EVEBRIEF

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BUSINESS RATES APPEAL DEADLINE APPROACHES

Hilary Wescombe
Editor

Business rates climbed up the agenda during 2014 and that has not changed at the start of 2015. December's Autumn Statement included the announcement that transitional relief will be extended to 2017 for properties with a rateable value no greater than £50,000. The existing scheme ends on 31 March 2015. Item 18 refers to this and the guidance issued on the discretion available to local authorities to reduce liabilities for those otherwise facing significant hikes in their rates bills.

Perhaps of more immediate interest are the changes to the appeals regime for England also announced in the Autumn Statement, albeit with no regulations issued as yet and time is running short. As we understand the intention, the effect of appeals made on or before 31 March 2015 will still be backdated to 1 April 2010, the start of the 2010 rating list, (where appropriate) but the effect of most appeals made after that date will be limited to 1 April 2015. This will mean that even a successful appeal resulting in a reduced rateable, if made after 1 April 2015, will not lead to a ratepayer receiving a full refund of overpaid rates.
It is important that where an appeal is warranted it is put in place as soon as possible.

Please get in touch with your usual Gerald Eve contact, with me Hilary Wescombe or with our Head of Business Rates Jerry Schurder to discuss this change in more detail.

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LANDLORD & TENANT

01 Court of Appeal

Assignment

*LANKESTER & SON LTD V RENNIE
[2014] PLSCS 336 – Decision given 02.12.14

Facts: L was the respondent landlord of car showroom premises that were let to the appellants, R, for a term of ten years until August 2017. The lease contained a covenant against assignment without the landlord's written consent. A break clause, which expired in May 2012, gave R an option to end the lease by six months written notice. In 2008, L indicated that it would be willing to grant R a licence to assign the lease to a company provided that two directors personally guaranteed the lease obligations. The directors were not prepared to give these guarantees and this issue, among others, remained unresolved when R vacated the premises in October 2008 and allowed the company to take up occupation. L accepted payments from the company and both sides prepared to assign the lease. In January 2009, a firm of solicitors acting for both sides held a transfer deed signed by R. In March 2010, the company notified L of its intention to vacate the premises and agreed to pay £15,000 in settlement of a claim that L had brought against it for arrears of rent and other sums due under the lease.

Point of dispute: Whether a further claim brought by L, this time against R, for sums due under the lease should succeed. R counterclaimed for a declaration that the lease was no longer vested in them having been assigned to the company or surrendered by operation of law. R contended that:

i there had been an effective assignment of the lease in equity;

ii L was estopped from denying that the company was the tenant and therefore could not bring a claim against R; and

iii the settlement of the claim against the company had effected a surrender of the lease by operation of law. At first instance, L's claim was allowed and R's counterclaim was dismissed, and R appealed against that decision.

Held: The appeal was dismissed.

i. The transfer deed had not become fully effective since it had probably not been executed and formally delivered.

ii. No estoppel had arisen. L was only prepared to allow an assignment of the lease if it received personal guarantees from the company's directors. These were never provided and it had never consented to the company going into occupation. It had then been presented with a fait accompli when the company did move in, but there had never been a formal assignment of the lease. R had not acted in any way to their detriment in reliance on anything that was said or done by L in its dealings with R or the company.

iii. The 2010 settlement between L and the company did not bring about a surrender of the lease by operation of law. That conduct could only ever have amounted to a surrender of such estate as the company possessed – at all material times R were the tenants under the lease and bound by its covenants.

02 Court of Appeal

Tenancy deposit scheme – Housing Act 2004 – Localism Act 2011 – landlord not protecting deposit in authorised scheme – whether landlord precluded under s215 of 2004 Act from serving notice of possession under s21 of Housing Act 1988

*NG V CHARALAMBOUS
[2014] PLSCS 357 – Decision given 16.12.14

Facts: In August 2002, the appellants took a tenancy of a residential property for a term of a year less one day and paid a deposit of £1,560. The tenancy was renewed for further one-year periods in 2003 and 2004. The deposit was carried over each time but it was never held in a statutory deposit scheme. After August 2005, the appellants remained in occupation under a statutory periodic tenancy arising under the Housing Act 1988 and in October 2012, the respondents gave notice under s21 of that Act requiring possession of the property. The appellants contended that the notice was invalid.

Point of dispute: Whether the appellants' appeal would be allowed against the ruling of the judge in the court below that the s21 notice was valid. The appellants argued that it was not, on the ground in s215(1) of the Housing Act 2004, as amended by s184 of the Localism Act 2011, that at the time when the notice was served the deposit was not held in accordance with an authorised tenancy deposit scheme under the 2004 Act, or the respondents had not complied with the requirements of s213(3) of that Act regarding compliance with the initial requirements of such a scheme.

