planning permission for the development specified in the 2000 certificate under s15(5) LCA 1961. The requirement to make that assumption was unqualified and there was no question of the assumption being negated in whole or in part by a later s17 Certificate specifying more limited development and that planning permission would not be granted for any development other than that specified. This was made clear by the provisions of s14(3A) LCA 1961. Though the HA alleged that the 2000 certificate was demonstrably flawed it accepted that s15(5) LCA 1961 applied and also that development referred to in the current application was covered by 2000 certificate. The only purpose in seeking a new certificate would be to cut down the ambit of the 2000 certificate which could not be done.

HOUSING

17 CLG Statistics

House Price Index – June 2010

- UK house prices have risen by 9.9% since June 2009, but were unchanged since May 2010
- in June the average house price in the UK was £210,775 (not seasonally adjusted)
- UK house prices rose by 0.8% in the quarter to June 2010, compared to an increase of 2.8% in the March quarter (seasonally adjusted)
- average house prices increased by 10.5% in England, by 3.7% in Scotland and by 13.5% in Wales, but fell in Northern Ireland by 7.7%
- prices paid by first time buyers increased by 10.3% in the year to June. Those paid by owner occupiers were 9.8% higher
- prices of new properties were 9% higher than last year; prices for pre-owned properties were 10% higher

http://www.communities.gov.uk/publications/corporate/statistics/hpi062010

18 CLG Statistics

House Building: June Quarter 2010, England

Key points from the latest release are that:

- there were 28,590 seasonally adjusted house building starts in England in the June quarter 2010. This is 13% higher than in the previous quarter
- private enterprise housing starts (seasonally adjusted) were 10% higher than in the March quarter 2010. Starts by registered social landlords were 17% higher
- housing completions in England rose by 1% to an estimated 26,550 (seasonally adjusted) in the June quarter 2010 compared to the previous quarter. Private enterprise housing completions (seasonally adjusted) were 1% higher in the June quarter of 2010 than in the previous quarter. Completions by registered social landlords remained the same over that period
- annual housing starts reached 98,500 in the 12 months to June 2010, up by 44% compared with the 12 months to June 2009. Annual housing completions in England totalled 110,210 in the 12 months to June 2010, down by 13% compared with the 12 months to June 2009
- all regions experienced a rise in annual starts in the 12 months ending June 2010 compared to the previous year

http://www.communities.gov.uk/publications/corporate/statistics/housebuildingq22010

19 CLG Statistics

Code for Sustainable Homes: June Quarter 2010

These statistics show the number of dwellings that have been certified to the standards set out in the Technical Guide to the Code for Sustainable Homes Code.

Key points from the latest release are that:

- 7,984 post construction stage certificates and 27,129 design stage certificates were issued up to and including June 2010
- 10% of homes with post construction certificates and 22% of those with design stage certificates have been built by the private sector
- 24,186 dwellings at the design stage received a three star rating and 287 dwellings received a six star rating between April 2007 and June 2010
- 7,148 dwellings at post-construction stage received a three star rating and eight dwellings received a six star rating over the same period
- the majority of the certificates issued since April 2007 at design stage (89%) and at post construction stage (90%) have been awarded at Code level 3

http://www.communities.gov.uk/publications/corporate/statistics/codesustainablesapq22010

20 HCA Statistics

Monthly Housing Market Bulletin, July 2010

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

- according to Halifax house prices fell for the third month in a row
- supply in the housing market has grown three times faster than demand, partly due to the abolition of HIPS
- buyer interest is declining due to uncertain economic climate and the prospect of job losses
- according to the Council of Mortgage Lending mortgage lending continues to make a gradual recovery, with a 15% increase in lending this May compared to the previous year
- the FSA issued a consultation on the subject of responsible lending on 13.07.10, proposing an end to self-certification and aiming to reduce the number of interest-only mortgages
- housebuilders remain cautious. Most are focusing on optimising price rather than volumes due to the economic climate and lack of mortgage availability

http://www.homesandcommunities.co.uk/public/documents/Monthly-Housing-Bulletin-July2010.pdf

21 London Housing Design Guide Interim Edition

This is an interim guide with a final version to be published next year, and follows public consultation on the draft London Housing Design Guide and cost impact assessment. The standards set out in this guide will be applied immediately to projects supported by the London Development Agency.

It may be subject to changes following the Examination in Public of the London Plan and the finalisation of the Homes and Communities Agency design standards review, in order to ensure that all design guidance is in alignment.

