

EVEBRIEF

Legal & Parliamentary

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SUSTAINABILITY. DISMISS IT AS A FLASH IN THE PAN AT YOUR PERIL



Gemma Goakes
Senior Surveyor

Information papers, consultations, feasibility studies and published housing indices keep coming in abundance but there appears to be slightly less case law than usual. I wonder, is this the fallout from the abolition of 'quango's' who are determined to go out in style? Are the remaining departments trying to prove their worth in their struggle for survival? Or have the litigators been 'credit crunched'?

We report on a number of interesting judgements particularly the Solicitors negligence case at item 13 and the Nuisance claim at item 12. The Office of Fair Trading Consultation at item 29 is worthy of reading. As from 6 April 2011, land agreements will no longer be excluded from Competition law.

Sustainability continues to dominate with a number of very relevant reports on the perceived way ahead. At item 26 we report on a paper produced by the Green Property Alliance seeking to create a standardised method of measuring the sustainability performance of buildings. At item 22, the Department of Energy and Climate Change has also been busy trying to create a blueprint to enable a framework for decision making for applications for development consent for energy infrastructure. Hopefully this will be decided before the final outcome of the Feasibility study on Severn Tidal Power at item 23 to ensure any further movements in this area to take place unhindered.

At items 27 and 28, English Heritage encourages increased spending on our historical environment and encouraging more historical attractions. This continues the message that investing in our heritage is good for the environment, the locality in terms of job creation and income generation for the wider economy. They are encouraging Local Authorities to flex their muscles and utilise all powers available to them to ensure that historic buildings are preserved and well maintained. Item 25 reports on the Transfer of land and buildings to community based organisations, as encouraged as part of David Cameron's 'Big society'.

Whatever your views on global warming/climate change and sustainability, it appears that the government has a very clear view. This edition shows that a lot of work is going on in the background and all routes lead into the vision. It appears that no one is exempt and property/occupiers stand to be hit the hardest by new legislation, particularly Carbon Reduction Commitment. If the amount of consultation currently under consideration in this area is to continue you would be well advised to ignore it at your peril as it is here to stay!

A handwritten signature in dark ink that reads "Gemma Goakes" with a flourish underneath.

LANDLORD & TENANT

01 Court of Appeal

Forfeiture of lease for breach of covenant

* PATEL V K&J RESTAURANTS LTD
(2010) PLSCS 276 – Decision given 28.10.10

Facts: Patel (P), the appellant in this case, was the landlord and K&J Restaurants Ltd (K&J) the tenant of premises comprising a restaurant with three flats above. The 20-year lease from 2004 contained a user covenant prohibiting the use of the premises for illegal or immoral purposes and a covenant against underletting or parting with or sharing possession of part of the premises. In 2007 K&J entered into various agreements with a company who took over management of the restaurant, paying an annual consultancy fee to K&J but the company retained the turnover. In 2008 the police suspected that one of the flats upstairs was being used as a brothel and notices were served on P and K&J requiring the situation to be remedied. K&J secured the departure of the sub-tenant from the flat. K&J changed the locks of the restaurant and purported to terminate the management agreement but in subsequent court proceedings it was reinstated on an interim basis. P considered that the user covenant in the lease had been breached and that the restaurant management arrangements breached the covenant against sharing or parting with possession. The management company left the premises by agreement in May 2009.

Point of dispute: Whether P's appeal should be allowed against the ruling of the judge in the court below who dismissed his possession claim. The judge held that (i) although K&J had had sufficient reason to suspect use of the flat as a brothel following the police's phone call, it was reasonable that it awaited a promised confirmation of this by letter before taking any action; and (ii) the agreements with the management company did not give rise to parting with or sharing of possession since that company was in occupation only as K&J's agent.

Held: The appeal was allowed.

- (i) Immoral use of premises by a tenant was not a remediable breach, but such use by a sub-tenant was remediable so long as the tenant took immediate action once it suspected the use. In this case K&J had, for a significant period of time, failed to take reasonable steps to investigate the goings on at the flat despite having reasonable grounds for suspecting that it was being used as a brothel.
- (ii) Although K&J had not excluded itself from the premises, it had given the management company an enforceable right to use them for its own benefit, not just as K&J's agent – this amounted to a sharing of occupation in breach of covenant and, although remediable, the breach had not been remedied before the trial. Changing the locks was insufficient since K&J should also have given written notice terminating the management agreement. If a tenant successfully excluded a sub-tenant or licensee without resorting to court proceedings the relevant breach might have been remedied, but where consequent proceedings resulted in the subtenant or licensee being allowed into occupation it was not.

