EVEBRIEF

Legal & Parliamentary

Volume 37(02) 9 March 2015

TALES OF DELIBERATE CONCEALMENT AND COUNCIL CONDUCT

Gemma Dow
Editor

In this particularly varied edition the reports include the deliberate concealment of a breach of planning control on a site in Winchester and in another case we report on Winchester City Council being criticised for failing to carry out an appropriate procurement exercise which was required due to changes to a development agreement.

At item 10 we report on an appeal to the High Court to ascertain whether it is permissible for the local authority to charge a fee for monitoring compliance with a s106 agreement. Although the Court found against the charging of such fees, it was careful to 'leave the door ajar' by not ruling out that monitoring fees may be payable in some limited circumstances.

Continuing this theme, at item 05 a tenant held a long lease of a flat on one of the Council's estates in Norwich. The Council had a city-wide contract for provision of communal lighting. Rather than charging according to usage or an apportionment, the Council sought to charge on the basis of the relative rateable values of the estate and other blocks that were included in the contract. There was concern that this method did not reflect the actual costs, and the Council could not produce any supporting documentation as required under the lease. The court sensibly found in favour of the tenant.

The antics of the local authority reported at item 09 led to a resident and city councillor of Winchester leading a revolt against his own Council, successfully assisted by a Gerald Eve partner who gave evidence which contributed towards the defeat of Winchester City Council. The extent of the variations to the development agreement was such that the development should have been retendered to ensure best value for the community, but the Council did not do so.

The moral of these cases appears to be 'play by the rules and don't over charge'.

Gemma Dow

GERALDEVE

LANDLORD & TENANT

01 Court of Appeal

Notice to terminate business tenancy relying on intention to demolish and reconstruct in s30(1)(f) of the Landlord and Tenant Act 1954 – whether intention of landlord to be established as at date of hearing or earlier date of s25 notice

*HOUGH V GREATHALL LTD
[2015] PLSCS 28 – Decision given 27.01.15

Facts: The appellant was the tenant and the respondent the landlord of business premises in London SE25 under a lease which was protected under the Landlord and Tenant Act 1954. The landlord served a s25 notice to terminate the tenancy at the end of the contractual term which stated that the landlord opposed the grant of a new tenancy under the ground in s30(1)(f), namely that it intended to demolish and reconstruct the property at the end of the tenancy. In the county court, the tenant's application for a new tenancy was dismissed, the judge finding that although the landlord did not have the necessary intention to demolish and reconstruct at the date when it served its s25 notice, it could establish such an intention at the date of the hearing, which was the relevant date for that purpose.

Point of dispute: Whether to allow the tenant's appeal against the judge's ruling. The tenant argued that following the amendments made to the 1954 Act by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003/3096 the landlord had to prove its intention to demolish and reconstruct at the date when it served its s25 notice. The tenant argued that the change in the wording of s25(6), requiring the landlord's notice to state the grounds on which it "is opposed" to the grant of a new tenancy rather than whether it "would oppose" such a grant, indicated that those grounds now had to exist at the date of the notice.

Held: The appeal was dismissed. The change in the wording in s25 had come about because of the abolition, under the amendments made by the 2003 Order, of the procedure for the service of a counternotice by the tenant. The words "would oppose" had been used because the landlord was waiting to see whether or not the tenant would serve a counternotice indicating its unwillingness to give up possession. After the abolition of the counternotice provisions there was no need for the conditional tense. There was nothing to indicate that parliament had intended to revise the settled law as to the time when the landlord had to demonstrate its intention under s30(1)(f). The relevant date at which the landlord had to establish its intention was that of the hearing, and this was the case whether the application to the court was triggered by a landlord's s25 notice or a s26 request by a tenant.

02 Court of Appeal

Assured shorthold tenancy – implied covenant under s11 Landlord and Tenant Act 1985 – tenant injured while tripping over uneven paving stone on path outside block of flats – liability of respondent landlord – whether liability only arose once landlord given notice of disrepair

**EDWARDS V KUMARASAMY
[2015] PLSCS 30 – Decision given 28.01.15

Facts: The appellant, who was an assured shorthold tenant of a second floor flat in a block, was injured when he tripped over an uneven paving stone on the pathway leading from the front door of the block to the communal bin area in the car park. He brought a claim in damages against the respondent whose long lease of the flat included the right to use the entrance hall, lift and staircases, an access road, a parking space and the bin store. The owner of the block covenanted to keep in repair the communal areas including the passageways and footpaths forming part of the building, but his liability was limited to cases where the tenant had given notice of the defect and the building owner had had a reasonable opportunity to remedy the defect. No notice about the uneven paving stone had been given either by the appellant to the respondent, or by the respondent to the building owner.

Point of dispute: Whether to allow the appellant's appeal against the decision of the judge in the court below who had rejected his claim. The appellant had argued that the covenant implied into the tenancy by s11(1A) of the Landlord and Tenant Act 1985 to repair the structure and exterior of the "dwellinghouse" extended not merely to the flat itself but also to any other part of the building in which he had an estate or interest. The judge held that the respondent was not liable under this extended covenant because it was a precondition to liability that notice of the defect had been given.

Held: The appeal was allowed. The respondent's right to use the various communal areas provided by his own landlord took effect as legal easements, such that he had an estate or interest in the paved area where the appellant suffered his accident. This was sufficient to bring the extended covenant into play. The front path could properly be described as the exterior of the front hall as it was an essential means of access to the front hall. The application of the extended covenant did not depend on notice of disrepair being given to the respondent, as the defect was in an external part of the building that was not demised to the tenant. This situation was different to a defect inside the demised premises where the landlord would only be in breach once he was notified of it.

03 High Court

Conditional planning permission granted for new crematorium – appeal determined under written representations procedure

*WESTERLEIGH GROUP LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2014] EWHC 4313 (Admin) – Decision given 18.12.14

Facts: The inspector appointed by the Sec of State granted conditional planning permission to the third defendant for the construction of a new crematorium. The claimant, WGL, sought to quash the decision on the basis that the inspector had erred in law by determining the appeal under the written representations procedure and had acted unlawfully in his consideration of preferable alternative sites.

Point of dispute: Whether WGL's application should be allowed.

Held: The application was dismissed. It was not conceivable that the inspector had failed to consider the Sec of State's published criteria before determining that the appeal should be decided under the written representations procedure and he had not been unreasonable or irrational in the application of those criteria. As the inspector had not found that the proposal gave rise to significant or conspicuous adverse effects, he had not been obliged to consider alternative sites.

