EVEBRIEF

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EDITORIAL

Hilary Wescombe
Editor

To all our readers we wish a happy and prosperous New Year. In this first issue of 2014 we roll out some changes to Evebrief. We have a new look layout which we hope will be easier to read especially on portable devices. We will now be issuing Evebrief at six-weekly intervals, but keep an eye out for Evebrief Interim in which we will report any particularly important Legal or Parliamentary items that arise between editions. We are always receptive to your views on our publication so please let us know what you think.

The Courts have been busy since our last issue and we report on a number of cases. Item 11 concerns four local authorities' attempts to achieve exemption from changes to planning rules. The councils feared the changes would result in a negative impact on their local economies and encourage sub–standard and expensive housing and a lack of affordable housing. The judge agreed that the Secretary of State would have been sensible to have devised his scoring system for exemption before applications were made but ruled that this failure did not make the process unfair.

We also have some rating items and at item 17 we report the Upper Tribunal's decision in the case in which the President of the Valuation Tribunal, in his decision, criticised the Valuation Officer for making "an unattractive display of pedantry and formalism". Disappointingly, the higher court has agreed with the VO and treated the proposal in question as invalid despite the error on the proposal form being minor and despite the VO not being clear that he intended to deal with the matter in that way before the Valuation Tribunal hearing. Perhaps better use of the Statement of Case procedure for setting out the details of a case prior to VT would have avoided considerable public expense in appealing this case to the Upper Tribunal.

GERALDEVE

LANDLORD & TENANT

01 Court of Appeal

Dilapidations

*SUNLIFE EUROPE PROPERTIES LTD V TIGER ASPECT HOLDINGS LTD
(2013) PLSCS 313 – Decision given 17.12.13

Facts: The respondent was the landlord and the appellant the tenant of commercial premises in central London under 35 year full repairing leases from 1973. When the appellant vacated the premises in 2008 they were left in a very poor condition and, having carried out extensive works in order to relet them, the respondent claimed damages for breach of the repairing covenants in the leases. The judge assessed the common law measure of damages at £1.35m, finding that although some of the respondent's works went beyond what was required by the lease, the rest was recoverable as damages.

Point of dispute: Whether the appellant's appeal would be allowed against the judge's decision. The judge had found that since the cost of the necessary works was less than the diminution in value of the reversion caused by the disrepair the full cost was recoverable and not affected by the statutory cap in s18 of the Landlord and Tenant Act 1927, which would otherwise have limited the damages to the amount of the diminution in value. The appellant argued:

i. Where the respondent had done work that was different from that which the appellant would have had to do in order to comply with its covenants, the burden was on the respondent to prove that the statutory cap did not apply; and

ii. The judge had erred in using the appellant's expert's report as the template for valuation of the premises in circumstances where the expert had not been called to give evidence and the appellant had not challenged the respondent's expert's alternative figure.

Held: The appeal was dismissed.

i. The judge had been entitled to find that the amount of the diminution in value was to be inferred from the costs of repairs reasonably necessary to make good the loss caused by the appellant's breach. On the evidence it was apparent that the respondent would not have carried out any works if the appellant had left the premises in the state and condition it should have done.

ii. The fact that the appellant had not called its expert to give evidence did not prevent the judge from adopting that expert's valuation as the template for his valuation. Where a party had disclosed an expert's report any party could use that report as evidence at the trial. The equivalent valuation of the respondent's expert had been based on an erroneous assumption that a purchaser of the building would have to spend a large sum to make it lettable and in those circumstances it would have been inappropriate to use that as the headline valuation figure.

If you require advice on landlord & tenant issues, contact Graham Foster on Tel. +44 (0)20 7653 6832 gfoster@geraldeve.com

PLANNING

02 Court of Appeal

Refusal of planning permission for residential development – whether Sec of State erring in failing to consider ministerial statement on sustainable development issued after close of inquiry but before decision taken

*OXFORD DIOCESAN BOARD OF FINANCE V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2013) PLSCS 300 – Decision given 03.12.13

Facts: A developer sought planning permission for a residential development on land close to the village of Shinfield, near Reading. The lpa refused permission and the developer's appeal against that decision was dismissed by the Sec of State, on the recommendation of a planning inspector, after a public inquiry. The developer challenged that decision, arguing that the Sec of State had erred in failing to consider a ministerial statement on "Planning for Growth" which had been issued after the inquiry had closed, but before his decision had been made in the appeal. This stated that the planning system had a key role to play in the helping to rebuild Britain's economy by ensuring that *"the sustainable development needed to support economic growth is able to proceed as early as possible".*

Point of dispute: Whether the lpa's appeal would be allowed against the ruling of the judge in the court below who had allowed the developer's appeal against the refusal of permission on the grounds that the ministerial statement was a material consideration to which the Sec of State was obliged to have regard.

Held: The lpa's appeal was allowed. Taking the ministerial statement into account was just the first step and the judge should then have gone on to consider whether any of the principles contained in it would have made any difference to the Sec of State's decision.

