EVEBRIEF

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THE FINAL FLOURISH

I will not focus on the upcoming election save for the fact that we do report on some of the last pieces of legislation to come out of the current Government.

We report on the consolidated new permitted development rights which introduce some new relaxations to the planning permission regime but in many circumstances these are still controlled by the prior approval requirements. We also report on the national space standards for housing, which together with the move from the Code for Sustainable Homes requirement to Building Regulation approval that significantly change the background guidance to new housing development. It certainly has been a busy time for government in particular DCLG in implementing matters both within the Deregulation Act 2015 and consequential supporting documents. We will now, thankfully, enter a period of calm whilst the hustings, election and negotiations fill the void left by the lack of Government work during this period.

Peter Dines
Editor

GERALDEVE

LANDLORD & TENANT

01 Upper Tribunal: Lands Chamber

Respondent local authority carrying out scheme of major works on 1960s estate – reasonableness of service charge – repairs or improvements – s19 Landlord & Tenant Act 1985

*WAALER V HOUNSLOW LONDON BOROUGH COUNCIL
[2015] PLSCS 52 – Decision given 26.01.15

Facts: The appellant held a long lease of a flat on a 1960's estate owned by HLBC. Between 2005 and 2006 HLBC carried out a scheme of major works to the estate including replacing the flat roof on each block with a pitched roof and replacing the wood-framed windows with metal-framed units, which in turn required replacement of exterior cladding and removal of asbestos. The appellant received a demand for over £55,000 which the first tier tribunal (FTT) held was recoverable under the terms of the lease.

Point of dispute: Whether to allow the appellant's appeal against the FTT decision. Issues arose as to whether: (i) the works were repairs, which the council were obliged to carry out under the repairing covenant in the lease, or improvements which they were not obliged to carry out; and (ii) whether, in determining whether the charges were reasonable within the meaning of s19 of the 1985 Act, the financial impact on leaseholders should be taken into account.

Held: The appeal was allowed in part.

i. Different considerations applied when assessing the reasonableness of the cost of repairs from those that applied to improvements, notwithstanding that s19 of the Landlord and Tenant Act 1985 did not distinguish between them. If a landlord decided to carry out a scheme of works which went beyond what was required to effect a repair and sought to recover contributions from leaseholders then it had to take into account the extent of the leaseholders' interest, their views and the financial impact. Where works of repair were required the leaseholders' means would usually be irrelevant to the issue of whether the costs were reasonably incurred, but that was not the case with improvements. If a landlord was embarking on a major scheme of works which would result in a building that was different to the original demise it had to consider a number of matters before deciding whether to proceed, including the possibility of a less expensive route and giving greater weight to the financial means of the paying leaseholders.

ii. The costs of replacing the flat roofs with pitched ones were reasonable, but this was not the case with the windows whose design had been defective since the building was constructed. The council should have explored less expensive solutions to remedy the problem. The financial impact of the works was relevant to the question of whether the cost had been reasonably incurred and there was no evidence that the council had given any consideration to this. Therefore the FTT should not have been satisfied that the council's decision to incur the costs was reasonable or that the whole of the cost of the replacement windows and cladding had been reasonably incurred. The case was remitted to the FTT to determine how much the service charge should be reduced by to reflect that finding.

02 CLG Publication – Government Response to Policy Paper

Review of property conditions in the private rented sector: Government response

This report is the Government's response to the discussion document that considered how best to tackle rogue landlords without negatively impacting on good ones.

https://www.gov.uk/government/publications/review-of-property-conditions-in-the-private-rented-sector-government-response

03 CLG Publication

Renting a safe home: a guide for tenants

This guide explains to tenants what they should look out for in a home they are renting to ensure that it is safe for them to live in and will not adversely affect their health. It also explains landlords' obligations and what can be done if the landlord does not comply with these.

https://www.gov.uk/government/publications/renting-a-safe-home-a-guide-for-tenants

04 CLG Publication

Selective licensing in the private rented sector: a guide for local authorities

Local authorities have powers to introduce selective licensing of privately rented homes in order to tackle problems in their areas, or parts of them, caused by low housing demand and/or significant anti-social behaviour. Local residents, landlords and tenants have to be consulted prior to the introduction of a licensing scheme, and landlords who rent out properties in an area that is subject to selective licensing are required to obtain a licence from the local authority for each of their properties. With effect from 01.04.15, a new General Approval will come into force. Local authorities will be required to obtain confirmation from the Sec of State for any selective licensing scheme which would cover more than 20% of their geographical area or would affect more than 20% of privately rented homes in their area. This guidance explains the criteria for making a selective licensing scheme and discusses the type of evidence needed to support a designation. This Guidance applies to both designations make under the General Approval 2015 and those which require confirmation by the Sec of State.

https://www.gov.uk/government/publications/selective-licensing-in-the-private-rented-sector-a-guide-for-local-authorities

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

PLANNING

05 Court of Appeal

Interpretation of planning policy – off-airport site car park – whether relevant policy requiring need for airport-related parking to be demonstrated in general or in relation to particular development

*GPS ESTATES LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT [2015] PLSCS 76 – Decision given 05.03.15

Facts: The respondent, GPS, operated a "meet and greet" parking service at Luton airport. While passengers were away their cars were stored in a car park about 2km from the airport. In July 2012 the lpa issued an enforcement notice requiring GPS to cease using the off-airport site as it contravened local plan policy LLA2 on airport-related parking. This policy stated that permission would not be given for such a use unless it could be demonstrated that there was a long-term need for the development that could not be met at the airport and also that the use accorded with the council's surface access strategy encouraging the use of public transport. The council also stated that it had given permission in 2006 for the redevelopment of another site which would provide 5,000 off-airport parking spaces. On appeal the planning inspector appointed by the Sec of State upheld the notice, finding that although the outline permission for the other site had lapsed, occupancy rates of car parks at the airport were low and there was no demonstrable need for long-term parking at GPS's site.

Point of dispute: Whether to allow the Sec of State's appeal against the decision of the court below which had allowed GPS's appeal against the inspector's decision. The judge found that the inspector had erred in failing to grasp or deal with the point that the outline permission for the other site must have complied with policy LLA2. The Sec of State argued that LLA2 was concerned with whether there was a need for the particular development under consideration rather than whether there was a need for the provision of additional car parking capacity in general.

Held: The appeal was allowed.

i. The criteria in policy LLA2 were concerned with the particular development for which permission was being sought. The judge had misinterpreted the policy so far as he had considered that the "need" criterion was directed to whether there was a need for the provision of additional car parking capacity in general. The inspector had correctly interpreted the need criterion in policy LLA2 and had been entitled to conclude that there was no persuasive evidence to demonstrate that it was satisfied in relation to GPS's site.

ii. The provision of additional airport related off-site parking would tend to undermine the council's surface access strategy and on that ground the inspector had been entitled to dismiss the appeal against the enforcement notice.

06 Planning Court

Refusal of planning permission for wind turbine – views from a heritage asset

*NORTHCOTE FARMS LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2015] All ER (D) 250 (Feb) Decision given 20.02.15

Facts: The claimant applied to quash the decision of the inspector appointed by the Sec of Sate refusing planning permission for the erection of a wind turbine in the vicinity of a nearby, but inaccessible, heritage asset whose windows were bricked up.

Point of dispute: Whether to allow the claim. The claimant submitted that the inspector had erred in concluding that there would be harm to the heritage significance of a heritage asset on a hypothetical assumption that narrow views from the building would be harmed, if the windows were not bricked up.

Held: The claim was dismissed. The inspector had been entitled to take into account views from the building. The fact that its windows were bricked up and it was inaccessible was relevant to the amount of harm, but circumstances might change; the inspector had not been bound to specify the amount of harm caused by the views from the building.

