EVEBRIEF

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EDITORIAL

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Editor

One of the most litigious aspects of planning surrounds the operation of the environmental impact assessment ("EIA") regime. It has proved to be a particularly fertile ground for claimants and, for the developer, the consequences of a successful judicial review can be dramatic. The law is currently found in the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, which implement EU Council Directive 85/337/EEC. To some, compliance with the requirements of the Directive and the domestic regulations has become akin to a legal obstacle course, and the courts have taken the view in recent years that a breach of the Directive requires nothing less than the nullifying of any action based on it. Thus any established breach of the EIA process ought to result in the planning permission being quashed. However, at item 05 we report a recent case which suggests that the courts may be modifying their extreme approach to breaches of the EIA process.

At item 14, we report on the Government's limited proposals for reform of the rating system. The introduction of greater transparency and disclosure is to be welcomed but it is questionable whether the very basic, high level, rental evidence that the Government suggests the VO should disclose will be sufficient to allow ratepayers to audit their assessments, especially as the properties to which the evidence relates will not be identified.

As the proposals are drafted there would be no reduction in the workload required of either the VOA or ratepayers' advisers.

The arguments for and against HS2 have been well–publicised in the media and elsewhere and will no doubt continue. At items 27 to 30 we summarise the key information currently available, with links to the relevant documents.

Finally, in 2014 we will publish Evebrief in a slightly different style which we hope everyone will find easier to read on–screen, and will move to a six–weekly publication cycle with intermediate bulletins on any matters of particular importance. We would welcome your views on whether you find this to be an improvement on the present format. In the meantime, we wish all our readers a happy and peaceful Christmas and New Year.

Tony Chase

GERALDEVE

LANDLORD & TENANT

01 Upper Tribunal Lands Chamber

Right to manage – death of one lessee before RTM company incorporated – whether notice of invitation to participate and notice of claim needed to be served on deceased lessee's personal representatives

**ASSETHOLD LTD V 7 SUNNY GARDENS ROAD RTM CO LTD (2013) PLSCS 259 – Decision given 15.10.13

Facts: The lessees of three flats in a converted house agreed to form a company ("the RTM company") in order to acquire the right to manage the building under Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002 with each of them becoming a director and shareholder. Before the RTM company was incorporated one of the lessees died, but she had already signed all the paperwork relating to the incorporation and her name continued to appear on its register of members. A disputed the RTM company's claim to acquire the right to manage and the company applied to the Leasehold Valuation Tribunal (LVT) for determination of the issue under s84(3) of the 2002 Act.

Point of dispute: Whether to allow A's appeal against the LVT's determination that the RTM company was entitled to acquire the right to manage. The LVT found that the deceased lessee continued to be a qualifying tenant for the purposes of the legislation for so long as she remained registered as the proprietor of the flat and that while her name continued to appear on the register of the RTM company's register of members it was unnecessary to serve a notice inviting participation or a claim notice on her personal representatives.

Held: The appeal was allowed.

i. On the death of the deceased lessee the leasehold interest in her flat passed to the executors of her will, if she had one, or otherwise to the Public Trustee. A transfer on the death of an individual proprietor was excepted from the general rule that registrable dispositions did not operate at law until registration was complete.

ii. The qualifying tenants of the deceased's flat at the relevant time were her personal representatives. The deceased was never a member of the RTM company, as membership was conditional on retaining the status of qualifying tenant.

iii. The deceased's personal representatives were qualifying tenants but not members of the RTM company so they should been served with a notice of invitation to participate (s78 of the 2002 Act) and a copy of the claim notice (s79).

iv. It was not appropriate in this case to remit the case to the LVT to determine whether the RTM company's failure had caused any prejudice. The RTM company should start again with a new notice inviting participation and a new notice of claim.

02 Upper Tribunal: Lands Chamber

Service charges – s20 Landlord and Tenant Act 1985 – whether cost of additional works recoverable

*SOUTHERN LAND SECURITIES LTD V HODGE (2013) PLSCS 280 – Decision given 12.11.13

Facts: H was the long lessee of one of four flats in a terraced house, the freehold of which was owned by SLS. In October 2008, the managing agent served a stage 1 consultation notice on the lessees of each flat, pursuant to s20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 notifying them of SLS's intention to carrying out "external repairs and redecorations". The agent notified the lessees that the cost would be £37,553 plus VAT but the lessees were later notified that additional works were required at a cost of £5,500. However, as by then the negotiated price for the original works had come down the overall price was less than the original tender. In February 2010, the contractor submitted an invoice in the sum of £7,735 plus VAT for the additional works as more work had had to be done, this having been agreed with the landlord's surveyor.

Point of dispute: Whether to allow SLS's appeal against the findings of the Leasehold Valuation Tribunal (LVT) that:

i. the October 2008 notice was invalid;

ii. in any event, the additional works as actually carried out did not fall within the ambit of "external repairs and redecorations" contemplated in the original notice so that there should have been a second round of consultation in respect of them; and

iii. even if this was incorrect £7,735 was still an unreasonable sum for the additional works and only £1,510 was recoverable in respect of them.