03 Court of Appeal

Application for planning permission for residential development in green belt – whether planning inspector erring in using housing target figure in revoked regional spatial strategy instead of reference to full objectively–assessed housing needs

*HUNSTON PROPERTIES LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2013) PLSCS 307 – Decision given 12.12.13

Facts: HP applied for outline permission for a development of 116 dwellings, a care home, and other facilities on a 5ha site in St Albans within the green belt. Permission was refused and HP appealed, relying on evidence of a projected annual housing need for 688 households in St Albans over a five year period from 2013–2018. Comparing this with the number of dwellings that could be accommodated on sites identified by the lpa as deliverable, this left a shortfall of 1417 dwellings. HP argued that this shortfall amounted to very special circumstances sufficient to justify its development in the green belt. The inspector rejected this argument, finding that the appropriate housing target was 360 per annum, this figure being the minimum annual average development figure for St Albans set out in the former regional spatial strategy (RSS) for the area. The RSS had been revoked in January 2013, but the St Albans lpa had not yet identified a five year supply of deliverable sites sufficient to meet the full objectively assessed housing needs for their area, as required by the new NPPF which replaced the RSS. In the court below HP's application to quash the inspector's decision was allowed. (See Evebrief, Volume 35(13) i3) The judge held that the inspector's approach had been wrong in law and that the NPPF did not require or permit a decision maker to adopt an old constraints adjusted RSS figure, which did not even purport to reflect the full, objectively assessed needs for housing.

Point of dispute: Whether the local authority's appeal would be allowed against the lower court's ruling.

It contended that the inspector's approach was justified by the qualification to para 47 of the NPPF, to the effect that the full, objectively assessed needs for housing were to be met by local plans "so far as consistent with the policies set out in this framework".

Held: The appeal was dismissed. As no new local plan had been prepared for St Albans and the RSS had been revoked there was a policy vacuum in terms of the housing delivery target. In principle, a shortage of housing land when compared to the needs of an area was capable of amounting to very special circumstances justifying inappropriate development in the green belt. In the absence of an adopted local plan the inspector was not entitled to rely on a housing requirement figure derived from a revoked plan. The inspector had erred in adopting a constrained figure for housing need and in finding, by reference to that figure, that there was no shortfall in housing land supply in the district. Using the correct policy approach, she should have concluded that there was a shortfall since the supply fell below the objectively assessed five year requirement. However, the existence of such a shortfall would not automatically mean that very special circumstances were demonstrated – the ultimate decision would turn on a number of factors. In this case the inspector had erred by using a quantified figure for the five year housing requirement which departed from the approach in the NPPF and her decision was quashed accordingly.

04 Court of Appeal

Environmental impact assessment (EIA) not required by lpa for development, but conditions imposed in grant of planning permission regarding water quality – whether two decisions inconsistent

*R (ON THE APPLICATION OF CHAMPION) V NORTH NORFOLK DISTRICT COUNCIL (2013) PLSCS 317 – Decision given 18.12.13

Facts: The appellant, NNDC granted planning permission to the second appellant company for development of its plant on a site close to the River Wensum, which was designated as a SSSI and a special area of conservation. When arriving at this decision NNDC took the view that no EIA was required, nor an assessment under the Habitats Directive. However, the planning permission was made subject to conditions requiring the water quality in the drainage network between the site and the river to be monitored and, if necessary, restored so as to prevent harm to the SSSI. C sought judicial review of the grant of permission.

Point of dispute: Whether NNDC's appeal would be allowed against the decision of the judge in the court below who quashed the planning permission on the basis that NNDC could not rationally take the position that no EIA was required, suggesting that they had concluded there was no risk of pollutants from the plant entering the river, while the decision in relation to planning conditions suggested that they thought there was such a risk. NNDC argued it could rationally conclude that both an EIA and an appropriate assessment were not required and that planning permission should be subject to conditions.

Held: The appeal was allowed.
There was no inconsistency between the two positions adopted by NNDC as they were sequential and separate aspects of its decision making process and reasoning. NNDC could properly consider that the conditions were necessary as a precautionary measure for reassurance, without their also having to consider that without them there was a likelihood that the river would become polluted. There was nothing in the wording to suggest a likelihood of the water quality diminishing, let alone of it diminishing to such an extent that it could have a significant impact on the SSSI and SAC.

05 Court of Appeal

Lawful development certificate – whether subsequent planning permissions had effect of releasing restrictions on type of goods sold

*PEEL LAND & PROPERTY INVESTMENT PLC V HYNDBURN BOROUGH COUNCIL
(2013) PLSCS 131 – Decision given 19.12.13

Facts: The appellant, PLPI, owned a large out-of-town retail park where bulky goods were sold. Under s106 planning agreements entered into with HBC in 1995 and 2009, PLPI agreed not to sell certain goods from the units. Each agreement contained a proviso that nothing in it was to limit the right to develop any part of the site in accordance with any later planning permission. Between 2008 and 2011, PLPI obtained various planning permissions permitting building works which altered the units. None of these permissions imposed any restriction on the types of goods that could be sold from the altered units. PLPI applied to HBC for lawful development certificates to the effect that the later permissions meant that the units could be used for unrestricted A1 retail use. It contended that those permissions had granted it a "right to develop", within the meaning of the proviso to the s106 agreements, without imposing any restriction on the type of retail use, and that, consequently, the restrictions in the s106 agreements ceased to apply.

Point of dispute: Whether PLPI's appeal would be allowed against the decision of the judge in the court below who upheld HBC's decision to refuse the issue of lawful development certificates.

