EVEBRIEF

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CHANGES TO AFFORDABLE HOUSING AND S106 THRESHOLDS

Ben Aldridge
Editor

Earlier this year the Government consulted on proposals set out in its 2013 Autumn Statement to amend affordable housing thresholds. We report at Item 11 on its response to that consultation and at Item 12 on revisions to Planning Practice Guidance relating to affordable housing and tariff style planning obligations.

The aim of these changes, which form part of a wider programme of reforms to get Britain building, is to stimulate housebuilding by tackling the 'disproportionate burden' of developer contributions on small scale developers and custom and self-builders. Measures were also taken earlier this year to exempt self-builders from paying the community infrastructure levy.

The changes should assist smaller developments and help unlock sites, not only due to the resultant financial savings but also by enabling delays caused by negotiations on contributions to be avoided, and so will be welcome news to many in the building industry. However, as with any threshold there may be unintended impacts such as split sites or 'under-development' of sites to create smaller schemes and no doubt local councils will be concerned at the effect on the supply of affordable homes.

Elsewhere at Item 19 we report on the Law Commission's recommendations on reforming the law on rights of light which follow last year's consultation, and at Item 1 on changes to Stamp Duty Land Tax which came into force on 4 December.

The Editorial team wish all readers a happy and peaceful Christmas and New Year.

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Correction

In the final stages of production of the last edition, Volume 36(08) published on 17 November 2014, two case names and references were inadvertently omitted. These were:

PLANNING

Item 07:

High Court

*R (ON THE APPLICATION OF MID COUNTIES CO–OPERATIVE LTD) V FOREST OF DEAN DISTRICT COUNCIL
[2014] PLSCS 259 – Decision given 30.09.14

COMPENSATION

Item 22:

Upper Tribunal Lands Chamber

*HARRINGAY MEAT TRADERS LTD V GREATER LONDON AUTHORITY
[2014] PLSCS 256 – Decision given 10.07.14

AUTUMN STATEMENT

01 HM Treasury Fact Sheet

Stamp Duty Changes

The new rules for stamp duty, announced in the Autumn Statement and which affect residential property transactions, came into force on 04.12.14. The majority of homebuyers will now pay less stamp duty. Under the old rules tax was paid at a single rate on the whole property price. Under the new rules buyers will pay the rate of tax on the part of the property price within each tax band. The new rates of stamp duty are as follows:

£0 – £125,000	0%;
£125,001 – £250,000	2%;
£250,001 – £925,000	5%;
£925,001 – £1,500,000	10%; and
£1,500,001 and over	12%,

Purchasers who have already exchanged contracts, but not yet completed have the choice as to whether to pay stamp duty under the old or new rules.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/382324/Stamp_Duty_15.pdf

LANDLORD & TENANT

02 Court of Appeal

Leasehold Reform, Housing and Urban Development Act 1993 – collective enfranchisement – notice omitting details prescribed by s13(3)e in respect of one flat

*NATT V OSMAN
[2014] PLSCS 331 – Decision given 26.11.14

Facts: The appellants were long leaseholders of two flats in a building in North London. There were four flats in total, but one of these was in the attic and was let to the freehold respondents' daughter. In June 2010 the appellants served an initial notice on the respondents under s13 of the 1993 Act claiming their right to acquire the freehold of the property by collective enfranchisement. The notice stated that the property contained only three flats held by qualifying tenants. It omitted the attic flat which the appellants considered was not a flat for the purposes of the 1993 Act on the grounds that the staircase leading to it had been constructed on a landing that was actually part of one of the other flats.

Point of dispute: Whether the notice was valid. At first instance the judge ruled in favour of the respondents finding that:

i. The landing was not included in the demise of the adjoining flat and there were no grounds for rectification;

ii. The attic flat had a lawful means of access which meant that it satisfied the definition of a "flat" for the purposes of the 1993 Act; and

iii. The omission of the details of the attic flat from the notice rendered it invalid.

Held: The appellants' appeal against the judge's decision was dismissed. Their initial notice was invalidated by reason of non–compliance with s13(3)(e) for the following reasons:

I. Where a statute did not precisely state the consequence of a failure to comply with a process or procedure laid down in it the modern approach was to determine a non–compliance issue by applying all the usual principles of statutory interpretation.;

II. In a case where there was a statutory requirement to serve a notice as part of the process of acquiring or resisting the acquisition of property rights, the court would not adopt a "substantial compliance" approach, but would interpret the notice to see whether it actually complied with the strict statutory requirements; and

ii. A consideration of the statutory scheme led to the conclusion that non–compliance invalidated an initial notice. In this case there had been a failure to identify all the qualifying tenants and to state their addresses in the property, which was important because the correct number of qualifying tenants had to give the s13 notice in order for it to be valid.

03 Upper Tribunal Lands Chamber

Service charges – respondent disputing liability to contribute through service charges to costs of lift maintenance and directors' expenses

*SOLARBETA MANAGEMENT CO LTD V AKINDELE
[2014] PLSCS 306 – Decision given 30.09.14

Facts: The appellant company, SM, was responsible for managing 25 private flats in a development. The flats were let on long leases and SM employed a full-time managing agent to discharge its duties. The leaseholders were all members of SM and liable to pay a service charge representing a specified percentage of the costs it incurred in discharging its obligations under the leases. A was the leaseholder of a private ground floor flat in a building which otherwise contained social housing. Para 3 of the fourth schedule to the lease entitled SM to "provide such other services and discharge such other obligations or functions as [it] shall reasonably from time to time consider necessary or expedient for the use and occupation of the flats in the buildings." Para 9 referred to "such other services or functions as [SM] shall think fit for the upkeep and enhancement of the estate or for the benefit of the flats erected thereon." Clause 6.2 of the lease permitted SM to employ a firm of managing agents and to "discharge all proper fees salaries charges and expenses payable to such agents or such other person who may be managing the estate."

