EVEBRIEF

Legal & Parliamentary

Volume 32(17) 20 December 2010

LOCAL EMPOWERMENT AND LEASEHOLD ENFRANCHISEMENT

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The much-heralded Localism Bill was published on 15 December. A great deal has already been written about it and summaries of its contents are widely available – including our brief report at item 01. Gerald Eve's rating clients and contacts will have received already our Rating News Update which explains the business rates provisions. So far as the planning provisions are concerned, it is worth pointing out what has not been included. Two of the most controversial aspects of the Conservatives' pre-election policy paper, the introduction of third-party rights of appeal and the curtailing of the appeal rights of applicants, have to the relief of many been omitted.

In the Cadogan Square Properties case reported at item 08, in which our Partner Julian Clark gave evidence, the Upper Tribunal considered whether, in valuations for enfranchisement, a departure from the Sportelli deferment rates can be argued for leases with less than 20 years left to run. In Sportelli the Tribunal looked at past growth trends and set the rate for present and future valuations at 5% In the Cadogan Square case the Tribunal held that, for the appropriate deferment rate to apply for leases with between 10 and 20 years unexpired, regard needs to be had to the market at the valuation date. This introduces a more realistic, market-oriented, approach and leaves it open for landlords and tenants to argue in the future for rates above or below the Sportelli rate to reflect changes in the market.

Finally, the Evebrief editorial team wishes all readers a happy and peaceful Christmas and New Year.

Tony Chase

GOVERNMENT

01 Bill

Localism Bill

By the time that this edition of Evebrief is published much will have been written about this Bill, which was published on 13.12.10, so it is not intended to report on it in detail. It included a number of Business Rates measures which are the subject of Gerald Eve's latest Rating News Update. The Bill also provides the potential for a major cultural shift in the way that planning decisions are taken in England and Wales, seeking to place the "Big Society" at the heart of the planning system.

In summary, the main provisions of the Bill are as follows:

- comprehensive Area Assessments, Local Area Agreements, the Audit Commission and the Standards Board are to be abolished
- councils are to be given a general power of competence, allowing them to do anything that is not prohibited by law
- communities are to be given powers to bid for the ownership and management of local assets threatened with closure and rights which will enable them to become more involved in running local services
- council tax capping is removed and local residents are to be given the power to force referenda on Council Tax increases above a certain level
- residents are to be given the power to call referenda on any local issue
- directly elected mayors are to be introduced in 12 cities in England, subject to referenda
- regional strategies are to be abolished
- the Infrastructure Planning Commission is to be abolished. A duty is imposed on local planning authorities to co-operate and provide constructive, active and ongoing engagement in processes involving decisions on sustainable development for, or in connection with, strategic infrastructure
- the concept of neighbourhood planning is introduced. Communities, in the form of parishes or neighbourhood forums, will be empowered to give consent for certain categories of development under neighbourhood development orders. Neighbourhood development plans will set out policies in relation to development and use of land in a particular neighbourhood specified in the plan
- "pre-determination rules" which restrict local Councillors from campaigning actively on local issues are to be reformed
- funds from the Community Infrastructure Levy will be passed directly to local neighbourhoods

PLANNING

02 Administrative Court

Whether Sec of State had power to revoke regional strategies

**R (ON THE APPLICATION OF CALA HOMES (SOUTH) LTD) V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2010) 46 EG 116 (CS) – Decision given 10.11.10

Facts: Cala Homes (CH), a housebuilder, had applied for planning permission to build 2,000 residential properties and associated infrastructure on a site near Winchester. Its appeal against the local planning authority's failure to determine that application had been dismissed in 2007. After May 2009, when regional spatial strategies (RSS) were introduced, CH's prospects for obtaining permission for the development were increased since the RSS for the south east included policies to expand housing provision between 2006 and 2026 by 654,000 dwellings, 5,500 of which were to be accommodated in an area that included CH's site. It submitted a second planning application which again the local council failed to determine and CH appealed to the Sec of State. A public inquiry was due to be held in September 2010. Following the General Election in May 2010 the new Government expressed its intention to abolish RSSs and at CH's request the public inquiry was suspended until 2011. In July 2010 the Sec of State revoked all regional strategies.

Point of dispute: Whether CH's application for judicial review of the Sec of State's decision would be allowed. The main issue was whether the Sec of State was entitled to use the discretionary power to revoke regional strategies contained in s79(6) of the Local Democracy, Economic Development and Construction Act 2009 to revoke regional strategies as a complete tier of planning policy. Section 70(1) of the Act, which stated that: "There is to be a regional strategy for each region", was at odds with s79(6) which provided that the Sec of State could revoke any regional strategy.

Held: CH's application was granted. The declaration in s70(1) was clear and it could only be given proper effect if the remainder of Part 5 of the 2009 Act was interpreted as creating the machinery designed to promote that statutory purpose. The tension between s70(1) and s79(6) could be resolved if the latter were interpreted as creating a power of revocation but only with a view to setting in motion the procedures set out in the Act for establishing a new regional strategy as soon as administratively practicable. On that view s79(6) did not enable the Sec of State to decide that he could, in principle, dispense with all regional strategies.

03 CLG Publication

The Community Infrastructure Levy: An overview

This document, which replaces the previous Community Infrastructure Levy: An overview published in March 2010, sets out the purpose of the levy and how it is intended to operate. The levy came into force in April 2010 and allows local authorities in England and Wales to raise funds from developers undertaking new building projects in their areas. The money raised can be used to fund a wide range of infrastructure that is needed as a result of development e.g. transport schemes, flood defences, schools, hospitals, other health and social care facilities, parks, green spaces and leisure centres.

http://www.communities.gov.uk/publications/planningandbuilding/communityinfrastructurelevy1

04 CLG Report

Planning Costs and Fees: Final Report

This research report provides data on the costs of fee-chargeable development management and in particular whether planning application fees cover local authority costs. The research seeks to identify methods that would enable local authorities to calculate costs as a basis for locally-set planning application fees. It considers the cost, income and fee implications of a number of recent and potential policy changes, including planning performance agreements, revised permitted development rights for householder development and the recommendations of the Killian-Pretty review for the extension of permitted development rights to non-householder development and that better performing local authorities should be given more freedom to charge higher fees.