04 Upper Tribunal: Lands Chamber

Landlord and Tenant Act 1985 – service charge provisions – appellant body seeking to become a recognised tenants' association – membership of appellant representing less than 60% of qualifying tenants in building but paying more than 60% of charge

** ROSSLYN MANSIONS TENANTS' ASSOCIATION V WINSTONWORTH LTD
[2015] PLSCS 18 – Decision given 13.01.15

Facts: The appellant, RMTA, applied to the First Tier tribunal (FTT) to become a recognised tenants' association in respect of a mansion block of flats in London NW6, pursuant to s29 of the Landlord and Tenant Act 1985. There were 13 flats in the block, eight of which were let on long leases at a low rent with service charge provisions. Four of the long lessees did not wish to become members of RMTA and did not support the application, in which it was alleged that the building was being very poorly managed with an opaque contract tendering process leading to work being awarded to the respondent's director or members of his family.

Point of dispute: Whether to allow RMTA's appeal against the refusal of the FTT to grant a certificate of recognition. The FTT noted that membership of RMTA, as a percentage of tenants liable to pay a service charge, was less than the 60% recommended in a government guidance document, while the constitution of RMTA did not permit voting rights to tenant members who were not long leaseholders. RMTA argued that the FTT should have taken into account the fact that although the qualifying tenants who supported it represented less than 60% of the qualifying tenants, between them they paid about 70% of the total amount of the service charge.

Held: The appeal was allowed.

i. Under s11 of the Tribunals, Courts and Enforcement Act 2007 a party could appeal to the Upper Tribunal, with permission, on any point of law arising from a decision made by the FTT.

ii. The FTT had a wide discretion under s29 and it had to decide whether a certificate should be granted having regard to all the relevant facts of the case. The question of whether the application for recognition was supported by a substantial proportion of the qualifying tenants was a relevant consideration, but only one. s29 did not contain a requirement for a minimum percentage of the total qualifying tenants to support the association and the application had to be looked at in the light of all the relevant circumstances.

iii. The FTT had erred by treating as irrelevant the proportion of total variable service charge paid by the flats supporting the application for a certificate.

iv. The FTT should have given consideration to whether the history of complaints and the apparent breakdown in confidence between the respondent and the tenants who supported RMTA was a factor which weighed in support of giving a certificate.

05 Upper Tribunal: Lands Chamber

Service charge – appellant owning long lease of flat on council's estate – council had city–wide contract for provision of communal lighting – whether council entitled to charge according to comparative rateable values of estate and council's other properties

**NORWICH CITY COUNCIL V REDFORD
[2015] PLSCS 48 – Decision given 26.01.15

Facts: The respondent, R, held a long lease of a flat in a block on an estate in Norwich, the freehold of which was owned by NCC. The lease required R to pay a service charge to represent "a fair share as determined by the Council… of the Council's Expenditure attributable to the Property", including the "reasonable expenditure of the Council in complying with its obligation to provide, maintain etc. lighting to the communal areas on the estate". NCC, who had a city-wide contract for the maintenance of communal lighting in all their blocks of flats, calculated the amount of the charge for the estate where R's flat was situated by apportioning the cost based on the relative rateable value of the estate and its other blocks that were covered by the contract. R was concerned that this method of apportioning the costs did not reflect the actual costs incurred on the estate's communal lighting and that NCC had failed to produce any accounts or receipts as required by the lease.

Point of dispute: Whether NCC's appeal would be allowed against the finding of the first tier tribunal that the lighting maintenance charges did not comply with R's lease and were not payable. It was also held that it was not possible, on the information provided by NCC, to calculate the true cost payable by R.

Held: The appeal was dismissed. Interpreting R's lease correctly meant that NCC could only recover the cost of communal lighting to this estate. There was no reference to any wider category of property or estate, nor any provision for apportionment of costs which might be incurred in relation to a larger area. A reasonable person reading the lease would not have interpreted it to mean that it permitted NCC to include in the service charge money spent on providing communal lighting to other flats in the city outside the estate. Whether the cost determined by NCC actually represented what it had spent on lighting the estate could not ascertained since it had produced no evidence as to the actual costs referable to the estate.

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

Planning permission for development near to Sherwood Forest – consultation with Natural England – Conservation of Habitats and Species Regulations 2010 (Habitats Regulations) – whether planning agreement contrary to Regulation 122 of the Community Infrastructure Levy Regulations 2010

**R (ON THE APPLICATION OF SAVAGE) V MANSFIELD DISTRICT COUNCIL
[2015] PLSCS 14 – Decision given 15.01.15

Facts: The respondent council, MDC, granted outline planning permission for a large development on a site close to Sherwood Forest, where there were substantial breeding populations of nightjar and woodlark, and close to an SSSI. The development proposal included a mitigation protocol and MDC consulted with Natural England before granting planning permission. The developer negotiated a s106 TCPA 1990 planning agreement with MDC which stated that if the planning permission were revoked or modified at a future date under the Habitats Regulations (which would apply if Sherwood Forest were designated as a Special Protection Area (SPA)), the developer would repay any compensation that MDC was obliged to pay it.

Point of dispute: Whether the appellant's appeal would be allowed against the decision of the court below to dismiss her application for judicial review to quash the grant of permission. The appellant argued that:

i. MDC had failed to follow Natural England's advice to carry out a "risk–based assessment" as it was a possibility that Sherwood Forest and the wood near to the development site might in future be designated as a SPA or as a potential site for such designation (pSPA); and

ii. the s106 agreement was unlawful so far as it would eliminate financial risk to MDC. It did not overcome a legitimate planning objection and thus was contrary to regulation 122 of the Community Infrastructure Levy Regulations 2010.

Held: The appeal was dismissed.

i. Under para 118 of the National Planning Policy Framework 2012 a planning authority's obligations were extended to pSPAs, but in the case of Sherwood Forest the government had not initiated a consultation on a proposed designation. Accordingly MDC was not obliged to consult Natural England about the potential impact of the development on the nightjar or woodlark populations. The appellant's grounds of challenge were not well–founded so far as they related to the failure of MDC to take into account the results of a consultation that they were not obliged to undertake. The risk–based assessment advised by Natural England did not relate to a possible change in the physical landscape, but to a change in the legal position in the event of a designation as an SPA which MDC had addressed by accepting the developer's proposed protocol for mitigation measures and by the terms of the s106 agreement, which protected them from having to compensate the developer for loss caused by the revocation or modification of the permission.

ii. Section 122 of the Community Infrastructure Levy Regulations 2010 would only be engaged in relation to a planning obligation if the obligation in question was the reason for granting planning permission. This was not the situation that arose in this case since MDC had considered the development to be acceptable in planning terms even without the relevant clause of the s106 agreement.