Held: The appeal was allowed. The conditions for the application of s215 had been satisfied. The first condition was that a tenancy deposit had been paid in connection with a shorthold tenancy; the second would be fulfilled if one of two alternatives was established, in this case set out in s215(1)(a): "the deposit is not being held in accordance with an authorised scheme". The deposit in this case was not, and never had been, held in a scheme. The s21 notice was invalid.

03 Statutory Instrument

SI 2015/14 The Housing (Tenancy Deposits) (Specified Interest Rate) (Revocation) (England) Order 2015

W.e.f. 04.02.15 this Order revokes the 2007 Order in England only. The 2007 Order specifies the rate of interest payable by a custodial tenancy deposit scheme on deposits repaid to tenants and landlords at the end of a tenancy. The 2007 Order was only relevant so long as the arrangements under which the tenancy deposit schemes were established provided for deposits repaid to tenants and landlords to be paid with interest. Those arrangements were changed in England in 2010 to provide that such amounts were no longer required to be paid with interest and the 2007 Order is therefore redundant.

http://www.legislation.gov.uk/uksi/2015/14/contents/made

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

PLANNING

04 Court of Appeal

Environmental Assessment – safeguarding directions for Phase 1 of HS2 project – whether SEA required before issuing safeguarding directions

*R (ON THE APPLICATION OF HS2 ACTION ALLIANCE LTD) V SEC OF STATE FOR TRANSPORT [2014] PLSCS 346 – Decision given 09.12.14

Facts: These proceedings concerned a challenge by the appellants by way of judicial review to a decision of the government in connection with its proposals for a new HS2 high-speed rail link from London to Birmingham (Phase 1) and then on to Leeds and Mancheser (Phase 2). Public consultation on the preferred route was followed by the issue of a command paper on "Decisions and Next Steps" (DNS). In earlier proceedings the Supreme Court had ruled that the DNS did not breach European directives on the protection of the environment.

Point of dispute: Whether the appellants' appeal would be allowed against the ruling of the court below which dismissed their judicial review claim challenging the legality of safeguarding directions issued by the Sec of State in July 2013 under the Town and Country Planning (Development Management Procedure) (England) Order 2010 in respect of Phase 1. The appellants contended that the directions amounted to a "plan or programme" setting the framework for future development consent for projects within the safeguarded zone, within the meaning of Article 2(a) of Directive 2001/42/EC (the SEA Directive), such that they should not have been issued without first conducting a strategic environmental assessment.

Held: The appeal was dismissed. The safeguarding directions were neither a plan or programme setting the framework for development consent within the meaning of Article 2(a) of the SEA Directive, nor did they set the framework for development consent for projects within the safeguarded zone. The objectives set out in the directions (ensuring that new developments along the route of HS2 would not prejudice the building or operation of HS2 or increase the cost of the project) were material considerations to be taken into account when deciding whether or not to grant planning permission for a development, but it was important to distinguish between procedure and substance in the decision-making process when viewing it as a whole and to recognise that there was a distinction between the development plan and the directions. An applicant for planning permission for a development along the line of HS2 could appeal to the Sec of State for Communities and Local Government (SSCLG) against an adverse decision or a failure to decide the application by the lpa and the SSCLG would be likely to place considerable weight on the objectives set out in the directions because of the national importance of the HS2 project. The Government's proposal for HS2 was being pursued by specific legislation and not pursuant to any "plan or programme" for the purposes of the SEA Directive. Thus it was not realistic to describe the directions, whose purpose was to ensure that the implementation of the project was not prejudiced by other developments, as some form of "plan or programme" in their own right.

05 Court of Appeal

NPPF – council adopting local plan – plan altering green belt boundaries so as to include respondent's land – whether inspector properly having regard to requirements of NPPF and correctly applying test for revising green belt boundaries

*GALLAGHER ESTATES LTD V SOLIHULL METROPOLITAN BOROUGH COUNCIL [2014] PLSCS 360 – Decision given 17.12.14

Facts: In December 2013, SMBC adopted a local plan for Solihull which had been approved with modifications by an inspector appointed by the Sec of State. The plan altered the boundaries of the green belt to include two sites which GE wished to develop for housing, which meant that any application for planning permission by GE was likely to fail. GE challenged the lawfulness of the local plan in proceedings brought under s113(3) of the Planning and Compulsory Purchase Act 2004.