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

05 CLG Consultation

Proposals for changes to planning application fees in England: Consultation

Deadline for Comments: 07.01.10

Following on from the report at item 04 above, this consultation paper seeks views on proposed changes to the planning application fees regime which would decentralise responsibility for setting fees to local planning authorities. It is also proposed to allow authorities to charge for resubmitted applications and to set higher fees for retrospective applications.The aim of these proposals is to reduce the amount by which local taxpayers have to subsidise planning applications. If the proposals are approved by Parliament, it is anticipated that the changes would be implemented from April 2011, with a six month transition period until October 2011.

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

RATING

06 Administrative Court

Liability for non-domestic rates

* TALLINGTON LAKES LTD V GRANTHAM MAGISTRATES COURT (2010) PLSCS 302 – Decision given 25.11.10

Facts: TLL (the appellant) ran a business which consisted of a caravan park and various leisure facilities from a site where various other businesses, all controlled by M, were also located. M was the sole director of TLL whose parent company also operated from the site. The local authority applied for liability orders against TLL for non-payment of non-domestic rates from 2006-10.

Point of dispute: Whether TLL's appeal should be allowed against the judge's ruling that TLL was liable for the rates since it was in actual occupation of the site, all the operators on it being companies of which M was the sole director: M had control over the entire site and, since M and TLL were one and the same, TLL should be treated as occupying and controlling the site. TLL argued that the parent company was the rateable occupier since it had "paramount control" of the site.

Held: TLL's appeal was allowed. The site was a single hereditament and it was therefore necessary to show that the taxpayer occupied the whole of it before it could be held liable for non-domestic rates. In this case there was no evidence before the judge to show that TLL, rather than the parent company, was in actual occupation. There was no basis in law or on the factual evidence for the judge's finding of shared occupation between the companies on the site and no basis for the finding that TLL was in paramount control of the site.

LEASEHOLD REFORM

07 Court of Appeal

Collective enfranchisement – appellant landlord granting long lease of basement flat to nominee – whether lease void as disposal of common parts under sections 19(1)(ii) and 2(1)(b) of Leasehold Reform, Housing and Urban Development Act 1993

* PANAGOPOULOS V EARL CADOGAN
(2010) PLSCS 290 – Decision given 11.11.10

Facts: Cadogan ("EC") owned the freehold of a building containing five flats and a basement caretaker's flat. Three of the five qualifying tenants (P) served notice to acquire the freehold of the building under s13 of the 1993 Act. EC's counternotice, under s21, sought no leaseback of any part of the building, but subsequently EC notified P of its intention to grant a lease of the basement caretaker's flat to its own nominee, thereby excluding it from the freehold sale. P objected, maintaining that such a grant would be void by virtue of the anti-avoidance provisions in s19 of the 1993 Act since two of the tenants were legally entitled to the services of a resident caretaker in their leases. In March 2008 EC formally granted a lease of the basement flat and the adjacent light well to a company associated with it for a term of 999 years at a peppercorn rent. P issued proceedings to determine the effect of s19 of the 1993 Act with regard to the new lease.

Point of dispute: Whether EC's appeal should be allowed against the findings of the courts below that the lease was caught by the anti-avoidance provisions in s19. They had found that the lease was void under s19(1)(a)(ii) as a lease of common parts that P needed to acquire for their proper management or maintenance within s2(1)(b). The issues to be determined were: (i) whether the caretaker's flat consisted of or included common parts of the building; and (ii) whether the acquisition of the lease of that flat was reasonably necessary for the proper management or maintenance of those common parts.

Held: EC's appeal was dismissed. Common parts constituted areas of a building that were available for shared use or benefit. The common benefit from a caretaker's flat was the services of a caretaker, rather than use of the flat itself, but s101(1) defined common parts as including any common facilities within them so that the provision of a resident caretaker and a flat for his use could reasonably be regarded as a facility within that definition. Therefore the caretaker's flat consisted of "common parts" within s2(1)(b) of the 1993 Act which P needed to acquire for their proper maintenance. It was irrelevant that EC might be willing to negotiate terms to make the flat available or that a caretaker could be accommodated in another flat.

08 Upper Tribunal (Lands Chamber)

Collective enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993 (LRHUDA) of prime Central London properties — purchase price payable to landlord for freehold — deferment rate to be applied where leases have under 20 years unexpired

** CADOGAN SQUARE PROPERTIES AND OTHERS V EARL CADOGAN
UT Neutral citation number: (2010) UKUT 427 (LC) – Before: The Honourable Mr Justice Morgan – Decision given 03.12.10

Facts: In a collective enfranchisement claim under the LRHUDA the leasehold valuation tribunal (LVT) was asked to determine the purchase price payable by the nominee purchasers to the landlord (EC) for the freehold of various flats in Cadogan Square. An issue arose as to the appropriate deferment rate to be applied as the existing leases of the flats all had between 15.5 and 17.8 years to run. The LVT applied the 5% generic rate for flats laid down by the Lands Tribunal in the case of Earl Cadogan v Sportelli (2007) 1 EGLR 153 (see Evebrief Volume 29(02) item 10), but in that case the unexpired term of the leases was more than 20 years. On appeal the nominee purchasers contended that a rate of 5.5% should have been applied while EC supported the Sportelli rate. In Sportelli it was stated that where the length of the unexpired term was less than 20 years regard would need to be had to the property cycle at the valuation date. In the case of Earl Cadogan v Erkman (see Evebrief Volume 31(03) item 8) the Lands Tribunal concluded that EC should not be allowed to argue for a deferment rate of less than 5% and the nominee purchaser could not amend her statement of case to allow her to contend for a deferment rate of more than 5.5%. In that decision the Tribunal also considered the status of the deferment rate guidance given by the Tribunal in Sportelli, but held that it should generally, except in exceptional circumstances, exclude evidence designed to show that the guidance was wrong.