02 Property Industry Alliance Occupier Satisfaction Survey

Occupier Satisfaction Survey – September 2010

This is the fourth year of this Survey which aims to collect the views of a range of occupiers, detailing their experience of working with landlords over the last twelve months. It aims to identify key areas for improvement and those where there is good practice.

http://www.rics.org/site/scripts/documents_info.aspx?documentID=1077

PLANNING

03 High Court

Inappropriate development in the Green Belt

* HAYDEN-COOK V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2010) All ER (D) 20 (Oct)

Facts: Hayden-Cook (H-C) sought permission for development of a Green Belt site located next to a busy main road. Access to the site, on which there were two semi-detached dwellings, was difficult and H-C's proposal involved demolishing these and replacing them with two much larger dwellings set further back from the road, as there were considerable road safety issues. The local authority refused permission for the development and the inspector appointed by the Sec of State dismissed H-C's appeal.

Point of dispute: Whether H-C's appeal against the inspector's decision would be allowed. H-C argued that the inspector had not properly considered the fact that refusal would delay pressing road safety issues, and that he had erred in his reasoning.

Held: The appeal was dismissed. Where an inappropriate Green Belt development was proposed there was a substantial onus on the claimant to prove that very special circumstances existed to outweigh the harm to the Green Belt. In none of the circumstances had the inspector erred in law. It was not the case that larger dwellings were necessary for improved road safety and the inspector had properly considered whether H-C could have submitted a more realistic proposal. The inspector had realised that refusal would result in uncertainty and delay but he had correctly considered that this was outweighed by the harm to the Green Belt that the development would cause. The inspector had refused permission because H-C could not sufficiently demonstrate that special circumstances existed for his more ambitious scheme.

 04 CLG Consultation

Planning for schools development

 Deadline for Responses: 10.12.10

This consultation seeks views on the Government's proposals to make changes to the General Permitted Development Order (GPDO) to give permitted development rights for changes of use to a school. The purpose of this proposal is to support the Department of Education's policy on new free schools.

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

 05 Summary of Responses to CLG Consultation

Consultation on Implementing the Mobile Homes Act 1983 on local authority Gypsy and Traveller Sites: Summary of Responses

This consultation sought views on s318 of the Housing and Regeneration Act 2008 which will apply the Mobile Homes Act 1983 to local authority Gypsy and Traveller sites, bringing the rights and responsibilities of residents living on them into line with those of residents living in similar caravan site accommodation, such as private Gypsy and Traveller sites and park home sites. This came about as a response to the European Court of Human Rights decision in the case of *Connors v United Kingdom* (2004) when it was ruled that the lack of procedural safeguards to eviction on local authority Gypsy and Traveller sites breached Article 8 of the European Convention for Human Rights. Respondents were generally supportive of the proposals put forward in the consultation, and this document sets out amendments to the terms of the 1983 Act and other transitional arrangements that will apply to local authority and county council Gypsy and Traveller sites when s318 is brought into force.

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

 06 CLG Letter to Chief Planning Officers

Transfer of Government Offices for London's planning casework to Communities and Local Government

As part of the Government's commitment to localism and decentralisation the Government announced in May the abolition of the Government Office for London. These letters to local authorities confirm that the Government Office for London's National Unit for Land Acquisitions and Disposals (NULAD) and the Planning and Housing Division's casework have transferred to Communities and Local Government.

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

RATING

 07 White Paper

Local growth: realising every place's potential

This paper confirms the Government's intention to consider the scope to allow councils to retain locally raised business rates. This will be taken forward through the Local Government Resource Review which will start in January 2011 and during which a number of important related issues will be considered, including:

- The possible impacts on councils where locally raised funding might be insufficient to meet budget requirements, as well as councils who do not collect business rates.
- A 'Business Increase Bonus' scheme to replace (LABGI) (Local Authority Business Growth Incentive), rewarding local authorities for growth in their business rates revenues.
- The introduction of new powers to enable authorities to carry out Tax Increment Financing. Councils can use Tax Increment Financing borrowing to fund key infrastructure and other capital projects which will further support locally driven economic development and growth.
- Allowing councils to keep business rates from renewable energy projects.