Point of dispute: Whether to allow SMBC's appeal against the decision of the judge in the court below who allowed GE's claim. The judge held that the inspector's approach had been unlawful as he had failed properly to consider whether the local plan met the full objectively assessed needs for housing in the area and that he had failed to apply the stringent test of exceptional circumstances that applied to revision of the green belt boundary. GE also argued that the plan should not just be remitted for reconsideration by a different inspector, but quashed altogether.

Held: The appeal was dismissed.

i. The NPPF had introduced a radical policy change in respect of housing provision. Paragraph 47 required a two-step mandatory approach – an objective assessment of full housing needs, and an assessment as to whether other policies dictated or justified constraint. The process by which the inspector had come to recommend adoption of the local plan did not meet the requirements of the NPPF as he had not undertaken this mandatory approach.

ii. The inspector had erred in his approach to the test for the revision of green belt boundaries. Exceptional circumstances were needed to revise a boundary and these had not been proved.

iii. It was not necessary to quash the local plan. Those parts that contained legal errors should be remitted to SMBC for reconsideration in the light of the court's findings and to remedy the illegalities in the way they had been prepared.

06 Planning Court

Planning permission for wind turbine – harm to listed building – whether inspector misinterpreting development policy and failing to have regard to NPPF

*PUGH V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2015] PLSCS 5 – Decision given 05.01.15

Facts: An inspector appointed by the defendant Sec of State allowed an appeal by the owner of a farm in Cornwall against refusal of planning permission for the erection of a wind turbine on his farm. The claimant, P, who owned a neighbouring property from which he operated a holiday cottage business had objected to the application at every stage.

Point of dispute: Whether to allow P's claim to set aside the inspector's decision to grant permission for the wind turbine. P contended that the inspector had, inter alia:

i. failed to take into account the harm that would be caused to two listed buildings and irrationally found that there would be no harm;

ii. failed to apply local development plan policies and national policy to the impact of the proposed development on the settings of scheduled ancient monuments (SAMs); and

iii. failed to have regard to national policy in para 132 of the NPPF by failing to identify a clear and convincing justification for the harm to the SAMs which would be affected by the development.

Held: P's claim was dismissed.

i. In considering whether to grant permission for a development that would affect a listed building s66 of the Planning (Listed Building and Conservation Areas) Act 1990 required an inspector to have special regard to the desirability of preserving the building, its setting or any special features of special architectural or historical interest that it had. There was no equivalent statutory duty for SAMs, but in the NPPF the same policy tests for assessment of impact were applied to SAMs and listed buildings.

ii. Paragraph 132 of the NPPF required great weight to be attached to an asset's conservation.

iii. The inspector had not found any cogent evidence of adverse impact on any listed building or its setting.

iv. Neither P nor any other claimant had invited the inspector to consider the impact of the development on SAMs but as the nearest SAM was over 3km away it was difficult to see how this would have affected the outcome of the appeal.

v. The inspector had taken great care in his assessment of the value of the historical assets, following the sequential approach in the NPPF. It was a professional assessment which gave full weight to the value of the SAMs in question.

07 Statutory Instrument

SI 2015/20 The Neighbourhood Planning (General) (Amendment) Regulations 2015
The Localism Act provided a statutory regime for neighbourhood planning. These Regulations, which come into force on 09.02.15, amend the Neighbourhood Planning (General) Regulations 2012 ("the 2012 Regulations").

- Regulation 2(3) inserts a new Regulation 6A into the 2012 Regulations to prescribe the date by which a local planning authority must determine applications for designation of a neighbourhood area.
- Regulation 2(4) adds an environmental report prepared in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 to the list of documents that a qualifying body must submit to a local planning authority with a proposal for a neighbourhood plan. Alternatively, a statement of reasons as to why an environmental assessment is not required may be submitted.

http://www.legislation.gov.uk/uksi/2015/20/contents/made

08 CLG Consultation

Planning application process: statutory consultee arrangements
Deadline for Responses: 29.01.15

This consultation invites views on measures aimed at ensuring more effective provision of advice to lpas in relation to surface water drainage management. Statutory consultees are those organisations and bodies which lpas are legally required to consult before reaching a decision on relevant planning applications. The proposals are as follows:

- Part A: to introduce the Lead Local Flood Authority as a statutory consultee on major planning applications with surface water implications to ensure technical advice is available to lpas;
- Part B: to change the thresholds for the Environment Agency's statutory consultee involvement in a planning application to achieve a more proportionate approach in the light of changing conditions; and
- Part C: to make water companies statutory consultees in respect to planning applications for shale oil and gas development.

https://www.gov.uk/government/consultations/planning-application-process-statutory-consultee-arrangements

09 CLG Publication

Plain English guide to the planning system

This is a plain English guide to how the planning system in England works. It is an overview only and does not contain any new policy or guidance.

https://www.gov.uk/government/publications/plain-english-guide-to-the-planning-system

10 House of Commons – Communities and Local Government Committee – Fourth Report

Operation of the National Planning Policy Framework

This inquiry examined how well the NPPF is working. The evidence presented to the inquiry has highlighted a number of concerns:

- unsustainable development is not being prevented in some places;
- inappropriate housing is being imposed upon some communities as a result of speculative planning applications; and
- town centres are not being given sufficient protection against the threat of out of town development.