Point of dispute: The appropriate deferment rate to be applied when the unexpired term is less than 20 years and the precedent effect of this decision. Whether, on the evidence, the position in the property cycle at the valuation dates should lead to a change in one or more components in the Sportelli formula.

Held: In the case of two of the properties, where there was a possibility of redevelopment to convert the buildings back to single houses at the end of their lease terms, EC argued for a deferment rate in line with the Sportelli rate for houses while the nominee purchasers argued that the reason for the adoption of a different rate was due to the additional management issues in respect of flats. The Tribunal held that the deferment rate to be adopted was that which was applicable to flats rather than houses.

Where the unexpired term was less than 20 years it was not appropriate to regard the real growth rate and the risk premium as coupled together – one of those components alone could be adjusted, but not both. Where the argument has been about expected growth rates the obvious component to consider is the real growth rate. In Sportelli the Tribunal held that it was appropriate to adopt a generic deferment rate of 4.75% (for houses) and 5% (for flats) which meant that hypothetical parties in the open market negotiating a purchase of a reversion subject to a lease or leases of 20 years would agree that the appropriate real growth rate was 2%. Where the unexpired terms are less than 20 years the hypothetical parties would know how the negotiations would have proceeded had the terms been equal to 20 years, and the purchaser would have to persuade the hypothetical and willing vendor that the position in the property cycle at the valuation date should lead to some adjustment to the expected real growth rate (and consequent deferment rate). The claimant with an unexpired term of less than 20 years must offer more than would be appropriate for a 20 year term. The price for a reversion on a 20 year term (arrived at in accordance with Sportelli guidance) will be a floor for the price of a reversion on a term of under 20 years where the deferment rate is above 5% for the shorter term. Although there may be a stepped change in the deferment rate, there will not be a corresponding stepped change in the price for the reversion as this will be smoothed by arms length negotiations on price. Of the five cases considered two had valuation dates in 2005 and had unexpired terms of between 17.3 and 17.8 years, and three had valuation dates in 2007 with unexpired terms of between 15.6 and 16.1 years. The Tribunal determined that a deferment rate of 5.25% should be adopted for the cases with a 2005 valuation date and 5.5% for those with a 2007 valuation date.

The approach adopted by the Upper Tribunal in this case set a precedent to be adopted when determining the deferment rate for unexpired terms from 10 years up to (but not including) 20 years. Terms of less than 10 years were not considered by the Tribunal, but they consider that different questions arise such as whether the Sportelli risk free rate remains appropriate, whether a forecasting model should be used and the possible use of net rental yields for very short unexpired terms.

REAL PROPERTY

09 High Court

Commons registration – rectification of register – whether area of undeveloped land properly registered as a town or village green (TVG)

* BETTERMENT PROPERTIES (WEYMOUTH) LTD V DORSET COUNTY COUNCIL
(2010) PLSCS 297 – Decision given 23.11.10

Facts: C owned an area of undeveloped land that was crossed by two footpaths. For many years, despite all C's efforts, local residents had walked all over the land without keeping to the paths. In 1997 an application was made to the Council to register the land as a TVG under s13 of the Commons Registration Act 1965. Following a public inquiry in 2001 the council determined that the land should be registered as a TVG on the grounds that it was land on which inhabitants of the locality had indulged in lawful sports and pastimes as of right for not less than 20 years pursuant to s22(1) of the 1965 Act. C reserved the right to apply to rectify the register and cancel the registration under s14 and in 2004 it sold the land to BP, the claimant.

Point of dispute: Whether BP's application to rectify the register would be allowed.

Held: The application was granted. The question was whether the user by local residents had been contentious so that it did not amount to user as of right. A user was contentious when the landowner did everything he could to interrupt and contest it and in this case C had done everything it could have done to contest the user and endeavour to interrupt it. Such steps could either be by physical obstruction or by legal action. The steps that C had taken, which fell short of legal proceedings, were proportionate to the user in question and they sufficiently communicated to the persons using the land that their user was contentious. An order for rectification of the register would be made cancelling registration of the land as a TVG.

CONTRACT

10 Supreme Court

Option to purchase land developed as a golf course – contradictory valuation provisions in lease – whether land to be valued as a golf course or at full market value with potential for residential development

** MULTI-LINK LEISURE DEVELOPMENTS LTD V NORTH LANARKSHIRE COUNCIL
(2010) PLSCS 294 – Decision given 17.11.10

Facts: The appellant ("Multi-Link") had developed and operated a pay-and-play golf course in Cumbernauld on land that it leased from the respondent local authority ("the council"). The 50-year lease contained an option to purchase the land at "the full market value of the subjects hereby let as at the date of the proposed purchase… of agricultural land or open space suitable for development as a golf course… In determining the full market value… the landlords shall assume… that the subjects hereby let are in good and substantial order and repair and that the obligations of the landlords and the tenants under this lease have been complied with, and … the landlords shall disregard… any improvements carried out by the tenants during the period of this lease otherwise than in pursuance of an obligation to the landlords…". Multi-Link served notice to exercise the option in 2007 and the council fixed the option price at £5.3m to take account of the development potential of the land since it had been included in an area identified for housing in the finalised draft local plan for 2008. Multi-Link failed to complete within the 28 days required by the council who then served a rescission notice.