Point of dispute: Whether SM's appeal would be allowed against the ruling of the first tier tribunal that it could not recover from A contributions to the cost of maintaining the lift in the private residential building or to the expenses of SM's directors.

Held: The appeal was allowed. A's lease was unusually brief and SM's obligations as set out in paras 3 and 9 of the fourth schedule were in very wide terms. The lease contained no specific obligations regarding repair, maintenance or renewal and gave SM a discretion to be exercised "reasonably", to do whatever it considered "necessary or expedient for the use and occupation of the flats in the Buildings…" It did not matter that maintenance of the lift was not specified in para 3 as virtually nothing else was; everything being left to SM's discretion. The Buildings encompassed both the private residential building and the private part of the social housing building and it did not matter whether the works which SM decided to do benefitted all or only some of the long lessees. The expenses of SM's directors were recoverable under clause 6.2 since no distinction was drawn between management of the estate and management of the management company. Where a firm of managing agents was appointed to manage the estate, that did not prevent SM from charging its administration costs in relation to any retained functions or obligations.

04 Upper Tribunal: Lands Chamber

Appellant tenant challenging service charges for past years – whether time-barred because of appellant's unreasonable delay – whether any statutory limitation period applying to s27A application

**PARISSIS V BLAIR COURT (ST JOHN'S WOOD) MANAGEMENT LTD
[2014] PLSCS 330 – Decision given 11.11.14

Facts: The appellant, P, held long leases of two flats in a building managed by the respondent (BCM). In November 2010, P applied to the LVT under s27A of the Landlord and Tenant Act 1985 to challenge certain items of expenditure in the service charges for the years 2001 to 2005. These items included the costs of major works carried out in 2001, related expenditure in 2004 and legal costs incurred by BCM in 2001 to 2003 and in 2005.

Point of dispute: Whether P's appeal would be allowed against the LVT's finding that it had no jurisdiction to determine the application because the proceedings were time-barred on the grounds of P's unreasonable delay, causing prejudice to BCM. The LVT found that there was no question of any trust having arisen in respect of the sums collected for major works and legal costs which meant that s21 of the Limitation Act 1980, which would disapply any relevant limitation period in the case of an action by a beneficiary under a trust, did not apply.

Held: The appeal was allowed. There was doubt regarding the extent, if any, to which the Limitation Act 1980 applied to an application to a LVT under s27A of the 1985 Act. Different considerations might apply depending on whether the application was brought by a landlord or a tenant. The following points were made:

i. In deciding that the application was time-barred because of "unreasonable delay" the LVT had, in effect, applied the principle of laches, but this doctrine could not apply to a s27A application which was an exercise of a statutory right rather than a claim for equitable relief;

ii. An application by a tenant under s27A to determine how much was payable in service charges was not an "action to recover any sum recoverable by virtue of any enactment" so as to fall within the limitation period under s9 of the 1980 Act – a claim for repayment of any excess would be a restitutionary claim for recovery of an overpayment;

iii. The s27A application was not "an action founded on simple contract" so as to attract the limitation period in s5 of the 1980 Act;

iv. The LVT had erred in deciding that the application was time-barred and the matter should be remitted to it for reconsideration; and

v. The LVT might wish to consider whether the application should be dismissed as an abuse of process considering the length of P's delay in making his application.

05 High Court

Judicial review of decision to make a management order – claimant freeholder arguing that defendant had no jurisdiction to make an order including land outside the premises

*R (ON THE APPLICATION OF CAWSAND FORT MANAGEMENT CO LTD) V FIRST–TIER TRIBUNAL (PROPERTY CHAMBER)
[204] All ER (D) 194 (Nov) – Decision given 18.11.14

Facts: The claimant acquired the freehold of a fort and constructed 30 dwellings which it sold off, either as freeholds or long leaseholds. The freeholders and leaseholders were granted rights over the amenity land which the claimant covenanted to maintain, but it failed to do this. In 2005, the Leasehold Valuation Tribunal (LVT) ordered a manager to undertake a scheme of management, including the whole area of the fort, under s24 of the Landlord and Tenant Act 1987. This decision was upheld by the Lands Tribunal and the Court of Appeal, which found that there was nothing in the language of Part II of the Act or in its aim to justify limiting a manager's functions to those which had to be carried out on "the premises to which the Act applies" in s24(1). In May 2013 the leaseholders applied for the reappointment of a manager and the defendant (FTT) made a further management order in similar terms to the original one.

Point of dispute: Whether to allow the claimant's application for judicial review of FTT's decision. It argued that the FTT had no jurisdiction to make the order that it had as it was a management order of property which included land outside the land which comprised the premises, including the amenity land.

Held: The application was dismissed. Rights over servient land were properly described as being in relation to dominant land. The order which the FTT was empowered to make, under s24(1) of the Act, appointing a manager to carry out functions in relation to the premises might extend to land over which such rights ran, albeit that that land was not within the premises buildings and curtilages. The order was in respect of land outside the leaseholders' premises, but which was properly "in relation" to those premises and thus within the scope of s24.

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

PLANNING

06 Court of Appeal

Environmental Impact Assessment

*R (ON THE APPLICATION OF OLDFIELD) V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2014] PLSCS 309 – Decision given 07.11.14

Facts: On the recommendation of a planning inspector, the lpa granted planning permission for the development of a seafront site in Margate. The development comprised the redevelopment of an existing building, the construction of a Tesco superstore, a hotel and car parking. The site adjoined a beach which was of environmental importance as a habitat for wintering and breeding birds. The lpa had come to the conclusion that no EIA was required for the development. O, a local resident, sought judicial review of the screening opinion and challenged the grant of planning permission. She contended that the lpa had failed properly to consider the cumulative effects of the proposed development when it was combined with the planned redevelopment of a nearby amusement park.