A number of possible changes to both the NPPF itself and the way it is applied are suggested, including:

- taking steps to ensure that the planning system delivers sustainable development: giving the same weight to the environmental and social dimension as the economic one; granting planning permission for development only if accompanied by the necessary infrastructure to support it; emphasis on the natural environment;
- councils should act more quickly to get adopted plans in place;
- addressing the issue of land supply; and
- changing the NPPF to give greater protection to town centres, in particular preventing buildings that were formerly used for professional and financial services being changed to residential use without permission.

http://www.publications.parliament.uk/pa/cm201415/cmselect/cmcomloc/190/19002.htm

11 CLG Planning Statistics

Planning applications in England: July to September 2014

During this period district planning authorities in England:

- received 118,900 applications for planning permission, 300 more than in the corresponding quarter in 2013;
- granted 95,600 permissions, up 2% from the same quarter in 2013;
- granted 88% of applications, unchanged from the same quarter in 2013;
- decided 78% of major applications within 13 weeks or within the agreed time, up from 69% a year earlier; and
- made 5% more residential decisions than in the same quarter in 2013.

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

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

RATING

12 Upper Tribunal: Lands Chamber

JAMES GALLAGHER (VO) DR M G READ & PARTNERS & DR J POYSER & PARTNERS
UTLC Case Number: RA/31/2012 – Decision given 12.01.15

Facts: The appellant (VO) sought to appeal a decision of the VTE regarding the rateable values of three purpose built GP surgeries in Sheffield in the 2005 Rating List. The GP partnership owned the freehold of one of these, which opened in 1993, while the other two, which opened in 2005 and 2008 respectively, were held leasehold, the GP partnerships being the tenants of the original developers.

Points of dispute: The parties disputed the weight which should be given to the rental evidence provided by the VO, how closely this followed the rating hypothesis and, in particular, the principle that a hereditament should be valued "vacant and to let". The VO relied on 13 rents on other purpose built GP surgeries which were a mixture of actual transactional rents and Current Market Rents (CMRs) determined by the DV under the Doctors' Rent and Rates Reimbursement Scheme. (This scheme came about as a means of encouraging the building of modern purpose built facilities and pays whichever is the lower of the actual rent and the CMR.) It was argued that, with the CMR in place, there was no incentive on practices to negotiate effectively and also that the CMRs had as their basis the evidence of agreed rents, which were themselves derived directly from development appraisal rather than open market evidence.

Held: The VO's appeal was dismissed. The original decisions of the VTE should be upheld, i.e. that the rateable values of all three hereditaments should be arrived at on the Contractors Basis. The Tribunal was not persuaded by the VO's arguments as to the nature of the lease rents or CMRs because they were not based upon the vacant and to let principle and did not reflect the value of occupation to the occupier.

13 CLG and HM Treasury Consultation

Business Rates Avoidance: Discussion Paper
Deadline for Comments: 28.02.15

In the Autumn Statement 2014, the government announced that it would start a discussion with a view to reaching a better understanding of the nature and scale of business rates avoidance in England and finding ways to tackle this problem. This paper builds on the work undertaken by the government's anti-avoidance working group and requests responses from interested parties to further inform the Government as to the types and scale of avoidance and ideas for potential solutions.

https://www.gov.uk/government/consultations/business-rates-avoidance-discussion-paper

14 HM Treasury and CLG Publication

Administration of business rates in England: interim findings

In its 2013 Autumn Statement, the Government announced that it would commence a discussion with businesses and local authorities about long-term administrative reform to the business rates system in England after 2017. This paper summarises the government's initial findings on this subject and sets out how it proposes to respond to calls by business for clearer billing, better sharing of information and a more efficient appeals system.

https://www.gov.uk/government/publications/administration-of-business-rates-in-england-interim-findings

15 CLG Publication

Administration of business rates in England: summary of responses

In April 2014, the government published a discussion paper on business rates administration in England. Over 200 responses were received from local authorities, businesses and individuals. This document summarises the main messages received from the responses under four main headings:

- how property is valued;
- how often it is valued;
- how rates bills are set and collected; and
- how information about ratepayers and business rates is provided and used.

https://www.gov.uk/government/publications/administration-of-business-rates-in-england-summary-of-responses

16 CLG Business Rates Information letter

12/2014: admin review, your rateable value, business rates avoidance

This letter provides information on the items reported above:

- Review of business rates administration: interim findings;
- Summary of responses; and
- Business rates avoidance discussion paper.

https://www.gov.uk/government/publications/122014-admin-review-your-rateable-value-business-rates-avoidance

17 CLG Guidance

Business Rates – Extension of transitional relief for small and medium properties

The business rates transitional relief scheme, which was introduced in 2010, comes to an end on 31.03.15 and as a result, some ratepayers will face a jump to their full rates bill from 01.04.15.

The government announced in the 2014 Autumn Statement that it will extend to March 2017 the current transitional relief scheme for properties with a rateable value up to and including £50,000. This guidance sets out the detailed criteria which will be used to determine funding relief for properties falling out of transition to higher bills in 2015/16.

https://www.gov.uk/government/publications/business-rates-extension-of-transitional-relief-for-small-and-medium-properties

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

Acquiring authority purchasing land at auction in order to relocate livestock market and develop town centre site for supermarket – assessment of compensation for shooting rights acquired pursuant to CPO – whether rights had premium value as key to development – whether to disregard such value under *Pointe Gourde* principle as wholly attributable to authority's scheme

*HANBURY–TENISON V MONMOUTHSHIRE COUNTY COUNCIL
[2014] PLSCS 349 – Decision given 02.12.14

Facts: The livestock market in the centre of Abergavenny was to be demolished and relocated to two fields on the outskirts (the reference land) and the town centre redeveloped. The acquiring authority, MCC, had acquired the reference land itself at a public auction in 2006 and by a CPO confirmed in July 2012 it purchased HT's shooting rights over the reference land. The rights vested in MCC in March 2013. HT claimed compensation for the value of the shooting rights. These fell to be valued under rule 2 of s5 of the Land Compensation Act 1961 by reference to the amount that they might expect to realise if sold on the open market by a willing seller. MCC valued the shooting rights at £1,000 while HT sought over £5.5.m to reflect a premium value of the rights as key to the relocation of the livestock market and redevelopment of their former site.

Point of dispute: This was a trial of the preliminary issue to determine whether, as contended by MCC, any premium value had to be disregarded by reference to the "*Pointe Gourde* principle" under which, when valuing land which is compulsorily acquired, it was necessary to disregard any increase or decrease in the value of the land wholly attributable to the acquiring authority's scheme. HT argued that any premium value was not attributable to MCC's scheme since if it had not acquired the reference land and shooting rights the land would still have been acquired for the same purpose by a private developer.

Held: The preliminary issue was determined in favour of MCC. The guiding principle when assessing compensation is that dispossessed owners should receive fair compensation. The tribunal had to assess how much the shooting rights would have sold for if they had been sold on the open market by a willing seller in March 2013. If HT's rights had an enhanced value then he would be entitled to compensation reflecting the enhancement, but if the enhancement was solely attributable to MCC's scheme then it fell to be disregarded under the *Pointe Gourde* principle. If a developer had been present at the 2006 auction it would have acquired the shooting rights at the same time as the reference land, so that it were not put under ransom by the owner of the shooting rights. Having acquired the reference land MCC had a particular requirement for the shooting rights, but any significant increase in their value had to be disregarded because it was attributable solely to MCC's scheme for the construction of the new livestock market on the reference land and the redevelopment of the existing livestock market site.

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

HOUSING

19 CLG Consultation

Stepping onto the property ladder
Deadline for Comments: 09.02.15

The government is keen to ensure that first time buyers should be able to acquire their first home more easily and its new Starter Homes scheme aims to free up the planning system to help provide more low cost high quality starter homes. To deliver on this package the government will need to work closely with developers, local authorities and land owners and it is hoped that 100,000 starter homes will be built over the next five years. This consultation sets out the Starter Homes proposals and seeks views about the proposed planning policy change and its implementation.

https://www.gov.uk/government/consultations/stepping-onto-the-property-ladder

20 House Builders Federation publication

Housing pipeline report – Q3 2014 report – Published Dec 2014

Residential planning approvals fell back during the third quarter of 2014 from the high point seen during the preceding three months, but remained ahead of the level of one year earlier. There were fewer private housing approvals granted, much of this being accounted for by the fact that fewer large scale (500 plus unit) developments secured approval during the quarter. Approval was given for over 48,700 residential units during the third quarter of 2014, a 21% drop on the previous quarter but unchanged on a year ago. Despite the weakening seen during the third quarter, the number of units approved during the first nine months of the year totalled over 161,200, 20% more than during the same period in 2013.