07 High Court

Planning permission granted for demolition of buildings in central London and redevelopment – whether inspector failed to take account of material consideration – whether procedural errors led to unfairness – whether inspector showing bias

*TURNER V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2015] PLSCS 95 – Decision given 26.02.15

Facts: A developer applied to the lpa for planning permission to redevelop a 3.5 ha site lying to the south of the Thames which was occupied by the Shell Centre. The application was referred to the Mayor of London and called in by the Sec of State because of the importance of the site and the impact that the new development could have on various listed buildings, as well as the World Heritage Site covering Parliament Square and views from St James's Park. Following an inquiry, planning permission for the development was granted, the Sec of State having followed the recommendations of his inspector.

Point of dispute: Whether to allow T's challenge to the grant of permission. T contended that: (i) the inspector had erred in failing to consider a second confidential report prepared on behalf of the developers; (ii) there had been procedural errors resulting in unfairness; and (iii) the inspector had not treated the claimant (who appeared in person) in the same way as counsel representing the developer, resulting in apparent bias against him.

Held: T's claim was dismissed.

i. The report that the inspector had considered had been sufficient to enable him to give proper consideration to the viability of the proposal and all other matters dealt with in it.

ii. It was a mandatory rule contained in the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 that statements of case should be provided. The inspector had been wrong to dispense with this requirement and allow proofs of evidence alone. However, T had received all the information that he needed from the proofs of evidence and summaries provided and in the circumstances the breach of the Rules had not produced any prejudice to T.

iii. The inspector had mismanaged the conduct of the inquiry and his conduct gave rise to concern that he had been unfair to objectors. However, it amounted to judicial misconduct rather than bias.

iv. In all the circumstances, the overall conduct of the inquiry and the procedural irregularities had not led to prejudice to T that was sufficiently serious to meet the test set out in s288 of the Town and Country Planning Act 1990.

08 High Court

Community infrastructure levy (CIL) – whether pub "in use" for six months out of previous three years so as to allow its floorspace to be offset against that of new development when calculating CIL rate to be charged

**R (HOURHOPE LTD) V SHROPSHIRE COUNCIL
[2015] EWHC 518 (Admin) – Decision given 02.03.15

Facts: A pub, the Red Lion, in Shropshire ceased trading in May 2011 and was subsequently destroyed by fire in April 2012. In March 2014 the claimant developer which owned the site obtained planning permission to demolish the original building and erect residential units on it. The defendant council, SC, imposed a liability on the claimant to pay CIL in the sum of £40,705. The claimant objected to the amount of the CIL on the basis that it was entitled to a deduction, based on its floorspace, by virtue of the building having been "in lawful use" for a particular period notwithstanding that it had ceased to trade. The pub closed for business on 06.05.11; after that many of the fixtures and fittings required for the pub business remained on site. A director of the company which ran the pub continued to live on site until some date in August 2011.

Point of dispute: Whether the amount of CIL payable by the claimant should be reduced. The claimant disputed SC's decision that the building had not been "in use" for six months out of the preceding three years and therefore its floorspace could not be offset against that of the new development in calculating the CIL rate to be charged.

Held: The claim was dismissed. "In lawful use" means more than possession of a lawful use – the building must actually be utilised for this use. This requires an assessment of all the circumstances and evidence as to the activities taking place and what the user's intentions are. In the case of a pub the building must be open to the public and serving drinks and food, that being the primary characteristic of a pub. In this case the Red Lion's failure to be open to patrons meant that the "in lawful use" test had been failed.

09 High Court

Claim against grant of planning permission for solar farm – failure to consult English Heritage – whether defendants failing to have special regard to desirability of preserving listed buildings – whether defendant breaching claimant's legitimate expectation to be consulted – environmental impact assessment

*GERBER V WILTSHIRE COUNCIL
[2015] PLSCS 78 – Decision given 05.03.15

Facts: WC, the defendant local authority, having undertaken a screening of a proposed solar farm development in Wiltshire, came to the conclusion that no environmental impact assessment (EIA) was required. The interested party applied to WC for planning permission for the development over an area of land totalling approximately 22ha. The application was accompanied by a heritage statement which identified Gifford Hall, a Grade II listed building lived in by the claimant, G. Planning permission was granted and work on the development commenced, but G contended that he only became aware of it once it was being constructed and had therefore not objected to it or participated in the decision making process.

Point of dispute: Whether to allow G's claim challenging the legality of the grant of planning permission. G contended that WC had:- (i) erred in failing to consult English Heritage as part of the planning application, even though WC believed that the development would have an effect on a listed building; (ii) failed to discharge its duty to have special regard to the desirability of preserving listed buildings under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990; (iii) created a legitimate expectation that G would be consulted about the application due to its statement of community involvement to endeavour to notify occupiers of adjoining premises which might be affected; and (iv) erroneously concluded from its screening opinion that no EIA was required.

Held: The claim was allowed and the grant of planning permission was quashed.

i. The court was satisfied that WC had thought there was an effect on listed buildings and the conservation area, and accordingly English Heritage should have been consulted.

ii. The duty under s66 had clearly been engaged, but not properly discharged by WC.

iii. WC had breached this legitimate expectation.

iv. The screening opinion was flawed both as to its substance and its reasoning.

10 Planning Court

Objection to decision to grant planning permission for erection of wind turbine – whether inspector failed to apply statutory duties properly – whether claimant substantially prejudiced by inspector's failure to apply properly the duty to have special regard to desirability of preserving listed building or setting

*MORDUE V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2015] PLSCS 81 – Decision given 09.03.15

Facts: An inspector appointed by the Sec of State granted planning permission for the erection of a wind turbine at a farm in Northamptonshire. The claimant, M, was a member of a local action group which was concerned about the visual impact of the turbine on the surrounding landscape and many local listed buildings. M applied to quash the inspector's decision under s288 of the Town and Country Planning Act 1990.

Point of dispute: M contended that: (i) the inspector had failed properly to apply the duty under s38(6) of the Planning and Compulsory Purchase Act 2004 which required the appeal to be determined in accordance with the development plan unless material considerations indicated otherwise; (ii) the inspector had failed to apply the duty under s66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving any listed building or its setting; (iii) the inspector had failed to deal with the intrinsic significance of the heritage assets affected by the proposed development and the contribution their setting made to their significance; and (iv) M had been substantially prejudiced by the inspector's failure to give reasons for his decision.

Held: The application was granted.

i. With regard to s38(6) of the 2004 Act the inspector had recognised that the proposal was not in accordance with the development plan, but had considered that the environmental benefits of renewable energy meant that he should determine the appeal in favour of the development. He was not required to provide any statement of his reasons for this decision.

ii. The inspector had failed to give reasons demonstrating that he had given considerable weight to the harm to the settings of each of the listed buildings that he found would be harmed to some extent by the development. This had caused M considerable prejudice.

iii. The inspector was not under an obligation to include in his reasons a description of the particular value of each relevant listed building whose setting would be affected by the proposed development and a description of the contribution which its setting made to each.

iv. This argument added nothing material to the other grounds for challenging the inspector's decision.

11 Planning Court

Claimant applying for order to quash decision to adopt motorway plan – strategic environmental assessment (EIA) – Site of Special Scientific Interest (SSSI) – decision making process

R (ON THE APPLICATION OF FRIENDS OF THE EARTH ENGLAND, WALES AND NORTHERN IRELAND LTD) V WELSH MINISTERS
[2015] PLSCS 108 – Decision given 26.03.15

Facts: In July 2014 the decision was taken to construct a new section of the M4 motorway near Newport in South Wales in order to alleviate traffic and accident problems. The new stretch of road would run across the Gwent Levels, an area which comprised a number of SSSIs and the River Usk Special Area of Conservation (SAC).

Point of dispute: Whether the adoption of the plan should be quashed. The claimant, an environmental organisation, argued that: (i) the decision making process had been unlawful as it failed to comply with the SEA directive, particularly because the process by which the plan had been adopted had failed properly to identify, describe and evaluate all reasonable alternatives on a comparable basis to the plan; and (ii) the Minister had failed to take reasonable steps to further the conservation and enhancement of the flora and fauna of the SSSIs over which the proposed route ran, as required by s28G of the Wildlife and Countryside Act 1981.

