

# EVEBRIEF

## Legal & Parliamentary

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### EDITORIAL



**Tony Chase**  
Editor

The courts and tribunals appear to have been very busy in the period leading up to the summer break. We have reported a bumper 17 decisions in this edition, including a number of 'two star' and 'three star' cases which are of particular note.

The Supreme Court decision reported at item 38 establishes the statutory right for a sewerage undertaker to discharge surface water and treated effluent into private watercourses without the consent of their owners where the outfall was in use prior to December 1991.

The decision of the Court of Appeal reported at item 3 marks the latest skirmish in objectors' battles against the HS2 high speed rail link. HS2 Action Alliance has lost its bid to derail the scheme on the grounds that the safeguarding directions should be quashed as they required a strategic environmental assessment.

Finally, at item 7 we report on the consultation on the latest of this Government's efforts to improve the planning system. Three items of particular interest in the development field are the raising of the thresholds for requiring an Environmental Impact Assessment on projects; a "deemed discharge" of applications for details required by planning conditions if they are not dealt with within a prescribed period; and the potential conversion of light industrial and warehouse buildings to residential use as permitted development. Also of interest to high street investors will be the proposed combining of the Class A1 (Shops) and A2 (financial and professional services) use classes into one (excluding betting offices and pay day loan shops). We will monitor the course of this consultation with interest.

A handwritten signature in black ink that reads "Tony Chase".



**GERALDEVE**

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## LANDLORD & TENANT

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01 Court of Appeal

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### **Landlord and Tenant Act 1954 – whether tenant in breach of covenant in lease so that a new tenancy should not be granted**

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\*MUSSELLWHITE V YOUSSEFI  
[2014] PLSCS 200 – Decision given 02.07.14

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**Facts:** The appellant occupied a dwellinghouse, shop and rear garden under the terms of a 15 year lease soon to expire, and served notice on the respondent landlord, under s26 Landlord and Tenant Act 1954, requesting a new 15 year term. The landlord opposed the request and applied to the Court for an order for termination of the tenancy with no grant of a new term. The judge held that the order should be made, on grounds s30(1)(a) and (c) of the 1954 Act. On ground (a), uncontrolled creeper growth over the rear exterior wall risked causing damage and, whilst not a breach of the tenant's repairing covenant, it was a breach of the implied obligation to use the premises in a tenant-like manner. In relation to ground (c) the judge found that there were substantial breaches of the covenant requiring the tenant to give reasonable access to the landlord to examine the condition of the property. In addition, the judge found that there were substantial breaches of the covenant to use the premises for retail trade only, as the tenant carried out no retail business at the premises and had no intention of doing so.

**Point of dispute:** Whether the tenant's appeal against the order of possession made by the judge should be allowed.

**Held:** The appeal was allowed in part only. A breach under ground (a) would have to be substantial and the Court would have to consider whether it would be unfair to impose a new term on the landlord having regard to the tenant's past performance and behaviour in relation to the obligation to repair and maintain the premises. In this case the plant growth on the rear wall was not a breach of the tenant's express repairing covenant as this related only to the interior of the premises, and did not amount to a breach of the implied covenant to use the premises in a tenant-like manner. The judge had however been entitled to find, under ground (c) that it would be unfair and prejudicial to the landlord to determine that a new lease should be granted in view of the tenant's persistent and wilful refusal to comply with the terms of the tenancy by refusing access to the landlord. In addition there was a substantial breach of the user clause; on a proper construction of the clause it imposed a positive obligation actually to use the premises for the stated purpose and the absence of an express 'keep open' covenant did not detract from the positive nature of the obligation.

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02 High Court

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### **Whether landlord's consent for change of use of office building to residential flats unreasonably withheld – whether risk of leasehold enfranchisement arising from creation of flats justified withholding of consent**

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\*\*MOUNT EDEN LAND LTD V BOLSOVER INVESTMENTS LTD  
[2014] PLSCS 200 – Decision given 20.06.14

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**Facts:** The appellant owned the freehold of an office building in London, W1 which was let to the respondent tenant on a 999 year lease from 1926. The lease contained a covenant against alterations without the landlord's consent, which, by virtue of s19 of the Landlord and Tenant Act 1927, was not to be unreasonably withheld. The respondent applied for permission to convert the building into residential flats but the appellant refused consent on the grounds that it would open up the possibility of a collective enfranchisement claim and that it would lose its reversion.

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

**Point of dispute:** Whether the appellant should be granted permission to appeal against a declaration, obtained by the respondent, that it had unreasonably withheld its consent to the proposed alterations to the building. The appellant contended that the possibility of leasehold enfranchisement that would result from creation of the flats justified its refusal of consent as it would result in its losing control of the building which it needed in order to protect the remainder of its estate.

**Held:** The application was dismissed. The judge had been entitled to conclude that the risk of leasehold enfranchisement did not make a refusal of consent reasonable and the court was not satisfied that the proposed appeal had a reasonable prospect of success. The flats would not necessarily be let on long leases and, even if they were, it was wholly speculative as to whether enough leaseholders would band together to try to exercise the right of collective enfranchisement.

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## PLANNING

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### 03 Court of Appeal

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#### **HS2 high-speed rail link – whether safeguarding directions require a strategic environmental assessment**

\*\*\*R (ON THE APPLICATION OF HS2 ACTION ALLIANCE LTD) V SEC OF STATE FOR TRANSPORT [2014] PLSCS 237 – Decision given 06.08.14

**Facts:** Safeguarding directions were issued, to come into force on 9 July 2013, in connection with the proposed phase 1 of the HS2 high-speed rail link from London to Birmingham. These adjusted the procedures for making planning decisions by providing formal arrangements for HS2 Limited to be consulted on applications for planning permission within the safeguarded land and ultimately for the Sec of State for Transport to intervene by restricting the grant of planning permission. Objectors to HS2 applied for judicial review of the safeguarding directions.

**Point of dispute:** Whether the safeguarding directions should be quashed on the grounds, inter alia, that they were a plan or programme which set the framework for future development consent which required a strategic environmental assessment under Article 2(a) of the Council Directive 2001/42/EC.

**Held:** The application was dismissed. The HS2 project was not a plan or programme under Article 3(2) of the SEA Directive and neither were the safeguarding directions which served to protect it. The safeguarded area reflected the Government's views as to a viable route for the railway and the need for sufficient land to enable it to be constructed but the directions did not represent the evolution of the HS2 project into a plan or programme setting the framework for future development consent nor did they constitute a framework of policy or criteria constraining the discretion of planning decision makers.

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### 04 High Court

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#### **Variation of planning permission, whether inspector failed to determine application in accordance with development plan**

\*ARSENAL FOOTBALL CLUB PLC V SEC OF STATE [2014] PLSCS 231 – Decision given 30.07.14

**Facts:** AFC sought to vary the conditions on its stadium consent to allow for additional events to be held on Sundays. This was refused. On appeal the inspector recognised some benefits but concluded that any such benefit did not outweigh the conflict with development plan policy and the harm which would occur. The relevant development plan policies sought to restrict entertainment uses to town centres and to resist development which would cause unacceptable disturbance or detrimentally affect the amenity, character and function of an area.

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**Point of dispute:** Whether the inspector had erred in law in concluding that the proposal did not comply with the development plan for the area.

**Held:** The application was dismissed. The inspector was required to determine whether the application complied with development plan policy and in cases where different parts of the local plan pointed in different directions it was for the decision maker to decide which policy should be given greater weight. Decision letters should be read in good faith and understood as a whole. In the present case it was clear that the inspector had addressed the policy position correctly.