Point of dispute: Whether Multi-Link's appeal should be allowed against the decision of the court below that: (i) the land should be valued as though it was still agricultural land or open space suitable for development as a golf course; but (ii) the "full market value" could include any potential for residential use.

Held: Multi-Link's appeal was dismissed.

i (Per 3 of the Law Lords) The lease should be construed as a commercial agreement. It had been poorly drafted and no construction could provide perfect harmony between all its elements, but Multi-Link's interpretation, which disregarded the substantial hope value, produced a result that the parties to a commercial agreement were unlikely to have intended.

ii Although the valuation clause directed the council to ignore other improvements that Multi-Link had carried out, it did not direct it to ignore other factors that might be relevant to the value of the golf course – the inclusion of the land within an area of potential housing in the draft structure plan was such a factor. To construe the clause such that the council was to value the land on the basis that it was to be used only as a golf course would be an artificial approach and the council could have regard to hope value of the golf course when assessing its full market value.

iii (Per 2 of the Law Lords) The clause had been badly drafted and a sensible commercial meaning to the clause as a whole had to be found, taking into account the factual background known to the parties at the time the lease was entered into. The council was under a statutory duty not to sell its land for less than the best that could reasonably be obtained for it, while Multi-Link was a commercial organisation which would make the most of a financial opportunity if one arose. The assumptions and disregards at the end of the option clause did not overcome the weight of its opening words which indicated that the option price was to be determined by its full market value, taking full account of its full potential, if any, for development.

11 Court of Appeal

Rescission

* HOOPER V OATES
(2010) PLSCS 301 – Decision given 26.11.10

Facts: In February 2008 the appellant agreed to purchase a property from the respondents for £605,000. The contract incorporated the standard conditions of sale 2003 (24th ed). The appellant paid a 5% deposit but under special condition 6 the full 10% deposit was payable if completion did not take place by 30.06.08. After the appellant failed to complete by 4pm on that day the respondents' conveyancer served a notice to complete by fax. This became effective the following day which meant that the period of 10 working days for completion under the notice expired on 15.07.08. On 14.07.08 the respondents' conveyancer served a formal rescission notice which required payment of the balance of the 10% deposit and a completed form UN2 to remove the appellant's unilateral notice in respect of the contract. The appellant agreed to send a completed form UN2 to the Land Registry but disputed his liability to pay any more over and above the 5% deposit already paid.

Point of dispute: Whether the appellant's appeal would be allowed against the recorder's ruling that the rescission notice was valid, the 5% deposit was forfeited and the remaining 5% was payable. The recorder had held that the rescission notice did not amount to an abandonment of the contract and its premature service had not affected the appellant who could not, therefore, accept it as forfeiting the contract. Alternatively, the appellant had, in fact, affirmed the contract by returning the form UN2 to the Land Registry.

Held: The appeal was dismissed. In determining whether a contract had been repudiated, the test was whether, from the perspective of a reasonable person in the position of the innocent party, the contract-breaker had clearly shown an intention to abandon and refuse to perform the contract. The situation on 14/15 July from the perspective of a reasonable person in the appellant's position, who understood the terms of the contract, therefore had to be examined. It should have been obvious that the respondents had intended to perform the contract by invoking the contractual machinery to determine it, but had made mistakes in terms of the timing of their notice. If the appellant had been ready, willing and able to buy the property the respondents would have sold it to him. A reasonable person in the appellant's position could not have regarded the 14.07.08 notice as showing an intention not to perform the contract.

TORT

12 High Court

Surveyor's negligence – breach of duty of care

* SCULLION V BANK OF SCOTLAND (T/A COLLEYS)
(2010) PLSCS 256 – Decision given 08.10.10

Facts: S, the claimant, purchased a buy-to-let flat from a developer in 2002. The purchase price was £353,000 and S applied for a loan from a mortgage provider (M) in the sum of £283,000. C, the defendant, was a firm of surveyors instructed to value the property. It assessed its open market value at £353,000 and the achievable rent at £2,000 pcm. S's monthly mortgage payments were £1,440. In fact, after completion, the flat yielded only half of C's predicted monthly rental and in 2006 he sold it for £270,000. S sought damages for the loss he had suffered as a result of C's alleged over-valuations and the court held that C had acted negligently in overstating both the capital value of the flat and its achievable rent. Realistic figures would have been between £270,000 and £330,000 for the former, and between £1,100 and £1,350 pcm for the latter.

Point of dispute: At the adjourned hearing on quantum of damages, whether S's claim for damages in the sum of £30,000 to reflect the fall in value of the flat between the date when he purchased it and the date on which it was sold would be allowed.

Held: S's claim was allowed in part. He could not recover compensation for any fall in value of the flat caused by changes in market conditions between the dates of purchase and sale. However, he was entitled to recover damages for the losses he suffered as a result of being unable to let out the flat at a rent that would provide him with enough income to cover his mortgage repayments. C should have known that it was a condition of M's mortgage offer that the estimated rent should exceed the payments due under the mortgage by an adequate margin. The only losses for which S was entitled to recover damages against C were those that flowed from the negligent overstatement of the anticipated rent. C was ordered to pay £72,234.54 plus interest at the rate of 6%.

13 High Court

Possession order for trespass

* SCHOOL OF ORIENTAL AND AFRICAN STUDIES V PERSONS UNKNOWN
(2010) PLSCS 303 – Decision given 25.11.10

Facts: SOAS operated from a campus under a 98 year lease from the University of London from May 1993. Only persons who had permission to do so from SOAS had permission to enter the land, and students had permission to access it for educational purposes.