Point of dispute: Whether O's appeal would be allowed against the decision of the judge in the court below to dismiss her claims. The judge ruled that the lpa had been entitled to find that there were no significant cumulative environmental effects of the development. It could validly conclude that any significant environmental effects would be the free-standing consequences of the amusement park project and thus did not have to be considered as part of the cumulative consequences of O's development.

Held: The appeal was dismissed. Any assessment of cumulative environmental effects of a development had to be made in the light of what was known or reasonably ascertainable at the time of the assessment. Although the amusement park site was earmarked for development, its future was uncertain and no planning application had as yet been made. In those circumstances the lpa could validly conclude that there were no significant environmental effects of the development currently in question.

07 High Court

Outline planning permission for major development – viability – whether decision making process procedurally flawed

*R (ON THE APPLICATION OF EQUIOM (ISLE OF MAN) LTD V CROYDON LONDON BOROUGH COUNCIL
[2014] PLSCS 311 – Decision given 10.11.14

Facts: The defendant council, CLBC, granted outline planning permission for the redevelopment of the Whitgift Centre and surrounding land in Croydon. The proposal included upgrading of the retail element of the site, which was located in the centre of Croydon, and the provision of leisure facilities and housing in order to attract more residents to the area. The developer would be required to provide a percentage of affordable housing. The claimants, who were the main operators of the Whitgift Centre, were opposed to the redevelopment and so CLBC made a compulsory purchase order on 15.04.14 with an inquiry fixed for 2015.

Point of dispute: Whether to allow the claimants' application for judicial review of CLBC's decision to grant planning permission and conservation area consent for the redevelopment. The claimants contended that they had not seen a confidential report commissioned by the proposed developer into the overall viability of the scheme which meant that they were unable to make their objections in a focused manner. A report by CLBC's director of planning stated that the 50% level of affordable housing contained in the Croydon Local Plan was not achievable, but that planning obligations entered into by the interested parties would secure 15% affordable housing, which met the requirements of the Croydon Opportunity Area Planning Framework.

Held: The application was dismissed.

i. It was a general principle that confidential information does not have to be disclosed although there were certain caveats to this. It was reasonable to take the view that where issues were raised about the level of information given and whether the scheme could certainly go ahead, confidentiality could properly be maintained. Once permission was granted, the need for confidentiality of the draft reports was removed.

ii. It was important to recognise a CPO was needed in this case. Viability was not generally a proper reason for refusing permission, but because a CPO would be needed, deliverability would have to be demonstrated. In the circumstances, overall viability was not a matter to be considered in detail since it would not be a reason to refuse outline planning permission, but it was a matter to be taken into account in considering whether the affordable housing requirements could be met. The claimants had been given a fair chance to make their objections and would have another opportunity to put their case at the 2015 CPO inquiry. At this, all relevant information would be available, the viability and deliverability of the scheme would have to be comprehensively demonstrated by the interested parties and thus the claimants' rights would be fully protected.

08 Planning Court

Grant of planning permission subject to s106 agreement requiring payment of transport contributions – subsequent grant of a second planning permission without the s106 obligation – whether claimant entitled to elect to continue and complete development under second planning permission

**R (ON THE APPLICATION OF ROBERT HITCHINS LTD) V WORCESTERSHIRE COUNTY COUNCIL [2014] PLSCS 325 – Decision given 18.11.14

Facts: In 2012 RH, a property developer, obtained planning permission to build up to 200 homes on a site in Worcester. The permission was subject to an agreement under s106 of the Town and Country Planning Act 1990 to pay the defendant highway authority, WCC, transport contributions in three instalments. RH then sold the site to a third party, but agreed that it would observe and perform its obligation to make the payments to WCC under the first s106 agreement. RH later submitted a further application for residential development on the site, permission for which was granted but without any obligation to make a transport contribution.

Point of dispute: Whether the obligation to pay a transport contribution had survived the grant of permission on the second application. The questions which arose for determination were: (i) whether, after the reserved matters approval had perfected the second planning permission, RH had been able to elect to continue and complete the development under the second permission rather than the first one; and (ii) if so, whether on the available evidence RH had in fact elected to continue and complete the development under the second permission.

Held: RH's application for relief was granted and it was not liable to pay the transport contribution.

i. As a matter of law, after the reserved matters approval had perfected the second planning permission, the third party developer could elect to continue and complete the development under the second planning permission, rather than the first one. Where two permissions exist for the same land a developer can, as a matter of principle, choose between them.

ii. The material operations which the developer had carried out had been under the second permission, since the first had been given up.

iii. The court was not persuaded that this was a case in which relief should be withheld. Three conditions had to be satisfied: the question under consideration was a real one; the person seeking the declaration had a real interest; and there had been proper argument. All of these were satisfied in this case and, having succeeded on the merits, there was no reason to deprive RH from the relief it sought.

09 Planning Court

Judicial review of grant of planning permission to develop a former brewery in a conservation area – whether defendant local authority had applied presumption in favour of preserving and enhancing surrounding conservation area

*R (ON THE APPLICATION OF HUGHES) V SOUTH LAKELAND DISTRICT COUNCIL
[2014] PLSCS 335 – Decision given 28.11.14

Facts: The defendant local authority, SLDC, granted planning permission and conservation area consent for the demolition of buildings at a former brewery in Ulverston, Cumbria and for the redevelopment of the site. The site was within the local conservation area.