It considers six key areas of design which developments will need to deal with, being:

- outdoor spaces;
- mix of housing size, type and tenure;
- entrances and circulation areas, car parking, waste and cycle stores;
- space standards;
- comfort; and
- climate change.

http://www.lda.gov.uk/Documents/London_Housing_Design_Guide_interim_August_2010_9460.pdf

CONTRACT

22 High Court

Rectification of transfer – whether rectification available on grounds of common or unilateral mistake – whether defendant assuming duty of care not to benefit from claimants' misunderstanding

* DAVENTRY DISTRICT COUNCIL V DAVENTRY & DISTRICT HOUSING LTD
(2010) PLSCS 231 – Decision given 30.07.10

Facts: The defendant, Davenry & District Housing (DDH), had been incorporated to purchase DDC's housing stock. DDC's housing department staff were to transfer to DDH, but to retain membership in, the local government pension scheme which was estimated to be £2.4m in deficit at the time of the negotiations. The discussions on price related in part to how and by whom that deficit was to be made up. Various documents (inter alia, a memorandum of understanding that the parties should work within partnership principles, a joint letter to their consultants instructing them to work together to find a solution achieving the best deal for both parties without causing detriment to the other, and a valuation document containing statements in similar terms) were signed during negotiations but were not intended to be legally binding. A proposal was drafted by DDC, and a later version signed by both DDC and DDH, in terms which DDC understood to mean that DDH would pay the deficit. The solicitors drafting the transfer contract had not been directly involved with the negotiations of commercial terms. Before execution DDH's solicitor obtained DDC's solicitor's consent to an amendment requiring DDC to make a payment in the amount of the pension deficit to the county council following completion and the contract was completed with that amendment.

Point of dispute: Whether DDC's claim for rectification should be granted on the grounds of mutual or unilateral mistake. Alternatively DDC sought damages from DDH for breach of a duty of care which it alleged it was owed, under which DDH would not seek to benefit from DDC's misunderstanding or mistake during the finalisation of contractual documentation. DDC argued it was mistaken in giving consent to the amendment.

Held: The claim was dismissed:

(i) To obtain rectification for common mistake, it was necessary to show that the parties had held a common intention as to some matter, continuing until the execution of the instrument, but that, by mistake, the instrument did not reflect that intention. In assessing the common intention, it is necessary to consider objectively what would be regarded as that intention from the way the parties expressed themselves. In the instant case the parties had reached a common intention that the defendant should pay the pension deficit. However it was not possible to find that common intention had continued until the execution of the transfer contract, as by approving the suggested amendment, DDC's solicitor had changed the objectively viewed intentions. Accordingly, the claim for rectification on the ground of common mistake failed.

(ii) Rectification for unilateral mistake required both awareness by one party of the other's mistaken belief as to the inclusion, or omission, of a term of the instrument and a failure by that party to draw the mistake to the other's attention. In the instant case DDH had brought the change to their attention by proposing the new clause, and DDC had agreed to a clause providing the opposite of what they believed. DDC could not be regarded as separate from its solicitors and DDH was entitled to assume in the absence of other information that the DDC's solicitor was properly instructed and had informed its client. The requirements for rectification for unilateral mistake were not met.

(iii) No duty of care arose. The memorandum of understanding and other documents simply accepted the principle of fair and an agreement to negotiate in good faith.

GENERAL

23 Statutory Instrument

SI 2010/2019 The Sites of Special Scientific Interest (Appeals) (Amendment) Regulations 2010

These Regulations, which come into force on 01.10.10, make minor amendments to the Schedule to the 2009 Regulations which sets out the procedure to be followed when there is an appeal to the Sec of State in connection with a consent or management or stop notice relating to a site of special scientific interest.

http://www.opsi.gov.uk/si/si2010/pdf/uksi_20102019_en.pdf

24 Statutory Instrument

SI 2010/2127 The Public Rights of Way (Combined Orders) (England) (Amendment) Regulations 2010

These Regulations amend the 2008 Regulations (SI 2008/442) ('the Prinicpal Regulations'). In Orders made by local authorities creating, stopping up or diverting public rights of way, the Principal Regulations enable local authorities also to provide for consequential amendments of the definitive maps and statements recording those rights of way. These Regulations, which come into force on 01.10.10, prescribe wording for the forms relating to the modification of such definitive maps and statements in relation to Orders for which model forms are prescribed.

http://www.legislation.gov.uk/uksi/2010/2127/pdfs/uksi_20102127_en.pdf

25 CLG Statistics

Land Use Change Statistics (England) 2009 – provisional estimates (July 2010)

In 2009, it is estimated that:

- 80% of dwellings (including conversions) were built on previously-developed land, unchanged from 2008;
- new dwellings were built at an average density of 43 dwellings per hectare, unchanged from 2008; and
- 2% of dwellings were built within the Green Belt (unchanged since 2004) and 7% of land changing to residential use was within the Green Belt (unchanged from 2008).