Point of dispute: Whether SOAS should be granted a possession order against a group of students who had occupied one of the principal buildings on the campus to protest against the coalition government's educational spending plans. SOAS argued that it was seeking to exercise its property rights to occupy its own premises and to prevent unlawful trespassing and that the defendant students were trespassers since they had no right or licence to occupy the building to the exclusion of SOAS, nor to sleep there or control access to the buildings. The defendants argued that their rights under Articles 10 (freedom of expression) and 11 (freedom of peaceful assembly and association with others) of the European Convention on Human Rights had been infringed.

Held: SOAS's application was granted. Property rights under Article 1 were also important and Article 10 did not provide a general freedom to exercise the right of freedom of expression on private land. This would only be allowed in exceptional circumstances. Similarly, Article 11 could not be invoked to override SOAS's property rights. As the leasehold owner SOAS had a right to immediate possession and the students' rights to use the property did not extend to a sit-in which meant that SOAS could not exercise its rights of occupation. An interim possession order over the whole campus was granted.

HOUSING

14 Homes and Communities Agency Bulletin

Monthly Housing Market Bulletin – 29 November 2010

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

- the last few months have seen house prices starting to fall slightly. Supply has increased since many vendors have returned to the market in response to previously rising prices while demand has fallen back due to concerns about the economy and the continuing difficulties in obtaining mortgages
- generally, the housing market has been healthier in the south than in the north and mortgage lending is less than a year ago
- UKGDP increased by 0.8% in Q3 2010. Inflation remains above target and the Bank of England believes that this will continue in 2011
- there were 25,870 housing starts in England in Q3 2010 on a seasonally adjusted basis, 9% less than during the previous quarter
- housebuilders continue to remain cautious concentrating their efforts on former owner occupiers and focussing on profits rather than volume

http://www.homesandcommunities.co.uk/public/documents/MonthlyHousingBulletinNov10.pdf

15 CLG Publication

Housing Stock, England – Dwelling Stock estimates, England, 2010

The latest England Dwelling Stock estimates statistics produced by the Department for Communities and Local Government were released on Tuesday 30 November 2010.

The latest statistics report on dwelling stock in England as at 31 March 2010. Key points from the latest release are:

- there were an estimated 22,693,000 dwellings in England as at 31 March 2009, an increase of 0.57 per cent on the previous year
- in 2010, the region with the largest dwelling stock was the South East, with 3,661,000 homes. This was followed by London (3,300,000) and the North West (3,103,000). The region with the smallest dwelling stock was the North East, with 1,160,000 homes

http://www.communities.gov.uk/publications/corporate/statistics/housingstock2010

16 CLG Statistical Publication

House Price Index – September 2010

These statistics were produced on 16.11.10 and include data based on mortgage completions during the month of September 2010. The key points from the release are as follows:

- in September UK house prices increased by 6.1% over the year but they fell by 0.8% over the month (seasonally adjusted);
- the average mix-adjusted UK house price was £211,815 in September (not seasonally adjusted);
- average UK house prices were 0.7% lower over the quarter to September 2010 compared to a quarterly increase of 1.6% in June (seasonally adjusted);
- average prices increased over the year in England (6.5%), Scotland (1.4%) and Wales (8.8%) but they fell in Northern Ireland (-7.6%);
- prices paid by first time buyers were 4.6% higher on average than a year earlier, whilst prices paid by former owner occupiers increased by 6.7%; and
- prices paid for new properties were 5.6% higher on average than a year earlier, whilst prices for pre-owned dwellings increased by 6.2%.

http://www.communities.gov.uk/publications/corporate/statistics/hpi092010

17 CLG Publication

House Building – September Quarter 2010 – England

Key points from the latest release, published on 18.11.10, are:

- there were 25,870 seasonally adjusted house building starts in England in the September quarter of 2010, 9% lower than in the previous quarter but 67% above the trough in the March quarter 2009, and 48% below the peak in the March quarter of 2007
- private enterprise housing starts (seasonally adjusted) were 7% lower than in the June quarter of 2010. By comparison starts by housing associations were 14% lower over the same period
- housing completions in England (seasonally adjusted) were slightly lower this quarter, down from 26,600 in the June quarter 2010 to 26,470 in the September quarter 2010. This compares to a 1% rise between the March 2010 and the June 2010 quarters
- there were 4% more private enterprise housing completions in the September 2010 quarter than in the June 2010 quarter. By comparison, completions by housing associations fell by 16% over the same period
- annual housing starts reached 102,560 in the 12 months to September 2010, up by 40% compared with the 12 months to September 2009. Annual housing completions in England totalled 107,460 in the 12 months to September 2010, 13% lower than the 12 months to September 2009

http://www.communities.gov.uk/publications/corporate/statistics/housebuildingq32010

18 CLG Statistical Publication

Housing and Planning Statistics 2010

The latest annual volume of Housing and Planning Statistics for 2010 was released on 02.12.10. It covers all aspects of housing and planning in England. Key figures include the following:

- in 2008-09 there were 21.5 million households in England of which 14.6 were owner-occupiers, 3.8 million were social renters and 3.1 were private renters
- new additions to stock (new build plus conversions and change of use, less demolitions) rose from 132,000 net additions per annum in 2000-01 to a peak of 207,370 in 2007-08 before falling to 128,680 in 2009-10
- between 2008 and 2009 new build completions decreased by 17% from 143,000 to 118,000
- during 2009 in England, the lower quartile house price was 6.28 times the lower quartile full-time individual earnings
- the number of households in England is projected to rise by 5.8 million from 2008-2033, an increase of 232,000 per year on average, reaching 27.5 million in 2033
- in 2009 it is provisionally estimated that 80% of dwellings (including conversions) were built on previously-developed land, unchanged from 2008

http://www.communities.gov.uk/publications/corporate/statistics/housingplanningstatistics2010