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05 High Court

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**Village green – whether inspector correct in concluding that the use of the subject land was “by right” rather than “as of right” and whether land eligible for village green status**

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\*NAYLOR V ESSEX COUNTY COUNCIL  
[2014] PLSCS 227 – Decision given 28.07.14

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**Facts:** The owner of the land objected to an application by the claimant to register its land as a town or village green. The application was rejected by an inspector as the land had been managed, controlled, maintained and made available to the public under the Open Spaces Act 1906.

**Point of dispute:** Whether the use of the land by local residents had been "as of right" – effectively acting as if they have the right to be there when they do not – or "by right", meaning that they have actually been given permission to be there.

**Held:** The application was dismissed. The planning inspector had been entitled to conclude that those who had used the land had used it "by right", because it had been made available to the public by the Council with the agreement of the landowner. For land to qualify as a village green it must be used "as of right" by locals for a continuous 20 year period. Those requirements were not met in this case. The inspector had been entitled to find that the 20 year period relied on had been "interrupted" by a three-month period in 1993 when engineering works were carried out.

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06 Statutory Instrument

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**SI2014/2026 The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) (No.2) Regulations 2014**

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These Regulations introduced, with effect from 30 July 2014, a charge of £172 for applications to a local planning authority for prior approval in relation to development which involves a material change of use and permitted building operations in connections with that change. Applications for prior approval for change of use where building operations are not involved already attract a fee of £80, introduced in October 2013.

<http://portaldirector.wordpress.com/2014/07/31/change-to-the-fees-for-prior-approval-applications-for-permitted-development-rights-for-change-of-use/>

## 07 CLG Consultation

**Technical consultation on planning  
Deadline for comments 26.09.14**

This consultation document presents a range of proposals for how Government wishes to improve the planning system. It includes proposals for simplifying the production of neighbourhood plans or neighbourhood development orders; expanding permitted development rights; improving the use of planning conditions and enabling development to start more quickly on site after planning permission is granted; improving engagement with statutory consultees; raising the environmental impact assessment screening thresholds for industrial estate and urban development projects which are located outside of defined sensitive areas; and improvements to the nationally significant infrastructure planning regime.

<https://www.gov.uk/government/consultations/technical-consultation-on-planning>

## 08 CLG Consultation

**Local development orders for housing development on brownfield land  
Invitation to bid**

The government has announced funding to support local planning authorities who consult on and make local development orders on brownfield land that is suitable for housing in their area. This invitation to bid sets out more detail about the funding and online bidding process for the preparation of local development orders.

<https://www.gov.uk/government/consultations/local-development-orders-for-housing-development-on-brownfield-land-invitation-to-bid>

## 09 CLG Statement

**Planning for unconventional oil and gas**

In a statement to parliament on 28.07.14, DCLG announced that it had opened the bidding process for companies to obtain licences to explore for shale gas, which could lead to 'fracking' activity across the UK. The Government has made it clear however that new planning guidance will strengthen the safeguards covering operations and activity in areas of outstanding natural beauty, world heritage sites, national parks and the Broads and that mineral planning authorities should give great weight to conserving the landscape and scenic beauty of those areas and to the conservation of wildlife and cultural heritage. Any further drilling application will require planning permission as well as permits from the Environment Agency.

[http://www.planningportal.gov.uk/general/news/stories/2014/july14/310714/310714\\_1](http://www.planningportal.gov.uk/general/news/stories/2014/july14/310714/310714_1)

## 10 CLG Publication

**Improving planning performance: criteria for designation**

This document sets out the criteria which the government intends to use to assess and designate local planning authorities under the powers contained in s62B of the Town and Country Planning Act 1990 if their performance in handling planning applications falls below a satisfactory level.

<https://www.gov.uk/government/publications/improving-planning-performance-criteria-for-designation>



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 11 Report
 

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**The impact of the National Planning Policy Framework on decision making**


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This report analyses the impact of the NPPF on the potential to secure planning permission at application and appeal stage. The main findings were as follows:

- Since March 2012 there has been no material change in the percentage of planning applications approved by local planning authorities with approximately one fifth of applications failing at application stage;
- In the six month period prior to the introduction of the NPPF, appeals lodged by written representations, hearing and public inquiry procedures had broadly the same rate of success;
- The proportion of appeals allowed by the written representations procedure has not changed significantly;
- The rate of appeal success by hearing procedure has increased from 35% in the two years before the NPPF, to 42% in the two years since it came into force;
- The approval rate in appeals determined by public inquiry has increased from 38% in the six-month period prior to the introduction of the NPPF, to 57% 24 months afterwards;
- The proportion of appeals allowed for “all residential development” has increased from 37% to 42%; and
- These trends are also evident in statistics relating to major housing developments (more than ten dwellings).

[http://www.turley.co.uk/sites/default/files/uploads/intelligence/Research%20Report%20-%20NPPF%20statistics%201\\_4.pdf](http://www.turley.co.uk/sites/default/files/uploads/intelligence/Research%20Report%20-%20NPPF%20statistics%201_4.pdf)

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 12 CLG Statistical Publication
 

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**Live tables on planning application statistics**


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These live tables for statistics on planning applications at national and local planning authority level were updated on 23.07.14.

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

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 13 Local Government Information Unit Report
 

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**Public houses: How councils and communities can save pubs**


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This report, published in partnership with Campaign for Real Ale, argues that local authorities should take action to protect pubs from redevelopment and sets out some of the ways in which they can do this. The principal recommendations are:

- specific inclusion in planning policies in order to protect community assets;
- building the capacity for a more pro-active defence of assets of community value;
- use of Article 4 directions (the removal of permitted development rights); and
- use of conservation areas, heritage and other forms of local listing.

<http://www.lgiu.org.uk/publications/public-houses/>

If you require advice on planning & development issues, contact Hugh Bullock on Tel. +44 (0)20 7333 6302 [hbullock@geraldev.com](mailto:hbullock@geraldev.com)

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**RATING**


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14 Divisional Court

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**Unoccupied hereditament – whether exemption from unoccupied non-domestic rates on grounds that occupation was prohibited by law**


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\*\*PALL MALL INVESTMENTS (LONDON) LTD V GLOUCESTER CITY COUNCIL  
[2014] PLSCS 205 – Decision given 08.07.14

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**Facts:** The appellant (PMI) owned two office buildings in Gloucester which were unoccupied during 2011-13. PMI sought exemption from payment of unoccupied, non-domestic rates to GCC for each of those years on the grounds that the non-occupation was the result of dilapidations, caused in part by vandalism, and the state of the properties was such that occupation was prohibited by law.

**Point of dispute:** Whether PMI's appeal would be allowed against the ruling of the judge in the court below that the properties were not exempt from non-domestic rates. The questions for the court were whether: (i) the judge was correct to determine that the fact that the properties were constructed as offices but were in a state of disrepair, and the fact that they would not comply with health and safety legislation, were insufficient grounds to support a conclusion that the properties were prohibited by law from being occupied; and (ii) in the light of evidence that parts of the properties could be used for storage, the court could determine that this meant that occupation was not prohibited by law.