http://www.communities.gov.uk/publications/corporate/statistics/lucs2009provisionaljuly

26 The Rural Coalition – Report

The Rural Challenge

This report represents a shared policy agenda for rural communities. It aims to help achieve sustainable rural communities in which people enjoy living and working; which are vibrant, distinctive and in keeping with their surroundings; with a range of good quality local services; and which enhance local landscapes, heritage and biodiversity, whilst meeting the challenges of climate and economic changes. It proposes changes which respond to concerns which the new Coalition Government has stated it wishes to address.

http://www.cpre.org.uk/library/4331

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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.

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

Abbreviations
The following abbreviations are used in evebrief:

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

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

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

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

* Interesting but non-essential reading.

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EVEBRIEF

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SCOTLAND

PLANNING

01 Scottish Planning Policy

Post-Adoption Strategic Environmental Assessment (SEA) Statement

The Scottish Government has consolidated its national planning policy series to form a new single Scottish Planning Policy (SPP) and this document has been prepared in accordance with s18 of the Environmental Assessment (Scotland) Act 2005. It sets out how the findings of the SEA process have been taken into account in the final version of the SPP.

http://www.scotland.gov.uk/Resource/Doc/320138/0102389.pdf

02 National Planning Framework (NPF) 2

Post-Adoption Strategic Environmental Assessment (SEA) Statement

As required by s18(3) of the Environmental Assessment (Scotland) Act 2005, the purpose of this post-adoption SEA Statement is to set out the findings from the SEA process and explain how these were taken into account as the NPF was finalised.

http://www.scotland.gov.uk/Resource/Doc/320128/0102388.pdf

03 Scottish Government Circular

Planning Circular 1/09 – Development Planning: Appendix 1 – The Habitats Regulations

This appendix gives guidance on the application of The Conservation (Natural Habitats, &c) Regulations 1994, as amended, ('the Habitats Regulations') to the development planning system in Scotland. The Conservation (Natural Habitats, &c) Amendment (Scotland) Regulations 2007 inserted new Part IVA (regulations 85A – E) into the Habitats Regulations following a ruling from the European Court of Justice in 2005. Where a land use plan is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), and is not directly connected with, or necessary to the management of that site, the planning authority or SDPA should now make an 'appropriate assessment' of the implications for the site in view of its conservation objectives.

http://www.scotland.gov.uk/Resource/Doc/322693/0103825.pdf

04 Scottish Government Planning Advice Note

Planning Advice Note 2/2010 – Affordable Housing and Housing Land Audits

This Planning Advice Note provides advice and information on how the planning system can support the Government's commitment to increase affordable housing. It explains the variety of approaches and types of affordable housing available. It considers how the planning system can facilitate development of affordable homes. It emphasises the need for strategic planning to ensure housing need and demand is met, and considers the role of Housing Need and Demand Assessment (HNDA), the Local Housing Strategy (LHS) and development plans in delivering affordable housing. It also provides advice on the design of affordable homes and the wider community, as well as a range of information sources to encourage best practice in affordable housing delivery.

http://www.scotland.gov.uk/Resource/Doc/212607/0103970.pdf

05 Scottish Government Planning Advice Note

Planning Advice Note 3/2010 – Community Engagement

The Planning etc (Scotland) Act 2006 and associated legislation provide enhanced opportunities for people to get involved in the planning system. The Government's policy on community engagement is set out in Scottish Planning Policy (SPP) and in relevant Planning Circulars. This Planning Advice Note provides advice to communities on how they can get involved and to planning authorities and developers on ways of effectively engaging with communities on planning matters. It also links directly with the National Standards for Community Engagement, which sets out best practice principles for the way that councils and other public bodies should engage with communities.

http://www.scotland.gov.uk/Resource/Doc/322754/0103851.pdf

HOUSING

06 Scottish Government Statistics

Housing statistics for Scotland 2010: Key Trends Summary

Key Points from this release are that:

- new housing supply (new build, refurbishment and conversions) decreased by 16% between 2008-09 and 2009-10, although both housing association and local authority new build figures increased from the previous year;
- starts and completions of new house building fell by 22% and 17% respectively between 2008-09 and 2009-10;
- the number of units completed through all the Affordable Housing Investment Programme AHIP activity was 30% higher than in the previous year and the highest figure since the AHIP programme began;
- sales of public authority dwellings: sales of public authority dwellings fell by 46% in 2009-10; and
- the number of permanent lettings of local authority dwellings increased by 15% in 2009-10 compared to the previous year.