http://www.hbf.co.uk/policy-activities/news/view/housing-pipeline-report-q3-2014-report-published-dec-2014/

REAL PROPERTY

21 High Court

Rescission of contract for sale of land – deposit

*HARDY V GRIFFITHS
[2014] PLSCS 340 – Decision given 02.12.14

Facts: In April 2011, the defendants agreed to purchase a country house from the claimants for £3.6m. The contract was in writing and the defendants paid a deposit of £150,000. Completion was agreed to take place at the end of April 2012, but when this did not happen the claimants served a notice to complete on the defendants and subsequently rescinded the contract. The contract for sale incorporated the standard conditions of sale (4th ed), condition 6.8.3 of which provided: "On receipt of a notice to complete: (b) If the buyer paid a deposit of less than 10% (no less than £500), he is forthwith to pay a further deposit equal to the balance of that 10% deposit." Condition 7.5.1 and 7.5.2 provided: "If the buyer fails to complete in accordance with a notice to complete…The seller may rescind the contract and if he does so… he may… claim damages."

Point of dispute: Whether the claimants could succeed in their claim for damages against the defendants. The issue was whether, in the light of earlier authorities, the contractual rescission of a contract for sale of land precluded the vendor from recovering the unpaid balance of the deposit and from enforcing the provisions of the rescinded contract.

Held: The claim was allowed.

i. There was no authority for the proposition that the rescission of a contract for the sale of land, pursuant to the seller's contractual right to rescind, precluded recovery of the unpaid balance of the deposit or resulted in the contract being terminated ab initio. Any rights unconditionally acquired by a vendor of land, prior to the exercise of his contractual right to rescind, survived the rescission of the contract unless the contract clearly provided otherwise. The vendor had the right to sue for the deposit and was entitled to be placed in the same position as if the contractual obligation had been performed.

ii. In this case, the claimants' unconditional right to payment of the further deposit survived the exercise by them of their right to rescind the contract. Those damages could be claimed under standard condition 7.5.2(a)(iii). The claimants were also entitled to damages of £210,000 because of the defendants' breach of standard condition 6.8.3(b) of the contract.

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

ENERGY

22 CLG Publication

Notice of intention to publish non-domestic Energy Performance Certificate data

In response to a request made under the Environmental Information Regulations 2004 DCLG announced on 05.01.15 that it is to release approximately 723,000 records comprised of data from Display Energy Certificates and non-domestic Energy Performance Certificates belonging to non-domestic buildings in England and Wales. The information will be released on **http://opendatacommunities.org/**.

https://www.gov.uk/government/publications/notice-of-intention-to-publish-non-domestic-energy-performance-certificate-data

ENVIRONMENT

23 Department of the Environment, Food and Rural Affairs Consultation

Making flood defence consents part of the environmental permitting framework
Deadline for Comments: 17.02.15

This consultation invites views on proposals to integrate flood defence consents into the Environmental Permitting framework in England and Wales. These consents are needed before activities are undertaken in, over, under or near watercourses to ensure that they do not increase flood risk. Introducing these consents into the risk based environmental permitting framework will allow the government to introduce different types of permits, thus simplifying the burden of applying for a permit, and will enable the Environment Agency to focus on higher risk activities.

https://www.gov.uk/government/consultations/making-flood-defence-consents-part-of-the-environmental-permitting-framework

24 CLG Guidance Note

Flood Support Schemes – Updated December 2014

This note is an update on the schemes which the government made available to help homeowners, local authorities and businesses affected by flooding between the beginning of April 2013 and the end of March 2014.

https://www.gov.uk/government/publications/flood-support-package-for-homeowners-and-businesses

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

TRANSPORT

25 Department for Transport – Policy Statement

National policy statement for national networks – December 2014

The National Networks National Policy Statement (NPS) sets out the need for, and Government's policies to deliver, development of nationally significant infrastructure projects on national road and rail networks in England. It provides planning guidance for promoters of nationally significant infrastructure projects on the road and rail networks (NNNSIPs) and is the basis for the examination by the Examining Authority and decisions by the Sec of State, who will use this NPS as the primary basis for making decisions on development consent applications for NNNSIPs. Under s104 of the Planning Act the Sec of State must decide an application for a NNNSIP in accordance with this NPS unless he/she is satisfied that to do so would:

- lead to the UK being in breach of its international obligations;
- be unlawful;
- lead to the Sec of State being in breach of any duty imposed by or under any legislation;
- result in adverse impacts of the development outweighing its benefits; or
- be contrary to legislation about how the decisions are to be taken.