07 Administrative Court

Enforcement – appellant converted first floor of barn to residential use contravening planning permission – application for certificate of lawfulness – whether certificate should be refused on basis of conduct amounting to deliberate concealment of planning control breach

**JACKSON V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2015] PLSCS 10 – Decision given 13.01.15

Facts: The appellant, J, owned a property near Winchester which included a barn which had been erected in 2004 pursuant to a planning permission granted by the Local Planning Authority (LPA). However, the barn was not built in accordance with approved plans and J obtained restrospective planning permission for it. Following a complaint that the barn was being used for residential purpose the enforcement officer discovered that dormer windows and roof lights had been installed without permission. J applied for a Certificate of Lawfulness of Existing Use or Development (CLEUD) to confirm that the first floor was lawfully being used as a dwelling, on the basis that it had been used as such for a continuous period of four years. The LPA refused the application as it was not satisfied that the barn had been converted to a dwelling at least four years before the date of the application and, secondly, relying on the principle established by the Supreme Court in the 2011 decision in *Welwyn Hatfield Borough Council v Sec of State for Communities and Local Government*, that deliberate concealment of the breach of planning control prevented reliance on the four year limitation period. The LPA issued an enforcement notice alleging a material change of use of the barn, requiring cessation of residential use and restoration to the previously approved plan.

Point of dispute: Whether J's appeal would be allowed against the decision of the inspector appointed by the Sec of State who dismissed J's appeal against the enforcement notice. The inspector concluded that J's conduct had amounted to a positive deception of the local authority so as to engage the *Welwyn* principle and to deprive him of the benefit of the four year limitation period in s171B(2) of the 1990 TCPA.

Held: The appeal was dismissed.

i. The Localism Act 2011 introduced new legislation to deal expressly with the problem of deliberate concealment by giving LPAs power to apply to the magistrates' court for a planning enforcement order (PEO). However, this was a supplementary procedure available to LPAs and not an exhaustive replacement for the *Welwyn* principle.

ii. The inspector had concluded that the four criteria derived from *Welwyn* had been satisfied: (a) positive deception in matters integral to the planning process; (b) deception intended to undermine the planning process; (c) deception which did undermine that process; and (d) the wrongdoer would profit directly from the deception if the normal limitation period enabled him to resist enforcement. The *Welwyn* principle could be applied to changes of use within an already erected building and in this case the inspector had to consider whether there had been concealment by positive deception of the change of use from around the time when the four year limitation period started to run – he did not have to consider whether there had been deception from the time when the barn was erected. The inspector had reached his conclusions on matters of fact that were for him to determine, they could not be faulted in law and did not reveal any failure to apply the *Welwyn* principle.

08 Planning Court

Local planning authority refusing planning permission for residential development on grounds of poor design – decision overturned by Sec of State – whether Sec of State reached a lawful conclusion on question of poor design

*HORSHAM DISTRICT COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2015] PLSCS 32 – Decision given 23.01.15

Facts: The claimant council, HDC, had refused permission for a residential development on seven hectares of farmland in Henfield, West Sussex, outside the boundary of the built–up area, as defined in HDC's adopted general development control policies. The proposal was for a development of 160 dwellings of varying sizes with landscaping and open space. HDC refused planning permission for seven reasons, including that the proposal was unacceptable development in the countryside and would have significant adverse impacts on the visual amenity of the surrounding area. An inspector appointed by the Sec of State allowed the developer's appeal against the refusal of permission, concluding that the likely adverse environmental effects of the proposed development were limited and did not outweigh the considerable social and economic benefits and there was no indication in the NPPF that this development should be restricted.

Point of dispute: Whether to allow HDC's application for an order to quash the inspector's decision. The main ground of HDC's challenge was that, in light of para 64 of the NPPF, the Sec of State's approach to the loss of views from the appeal site and the question of poor design had been unlawful. Paragraph 64 stated that permission should be refused for a development of poor design that failed to take into account opportunities available for improving the character and quality of an area.

Held: The application was dismissed. Paragraph 64 was one of 13 paragraphs in the NPPF which explained what the government wanted the design of new development to achieve. It was not to be read in isolation from the broader context of policy on design in which it was set, or the broader context of national policy for delivering sustainable development. The inspector had applied the policy on good design in paras 56 to 68 of the NPPF generally, and the policy in para 64 specifically and found that the design approach adopted in the scheme would broadly accord with the objectives of the NPPF. The inspector's conclusion that there would not be poor design in terms of para 64 had been reasonable, clearly explained and based on a secure planning assessment with which the court could not properly interfere.

09 Planning Court

Redevelopment of Winchester city centre – claimant resident and councillor applying for judicial review of local authority's decision to authorise variations to development agreement – local authority failing to carry out procurement exercise

**R (ON THE APPLICATION OF GOTTLIEB) V WINCHESTER CITY COUNCIL
[2015] PLSCS 53 – Decision given 11.02.15

Facts: G, the claimant, who was a resident of Winchester and a city councillor, sought judicial review of WCC's decision in 2014 to authorise certain variations to a development agreement entered into in 2004 with a developer to build a new mixed use retail and residential scheme together with a bus station and other amenity uses in Winchester city centre. G led a campaign group which opposed the scheme, believing that it was poorly designed and that the variations had led to the removal of affordable housing and civic amenities.

Point of dispute: Whether WCC's decision to authorise the variations to the development agreement was unlawful. G argued that WCC should have carried out a procurement exercise under Council Directive 2004/18/EEC and the Public Contracts Regulations 2006. WCC argued that the variations were not materially different in character to the original contract or change its overall nature.

Held: G's application for judicial review was granted. In deciding whether variations to a development agreement required a procurement exercise, the test was whether the variations were materially different in character from the original contract, thus demonstrating the intention of the parties to renegotiate its essential terms. The range of possible material variations were examined in the 2008 case of *Pressetext Nachrichtenagentur GmbH v Republik Osterreich* and the court had to apply the *Pressetext* test to the evidence before it. One possibility was where contractors had been deterred from applying by the original less favourable terms, but were interested in applying under the improved terms. G had to satisfy the court, on the balance of probabilities, that a realistic hypothetical bidder would have applied for the contract had it been advertised i.e. comparing the original contract terms with the varied terms there had been material variations to the original contract which, if in place in 2004, would have provided an economic benefit to potential bidders. The variation clause in the contract was broad and unspecific and did not meet the requirement of transparency. On the evidence the court was satisfied, on the balance of probabilities, that a realistic hypothetical bidder would have applied for the contract, as varied, had it been advertised. The 2014 variations had resulted in a contract that was materially different in character, thus demonstrating the intention of the parties to renegotiate its essential terms. WCC's decision to authorise the variations to the development agreement without carrying out a procurement process, as required by the 2004 Directive and 2006 Regulations, was unlawful.

Note: GE Partner Alexander Gillington, gave evidence in support of the claimant's case.