**Held:** The appeal was dismissed.

- i. The burden was on the owner to establish the exemption in regulation 4(c) of the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008. Parliament would not have intended to establish an exemption for owners simply through inactivity which led to dilapidation of a building or by an owner occupying it for a particular purpose which would render him liable to prosecution under health and safety legislation.
  - ii. The health and safety legislation did not prohibit occupation and the risk of breach of the legislation if the premises were occupied did not suffice to exempt the owner.
  - iii. Since the district judge had made no finding on the issue whether occupation of the properties specifically for storage would disentitle PMI's claim for exemption, it was not appropriate for the court to express a concluded opinion on that issue.
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15 High Court

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**Liability for business rates after lease disclaimed**


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\*\*SCHRODER EXEMPT PROPERTY UNIT TRUST V BIRMINGHAM CITY COUNCIL  
[2014] EWHC 2207 (Admin); [2014] PLSCS 209 – Decision given 10.07.14

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**Facts:** The appellants, SEPUT, owned the freehold of commercial premises in Birmingham. In 2006 SEPUT granted a ten year lease of the property to WFL which subsequently assigned it to WFG but with WFL acting as guarantor. In 2011 WFG went into liquidation and the liquidator disclaimed all interest in the property under s178 of the Insolvency Act 1986, but WFL continued to pay rent as guarantor and SEPUT did not take any steps to repossess the property. BCC claimed non-domestic rates from SEPUT for the period after the disclaimer and were granted a liability order in the sum of £590,000.

**Point of dispute:** Whether SEPUT's appeal would be allowed against the order made by the district judge in the court below who held that they were the owners of the property within s45(1)(b) and 65(1) of the Local Government Finance Act 1988. Whether SEPUT was liable for the rates during the relevant period turned on whether they were entitled to immediate possession of the whole property during that period. SEPUT argued that the effect of the disclaimer under s178(4) of the 1986 Act was to end the liabilities of the tenant, but that the lease continued for certain purposes related to third parties including WFL as guarantor.

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**Held:** The appeal was dismissed. A disclaimer ended a lease for all purposes and after it the landlord was entitled to immediate possession. The rights and liabilities of guarantors that were preserved under s178(4) (b) were contractual ones, not property rights, and ensured that the guarantor's obligation to pay the rent continued until the landlord exercised his right to immediate possession by physically taking possession.

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16 Upper Tribunal (Lands Chamber)

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**Distribution warehouse – weighting of evidence and allowances for limited parking and loading**

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\*CARPETRIGHT PLC V PHILIP RAY (VO)  
RA/42/2011 – Decision given 11.06.14

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**Property:** A distribution warehouse in Purfleet with a useable site area of 85,008 sq m, a total built GIA of 46,728.7 sq m, 223 car parking spaces and 45 lorry spaces. The building was constructed in 2003 and let in 2007. The VT determined the 2005 List RV in line with the figure contended for by the VO.

**Issue:** How much weight should be given to the rent agreed in 2007, comparable rental evidence and comparable assessment evidence and whether allowances should be applied to reflect the low parking ratio and limited number of loading doors. The ratepayer analysed the rent agreed in 2007, using an indexed approach, and argued that this was better evidence than the agreed assessment evidence put forward by the VOA. A logistics expert gave separate evidence regarding the parking and loading requirement for a unit of this size and nature.

**Held:** The ratepayer's appeal was allowed in part in that an allowance of 5% was made to compensate for the low parking ratio and insufficient number of loading doors. In terms of the comparable evidence the member followed the propositions set down in Lotus & Delta Limited v Culverwell (VO) 1976 21RRC1. It was held that the rent on the subject property and other comparable properties did not provide sufficient evidence to show that the assessment was incorrect and in this case more weight was attached to the settlement evidence.

<http://www.landtribunal.gov.uk/judgmentfiles/j1048/RA-42-2011.pdf>

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17 Upper Tribunal (Lands Chamber)

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**Alteration of list – VT determining RV of aerodrome on basis of incorrect finding as to area of two hangars – Appellant VO subsequently altering list on MCC grounds, but substituted RV reflected not only MCC but actual size of hangars, contrary to Tribunal's earlier finding – VO's decision reversed by President of VTE on grounds that VO had no jurisdiction to change tribunal's earlier finding**

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\*\*\*RE PEARCE (VO)'S APPEAL  
[2014] UKUT 291 (LC); [2014] PLSCS 217 – Decision given 08.07.14

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**Facts:** An aerodrome was entered into the 2005 rating list with RV £100,000. The ratepayer's appeal to the VT was allowed in March 2008 and the rateable value was reduced to £62,250, but in reaching its decision the VT erroneously adopted floor areas for the two hangars on the site that were much smaller than they actually were. The appellant VO altered the rating list in accordance with the VT's decision. In 2009 the ratepayer sought a reduction in the proposed RV for the aerodrome in the draft 2010 rating list on the grounds that the VO's assessment assumed the hangars to be larger than the size as determined by the VT, and because of a material change in that two portable buildings on the site had been removed. The result was that the VO altered the 2005 list w.e.f. April 2009 to take account of the removal of the buildings, but maintained his assumption as to the area of the hangars and accordingly increased the rateable value of the aerodrome in the 2005 rating list to £81,850.

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**Point of dispute:** Whether the VO's appeal would be allowed against the ruling of the President of the VTE ordering the VO to reduce the RV of the aerodrome to £66,000 w.e.f April 2009. The President found that the VO was constrained by the previous VT decision which definitively established, subject only to any review, correction or appeal, the rateable value of the hereditament during the life of the rating list to which the decision related. Accordingly the VO could only reassess or revalue the hereditament to the extent of the material change.

**Held:** The VO's appeal was allowed. The VO had been entitled to alter the RV of the hereditament so as to correct the previous error made by the VT over the area of the hangars. Once the VT had determined the rateable value of a hereditament the VO could not take steps to change it, unless a material change of circumstances provided a basis for a reconsideration of the entry in the list. However, once a VO became aware of a material change he had to alter the rating list to reflect the new rateable value in light of that change and to value the hereditament as it actually exists. If it were obvious that the VT had made a mistake in its assessment the VO should not perpetuate that mistake in his own revaluation.

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18 CLG Letter

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**Open letter to those who responded to the consultation paper "Checking and Challenging your Rateable Value"**

The DCLG has written to those who responded to the Government's consultation to confirm that the Government has decided to combine the consideration of reform of the business rates appeals process into the broader review of business rates administration which may lead to longer term reform after the next revaluation in April 2017.

<https://www.gov.uk/government/consultations/checking-and-challenging-your-rateable-value>

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

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**COMPENSATION**

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19 Upper Tribunal (Lands Chamber)

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**Whether reference to the Tribunal for determination of compensation, following acquisition by general vesting declaration, was made after expiry of the six year limitation period.**

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\*\*HARRINGAY MEAT TRADERS LTD V GREATER LONDON AUTHORITY [2014] UKUT 0302 (LC) – Decision given 10.07.14

**Facts:** HMT owned a freehold and part leasehold interest in a property which it used as a meat processing plant, with the first floor having been used as a nightclub. The property was compulsorily acquired by the GLA's predecessor, the London Development Agency, in connection with the development of the facilities for the 2012 London Olympic Games. The CPO was exercised by general vesting declaration (GVD); the property itself vested in the GLA on 2 July 2007 but possession was agreed to be deferred until 13 July to allow HMT to relocate. A further GVD was made in respect of an adjoining stretch of public road of which HMT was identified as one of eight owners, and that land vested in the GLA on 3 September 2008. HMT referred the claim to the Tribunal, seeking determination of the compensation payable, on 12 July 2013.