<http://www.bis.gov.uk/assets/biscore/regional/docs/l/cm7961-local-growth-white-paper.pdf>

08 CLG Letter to Chief Finance Officers of English billing authorities

**Business Rates Information Letter (BRIL) 10/2010:
General Rating Information**

This letter covers the following:

- Local growth white paper (see item 07 above). This outlines proposals to provide stronger incentives for councils to support long term sustainable growth in their local economies.
- The new burden of the temporary increase in small business rate relief.
- Changes to the business rates calculator as a result of the change in small business rate relief. Where the ratepayer may be eligible for relief the calculator now shows the bill for the six months to 30 September and then for the six months to 31 March (to illustrate the different levels of relief).
- National non-domestic rates 2 – reassessment of local authorities' contributions to the NNDR pool following the adjustment to the rules governing the small business rate relief that came into force on 01.10.10.

<http://www.communities.gov.uk/documents/localgovernment/pdf/12799410.pdf>

COMPULSORY PURCHASE

09 High Court

Compulsory Purchase Order (CPO) confirmed on city centre retail site – application for judicial review of decision to execute general vesting declaration (GVD)

* R (ON THE APPLICATION OF ICELAND FOODS LTD)
V NEWPORT CITY COUNCIL
(2010) PLSCS 259 – Decision given 12.10.10

Facts: Newport City Council (NCC) made a CPO in respect of land required for a retail-led mixed-use development in Newport city centre. There were a number of objections, including that by Iceland Foods Ltd (Iceland) which had leasehold interests in the land included in the CPO. An inspector appointed by the National Assembly for Wales considered the objections and recommended that the CPO should be confirmed "for the purpose of... carrying out a comprehensive scheme". NCC gave notice of confirmation of the CPO and notice of their intention to make a General Vesting Declaration (GVD). The preferred developer was not in a position to fulfill the terms of its development agreement with NCC which therefore agreed to implement the CPO and to seek financial support from external sources so that a major shopping development could go ahead. NCC executed and sealed the GVD despite Iceland's objections that it was illegal.

Point of dispute: Whether Iceland's application for orders that the GVD and CPO were illegal would be allowed. Iceland argued that NCC had acted unlawfully in executing and serving the GVD because those steps had been taken for a different purpose to the one put forward when the CPO was confirmed.

Held: The application was dismissed. Where a local authority obtained a power of compulsory acquisition that was expressed or limited by reference to a particular purpose it could not seek to use the power for a different or collateral purpose. In this case there was no reasonable doubt concerning the purpose underlying the CPO – the land was required for the purpose of carrying out a comprehensive scheme of development which was in the public interest. The scheme incorporated various different land uses and fell within the statutory power to make a CPO conferred on NCC under s226(1) of the Town and Country Planning Act 1990. There was no basis for concluding that NCC were implementing the CPO for a purpose that was different from or collateral to the purpose that justified the confirmation of the CPO. Iceland had failed to establish that NCC had acted unlawfully when they decided to implement the CPO or when they executed the GVD.

REAL PROPERTY

10 Court of Appeal

Constructive Trust

* HERBERT V DOYLE
(2010) PLSCS 260 – Decision given 13.10.10

Facts: In 2000 the appellant obtained planning permission to redevelop his property, including building some mews houses in the garden area. The proposed development would encroach on the respondents' property from which they ran a dental practice, and the parties entered into negotiations to exchange some parking spaces – the respondents' spaces (the green spaces) would be given to the appellant in return for his red spaces. In 2001 it was also agreed that the appellant would build a compressor house on his property which he would let to the respondents for use in their practice together with other parts of the ground floor which they already leased. In April 2003, when the appellant began to lay out the areas for the mews houses, the parties held a meeting in order to resolve certain outstanding issues concerning encroachment. Once the development was completed the appellant commenced proceedings against the respondent to require him to transfer the green parking spaces. The judge found that the April 2003 meeting had resulted in an oral agreement on the terms on which the development could proceed and that the appellant was entitled to the transfer of the green spaces provided that he took the other steps required of him under the agreement. The appellant did not wish to carry out those steps whereupon the respondent sought and obtained a further ruling relating to the transfer of green parking spaces and the payment of a sum of £15,000 in return for certain leases and the red parking spaces.

Point of dispute: Whether the judge's finding that the April 2003 agreement was intended to be legally binding and was not subject to contract was correct, notwithstanding that the agreement did not meet the requirements of s2 of the Law of Property (Miscellaneous Provisions) Act 1989. The main issue was whether the arrangements between the parties had sufficient clarity to satisfy the requirements of a constructive trust.