http://www.scotland.gov.uk/Resource/Doc/1035/0103752.pdf

GENERAL

07 Scottish Rural Development Council Report

Speak Up for Rural Scotland

The Rural Development Council was set up in 2008 to advise the Scottish Government on a range of issues relevant to the prosperity of rural Scotland. This report contains the Council's views on how rural Scotland can contribute to the creation of a more successful country through sustainable economic growth and how it will deal with the challenges of the 21st century.

http://www.scotland.gov.uk/Resource/Doc/319168/0102002.pdf

WALES

PLANNING

08 Statutory Instrument

WSI 2010/2002 The Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Saving Provisions) (Wales) (Amendment No 1) Order 2010

This Order, which came into force on 26.08.10, brings the transitional arrangements made in relation to Powys County Council under the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005 ('the No 4 Order'). It removes Powys County Council from the list of planning authorities in the Schedule to the No 4 Order, thus placing the Council under a duty to prepare a local development plan for its area.

http://www.legislation.gov.uk/wsi/2010/2002/pdfs/wsi_20102002_mi.pdf

09 Welsh Assembly Consultation

Introducing Standard Information Requirements for Planning Applications in Wales. The Standard Planning Application Form ('1APP') and the Validation of Planning Applications Deadline for Comments: 12.11.10

The Welsh Assembly Government is proposing to make the use of the Standard Application Form mandatory, whether electronically or on paper through the Planning Portal so applicants understand the information which must accompany applications for planning permission, listed building and conservation area consents.
To accompany the legislative changes coming into force later in 2010/11, a new circular with advice for local planning authorities and a best practice guide aimed at a wider audience including applicants are proposed. The purpose of this consultation is to seek views on whether the proposed approach is appropriate and to seek comments on the draft guidance documents.

http://new.wales.gov.uk/consultations/planning/1appconsultation/?lang=en

10 Welsh Assembly Consultation

Draft List of Statutory and Non-statutory Consultees in the Planning Application Process
Deadline for Comments: 26.11.10

The Welsh Assembly Government proposes to develop a single comprehensive list of all nationally defined consultees in the planning application process in Wales. This draft list is based on a similar exercise that was carried out in England between December 2009 and March this year. It seeks to identify:

- statutory consultees in the planning application process; and
- all bodies and organisations identified in national policy, guidance, and Circulars who should be consulted on planning applications.

http://new.wales.gov.uk/consultations/planning/planappconsultees/?lang=en

REAL PROPERTY

11 Statutory Instrument

WSI 2010/2021 The Local Land Charges (Amendment) (Wales) Rules 2010

These Rules, which came into force on 31.08.10, amend the Local Land Charges Rules 1977 (SI 1977/985) to remove the entry for item 5 (personal searches in the register in respect of a parcel or parcels of land) from Schedule 3 (Fees). The fee is incompatible with the Environmental Information Regulations 2004(1) implementing Council Directive 2003/4/EC(2) on public access to environmental information.

http://www.legislation.gov.uk/wsi/2010/2021/pdfs/wsi_20102021_mi.pdf

NORTHERN IRELAND

PLANNING

12 Supplementary Planning Guidance (SPG)

Wind Energy Development in Northern Ireland's Landscapes

This SPG contains broad strategic guidance on the visual and landscape impacts of wind energy development. It includes the following:

- the background to Northern Ireland's landscapes and to wind energy development that has already taken place;
- the approach and methodology used to assess wind energy development in relation to the landscape of each of the Landscape Character Areas;
- general principles and guidance relating to wind energy development in the landscape, and the sensitivities, opportunities and challenges associated with this kind of development;
- a consideration of cumulative wind energy development in Northern Ireland's distinctive landscapes as at October 2007 with particular reference to landscape issues that need to be carefully considered in the future; and
- practical guidance on the use of this SPG and the preparation and submission of wind energy proposals.

http://www.planningni.gov.uk/index/policy/supplementary_guidance/spg_other/supplementary_guidance_wind_energy_development_in_ni_landscapes-2.html

13 PPS 7 Addendum

PPS 7 Addendum: Safeguarding the Character of Established Residential Areas

This is the second addendum to PPS 7 'Quality Residential Environments'. It contains additional planning policy provisions on the protection of local character, environmental quality and residential amenity within established residential areas, villages, and smaller settlements. It also sets out policy on the conversion of existing buildings into flats, while the addendum contains policy to help promote the greater use of permeable paving within new residential developments in order to reduce the risk of flooding from surface water run-off.

http://www.planningni.gov.uk/index/policy/policy_publications/planning_statements/planning_policy_statement_7_addendum2.html