Held: The appeal was dismissed. The goods restrictions accepted by PLPI in the 1995 and 2009 agreements were made pursuant to HBC's planning policy of maintaining a balance between out-of-town retail shopping parks and conserving retail use in town centres. The later planning permissions were for physical alterations to the units, and no specific request for change of use had been made.

i. The judge had been entitled to conclude that the later permissions were granted for operational building works only and did not involve a material change of use.

ii. Section 75(2) and (3) of the Town and Country Planning Act 1990 did not apply so as to enable the new altered units to be used for A1 retail purposes.

iii. The later permissions did not open a new planning chapter in the history of the units in circumstances where they were only for physical alterations to improve them, with no material change from existing restricted use to unrestricted A1 use.

iv. The later permissions did not trigger the operation of the "right to develop" proviso so as to release the units from the goods use restriction in the 1995 and 2009 agreements. Those restrictions would cease to apply only if PLPI had the "right to develop" the units in a sense relevant to a material change of use.

06 Administrative Court

Challenge to grant of planning permission for development of retail site – whether Sec of State should have considered cumulative environmental impact with amusement park

*R (ON THE APPLICATION OF OLDFIELD) V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2013] All ER (D) 194 (Dec) – Decision given 12.12.13

Facts: The defendant Sec of State granted planning permission for the redevelopment of a retail site having concluded that it was not an EIA development. O sought judicial review of that decision.

Point of dispute: Whether O's application would be allowed. O argued that: (i) the Sec of State had failed to consider the cumulative effect of this development together with that of a nearby amusement park; (ii) as the amusement park would have significant environmental effects, when it was considered with the retail site, the effects were likely to be significant; and (iii) the Sec of State had failed to reach a rational decision. If the sites had been considered cumulatively he would have been bound to regard it as an EIA development and to conduct an EIA before granting planning permission.

Held: The application was dismissed.

i. The amusement park development had not been split off from consideration – it had never been part of the retail site development at all.

ii. Both developments would contribute to regeneration of the area. It had been open to the Sec of State to conclude that the significant environmental effects of the amusement park would be the free–standing consequence of that development and they were not to be considered as part of the retail site development.

iii. The issues dealt with in the Sec of State's letter were matters of planning judgment.

07 Administrative Court

Refusal of planning permission for sustainable self-sufficient dwelling – whether inspectors erring in law in exercise of planning judgment

*SCRIVENS V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2013) PLSCS 289 – Decision given 22.11.13

Facts: S sought planning permission for the erection of a number of sustainable zero-energy buildings on a site near Ashford in Kent. There was a presumption in the NPPF in favour of sustainable development. Planning applications had to be determined in accordance with the development plan unless material considerations indicated otherwise, but the plan and any decision had to reflect that presumption.

Point of dispute: Whether to grant S's applications to quash the inspectors' decisions to dismiss his appeals against the lpa's decision to refuse permission for the developments. S argued that the buildings he wanted to erect conformed to the requirements of the NPPF and the Renewed EU Sustainable Development Strategy and that, as they were consistent with the obligation to achieve sustainable development, permission should have been granted.

Held: S's applications to quash the inspectors' decisions were dismissed.

i. However sustainable it was, a development that was entirely out of place or would adversely affect a neighbouring community in economic terms could properly be refused, as could an unsightly development in the countryside that would adversely affect future generations. The inspector in the first case had been well aware that the proposed development would provide for renewable energy and support the transition to a low carbon future, but he took the view that it did not fit in with the intrinsic character and beauty of the countryside. The weight to be attached to the contravening considerations was a matter of judgment with which the court could not interfere. It was a matter of degree and the inspector had been entitled to reach the conclusion he had.

ii. The second application was an innovative design for a near–zero energy dwelling in the countryside. The inspector had properly exercised his judgment concluding that the proposal in that particular location did not meet the requisite test in the NPPF that new isolated homes in the countryside should be avoided unless there were special circumstances. The energy credentials of a development did not in themselves justify a grant of planning permission – the effect that it would have on the countryside and neighbouring communities had be taken into account.

08 Administrative Court

Planning policy – under delivery of housing

*COTSWOLD DISTRICT COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (2013) PLSCS 297 – Decision given 27.11.13

Facts: CDC sought to quash two decisions of the Sec of State to grant planning permission for residential development on two sites in Tetbury, Gloucestershire. Both sites were in AONBs and both decisions required consideration of whether CDC had demonstrated that they had a supply of land sufficient to meet their housing requirements for the next five years. The Sec of State accepted an inspector's recommendation that the housing requirement should be based on the draft RSS and, applying the principles in NPPF, then adding 20% to the RSS figures due to CDC's record of persistent under delivery of housing.

Point of dispute: Whether to allow CDC's challenge to the Sec of State's decision. CDC pointed to the Kemble decision where the inspector had not added a 20% buffer as there had not been a persistent under delivery of housing when the figures for housing requirements set out in a structure plan were considered. The question was whether the Sec of State had acted unlawfully in reaching his decisions without regard to the Kemble decision and had misinterpreted para 47 of the NPPF as to the meaning of "persistent under delivery of housing".

Held: The applications were dismissed.

i. Reference to "persistent" under delivery of housing meant a state of affairs which continued over time. The length of time was a matter of judgment for the decision maker and there had to have been a record of under delivery. In this case the claim that the Sec of State had erred in his interpretation of persistent under delivery had not been made out. It had been reasonable to consider the situation of a five year period. He was entitled to take into account, not only that there had been under delivery compared to the structure plan figures, but also that those figures had understated the actual housing requirement.

ii. A public body had to have regard to material considerations, where these were obvious, whether or not attention had been drawn to them. Generally decision makers did not have to make their own inquiries to establish whether there had been any previous, potentially relevant decisions. On the facts of this case, the Kemble decision was not so obviously a material consideration that the Sec of State should have made his own enquiries into it.