Held: The appeal was dismissed. Both proprietary estoppel and constructive trust had a requirement in certain situations, including commercial transactions, for completeness of agreement with respect to an interest in property. In both situations there had to be certainty as to that interest. In this case the transaction was a commercial one since the parties were dealing at arm's length and had access to lawyers and it satisfied the requirements for a constructive trust. There had been a complete agreement in April 2003. The fact that the parties had continued to negotiate after that and agreed variations to the agreement did not undermine the judge's finding that there was a complete agreement as at date. In the light of the judge's findings, the appellant could not show that the varied agreement lacked certainty. The variations did not make the agreement uncertain but simply altered its content for the purposes of its future operation.

11 Court of Appeal

Repudiatory breach of contract

* EMINENCE PROPERTY DEVELOPMENTS LTD V HEANEY
(2010) PLSCS – Decision given 21.10.10

Facts: In December 2007 the respondent contracted to purchase long leases of 13 flats in a block which the appellant was developing. The respondent paid a deposit of £36,000 and the contracts incorporated the standard conditions of sale (4th ed). The contractual completion date was in December 2008, by which time the property market had fallen significantly and the respondent failed to complete. The appellant served a notice to complete which meant that the consequences prescribed by standard condition 7.5 would occur if the respondent failed to complete within ten working days and an accompanying letter stated that the notice would expire on 15.12.08. This date was in fact incorrect since the ten working days actually expired on 19.12.08. The respondent took no steps towards completion and on 17.12.08 the appellant gave notice to rescind the contract and forfeit the deposit under standard condition 7.5. However, these notices were premature due to the error over the expiry date of the notice to complete and the respondent claimed that the premature rescission notice amounted to a repudiatory breach of contract, that he had accepted the repudiation and was therefore entitled to the return of his deposits. The appellant sought a declaration that the deposits had been validly forfeited owing to the respondent's failure to complete by 19.12.08.

Point of dispute: Whether the appellant's appeal should be allowed against the recorder's ruling that he had repudiated the contract. The appellant argued that the premature rescission notices were not an unequivocal repudiation since they had been served erroneously and a reasonable recipient would have known that the appellant still wanted completion to take place, or to exercise his contractual remedies for non-completion.

Held: The appeal was allowed. The legal test of repudiatory conduct was whether looking at the circumstances objectively the contract-breaker had shown an intention to abandon and refuse to perform the contract. The appellant's notice of rescission was not a repudiatory breach of these sale contracts – the appellant had been ready, willing and able to complete and this had been confirmed by his notice to complete and accompanying letter. Although that letter contained the wrong date for the expiry of the notice to complete, it made it clear that the calculation was based on the contractual provisions and a reasonable person would have realised that they had been mistakenly applied. On the facts, it was impossible to find any intention on the part of the appellant to abandon or refuse to perform the contracts and the recorder had erred in concentrating on the rescission notices without taking into account all the circumstances.

TORT

12 High Court

Damages in nuisance for foul odours emanating from adjoining premises on light industrial estate

* HIROSE ELECTRICAL UK LTD V PEAK INGREDIENTS LTD
(2010) PLSCS 269 – Decision given 21.10.10

Facts: HE occupied premises on a light industrial estate from which it manufactured parts for mobile telephones. It vacated the premises in May 2008. PI had been the lessee of the neighbouring premises from which it manufactured additives and coatings for food. Throughout the time of PI's occupation HE had complained about the unpleasant smells which escaped into its property through cracks in the party wall.

Point of dispute: Whether HE's complaints amounted to a nuisance in law, given the nature of the neighbourhood.

Held: HE's claim was dismissed. Causing an offensive smell was one of the established types of nuisance caused by interference with another's enjoyment of its land where it involved personal inconvenience and interference with one's quiet enjoyment, personal freedom or anything that discomposed or injuriously affected the senses or the nerves. There was no absolute standard to be applied and it was always a matter of degree whether the interference with comfort or convenience was sufficiently serious to constitute a nuisance. It was well established that the character of the neighbourhood in question had to be taken into account. On the evidence the degree of interference with HE's business and with the comfort of its employees having regard to the character of the industrial estate was insufficient; in a residential area the situation would have been different. PI's use of the unit had not been unreasonable and the root of the problem was the inadequate protection provided by the party wall and HE should have taken the necessary steps to alleviate the problem for the benefit of its employees.