Point of dispute: Whether to allow H's application for judicial review of SLDC's decision to grant planning permission. H was a local resident who opposed the development. She argued that SLDC had wrongly failed to give priority weight to the impact of the development on the local conservation area by failing to apply the presumption in favour of preserving and enhancing the surrounding conservation area pursuant to s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Held: The application was granted. The duty in s72(1) meant that, when deciding whether harm to a conservation area was outweighed by the advantages of a particular development, the decision-maker should give particular weight to the desirability of avoiding such harm. In such cases there was a strong presumption against the grant of permission. There was a need to give special weight to maintaining the conservation area in exercising the planning judgment. Even if the harm was less than substantial, so that para 134 of the NPPF applied, it still had to be given considerable importance and weight where the harm was to a heritage asset (the conservation area). The planning officer had not done this in the planning balance exercise, which meant that his report and the decision based on it were flawed. There was no basis for exercising the court's discretion not to quash the decision to grant permission.

10 Planning Court

Claimant seeking judicial review of defendant minerals planning authority's grant of temporary planning permission

*R (ON THE APPLICATION OF FRACK FREE BALCOMBE RESIDENTS ASSOCIATION) V WEST SUSSEX COUNTY COUNCIL
[2014] All ER (D) 67 (Dec) – Decision given 05.12.14

Facts: The defendant minerals planning authority, WSCC, had granted a temporary planning permission to a company, CBL, for the exploration and appraisal of a hydrocarbon lateral borehole. The proposed development required a number of statutory authorisations in addition to the grant of minerals planning permission, including from the Environment Agency (EA) and the Health and Safety Executive (HSE).

Point of dispute: Whether to allow the claimant's application for judicial review of WSCC's decision to grant permission for the development. The claimant contended that:

i WSCC's planning committee had been wrongly advised that it should leave matters such as pollution control, air emissions and well integrity to the EA, HSE and other statutory bodies;

ii the committee had been misled with regard to the views of Public Health England (PHE) on air emissions monitoring and of the HSE on well integrity;

iii the committee had been wrongly advised to treat as immaterial evidence of past breaches of planning permission by CBL;

iv the committee had been wrongly advised that the number of objections received, as opposed to their content, had been immaterial; and

v the committee had been wrongly advised that the issue of the costs generated by protests at the activities of CBL had been immaterial.

Held: The application was dismissed.

i. There had been ample material before the committee that all matters of concern could and would be addressed by the statutory regulatory authorities.

ii. The submission that the committee had been misled on PHE's views was without substance.

iii. The committee had addressed all material matters to the issue of CBL's past breaches of planning permission.

iv. The committee had been well aware that there was substantial opposition to the development, including the number of objections, but had been advised to look at the issues raised, rather than the numbers raising them.

v. If the committee had taken into account the argument that by granting planning permission it would excite opposition, leading to disruptive protests, it would have had regard to an immaterial consideration and acted unlawfully.

11 CLG Response to Consultation

Planning Contributions (s106 Planning Obligations)

In March 2014 the Government published a consultation on "Planning Performance and Planning Contributions". This consultation took forward the Government's 2013 Autumn Statement commitment to consult on a proposed new ten-unit threshold for s106 affordable housing contributions within national policy to reduce planning costs to developers. This document summarises the comments received and the Government's response to the planning contributions part of the consultation.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/381349/Planning_Contributions__Section106_planning_obligations_.pdf

12 CLG Planning Practice Guidance

Planning obligations

This was updated on 28.11.4 and outlines a change in the circumstances where contributions for affordable housing and tariff-style planning obligations (s106 planning obligations) should not be sought from small scale and self-build development.

- Contributions should not be sought from developments of ten units or less and which have a maximum combined floorspace of no more than 1,000 sq m.
- In designated rural areas (as described in s157(1) of the Housing Act 1985, and including National Parks and Areas of Outstanding Natural Beauty), local planning authorities may choose to apply a lower threshold of 5 units or less – in such cases no s106 obligations or affordable housing should be sought. In a rural area where the lower five-unit or less threshold is applied, affordable housing and tariff-style contributions should be sought from developments of between six and ten units in the form of cash payments which are commuted until after completion of the units in the development.
- Affordable housing and tariff–style contributions should not be sought from any development consisting only of the construction of a residential annex or extension to an existing home.

http://planningguidance.planningportal.gov.uk/revisions/23b/012/

13 Autumn Statement

National Infrastructure Plan 2014

The National Infrastructure Plan 2014 was launched by the Government on 02.12.14. It includes the following key proposals:

- A new housing initiative under which the government will plan, commission, build and sell homes itself. A pilot programme is being set up on a government owned former RAF base in Northstowe near Cambridge where the Homes and Communities Agency is to develop 10,000 new homes. The feasibility and economic impacts of rolling out this model on a wider scale, to support and accelerate housing supply, will be evaluated;
- Commitment to a loan of £55 million to support the extension of the London Overground to Barking Riverside, which will unlock the delivery of 11,000 homes;
- Supporting the regeneration of Brent Cross which will prove 7,500 new homes;
- Extending the capital settlement for affordable housing by £957 million in 2018-19 and 2019-20 to provide 275,000 new affordable homes over the next Parliament;
- A six year programme of investment in 1400 flood defence projects at a cost of £2.3 billion;
- £15.5 million to be spent on flood defences in Somerset; and
- A large programme of investment in new roads and road improvements.