09 Administrative Court

Challenge to grant of planning permission for residential development – environmental impact assessment (EIA)

*SMYTH V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2013] EWHC 3844 (Admin) – Date of decision 09.12.13

Facts: Planning permission was granted on appeal for the construction of 65 dwellings with associated highways and parking. The inspector appointed by the Sec of State found that: (i) the proposed development was not significant in terms of the amount of agricultural land that would be taken; (ii) the lpa had not achieved its annual housing land supply requirement; and (iii) the proposed development would not cause significant harm to the character and appearance of the area. A group of local residents objected to the development.

Point of dispute: Whether the residents' application to quash the decision to grant permission would be quashed. The issues were as follows:

i. whether the Sec of State's decision to grant planning permission without first having carried out an EIA was lawful;

ii. whether the inspector's conclusion that the development would not harm nearby protected wildlife sites was lawful;

iii. whether the inspector had erred in relying on a unilateral planning obligation under s106 to pay a "conservation contribution" calculated using a one-size-fits-all formula;

iv. whether the inspector had properly construed and applied the relevant policies with respect to sustainable development, versatile land and housing land supply; and

v. whether the inspector had given adequate reasons for his decision with respect to harm to the identity of the village.

Held: The application was dismissed.

i. It was settled law that whether a proposed development was likely to have significant effects on the environment involved an exercise of judgment or opinion. The question here was whether a flawed screening opinion led to a failure to conduct an EIA. In this case the reasons in the opinion had been adequate.

ii. The inspector's conclusion that, with mitigation measures, the development would not have a significant effect on wildlife could not be faulted and he had adopted the correct approach.

iii. The inspector's approach had been reasonable and rational.

iv. The inspector had been right to apply the presumption in favour of sustainable development. The finding that the lpa had failed to achieve its annual housing requirement every year since 2001 entitled him to conclude that it had accrued a significant shortfall and to use that as a significant factor in applying the planning balance which he had later done as part of his overall balancing exercise.

v. The inspector's judgment that the proposed development would not be significantly harmful to the character and appearance of the area had been adequately explained.

10 Administrative Court

Planning permission for erection of wind turbine in high sensitivity location – whether lpa failing to take material considerations into account

*R (ON THE APPLICATION OF LANCASHIRE) V NORTHUMBERLAND COUNTY COUNCIL
(2013) PLSCS 312 – Decision Given 12.12.13

Facts: NCC, the local planning authority, granted permission for the erection of a wind turbine on the applicant's farm. It would supply electricity to his house, a holiday cottage and a caravan park and any excess energy produced would be fed back into the national grid. The turbine would be located on agricultural land close to the boundary of the Northumberland National Park in an area of landscape recognised as being sensitive to wind energy development. L, a local resident who objected to the development because of its possible impact on the surrounding landscape and ancient monuments, applied for judicial review of the decision to grant permission for it.

Point of dispute: Whether to allow L's application. He contended that the decision was unlawful because the planning officer's report to the planning committee:

i. failed to mention that he 2010 Northumberland Key Land Use Impact Study had described the landscape in the locality as one of "high sensitivity" with the assumption that it should be protected;

ii. had referred to the wrong policy in the local plan, since the application was for a wind farm designed to be connected to the national network; and

iii. wrongly applied the test of whether the development would cause substantial harm rather than harm to the ancient monuments in question.

Held: The application was dismissed.

i. The relevant part of the 2010 study was not a material consideration in this case.

ii. The appropriate policy had been addressed. This was an application for a small–scale renewable energy development designed to supply individual premises or groups of premises, not a wind farm designed to connect to the national grid. The purpose of the proposal was to supply the applicant's farmstead rather than the grid.

iii. On the facts, the limited extent to which English Heritage and the county archaeologist had been indicating that some harm would have been caused to the setting of an ancient monument could not have made any difference to the planning outcome. The intangible nature of any detriment to an ancient monument would not have outweighed the tangible carbon footprint benefits arising from the development.

11 Administrative Court

Local authorities seeking to set aside decisions refusing exemption from permitted development provisions

**R (ON THE APPLICATION OF ISLINGTON BOROUGH COUNCIL AND OTHERS) V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
(2014) PLSCS 001 – Decision given 20.12.13

Facts: The claimant local authorities sought to set aside a decision by the Sec of State to refuse their claims for exemptions from an amendment made to the 1995 GPDO by the 2013 Amendment Order. The effect of the latter was to add change of use from Class B1(a) (offices) to Class C3 (dwelling-houses) to the list of permitted developments that did not require planning permission. The claimants could have avoided the new proposed permitted development if they could demonstrate that there would be an adverse economic impact.

Point of dispute: Whether the decisions would be set aside. The claimants contended that the failure to inform them of the way in which their applications would be assessed was unfair and therefore unlawful. The approach to the assessment should have been settled in advance; nor had it been made clear that the authorities should cross–refer to planning policies. The authorities also argued that allowing only four weeks for submission of applications after a lengthy consultation was unreasonable and unfair.