13 Court of Appeal

Solicitor's negligence – fraudulent transfer of property – whether claim statute barred under s2 Limitation Act 1980

* NOURI V MARVI
(2010) PLSCS 262 – Decision given 14.10.10

Facts: Nouri (N) was the registered owner of a flat. In April 2001 his signature was forged on a fraudulent transfer of the flat to a third party (X) who obtained the transfer by purporting to be N and instructing Marvi (M), a firm of solicitors, to act on the sale. Although N was aware that at an earlier date X had carried out an unauthorised sale of the property he had not taken any steps against him. The property was registered in X's name in July 2001 and sold in 2003 to a third party. N's claim for rectification of the register was dismissed on the grounds that he had failed to properly take care of his own interests. In July 2007 N brought a claim against M in negligence, alleging that when it received instructions from X, purporting to be N, it had a responsibility to N to act in a responsible manner including an obligation to confirm its instructions directly with the client and to satisfy itself as to his identity. N's argument was that he did not suffer actual damage and therefore that the cause of action did not accrue until July 2001 when X's title was registered. Alternatively, M had been under a continuing duty of care to prevent N from losing his title.

Point of dispute: Whether N's appeal should be allowed against the ruling in the court below that his claim was statute barred, on the grounds that the sale to X was an immediate blot on the title which meant that time began to run in April 2001. Accordingly, N's claim was statute barred. The judge also found that M had no continuing duty of care.

Held: The appeal was dismissed.

- i. The value of the flat had fallen following the forged transfer since any purchaser from N was exposed to the risk of possible litigation. N had therefore suffered actual damage in April 2001 and his cause of action accrued then. Time started to run under s2 of the Limitation Act even if the claimant was unaware of the circumstances which led to the cause of action. The issue was whether N could have maintained an action for damages against M following completion of the sale to X and for that purpose it had to be assumed that N was aware of the breach at that date. It would have to be assumed that N was aware of the forged transfer and he was under a duty to alert a potential purchaser to the problem, so that the open market value of the flat was the sum that a purchaser who had knowledge of the forged transfer would pay. Section 14A provided an alternative time limit of three years from the date of knowledge but that did not assist N either since he had had knowledge of the fraudulent transfer to X by 2002.
- ii. There were no special facts to suggest that M had a continuing duty to N after completion of the transaction for which it had been retained. Even if this were not the case the cause of action would still have accrued in April 2001 when the loss was first suffered as a consequence of the breach.

HOUSING

14 CLG Statistical Release

House Price Index – August 2010

- UK house prices were 8.3% higher than in August 2009 and 0.7% higher than in July 2010 (seasonally adjusted).
- The mix-adjusted average house price in the UK stood at £213,116 in August (not seasonally adjusted).
- UK house prices rose by 0.8% in the quarter to August 2010 compared to an increase of 1.7% in the May quarter (seasonally adjusted).
- Average prices increased by 9.3% in England, by 0.4% in Scotland, by 9.0% in Wales but fell by 18.8% in Northern Ireland.
- Average prices paid by first time buyers increased by 8.2% over the year to August whilst prices paid by former owner occupiers increased by 8.3%.
- Average prices paid for new properties were 8.6% higher than a year ago and prices paid for pre-owned dwellings were 8.3% higher.

<http://www.communities.gov.uk/documents/statistics/pdf/1736831.pdf>

15 CLG Statistics

Net supply of housing: 2009-10, England

- Annual housing supply in England reached 128,680 net additional dwellings in 2009-10. This represents a 23% decrease on the number of net additional homes supplied in 2008-09 and the lowest level of annual housing supply since 2000-01.
- In 2009-10, 97% of net additional dwellings were accounted for by new build completions, similar to last year when new build completions comprised 95% of net additional dwellings.
- Fewer net additional dwellings were supplied in the 2009-10 financial year than in the previous year in all the English regions. The largest annual decrease was seen in the North West (38%) followed by the South East (32%).

<http://www.communities.gov.uk/documents/statistics/pdf/1746065.pdf>

16 English Housing Survey

English Housing Survey (EHS) Bulletin: Issue 2

Detailed findings from the English Housing Survey were published on 27.10.10. The EHS brings together the former DCLG housing surveys – the Survey of English Housing (SEH) and the English House Condition Survey (EHCS). This bulletin provides key findings from the following reports:

- English Housing Survey Household Report 2008-09; and
- English Housing Survey Housing Stock Report 2008.

<http://www.communities.gov.uk/documents/statistics/pdf/1750285.pdf>

17 English Housing Survey

English Housing Survey 2008 Housing Stock Report

This is the first detailed Housing Stock Report from the new EHS. It examines housing stock profile (age, type and size), analyses amenities and services provided by the stock, external environment, housing conditions in relation to disrepair, damp and mould and the Housing Health and Safety Rating System. The energy performance of dwellings is considered in some detail including an examination of the uptake of heating and insulation measures in the housing stock and its current performance in terms of energy efficiency and the carbon emissions associated with heating, lighting and ventilation, and, secondly, what further cost effective improvements could be carried out and the impact that these could make for energy efficiency and carbon emissions.