10 High Court

Regulation 22 of the Community Infrastructure Regulations 2010 – whether permissible for local authority to charge a fee for monitoring compliance with s106 agreement

**OXFORDSHIRE COUNTY COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2015] EWHC 186 (Admin) – Case No: CO/4757/2014 – Decision given 03.02.15

Facts: A developer sought planning permission from Cherwell District Council (the lpa) for a small housing development. A s106 agreement was entered into between the various parties involved for contributions from the developer towards infrastructure matters, including a sum to be paid to the claimant, OCC, for administering and monitoring the agreement. The agreement also included a "blue-pencil" clause which enabled the Inspector to strike out contributions that did not meet the tests for planning obligations set out in Regulation 122 of the CIL Regulations. The inspector struck out certain contributions sought by OCC in the agreement, including the monitoring/administration fee, on the grounds that such a fee was "not necessary to make the development acceptable in planning terms" and therefore did not comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

Point of dispute: Whether OCC's application under s288 of the TCPA 1990 to quash the inspector's decision should be allowed. OCC argued that the inspector had misinterpreted the "necessity" test and had made an irrational decision in finding that, although the obligations were necessary, monitoring of them was not. Further, he had taken into account an immaterial consideration, namely, whether the administration and monitoring of the planning obligations was one of the normal functions of OCC. The defendant Sec of State submitted that the necessity test in regulation 122(2)(a) – "necessary to make the development acceptable in planning terms" – related to the impact of the development on the character of the land, not with planning fees, and that the monitoring of planning obligations was part of OCC's statutory functions.

Held: OCC's application was dismissed and the inspector's decision to strike out the monitoring/ administration fee from the s106 agreement upheld. It was part of OCC's functions to administer monitor and enforce planning obligations in s106 agreements. This case was a routine planning application for a relatively small development, whereas OCC was seeking a fee based on a standardised table of fees. The judge referred to the 2006 Planning Obligations: Practice Guidance which nowhere states that planning authorities could charge a developer the cost of administration and monitoring as part of a planning obligation – these should be met out of the authority's own budget, and OCC had not carried out an individual assessment of special costs liable to be incurred for this particular development. The court did not rule out that in some limited circumstances such a fee might be acceptable, such as in a very large minerals development in a sensitive location or a nationally significant piece of transport or energy infrastructure.

11 DECC Announcement

Fracking Ban in National Parks

The Government has announced that it is committed to banning fracking outright in National Parks, Sites of Special Scientific Interest and Areas of Outstanding Natural Beauty. Currently fracking is allowed in those designated areas, but only in "exceptional circumstances". The announcement was made as part of the debate of the Infrastructure Bill in the House of Commons.

https://www.gov.uk/government/news/shale-developments-to-be-banned-in-all-uk-national-parks

12 CLG Press Release

Change in the law to protect pubs

The government has announced that it is to bring in legislation to protect pubs from being demolished or converted into different uses against the will of local communities. Local pubs can already be listed as Assets of Community Value, which means that local communities have six months to put together a bid to buy their local pub if it is put up for sale. Under the new initiative, listed pubs would have their permitted development rights for change of use or demolition removed meaning that in future a planning application would have to be made.

https://www.gov.uk/government/news/coalition-ministers-change-the-law-to-protect-the-great-british-pub

13 Government Response to Consultation

Planning application process improvements

In July 2014, the Government published the "Technical Consultation on Planning", s4 of which sought views on a package of measures which aim to improve the planning application process. These were:

- Part A – measures to change the thresholds for statutory consultee involvement in planning applications and changes in arrangements for notification and referral of applications to the Sec of State on some heritage matters;
- Part B – notifying railway infrastructure managers of planning applications for development near railways; and
- Part C – proposals to consolidate the Town and Country Planning (Development Management Procedure) (England) Order 2010.

This document provides a summary of the responses received to each of these proposals and the Government's response to them.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/397719/150122_Planning_application_process_improvements.pdf

14 CLG Statistics

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

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

RATING

15 Upper Tribunal: Lands Chamber

Plant and Machinery – whether air handling unit rateable and what constitutes a trade process

**BERRY(VO) V ICELAND FOODS LIMITED
[2015] RA/61/2012 – Decision given 14.01.15

Facts: I, the respondent, installed a larger air handling unit than was the norm. This enabled them to deal with the excess heat generated in their premises as a result of their business model selling high volumes of refrigerated products. The VTE determined that the air handling unit was used mainly in connection with a trade process and was not therefore rateable.

Point of dispute: Whether to allow the VO's appeal against the VTE's decision. Was the VTE right to regard the air handling system as part of the hereditament because it was used "mainly" as part of a "trade process" under Regulation 2 of The Valuation for Rating (Plant and Machinery) (England) Regulations 2000. If the VTE was not correct, what rateable value should be entered in the list to account for the presence of the air handling unit in the appeal property?

Held: The appeal was allowed in part. The term "trade process" should be considered in the context of the exemption which primarily relates to "manufacturing operations", the defining characteristic of which is activity bringing about a transition from one state or condition to another. The display or storage of goods, as carried out by I, did not, on that basis, involve any trade process and the air handling system should be valued. The enhanced specification and evidence that I was not the only trader with such requirements was justification to depart from the £4 per sq m used to value the more modest standard air handling systems normally present in a retail warehouse such as the appeal property. The contractor's basis of valuation was adopted using the statutory decapitalisation rate of 5% proposed by the respondent and not investment yields advocated by the appellant VO.

Note: Specific criticism was levelled at the technical experts for failing to assist the Tribunal by recording those matters on which they agreed and those where they differed

16 Upper Tribunal: Lands Chamber

RV of gas fired power station – receipts and expenditure valuation – time horizon of hypothetical tenancy – appeal against VTE's decision that RV was £1

*KEIR HARDMAN (VO) AND BRITISH GAS TRADING LIMITED
UTLC Case Number: RA/48/2011 – Decision given 13.02.15

Facts: The appellant (VO) sought to appeal a decision of the VTE which determined that the Rateable Value of a Combined Cycle Gas Fired Power station should be RV £1. The power station was located in Peterborough and commenced commercial operation in 1993 before being acquired by Centrica in 2001 for £99.5 million.

Points of dispute: Whilst significant evidence was led on the correct approach to a receipts and expenditure valuation, as well as alternative methodologies including the contractor's basis, the principle issue in dispute concerned the time horizon of the hypothetical tenancy. The respondent ratepayer had successfully argued in the Valuation Tribunal that the possibility of the tenancy being brought to an end by way of notice (with a view to a renegotiation of the rent) after a year meant that the hypothetical tenant would take a short (one to two year) view of likely profitability. The loss making potential over that time period led them to conclude that the RV should be £1. The appellant Valuation Officer contended that it was wrong to assume that the tenancy would be brought to an end after a short period and that a longer term view of profitability should be taken. The respondent's receipts and expenditure valuation was also criticised as failing to take account of wider issues intrinsic to value.