Held: The claims were dismissed.

i. The court was not persuaded that the time given for applying for exemption was in all circumstances inadequate or unlawful.

ii. In each case it was for the applicant to establish its case and to decide on what material to present and how. The claimants should have been aware of the relevance of planning policies or of the loss of business rates.

iii. With hindsight it would be have been sensible for the Sec of State to have worked out in advance how applications were to be assessed and to have informed the local authorities. However, subsequent correspondence had given them sufficient information to enable applicants to appreciate what had to be established to obtain an exemption and the need to provide clear and cogent evidence to justify the grant of an exemption. Having regard to the context, there had been no unfairness in the application process.

12 Statutory Instrument

SI 2013/3194 The Town and Country Planning (Development Management Procedure and S62A Applications) (England) (Amendment No. 2) Order 2013

This Order, which came into force on 13.01.14, amends the 2010 Order which requires applicants for planning permission to notify owners of the land to which the application relates. It is now for the Sec of State rather than the local planning authority to publish the form of application for planning permission where the application is for the winning and working of oil or natural gas by underground operations (including exploratory drilling), and, secondly, where the land is solely to be used for underground operations the applicant no longer has to notify the owners of the land.

http://www.legislation.gov.uk/uksi/2013/3194/contents/made

13 Statutory Instrument

SI 2013/3221 The Infrastructure Planning (Business or Commercial Projects) Regulations 2013

Section 26 of the Growth and Infrastructure Act 2013 amended Part 4 of the Planning Act 2008 to enable business or commercial projects of a prescribed description to be authorised under the planning regime that currently applies to nationally significant infrastructure projects. These Regulations, which came into force on 18.12.13, contain that prescribed description.

http://www.legislation.gov.uk/uksi/2013/3221/contents/made

14 HM Treasury Publication

National Infrastructure Plan 2013

This is the Government's analysis of the UK's infrastructure needs across different sectors now and in the future. The document sets out how the government intends to identify and deliver the infrastructure that is needed and explains the rationale for selecting its top 40 priority investments, providing more detail on the funding, timing and status of these.

https://www.gov.uk/government/publications/national-infrastructure-plan-2013

15 CLG Statistical Publication

Planning applications in England: July to September 2013

These statistics on numbers of applications decided and granted were released on 19.12.13.

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

16 CLG Statistics

Live Tables on planning application statistics

These 36 live tables contain statistics on planning applications at national and local planning authority level.

https://www.gov.uk/government/statistical-data-sets/live-tables-on-planning-application-statistics

If you require advice on planning issues, contact Hugh Bullock on Tel. +44 (0)20 7333 6302 hbullock@geraldeve.com

RATING

17 Upper Tribunal (Lands Chamber)

Validity of proposal with error in rent stated

**MS KAREN KENDRICK VO V MAYDAY OPTICAL
[2013] UKKUT 0548 (LC) – Case Number: RA/24/2012 – Decision given 12.11.13

Facts: The ratepayer's appeal in this case was originally struck out by the Valuation Tribunal as invalid due to an error in the rent stated on the proposal form, but the President set aside that decision on the basis that it had not been made clear to the ratepayer that the VO intended to apply at the hearing for the proposal to be treated as invalid. The VTE found in favour of the ratepayer (see Evebrief, Volume 34(07) i11) and it was held that the proposal was valid, notwithstanding the error.

Issue: Whether to allow the VO's appeal against the VTE decision.

Held: The VO's appeal was allowed and the proposal was treated as invalid. The error regarding the rent in the proposal forms meant that there was not substantial compliance with the regulations which caused prejudice to the VO. Whilst the VO did not have to take an issue over validity there was nothing to preclude her from doing so at a later stage. The VTE erred in deciding for itself that it should ask whether as a matter of public law the VO was acting reasonably and lawfully in asserting invalidity. It was not "an unattractive display of pedantry and formalism" for the VO to take the invalidity point on the facts of this case.

18 Upper Tribunal (Lands Chamber)

Valuation of Veterinary Treatment Centre in converted warehouse – whether to be valued on gross or net internal area basis

*VRCC LIMITED V MRS AMANDA FRENCH (VO)
[2013] UKUT 0627 (LC) – Case Number: RA/20/2013 – Decision given 17.12.13

Property: A 1990s warehouse converted extensively to a veterinary clinic following the grant of planning permission in 2002 for change of use, including a substantial radiotherapy clinic within a significant construction with concrete walls 1m thick and a piled foundation floor.

Issues: Whether the property should be valued as a warehouse using gross internal areas, with uplifts for various factors (per the appellant) or as a veterinary clinic using the net internal floor area adapted for some other such uses in a variety of building types.

Held: The applications were dismissed.

i. The works to convert the property back to a warehouse, especially the radiotherapy room, could not be construed as minor and under the rebus sic stantibus concept, the property would be valued as a veterinary surgery.

ii. The settlement and assessment evidence of warehouses in the vicinity could not therefore be relied upon.

iii. The alterations were sufficiently extensive to render an EIA basis meaningless in the context of a rating valuation.

iv. The evidence provided by the VO on an NIA basis was not immune from criticism, but the value in terms of main space was accepted.

Tribunal's comment: The Tribunal commented on the fact that the appellant's expert witness was acting on a conditional fee arrangement, which he had not disclosed in his statement of case or expert report. The Tribunal reminded experts that if acting on a conditional fee basis their evidence is susceptible to the Tribunal giving it little or no weight owing to the risk of it being tainted by unconscious bias.