Held: The appeal was allowed.

i. It was not necessary to address the validity of the October 2008 notice since H was content to continue on the basis that it was valid. The LVT should not have raised an issue that had not been raised by either of the parties.

ii. The additional works were not properly within the ambit of the October 2008 stage 1 notice since the words "external repairs and redecoration" did not sufficiently describe them. Nothing in the original works was dependent on the additional works being done and there was no evidence that the additional works were an unexpected item of repair that could not have been foreseen at the time when the October 2008 notice was served. It could not now be argued that the additional works should be included within the external repairs as part and parcel of those works.

iii. The LVT had insufficient evidence on which to conclude that the sum charged for the additional works was excessive. The LVT's conclusion had been procedurally unfair because the parties had not had an opportunity to make observations on the knowledge or information that the LVT was using as the basis of its decision. The appeal would be allowed to that extent.

PLANNING

03 Court of Appeal

Environmental impact assessment (EIA) – planning permission granted for increased use of agricultural processing plant on premise that existing use was lawful – existing use in breach of planning control but allowed by passage of time – whether legislation permitting tolerated breach of planning control incompatible with EU law on EIA

*R (ON THE APPLICATION OF EVANS) V BASINGSTOKE AND DEANE BOROUGH COUNCIL
(2013) PLSCS 283 – Decision given 20.11.13

Facts: The interested party owned and operated a watercress farm in an AONB. Operations at the site included taking water from an aquifer at the source of a riverlet and discharging waste water back into the River Test, which was an SSSI. In October 2010, BDBC granted planning permission for development on the site. The appellant, E, objected to the development on environmental grounds and applied for judicial review of the decision to grant permission, contending, inter alia, that BDBC had failed to take enforcement action against the allegedly unlawful use of the existing buildings on the grounds that the facility should have been made the subject of an EIA assessment. BDBC considered that the existing use of the buildings on the site was immune from enforcement and thus lawful by the expiry of ten years pursuant to s171B of the Town and Country Planning Act 1990, but that in any event it was necessary to disapply s171 B under the Simmenthal principle established by the European Court of Justice in 1978.

Point of dispute: Whether E's appeal would be allowed against the ruling in the court below that s171B was a procedural rule to which the Simmenthal principle did not apply as it was not incompatible with the EIA Directive. E argued that there should be no time limit for enforcement action in respect of EIA development. In the absence of a certificate of lawful development, a landowner benefiting from the rule had no certainty that would be affected by removing the ten year immunity.

Held: The appeal was dismissed.

i. E's argument that the imposition of a time limit was incompatible with the obligations of a member state under the EIA Directive flew in the face of well–established authority.

ii. Even if time limits on taking enforcement action were not in principle incompatible with the obligations of a member state to ensure compliance with the Directive, the precise nature of time limits fell within the autonomy of a member state provided that the one in question complied with principles of equality and effectiveness. The ten year limit under s171B satisfied these requirements.

04 Administrative Court

Application to quash Sec of State's decision to grant interested party's application for planning permission for a motorway service area

*JAYTEE (RAINTON) LLP V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2013) PLSCS 275 – Decision given 29.10.13

Facts: The three claimant companies, and an interested party all sought planning permission to construct a motorway service station on a stretch of the A1 in North Yorkshire. These schemes were rivals to each other and there was also a fifth proposal for a truck stop area. At a public inquiry conducted by the Sec of State the inspector recommended that the third claimant's proposal should be accepted and he rejected the other four, but the Sec of State decided that permission should be granted to the interested party and for the truck stop proposal.

Point of dispute: Whether to allow the claimants' application to quash the Sec of State's decision. They contended, inter alia, that the reasons he had given for his decision that the first interested party's proposal was the best for that section of the A1 had been irrational, inconsistent, unreasonable and inadequate.

Held: The application was dismissed.

i. The Sec of State's assessment of the four proposals had been reasonable and clearly explained. The first interested party's application conformed with the development plan and was the most sustainable. He had weighed up all the relevant considerations and concluded that this proposal was the best of the four; his conclusions on the question of need, on the ability of the proposal to meet it and on the relative merits of the competing proposals were entirely coherent and clear. They could not be said to be irrational and in a public law challenge they were unimpeachable.

ii. The decision maker had to provide intelligible and adequate reasons on the main issues in dispute. The Sec of State's conclusions on the central issues – the need for an additional service area and the ability of each proposal to meet it – did not have to be elaborate. His reasons, read as a whole, were a straightforward explanation of the decision he reached in the light of the inspector's reports, and were intelligible and accurate.

iii. The Sec of State was entitled to exercise his judgment differently from the inspector and it was his planning judgment that mattered. He had had to decide whether planning permission should be granted for any of the proposals that were before him and, if so, for which. He had done that by applying the relevant provisions of the development plan and having regard to all material considerations.

05 Administrative Court

Application for judicial review of grant of planning permission for development of open space – whether lpa failed to consider need for an environmental impact assessment (EIA) and to place an earlier screening decision on the planning register – whether lpa failed properly to consider development plan policies

**R (ON THE APPLICATION OF GIBSON) V HARROW LONDON BOROUGH COUNCIL
(2013) PLSCS 272 – Decision given 07.11.13

Facts: A parochial church council ("the interested party") wished to raise funds by selling a 1.4 hectare redundant private sports field with planning permission for residential development (including affordable housing) and a new 0.69 ha area of public open space. One of the houses backing onto it was owned by G, who objected to the land being developed. The history of the development was tortuous. At every stage it had been vehemently opposed by local residents, including an unsuccessful attempt to register the land as a village green. There were several planning applications, the third of which was refused on appeal on a technicality relating to the planning obligation. The interested party submitted a fourth application without the defect in the planning obligation and HLBC granted planning permission. At the end of the then three month time limit, G challenged the decision.