This NPS does not cover High Speed Two. The High Speed Two Hybrid Bill will seek the necessary legal powers to enable the construction and operation of Phase One of High Speed Two (HS2). It is planned to use a Hybrid Bill process for Phase Two of HS2.

https://www.gov.uk/government/publications/national-policy-statement-for-national-networks

LONDON

26 Mayor of London Consultation

City Fringe Opportunity Area Planning Framework – Consultation Draft December 2014
Deadline for Comments: 13.02.15

Historically, the City Fringe was regarded as the area around the north and eastern edges of the City of London's core financial district. However, as London's office market has expanded into these areas they are now considered part of the core, and the City Fringe now includes areas such as Hackney, Dalston, Haggerston and Whitechapel. This draft Framework for the City Fringe Opportunity Area (OA) addresses the following key factors:

- Growth opportunity and threats to growth in the OA;
- Affordable space;
- Vision for the OA;
- Ensuring there is space for continued business growth;
- Striking the appropriate balance between residential and commercial development;
- Supporting mix of uses;
- Identifying key strategic development sites and connecting the OA; and
- Implementation.

http://www.london.gov.uk/priorities/planning/publications/city-fringe-opportunity-area-planning-framework

27 London Enterprise Panel – Research project

London 2036: An Agenda for Jobs and Growth

This document is the result of a business-led consultation project undertaken to help drive jobs and growth in London. The study was produced by London First on behalf of the London Enterprise Panel, with detailed analysis undertaken by McKinsey & Co. It is the result of over 12 months' work involving over 400 stakeholders from business, London government, central government, universities and others, and highlights three core themes for successfully developing and safeguarding London's economy:

- Cementing existing leadership: The Global Hub;
- Fuelling more diverse growth: The Creative Engine; and
- Addressing weaknesses: The City that Works.

The report sets out a formula to enable the capital to achieve world-beating income growth, greater job opportunities than rival cities, a diverse and shock-proof economy, more homes and better transportation, as well as more balanced economic growth across the UK. As part of that formula, it says greater control of taxes and expanding the capital's ability to capture the uplift in property values from transport investment will be crucial to securing the long-term infrastructure investment that will help drive the city's growth. The report also concludes that "London's fundamental strengths in research, talent, creativity and finance should make it an unparalleled location for commercial innovation".

https://lep.london/publication/london2036

GENERAL

28 High Court

Adjudication – validity of adjudicator's appointment

**EUROCOM LTD V SIEMENS PLC
[2014] EWHC 3710 (TCC) – Decision given 07.11.14

Facts: In 2011, S engaged E to install communications systems at two Underground Stations in central London. Following prolonged delays and disruption to the works, Eurocom served notice of adjudication S in 2012. Mr Matthew Molloy was appointed as adjudicator and determined that E owed S approximately £35,000, but no payment was made. E issued a further notice of adjudication in November 2013 and gave notice that it would be applying to the RICS for appointment of an adjudicator. On behalf of E a "*Request for nomination of an adjudicator by RICS on a construction contract*" on the RICS standard document "*Adjudication Explanatory Note (EN2C) and Application Form (DRS2C) December 2010*" was submitted. The form included the question "*Are there any Adjudicators who would have a conflict of interest in this case?*" A number of people were specified, a new arbitrator was appointed and a substantial award in E's favour was made. E sought to enforce the adjudicator's decision by way of summary judgment.

Point of dispute: Whether the appointment of the adjudicator was valid. S argued that it was not because E had named various people who in its view would be unwelcome appointees on the basis that it was thought, for one reason or another, that they would be unlikely to reach a favourable decision. However, E's objection to them was not actually based on a conflict of interest, as it admitted.

Held: The appointment was not valid because there had been a material fraudulent misrepresentation in the process of applying to the adjudication nominating body. This made the appointment a nullity so that the adjudicator did not have jurisdiction. In the alternative, the judge held that the contract between the parties contained an implied term that they would not act dishonestly, which had been breached, and again the effect was to deprive the adjudicator of jurisdiction. S had established real prospects of successfully defending the claim made by E to enforce the terms of the adjudicator's decision.

29 Adminstrative Court

Licensing of houses in multiple occupation

*R (ON THE APPLICATON OF REGAS) V ENFIELD LONDON BOROUGH COUNCIL
[2015] PLSCS 7 – Decision given 11.12.14

Facts: Pursuant to its statutory powers under the Housing Act 1984, ELBC decided to designate the entire borough for additional licensing of houses in multiple occupation (HMOs) and selective licensing of private rented sector (PRS) properties for five years from 01.04.15. The claimant, R, was a private landlord who let out a property in Enfield as a low rise HMO.