19 CLG Letter

Business rates information letter 09/2013

*VRCC LIMITED V MRS AMANDA FRENCH (VO)
[2013] UKUT 0627 (LC) – Case Number: RA/20/2013 – Decision given 17.12.13

This letter, addressed to the Chief Finance Officers of English Billing Authorities, was issued last December and contains information about:

- the Autumn Statement;
- 2014–15 Provisional Multipliers; and
- the consultation paper on reforms to the business rates appeal process (see Evebrief Volume 35(16) item 14).

https://www.gov.uk/government/publications/business-rates-information-letter-92013

If you require advice on rating issues, contact Jerry Schurder on Tel. +44 (0)20 7333 6324 jschurder@geraldeve.com

HOUSING

20 Homes & Communities Agency publication

Housing Market Bulletin, November 2013

The Housing Market Bulletin provides the latest information on trends in the housing market, the economy and the house building industry. It includes:

- house price changes from the main house price indices including Nationwide, Halifax, the Land Registry and RICS;
- housing market forecasts;
- housing starts and completions as reported by DCLG and updates on key house builders; and
- mortgage trends and information on the overall economy.

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

21 HCA Publication

Land Development and Disposal Plan, 2013/14 update

As a landowner the HCA owns just over 10,000 ha of land, including:

- economic assets transferred from the Regional Development Agencies (RDAs) in September 2011;
- coalfield sites transferred from the RDAs in July 2011;
- the remaining Commission for New Towns portfolio;
- some former hospital sites and land transferred from other public sector landowners;
- urban and brownfield sites from the former English Partnerships portfolio; and
- liabilities transferred from other bodies that have been wound up.

This plan sets out how HCA will use its land to accelerate economic activity in support of local development priorities and lists which sites are to be brought forward for development or disposal. There is also an overview of the HCA's land activity during 2012/13.

http://www.homesandcommunities.co.uk/ourwork/our-land

22 CLG Statistics

Live tables on dwelling stock (including vacants)

These live tables provide the latest, most useful or most popular data, presented by type and other variables, including by geographical area or on a temporal basis.

https://www.gov.uk/government/statistical-data-sets/live-tables-on-dwelling-stock-including-vacants

TRANSPORT

23 CLG Consultation

National road and rail networks: draft national policy statement
Deadline for Comments: 26.02.14

The draft national policy statement sets out the need for development of nationally significant infrastructure projects on national road and rail networks and the government's policies to address that need. Development of the networks must be designed so as to minimise environmental and social impacts and also address existing problems. This consultation seeks views on whether the statement adequately sets out the need for development of these projects, the government's proposals to address that need and detailed guidance on how impacts of developments are to be assessed and impacts mitigated.

https://www.gov.uk/government/consultations/national-road-and-rail-networks-draft-national-policy-statement

CONSTRUCTION

24 Circular Letter

New and amended Approved Documents and new Building Services Compliance Guides to support the energy efficiency requirements of the Building Regulations

This circular letter brings to the attention of all building control bodies and other interested parties guidance documents on Approved Documents L1A, L2A, L1B and L2B and 2013 compliance guides on new domestic and non-domestic building services.

If you require advice on construction issues, contact David Murgatroyd on Tel. +44 (0)121 616 4808 dmurgatroyd@geraldeve.com

https://www.gov.uk/government/publications/new-and-amended-approved-documents-and-compliance-guides-to-support-part-l

ENERGY

25 Historic Environment Local Management Publication

Historic environment guidance for wave and tidal energy

This guidance was commissioned as part of the National Heritage Protection Plan work in mitigating the impact of energy generation on the UK's historic heritage. The guidance is intended:

- for wave and tidal energy developers, regulators, curators, and environmental, engineering and archaeological contractors and consultants;
- to provide an introduction to wave and tidal energy and to the historic environment;
- to present guidance on specific issues;
- to enable all parties to engage constructively with the historic environment;
- to help provide clarity in relation to planning;
- to avoid circumstances in which heritage assets become an unreasonable or unexpected constraint; and
- to help create greater certainty.

http://www.helm.org.uk/guidance-library/historic-environment-guidance-wave-tidal-energy/

26 DECC Publication

Regulatory Roadmap: Onshore oil and gas exploration in the UK regulation and best practice

This set of documents aims to help operators understand the regulation process for onshore oil and gas (shale gas) exploration in the UK.

https://www.gov.uk/government/publications/regulatory-roadmap-onshore-oil-and-gas-exploration-in-the-uk-regulation-and-best-practice

27 Department of Energy and Climate Change Consultation

Environmental report for further onshore oil and gas licensing
Deadline for Comments: 28.03.14

Comments are invited on this report, the aim of which is to identify, describe and evaluate the likely significant effect on the environment of DECC's proposals to invite applications and issue new licences for further onshore oil and gas licensing in areas of Great Britain. The report is part of the Strategic Environmental Assessment process.

https://www.gov.uk/government/consultations/environmental-report-for-further-onshore-oil-and-gas-licensing

28 Department of Energy and Climate Change Publication

Facts about fracking

This guidance contains guidance and answers to frequently asked questions about shale oil and gas fracking. Shale gas activity in the UK is still in the exploration phase with companies drilling test wells. Although the UK has a long history of production of oil and gas from "conventional" onshore fields, there is as yet no experience of fracking production operations in UK conditions which means that the answers to questions about the potential impacts of production operations are of necessity still tentative or qualified.

https://www.gov.uk/government/publications/about-shale-gas-and-hydraulic-fracturing-fracking

29 Department of Energy and Climate Change Report

Strategic Environmental Assessment for further onshore oil and gas licensing: Environmental Report