Point of dispute: Whether G's application for judicial review of the grant of planning permission would be allowed and the planning permission quashed. G argued that:

i. HLBC had failed to screen the application. Although an EIA screening opinion had been produced in 2010 in connection with the third planning application there had not been any further consideration into whether an EIA assessment was needed when the fourth application was submitted;

ii. HLBC had failed to place the screening direction on the planning register; and

iii. HLBC had failed properly to deal with the relevant policies which should have been taken into account.

Held: The application was dismissed.

i. Despite the failure of HLBC to screen the particular housing development, the failure was not unlawful because a previous application for identical development had been screened and therefore the development had complied with Regulation 7 of the EIA Regulations.

ii. HLBC's acknowledged failure to place the earlier screening decision on the planning register in relation to the later application had caused no substantial prejudice to the claimant and so the judge refused relief, relying on the Supreme Court decision in Walton v The Scottish Ministers [2012] UKSC 44 and, in particular, the view that where there has been no significant prejudice caused to a claimant by breach of the Directive and the associated Regulations, the court retains a discretion not to quash the relevant decision.

   The development had been identified to be in the public interest, it would expand public access to open space and increase the supply of affordable homes.

iii. G's argument that HLBC had failed to properly deal with the relevant development policies was also rejected.

[Our partner, Simon Chalwin, advised the parochial church council in securing planning permission, the successful defence of an application to register the land as a village green, and during the judicial review process.]

06 Administrative Court

Judicial review of grant of planning permission – whether claimant had standing to seek judicial review as "aggrieved person" under s288 of the Town and Country Planning Act 1990

*JB TRUSTEES LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2013) PLSCS 282 – Decision given 18.11.13

Facts: The claimants, JBT, owned a strip of land just under a metre wide next to the south west boundary of the appeal site. In 2011 one of the defendants applied for outline planning permission for residential development on the appeal site. When the lpa failed to determine the application within the requisite period of time the applicant's appeal to the Sec of State was allowed.

Point of dispute: Whether JBT's application for an order quashing the inspector's decision under s288 of the Town and Country Planning Act 1990 would be allowed. The issue was whether JBT had standing under s288 as a "person aggrieved". JBT argued that it did as a person whose property rights had been harmed by an unlawful decision since, by not including a condition requiring the provision of a pedestrian link, the planning permission had devalued their property. The Sec of State contended that JBT was not a "person aggrieved" as its motive in pursuing the proceedings had been to exploit its ownership of the strip of land and use it as a ransom for the development. A "person aggrieved" had to have taken part in the appeal against the refusal of planning permission by making objections to, or representations on, the proposed development, unless they had some reasonable explanation for not having done so.

Held: The application was dismissed.

i. In the present case, the facts were unusual as JBT had originally objected to the application and had repeated its representations in the ensuing appeal, but it had withdrawn them before the appeal hearing. However, when the appeal succeeded, it had applied to the court for an order to quash the decision. In s288 a "person aggrieved" was somebody who had a particular grievance about a particular decision. The meaning of "aggrieved person" would vary according to a particular context and it was necessary to consider the particular legislation involved and the nature of the grounds on which the appellant claimed to be aggrieved.

ii. By the time the decision was made JBT's position was that it had no objection to the development. It had not demonstrated to the inspector that it had any concern for the environment or for the proper planning of the area. It was clear that JBT's purpose now was to realise a ransom value for its strip of land. Its source of grievance had no planning significance and in the particular circumstances of the case JBT was not a "person aggrieved" within s288.

07 Administrative Court

Advertisement consent

*STADIUM CAPITAL HOLDINGS (NO 2) LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2013) PLSCS 286 – Decision given 22.11.13

Facts: The first claimant owned land in North London on which an advertisement hoarding had been in position for 37 years. The second claimant was the advertiser who in 2011 had installed, at substantial cost, a large LED illuminated panel which displayed different advertisements in rotation. The hoarding had deemed consent pursuant to Regulation 6 of the Town and Country (Control of Advertisements) (England) Regulations 2007, having been used for ten years without any material increase in the extent to which, or any material alteration in the way in which, it had been so used. The 2011 change in the nature of the advertisement display did not affect the continuation of the deemed consent, but because of the capital outlay it had incurred, the advertiser would suffer severe financial detriment if it were not given a reasonable time within which to remove the hoarding.

Point of dispute: Whether an order made by an inspector appointed by the Sec of State upholding a discontinuance notice issued by the lpa requiring the claimants to discontinue the use of the site for the display of advertisements should be upheld. The lpa considered that the advertisement display caused substantial injury to the amenity of the locality. The power to serve a discontinuance notice where there is a deemed consent derives from Regulation 8 of the 2007 Regulations, which provides that a notice must specify the period within which the display or use of the site had to be discontinued. The original notice gave the minimum period of eight weeks, but this was extended by the inspector to three months. Para 82 of the Circular accompanying the Regulations sets out material considerations which lpas should take into account in deciding whether discontinuance notices would be served. These include consideration of the particular circumstances and allowing a reasonable time for discontinuing a display, particularly where discontinuance was likely to have serious financial consequences for an advertiser.

Held: The claimants' application to quash the inspector's order for discontinuance was granted. The Sec of State's decision that the notice was necessary as a result of the injury caused depended on the inspector's judgment and this had to stand. However, the inspector had ignored para 82 of the Circular – discontinuance had to take place as soon as reasonable in the circumstances. In this case longevity and lack of complaint about the advertisement was relevant being evidence of lack of public concern about injury to amenity, and financial considerations were also relevant. The inspector's decision in relation to time for compliance could not stand.