Held: The application was dismissed.

i. The decision makers had used the correct legal tests throughout the decision making process and had chosen the option which they had considered best met the transport planning objectives. All the possible options that could have met those objectives had been included in the SEA report. The claimant's preferred alternative had been rationally considered to be incapable of achieving the transport planning objectives. The defendants had more than adequately explained why they considered that alternative options would not achieve the required transport planning objectives; they had been entitled to act on the evidence before them and the widely accepted methodology employed in relation to the impact of planned public transport improvements.

ii. None of the options which would not have involved constructing a highway across the SSSIs could achieve the required transport improvement objectives. It was not maintainable that the Minister had not been sensitive to the harm and the importance of mitigating and minimising it and she had had the regard required of her to the desirability of preserving and protecting the SSSIs.

12 Planning Inspectorate

Overage Clause in Unilateral Undertaking

*MCCARTHY & STONE RETIREMENT LIFESTYLES LTD V SOUTH BUCKS DISTRICT COUNCIL
Appeal Ref: APP/N0410/A/14/2228247 – Decision given on 12.02.15

Facts: The applicant developer appealed against the refusal of planning permission for the erection of a building containing 37 retirement apartments with communal facilities and a shop at Denham Green, Bucks. Following the hearing, an executed Unilateral Undertaking (UU) was provided by the appellant. Core Policy 3 of the South Bucks District Local Development Framework Core Strategy (CS) 2011 seeks to secure at least 40% of all dwellings in schemes of five units and above as affordable accommodation, unless it is clearly demonstrated that this is not economically viable. An off-site affordable housing contribution of £245,000 was agreed between the parties.

Point of dispute: Whether the contribution provided by UU met the tests contained within Regulation 122 of the Community Infrastructure Levy Regulations 2010 in respect of affordable housing. The council had requested an overage clause to be included in the UU – this required a viability review to take place and a subsequent additional contribution to be paid to the council should this demonstrate an increase of the viability of the development. The appellant argued that this request was not reasonable or necessary in accordance with the tests identified within Regulation 122.

Held: The appeal was allowed and permission for the development granted. The request for the overage clause was at odds with the guidance contained in the 2014 PPG and would not accord with the provisions of Regulation 122. The inspector could not conclude that the overage clause sought was necessary, related to the development and fairly related in scale and kind. The single contribution of £245,000 provided by the UU towards off-site affordable housing would accord with the objectives of Core Policy 3 of the CS and also Regulation 122 and the tests for planning obligations set out in the Framework.

13 Statutory Instrument

SI 2015/462 The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015

These Regulations, which came into force on 6 April consolidate two sets of 2010 Regulations and revoke the whole or part of a number of instruments relating to infrastructure planning which were made between 2010 and 2013.

http://www.legislation.gov.uk/uksi/2015/462/contents/made

14 Statutory Instrument

SI 2015 595 The Town and Country Planning (Development Management Procedure) (England) Order 2015

With effect from 15.04.15, this Order consolidates the provisions of the 2010 Order and subsequent amending instruments. It prescribes procedures connected with planning applications, consultations relating to planning applications, local development orders, certificates of lawful use or development and the maintenance of registers relating to planning applications. The main changes made relate to:

- the requirement to notify an infrastructure manager where a proposed development is within ten metres of relevant railway land;
- the required information requirements to accompany an application made under a planning condition;
- deemed discharge;
- requirement to provide reasons for imposition of conditions that require matters to be completed prior to start of a development; and
- consultation requirements.

http://www.legislation.gov.uk/uksi/2015/595/contents/made

15 Statutory Instrument

SI 2015/596 The Town and Country Planning (General Permitted Development) (England) Order 2015

With effect from 15.04.15, this Order consolidates the 1995 GDPO. It grants planning permission for certain classes of development without the requirement for a planning application to be made under Part 3 of the Town and Country Planning Act 1990. Schedule 2 to this Order sets out these classes of development in detail. The provisions relate to categories of permitted development including the requirement to obtain prior approval in some circumstances.

http://www.legislation.gov.uk/uksi/2015/596/contents/made

16 Statutory Instrument

SI 2015/597 The Town and Country Planning (Use Classes) (Amendment) (England) Order 2015

With effect from 15.04.15, this Order amends the 1987 Order 1987 which specifies classes for the purposes of s55(2)(f) of the Town and Country Planning Act 1990. This section provides that a change of use of a building or other land does not involve development for the purposes of the Act if the new use and the former use are both within the same specified class. This Order provides that use as a betting office and use as a pay day loan shop are now included in the list of uses which are excluded from the specified classes.

For three years, premises transitional provisions apply to premises which at 15.04.15 are in the process of converting to a betting office or a pay day loan shop. During that time these will be treated as if they remained within Class A2 (financial and professional services) of the Schedule to the principal Order.

http://www.legislation.gov.uk/uksi/2015/597/contents/made

17 Statutory Instrument

SI 2015/598 The Town and Country Planning (Compensation) (England) Regulations 2015

These Regulations came into force on 15.04.15 and they revoke the 2013 Regulations and the 2014 Amendment Regulations. They are made under s108 of the Town and Country Planning Act 1990, which provides for the payment of compensation to land owners in certain cases where planning permission for development granted by a development order, local development order or neighbourhood development order is withdrawn and where on an application for planning permission for that development, the application is refused or permission is granted subject to conditions. The Regulations prescribe in detail the circumstances when compensation is payable.

http://www.legislation.gov.uk/uksi/2015/598/contents/made

18 Statutory Instrument

SI 2015/660 The Town and Country Planning (Environmental Impact Assessment) (Amendment) Regulations 2015

These Regulations, which came into force on 06.04.15, amend the 2011 Regulations to raise and amend the thresholds at which certain types of development project will need to be screened in order to determine whether an environmental impact assessment is required under the EU Directive 2011/92/EU. These changes will reduce the number of projects that have to be screened by local authorities.

- The threshold for industrial estate development projects is raised from areas exceeding 0.5 hectares to areas exceeding five hectares.
- In the case of urban development projects, the existing threshold of 0.5 hectares is raised and amended such that a project will need to be screened if:
    - The development includes more than 1ha of development that is not dwelling house development;
    - The development includes more than 150 dwellinghouses; or
    - The area of the development exceeds five hectares.

http://www.legislation.gov.uk/uksi/2015/660/contents/made

19 Statutory Instrument

SI 2015/758 The Infrastructure Act 2015 (Commencement No. 2 and Transitional Provisions) Regulations 2015

These Regulations, which were made on 18.03.15, brought into force s26 and, so far as not already in force, s28 of the Infrastructure Act 2015. Section 26 amends the Planning Act 2008 to enable the earlier appointment of examining authorities on applications for development consent for nationally significant infrastructure projects. Section 28 amends the 2008 Act to allow the Sec of state to refuse an application for an order to change, or revoke, a development consent order made under that Act if he considers that the development that would be authorised as a result of the change should properly be the subject of an application for a new development consent order.

http://www.legislation.gov.uk/uksi/2015/758/contents/made

20 Statutory Instrument

SI 2015/760 The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) (Amendment) Regulations 2015

These Regulations will come into force on 14.07.15 and amend the 2011 Regulations which are concerned with the procedures surrounding applications for development consent orders for nationally significant infrastructure projects under the Planning Act 2008. The amendments relate to:-

- the removal of the minimum scale requirement for plans that show offshore matters;
- consultation requirements;
- procedural provisions relating to the Sec of State's power to decide not to hold an examination in respect of an application; and
- reduction of time limits in respect of the procedural stages of an application.

http://www.legislation.gov.uk/uksi/2015/760/contents/made

21

SI 2015/797 The Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) (Amendment) Order 2015