The measures supporting housing in the National Infrastructure Plan will be accompanied by a package of measures that will increase access to affordable housing.

https://www.gov.uk/government/news/ambitious-plans-for-housing-flood-defence-and-roads-set-out-in-national-infrastructure-plan-2014

14 CLG Statistics

Live tables on planning application statistics

These are live tables for 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 & development issues, contact Hugh Bullock on Tel. +44 (0)20 7333 6302 hbullock@geraldeve.com

RATING

15 Upper Tribunal: Lands Chamber

Ratepayer installing internal staircase between three floors of demised office premises – VTE excluding area taken up by staircase from net internal area for purposes of rating valuation – whether staircase area to be brought back into account by end adjustment for tenant's improvements

*RE MANNING (VO)'S APPEAL
[2014] PLSCS 324 – Decision given 30.10.14

Facts: The ratepayer held three ten year leases of office premises spread over three floors of a building in London EC2. A private internal staircase, which linked the three floors and occupied 1.2% of the total demise, was in place and in use on the material day. The ratepayer had installed the staircase for security purposes as part of the fitting out works carried out before they moved into the premises, and was obliged to reinstate at the end of the term. In arriving at the rateable value for the premises the VTE held that the floor area of the staircase should be excluded and the RV reduced accordingly, rejecting the VO's contention that its value should be brought back into account as a tenant's improvement. It noted that under s3.14 of the RICS Code of Measuring Practice (6th ed) "the Code" stairwells were to be excluded and that the premises had to be valued in accordance with the "*rebus sic stantibus*" rule which meant that matters affecting the physical state or enjoyment of the hereditament were to be taken to reflect the premises as they stood at the material day.

Point of dispute: Whether the VO's appeal against the VTE's ruling would be allowed. In addition to its earlier arguments, it also contended that the "doctrine of minor works" applied so that the area of the staircase was to be valued as offices as if the staircase had been removed.

Held: The appeal was dismissed. The staircase was to be excluded as a "stairwell" within the meaning of s3.14 of the Code. While rent review clauses and lease renewals generally specifically disregarded the effect on rent of tenants' improvements, for rating purposes the hereditament was to be valued as it stood in its actual physical state at the relevant date. No end adjustment should be made for the staircase as a tenant's improvement; nor could it be brought into account under the doctrine of minor works, under which the physical state of the premises was to be taken to reflect minor alterations that a prospective occupier would consider making when formulating its rental bid, as the staircase was in place on the valuation date. In carrying out the valuation exercise the critical question was whether the hypothetical tenant wishing to take the premises for general office use would pay more because of the presence of the staircase. The VO had produced no evidence to demonstrate that this was the case.

16 Upper Tribunal: Lands Chamber

Split site – respondent operating cheese wholesaling, processing and distribution business from two buildings separated by a public highway – whether buildings should be listed as a single hereditament or two separate hereditaments

**JOHNSON (VO) V H&B FOODS LTD
[2014] PLSCS 327 – Decision given 10.11.14

Facts: The respondent company, H&B, was a wholesaler, processor and distributor of cheese operating from two buildings on either side of a public highway in London, SW8. The larger building contained offices, a refrigerated warehouse, packing room, the main production room and the loading bays for goods coming in and out. The smaller building contained another production room, but had no loading bays so that staff moved between the two buildings on foot or with forklift trucks for the purpose of assembling orders, which were then dispatched from the larger building. The VO entered the two buildings in the 2005 valuation list as two separate hereditaments: a "factory office and premises" and a "warehouse and premises".

Point of dispute: Whether to allow the VO's appeal against the ruling of the VTE, on H&B's appeal against the original listing, that the two entries should be merged to create a single composite hereditament comprising a factory and premises.

Held: The appeal was dismissed. Both parties agreed that the most relevant guidance on the identification of the hereditament could be found in the Court of Appeal decision in *Gilbert v Hickinbottom & Sons Limited ([1956] 2 QB 40, [1956] 2 All ER 101, 1 RRC 46)*. Whether premises formed one hereditament was a matter of fact and degree. The two buildings were separated geographically and were of different age and design. However, functionally the two buildings were essential to each other and could be regarded as a single hereditament. In particular, it was important that the smaller building had been designed with the needs of the occupier of the larger building in mind, which meant it lacked normal warehouse facilities, such as a loading bay. The working of the two buildings together was essential to the functioning of H&B's time critical business and they had been designed and adapted with a view to their complementary use. Their functional relationship was sufficient to require that they be entered in the rating list as a single hereditament and the merged hereditament should be described as a food processing centre. This case affirms the position regarding the hereditament and functionality established by the Gilbert case which has stood for over 50 years.

17 CLG Statistics

National non-domestic rates collected by councils in England: 2013 to 2014

- In 2013-14, local authorities reported that their income from the non-domestic rates retention scheme was £20.4 billion.
- In 2013-14, £3.1 billion of business rates relief was granted.
- 79% of this relief was mandatory relief other than small business rate relief.
- Relief for charitable occupation amounted to £1,434 million, or 47% of the total relief granted in 2013-14.
- £986 million of small business rate relief was granted while income from the supplement charged to fund this relief amounted to £447 million.

https://www.gov.uk/government/statistics/national-non-domestic-rates-collected-by-councils-in-england-2013-to-2014

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

COMPENSATION

18 Upper Tribunal: Lands Chamber

Disused railway cutting acquired for highway scheme – whether appellants entitled to certificate of appropriate alternative development under s17 Land Compensation Act 1961 in respect of tipping and land reclamation on entire site

*EDWARDS V RHONDDA CYNON TAFF COUNTY BOROUGH COUNCIL
[2014] PLSCS 320 – Decision given 14.10.14

Facts: The respondent council compulsorily acquired two parcels of agricultural land adjoining a disused railway cutting from E, the appellant, for the purposes of a highway construction scheme. In connection with her compensation claim E applied to the council for a certificate of appropriate alternative development under s17 of the 1961 Act, claiming that in the absence of the CPO, permission would have been granted for tipping and land reclamation on the whole three acre site, including the two parcels of land and the cutting. However, the council issued a negative certificate which stated permission would not have been granted for any development of the site other than that for which E's interest was being compulsorily acquired i.e. the highway scheme. It took the view that permission for the landfill/reclamation scheme would not have been granted since it was contrary to the applicable planning policies as unjustified development in the countryside and would be detrimental to the character and appearance of the area.