**Point of dispute:** Whether, as contended by the GLA, the reference to the Tribunal should be dismissed on the basis that the reference was not made within six years of the vesting date as required by s10, Compulsory Purchase (Vesting Declarations) Act 1981. HMT contended that the date from which the six year limitation period should run was the later vesting date for the road of 3 September 2008 and not the date on which the premises themselves vested. It further contended that the effect of the GLA's approach, where land owned by the same party has been acquired in stages, was contrary to clear a public interest in enabling and encouraging claims to be addressed in a comprehensive and holistic manner in that it forced the claimant to make piecemeal references to the Tribunal or to forego part of the statutory period allowed in respect of those rights and interests which were acquired last. Alternatively HMT submitted that, if the reference was submitted outside the six year limitation period, the Tribunal should extend the period on the basis that it had pursued the claim industriously but that it had been disadvantaged by the proceedings having become prolonged due to matters outside its direct control.

**Held:** The reference to the Tribunal was made after expiry of the limitation period and was therefore time-barred. There was no justification in the 1991 Act for treating entitlement to compensation as arising on the date of the vesting of the last of the claimant's interests. Where different interests are vested at different times a separate cause of action exists in relation to each of them from each relevant date of vesting. The Tribunal has no power to extend the statutory limitation period and it has not been suggested that any actions by the LDA or the GLA amounted to a waiver of the limitation period or that any estoppel applies to prevent reliance on the limitation period. For avoidance of doubt, HMT had been correct in not suggesting that the date on which possession was taken was relevant; the limitation period runs from the date of vesting and the date on which the GLA took physical possession was irrelevant.

If you require advice on compensation & compulsory purchase issues, contact Tony Chase on Tel. +44 (0)20 7333 6282 tchase@geraldev.com

## LEASEHOLD ENFRANCHISEMENT

20 Upper Tribunal (Lands Chamber)

### **Leasehold Enfranchisement – purchase of freehold under s9(1A) Leasehold Reform Act 1967 – basis on which ‘relativity’ of leasehold to freehold value should be arrived at for the valuation of the existing leasehold interest**

\*\*KOSTA V TRUSTEES OF THE PHILLIMORE ESTATE  
[2014] UKUT 0319 (LC); [2014] PLSCS 242 – Decision given 07.08.14

**Facts:** K held an occupational long lease from PE of 47 Phillimore Gardens, London W8. When the lease had 54.45 years unexpired, K served notice under the Leasehold Reform Act 1967 to acquire the freehold. The price fell to be determined in accordance with s9(1A) of the 1967 Act and would include a marriage value to reflect to merging of the interests, with the existing lease to be valued as at 13 October 2011. It was agreed that the proper approach was to assess the freehold value with vacant possession and then to decide what proportion, as a percentage, the existing lease value bore to the freehold possession value (referred to as “the relativity”). The LVT heard evidence that the relativity was proposed to be 87.04% by the leaseholder and 75.5% by the landlord. The leaseholder's case centred on a ‘hedonic regression model’ prepared by a statistician, whilst the landlord's case relied upon established graphs of relativity. The LVT adopted the latter approach and determined the relativity at 76%. K appealed.

**Point of dispute:**

This was restricted to the relativity to be used to arrive at the value of the existing lease. The leaseholder proposed 86.39%, resulting in a premium of £1,925,521, whilst the landlord proposed 76%, as determined by the LVT, resulting in a premium of £2,763,890.

**Held:** The appeal was dismissed. No weight was placed on the statistical method and no evidence had been produced to explain or support its use, and the Tribunal accepted the point that the graphs have been referred to and relied upon by valuers for a substantial period of time and a well informed hypothetical purchaser would have based its offer on the average of all the graphs. The relativity was determined at 76%.

If you require advice on leasehold reform issues, contact Julian Clark on Tel. +44 (0)20 7333 6361 jclark@geraldev.com

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## HOUSING

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21 Court of Appeal

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### **Possession order against housing association tenant – whether housing association guilty of disability discrimination under the Equality Act 2010**

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\*ASTER COMMUNITIES LIMITED (FORMERLY FLOURISH HOMES LIMITED) V AKERMAN–LIVINGSTONE [2014] PLSCS 229 – Decision given 30.07.14

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**Facts:** A-L was homeless and suffering from a severe stress disorder. The district council, as housing authority, accepted a duty, under s193(2) Housing Act 1996, to ensure that housing was available to him, and found temporary accommodation with ACL. Subsequently the district council offered A-L a choice of properties as permanent accommodation, but he was unable to cope with the process and did not choose any of the properties offered. Consequently the duty to accommodate him came to an end under s193(5) of the 1996 Act upon A-L's refusal to accept suitable accommodation offered, and ACL was instructed to take proceedings to obtain possession of the temporary accommodation so that it could be made available to another homeless person.

**Point of dispute:** Whether, contrary to the decisions of the County Court and High Court, the possession proceedings represented discrimination against A-L by reason of his disability, contrary to S15, Equality Act 2010.

**Held:** The appeal was dismissed. Even if the possession proceedings amounted to discrimination this would not be unlawful if it could be shown that they were a proportionate means of achieving a legitimate aim within s15(1)(b) of the 2010 Act. This was analogous to the position under Article 8 of the European Convention on Human Rights where the rights to respect for a person's home is qualified by permitting interference with the right by a public authority where this was a proportionate means of achieving a legitimate end. Under the 2010 Act, as in Article 8 cases, the interest of the social landlord in obtaining possession would usually outweigh the interest of the person relying on disability discrimination. In this case A-L would still be entitled to housing duties, albeit more limited, by the local housing authority under s190(2) of the 1996 Act which would provide him with advice and assistance and a reasonable opportunity to obtain accommodation, and in those circumstances a tenant would succeed in a disability discrimination case only where a considerable and unfair hardship could be shown.

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22 HCA Bulletin

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### **HCA monthly housing market bulleting – July 2014**

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The principal findings in this latest HCA bulletin on trends in the housing markets and the economy include the following:

- Average house prices continue to increase although the rate of increase appears to be easing as the dominant London market slows down;
- Numbers of housing transactions have increased but remain below the 2007 peak, and numbers of mortgage advances continue to grow rapidly;
- Average residential building land values have increased, with greenfield land now at approximately 75% of its 2007 level and the average urban value at around 50% of the 2007 peak;
- The economy continues to grow with GDP increasing by 0.8% in Q2 2014, unemployment is stable at 6.6% and CPI inflation is 1.9%; and
- The ratio of the standardised average property price to earnings was 4.95 in June 2014, compared with a high of 5.83 in July 2007 and a low of 3.07 in December 1995.

[http://www.homesandcommunities.co.uk/sites/default/files/our-work/hca\\_housing\\_market\\_bulletin\\_july\\_2014.pdf](http://www.homesandcommunities.co.uk/sites/default/files/our-work/hca_housing_market_bulletin_july_2014.pdf)

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23 Publication

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**English Housing Survey bulletin: issue 11**

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This bulletin is a newsletter for users of the EHS. Issue 11 focuses on the four 2012-13 Annual Reports – on Households, Homes, Energy Efficiency and Fire Safety with accompanying live tables – which were published on 23.07.14. The key findings of those reports are summarised.

<https://www.gov.uk/government/publications/english-housing-survey-bulletin-issue-11>

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24 CLG Report

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**English Housing Survey: Energy Efficiency of English housing  
Annual report on England's housing stock 2012**

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The English Housing Survey is a national survey of people's housing circumstances and the condition and energy efficiency of housing in England. This report focuses on the energy efficiency of England's housing stock. Split into two sections the first provides a comprehensive profile of the energy performance of the housing stock in 2012, while the second considers the feasibility and costs associated with improving the energy efficiency of the stock.