Held: The VO's appeal was allowed. The Tribunal determined that it was wrong as a matter of law to suppose that the possibility of a rent review must prevent the hypothetical parties from contemplating continuance beyond two years. The valuation hypothesis was preserved by assuming that, as reasonable parties, the hypothetical landlord and tenant would view the prospect of continuance in the light of the rent that was agreed. For a hereditament such as a power station the parties would assume a tenancy with a lengthy prospect of continuance and the rent agreed would reflect this. The Tribunal also endorsed the VOA's use of alternative methods of valuation to test the result of the receipts and expenditure valuation.

17 Statutory Instrument

SI 2015/106 The Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) Order 2015

This Order, which came into force on 02.03.15, amends the 2012 Order to make provision for a continued temporary increase in the level of small business rate relief for the financial year beginning 01.04.15, which would otherwise have ended on 31.03.15.

http://www.legislation.gov.uk/uksi/2015/106/contents/made

18 Statutory Instrument

SI 2015/135 The Local Government Finance Act 1988 (Non-Domestic Rating Multipliers) (England) Order 2015

This Order specifies that for 2015/16 the figure for item B in the calculations for arriving at the small business non-domestic rating multiplier for 2015/16 will be 256.9. The Order will only come into force if it is approved by resolution in the House of Commons before the House approves the Local Government Finance Report 2014-15.

http://www.legislation.gov.uk/uksi/2015/135/contents/made

19 CLG Consultation

Council Tax and Business Rates: Powers of Entry
Consultation closed on 20.02.15

This consultation sought views on proposals to amend the Valuation Office Agency's powers of entry in order to ensure greater consistency in the way in which these are exercised and greater clarity for those affected by them, while upholding effective enforcement.

https://www.gov.uk/government/consultations/council-tax-and-business-rates-powers-of-entry

20 CLG Business Rates Information Letter

1/2015: Business Rates and Childcare Providers; Extension of transitional relief for Small and Medium Properties

This letter provides information on:

- Business rates and childcare providers – the Government would like to encourage local authorities to consider using their business rates local discounts powers to support access to local high quality childcare provision; and
- Extension of transitional relief for small and medium properties – the Government announced in the Autumn Statement 2014 that it will extend to March 2017 the current transitional relief scheme for properties with a rateable value up to and including £50,000.

https://www.gov.uk/government/publications/12015-business-rates-and-childcare-providers

21 CLG Business Rates Information Letter

2/2015: publication of business rates changes

This letter provides information on:

- summary of responses and the government's response to the technical consultation on business rates retention and shale gas; and
- amendments to the Council Tax and Non-Domestic Rating Demand Notice (England) Regulations 2003.

https://www.gov.uk/government/publications/22015-publication-of-business-rates-changes

22 CLG Guidance

3/2015: non-domestic rating multipliers for 2015 to 2016

This letter provides information on:

- the non-domestic rating multipliers for 2015-16. The Retail Price Index increase in the multiplier has been capped at 2% for 2015/16 – the non-domestic rating multiplier for 2015/16 is 49.3p and the small business non-domestic rating multiplier is 48.0p; and;
- the Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) Order which extends for one year the temporary increase in Small Business Rate Relief.

https://www.gov.uk/government/publications/32015-non-domestic-rating-multipliers-for-2015-to-2016

23 CLG Statistics

National non-domestic rates collected by councils in England: forecast for 2015 to 2016

This publication contains the forecasts of national non-domestic rates to be collected by local authorities in England and the amount of relief that will be granted.

https://www.gov.uk/government/statistics/national-non-domestic-rates-collected-by-councils-in-england-forecast-for-2015-to-2016

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

HOUSING

24 Homes & Communities Agency Monthly Housing Market Bulletin

Housing market bulletin – January 2015

This bulletin provides the latest information on trends in the housing market and the economy.

- Average house prices are still rising. Although the national average rate is easing, it is still high by historical standards, but there is considerable regional variation.
- Seasonally adjusted numbers of housing transactions have stayed fairly constant for the last six months.
- GDP and employment have risen and unemployment has continued to fall.
- The Consumer Price Index rose by 0.5% in the year to December, down from 1.0% in November, although this was largely due to the fall in the oil price.

https://www.gov.uk/government/publications/housing-market-bulletin

COMPENSATION

25 Upper Tribunal (Lands Chamber)

Compulsory Purchase – compensation – limitation – negotiations continuing after limitation period for bringing compensation claim expired – whether authority entitled to rely on limitation defence – whether estopped by their conduct from doing so

**KHAN V TYNE & WEAR PASSENGER TRANSPORT EXECUTIVE T/A NEXUS
[2015] PLSCS 54 – Decision given 26.01.15

Facts: In July 2000 the acquiring authority entered and took possession of K's land pursuant to compulsory acquisition powers that it exercised in connection with the extension of the Tyne & Wear Metro. Notwithstanding ongoing negotiations about K's compensation the matter remained unresolved due to K taking a long time to appoint a surveyor and rejecting successive offers made by the authority. In August 2011 the authority informed K that the time limit for bringing a claim had expired and that it was not making any more offers. In July 2013 K's claim for compensation was referred to the Upper Tribunal, but the authority argued that the claim was time-barred under s9(1) of the Limitation Act 1980 since he had failed to bring the proceedings within six years of the date when his cause of action accrued.

Point of dispute: Whether K's claim for compensation would be allowed. K argued that the authority was estopped from raising the limitation defence by reason of its actions in continuing negotiations and making an advance payment in respect of compensation after the limitation period had expired between 2008 and 2010. Further, the negotiations had continued on the basis of a common understanding that K had a valid claim for compensation and in reliance upon that he had instructed new surveyors and solicitors. Alternatively, the conduct of the authority amounted to a waiver of its entitlement to rely on s9 of the 1980 Act.

Held: The claim was dismissed. The right to compensation for the compulsory purchase of an interest in land arose at the date of entry by the acquiring authority onto the land and it expired six year later, which meant that the limitation period applicable to K's compensation claim had expired in July 2006. The authority was not barred from relying on the limitation point as a defence to K's compensation claim – in order to establish an estoppel by convention so as to defeat a limitation defence it was not sufficient to establish the existence of a shared assumption that compensation would be payable. There had to be a common assumption, communicated between the parties, that no defence of limitation would be relied on. The fact that the authority had also made advance payments to K after the expiry of the limitation period was not inconsistent with the authority reserving the right to rely on a defence of limitation if agreement was not ultimately reached on the fair level of compensation. Even if a convention were established to the effect that limitation would not be relied upon, that could only be temporary – as with estoppels generally either party could resile from a convention if to do so would not be unconscionable. Any possible convention had been dissolved by the authority's letter of August 2011 and K had delayed for almost two years after that in making a reference to the Tribunal, which was fatal to any estoppel claim.