This is a non-technical summary providing an overview of the Environmental Report produced as part of the SEA of the Further Onshore Oil and Gas Licensing Round which DECC is proposing to conduct for unlicensed areas in parts of England, Scotland and Wales. The licences would give exclusive rights to explore for, and exploit, hydrocarbons within a specific area, although under the licence further authorisations would also be required from other agencies for any of those activities actually to take place.

https://www.gov.uk/government/consultations/environmental-report-for-further-onshore-oil-and-gas-licensing

LONDON

30 GLA Publication

Mayor's Response to the Housing Standards Review Consultation

This is the Mayor's response to the Department for Communities and Local Government's consultation on the Housing Standards Review.

http://www.london.gov.uk/priorities/planning/publications/mayors-response-to-the-housing-standars-review-consultation

If you require advice on planning issues, contact Hugh Bullock on Tel. +44 (0)20 7333 6302 hbullock@geraldeve.com

GENERAL

31 Court of Appeal

Boundary dispute – whether judgment vitiated by procedural irregularity in dealing with expert evidence – treatment of experts' evidence

*HATTON V CONNEW
(2013) PLSCS 310 – Decision given 10.12.13

Facts: The parties were in dispute regarding the position of the boundary between their properties. During the course of a three day trial, the judge conducted a site visit during which he allowed the parties' experts to explain their respective positions to him. This was done instead of a formal cross-examination in court on the experts' reports. Subsequently, the judge found in favour of the respondents on all the issues before him.

Point of dispute: Whether to allow the appellants' appeal against the judge's ruling, on the grounds that the way in which he had treated the expert evidence was so irregular as to render his whole decision unjust. They submitted that there should have been a formal cross-examination of the experts' evidence.

Held: The appeal was allowed in part.

i. The court had a wide discretion to control evidence, including experts' evidence (CPR 32 and CPR 35). However the overriding objective was to deal with cases justly and to respect the right of parties to a fair trial. Generally, an expert would give his evidence in court when it would stand as evidence-in-chief. If a judge was told something by an expert during a site visit he had to be careful that this did not disadvantage one of the parties since no court recording of the conversation would be available. In such a situation he should ensure that the other party was present and that an accurate note was made of the question and the answer to it. While a judge had a wide discretion to limit cross-examination of an expert he should not dispense altogether with cross-examination.

ii. In this case there had been serious procedural irregularities in the way the proceedings were conducted. There had been no formal cross-examination of the experts during the site visit and no formal note had been made of the questions the judge had asked or the answers given. In a situation where crucial evidence was not recorded in the expert's report, a transcript, an agreed note or in the judgment it would be impossible for an appeal court to evaluate it.

iii. The court would only allow an appeal on the grounds of a serious procedural irregularity where the decision of the court was unjust within the meaning of CPR 52.11(3)(b), which would depend on the circumstances of the case. Two out of three aspects of this case would be remitted for retrial since the appeal court could not be satisfied that the conclusion reached by the judge had been correct. In relation to the third area in dispute the judge had a proper basis for his conclusion and his decision was upheld.

32 CLG Statistics

Land use change statistics in England: 2011

This release shows changes that have occurred to developed uses in terms of location and types of land use.

https://www.gov.uk/government/publications/land-use-change-statistics-in-england-2011

33 CLG Statistics

Live tables on land use change statistics

These tables provide the latest, most useful or most popular data, presented by type and other variables, including by geographical area or as a time series.

https://www.gov.uk/government/statistical-data-sets/live-tables-on-land-use-change-statistics

34 CLG – Consultation Response

Consultation on registration of new town or village greens: proposed amendments to Schedule 1A (Exclusion of Right under s15) to the Commons Act 2006

This is a summary of the responses and the government response to the July 2013 consultation seeking views on a draft order to further reform the provisions for applications to register land as a town or village green.

https://www.gov.uk/government/consultations/registration-of-new-town-or-village-greens-proposed-amendments-to-the-commons-act-2006

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London (West End)
Hugh Bullock Tel. +44 (0)20 7493 3338
hbullock@geraldeve.com

London (City)
Simon Prichard Tel. +44 (0)20 7489 8900
sprichard@geraldeve.com

Birmingham
Alan Hampton Tel. +44 (0)121 616 4800
ahampton@geraldeve.com

Cardiff
Joseph Funtek Tel. +44 (0)29 2038 8044
jfuntek@geraldeve.com

Glasgow
Ken Thurtell Tel. +44 (0)141 221 6397
kthurtell@geraldeve.com

Leeds
Philip King Tel. +44 (0)113 244 0708
pking@geraldeve.com

Manchester
Rupert Collis Tel. +44 (0)161 830 7070
rcollis@geraldeve.com

Milton Keynes
Simon Dye Tel. +44 (0)1908 685 950
sdye@geraldeve.com

West Malling
Andrew Rudd Tel. +44 (0)1732 229 420
arudd@geraldeve.com

To add your name to the evebrief distribution list, please contact us at evebrief@geraldeve.com

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.

Evebrief editorial team
Tony Chase
Steve Hile
Peter Dines
Hilary Wescombe
Gemma Dow
Ben Aldridge
Annette Lanaghan
Ian Heritage

Abbreviations
The following abbreviations are used in evebrief:

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

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

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

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

* Interesting but non–essential reading.