This Order, which came into force on 15.04.15, amends the publicity requirements set out in the 2013 Order.

http://www.legislation.gov.uk/uksi/2015/797/contents/made

22 Statutory Instrument

SI 2015/807 The Town and Country Planning General (Amendment) (England) Regulations 2015

These Regulations, which come into force on 15.04.15, amend the 1992 Regulations. They narrow the requirement for an interested planning authority to refer to the Sec of State for determination any applications for planning permission which they make which relate solely to the demolition of an unlisted building in a conservation area. An application only needs to be referred to the Sec of State where Historic England is notified of the application and objects to it, and the authority do not propose to refuse the application.

http://www.legislation.gov.uk/uksi/2015/807/contents/made

23 Statutory Instrument

SI 2015/809 The Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2015

These Regulations, which come into force on 15.04.15, amend the 1990 Regulations regarding local authorities' requirements to notify Historic England of applications for planning permission which they think would affect the setting of a listed building or the character or appearance of a conservation area, and the circumstances when local authorities must refer their own applications for listed building consent to the Sec of State.

http://www.legislation.gov.uk/uksi/2015/809/contents/made

24 Statutory Instrument

SI 2015/836 The Community Infrastructure Levy (Amendment) Regulations 2015

These Regulations, which came into force on 01.04.15, amend the 2010 Regulations. Regulation 49 of the 2010 Regulations provided relief from the Community Infrastructure Levy where a dwelling satisfied at least one of four conditions. A fifth one is now added which is dwellings that are let by private landlords. In order to satisfy the new condition the dwelling must be let at no more than 80% of the market rent (including service charges) to tenants who are not adequately served by the local housing market. A planning obligation designed to ensure that these criteria are met must be entered into.

http://www.legislation.gov.uk/uksi/2015/836/contents/made

25 Statutory Instrument

SI 2015/949 The Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015

With effect from 27.03.15, this Order has amended the Planning Act 2008 to add to the categories of infrastructure project which are nationally significant developments relating to radioactive waste geological disposal facilities.

http://www.legislation.gov.uk/uksi/2015/949/contents/made

26 Government Response to CLG Select Committee Inquiry

Operation of the National Planning Policy Framework

This is the Government's response to the CLG Select Committee Inquiry into the operation of the National Planning Policy Framework.

https://www.gov.uk/government/publications/operation-of-the-national-planning-policy-framework-government-response-to-the-clg-select-committee-inquiry

27 Government Response to Consultation

Technical consultation on planning

This is the Government's response to various consultations on the following matters:

- improving the use of planning conditions;
- streamlining the number of non-planning consents that can be included in a Development Consent Order;
- reforms to neighbourhood planning;
- the procedural detail of the deemed discharge of planning conditions measure;
- planning application process improvements;
- proposals to raise the environmental impact assessment screening thresholds; and
- changes to Development Consent Orders.

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

28 Planning Inspectorate Advice Note

The role of local authorities in the development consent process

The Planning Act 2008, which relates to applications for permission for nationally significant infrastructure projects relating to energy, transport, water, waste, waste water and certain business and commercial developments, contains various aspects where the participation of a local authority is required. This advice note explains when and why a relevant local authority needs to take part in the process.

http://infrastructure.planningportal.gov.uk/wp-content/uploads/2015/02/Advice_note_2.pdf

29 Letter from the Minister of Housing and Planning

Letter to the Chief Executive of the Planning Inspectorate
This letter highlights national planning policy on landscape character and where applications come forward that are 'premature' in relation to an emerging Local Plan. These issues are important in many planning cases, and this letter sets out clearly the government's position.

https://www.gov.uk/government/publications/letter-to-the-chief-executive-of-the-planning-inspectorate

30 CLG Statistics

Planning applications in England: October to December 2014

Between October and December 2014 district level planning authorities in England:

- received 111,100 applications for planning permission, up 2% from 108,400 in the corresponding quarter of 2013;
- granted 88,900 permissions, up 4% from the same quarter in 2013; and
- made 75 more residential decisions than in the December quarter 2013.

In the year ending December 2014 these authorities:

- granted 354,800 permissions, 2% more than during the year ended December 2013; and
- granted 88% of decisions, unchanged from the previous year.

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

31 CLG Statistics

Live tables on planning application statistics

These are live tables for statistics on planning applications at national and local planning authority level, updated on 19.03.15.

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

32 CLG Publication

Arrangements for handling heritage applications Direction 2015

This Direction is made by the Sec of State and sets out the requirements to notify Historic England (the new name for English Heritage from 01.04.15), the National Amenity Societies and the Sec of State of certain listed building consent applications and the circumstances in which Historic England's own applications for listed building consent should be referred to the Sec of State for determination. It will replace the Directions currently included in the following Circulars:

- Circular 01/2001: Arrangements for handling heritage applications – notification and directions by the Sec of State;
- Circular 09/2005: Arrangements for handling heritage applications – notification to National Amenity Societies Direction 2005; and
- Circular 08/2009: Arrangements for handling heritage applications – notification to the Sec of State (England) Direction 2009.

These Directions will be revoked on 15.04.15 and the circulars cancelled.

https://www.gov.uk/government/publications/arrangements-for-handling-heritage-applications-direction-2015

33 CLG Publication

The Conservation Areas Direction 2015

This Direction came into force on 15.04.15 and sets out the new requirements for handling heritage related applications. It will replace the one previously included in paragraph 31 of the DETR's Circular 01/2001: Arrangements for handling heritage applications – notification and directions by the Sec of State.

https://www.gov.uk/government/publications/the-conservation-areas-direction-2015

34 CLG Publication

Hazardous substances: draft planning practice guidance

Planning practice guidance on hazardous substances is being updated to reflect changes which will be introduced by new regulations on 01.06.15. The new regulations are being introduced to streamline the current system and to bring the regulations into line with international standards.

https://www.gov.uk/government/publications/hazardous-substances-draft-planning-practice-guidance

35 CLG Publication

Planning Act 2008: examination of applications for development consent

This guidance is concerned with the examination of applications for development consent under the Planning Act 2008, which are undertaken by an Examining Authority appointed by the Sec of State. In practice, many of the Sec of State's functions relating to the handling of applications for major infrastructure projects, including the acceptance of applications for examination and the appointment of Examining Authorities, are carried out through the Planning Inspectorate. This guidance should be read alongside the Planning Act 2008, the Infrastructure Planning (Examination Procedure) Rules 2010 and the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015.

https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent

36 CLG Publication

Guidance on the pre-application process for major infrastructure projects

This guidance sets out the requirements and procedures for the pre-application process and consultation for major infrastructure projects.

https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects

37 CLG Publication

Dealing with illegal and unauthorised encampments

This is a summary of the powers that public bodies have to help them deal with illegal and unauthorised camp sites and help with the reclamation of land and property.

https://www.gov.uk/government/publications/dealing-with-illegal-and-unauthorised-encampments

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

HOUSING

38 CLG Statistical Release

House building in England: October to December 2014

- It is estimated that there were 29,800 seasonally adjusted house building starts in England in the December quarter 2014, 10% fewer than in the previous quarter and 9% fewer than during the same quarter in 2013.
- There were an estimated 30,760 housing completions in the December quarter of 2014, an 8% increase on the same quarter a year earlier.
- Seasonally adjusted starts are now 74% above the trough in the March quarter 2009 but 39% below the March quarter 2007 peak.

- In the 12 months to December 2014 there were 137,010 housing starts, 10% higher than the year before. Over the same period annual housing completions totalled 118,760, an increase of 8% compared with the previous 12 months.