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

REAL PROPERTY

26 Court of Appeal

Adverse possession – criminal trespass – effect of s144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 – whether respondent barred from relying on adverse possession to extent that acts of possession amounted to criminal offence

**R (ON THE APPLICATION OF BEST) V CHIEF LAND REGISTRAR
[2015] PLSCS 20 – Decision given 21.01.15

Facts: In November 2012, B applied to be registered as the proprietor of a residential property on the grounds that he had acquired title to it by ten years adverse possession. B had first entered the property in the late 1990s and having carried out substantial works of repair to it he moved in in January 2012. In September 2012, s144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 came into force which criminalised acts of trespass by "living in" a residential building, which meant that from that date B's occupation of the property was a breach of criminal law. The appellant registrar (CLR) cancelled B's application for registration as he took the view that it was an implied requirement of Schedule 6 to the Land Registration Act 2002 that the adverse possession relied on should not have been a criminal offence for any part of the relevant period.

Point of dispute: Whether CLR's appeal would be allowed against the finding of the judge in the court below that the enactment of s144 of the 2012 Act was not intended to have any effect on the operation of adverse possession and the ability of a trespasser to acquire title by adverse possession of land.

Held: The appeal was dismissed. Criminally unlawful activity contrary to s144 would not prevent a person's actions from qualifying as relevant adverse possession for the purposes of the 2002 Act. Adverse possession was founded on the tort of trespass and the public interest in having land put to good use and having clear rules to govern acquisition of title to land which had been abandoned had been taken to override the general concern that a person should not benefit from their unlawful action. It had not been the intention when s144 of the 2012 Act was enacted that it should affect the operation of the 2002 Act in respect of acquisition of title to land by adverse possession.

27 Upper Tribunal: Lands Chamber

Discharge or modification of restrictive covenant – whether covenant becoming obsolete on death of original vendor – whether successors in title to original vendor retained power to consent to alterations

*RE COOK'S APPLICATION
[2015] PLSCS 16 – Decision given 19.12.15

Facts: The applicants, C, obtained planning permission to demolish their existing two–storey house and replace it with a larger one. They applied to the Upper Tribunal under s84(1) of the Law of Property Act 1925 to discharge or modify a restrictive covenant affecting the property which was contained in a 1962 conveyance for the benefit of the then vendor, who was the next door neighbour and a friend of the purchaser, C's predecessor in title. The conveyance prohibited making any alterations or erecting any additional buildings "without the previous consent of the Vendor" or doing anything that might be a nuisance or annoyance "to the Vendor or to the owners or occupiers of the adjoining property". The original vendor had died and the question arose as to whether the covenant was enforceable by anyone.

Point of dispute: Whether to allow C's application to discharge the covenant under s84(1)(a) of the Law of Property Act 1925. C's neighbours objected, arguing that the proposed development required their consent as the successors in title of the original vendor. Alternatively, they argued that if the consent required was that of the vendor herself, then the restrictions against building had become absolute on her death.

Held: The application was allowed.

i. The reference to the "Vendor" in the 1962 conveyance did not include the original vendor's successors in title. The covenant against alterations without "the Vendor's consent" was different to the language of the covenant against nuisance or annoyance which was expressed to be for the benefit of "the Vendor or the owners and occupiers" of the adjoining property. Although the drafting was unusual, the expression "the Vendor" meant the original vendor alone and the language of the restriction should be given its literal effect.

ii. However, if it were read literally, the covenant would become an absolute bar to any future development following the death of the original vendor because there was no "Vendor" from whom to obtain consent. It was not appropriate to construe it that way as this would put subsequent owners of the original Vendor's property into the same position as if the covenant had been with her successors, which had not been the parties' intention. The better construction was that the covenant was intended to lapse and become unenforceable after the death of the original vendor and the restriction should be discharged.

28 Upper Tribunal: Lands Chamber

Discharge or modification of restrictive covenant – amenity land on housing estate – applicants seeking discharge of covenant against fencing amenity land – whether covenant obsolete – s84(1)(a), (aa) and (c) of Law of Property Act 1925

**RE CLARKE AND OTHERS' APPLICATION
[2015] PLSCS 58 – Decision given 29.01.15

Facts: The applicants all owned houses on a small housing estate which had originally been developed by a housing association. The houses were arranged around an area of "amenity land" which residents of the estate were allowed to use. These rights were contained in 1981 conveyances from the housing association to the residents, which each included a piece of the amenity land, but subject to rights for all the owners to use the amenity land for recreation and covenants prohibiting them from erecting fences on their individual pieces. In 2010 the applicants obtained permission to change the use of their parts of the amenity land to private garden areas, but in order to implement this they needed to erect fences. They applied to the Upper Tribunal under s84(1) of the Law of Property Act 1925 seeking the discharge or modification of the 1981covenant against fencing.

Point of dispute: Whether the application would be allowed. The applicants relied on ground (a) – the covenants had become obsolete; ground (aa) – they impeded a reasonable user of the land and did not secure any practical benefits of substantial value or advantage to the persons entitled to the benefit of them; or ground (c) – the discharge of the covenant would not injure those persons. They argued that the relevant parts of the amenity land had fallen into neglect and were unused, that after the housing association ceased to exist there had been an increase in owner–occupation and there was no longer any mechanism for enforcing the "co–ownership" ethos of the estate. The other residents on the estate objected.

Held: The application was dismissed for the following reasons:

i. Ground (a) was not made out since the objects of the 1981 conveyances could still be achieved. The character of the amenity land and of the neighbourhood had not changed since then;

ii. Ground (aa) the use of the amenity land as domestic gardens was a reasonable user which was being impeded by the restrictions, but they should not be discharged as they still secured practical benefits to the objectors;

iii. Ground (c) was not made out either. If some parts of the amenity land became parts of individuals' gardens it was inevitable that further enclosures would take place, resulting in injury to the objectors since they would not benefit from access over the whole of the amenity land; and

iv. Even if one of the grounds above had been made out it would have been inappropriate to discharge the covenants because of the easement granted in the 1981 conveyances, in the form of a right of way over all the amenity land for the recreational purposes. Discharging the covenant against fencing would lead to an unworkable situation as one impediment to the enclosure of the amenity land would be removed, but that would not legitimise interference with the objectors' easement.