Point of dispute: Whether E's appeal would be allowed against the council's decision. E argued her proposal was an acceptable form of development. The council should have dealt with her proposal on its merits; given that permission had been granted for the highway scheme, her proposed scheme should have been acceptable as it would have had a lesser impact on the landscape.

Held: The appeal was allowed.

i. In determining whether planning permission would have been granted for E's reclamation scheme the court had to approach the issues afresh, and was not confined by the grounds on which the council had determined the s17 application.

ii. Throughout England and Wales there were major infrastructure schemes going ahead which would have significant effects upon the environment and parties whose land was affected by them could not argue that they should be entitled to a certificate of alternative development because their proposals would have a lesser impact. Different considerations applied to a much needed and long awaited highway scheme and a proposal like E's. E's proposal had to be considered on its merits in accordance with development plan policies and national guidance.

iii. However, in this case, the council had erred in refusing the certificate sought by E. There would not be any adverse effects on the character, visual amenity, or nature conservation value of the site; the proposal was sustainable within the requirements of development plan policies relating to landfill sites; and although not specifically included within the development plan overall, it was acceptable in planning terms under its policies.

iv. Section 17 of the 1961 Act was a hypothetical exercise to assist in the assessment of compensation for compulsory acquisition of land – a certificate of alternative development was just an indication of what development would have been allowed. It was unnecessary to provide a set of specific conditions and parameters to define the particular form of development that would be permitted.

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

REAL PROPERTY

19 Law Commission Report

Rights to Light

The Law Commission began this project on reform to the law on rights to light in March 2012. It published a consultation paper on 18.02.13 and has now published its final report. The key recommendations for reform are as follows:

- a statutory notice procedure which would allow landowners to require their neighbours to tell them within a specified time if they intend to seek an injunction to protect their right to light, or to lose the potential for that remedy to be granted;
- a statutory test to clarify when courts may order damages to be paid rather than halting development or ordering demolition;
- an updated version of the procedure that allows landowners to prevent their neighbours from acquiring rights to light by prescription;
- amendment to the law regarding abandonment of an unused right to light; and
- a power for the Lands Chamber of the Upper Tribunal to discharge or modify obsolete or unused rights to light.

http://lawcommission.justice.gov.uk/publications/rights-to-light.htm

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

CONTRACT

20 Upper Tribunal: Lands Chamber

Construction of deed of grant to operate and maintain electricity line – compensation to be paid in event that planning permission obtained to develop land "for residential or industrial purposes" – permission obtained to construct a building for storage and distribution – whether compensation payable

*G PARK SKELMERSDALE LTD V ELECTRICITY NORTH WEST LIMITED
[2014] PLSCS 323 – Decision given 21.10.14

Facts: The applicant, GPS, owned almost 11ha of undeveloped land outside Skelmersdale over which ENW operated and maintained an overhead electricity line pursuant to a 1967 deed of grant between the parties' predecessors in title. The deed provided for the grantee to pay compensation within six months of receiving notice from the grantor that planning permission had been obtained for development of the land "for residential or industrial purposes". Following the grant of outline permission in 2001, GPS obtained reserved matters approval in 2007 for the erection of a single large building to be used for purposes within Classes B2 and/or B8 of the Use Classes Order 1987. It was not possible to construct the building without removing the overhead line.

Point of dispute: Whether GPS was entitled to compensation. ENW argued that it was not on the grounds that development for storage or distribution uses within Class B8 was not development "for industrial purposes". It considered that that reference should be construed consistently with the references to "industrial building" in the Town and Country Planning Act 1962, which was the relevant legislation in force at the time the deed was made. This would include use for manufacture but not distribution.

Held: The preliminary issues were determined in favour of GPS.

i. The words in the 1967 deed were not technical and should be interpreted as they would be understood by a reasonable person having all the background knowledge that would reasonably have been available to both parties at the time. The word "industry" was capable of a wide variety of meanings; the expression "residential or industrial purposes" was used in contrast to the then agricultural use of the land and the wider commercial context of the deed also pointed to that conclusion. The expression was wide enough to include development for storage and distribution uses within Class B8 of the 1987 Use Classes Order.

ii. The appropriate date for assessing compensation was the date of the reserved matters approval in 2007 as it was only at that point that the development could proceed.

HOUSING

21 CLG Statistical Release

Net supply of housing in England: 2013 to 2014

These latest statistics on the supply of housing in England were released on 13.11.14. Key points from the release are as follows:

- There were 136,610 net additional dwellings in England in 2013-14, 10% up on the previous year; and
- Of these net additional dwellings 130,340 were new build homes, 4,470 were additional homes resulting from conversions, 12,520 were additional homes resulting from change of use, there were 1,330 other gains and 12,060 homes were lost through demolitions.

https://www.gov.uk/government/statistics/net-supply-of-housing-in-england-2013-to-2014

22 CLG Statistical Release

Code for Sustainable Homes: September 2014

This release shows the number of dwellings that have been certified to the standards set out in the Code for Sustainable Homes Technical Guide. It provides a breakdown by local authority area, by Code level and whether the homes are registered as private or public sector homes.

https://www.gov.uk/government/statistics/code-for-sustainable-homes-september-2014

23 CLG Statistical Release

Affordable housing starts and completions: April to September 2014

These are the latest statistics on affordable housing starts and completions managed by the Homes and Communities Agency (HCA) and the Greater London Authority (GLA), released on 20.11.14.