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

Agency
Simon Prichard Tel. +44 (0)20 7489 8900
sprichard@geraldeve.com

Compensation & Compulsory Purchase
Tony Chase Tel. +44 (0)20 7333 6282
tchase@geraldeve.com

Building Consultancy
David Murgatroyd Tel. +44 (0)121 616 4808
dmurgatroyd@geraldeve.com

Miles Thompson Tel. +44 (0)20 7333 6395
milesthompson@geraldeve.com

Environment & Contamination
Keith Norman Tel. +44 (0)20 7333 6346
knorman@geraldeve.com

Landlord & Tenant
Graham Foster Tel. +44 (0)20 7653 6832
gfoster@geraldeve.com

Leasehold Reform
Julian Clark Tel. +44 (0)20 7333 6361
jclark@geraldeve.com

Minerals & Waste Management
Philip King Tel. +44 (0)113 244 0708
pking@geraldeve.com

Planning & Development
Hugh Bullock Tel. +44 (0)20 7333 6302
hbullock@geraldeve.com

Rating
Jerry Schurder Tel. +44 (0)20 7333 6324
jschurder@geraldeve.com

Real Property
Annette Lanaghan Tel. +44 (0)20 7333 6419
alanaghan@geraldeve.com

Valuation
Mark Fox Tel. +44 (0)20 7333 6273
mfox@geraldeve.com

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

For more information on our research services please contact:
Robert Fourt
Partner
Tel. +44 (0)20 7333 6202
rfourt@geraldeve.com

EVEBRIEF

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SCOTLAND

PLANNING

01 Scottish Assembly Government Publication

Ambition – Opportunity – Place: Scotland's Third National Planning Framework Proposed Framework

This proposed National Planning Framework 3 (NPF3) is the spatial interpretation of the Government Economic Strategy and sets out its aims for Scotland to become:

- successful and sustainable;
- low carbon;
- natural and resilient; and
- well-connected.

There are fourteen developments proposed to help deliver this strategy. It is expected that the new Framework will be finalised and published in June 2014.

http://www.scotland.gov.uk/Publications/2014/01/3724

If you require advice on planning issues, contact Hugh Bullock on Tel. +44 (0)20 7333 6302 hbullock@geraldeve.com

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02 Scottish Assembly Government Circular

Planning Series Circular 3/2013: Development Management Procedures (Scotland)

This circular describes the requirements for processing planning applications contained in the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 (SSI 2013/155) and relevant provisions of the Town and Country Planning (Scotland) Act 1997 as amended (primarily amendments by the Planning, etc. (Scotland) Act 2006). The guidance covers:

- the pre-application phases (including processing agreements to project manage large or complex applications and requirements on pre-application consultation;
- the contents of applications;
- neighbour notification and publicity requirements for applications;
- consultation;
- time periods for decisions;
- decision notices; and
- local review of decisions or failure to take decisions.

http://www.scotland.gov.uk/Publications/2013/12/9882

03 Scottish Assembly Government Circular

Planning Series Circular 4/2013: Planning Appeals (Scotland)

This Circular, which covers the requirements of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 – SSI 2013/156 (which came into force on 30.06.13), contains guidance on the procedural requirements for appeals made to Scottish Ministers in the following planning case types:

- planning permission (other than local review cases);
- planning obligations;
- good neighbour agreements;
- certificates of lawful use or development;
- listed building consent;
- conservation area consent;
- advertisement consent; and
- tree replacement notices.

http://www.scotland.gov.uk/Publications/2013/12/2943

04 Scottish Assembly Government Circular

Planning Series Circular 5/2013: Schemes of Delegation and Local Reviews (Scotland)

This Circular relates to the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013. Planning authorities must now have a scheme to delegate decisions on planning applications for local development to appointed officers for decision (this is instead of Planning Committees deciding smaller scale proposals). Where applications for local development are delegated in this way the applicant can seek a local review by the planning authority of the appointed officer's decision or failure to make a decision. The circular describes:

- the requirements on seeking a review;
- the information to be provided;
- the timescales for seeking a review; and
- procedures for considering a review.

http://www.scotland.gov.uk/Publications/2013/12/8902

05 Scottish Assembly Government Circular

Planning Series Circular 6/2013: Development Planning (Scotland)

This Circular, which replaces Circular 1/2009 and Appendix 1: the Habitats Regulations, describes the development planning system in Scotland and explains legislative provisions in both the primary legislation and the subsequent Regulations. It also explains the Scottish Ministers' expectations for the development plan preparation process and the Examination procedure.

http://www.scotland.gov.uk/Publications/2013/12/9924

HOUSING

06 Scottish Government Publication

Scottish House Conditions Survey 2012 – Key Findings

This publication contains the statistics from a national survey of the housing stock which is part of the Scottish Household Survey (SHS). (Until 2012 this was the Scottish House Condition Survey which has since been incorporated into SHS.)

http://www.scotland.gov.uk/Publications/2013/12/3017

WALES

PLANNING

07 Welsh Assembly Government Consultation

Draft Planning (Wales) Bill and Positive planning: proposals to reform the planning system in Wales Deadline for Comments: 26.2.14

This draft Bill and Consultation paper contains the Welsh Assembly Government's proposals to modernise the planning system in Wales through changes to primary legislation, secondary legislation, policy and guidance. The consultation identifies the need for a change in attitude away from regulating development towards encouraging and supporting development.

http://new.wales.gov.uk/consultations/planning/draft-planning-wales-bill/?lang=en

If you require advice on planning issues, contact Hugh Bullock on Tel. +44 (0)20 7333 6302 hbullock@geraldeve.com

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