08 Administrative Court

Judicial review of grant of planning permission for residential development in AONB

*R (ON THE APPLICATION OF MEVAGISSEY PARISH COUNCIL V CORNWALL COUNCIL
[2013] EWHC 3684 (Admin) – Decision given 27.11.13

Facts: A developer applied for planning permission for a residential development on two fields within the South Coast Area of Outstanding Natural Beauty. No EIA was submitted with the application but there was an Alternative Site Assessment (ASA). All six possible sites were in the AONB and the development would have the greatest impact on the AONB. However, the site scored higher in respect of other planning considerations. The CC's senior development officer's report concluded that the adverse impact of the proposed development in an undeveloped coastal location in the AONB outweighed the provision of affordable housing and recommended that permission should be refused. The planning committee took the view that the provision of affordable housing outweighed any impact on the AONB and it voted in favour of granting planning permission.

Point of dispute: Whether the planning permission should be quashed. The claimant parish council argued that (i) CC had made its decision on a materially incorrect construction of the relevant policies in relation to the AONB; and (ii) CC had failed to give a proper summary of its reasons for the grant of permission.

Held: The application to quash the grant of planning permission was allowed.

i. The summary reasons given for the planning committee's decision to grant the application had been inadequate and the rationale behind its decision were not given. The committee had departed from the guidance relating to grants of permission for development in an AONB without reason.

ii. There was no evidence in this case that need for affordable housing amounted to exceptional circumstances. Even if it did, the CC's committee should also have demonstrated that the public interest was in favour of granting permission for the development.

iii. The words of the committee's summary grounds suggested that they had ignored the requirements of the framework and had adopted the wrong approach.

09 Statutory Instrument

SI2013/2931 The Localism Act 2011 (Commencement No. 3) Order 2013

Article 2 of this Order brings into force, insofar as it is not already in force, s122 of the Localism Act (consultation before applying for planning permission) on 17.12.13.

http://www.legislation.gov.uk/uksi/2013/2931/contents/made

10 Statutory Instrument

SI 2013/2932 The Town and Country Planning (Development Management Procedure and S62A Applications) (England) (Amendment) Order 2013

This Order, which comes into force on 17.12.13, is concerned with compulsory pre–application consultation under s61W of the Town and Country Planning Act 1990. In certain cases applicants for planning permission must consult members of the local community before the application is made and under s61W, the Sec of State may specify the description of developments to which the duty to consult applies. This Order amends the 2010 Order to provide that the pre–application consultation duty will apply to applications for planning permission in respect of any development involving an installation for the harnessing of wind power for energy production where the development involves he installation of more than two turbines or the hub height of any turbine exceeds 15 metres.

http://www.legislation.gov.uk/uksi/2013/2932/contents/made

RATING

11 Upper Tribunal (Lands Chamber)

Out–of–town retail park 4.3. miles from Leicester town centre – existing shopping centre in town centre more than doubled in size – held that opening of enlarged shopping centre reduced rental values at out–of–town centre – trading evidence accepted and RVs reduced by 10%

**GPS (GREAT BRITAIN) LIMITED AND 6 OTHERS V SAMUEL CHARLES DAVID BIRD (VO)
RA/20–26/2011 – Decision given 21.11.13

Property: Seven retail units at Fosse Park, an out-of-town retail park 4.3 miles south west of Leicester city centre occupied by high street retailers including Boots, New Look, W H Smith, River Island and BHS.

Issue: Whether the seven ratepayers' appeals against the determination of the Valuation Tribunal would be allowed. The ratepayers sought to alter the 2005 Rating List w.e.f. 4.9.08 when Highcross shopping centre in Leicester city centre opened for trade.

Held: The appeals were allowed and the ratepayers were awarded a 10% reduction in their rateable values at Fosse Park. The Tribunal accepted the trade impact evidence combined with the Leicester City Retail Capacity Study carried out in 2007, which looked at the projected impact of Highcross on Fosse Park.

Editor's Note: Gerald Eve's partner Alan Hampton pursued this appeal to the Upper Tribunal on behalf of our client, Boots. The Tribunal's decision will take effect once the question of costs has been determined. The ratepayers are seeking to recover costs from the Valuation Office Agency.

12 The Valuation Tribunal for England

Entries in 2005 Rating List following unlawful completion notices – whether entries in respect of unoccupied hereditaments could be deleted – jurisdiction of Tribunal

*MEPC BIRCHWOOD PARK ESTATES V GRACE (VO)
Appeal Numbers: 065516567431/541N05; 065516567846/541N05; 065516566284/541N05; 065516566731/541N05 – Decision given 28.05.13

Property: 303 and 304 Bridgewater Place, Birchwood Park, Warrington. The 2005 Rating List contained entries relating to two buildings which were made following the issue of completion notices. It was then established that those notices were invalid, meaning that the entries should not have been made. The subsequently occupied parts of the buildings were then properly entered into the list, but the VO contended that he no longer had power to delete the entries in respect of the unoccupied parts because more than a year had expired after the life of the 2005 List and in the absence of valid proposals neither he nor the Tribunal could delete them.

Issue: Whether the Tribunal had jurisdiction to delete the entries.