19 CLG Research Report

Estimating housing need

This report follows a study commissioned by the Department for Communities and Local Government in August 2008 with the aim of developing a statistical model for estimating current and future housing need at both the national and regional level. The research assesses and forecasts housing need in England, in terms of a range of housing outcomes including overcrowding, homelessness and unsuitable accommodation.

http://www.communities.gov.uk/publications/housing/estimatinghousingneed

TAXATION

20 Administrative Court

Council tax liability – whether house in multiple occupation

*R (ON THE APPLICATION OF GOREMSANDU) V HARROW LONDON BOROUGH COUNCIL
(2010) 45 EG 94 – Decision given 26.07.10

Facts: In 1999 G let a bungalow on an assured shorthold tenancy to a group of four tenants on a furnished basis. The tenants did not want to use the furniture and G agreed to store it in the conservatory. Following successive tenancies a new one was granted to only three of the tenants in January 2002, the fourth person remaining in occupation with G's permission until 2005. Although the tenancy agreements specified the total amount of rent payable, in practice each tenant paid his own share to G. The last tenancy ended in 2007. The respondent council took the view that the storage of furniture rendered the bungalow a house in multiple occupation (HMO) during the period of the tenancies and that the inhabitants had a licence to occupy only part of the dwelling. Accordingly, the council concluded that G, the appellant, was liable for outstanding council tax of over £11,000.

Point of dispute: Whether G's appeal would be allowed against the decision of the valuation tribunal which found that the bungalow had been an HMO by virtue of: (i) the furniture storage arrangements; (ii) the arrangement whereby each tenant paid for their rent separately; and (iii) the presence in the house of a person who was not a tenant.

Held: G's appeal was allowed.

- The conservatory remained part of the premises demised to the tenants who were paying rent for the items stored in it, even though they were not using them. Since the tenants were entitled to use the whole house, including the conservatory, it was not an HMO within the definition in Class C of reg 2 of the Council Tax (Liability for Owners) Regulations 1992.
- The arrangements for separate rent payments were for convenience and did not render the property an HMO within the second limb of Class C. These did not give rise to a licence arrangement whereby the tenants occupied part only of the dwelling. They were jointly liable for the entire rent under the lease.
- The bungalow did not become an HMO by virtue of the fourth person's continued occupation after 2002.
- G was not liable for council tax during the relevant period.

CONSTRUCTION

21 CLG Statistical Publication

Code for Sustainable Homes: September Quarter 2010

These latest official statistics on the Code for Sustainable Homes and Energy Performance of Buildings released on 19.11.10 show the number of Code for Sustainable Homes dwellings that have been certified to the standards set out in the Code Technical Guide, and the average efficiency (SAP rating) of new homes which is based on the national Energy Performance Certificate register. The following key findings are reported:

- there were 12,876 post construction stage certificates and 36,099 design stage certificates issued up to and including September 2010
- 11% of homes with post construction certificates and 22% of those with design stage certificates have been built for the private sector, the remainder were built for the public sector
- the majority of certificates issued since April 2007 at design stage (87%) and at post construction stage (88%) have been awarded at Code level 3
- the average SAP rating of new homes in England was 79.3 and in Wales 79.4 for the quarter ending September 2010
- a summary document recording the changes between the May 2009 version of the Code for Sustainable Homes Technical Guidance and the new 2010 version has also been published

http://www.communities.gov.uk/publications/corporate/statistics/codesustainablesapq32010

http://www.communities.gov.uk/publications/planningandbuilding/codeguidesummary2010

22 CLG Publication

Making better use of energy performance certificates and data – Summary of responses

The publication analyses the responses to the consultation 'Making better use of Energy Performance Certificates and data' which closed on 25 May 2010. The proposals in the consultation were as follows:

- extend access to energy performance data;
- require property adverts to show the energy performance rating;
- require energy performance certificates for houses in multiple occupation;
- require energy performance certificates iforn holiday homes;
- extend display of energy certificates to commercial buildings;
- make the lodging of air-conditioning reports on the England and Wales non-domestic energy performance certificate register mandatory; and
- clarify when energy performance certificates are required for sale or renting out of domestic and non-domestic properties.

http://www.communities.gov.uk/documents/planningandbuilding/pdf/37907201.pdf

ENVIRONMENT

23 Defra Consultation

Future funding for flood and coastal erosion risk management: Consultation on the future Capital Grant-in-Aid allocation process in England

Deadline for Comments: 16.02.11

This consultation invites views on reforms to the way in which capital grant-in-aid is allocated to projects in England in order to manage the risk of flooding and coastal erosion. Under the current funding system the costs of risk management are almost entirely borne by the taxpayer which limits how much can be achieved, leads to potential inequity in the system and the extent to which local communities can influence priorities is more limited. Under the proposed new system national budgets would no longer be focussed on managing risk, but instead they would pay for a share of the ultimate benefits delivered once the risk management outcomes have been achieved. Where the benefits and outcomes of a project outweigh its costs it may remain fully-funded by the Government. In other cases schemes would proceed only if costs can be reduced or sufficient other funding found. Those most at risk and living in deprived areas would continue to be the focus for Government support.

http://www.defra.gov.uk/corporate/consult/flood-coastal-erosion/index.htm

ENERGY

24 CLG Report

Focus on behaviour change – reducing energy demand in homes

This report describes the findings of an expert workshop that reviewed a theoretical framework on how the behaviour of households can be changed to reduce energy use and emissions of CO_2, focussing on means, motive and opportunity.