<http://www.communities.gov.uk/documents/statistics/pdf/1750754.pdf>

18 English Housing Survey

English Housing Survey 2008-09 Household Report

This is the first detailed Household Report from the new EHS. It examines the following:

- the main characteristics of households in different housing tenures;
- owner occupiers and sources of finance for home purchases including types of mortgages and characteristics of first time buyers;
- private and social renters;
- house moves into, between and within tenures; and
- satisfaction with accommodation and local area.

<http://www.communities.gov.uk/documents/statistics/pdf/1750765.pdf>

19 CLG Statistical Release

Affordable Housing Supply, England, 2009-10

- 57,730 additional affordable homes were supplied in England in 2009-10 – an increase of 4% on the number supplied in 2008-09 and the highest number since 1995-96.
- 33,120 new affordable homes were provided for social rent in 2009-10, an increase of 7% on 2008-09.
- There were 46,980 new build affordable homes in 2009-10, 81% of the total supply.
- 51,140 homes were delivered with grants from the Homes and Communities Agency in 2009-10 of which 82% were new build homes.
- More than half of all new affordable homes were supplied in London (24%), the South East (19%) and the South West (11%).
- There was an increase in affordable housing supply in six of the nine regions in England. The largest annual growth both in absolute and percentage terms was seen in the North East.

<http://www.communities.gov.uk/documents/statistics/pdf/1752505.pdf>

CONSTRUCTION

20 Guidance on Building Design

BS 8300:2009 and Amendment 1: 2010 Design of buildings and their approaches to meet the needs of disabled people. Code of practice

The guidance in BS 8300 covers a wide range of disabilities and the use of the built environment by disabled people who can be residents, visitors, spectators, customers, employees, or participants in sports events, performances and conferences. This standard explains how to anticipate and overcome restrictions that prevent disabled people from making full use of premises and their surroundings.

21 CLG Letter to Building Control Bodies

Building Act 1984: Approved Document Basements for Dwellings

Approved Document Basements for Dwellings, published 2004 with an addendum published 2007, has been removed from the list of approved documents as of 01.10.10 as some of the guidance it contains does not reflect the changes in Building Regulations since it was last published.

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

ENERGY

22 Department of Energy and Climate Change Consultation

Planning for new energy infrastructure – Consultation on revised draft National Policy Statements for Energy Infrastructure

Deadline for Comments: 24.01.11

The energy National Policy Statements (NPSs) will be a blueprint for decision-making on individual applications for development consent for relevant types of energy infrastructure. Between November 2009 and February 2010 the previous Government consulted on six draft energy NPSs and the Appraisals of Sustainability, Habitats Regulations Assessments and Impact Assessments that accompanied those NPSs. Over 3000 responses were received and having considered these the Government has made changes to the draft energy NPSs and the accompanying documents. Following these changes the Government is now consulting on the revised draft NPSs and the accompanying documents.

<https://www.energynpsconsultation.decc.gov.uk/docs/ConsultationDocument.pdf>

(Government Response to the Consultation on the Draft National Policy Statements for Energy Infrastructure)

<https://www.energynpsconsultation.decc.gov.uk/docs/GovernmentResponsetoConsultation-October2010.pdf>

23 Department of Energy and Climate Change, South West RDA, Welsh Assembly Government Report

Severn Tidal Power Feasibility Study Conclusions and Summary Report

The Severn's enormous tidal range could provide up to 5% of our current electricity generation from an indigenous renewable resource whilst bringing a new employment opportunity both locally and nationally. There are a number of potential Severn power schemes. Ten have been assessed in a feasibility study and over the last year that number has been reduced to five. This report explores the costs and potential payback periods combined with the economic and employment benefits.