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

39 CLG Statistical Release

Live tables on house building

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

https://www.gov.uk/government/statistical-data-sets/live-tables-on-house-building

40 CLG Statistical publication

English Housing Survey 2013 to 2014: headline report

The English Housing Survey is a national survey of people's housing circumstances and the condition and energy efficiency of housing in England. The first chapter of this report focuses on the profile of households including trends in tenures, demographic and economic characteristics of households, rents and housing benefit, recent movers, mortgage difficulties, overcrowding and under-occupation; and life satisfaction. Chapter 2 provides an overview of the housing stock in England including age, type and size of homes, energy efficiency, decent homes, homes affected by damp and mould and fire safety. This is the first release of data from the 2013-14 survey – the report will be followed by a series of more detailed annual reports.

https://www.gov.uk/government/statistics/english-housing-survey-2013-to-2014-headline-report

41 CLG Consultation Response

Stepping onto the property ladder

This consultation, which contained proposals for enabling more low cost, high quality starter homes for first time buyers, concluded in February. Since then, on 02.03.15 the government has introduced a new national starter home exception site planning policy through a written ministerial statement. This document sets out a summary of the responses to the consultation, the government response to feedback and next steps in the roll out of new starter homes.

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

42 CLG Guidance

Starter Homes Design

The Government has announced a new Starter Homes initiative in England which is aimed at helping first time buyers to buy a home. This document is an initial set of examples of starter home designs which has been put together by the government's new Design Advisory Panel. They show good design in a local context in order to show communities the quality of homes being offered.

https://www.gov.uk/government/publications/starter-homes-design

43 CLG Publication

Build to Rent: guide for local authorities

This guidance outlines practical options as to how local authorities can support the development of private rented sector homes and examples of schemes being supported by this scheme. It also provides some background to the policy and initiatives supporting the development of this new housing sector throughout the country.

https://www.gov.uk/government/publications/build-to-rent-guide-for-local-authorities

44 Homes and Communities Agency Bulletin

Housing market bulletin – March 2015

The housing market bulletin provides the latest information on the housing market, the economy and the housebuilding industry.

- Average house prices continue to rise, although with a large amount of regional variation.
- There has been a decline in the number of loans to first time buyers, but buy-to-let lending has increased.
- Employment has risen and the rate of inflation has slowed down.

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

45 Home Builders Federation Report

New Housing Pipeline Q4 2014 Report

Residential planning approvals strengthened during the final quarter of 2014. The rise was largely driven by an increase in private housing unit approvals. Whilst social housing unit approvals were also up on the particularly weak levels seen in the second and third quarters of 2014, they remain well down on a year ago.

Overall, Glenigan recorded approval for over 58,400 residential units during the fourth quarter of this year; a 20% rise on the third quarter and 1% up on a year earlier. The number of units approved during 2014 totalled over 219,700, 15% more than in 2013.

http://www.hbf.co.uk/fileadmin/documents/research/Housing_pipeline_report_Q4_2014_-_March_2015.pdf

RATING

46 Upper Tribunal: Lands Chamber

Alteration of rating list to reduce RV of restaurant and wine bar for period of Occupy London protest – whether that event a material change of circumstances justifying alteration of list – whether too transient to affect rental bid for premises on statutory rating hypothesis

*RE PAVLOU (VO)'S APPEAL
[2015] PLSCS 97 – Decision given 18.03.15

Facts: The ratepayer occupied premises in Paternoster Square, London EC4 which were used as a wine bar and restaurant. He succeeded in altering the rateable value of the premises shown in the 2010 rating list from £175,000 to £135,000 for the period mid-October 2011 to late February 2012 due to the restricted access to the square during that period as a result of the Occupy London protest outside St Paul's Cathedral, which represented a material change of circumstances, justifying alteration of the list. In reaching its decision the VTE found that the indefinite closure of the square for an indefinite period, during the run-up to Christmas, would affect the rental bid that a hypothetical ratepayer would be prepared to make for the premises.

Point of dispute: Whether to allow the VO's appeal against the VTE decision. The VO argued that the Occupy London protest was of too transient a nature for a hypothetical landlord and a hypothetical tenant to agree a lower rent under the statutory rating hypothesis. It was the kind of event that was to be expected in a capital city and would already be reflected in the market's attitude to risk and rental values.

Held: The appeal was allowed in part.

i. The compiled list entry was altered to £164,000.

ii. It was relevant to take into account the effect of the Occupy London protest. By the material day it had been going on for three weeks causing much disruption to ordinary comings and goings in Paternoster Square. A hypothetical tenant would not have considered that the end of the protest was imminent at the material day and he would not be prepared to pay the same annual rent as he would have done in the absence of Occupy London.

iii. When considering the effect of the protest on the hypothetical rental bid no weight should be given to any reduction in the ratepayer's actual trade figures since such information was too limited to establish any trend and would not have been available to the hypothetical landlord and tenant. The hereditament should be valued by reference to rental comparables not receipts. However, the actual rent concession made by the landlord, representing about one twelfth of the annual rent, was a relevant factor to take into account.

iv. The fact that the agreed rent concession was referenced to the payment of a quarterly rent, and that payment of the balance was deferred until the next quarter day, indicated that both landlord and tenant expected the protest to be over by the next quarter day. The effect of the rent concession should be analysed for the period from mid-October 2011 when the protest started and the March quarter day. The concession was likely to have been divided 50:50 between rental value and goodwill Applying that approach a hypothetical landlord and tenant would have agreed an annual rent of £148,420. The RV of the hereditament in the 2010 rating list should be reduced to £148,000 With effect from mid-October 2011, reverting to £164,000 when the protest ended in February 2011.

47 Statutory Instrument

SI 2015/424 The Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2015

These Regulations, which came into force on 28.03.15, amend the 2009 Regulations which are primarily concerned with the alteration of local and central non-domestic rating lists by valuation officers, proposals for such alterations from other persons and appeals to the VTE where there is a disagreement about a proposal between the valuation officer and someone else. Regulation 14 of the 2009 Regulations is amended by Regulation 7 such that the effective date of any alteration made to a rating list is to be determined according to the circumstances giving rise to the alteration and the date on which it is made. The amendments enable an alteration of a list to have effect before, as well as after, the coming into force of the Regulations.

http://www.legislation.gov.uk/uksi/2015/424/contents/made

48 CLG Guidance

Business rates: retail relief

In the Autumn Statement delivered on 05.12.13 the Government announced that it would provide up to £1,000 relief to all occupied retail properties with a rateable value of £50,000 or less in each of the years 2014-15 and 2015-16. For 2015-16 the amount of relief has been increased to £1,500.

https://www.gov.uk/government/publications/business-rates-retail-relief

49 CLG Letter to Chief Finance Officers

Business Rates Information Letter 4/2015

This letter draws attention to the following:

- Business Rates Retail Relief Increase. In its Autumn Statement 2014 the Government announced that the amount of retail relief that it would provide for occupied retail properties with RV of £50,000 or less would be increased to £1500 per property for 2015-16;
- The Council Tax and Non-Domestic Rating (Demand Notices) (England) (Amendment) Regulations 2015 No. 427 which provide for new explanatory notes in demand notices for non-domestic rates. These reflect the recent changes to non-domestic rating announced in the Autumn Statement;
- Backdated Appeals. Alterations to rateable values can now only be backdated to the period between 01.04.10 and 01.04.15 for VOA alterations made before 01.04.16 and ratepayers' appeals made before 01.04.15. (SI 2015/424 – see item above); and
- Business Rates S31 Grant Determinations.

https://www.gov.uk/government/publications/42015-business-rates-retail-relief-increase

50 Budget 2015

Points of interest for ratepayers

- The Government is to conduct a broad review of business rates to ensure that they are fit for purpose for a 21st century economy. The terms of reference for this review were published on 16.03.15.
- The Government wants to strengthen financial incentives to encourage business growth. Budget 2015 announced pilot schemes in Cambridgeshire and Peterborough, and probably Greater Manchester and Cheshire East which will enable these areas to retain 100% of any additional business rate growth beyond expected forecasts. These will commence in April 2015.
- The Government will consult on whether to introduce business rate relief for local newspapers in England.
- The Government will encourage local authorities to use their business rates discretionary relief powers to support the sharing economy, including shared workspaces and makerspaces.