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

GENERAL

25 CABE Publication

Community-led spaces: A guide for local authorities and community groups

This is a guide to the issues involved in transferring ownership and management of public space from local authorities to community groups, but it is also relevant to other public bodies which might be considering transferring their spaces. It is based on lessons learned from a number of case studies across England. Many neighbourhood groups already influence how their local spaces are managed and much hands-on support is provided through volunteering. Community groups can become more actively involved, either by managing spaces themselves, or by licensing or leasing the space from the local authority and taking ownership of it for the benefit of the community; according to a recent local authority survey carried out in 2009 the number of such transfers is rising.

http://www.cabe.org.uk/publications/community-led-spaces

26 CABE Report

Supermarket-led development: asset or liability?

Supermarkets are often the catalyst for creating large parts of towns and cities as new stores are invariably built alongside a mix of housing, sports facilities, shopping streets or schools. Many people have concerns about the numbers of independent retailers who are put out of business once a supermarket arrives in a town, and very often a supermarket development can consist of a large plain building with a car park in the middle of a town which undermines regeneration of the town centre, local character and any sense of place, while at the same time compounding traffic problems. In this report CABE has reviewed 30 major supermarket schemes and examines how local planning authorities can work with developers to create schemes which are commercially viable and enhance the place in which they are built.

http://www.cabe.org.uk/publications/supermarket-led-development

27 RICS Report

RICS Rural Vision

The Rural Vision represents the views and priorities of RICS members involved in a wide range of rural policy and practice in the UK. This overview document covers the breadth of members' work in all aspects of land and property management in rural areas. The Rural Vision document explains the key areas of RICS policy work in 2011/12 under its overall objective of supporting a vibrant and sustainable land and property sector.

http://www.rics.org/site/scripts/documents_info.aspx?documentID=1133

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THE SUNDAY TIMES 100 BEST COMPANIES TO WORK FOR 2010

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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

Legal & Parliamentary

Volume 32(17) 20 December 2010

SCOTLAND

PLANNING

01 Statutory Instrument

SSI 2010/426 The Flood Risk Management (Flood Protection Schemes, Potentially Vulnerable Areas and Local Plan Districts) (Scotland) Regulations 2010

These Regulations, which come into force on 24.12.10, make provision for flood protection schemes, potentially vulnerable areas, and local plan districts under the Flood Risk Management (Scotland) Act 2009. A flood protection scheme is a scheme prepared by a local authority in accordance with s60 of the Act for the management of flood risk within the authority's area. Potentially vulnerable areas are areas identified by the Scottish Environment Protection Agency ("SEPA") in accordance with s13 of the Act where SEPA considers that significant flood risk exists or is likely to occur. Local Plan Districts are areas around potentially vulnerable areas that SEPA must identify in accordance with s13 of the Act for the purpose of preparing local flood risk management plans. Part II of the Regulations contains provisions regarding the assessment of the environmental effects of flood protection schemes. Part III specifies the information that these schemes must include by way of maps, plans and specifications. Part IV makes further procedural provisions regarding flood protection schemes and Part V is concerned with Potentially Vulnerable Areas and Local Plan Districts.

http://www.legislation.gov.uk/ssi/2010/426/pdfs/ssi_20100426_en.pdf

02 Statutory Instrument

SSI 2010/432 The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010

These Regulations, which come into force on 01.02.11, make provision in connection with applications for the modification and discharge of planning obligations entered into under s75 of the Town and Country Planning (Scotland) Act 1997. The Regulations deal with how an application is to be made, timing, notification procedures, required information and appeals.

http://www.legislation.gov.uk/ssi/2010/432/pdfs/ssi_20100432_en.pdf

03 Statutory Instrument

SSI 2010/433 The Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010

These Regulations come into force on 01.02.11 and make provision in connection with applications for the modification and discharge of obligations entered into under good neighbour agreements under s75D of the Town and Country Planning (Scotland) Act 1997 and related appeals.

http://www.legislation.gov.uk/ssi/2010/433/pdfs/ssi_20100433_en.pdf

04 Statutory Instrument

SSI 2010/434 The Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Regulations 2010

These Regulations, which come into force on 01.02.11 and replace the 1975 Regulations, provide for the making of new tree preservation orders under s160 of the Town and Country Planning (Scotland) Act 1997.

http://www.legislation.gov.uk/ssi/2010/434/pdfs/ssi_20100434_en.pdf

RATING

05 Statutory Instrument

SSI 2010/440 The Non-Domestic Rates (Levying) (Scotland) (No 2) Regulations 2010

These regulations, which come into force on 01.04.11, make provision for the amount payable in certain circumstances as non-domestic rates in respect of non-domestic subjects in Scotland for the financial year 2011-12. Non-domestic rates for subjects not covered by these regulations, or by the Non-Domestic Rates (Levying) (Scotland) (No 3) Regulations 2010 ("the No 3 Regulations") areis fixed by Order under the Local Government Act 1975. Reg 3 provides for the general reduction in rates for a ratepayer of non-domestic subjects with a rateable value of £18,000 or less, the reduction being on a sliding scale of between 25% and 100%. Reg 4 provides a formula for the additional amount payable as rates for lands and heritages with a rateable value exceeding £35,000, other than those to which reg 3 of the No 3 Regulations 2010 applies. Under the Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Regulations 2010 a reduction in rates is available for lands and heritages used solely for the generation of renewable heat or power (or both). Reg 5 removes a limitation in those regulations, that heat or power produced from renewable sources by a combined heat and power system only qualifies for relief if the system has an electrical capacity of 50 kilowatts or less.