<https://www.gov.uk/government/publications/english-housing-survey-2012-energy-efficiency-of-english-housing-report>

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25 CLG Report

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**English Housing Survey 2012 to 2013: Households  
Annual report on England's households, 2012-13**

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This report contains findings from the 2012-13 EHS on:

- tenure trends in the owner occupation, social and private rented sectors;
- overcrowding and under-occupation; and
- movement of households between and within different tenures.

<https://www.gov.uk/government/publications/english-housing-survey-2012-to-2013-household-report>

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26 CLG Report

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**English housing survey 2012: Profile of English Housing  
Annual report on England's housing stock, 2012**

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This report published in July 2014 concentrates on the physical characteristics of England's housing stock and is split into three sections:

- Overall profile of the stock in 2012 and how this has changed, including an examination of the characteristics of new build properties;
- Services, amenities and accessibility; and
- Overall dwelling condition and safety of the housing stock in 2012 and over time using five key indicators – disrepair, the incidence of damp and mould, electrical safety, serious hazards assessed under the Housing Health and Safety Rating System, and Decent Homes.

<https://www.gov.uk/government/publications/english-housing-survey-2012-profile-of-english-housing-report>

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27 Mayor of London Report

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**Barriers to housing delivery**

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In 2012 the Mayor commissioned independent consultants to identify the barriers to housing delivery in London with the aim of realising the housing potential of the development capacity in the planning pipeline and exploring how the construction sector can make a greater contribution to economic recovery. This update to the original December 2012 report was published in July 2014 and focuses on the question of why housing delivery targets are not being met when the stock of unbuilt private sector planning permissions is significant. Included in the key findings are that, when measured in terms of housing starts rather than completions, the housing need targets are being met in terms of the contribution expected from private sale starts on sites of 20 or more homes; as few individual schemes commence construction of more than 100 private sale units per year the number of consented sites is as important, if not more so, than the number of consented units; and that if recent rates of permission for large sites continues and the sales environment continues to be favourable, it is likely that the private sector starts requirement of 49,000 homes a year will continue to be met or exceeded.

<http://www.london.gov.uk/priorities/planning/publications/barriers-to-housing-delivery>

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28 CLG Report

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**Review of local authorities' role in housing supply – progress update**

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The review was announced in 2013 with the purpose of considering how councils can help to increase housing supply for their communities across all tenures. This latest report, published on 31.07.14, provides a progress update on the review and comments on the many positive signs that the local authorities are well placed to drive the change in housing activity and delivery and also on the evidence of challenges and how they might be addressed. The next phase of the review will focus on options for addressing the challenges identified and will explore information on efficiency including the comparative cost of house building, efficiency in stock and asset management and the importance of securing value for money.

<https://www.gov.uk/government/publications/review-of-local-authorities-role-in-housing-supply-progress-update>

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29 CLG Report

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### **Public Attitudes to New House Building**

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This report sets out the findings from the 2013 British Social Attitudes Survey. The survey found that opposition to development of new homes fell substantially between 2010 and 2013 in terms of both the number of respondents saying that they would oppose new homes being built in their local area and the strength of opposition. Home owners and those living in small cities, towns and rural areas were, however, still more likely to oppose development than those renting or living in large cities.

[http://www.planningportal.gov.uk/general/news/stories/2014/july14/310714/310714\\_3](http://www.planningportal.gov.uk/general/news/stories/2014/july14/310714/310714_3)

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30 CLG Statistical Publication

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### **Tenure trends and cross tenure analysis**

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These tables contain data on the nature and number of tenancies at regional and national level. There are tables on the following:

- tenure trends;
- cross-tenure comparisons of characteristics of households and their accommodation;
- overcrowding and under-occupation; and
- need for specially adapted accommodation.

<https://www.gov.uk/government/statistical-data-sets/tenure-trends-and-cross-tenure-analysis>

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31 CLG Statistical Publication

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### **New households and recent movers**

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This set of data contains tables on:

- household mobility;
- length of residence;
- demographic characteristics of movers;
- movement between tenures;
- movement into and out of tenures; and
- tenancy deposits.

<https://www.gov.uk/government/statistical-data-sets/new-households-and-recent-movers>

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32 CLG Statistical Publication

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**Dwelling condition and safety**

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This set of data contains tables on:

- Decent Homes criteria;
- health and safety;
- damp and mould; and
- repair costs and electrical safety.

<https://www.gov.uk/government/statistical-data-sets/dwelling-condition-and-safety>

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33 CLG Statistical Publication

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**Energy inefficient dwellings**

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This set of data contains tables on energy performance of dwellings.

<https://www.gov.uk/government/statistical-data-sets/energy-inefficient-dwellings>

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34 CLG Statistical Publication

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**Stock profile**

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This data set contains tables on stock profile.

<https://www.gov.uk/government/statistical-data-sets/stock-profile>

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35 CLG Statistical Publication

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**Energy performance**

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This set of tables focuses on heating and insulation.

<https://www.gov.uk/government/statistical-data-sets/energy-performance>

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36 CLG Statistical Publication

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**Owner occupiers, recent first time buyers and second homes**

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This set of data contains information on ownership, mortgages and second homes for owner occupiers and first time buyers in England.

<https://www.gov.uk/government/statistical-data-sets/owner-occupiers-recent-first-time-buyers-and-second-homes>

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37 CLG Statistical Publication

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### Social and private renters

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These are tables on:

- demographic and economic characteristics of renters;
- accommodation characteristics;
- rents and housing benefit; and
- types of letting.

<https://www.gov.uk/government/statistical-data-sets/social-and-private-renters>

## REAL PROPERTY

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38 Supreme Court

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### Sewerage undertaker – canal – right of discharge into private watercourses – Water Industry Act 1991

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\*\*\*MANCHESTER SHIP CANAL CO LTD V UNITED UTILITIES WATER PLC  
[2014] PLSCS 199 – Decision given 02.07.14

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**Facts:** MSCC owned the Manchester Ship Canal and the Bridgewater Canal into which the appellant, UUW, as the sewerage undertaker for the area, discharged water. MSCC sought a declaration that UUW had no right to discharge water into their canals without their consent. At first instance the claim was dismissed, the judge holding that UUW benefited from the implied right of discharge that had existed under the statutory regime before the sewerage functions were privatised by the Water Act 1989.

**Point of dispute:** Whether UUW's appeal would be allowed against the ruling of the Court of Appeal which found, reversing the decision of the judge in the court below, that the implied right of discharge had not survived the enactment of the Water Industry Act 1991. The issues were: (i) whether, under the 1991 Act, a sewerage undertaker had a statutory right to discharge surface water and treated effluent into private watercourses without the consent of their owners; and (ii) if so, whether the right extended to any sewer or only to those that were in existence in 1991 when the new sewerage legislation was passed.

**Held:** The appeal was allowed.

- i. Discharge into a private watercourse was an unlawful trespass unless it was authorised by statute. A right to commit what would otherwise be a tort could also be implied if it were impossible to perform a statutory duty without doing the act in question.
- ii. No right to discharge from public sewers into private watercourses had ever been conferred expressly by statute, but it was recognised that this right had existed at least until 1989 and it provided the basis upon which the industry operated. Section 17 of the Public Health Act 1875 restricted the right to discharge foul water into any watercourse and thus impliedly recognised the right to discharge treated effluent (*Durrant v Branksome Urban District Council* [1897] 2 Ch 291). Although the features of the 1875 Act (subsequently reproduced in the Public Health Act 1936) were incorporated into the Water Act 1989, the Water Industry Act 1991 had introduced significant changes and created a much more elaborate statutory scheme.
- iii. However, it was possible to imply a right of discharge limited to outfalls already in use on 01.12.91 when the 1991 Act came into force, but not applying to any future outfalls. The relevant right was contained in s116 which contained a restriction against discontinuing the use of a sewer before an effective alternative was provided.