51 CLG Business rates information letter

5/2015: business rates review and additional information

This letter provides information on the following:

- business rates review. This was launched on 16.03.15 and will report by Budget 2015;
- local discounts – supporting the sharing economy including shared workspaces; and
- interest rate for 2015/16 – the rate of interest payable on refunds of overpaid rates, arising from alterations to the rating list, is 0% from 01.04.15 to 31.03.16.

https://www.gov.uk/government/publications/52015-business-rates-review-and-additional-information

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

COMPULSORY PURCHASE

52 Upper Tribunal: Lands Chamber

CPO of shop – negotiations over payment of compensation – claimant surrendering lease to authority in expectation of receiving compensation – whether terms of surrender preserved right to claim compensation – legitimate expectation that compensation payable

*OBICHUKWU V LONDON ENFIELD BOROUGH COUNCIL
[2015] PLSCS 56 – Decision given 16.02.15

Facts: The claimant, O, leased a shop from the acquiring authority (LEBC). The premises were located in a retail parade in the base of a residential tower block of flats which LEBC proposed to demolish and redevelop. In 2011, LEBC made a CPO which O objected to, erroneously thinking that this was necessary in order to protect her entitlement to compensation. On the day of the inquiry, O agreed to withdraw her objection and afterwards she wrote to LEBC indicating that she intended to hand back the keys to the shop.

Point of dispute: Whether O's claim to compensation would be allowed. LEBC argued that because O had surrendered her lease no entitlement to compensation arose. The issues which arose were: (i) whether the terms on which O had surrendered her lease, including any implied terms, preserved her right to claim compensation; and (ii) whether LEBC's conduct had created a legitimate expectation that O would remain entitled to compensation as if her lease had been compulsorily acquired.

Held: The claim was dismissed and O was not entitled to any compensation.

i. At the time when O withdrew her objection to the CPO there was an expectation on both sides that compensation would be paid to her for the lease. O had not appreciated that unconditionally surrendering the lease would put her right to compensation at risk. However, there was no suggestion that there had been any agreement between the parties that the lease should be surrendered in return for a commitment to negotiate compensation or submit the issue to the tribunal. O's lease had not come to an end pursuant to any contract.

ii. O's lease had been terminated by an implied surrender, or surrender by operation of law. O's letter to LEBC had made it clear that, whatever she might have thought about compensation, she wanted to bring her lease to an end by returning the keys. LEBC had accepted the keys, used them to secure the premises and sought to remove O's goods from the shop. Whether it was unfair or inequitable that LEBC relied on O handing back the keys without making good her expectation that they would continue negotiating over compensation, this made no difference to the doctrine of surrender.

iii. LEBC's conduct had not been such as to create a legitimate expectation on O's part that negotiations over compensation would continue, and the approach taken by LEBC did not amount to an abuse of power. There was no authority for the proposition that the public law doctrine of legitimate expectation, or the private law of estoppel, could be used to create an entitlement to pursue a claim for compensation where the statutory procedures had not been implemented.

53 CLG Consultation

Improving the compulsory purchase process
Deadline for Comments: 09.06.15

This consultation seeks views on a range of technical proposals which are aimed at making the compulsory purchase regime clearer, fairer and faster.

https://www.gov.uk/government/consultations/improving-the-compulsory-purchase-process

54 CLG Draft Guidance

Compulsory purchase process and the Crichel Down Rules: draft updated guidance
Deadline for Comments: 09.06.15

This draft compulsory purchase guidance has been updated to reflect legislative changes and case law since 2004. The document also contains guidance on issues of purchase notices and the Crichel Down Rules on the disposal of surplus land acquired by, or under the threat of, compulsion. There have been no substantive changes to the Crichel Down Rules.

https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-draft-updated-guidance

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

LEASEHOLD ENFRANCHISEMENT

55 Upper Tribunal: Lands Chamber

Lease extension – determination of premium – whether adjustments to be made to relativity, deferment rate, capitalisation rate and other matters

*ROBERTS V FERNANDEZ
[2015] PLSCS 107 – Decision given 23.03.15

Facts: The respondent, F, held a long lease of a one-bedroom flat in Bromley. The lease was for 99 years from about 1986 at a ground rent of £200, subject to review every 25 years in line with the RPI. The lease provided that the appellant freeholder, R, was to be paid 1% of the sale price each time the lease was assigned. F wished to acquire a new extended lease of her flat under the Leasehold Reform, Housing and Urban Development Act 1993. At the time of the application the lease had almost 72 years left to run. In valuing the unexpired term the first tier tribunal (FTT) applied a deferment rate of 5.75%, departing from the 5% generic rate for flats laid down in *Earl Cadogan v Sportelli [2007]* 1 EGLR 153, and making the following additions: (i) 0.25% to reflect the property's higher risk of obsolescence when compared with prime Central London properties; (ii) 0.25% to reflect the lack of substantial long-term growth in capital values in the area; and (iii) 0.25% to reflect the potential management difficulties posed by the consultation requirements of the Service Charges (Consultation Requirements) (England) Regulations 2003 for landlords of flats. A capitalisation rate of 5.5% was also applied, resulting in a determination that £10,052 was payable.

Point of dispute: Whether to allow R's appeal against the FTT's determination. R contended that: (i) a relativity of 85% was appropriate to reflect the current attitude of lenders who were increasingly averse to lending on short leases; (ii) an addition should be made to the freehold value and the marriage value calculation should be adjusted to take into account the onerous terms of the lease – low ground rent and requirement to pay 1% to the freeholder on assignment; (iii) there was no evidence to justify a departure from Sportelli; and (iv) the capitalisation rate should be reduced to reflect the attractiveness of the lease terms to an investor.

Held: The appeal was dismissed for the following reasons:

i. There were no grounds for departing from the FTT's decision on relativity;

ii. R's arguments for an onerous lease supplement and marriage value adjustment rested on the proposition that the element of the ground rent which exceeded 1% of the freehold values would be considered onerous in the market. There was no evidence to support either of these adjustments.;

iii. In relation to the deferment rate there was insufficient evidence to justify the FTT's addition of 0.25% to the *Sportelli* rate for the risk of deterioration or obsolescence. Likewise, the evidence before the FTT was insufficient to justify an addition to the Sportelli rate to reflect differences in long-term capital growth;

iv. There was no justification for any reduction to reflect increased management risk resulting from the 2003 Regulations. The FTT had been wrong to make the three additions to the deferment rate and it should be 5.25%;

v. The appropriate capitalisation rate was 7%, being a figure that had been agreed in many cases where ground rent reviews were at intervals of 20 years or more; and

vi. The relevant adjustments resulted in a valuation of £10,008, not different enough from the FTT's figure for it to be appropriate to substitute it. Although the deferment rate and the capitalisation rate decided by the FTT were wrong, the appeal was nonetheless dismissed.

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

REAL PROPERTY

56 Upper Tribunal: Lands Chamber

Modification of restrictive covenant

*RE STAFFORD-FLOWERS'S APPLICATION
[2015] PLSCS 80 – Decision given 05.03.15

Facts: The applicant, SF, owned a chalet-style holiday bungalow on the Isle of Wight. A restrictive covenant limited its use for leisure purposes and prohibited its occupation during "restricted periods" amounting to 74 days per year, and this accorded with the planning permission for the estate. In March 2012 the lpa granted a lawful use certificate to SF on the ground that he had occupied his bungalow continuously in breach of the planning permission for at least ten years and that the use was now immune from enforcement action. SF applied to have the restrictive covenant discharged or modified arguing that it was obsolete, it impeded a reasonable use of the property while securing no practical benefits to the people who held the benefit of it, and that its discharge or modification would not injure those persons.