<http://www.decc.gov.uk/assets/decc/What%20we%20do/UK%20energy%20supply/Energy%20mix/Renewable%20energy/severn-tp/621-severn-tidal-power-feasibility-study-conclusions-a.pdf>

GENERAL

24 RICS Research Paper – Findings in Built and Rural Environments – FIBRE Series

Cities in Recession

This research compares the approaches to bringing long term derelict and vacant ('hardcore') sites back into use in Manchester and Osaka in Japan. These are perceived to be comparable cities in their respective national contexts and in terms of their shared history. It is considered that both these cities can share from their experiences in terms of successful urban regeneration. Key messages from this research include the following:

- hardcore brownfield sites have been badly hit by the recent recession in both Manchester and Osaka;
- despite this, there is evidence that hardcore sites have been successfully regenerated in both cities and also that there is common ground in the critical success factors operating in both cities in bringing sites back into use;
- both England and Japan would benefit from better data and information on brownfield sites and contamination;
- both countries need to explore new vehicles for funding infrastructure and clean-up during a period of constraint on public spending; and
- the UK has lessons to learn from Japan's experience of the 'lost decade' of the 1990s.

http://www.rics.org/site/download_feed.aspx?fileID=7617&fileExtension=PDF

25 Government Publication

Pillars of the community: The transfer of local authority heritage assets

As part of its vision for the 'Big Society' the Government is encouraging community-based organisations and volunteers to play an increasing role in improving their local areas. One aspect of this is the transfer of land and buildings from local authorities to community-based organisations. Some of these transfers involve heritage assets and the transfer of ownership and responsibility for these can give rise to a variety of legal, financial, technical and regulatory issues. This document, which is a summary of the new web-based guidance note on this subject that has been endorsed by English Heritage, a number of other organisations in the heritage sector and the Asset Transfer Unit, is intended to be used by local authorities and community organisations.

http://www.helm.org.uk/upload/pdf/Pillars_of_CON.pdf?1287674210

26 Green Property Alliance Report

Establishing the Ground Rules for Property: Industry-wide Sustainability Metrics

This report outlines the requirement for greater consistency and clarity to measure the sustainable performance of buildings and wider property portfolios and how these can be measured and reported. This paper makes the following interim recommendations:

- a set of metrics for energy, carbon, water and waste which are consistent with the majority of major measurement frameworks in use by the property industry;
- mechanisms for classifying building types and norms of operation;
- a practical method of assigning responsibilities for measuring and reporting resource use in rented buildings; and
- practical methods for normalising resource use so as to allow interpretation and meaningful comparison.

http://www.bco.org.uk/uploaded/Common_Metrics_Paper_FINAL.pdf

27 English Heritage Report

Heritage Counts 2010 England

This report considers the evidence to support the economic argument for investing in heritage. It examines the effects of investment in the historic environment on economic activity and the economic impact of tourism and investment in historic visitor attractions.

Key findings:

- historic places are attractive to businesses and visitors;
- investment in historic areas delivers economic as well as environmental benefits;
- investment in the historic environment improves the way people feel about places; and
- investment in historic visitor attractions has an economic impact on the wider community.

<http://www.helm.org.uk/upload/pdf/HC-Eng-10.pdf?1288014517>

28 English Heritage Report

Saving London: 20 years of Heritage at Risk in the Capital

This report summarises the last 20 years of a very successful crusade to protect historically significant buildings in London:

- 94% of the buildings on the first register have been saved and brought back into use;
- 200 historic buildings have been saved over the last 20 years; and
- the effective reuse of historic buildings is vital in the battle against climate change.

<http://www.helm.org.uk/upload/pdf/saving-london.pdf?1288020989>

29 Office of Fair Trading Consultation

Land Agreements: Guidance on the application of competition law following the revocation of the Land Agreements Exclusion Order

Deadline for Comments: 14.01.11

Under current legislation, land agreements were excluded from the prohibition of anti-competitive agreements in chapter 1 of the Competition Act 1998. This situation will change as from 06.04.11 when land agreements will no longer be excluded.

This Guidance is intended to assist in applying the general principles of competition law to land agreements. It seeks to clarify the situation and covers the majority of scenarios where the changes would take affect.

http://www.offt.gov.uk/shared_offt/consultations/OFT1280.pdf

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London (West End)
Hugh Bullock Tel. 020 7333 6302
hbullock@geraldev.com

London (City)
Simon Prichard Tel. 020 7489 8900
sprichard@geraldev.com

Birmingham
Chris Kershaw Tel. 0121 616 4800
ckershaw@geraldev.com

Cardiff
Joseph Funtek Tel. 029 2038 8044
jfuntek@geraldev.com

Glasgow
Ken Thurtell Tel. 0141 221 6397
kthurtell@geraldev.com

Leeds
Mike Roberts Tel. 0113 244 0708
mroberts@geraldev.com

Manchester
Mike Roocroft Tel. 0161 830 7070
mroocroft@geraldev.com

Milton Keynes
Simon Dye Tel. 01908 685950
sdye@geraldev.com

West Malling
Lisa Laws Tel. 01732 229423
llaws@geraldev.com



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

Useful web links

www.ukonline.gov.uk
www.odpm.gov.uk
www.dft.gov.uk
www.inlandrevenue.gov.uk
www.hms.gov.uk
www.egi.co.uk
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.