- Between April and September 2014 there were 11,556 housing affordable housing starts in England delivered through a variety of programmes managed by HCA and GLA, approximately 14% fewer than during the same period in 2013.
- There were 12,697 completions between April and September 2014, 37% more than during this period in 2013.
- It should be noted, however, that there is a recognised pattern of higher delivery of affordable housing in the second half of the year.

https://www.gov.uk/government/statistics/affordable-housing-starts-and-completions-april-to-september-2014

24 CLG Statistical Release

House building in England July to September 2014

These latest statistics on house building in England were released on 20.11.14 and contain figures on new build housing starts and completions. Key points are as follows:

- In the September quarter of 2014 it is estimated that there were 33,000 house building starts, a decrease of 10% on the previous quarter but 1% more than in the same quarter in 2013;
- Seasonally adjusted completions are estimated at 31,130 in the September quarter 2014, 5% higher than the previous quarter and 8% higher than the same quarter last year; and
- In the 12 months to September 2014 there were 138,640 housing starts, up by 16% compared with the year before. Annual housing completions in England totalled 116,930 in the year to September 2014, 8% more than the previous year.

https://www.gov.uk/government/statistics/house-building-in-england-july-to-september-2014

25 CLG Statistics

Live tables on house building

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-house-building

26 HCA bulletin

HCA Monthly Housing Market Bulletin – November 2014

These bulletins provide the latest information on trends in the housing market and the economy. In November:

- Average house prices continued to increase, although the national average rate appears to be easing. There is much regional variation;
- Seasonally adjusted numbers of housing transactions have started to decrease, but the mortgage market continues to grow;
- House building completions increased by 9.5% between Q3 2013 and Q3 2014 and although land values continued to rise, they remain well below their 2007 peak; and
- GDP increased by 0.7% in Q3 2014. Unemployment has fallen and CPI inflation remains fairly stable.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/382370/HCA_Housing_Market_Bulletin_-_November_2014.pdf

27 All Party Inquiry – Report

The affordability of retirement housing

This paper presents the conclusions and recommendations from the inquiry of the All Party Parliamentary Group (APPG) on Housing and Care for Older People into the affordability of retirement housing. The report is concerned with older people who find themselves living in properties that are too big for them, too expensive to run and too difficult to maintain. It considers whether this group of people can afford to move to more appropriate housing, and if not, how they can be helped to afford to move, which would help to ease the pressure on the entire housing market.

http://www.demos.co.uk/publications/theaffordabilityofretirementhousing

CONSTRUCTION

28 CLG Consultation

Right to Build: supporting custom and self build
Deadline for Comments: 18.12.14

Right to Build is an extension of the government's planning reforms and aims to give custom builders the right to a suitable plot of land to build a new home with the help of their local planning authority. This consultation seeks views on the best way of creating the Right to Build.

https://www.gov.uk/government/consultations/right-to-build-supporting-custom-and-self-build

29 CLG Consultation

Next steps to zero carbon homes: small sites exemption
Deadline for Comments: 07.01.15

The government announced earlier this year that there would be an exemption from part of the zero carbon commitment for small sites, as it has recognised that achieving the zero carbon standard is particularly challenging for small builders. This consultation considers how this exemption might work and aims to inform further development of the policy.

https://www.gov.uk/government/consultations/next-steps-to-zero-carbon-homes-small-sites-exemption

ENERGY

30 DECC Guidance

About shale gas and hydraulic fracturing (fracking)

The DECC has published guidance and answers to some frequently answered questions about fracking. The main Facts about Fracking booklet is supported by six guides:

- Fracking UK shale: climate change;
- Fracking UK shale: planning permission and communities;
- Fracking UK shale: regulation and monitoring;
- Fracking UK shale: safety from design to decommissioning;
- Fracking UK shale: understanding earthquake risk; and
- Fracking UK shale: water.

There is also a plain English guide entitled Shale Gas made Simple, and a background note.

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

ENVIRONMENT

31 Defra Report

Reducing the risks of flooding and coastal erosion: an investment plan 2014

Following the widespread flooding which occurred in 2007 and the tidal surges and devastating storms of last winter the government has decided that investment in flood risk management must be prioritised. £2.3 billion is to be spent on capital investment in defences over the next six years, an increase of 9% in real terms compared with the current spending review period, and this investment programme sets out how this funding will be used. 1,400 schemes, including some major construction projects, will benefit from the funding and a full list of the projects has been published alongside this document.

https://www.gov.uk/government/publications/reducing-the-risks-of-flooding-and-coastal-erosion-an-investment-plan-2014

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

GENERAL

32 Law Commission Consultation

General Statute Law Repeals
Deadline for Comments 27.02.15

This consultation reviews statute law generally and proposes the repeal of a number of obsolete Acts relating to diverse topics such as agriculture, criminal law, housing, merchant shipping and guard dogs. The Acts span the period 1267 to 2003, although most of them date from the 1940s onwards. It is proposed to repeal 56 Acts in full and 49 in part.

http://lawcommission.justice.gov.uk/consultations/general-slr-repeal-proposals.htm

33 Report

Going for Growth – Reviewing the Effectiveness of Government Growth Initiatives

The aim of this report is to assess which of the Government's growth initiatives, such as Enterprise Zones, Tax Increment Financing and public land release are having a beneficial impact and offering adequate support within the context of a recovering economy and, in particular, the extent to which they are supporting efforts get viable development underway. Where any initiatives are identified as failing to deliver, it also explores the scope to make these more attractive and effective. Additional changes that could remove blockages to development are suggested with the aim of contributing to the UK's economic growth.

http://www.bpf.org.uk/en/files/bpf_documents/regeneration/ID13827-001_Growth_Initiatives_Report_Oct_2014_No_Images.pdf