The appeal was allowed to the extent of declaring that UUW could discharge into MSC's canals from any sewer outfall that was in use on or before 01.12.91.

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39 High Court

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**Bankrupt – beneficial interest – claimant father claiming sole beneficial ownership of properties registered in bankrupt’s name – whether claimant entitled to rely on deed of trust**

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\*THANDI V SANDS AND ANOTHER (AS TRUSTEES IN BANKRUPTCY OF TARLOCHAN SINGH)  
[2014] PLSCS 215 – Decision given 14.07.14

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**Facts:** T’s son was made bankrupt in September 2011. Although his son was the registered proprietor of 16 properties in Coventry, T argued that he was their beneficial owner on the basis that they were held on bare trust for him. He relied on a deed of trust dated the day when the last of the properties was acquired in 2003, but he argued that all the properties were his sole beneficial property since he had purchased them all between the 1980s and 2003. Accordingly, he submitted that the deed of trust did not create any new trust, but regularised and evidenced the existing position. T argued that the properties had never formed part of the bankrupt’s estate and sought an order that they be transferred to him and that the trustees in bankruptcy had acted in breach of trust by causing the legal title in the properties to be vested in themselves at a time when they allegedly knew that they were held on trust for T and failing to transfer the titles to him when he asked them to.

**Point of dispute:** Whether T’s claim that the deed of trust was valid and created with genuine intent of divesting the bankrupt of the beneficial interest in the properties would be allowed.

**Held:** The claim was dismissed. The beneficial interest in the properties was the same as the legal interest and the onus was on the person asserting something different to prove it with convincing evidence. All the circumstances and the conduct of the parties as a whole had to be looked at by the court, which had to ascertain the parties’ actual intention. If there was no expression of intention the court might make inferences from their conduct, such as a payment of or towards the purchase price. In this case the court reached the conclusion from the testimony of the parties that they would be prepared to give any evidence that would assist them in keeping the family assets away from the creditors. T had provided all the finance for the purchase of the properties, but had chosen to transfer them to the bankrupt. He might have intended that they would be held on trust, but that was not the only possible intention, particularly in the context of the acquisition and management of family assets and wealth. The contemporary objective evidence clearly showed that all the properties had been treated from the time they were acquired as belonging beneficially to the bankrupt. The 2003 deed of trust had been drawn up by way of insurance against claims against the bankrupt. It was thus neither persuasive evidence of the prior existence of a trust, nor legally effective to create a trust where none had existed before.

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40 High Court

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**Whether the owner of a dwellinghouse had gifted the property to a relative prior to her death and contrary to the provisions of her will.**

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\*\*KING V DUBREY  
[2014] PLSCS 196 – Decision given 01.07.14

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**Facts:** K was the nephew of the deceased owner of a house valued at £350,000 and which was the principal asset of her estate. The deceased had made a will under which D and other charities were beneficiaries; K claimed however that she had made a ‘donation mortis causa’ (DMC) – a gift of personal property in anticipation of death – to him four to six months before her death by giving him the deeds of the property and stating that “this will be yours when I go”. K therefore claimed that the house had been gifted to him by the DMC; alternatively he claimed for financial provision under the Inheritance (Provision for Family and Dependents) Act 1975 on the basis that he had given up his previous rented accommodation and been living with and dependent on the deceased for almost four years prior to her death.

If you require advice on real property issues, contact Annette Lanaghan on Tel. +44 (0)20 7333 6419 alanaghan@geraldev.com

**Point of dispute:** Whether K's claim could be allowed or whether, as contended by D, his evidence did not establish that the deceased had made a DMC and that there were doubts as to whether she had the capacity to do so.

**Held:** K's claim was allowed. A DMC took effect as an exception to the requirements of the Wills Act 1837 and involved a gift which must take effect in the future and remain conditional until the donor died. It could be revoked by the donor but would become absolute upon the donor's death. There was a requirement in the case of real property for the donor to part with the deeds or other documents which would entitle the possessor to the property, and it was essential that the DMC was made in contemplation of impending death. The Court concluded that K's evidence on these matters should be accepted, and attached particular importance to evidence of unsuccessful attempts by the deceased to make a new will in K's favour. There was no evidence to suggest that the deceased did not have capacity to make the gift at the relevant time, and the words used suggested a gift conditional on death and not consistent with any other interpretation. Had K's claim to the property been unsuccessful he would have been entitled in any case to financial provision under the 1975 Act as his aunt had been making a substantial contribution towards his reasonable needs, and the Court would have awarded a lump sum of £75,000.

## TORT

41 Court of Appeal

### **Architect's certificates for construction of new residential development – whether the architects owed a duty of care to purchasers of the flats and whether the architects inspections had been carried out negligently in failing to identify defects in the building works**

\*\*HUNT V OPTIMA (CAMBRIDGE) LTD  
[1024] PLSCS 240 – Decision given 31.07.14

**Facts:** OCL was a firm of architects engaged by a developer to carry out inspections of two blocks of flats during the course of development and to produce architect's certificates for the benefit of purchasers and their lenders. H and other purchasers were informed, before exchanging contracts, that they would receive such certificates on completion. OCL subsequently provided certificates of satisfactory construction but the purchasers later successfully claimed for damages on the grounds that the building works were defective and that the inspections had been carried out negligently. The Court held that OCL owed a duty of care to the purchasers who, to OCL's knowledge, had intended to rely on the certificates and who, in fact, had relied on them. The purchasers claimed on the basis of negligent misstatement, breach of collateral warranty, or a breach of a duty to take care in the inspection of the building works.

**Point of dispute:** Whether OCL's appeal against the decision of the Court below should be allowed.

**Held:** The appeal was dismissed. The Court held that:

- i. A claim for negligent misstatement could not succeed in respect of certificates that post-dated the exchange and completion of contracts for the purchase of the flats. The purchasers would have to show that they had relied on the statement in question, which could not have been the case as the statement, in the form of the architect's certificates, did not exist until after exchange and completion of the purchases;
- ii. An architect's certificate differed from an NHBC certificate in that it did not act as a guarantee of the quality of the building but was simply a statement and certification that various work had been carried out including conclusions as to the state of completions of the property and the standard of its construction. It was not described as a promise, warranty or representation; and
- iii. No separate duty of care arose in respect of the work of inspection that had led to the certificates being issued.

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42 High Court

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**Contract for sale of land – whether the judge erred in law in ruling that the purchaser was not induced to complete the purchase by the respondent’s fraudulent representations.**

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\*EDWARDS V ASHIK  
[2014] PLSCS 226 – Decision given 24.07.14

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**Facts:** E and A entered into a lease, mortgage and sale agreement in relation to a nightclub. The appellant purchaser alleged that the vendor had made misrepresentation in pre-contract inquiries. The appellant had completed the purchase and entered into occupation pursuant to the lease. The County Court Judge had found that there had been fraudulent misrepresentations relating to noise complaints but that the appellant would have been likely to have gone ahead with the purchase even if there had been no misrepresentation.