Held: Although the proposals could have been made more carefully the President was prepared to take a liberal view and the Tribunal could exercise its jurisdiction to order deletion of the entries relating to the non–occupied hereditaments. The President expressed the view that he did not think it would be right to take on overly technical view of the validity of the proposals in the circumstances of the case and he observed that the VO was seeking to immunise his invalid or unlawful entries by sheltering behind technical arguments about their validity.

13 Statutory Instrument

SI 2013/2887 The Central Rating List (England) (Amendment) (No. 2) Regulations 2013

These Regulations, which come into force on 13.12.13, amend the 2005 Central Rating List (England) Regulations which secure the central rating en bloc of certain hereditaments under s53(1) of the Local Government Finance Act 1988. The Schedule to the 2005 Regulations lists all designated persons and sets out the description of hereditaments prescribed in relation to each of them. These Regulations amend Part 12 of the Schedule which deals with long-distance pipeline hereditaments to reflect a change in ownership of a pipeline.

http://www.legislation.gov.uk/uksi/2013/2887/contents/made

14 CLG Consultation

Checking and Challenging your Rateable Value – The Government's proposals to improve transparency in the business rates valuation and formal challenge system Deadline for Comments: 03.03.14

It was announced in the Autumn Statement that the Government would consult in 2014:

"on changes to provide greater transparency over how rateable values are assessed, improve confidence in the system and allow well-founded challenges to be resolved faster, preventing backlogs building up in future."

The consultation paper was, in fact, issued on 05.12.13 with the intention of implementing the proposals as soon as October 2014. Under the current system ratepayers cannot see the rental evidence on which rateable values are based with the result that they make speculative challenges with little or no explanation of why they think that their rateable value is wrong. The government asserts that this leads to delays and businesses whose rateable values are too high have to wait for refunds. It is now proposed that:

- the VOA will have to provide limited rental information up front – an example of what this might look like is included as Appendix B;
- an IPP will need to be supported by rental evidence which shows why the ratepayer considers that the assessment is incorrect;
- the VO will have to issue a decision notice within 12 months; following which
- an appeal can, within two months, be lodged direct with the VTE.

https://www.gov.uk/government/consultations/checking–and–challenging–your–rateable–value

HOUSING

15 CLG Publication

Net supply of housing in England: 2012 to 2013

The latest housing statistics, which were released by the Government on 07.11.13, report on net supply of housing in the 2012 to 2013 financial year. Key points of the release are:

- In 2012–2013 there were 124,720 net additional dwellings, 8% fewer than the previous year; and
- 118,540 of these were new-build homes, 4,100 were additional homes resulting from conversions and 12,780 from change-of-use, while 12,060 homes were lost through demolitions.

https://www.gov.uk/government/publications/net–supply–of–housing–in–england–2012–to–2013

16 Policy Exchange report

Taxing Issues? Reducing housing demand or increasing housing supply

This paper examines the barriers to home ownership, including the pros and cons of introducing new land and property taxes and concludes that the system should not be overhauled now. Arguing that the best way of bringing down the cost of rent and home ownership and dealing with issues such as house price volatility and the wider instability that this creates is through housing supply and changes to the planning system, the report calls on policymakers to make a commitment to building 300,000 new homes every year from 2015–2020 by:

- building new garden cities; and
- encouraging councils to meet their housing targets by releasing land to local people for self design-and-build projects.

http://www.policyexchange.org.uk/publications/category/item/taxing-issues-reducing-housing-demand-or-increasing-housing-supply

17 Homes and Communities Agency (HCA) Bulletin

Housing Market Bulletin 2013 (October)

The Housing Market Bulletin provides the latest information on the housing market, the economy and housebuilding industry. The October bulletin reports that:

- average house prices continue to increase, led by the London market. According to the Office for National Statistics prices increased by 3.8% in the year to August 2013, while the Halifax reported an increase of 6.6% from September last year to September 2013;
- Land Registry data shows the number of homes sold in England and Wales was 17% greater in July 2013 than in the same period in 2012;
- the Council of Mortgage Lenders reports that the volume of lending in the third quarter of this year was 32% higher than in the same period last year, and the lending amount the highest since the third quarter of 2008;
- GDP in the UK has increased by 0.8% since the previous quarter;
- annual inflation is running at 2.7%, the same rate as August; and
- there were 2.49 million unemployed people in the UK in March–May 2013, which is 88,000 fewer than a year earlier.

http://www.homesandcommunities.co.uk/ourwork/market-context

18 CLG Statistical Release

House building in England: July to September 2013

The latest national statistics on house building in England were released on 15.08.13. Key points are as follows:

- It is estimated that seasonally adjusted housing starts in England were 32,230 in the September quarter, 8% higher than in the previous quarter;
- Seasonally adjusted completions are estimated at 28,850 during the same period, 5% higher than in the June quarter;
- Seasonally adjusted starts are now 89% above the March quarter 2009 trough, but still 34% lower than the March quarter 2007 peak, while completions are 40% below their peak in the March quarter 2007; and
- In the 12 months to September 2013 there were 117,110 housing starts, 16% more than in the previous 12 month period. Over the same period there were 107,950 housing completions – a decrease of 8% compared with the previous 12 months.

https://www.gov.uk/government/publications/house-building-in-england-july-to-september-2013

19 CLG Statistical Release

Help to Buy (equity loan) scheme and NewBuy statistics: April 2013 to September 2013

This release presents Official Statistics on the number of home purchases and the value of equity loans under the government's Help to Buy equity loan scheme, as well as the number of purchases under its NewBuy scheme. Key points are as follows:

- In the first six months (to the end of September) 5,375 properties were purchased with the support of the Help to Buy: equity loan scheme;
- The value of these loans was £208 million with the value of the properties sold under the scheme totalling £1.04 billion;
- The average price of a property bought under the scheme was £194,167 with an average equity loan of £38,703.; and
- Since its launch in March 2012, 4,450 homes have been purchased under the NewBuy Guarantee scheme.

https://www.gov.uk/government/publications/help-to-buy-equity-loan-scheme-and-newbuy-statistics-april-2013-to-september-2013

20 CLG Statistical Release

Affordable housing supply in England: 2012 to 2013

The latest statistics on gross affordable housing supply in England were released on 21.11.13. In 2012/13, 42,830 affordable homes were provided in England, 26% fewer than the 58,100 affordable homes supplied in 2011/12.

https://www.gov.uk/government/publications/affordable-housing-supply-in-england-2012-to-2013

REAL PROPERTY

21 Court of Appeal

Adverse possession

*SMART V LAMBETH LONDON BOROUGH COUNCIL
(2013) PLSCS 270 – Decision given 07.11.13

Facts: In 1971, LBC compulsorily purchased a number of derelict properties in Clapham, London SW4 with a view to demolishing them as part of a redevelopment scheme. The scheme did not happen and by the late 1970s squatters had moved in. Rather than evict them, in 1981 LLBC granted a licence to a housing association which in turn entered into an agreement with a housing co-operative to provide temporary accommodation for squatters who became members of that co-operative. The agreement provided for the grant of rights of occupation in a prescribed form. S had been the sole occupant of one of the properties since 1984 and was a member of the co-operative.

Point of dispute: Whether to allow S's appeal against the decision of the judge in the court below that he had not acquired title to the property by adverse possession. The judge found that S's occupation was with the express or implied permission of LLBC. Regularisation of the occupation of the properties was a necessary part of LLBC's scheme and until 2000 S and the other occupants had paid rent. S relied on his occupation for a period of 12 years and contended that it was adverse since he had never signed an occupation agreement in the prescribed form.

Held: The appeal was dismissed. S's possession was not adverse since he had at all material times been in possession with LLBC's consent, which could be either express or implied. For implied consent it had to be established that a reasonable person would have appreciated that the occupation was with the owner's permission. The judge was right to find that those in occupation of the properties had been there with LLBC's consent and also to find as a fact that they continued to occupy the premises thereafter with LLBC's express permission. The occupiers could not avoid the conclusion that their occupation was permissive by relying on the specific terms of the 1981 agreement. This was sufficient to answer S's claim to have been in possession for 12 years.

22 Court of Appeal

Position of boundary

**LANFEAR V CHANDLER
(2013) PLSCS 281 – Decision given 20.11.13

Facts: The appellant (C) and the respondent (L) owned adjoining residential properties on a 1970s development. L had acquired his property from the original developer while C bought hers later. C constructed a carport adjacent to her house the supports for which L alleged trespassed on his land. The question was whether the line of the boundary between the two properties followed a line of concrete edging stones that had been in place since the properties were first built, where originally there had been a line of fencing with the posts facing and sited on L's side, or whether it accorded with the "T" marks shown on a site plan that had been attached to the original 1971 conveyances. According to C, these marks indicated that the section of the boundary fence in question and the land that it occupied were intended to belong to her property, notwithstanding that the fence posts faced the other way.

Point of dispute: Whether C's appeal would be allowed against the ruling of the court below in favour of L. The judge ordered the carport to be taken down on the basis that the developer would have been unlikely to have intended to convey to the original purchasers of C's property the site of a fence whose posts faced away from it and that the position on the ground overruled any inferences to be drawn from the "T" marks on the plan. C argued that there was a presumption of law that the use of "T" marks indicated ownership of the relevant boundary feature.

Held: C's appeal was dismissed.

i. The parties' title to the disputed land depended on what had been conveyed to them or their predecessors in title in 1971. The plan attached to the conveyances was of insufficient scale or accuracy to enable the boundary dispute to be resolved by a process of measurement. The lack of clarity could be resolved by reference to extrinsic evidence. Where the balance would be struck as between relying on a conveyance and the position on the ground would depend on the facts in each case.

ii. The use of "T" marks did not raise any presumption in law as to the ownership of the relevant boundary feature. Although there was a well-established practice of using these to identify who owned a wall or a fence, whether that was determinative would depend on balancing it against the other relevant terms of the conveyance and the features of the plan, coupled with evidence of the position on the ground.

iii. Applying those principles, the judge's conclusion as to the position of the boundary had been correct. The transfer plan was an inaccurate representation of the position on the ground. The reasonable layman in 1971 would have regarded it as significant that the developer had chosen to mark the front boundary with concrete edging stones and had erected the boundary fence on L's side of the continuation of those stones, with the fence posts facing L's side. He would have been likely to conclude that both sections of the fence in question were intended to belong to the owners of L's property.

CONSTRUCTION

23 CLG Circular

New Approved Documents and new compliance guides supporting Part L: circular 04/13

This circular sets out and explains the approval and publication of:

- the new 2013 Approved Documents L1A and L2A;
- the amendments to the 2010 Approved Documents L1B and L2B;
- the new domestic building services compliance guide; and
- the new non-domestic building services compliance guide.