Contact details

If you require full details of any of the cases presented in this publication, or would like to discuss them in further detail, please contact our specialists:

Agency

Chris Kershaw Tel. 0121 616 4800
ckershaw@geraldev.com

Compensation & Compulsory Purchase

Tony Chase Tel. 020 7333 6282
tchase@geraldev.com

Building Consultancy

Michael Robinson Tel. 0161 830 7091
mrobinson@geraldev.com

Environment & Contamination

Keith Norman Tel. 020 7333 6346
knorman@geraldev.com

Landlord & Tenant

Graham Foster Tel. 020 7653 6832
gfoster@geraldev.com

Leasehold Reform

Julian Clark Tel. 020 7333 6361
jclark@geraldev.com

Minerals & Waste Management

Philip King Tel. 0113 244 0708
pking@geraldev.com

Planning & Development

Hugh Bullock Tel. 020 7333 6302
hbullock@geraldev.com

Rating

Jerry Schurder Tel. 020 7333 6324
jschurder@geraldev.com

Real Property

Annette Lanaghan Tel. 020 7333 6419
alanaghan@geraldev.com

Valuation

Mark Fox Tel. 020 7333 6273
mfox@geraldev.com

Gerald Eve Research

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

For more information on our research services please contact:

Robert Fourt
Partner
Tel. 020 7333 6202
rfourt@geraldev.com

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EVEBRIEF

Legal & Parliamentary

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- 03 Northern Ireland – Planning

SCOTLAND

PLANNING

01 Scottish Government Guide

A Guide to Planning Appeals in Scotland

This guide is aimed at anyone who:

- has a right to make an appeal to the Scottish Ministers against a planning decision or other planning action of a local planning authority; or
- has an interest in an appeal that has been made to the Scottish Ministers by someone else.

<http://www.scotland.gov.uk/Resource/Doc/327664/0105846.pdf>

02 One Scotland Consultation

Consultation on Amendments to the Modernised Planning System

Deadline for Comments: 28.01.10

This consultation seeks views on a number of refinements and amendments to the procedures on development management and appeals introduced in Scotland in 2009. It covers the following:

- Section A – Statutory Pre-Application Consultation Requirements and Applications to change Planning Conditions;
- Section B – The Neighbour Notification and Advertising of Planning Applications;
- Section C – Other Changes to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, including new consultation requirements, amendment of requirements for design statements for marine fish farming and requirements on decision notices;
- Section D – Amendments to the Appeals Regulations;
- Section E – Changes to Neighbour Notification Requirements on Permitted Development Rights for Demolition;
- Section F – Changes to Development Planning Regulations; and
- Section G – General Questions.

<http://www.scotland.gov.uk/Resource/Doc/327737/0105889.pdf>

NORTHERN IRELAND

PLANNING

03 Additional Advice on the Implementation of Planning Policy for New Dwellings on Farms

PPS 21 Advice on the implementation of Policy CTY 10 – Dwellings on Farms – Active Farmers

This policy in PPS 21 will allow a dwelling to be permitted on an active farm, every ten years subject to certain criteria. Criterion (c) of Policy CTY 10 operates with a presumption that the dwelling is sited to either visually link or cluster with an established group of buildings on the farm. As an exception consideration will be given to an alternative site away from other buildings where there are either demonstrable health and safety reasons, or verifiable plans to expand the farm business at the existing group of buildings. The applicant must submit appropriate supporting evidence, which can include a report from an independent consultant, demonstrating to the satisfaction of the Planning Service that it is not appropriate or feasible to position the dwelling in close proximity to existing buildings on the farm.

http://www.planningni.gov.uk/index/news/news_policy/advice_to_applicants_-_criterion_c_policy_cty_10_dwellings_on_farms.pdf

04 NI Planning Service – Best Practice Guidance Note

Transboundary Consultation and Land Use Plans

The purpose of this Note is to provide best practice guidance on transboundary consultation between Northern Ireland and the Republic of Ireland in relation to land use plans and Strategic Environmental Assessment.

http://www.planningni.gov.uk/index/news/news_other/sea-transboundary-consultation-practice-note-2.pdf