**Point of dispute:** Whether the judge in the court below had misdirected herself in treating the issue of inducement to purchase as turning on the question of whether the appellant would have proceeded with the purchase had he been given truthful answers regarding the noise complaints. The appellant argued that dishonest answers should be held to be a material cause of his entry into the contract.

**Held:** The appeal was allowed. It was common ground that, in cases of fraudulent misrepresentations, a presumption arises that a purchaser has been materially induced by the misrepresentation to enter into the contract. Accordingly the onus in this case shifted to the vendor to prove, on a balance of probabilities, that the misrepresentation had not in fact been a material cause of the purchase. The Judge had therefore erred in failing to address the correct question which was whether there was positive evidence that the tenant had in fact not been materially induced by the misrepresentation to enter into the contract. On a reconsideration of the issue, the presumption of inducement had not, on the evidence available, been rebutted.

## CONSTRUCTION

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43 Supplementary Planning Guidance

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**The Control of Dust and Emissions during Construction and Demolition.**

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This SPG, published in July 2014, seeks to reduce emissions of dust and harmful particulates from construction and demolition activities in London and also aims to manage emissions of nitrogen oxides from construction and demolition machinery by means of a new non-road mobile machinery ultra-low emissions zone. In particular it provides detailed guidance on implementation of relevant policies in the London Plan and the Mayor’s Air Quality Strategy, sets out the methodology for assessing the air quality impacts on construction and demolition in London, and identifies good practice for mitigating and managing air quality impacts.

<http://www.london.gov.uk/priorities/planning/publications/the-control-of-dust-and-emissions-during-construction-and>

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44 CLG Publication

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**Building control performance standards**

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The building control performance standards were first drawn up in July 1999 and revised and updated by the Building Control Performance Standards Advisory Group in June 2006. In 2013, the performance standards and supporting guidance were reviewed again and the results of that review are contained in this document.

<https://www.gov.uk/government/publications/building-control-performance-standards>

If you require advice on construction issues, contact Richard Fiddes on Tel. +44 (0)20 7333 6294 [rfiddes@geraldev.com](mailto:rfiddes@geraldev.com)

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## ENERGY

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45 CLG – Consultation outcome

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### **Next steps to zero carbon homes: allowable solutions**

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This report contains the feedback received during the consultation period (06.08.13 – 15.10.13), an analysis of the responses and the government's position since.

<https://www.gov.uk/government/consultations/next-steps-to-zero-carbon-homes-allowable-solutions>

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46 Department of Energy and Climate Change Report

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### **Non-Domestic Private Rented Sector Regulations Working Group Report: report to government**

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This report contains the views of a range of stakeholders on the proposed energy efficiency regulations under the Energy Act 2011 for the non-domestic private rented sector. These will require eligible properties in the sector to be improved to a specified minimum standard. The regulations will be brought into force by 01.04.18.

<https://www.gov.uk/government/publications/non-domestic-private-rented-sector-regulations-working-group-report-report-to-government>

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47 Department of Energy and Climate Change Report

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### **Domestic Private Rented Sector Regulations Working Group Report: report to government**

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This report contains the views of stakeholders on the proposed energy efficiency regulations under the Energy Act 2011 for the domestic private rented sector. It considered how the following regulations could be applied:

- Tenant's energy efficiency improvement regulations that will empower private domestic tenants to request consent for energy efficiency measures which cannot unreasonably be refused by their landlord - these must be in force by 01.04.16; and
- Minimum efficiency standard regulations that will require eligible properties in the sector to be improved to a specified minimum standard - these must be in force by 01.04.18.

<https://www.gov.uk/government/publications/domestic-private-rented-sector-regulations-working-group-report-report-to-government>

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## ENVIRONMENT

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48 Information Commissioner's Office (ICO) Guidance

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### **Charging for environmental information (Regulation 8)**

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The Environmental Information Regulations 2004 (EIR) give rights of public access to information held by public authorities. This document, which is part of a series of guidance which aims to help public authorities to understand their obligations and promote good practice, explains how public authorities should comply with the charging regime laid out in Regulation 8 of the EIR, and, in particular, what constitutes a "reasonable amount".

[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Environmental\\_info\\_reg/Practical\\_application/charging-for-environmental-information-reg8.pdf](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/charging-for-environmental-information-reg8.pdf)

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49 ICO Guidance

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### Property searches and the EIR

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This guidance explains how public authorities should respond to requests for local property search information and the relationship between the EIR and the Local Authorities (England) (Charges for Property Searches) Regulations 2008 (CPSR). The issue of charging for environmental information is currently the subject of an appeal to the First-tier Tribunal in the case of East Sussex County Council v Information Commissioner and Property Search Group. Two questions relating to this issue have in turn been referred by the Tribunal to the European Union Court of Justice. This version of the guidance therefore reflects the Commissioner's position while awaiting the court's decision, which is unlikely to be before 2015.

If you require advice on environment & contamination issues, contact Keith Norman on Tel. +44 (0)20 7333 6346 knorman@geraldeve.com

[http://ico.org.uk/for\\_organisations/~media/documents/library/Environmental\\_info\\_reg/Practical\\_application/property-searches-and-eir.pdf](http://ico.org.uk/for_organisations/~media/documents/library/Environmental_info_reg/Practical_application/property-searches-and-eir.pdf)

## LONDON

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50 London Assembly Government – Supplementary Planning Guidance

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### Shaping Neighbourhoods: Character and Context

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The London Plan 2011 includes a number of policies for facilitating high quality design, building on the positive elements of places to help inform the future enhancement and development of an area. In particular Policy 7.4 Local Character states that new development should help people understand “where a place has come from, where it is now, and where it is going”. The objectives of this SPG are to provide:

- specific guidance on the attributes of character and context in London;
- information on resources that inform an understanding of character and context in London;
- an analysis of the interrelationships between different aspects of character and how it can be articulated and presented to others; and
- examples of good practice in how an understanding of character and context can be used to help manage change in a way that sustains and enhances the positive attributes of a place.

<http://www.london.gov.uk/priorities/planning/publications/shaping-neighbourhoods-character-and-context>

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51 London Assembly Government – Supplementary Planning Guidance (SPG)

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### Town Centres

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This SPG provides guidance on the implementation of London Plan Policy 2.15 Town centres and its associated Annex and of other policies in the Plan with specific reference to town centre development and management. It also provides guidance on Policy 2.16 Strategic Outer London Development Centres and their potential to be developed as business locations with distinct strengths of greater than sub-regional importance.

<http://www.london.gov.uk/priorities/planning/publications/town-centres-supplementary-planning-guidance-spg>

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52 Report

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**Accommodating Growth in Town Centres: Achieving Successful Housing Intensification and High Street Diversification**

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This report assesses the changing nature of retail and the capacity and deliverability of housing intensification in and around town centres, while encouraging a diverse range of enterprises and the spaces they need on high streets. The study has been carried out by three firms of consultants on behalf of three sponsor bodies, the Outer London Commission, the Mayor's Design Advisory Group, and the LEP SME Working Group, and will inform the Further Alterations to the London Plan and future regeneration funding and programmes.

<http://www.london.gov.uk/priorities/planning/publications/accommodating-growth-in-town-centres-achieving-successful>

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53 Report

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**Barriers to Housing Delivery – Update**

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This is an update to Molior London's 2012 Report commissioned by the GLA, "Barriers to Housing Delivery in London" which considered why developers in London were not building more homes for private sale. This report considers housing delivery targets and concludes that, when measured in terms of housing starts, GLA housing need targets are being met in terms of the contribution expected from private-sale starts on sites of 20+ homes.