Point of dispute: Whether R's application for judicial review of ELBC's decision should be allowed. R argued that: (i) there had been a failure to consult potentially interested parties outside the borough in breach of s56 of the Housing Act 2004; and (ii) ELBC had failed to consult for the ten weeks required by the Sec of State. ELBC argued that relief should be refused in the exercise of the court's discretion due to delay and because any benefit to R would be outweighed by the disadvantage to others given the scheme's implementation.

Held: R's application was granted.

i. The 2004 Act imposed an obligation to take reasonable steps to consult people who were likely to be affected by the designation. This would include people who lived in immediately adjoining parts of other local authority areas, who had not been consulted.

ii. The statutory consultation requirement could not be satisfied by a general engagement and listening exercise. The process required precise identification of what was to be designated and its consequences. The period of consultation had been too short and not everyone within the borough who should have been consulted had been.

iii. The implementation and operation of an unlawful designation was a continuing unlawful act which could be challenged by an affected landlord or any other claimant with the necessary standing. Alternatively any landlord could refuse at any time in the future to apply for a licence and rely upon the ultra vires nature of the designation as a defence if prosecuted, with consequential administrative inconvenience. Taking all matters into account the court would exercise its discretion in favour of granting relief to R.

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

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Abbreviations
The following abbreviations are used in evebrief:

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

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

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

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

* Interesting but non–essential reading.

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EVEBRIEF

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SCOTLAND

PLANNING

01 Scottish Assembly Government Consultation

Consultation on the land use planning aspects of the Seveso III Directive on the control of major-accident hazards
Deadline for Responses: 02.03.15

This consultation invites comments on the proposed amendments to planning legislation to implement the land use planning elements of the Seveso III Directive, which controls major-accident hazards involving dangerous substances. The consultation includes draft provisions for applications for hazardous substances consent and related enforcement and appeal provisions, as well as public participation provisions for related planning permissions and requirements regarding land use planning policies, plans and programmes.

http://www.scotland.gov.uk/Publications/2014/12/7685

02 Scottish Assembly Government Consultation

Historic Environment Scotland Act: Secondary Legislation Consultation Paper
Deadline for Comments: 27.03.15

The Historic Environment Scotland Act gained Royal Assent on 09.12.14. The Act establishes Historic Environment Scotland (HES) as a new non-departmental public body which will take over the functions of Historic Scotland. The Act changes processes for the designation of sites and buildings, and for scheduled monuments, listed buildings and conservation areas consent, it creates new rights of appeal against certain HES decisions. HES will be a statutory consultee in relation to listed building and conservation area consents and EIA. This consultation invites views on the draft regulations which follow on from the Act and on whether they achieve the Act's aims of streamlining and transparency.

http://www.scotland.gov.uk/Publications/2014/12/2265

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03 Scottish Assembly Government Statistical Publication

Planning Performance Statistics, Quarter 2, 2014/15

This report presents the latest summary statistics on planning decision-making and timescales for the July to September 2014 quarter, and historic data going back to the first quarter of 2012/13. It is based on data collected by the Scottish Government from Local and Planning Authorities as part of the Planning Performance Framework (introduced in 2012).

http://www.scotland.gov.uk/Publications/2014/12/2214

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RATING

04 Scottish Assembly Government Consultation

Business Rates Valuation Appeals System – Discussion Paper
Deadline for Comments: 06.03.15

Following on from its 2012 consultation "Supporting Business – Promoting Growth" which was concerned with reforms to the Scottish business rates system, the Scottish Government undertook to conduct a separate review of the valuation appeal system which many respondents consider to be cumbersome, time-consuming, over-complicated and costly for ratepayers. This paper initiates that process as part of the wider review of the Scottish business rates system ahead of the 2017 revaluation.

http://www.scotland.gov.uk/Publications/2014/12/1945

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HOUSING

05 Scottish Assembly Government Publication

Scottish House Conditions Survey – Key Findings 2013

This document presents key indicators from the Scottish House Conditions Survey, including updated fuel poverty rates, energy efficiency ratings, carbon emissions, Scottish Housing Quality Standard and disrepair. The long term trend of improving energy efficiency of the housing stock continues with over a third of all Scottish dwellings now being in EPC Band C or better. More homes now have insulated lofts and levels of cavity wall insulation have also risen.

http://www.scotland.gov.uk/Publications/2014/12/6903