http://www.legislation.gov.uk/ssi/2010/440/pdfs/ssi_20100440_en.pdf

06 Statutory Instrument

SSI 2010/441 The Non-Domestic Rates (Levying) (Scotland) (No 3) Regulations 2010

These regulations, which come into force on 01.04.11, make provision for the amount payable in certain circumstances as non-domestic rates in respect of non-domestic subjects in Scotland. They apply only to the financial year 2011-12 and the non-domestic rate for subjects not covered by these regulations or the No 2 Regulations (see item 05 above) is fixed by Order made under the Local Government (Scotland) Act 1975. Reg 3 provides a formula for additional rates to be paid on lands and heritages used as shops which have a rateable value over £750,000 with five bands.

http://www.legislation.gov.uk/ssi/2010/441/pdfs/ssi_20100441_en.pdf

HOUSING

07 Statutory Instrument

SSI 2010/436 The Housing (Scotland) Act 2006 (Commencement No 9) Order 2010

This Order brings into force on 21.12.10 the provisions of Part 4 of the Housing (Scotland) Act 2006, which makes provision in relation to tenancy deposits.

http://www.legislation.gov.uk/ssi/2010/436/pdfs/ssi_20100436_en.pdf

08 Scottish Government Publication

Scottish House Condition Survey: Key Findings for 2009

The SHCS is the only national survey of housing and households undertaken in Scotland. It combines both an interview with occupants and a physical inspection of dwellings to build up a picture of Scotland's occupied housing stock covering all types of households and dwellings across the entire country – whether owned or rented, flats or houses. This is the sixth 'Key Findings' report since the SHCS changed to a continuous format in 2003.

http://www.scotland.gov.uk/Resource/Doc/997/0108172.pdf

ENERGY

09 Scottish Government Consultation

Securing the Benefits of Scotland's Next Energy Revolution

Deadline for comments: 18.02.11

This consultation is concerned with proposals to ensure that Scotland and its local communities benefit from renewable and low carbon energy developments. It is now known that Scotland's low carbon energy resources – wind energy, wave energy, tidal energy and carbon capture and storage (CSS) are of European significance. The Scottish Government is anxious to ensure that development of these renewables benefits Scotland as a nation, helping it to meet climate change targets, to generate substantial new economic activity, jobs, prosperity and a place in emerging global markets and it is committed to the principle that the people of Scotland should see a return on the exploitation of its natural resources. The bodies involved are the Scottish Government, local authorities and, as manager of the seabed, the Crown Estate Commissioners. It is important that the correct structures are put in place now to ensure that Scotland receives a lasting legacy from exploitation of its natural resources. This consultation seeks views on the following questions:

- In what ways can the legal framework within which the Crown Estate Commissioners operate, be reformed to ensure greater accountability for the management of the Crown Estate in Scotland to the people and government of Scotland?
- How can Scotland benefit fairly from the opportunities which will be created by the development of its renewable and low carbon energy sources?
- How can local communities be enabled to enjoy substantial, long-term and tangible returns?

http://www.scotland.gov.uk/Publications/2010/11/26094907/0

NORTHERN IRELAND

LOCAL GOVERNMENT

10 Department of the Environment Consultation Paper

Local Government Reform – Consultation on Policy Proposals

Deadline for Comments: 11.03.11

This consultation seeks views on proposals aimed at modernising and strengthening local democracy. The paper sets out a wide range of measures on the future shape of local government and includes proposals for the introduction of:

- a new governance framework to provide for efficient, fair and transparent decision-making across local government;
- a new ethical standards regime and mandatory Code of Conduct to ensure the highest standards of behaviour are maintained;
- a new community planning process together with a power of well-being;
- a new regime to support improvement in how councils deliver services to their ratepayers; and
- a Partnership Panel to formalise the relationships between the Executive and district councils and provide a forum for the collective consideration of strategic issues.

http://www.planningni.gov.uk/index/news/news_consultation/common_policy__lg-consultation.htm

PLANNING

11 NI Planning Policy Statement

NI Planning Policy Statement 4 : Planning and Economic Development

This PPS sets out the Department of the Environment's revised planning policies for economic development uses and indicates how growth associated with such uses can be accommodated and promoted in development plans. It seeks to facilitate and accommodate economic growth in ways compatible with social and environmental objectives and sustainable development.

http://www.planningni.gov.uk/index/policy/policy_publications/planning_statements/pps4-planning-and-economic-development.htm

12 Draft Planning Policy Statement

NI PPS16: Tourism

Deadline for Comments: 25.03.11

This statement sets out the Department of the Environment's planning policy for tourism development and for the safeguarding of tourism assets. It seeks to facilitate economic growth and social well-being through tourism in ways which are sustainable and compatible with environmental welfare and the conservation of important environmental assets and embodies the Government's commitment to sustainable development and to the conservation of biodiversity. When issued in final form, the policies of this Statement will supersede tourism Policies SP10 and TOU 1 to TOU 4 of the Planning Strategy for Rural Northern Ireland (PSRNI), policy CTY of PPS21 as it relates to tourism development, and the tourism policies of PSRNI. They will also supersede Coastal Policies CO 5, 6 and 7 of PSRNI and those elements of the remaining coastal policies insofar as they relate to tourism development or the protection of tourism assets from inappropriate development.

http://www.northernireland.gov.uk/draftpps16.pdf

CONSTRUCTION

13 NISR 2010/382 The Building (Amendment No. 2) Regulations (Northern Ireland) 2010

These regulations, which come into force on 31.12.10, contain various amendments to the Building Regulations (Northern Ireland) 2000. They do not apply to completed building work or to plans and notices deposited with a district council before these regulations come into operation.

http://www.legislation.gov.uk/nisr/2010/382/pdfs/nisr_20100382_en.pdf