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

ENERGY

29 CLG Statistical Release

Energy Performance of Buildings Certificates in England and Wales: Q1 2008 to Q4 2014

This statistical release presents experimental official statistics drawn from the data which have been lodged on the Energy Performance of Buildings (EPB) Registers for England and Wales. The statistics have been compiled from Energy Performance Certificates (EPCs) issued for domestic and non–domestic buildings, and Display Energy Certificates (DECs) for buildings occupied by public authorities. These statistics are still subject to evaluation and testing.

https://www.gov.uk/government/statistics/energy-performance-of-buildings-certificates-in-england-and-wales-2008-to-december-2014

30 CLG Report

Energy Performance of Buildings Data: Responses to DCLG Survey

This report summarises responses to a 2013 survey of current and potential users of Energy Performance of Buildings data. The survey aimed to establish a more accurate assessment of the level of interest in Energy Performance of Buildings bulk data, including who uses it, what for and what they intend to use it for in the future.

https://www.gov.uk/government/publications/energy-performance-of-buildings-data-responses-to-dclg-survey

ENVIRONMENT

31 Supreme Court

Grant of consent for wind farm in the Shetland Islands – effect of development on migratory population of whimbrel – Birds Directive – whether Ministers required to consider taking of special measures to improve conservation status of whimbrel

*SUSTAINABLE SHETLAND V SCOTTISH MINISTERS
[2015] PLSCS 50 – Decision given 09.02.15

Facts: In April 2012, the Scottish Ministers granted consent for the construction of a large–scale wind farm in the Shetland Islands. The accompanying environmental statement addressed concerns about the impact of the development on the whimbrel population, a protected species of migratory wading bird whose Shetland population represents 95% of the UK total. The addendum to this included a Habitat Management Plan (HMP), which identified measures for increasing the breeding success of the whimbrel. The Ministers decided that the proposed restoration of the peatland ecosystem under the HMP would offer benefits to a whole range of species and habitats and would be likely to have a positive value to the conservation status of the whimbrel; they further considered that any impact on the conservation status of whimbrel was outweighed by the benefits of the project, including its contribution to meeting renewable energy and climate change targets.

Point of dispute: Whether SS's challenge to the grant of consent should be allowed. SS argued that the Ministers had failed to take proper account of Directive 2009/147/EC (the Birds Directive), article 2 of which required them not only to maintain the current level of the whimbrel population, but also to adapt it to the "appropriate level" by bringing it up to favourable conservation status. This might require the taking of "special measures" under article 4, such as closing down the wind farm during whimbrel migratory or breeding months. At first instance the claim was allowed, but that decision was reversed by the Inner House of the Court of Session and SS appealed.

Held: The appeal was dismissed. In making their decision the Ministers had to take due account of the UK's obligations under the Bird Directive. However, they were not required to conduct a full review of their functions under the Directive with a view to considering how the application proposal would contribute or fit in with those functions – in particular the objective of bringing the whimbrel up to favourable conservation status. The Directive was just one of the material considerations that the Ministers had to take into account when deciding whether to grant consent for the development under the Electricity Act 1989. The Ministers had had regard to the desirability of improving the conservation status of the whimbrel on the islands. They had attached weight to the fact that the HMP would result in one third of the UK whimbrel population being brought under active management and regarded that as an exceptional opportunity to improve understanding of the species, its habitat and the measures necessary to conserve it.

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

LONDON

32 CLG Policy Paper

Short–term use of residential property in London

This paper sets out the Government's approach to bringing forward reforms to modernise s25 of the Greater London Council (General Powers) Act 1973 which prevents Londoners from renting out their properties for short periods of time unless planning permission is obtained from the appropriate local authority. Section 25 provides that the use of residential premises for temporary sleeping accommodation for less than 90 consecutive nights is a change of use requiring planning permission with fines of up to £20,000 for each offence. In fact, the legislation is poorly enforced and inconsistently applied across the Boroughs leading to uncertainty and confusion for residents, and the aim of introducing reform is to support London's tourism industry and help families boost their incomes by making their homes or spare rooms available.

https://www.gov.uk/government/publications/short-term-use-of-residential-property-in-london

33 London Assembly Government Consultation

London Riverside Opportunity Area Planning Framework (OAPF)
Deadline for Comments: 24.03.15

London Riverside covers an extensive part of east London, including parts of Barking and Dagenham, Havering and Newham where there are large areas of brownfield land, relatively deprived communities and low levels of development activity. It is considered that London Riverside has considerable geographic and economic advantages which should be capitalised – land availability, good location and plenty of green open spaces, making it well suited for the delivery of new housing, jobs and supporting facilities. The OAPF puts forward strategies to guide the regeneration of the area, the plan being set out in the form of five objectives:

- land use – a strategic approach to the release of underused Strategic Industrial Land (SIL) and the designation of new SIL to create up to 26,500 new homes and 16,000 jobs, including within the potential Housing Zone bid areas;
- improved transport infrastructure and services to unlock development potential;
- high quality public and private development;
- expediting the development of publicly owned land; and
- maximising housing investment.

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

GENERAL

34 Act of Parliament

Insfrastructure Act 2015

This Act received Royal Assent on 12.02.15. Its main aim is to help get Britain building and boost its competitiveness in transport, energy provision, housing development and nationally significant infrastructure projects. The most significant features of the Act are as follows:

- the creation of Highways England, a government–owned company with long–term sustained funding to deliver the government's roads investment strategy;
- enabling surplus and redundant public sector land and property to be sold more quickly;
- the introduction of a new "deemed discharge" provision on planning conditions to help speed up the delivery of house building projects which have already been granted planning permission;
- the Land Registry will be enabled to create a digitised local land charges register that will improve access to data and standardise fees;
- the Land Registry will be enabled to undertake new services to improve the conveyancing process;
- local communities are to be given the right to buy a stake in renewable energy infrastructure projects;
- it makes provision for the extraction of domestic shale gas;
- it establishes a cycling and walking investment strategy;
- it improves the nationally significant infrastructure regime by making a number of technical administrative improvements to the Planning Act 2008; and
- it enables the creation of an allowable solutions scheme to provide a cost effective way for house builders to meet the zero carbon homes obligation.

http://services.parliament.uk/bills/2014-15/infrastructure.html

https://www.gov.uk/government/news/infrastructure-act-will-get-britain-building

35 British Council of Offices Briefing Note

BCO Socio–Demographic Change

This briefing note considers socio-demographic changes in the workforce and the impact that these are likely to have on offices in the future as they adapt to accommodate an increasingly diverse workforce.

http://www.bco.org.uk/Research/Publications/Socio-Demographic_Change.aspx

36 Adam Smith Institute Paper

The green noose – An analysis of Green Belts and proposals for reform

This paper argues that the UK's housing crisis could be solved if the Green Belt were abolished. Contrary to generally accepted opinion that Green Belt land is a rural idyll, it argues that because much of it is devoted to intensive farming there are associated environmental costs and that Green Belts give rise to "leap-frog" development with intermediate patches of land being left undeveloped because of restrictions – a phenomenon indistinguishable from urban sprawl. As a possibly more acceptable alternative, it is suggested that removing Green Belt designation from intensive agricultural land would enable the building of all housing land required for the foreseeable future. A further proposal is to remove restrictions on land within ten minutes' walk of a railway station, which would allow the development of one million more homes within the Green Belt surrounding London alone.

http://www.adamsmith.org/research/reports/the-green-noose/

GERALD EVE'S UK OFFICE NETWORK

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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

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

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

EVEBRIEF

Legal & Parliamentary

Volume 37(02) 9 March 2015

SCOTLAND

RATING

01 Statutory Instrument

SSI 2015/47 The Non-Domestic Rate (Scotland) Order 2015

This Order, which comes into force on 01.04.15, prescribes a rate of 48 pence in the pound as the non-domestic rate to be levied throughout Scotland in respect of the financial year 2015-16.