The changes in the approved documents and compliance guides, which provide consolidated guidance on the energy efficiency requirements of the Building Regulations 2010 and amendments made to them since then, will come into effect on 06.04.14.

https://www.gov.uk/government/publications/new-approved-documents-and-new-compliance-guides-supporting-part-l-circular-0413

24 CLG Statistical Release

Code for Sustainable Homes and Energy Performance of Buildings: Cumulative and Quarterly Data for England, Wales and Northern Ireland up to end of September 2013

These are the latest statistics on the sustainable homes code and average energy efficiency (SAP ratings) for homes in England, Wales and Northern Ireland, released on 28.11.13. They show the number of dwellings that have been certified to the standards set out in the 2007 "Code for sustainable homes: technical guidance".

https://www.gov.uk/government/publications/code-for-sustainable-homes-and-energy-performance-of-buildings-data-september-2013

ENERGY

25 British Council of Offices Research Publication (accessible to BCO members only)

Britain's Energy Gap

This paper analyses the likelihood of the number of brownouts (short electricity voltage reduction) and blackouts (controlled electricity shutdowns) increasing in the UK in the future. It is estimated that in 2015–16 more than one third of businesses could be affected by a blackout because of the reduction in thermal power generation arising from the closure of a number of older power stations.

http://www.bco.org.uk/Research/Publications/Britains_Energy_Gap.aspx

MINERALS

26 Mineral Products Association (MPA) Report

2nd MPA Annual Mineral Planning Survey – 2012

This survey concludes that there is a danger that the current plan-led system will fail to provide local plans which identify sufficient land for future mineral extraction, increasing the risk that there may not be adequate supplies of material when these are needed to support economic recovery. Permitted reserves of sand and gravel are found to be in serious decline, with planning authorities reducing potential future supplies rather than adopting robust mineral plans and not indicating to operators where their planning applications are likely to be successful.

http://www.mineralproducts.org/13–release32.htm

TRANSPORT

27 Department for Transport publication

The Strategic Case for HS2

This document sets out why the Government has reached the conclusion that HS2 is the best means of tackling the challenge of England's increasingly overcrowded transport network. It aims to demonstrate how HS2 will transform inter-city travel, improve commuter services into London and other major cities and increase the amount of freight carried by rail, while at the same time supporting economic growth and making a major contribution to rebalancing the economy between the regions.

https://www.gov.uk/government/publications/hs2-strategic-case

28 Bill of Parliament

HS2 – Hybrid Bill

On 25.11.13, the Department for Transport submitted a hybrid Bill to Parliament. The High Speed Rail (London–West Midlands) Bill will grant the powers necessary to construct and operate Phase One of HS2 between London and the West Midlands.

The Government has set up a dedicated web section to the Bill and associated documents, which can be found at the link below.

http://www.hs2.org.uk/hs2-phase-one-hybrid-bill/hybrid-bill

29 Consultation

HS2 Phase One environmental statement
Deadline for Comments: 24.01.14

Comments are invited on the environmental statement which covers the environmental effects of the building and operation of Phase One of HS2 and the measures that could be used to manage and reduce any negative effects. A number of documents associated with this consultation have been published all of which may be found at the link below:

- Guide to the environmental statement;
- Non-technical summary and glossary;
- Volume 1: introduction and background information;
- Volume 2: area reports;
- Volume 3: route wide effects;
- Volume 4: off-route effects;
- Volume 5: supporting information and planning;
- Volume 5: environmental topic reports and map books;
- Consultation; and
- Announcements.

https://www.gov.uk/government/collections/hs2-phase-one-environmental-statement-documents

30 KPMG report

Potential impact of HS2 on the economy

This report was commissioned by HS2 Ltd. It concludes that HS2 could boost the UK's economy by £15 billion per year with the regions seeing the greatest benefits. The report gives a breakdown of the potential economic benefits for each HS2 city region, with variations in the impact on particular regions depending on assumptions as to competition between regions and how sensitive businesses are to differences in costs between places. It shows, for example, that HS2 could give the Birmingham city region economy a yearly boost equivalent to 2.1 – 4.2% of the city region's GDP; for Manchester city region the figure is 0.8% – 1.7%, for Leeds city region 1.6% and for Greater London 0.5%.

http://www.hs2.org.uk/press/hs2-could-deliver-annual-%C2%A315billion-boost-economy-kpmg-analysis-finds

LONDON

31 London Assembly Government Consultation

Homes for London – the London Housing Strategy
Deadline for Comments: 14.02.14

The Mayor has published a draft revised London Housing Strategy which sets out his policies to increase the supply of well-designed housing of all tenures by 42,000 a year for 20 years – a level not seen since the 1930s – in order to meet the needs of London's growing population and in particular to support working households. Since the Mayor's last revised draft London Housing Strategy was published in December 2011, a new investment round has been launched, significant new housing powers and resources have been devolved to the Mayor and the GLA has undertaken new strategic assessments of housing need and capacity in the light of the Census results which showed unprecedented growth in London's population. This new draft Strategy takes into account these changes along with the responses received to the 2011 version.

http://www.london.gov.uk/priorities/regeneration/high-streets-new/boroughpriorities/housing-land/consultations/draft-london-housing-strategy

GENERAL

32 Statutory Instrument

SI 2013/2878 The Growth and Infrastructure Act 2013 (Commencement No. 5 and Transitional and Saving Provisions) Order 2013