<http://www.london.gov.uk/sites/default/files/Barriers%20to%20Housing%20Delivery%20Update%20Report%20-%20July%202014.pdf>

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**PROPERTY MARKET**

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54 RICS Survey

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**UK Commercial Market Survey**

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The RICS UK commercial property market survey for Q2 of 2014 has found that latest trends include:

- Continued growth in tenant demand, particularly in the industrial sector;
- Conversely availability appears to be contracting at the fastest rate on record, particularly in London;
- Rental expectations have improved further with the value of incentive packages continuing to fall;
- 38% of the respondents reported an increase in speculative development; and
- 77% reported that investor interest has extended beyond primary assets into secondary, and 20% reported that it has moved into tertiary assets.

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## GENERAL

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55 College of Estate Management Report

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### **UK and Ireland Shopping Centre Management Sentiment Survey 2013**

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This report, published in July 2014, identifies factors and issues which are likely to affect UK and Irish shopping centres over the next three years and gives examples of new measures proposed by respondents to the survey aimed at increasing customer loyalty. The latter include free Wi-Fi and instant offers; increased provision of leisure/hospitality outlets such as cinemas, clubs and social enterprise units; creating wider parking bays for all customers; and targeted use of social media in place of the current 'scatter gun' approach.

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56 Government Statistical Publication

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### **Sustainable development indicators (SDIs)**

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This revised set of SDIs replaces the previous set which had been maintained by Defra since 2001. It is reduced in size and identifies a core set of headline indicators to highlight sustainable development priorities for users and government. The indicators are intended to provide an overview of national progress towards a more sustainable economy, society and environment.

<https://www.gov.uk/government/publications/sustainable-development-indicators-sdis>

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57 Consultations

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### **English Heritage Historic Environment Good Practice Advice Notes Deadline for Comments: 06.09.14**

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Comments are invited on three Historic Environment Good Practice Advice Notes which were published on 11.07.14:

- Note 1: The Historic Environment in Local Plans;
- Note 2: Decision-Taking in the Historic Environment; and
- Note 3: The Setting of Heritage Assets.

These notes are intended to assist local planning authorities, planning and other consultants, owners, applicants and other interested parties in implementing historic environment policy in the National Planning Policy Framework and related guidance contained in recently published Planning Practice Guidance.

<http://www.english-heritage.org.uk/publications/guidelines-and-standards/consultations>

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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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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.

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# EVEBRIEF

## Legal & Parliamentary

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### SCOTLAND

#### PLANNING

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01 Scottish Assembly Government Statistics

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#### Planning Authority Performance Statistics 2013/14

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This report contains statistics on planning decision making and timescales from 2012/13 to 2013/14. It is based on quarterly data collected by the Scottish Government from Local and Planning Authorities as part of the Planning Performance Framework. Longer term trends are also presented where the data from earlier years is in a comparable format.

<http://www.scotland.gov.uk/Publications/2014/07/2731>

### WALES

#### LANDLORD & TENANT

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02 Welsh Assembly Government Consultation

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#### Renting Homes – Illustrative Model Contract Deadline for Comments: 14.10.14

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The Renting Homes White Paper, which was consulted on in 2013, proposed the introduction of a clearer and more straightforward legal framework. Having received strong support, the Renting Homes (Wales) Bill is scheduled to be introduced into the National Assembly in 2015. Instead of the current complicated arrangements it is proposed that there will be two types of contract:

- i. a “secure contract” based on the current secure tenancy issued by local authorities; and
- ii. a “standard contract” modelled on the assured shorthold tenancy that is used mainly in the private rented sector.

This consultation seeks views on the overall structure and layout of the contract documents and supporting guidance. The detailed wording will be finalised once the Bill has been fully considered by the Assembly.

<http://wales.gov.uk/consultations/housing-and-regeneration/renting-homes-illustrative-contract/?status=open&lang=en>

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## PLANNING

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03 Statutory Instrument

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### **WSI 2014/1770 The Town and Country Planning (Non-Material Changes and Correction of Errors) (Wales) Order 2014**

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This Order, which comes into force on 01.09.14, makes corresponding provisions for Wales to s96A of the Town and Country Planning Act 1990 (allowing non-material changes to planning permissions) and to s184 of the Planning Act 2008 (correction of errors in a decision document).

<http://www.legislation.gov.uk/wsi/2014/1770/contents/made>

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04 Welsh Assembly Government Guidance

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### **Planning Guidance: Approving Non-material Amendments to an Existing Planning Permission**

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This guide explains how to make small changes to existing planning permissions.

<http://wales.gov.uk/topics/planning/policy/guidanceandleaflets/approving-non-material-amendments/?lang=en>

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05 Welsh Assembly Government Consultation

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### **Consultation on Draft Technical Advice Note (TAN) 1: Joint Housing Land Availability Studies (JHLAS) (Wales) Deadline for Comments: 10.10.14**

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This consultation invites views on the proposed changes to TAN 1. JHLAS are used to monitor the supply of housing land through the planning system. The aim of the review is to align housing land supply and Local Development Plan monitoring processes as part of wider proposals to improve local delivery of the planning system.

<http://wales.gov.uk/consultations/planning/draft-technical-advice-note-1/?status=open&lang=en>

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## NORTHERN IRELAND

### RATING

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06 Outcome of consultation on the decapitalisation rate

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The outcome of the Northern Ireland Government's consultation on the decapitalisation rate for the 2015 Revaluation stated as follows:

"Taking account of views expressed, the Department has decided to adopt lower decapitalisation rates than that proposed in the consultation paper.

A standard rate of 4% and a lower rate of 2.67% will be adopted for the new Valuation List, following the Revaluation in April 2015.

The MOD estate will move from the lower rate to the standard rate."

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## HOUSING

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07 DOE Report

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### **Northern Ireland Housing Land Availability Summary Report 2013**

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This report, published on 30 July 2014, revises and corrects inaccuracies in the 2013 report. The report shows housing land across Northern Ireland for those settlements designated in Development Plans in order to monitor progress of housing developments, inform new preparation of Development Plans regarding the allocation of land for housing and provide information on the available potential for further housing development in settlements.

[http://www.planningni.gov.uk/index/news/news\\_releases/common\\_news\\_revised\\_ni\\_housing\\_land\\_availability\\_summary\\_report\\_30072014.htm](http://www.planningni.gov.uk/index/news/news_releases/common_news_revised_ni_housing_land_availability_summary_report_30072014.htm)

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## GENERAL

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08 Statutory Instrument

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### **NISR 2014/197 The Business Improvement Districts (Miscellaneous) Regulations (Northern Ireland) 2014**

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These Regulations, which came into force on 02.07.14, make various provisions in relation to Business Improvement Districts in Northern Ireland.

- Reg 2 provides for the Dept of Finance and Personnel (DFP) to supply information from its non-domestic rates records to persons developing BID proposals.
- Reg 3 provides for DFP to supply information from its non-domestic rates records for the purpose of canvassing in relation to a ballot. Provision is also made for the restriction of the use of the information.
- Reg 4 prescribes the circumstances in which a district council may veto BID proposals, the period within which this must be done and the matters to which the district council must have regard in deciding whether to exercise the veto.
- Reg 5 provides for who is entitled to vote in a ballot.

<http://www.legislation.gov.uk/nisr/2014/197/contents/made>