http://www.legislation.gov.uk/ssi/2015/47/contents/made

02 Statutory Instrument

SSI 2015/49 The Non-Domestic Rates (Levying) (Scotland) Amendment Regulations 2015

W.e.f. 01.04.15 these Regulations amend the 2014 Regulations by amending the additional factor, S, set out in Regulation 4 of the 2014 Regulations, to 0.013. This additional factor will apply for the financial year 2015-2016 to lands and heritages with a rateable value over £35,000.

http://www.legislation.gov.uk/ssi/2015/49/contents/made

03 Statutory Instrument

SSI 2015/51 The Valuation Timetable (Scotland) Amendment Order 2015

W.e.f. 01.04.15 this Order amends the Valuation Timetable (Scotland) Order 1995 to reflect the fact that the next year of non-domestic rating revaluation was postponed from 2015-16 to 2017-18 by the Valuation (Postponement of Revaluation) (Scotland) Order 2013.

http://www.legislation.gov.uk/ssi/2015/51/contents/made

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

GERALDEVE

WALES

PLANNING

04 Welsh Assembly Government – response to Bill

Report on Planning (Wales) Bill

Having taken evidence on the impact of the draft Planning Bill, the Welsh Assembly Government's Environment and Sustainability Committee has published this report.

- Although the Committee found that there is broad support for reform of the planning system in Wales in order to achieve greater consistency in planning decisions, there is concern that the Bill could shift decision-making power too far away from local communities and local politicians with a number of its provisions potentially limiting individuals' rights to a hearing on a development that may impact their lives.
- The Committee also expressed concern that a proposal to introduce a new tier of local development plans, known as Place Plans, might make it even more difficult to engage local communities in the plan-making process. It has recommended that these should be given development plan status and that further consideration should be given to enabling local communities to be given more opportunity to engage with their preparation.
- It is also recommended that the position of the Welsh Language in the development system should be strengthened.

http://www.assembly.wales/laid%20documents/cr-ld10090%20-environment%20and%20sustainability%20committee%20-%20planning%20(wales)%20bill%20-%20stage%201%20committee%20report/cr-ld10090-e.pdf

see also:

http://www.planningportal.gov.uk/general/news/stories/2015/Feb15/050215/050215_4

05 Statutory Instrument

SI 2014/3492 The Non-Domestic Rating (Multiplier) (Wales) (No.2) Order 2014

This Order specifies that the figure for item B in para 3B of Schedule 7 to the Local Government Finance Act 1988 is 256.9 for the financial year commencing 01.04.15.

http://www.legislation.gov.uk/wsi/2014/3492/contents/made

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

HOUSING

06 Welsh Assembly Government Consultation

Consultation on the future of Right to Buy and Right to Acquire – a White Paper for social housing
Deadline for Comments: 16.04.15

Over the last 30 years Right to Buy and Right to Acquire have enabled many tenants in social housing to buy their home from their Local Authority or Housing Association with a consequent significant reduction in social housing stock. In the current financial climate it is difficult for people to get onto the housing ladder for the first time and there are many who cannot afford to rent privately. This has increased the need for social housing and the Welsh Assembly Government is now considering introducing the following measures which are aimed at protecting Wales's social housing stock from further reduction:

- changing existing legislation so as to reduce the maximum discount available to a tenant who applies to buy their home from their Council or Housing Association; and
- bringing forward legislation to end Right to Buy and Right to Acquire.

http://wales.gov.uk/consultations/housing-and-regeneration/future-of-right-to-buy/?lang=en

NORTHERN IRELAND

PLANNING

07 Statutory Instrument

NISR 2015/39 The Planning General Regulations (Northern Ireland) 2015

This Rule comes into force on 01.04.15 and is made under s71 of the Planning Act (Northern Ireland) 2011 which set the framework for development control following the transfer of most planning functions to councils in April 2015. These Regulations provide that an application for planning permission by a council itself, or by a council jointly with another person, shall be determined by that council unless the application is called in by the Department under a Direction make under s29 of the 2011 Act. They also provide a procedure for advertising and serving notice of an unopposed order revoking or modifying planning permission.

http://www.legislation.gov.uk/nisr/2015/39/contents/made

08 Statutory Instrument

NISR 2015/40 The Planning (Use Classes) Order (Northern Ireland) 2015

W.e.f. 01.04.15 this Order replaces the 2004 Use Classes Order. It specifies classes of use of buildings or other land for the purposes of s23(3) of the Planning Act (Northern Ireland) 2011 which specifies operations or uses which are not to be taken for the purposes of that Act as involving development and which therefore do not require planning permission. Sub-paragraph (e) provides that a change of use is not to be regarded as involving development where the former use and the new use are both within the same class as specified in an Order made under that paragraph.

http://www.legislation.gov.uk/nisr/2015/40/contents/made

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

RATING

09 Statutory Instrument

NISR 2015/20 The Rates (Making and Levying of Different Rates) Regulations (Northern Ireland) 2015

These Regulations came into force on 28.01.15 and were made in consequence of the reorganisation of local government and the revaluation of non-domestic premises, both of which will come into force on 01.04.15. They:

- enable different rates to be made and levied on the rateable net annual values of premises and the rateable capital values of premises;
- prescribe a formula whereby a capital value district rate made by a district council remains linked to the net annual value district rate make by that council; and
- revoke the 2006 Regulations.

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

10 Statutory Instrument

NISR 2015/32 The Valuation for Rating (Decapitalisation Rate) Regulations (Northern Ireland) 2015

These Regulations, which came into force on 24.02.15, prescribe the decapitalisation rate to be applied when determining the net annual value of any hereditament by reference to the contractor's principle for the purposes of any NAV list coming into force on or after 01.04.15. The decapitalisation rate is 2.67% in the case of a church, educational or healthcare hereditament and 4% in any other case. These Regulations have the effect of moving defence hereditaments from the lower of the two decapitalisation rates to the higher rate, following consultation on this issue.

http://www.legislation.gov.uk/nisr/2015/32/contents/made

11 Statutory Instrument

NISR/48 The Rates (Temporary Rebate) (Amendment) Order (Northern Ireland) 2015

Article 31D of the Rates (Northern Ireland) Order 1977 provides for a rebate on occupied rates for retail properties. This rebate applies to properties which become occupied during the three year period ending on 31.03.15 after having been unoccupied for a continuous period of at least twelve months, it amounts to one half of the rates chargeable in respect of the net annual value of the property and is granted for a period of twelve months. W.e.f. 01.04.15 this Order extends the rebate to retail properties which become occupied during the year ending 31.03.16.

http://www.legislation.gov.uk/nisr/2015/48/contents/made

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

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