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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
Mark Walsh Tel. +44 (0)161 830 7091
mwalsh@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
Richard Fiddes Tel. +44 (0)20 7333 6294
rfiddes@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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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

LANDLORD & TENANT

01 Scottish Government Publication

Private Sector Rent Statistics, Scotland (2010 to 2014)

This publication contains statistics on private sector rent levels in Scotland between 2010 and 2014. Information is given on rent levels for different property sizes across each of the 18 broad rental market areas in Scotland, average rents and rents at the higher and lower ends of the market.

http://www.scotland.gov.uk/Publications/2014/11/2313

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

PLANNING

02 Scottish Assembly Government Consultation

Public Engagement for Wind Turbine Proposals – Good Practice Guidance
Deadline for Comments: 15.12.14

The Scottish Government has agreed to prepare guidance on good practice community engagement methods for wind energy development proposals. This consultation invites comments on the contents of this guidance which will be taken into account before the document is finalised in the spring of 2015.

http://www.scotland.gov.uk/Publications/2014/11/7727

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

GERALDEVE

HOUSING

03 Scottish Assembly Government Publication

Housing Statistics for Scotland, Quarterly Update – November 2014

This is the first of a new style quarterly publication and includes information on recent trends in:

- New house building starts and completions by sector up to end June 2014 (with more up-to-date social sector information available up to end September 2014);
- The Affordable Housing Supply Programme (up to end September 2014); and
- Local Authority house sales including Right to Buy (up to end June 2014).

http://www.scotland.gov.uk/Publications/2014/11/2283

GENERAL

04 Scottish Assembly Government Consultation

A Consultation on the Future of Land Reform in Scotland
Deadline for Comments: 10.02.15

This consultation seeks views on a range of measures intended to further land reform in Scotland. The Scottish Government is proposing a Land Rights and Responsibilities Policy to help guide the development of public policy on the nature and character of land rights in Scotland and a range of proposals for a Land Reform Bill which is designed to:

- demonstrate long term commitment to land reform;
- improve the transparency and accountability of land ownership;
- address barriers to sustainable development and begin to diversify patterns of land ownership;
- demonstrate commitment to effectively manage land and rights in land for the common good; and
- address specific aspects of land ownership and rights.

http://www.scotland.gov.uk/Publications/2014/12/9659

WALES

PLANNING

05 Welsh Assembly Government Consultation

Planning and related decisions of the Welsh Ministers
Deadline for Comments: 30.01.15

This consultation invites views on proposals to change the way in which planning decisions and appeals are decided by Welsh Ministers or the Planning Inspectorate. It is proposed to:

- introduce a more efficient system for advertisement appeals in line with the Householder Appeal System and Commercial Appeal System;
- change how called in applications and appeals by statutory undertakers are dealt with;
- introduce the ability for an appeal against non-determination to be returned to the local planning authority for a decision within a prescribed timescale; and
- transfer authority for the determination of certain appeals to the Welsh Ministers and to the Planning Inspectorate.

http://wales.gov.uk/consultations/planning/planning-and-related-decisions-of-the-welsh-ministers/?status=open&lang=en

06 Welsh Assembly Government Consultation

Subordinate Legislation Relating to Certain Internal Operations (mezzanine floors)
Deadline for Comments: 13.02.15

This consultation seeks views on the Welsh Government's proposal to require a planning application for additional internal floor space of over 200 sq metres in retail developments.

http://wales.gov.uk/consultations/planning/planning-and-compulsory-purchase-act-2004/?lang=en

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

RATING

07 Statutory Instrument

SI 2014/2917 The Rating Lists (Valuation Date) (Wales) Order 2014

This Order, which comes into force on 01.12.14, postpones the date on which the next new non-domestic rating lists in Wales should be compiled from 01.04.15 to 01.04.17.

http://www.legislation.gov.uk/wsi/2014/2917/contents/made

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

HOUSING

08 Department of Housing and Regeneration Report

Houses into Homes scheme

The Houses into Homes scheme provides interest free loans to owners of properties which have been empty for more than six months to bring the properties back into use for sale or rent. Over the first two years of the project 230 loans were approved, totalling over £9.44 million. This report shows that 2,178 empty homes in Wales were brought back into use in 2013/14, 99% more than 2012/13, the first year of the scheme and a 112% increase on 2011/12, the year before the scheme started.

http://wales.gov.uk/newsroom/housing-and-regeneration/2014/141112-dramatic-increase-in-the-number-of-houses-turned-into-homes/?lang=en

NORTHERN IRELAND

PLANNING

09 Department for the Environment Consultation

Planning Reform and Transfer to Local Government: Proposals for Subordinate Legislation (Phase 2)
Deadline for Comments: 31.12.14

This consultation document is the second phase of a two-phased public consultation exercise being undertaken by the Department of the Environment on proposals for subordinate legislation for the reform of the planning system and the transfer of the majority of planning functions to the newly elected 11 district councils. This transfer is due to take place on 01.04.15, after which date the local councils will operate as the local planning authority for their respective areas.

http://www.planningni.gov.uk/index/news/news_consultation/consultation_phase_2_reform_and_transfer_31102014.htm

10 Northern Ireland Planning Portal – DOE Press Release

Developer contributions

Developer Contribution Schemes are already in place across Great Britain and the Republic of Ireland as a means of providing more social and affordable housing in mixed income communities and in June this year the Department of Social Development and the Department of the Environment consulted on the possible introduction of a similar scheme in Northern Ireland. The consultation closed on 23.09.14. Specific research is now being commissioned to fully explore the likely economic impact, both positive and negative, of the various options for developer contributions schemes that could be introduced in Northern Ireland.

http://www.planningni.gov.uk/index/news/news_releases/developer_contributions_next_steps.htm

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