Point of dispute: Whether to allow SF's application. The manager of the estate and other bungalow owners objected, arguing that night time occupation should continue to be prohibited for 74 days a year in order to preserve the character of the site as providing temporary, leisure-based, second-home accommodation.

Held: The application was allowed in part.

i. There had been no changes in the character of the property or the neighbourhood, or any other material changes of circumstances. The site remained a peaceful holiday park, albeit more occupied by second home owners now than short term holiday makers, but its nature would change for the worse if it were allowed to become a residential estate. The chalets were not suitable for full-time occupation. The purpose of the restriction could still be achieved and should not be deemed obsolete within the meaning of s84(1)(a) of the Law of Property Act 1925.

ii. Although sleeping in SF's bungalow was a reasonable user which was impeded by the restriction, the ability of the company to impede his full-time use of the bungalow was still a practical benefit of substantial value or advantage. Maintaining the prohibition on overnight sleeping in the bungalows during the restricted periods was the only way of preventing the park from becoming a normal, unrestricted housing estate. The owners of the bungalows were, in effect, members of a club and most of them wished to preserve the character of the site as a holiday park and had mandated the manager to object to SF's application.

iii. The restriction would be modified so as not to allow the bungalow to be occupied between 5pm and 10am on any day during the restricted periods.

57 High Court

Restrictive covenant – building scheme

*BIRDLIP LTD V HUNTER
[2015] PLSCS 110 – Decision given 24.03.15

Facts: The claimant, B, and the defendants, H, owned adjoining properties in Gerards Cross. B obtained planning permission to build two new houses on its land, but both parties agreed that if the restrictive covenants affecting it were enforceable and not modified the development could not go ahead. H, who objected to it, contended that they could enforce the covenants as they were part of a scheme of development to which their predecessor had been a party.

Point of dispute: Whether B should be granted a declaration under s84(2) of the Law of Property Act 1925 that the restrictive covenants were not enforceable by H. B submitted that there was no defined estate, that B's land did not have the benefit of the scheme and it had not been established that the restrictive covenants endured for the benefit of the other purchasers as opposed to the vendor.

Held: The claim was dismissed.

i. The key to a building scheme was reciprocity of obligation and the intention to create such reciprocity. The court had to determine whether, as a matter of fact, there had been an intention at the time of crystallisation of the scheme that the covenants were to be for the common benefit of the purchasers. Extrinsic evidence was admissible for this purpose.

ii. On the facts and on the balance of probabilities the court was satisfied that it had been the intention that the covenants should be for the common benefit of purchasers as well as for the vendor. The court was satisfied that a building scheme had been established.

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

ENERGY

58 Statutory Instrument

SI 2015/609 The Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2015

These Regulations, which came into force on 06.04.15 amend the 2012 Regulations which enacted, in part, EU Directive 2010/31/EU on the energy performance of buildings.

- The "relevant person" (seller, potential landlord or agent) must ensure that the energy performance indicator of the building is included in advertisements to sell or rent the property.
- Amendments are made regarding inspection and advice about improvement of air conditioning systems.

http://www.legislation.gov.uk/uksi/2015/609/contents/made

CONSTRUCTION

59 Statutory Instrument

SI 2015/767 The Building Regulations &c. (Amendment) Regulations 2015

These Regulations make a number of detailed changes to the 2010 Regulations. Some come into force on 18.04.15, one on 31.12.15, and the remainder on 01.10.15. They introduce the definition of "optional requirement" and provide for compliance with optional requirements, which will apply instead of a requirement that is applicable in all cases, where compliance with the optional requirement is made a condition of the planning permission under which building work is carried out.

http://www.legislation.gov.uk/uksi/2015/767/contents/made

60 CLG Circular

Circular 01/2015: Building Regulations &c (Amendment) Regulations 2015

The purpose of this circular is to:

- draw attention to the Building Regulations &c (Amendment) Regulations 2015 (SI 2015/767) and explain the changes they make to the Building Regulations 2010 and the Building (Approved Inspectors etc.) Regulations 2010;
- announce the authorisation of a number of new and extended competent person self-certification schemes and the revocation of authorisation of three schemes for particular types of work;
- explain the application of the transitional provisions;
- announce the approval and publication of four new approved documents and the amendment of an approved document; and
- announce the approval of a methodology for the calculation of water efficiency in new dwellings.

The changes made by these regulations apply in England and to excepted energy buildings in Wales. They come into effect on 01.10.15.

https://www.gov.uk/government/publications/building-regulation-amendment-regulations-2015-circular-012015

61 CLG Circular Letter

Building Act 1984, as amended by the Deregulation Act 2015

This letter contains guidance to building control bodies on changes made to the Building Regulations and Approved Inspector Regulations.

https://www.gov.uk/government/publications/building-act-1984-as-amended-by-the-deregulation-act-2015

62 CLG publication

Technical housing standards – nationally described space standard

This document sets out the government's new nationally described space standard, which will replace the existing different space standards used by local authorities. It deals with internal space within new dwellings and is suitable for application across all tenures. It sets out requirements for the Gross Internal (floor) Area of new dwellings at a defined level of occupancy as well as floor areas and dimensions for key parts of the home, notably bedrooms, storage and floor to ceiling height.

https://www.gov.uk/government/publications/technical-housing-standards-nationally-described-space-standard

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

GENERAL

63 Supreme Court

Registration of beach as town or village green under s15(4) of Commons Act 2006 – whether public using beach "as of right" for recreation – whether byelaws made by appellant landowner amounted to implied permission precluding use "as of right" – whether registration under 2006 Act incompatible with statutory purpose for which appellant holding land as port authority

**R (ON THE APPLICATION OF NEWHAVEN PORT & PROPERTIES LTD) V EAST SUSSEX COUNTY COUNCIL
[2015] PLSCS 62 – Decision given 25.02.15

Facts: In December 2010 the respondent county council, ESCC, as registration authority, approved an application by the town council to register a tidal beach in Newhaven as a town or village green (TVG), pursuant to s15 of the Commons Act 2006, on the grounds that it had been used by local inhabitants as of right for a period of 20 years up to April 2006 at which date the appellant owner of the beach had fenced it off from public access. The appellant, which was the harbour authority for Newhaven port, had various statutory functions relating to the maintenance and operation of the port, including the power to make byelaws relating to its use. The decision to register the beach as a TVG was quashed in judicial review proceedings brought by the appellant, but reinstated by the Court of Appeal.

Point of dispute: Whether to allow the appellant's appeal against the Court of Appeal's decision. The Court of Appeal held that none of the matters relied on by the appellant, including the existence of byelaws permitting many of the recreational activities carried on by the public on the beach, prevented the relevant public use from being "as of right" within s15.

Held: The appeal was allowed.

i. The appellant's byelaws amounted to a permission to members of the public to use the beach for leisure activities; this use was therefore "by right", not "as of right" and could not support an entitlement to registration as a TVG. A prohibition expressed in the byelaws in a certain way could imply a permission e.g. prohibiting bathing in a specified area of the beach and prohibiting sports and games that impeded the use of the harbour gave rise to an implication that bathing could take place elsewhere in the harbour and that associated recreational activities were also permitted so long as they did not impede the use of the harbour. The lack of display of the byelaws did not prevent them from operating as an effective licence rendering the use of the beach by members of the public "by right" rather than "as of right".

ii. Section 15 of the 2006 Act did not extend to the harbour. Registration of a TVG would be incompatible with the statutory purpose for which parliament had authorised the acquisition and use of the land by the appellant. Where parliament had conferred on a statutory undertaker powers to acquire land compulsorily and use it for defined statutory purposes, the 2006 Act did not enable the public to acquire by user rights which were incompatible with the continuing use of the land for those statutory purposes. Registration of the beach as a TVG would make it a criminal offence to damage the green or interrupt its use and enjoyment for recreation and that could conflict with the appellant's future exercise of its statutory powers as port authority.