This Order brought into force on 09.12.13 s5 of the Growth and Infrastructure Act 2013. Section 5 removes the Sec of State's powers to direct that a local development order be submitted for approval before adoption, to reject an order or part of one, and to direct that a local development order be modified before it is adopted. A new s61B(7A) is inserted into the 1990 Act which requires lpas to submit a copy of a local development order to the Sec of State after it is adopted.

http://www.legislation.gov.uk/uksi/2013/2878/contents/made

33 Statutory Instrument

SI 2013/2879 The Growth and Infrastructure Act 2013 (Local Development Orders) (Consequential Provisions) (England) Order 2013

This Order, which also came into force on 09.12.13, makes various consequential transitional and saving provisions in connection with the commencement of s5 of the Growth and Infrastructure Act 2013.

http://www.legislation.gov.uk/uksi/2013/2879/contents/made

34 CLG Publication

The Growing Places Fund: investing in infrastructure

This fund, which is worth £730 million, aims to support and unlock a number of key infrastructure projects whose aim is to stimulate wider economic growth and create new jobs and housing. Projects being supported by the Fund include site access/clearance/ broadband and transport infrastructure, utilities, refurbishment of buildings and flood defence barriers. This publication contains information about the progress being made by local enterprise partnerships in delivering the Growing Places Fund.

https://www.gov.uk/government/publications/the-growing-places-fund-investing-in-infrastructure

35 CPRE Report

Going, going, gone? England's disappearing landscapes

This report examines the threat to England's landscapes from inappropriate development in National Parks and AONBs. The report highlights a number of specific cases and calls on the Government to take action through national planning policy and guidance.

http://www.cpre.org.uk/what-we-do/countryside/landscapes/update/item/3452-going-going-gone-englands-disappearing-landscapes

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

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Abbreviations
The following abbreviations are used in evebrief:

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

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

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

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

* Interesting but non–essential reading.

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EVEBRIEF

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SCOTLAND

GENERAL

01 Scottish Assembly Government Research

Flood disadvantage in Scotland: mapping the potential losses in well-being

This research examines the communities which are most social and spatially vulnerable to potential flood events in terms of their underlying characteristics (i.e. socio-demographic data such as age and health, spatial and physical characteristics of the neighbourhood) with its focus being on mapping flood disadvantage – socio-spatial vulnerability combined with the probability of being flooded.

http://www.scotland.gov.uk/Publications/2013/10/5328

02 Scottish Assembly Government Response

Town Centre Action Plan – the Scottish Government response

In July 2013, the External Advisory Group (EAG) undertook the National Town Centre Review which culminated in a report "Community and Enterprise in Scotland's Town Centres". This set out a vision for Scotland's town centres concentrating on community, enterprise and place. This publication is the cross-government response to EAG's report.

http://www.scotland.gov.uk/Publications/2013/11/6415

GERALDEVE

WALES

PLANNING

03 Welsh Assembly Planning Policy

Planning Policy Wales (Edition 5, November 2012)

This document contains the current land use planning policy for Wales, providing the policy framework for the effective preparation of local planning authorities' development plans. It is supplemented by 21 topic based Technical Advice Notes (TANs) while procedural guidance is contained in Welsh Office/National Assembly for Wales/ Welsh Government circulars.

http://new.wales.gov.uk/topics/planning/policy/ppw/?lang=en

HOUSING

04 Welsh Assembly Government Bill

Housing (Wales) Bill

This Bill was introduced on 18.11.13. It takes forward the proposals set out in the Housing White Paper "Homes for Wales" published in 2012. Its main purposes are, inter alia:

- to introduce a compulsory registration and licensing scheme for private rented sector landlords and letting and management agents;
- to reform homelessness law, including placing a stronger duty on local authorities to prevent homelessness and allowing them to use suitable accommodation in the private sector;
- to place a duty on local authorities to provide sites for Gypsies and Travellers where a need has been identified;
- to introduce standards for local authorities on rents, service charges and quality of accommodation; and
- to give local authorities the power to charge 50% more than the standard rate of council tax on homes that have been empty for a year or more.

http://wales.gov.uk/topics/housingandcommunity/housing/housingbill/?status=closed&lang=en

05 Welsh Assembly Government Publication

Housing Land Availability in Wales – Summary for 2012

This summary sets out the results from the 2012-based Joint Housing Land Availability Studies. It covers data on land supply, use of Brownfield/Greenfield land and sites with flood risk constraints.

http://new.wales.gov.uk/topics/planning/planningstats/housing-land-availability-in-wales/summary-for-2012/?lang=en

CONSTRUCTION

06 Statutory Instrument

WSI 2013/2730 The Building Regulations &c. (Amendment No. 3) and Domestic Fire Safety (Wales) Regulations 2013

These Regulations insert into the 2010 Building Regulations a requirement to fit automatic fire suppression systems into care homes and certain rooms for residential purposes from 30.04.14 and into dwellings (houses and flats) from 01.01.16.

http://www.legislation.gov.uk/wsi/2013/2730/contents/made

07 Welsh Assembly Government Circular

Building Regulation Circular WGC 010/2013

This circular issues an amendment slip outlining changes to Approved Documents Part L1A, L1B, L2A and L2B to clarify amendments made to the Building Regulations 2010 by Building Regulations &c. (Amendment) (Wales) Regulations 2013 (S.I. 2013/747 W.89). It also clarifies the effects of amendments to Approved Inspector Regulations and competent person self-certification schemes in Wales.

http://new.wales.gov.uk/topics/planning/buildingregs/circulars/10-2013-changes-to-approved-documents/?lang=en