64 High Court

Solicitor's duty of care – proposed vendor of property going bankrupt and failing to complete – claimant losing deposit and claiming damages against his solicitors for breach of duty

*KANDOLA V MIRZA SOLICITORS LLP
[2015] PLSCS 70 – Decision given 27.02.15

Facts: The claimant, K, instructed the defendant firm of solicitors, MS, to act for him in connection with the purchase of a property. At exchange of contracts K paid a deposit of £96,000 which, unusually, was held by the vendor's solicitor as agents for the vendor. The vendor failed to complete and K lost his deposit. Later the vendor was made bankrupt and the solicitors who had acted for him disappeared. The two principal partners in the firm were struck off by the Law Society for fraudulent misuse of clients' money in relation to other transactions.

Point of dispute: Whether K could succeed in his claim for damages against MS on the grounds of breach of duty. K argued that he should have been given better advice about the risks involved with the transaction, which would have revealed that a bankruptcy petition was outstanding against the vendor.

Held: The claim was dismissed.

i. The amount of explanation that a solicitor was required to give to his client would depend on the client's level of experience. In this case the risks had been adequately explained to a person of K's experience. K had been referred to the risk of losing his deposit, to the fact that there were a number of charges on the property with the amounts outstanding under them not being known, and the risk that the vendor might become bankrupt and be unable to complete the contract. On the evidence the court was satisfied that K had understood this advice. Even if in fact he had not understood it, he had given MS the impression at the time that he had.

ii. It was not, in general, part of a solicitor's duty to check on the credit status of a client's counterparty in a transaction unless specifically instructed to do so, nor did this duty arise because the transaction took an unusual form involving a solvency risk as in this case – the duty of the solicitor was then to advise of the unusual risk, but not to seek to evaluate it unless specifically instructed to do so.

65 Policy Exchange Report

Cities for Growth – Solutions to our planning problems

This report sets out a new vision for planning England's urban areas. It argues that radical reform of the planning system is needed, that control needs to be taken away from local authorities and that there should be a levy on development in the green belt, if local people are happy to allow it to proceed. It also argues that new urban areas should start to be created again in the form of new Garden Cities near to existing urban areas which would combine a high quality of life with the benefits of access to a major city as well as being the catalyst for major construction projects which in turn would drive economic growth.

http://www.policyexchange.org.uk/images/publications/cities%20for%20growth%20-%20nov%202011.pdf

66 Future Spaces Foundation report

Vital Cities, *not* Garden Cities: the answer to the nation's housing shortage?

This report argues that building new Garden Cities is not the answer to Britain's housing crisis on the grounds that they are outdated, too reliant on car transport, unsustainable and will not provide sufficient quantities of new housing. Using the areas of Birmingham and Guildford as case studies, the report examines alternatives to Garden Cities through development solutions that it is considered could provide real socio-economic benefit for Britain's towns and cities. It also outlines a decision framework that could be applied to any area of the UK where a substantial housing need exists.

http://www.futurespacesfoundation.org/

67 CLG Consultation

Consultation on Business Improvement Districts
Deadline for comments: 19.06.15

This consultation is concerned with proposals for strengthening the role Business Improvement Districts (BIDs) including:

- Increasing transparency;
- Suggestions for closer working between BIDs and local authorities;
- Changes to charging arrangements for the BID levy collection; and
- Streamlining neighbourhood planning for BIDs.

https://www.gov.uk/government/consultations/consultation-on-business-improvement-districts

68 CLG Guidance

Business Improvement Districts: guidance and best practice

The aim of this Guidance is to help individuals, local partnerships and local authorities in England understand the process necessary to deliver a successful town centre BID.

https://www.gov.uk/government/publications/business-improvement-districts-guidance-and-best-practice

69 CLG Guidance

Business Improvement Districts: technical guide for local authorities

This technical guide focuses on the core roles and responsibilities a local authority is required to undertake in relation to the development, management and termination of a BID in its area. It also includes an explanation of the BID regulations.

https://www.gov.uk/government/publications/business-improvement-districts-technical-guide-for-local-authorities

70 Historic England Guidance

National Farmstead Assessment Framework

This guidance has been published to help secure sustainable development and the conservation of traditional farmsteads and farm buildings through the planning system.

http://www.historicengland.org.uk/news-and-features/news/new-life-for-old-farm-buildings

71 Design Council publication

Active by Design: designing places for healthier lives

This guide looks at how the design of buildings and public spaces in cities and towns can lead to positive changes in people's lifestyle and ultimately to greater levels of physical activity. The Design Council's Active by Design initiative promotes the use of good design to encourage greater levels of daily physical activity and increase access to healthy and nutritious food. It is a response to an increasing health crisis caused by low levels of physical activity and poor diets that affects millions of people each year.

http://www.designcouncil.org.uk/knowledge-resources/guide/active-design-designing-places-healthier-lives

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

London (City)
Fergus Jagger Tel. +44 (0)20 7653 6831
fjagger@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
Michael Riordan Tel. +44 (0)20 7333 7828
mriordan@geraldeve.com

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

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

EVEBRIEF

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WALES

PLANNING

01 Welsh Assembly Government Consultation

Consultation on a Private Rented Sector Code of Practice for Landlords and Agents
Deadline for Comments: 22.05.15

The Housing (Wales) Act received Royal Assent on 17.09.14. Part 1 of the Act includes provisions which introduce a mandatory licensing scheme for people involved in the letting and management of residential properties in Wales. Licence holders will have to abide by a Code of Practice issued by the Welsh Ministers. This consultation seeks views on the content of that Code of Practice.

http://gov.wales/consultations/housing-and-regeneration/private-rented-sector-code-of-practice-for-landlords-and-agents/?lang=en

02 Welsh Assembly Government Consultation

Proposed changes to the Environmental Impact Assessment Regulations and Local Development Orders
Deadline for Comments: 18.06.15

The consultation paper proposes the following:

i. Raising the screening thresholds for Schedule 2 "urban development projects" and "industrial estate projects";

ii. Measures to respond to recent case law and implement the Geological Storage Directive;

iii. Amendments to legislation associated with Local Development Orders (LDOs) in order to allow local planning authorities (LPAs) to make LDOs for Schedule 2 EIA development; and

iv. Specific provision in the EIA Regulations for discontinuance and modification orders.

http://gov.wales/consultations/planning/eia-regulations-and-local-development-orders/?lang=en

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

GERALDEVE

RATING

03 Statutory Instrument

WSI 2015/229 The Non-Domestic Rating (Small Business Relief) (Wales) Order 2015

This Order, which took effect from 01.04.15, re-enacts the 2008 Order with provision for a temporary rate relief scheme for 01.04.15 – 31.03.16. The maximum rateable value for hereditaments which might be eligible for relief from non-domestic rates is £12,000.

http://www.legislation.gov.uk/wsi/2015/229/contents/made

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

NORTHERN IRELAND

PLANNING

04 Statutory Instrument

NISR 2015/62 The Planning (Local Development Plan) Regulations (Northern Ireland) 2015

These Regulations, which came into force on 01.04.15, prescribe the form and content of local development plans to be prepared by councils and the procedure to be followed to bring the local development plan system into effect in Northern Ireland.

http://www.legislation.gov.uk/nisr/2015/62/contents/made

05 Statutory Instrument

NISR 2015/66The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015

These Regulations came into force on 01.04.15 and replace the 1992 Regulations in their entirety. They govern the procedure to be followed for obtaining planning consent for the display of advertisements.

http://www.legislation.gov.uk/nisr/2015/66/contents/made

06 Statutory Instrument

NISR 2015/70 The Planning (General Permitted Development) Order (Northern Ireland) 2015

The main purpose of this Order, which came into force on 01.04.15, is to grant planning permission for certain classes of development under Part 3 of the Planning Act (Northern Ireland) 2011.

http://www.legislation.gov.uk/nisr/2015/70/contents/made

07 Statutory Instrument

NISR 2015/71 The Planning (Development Management) Regulations (Northern Ireland) 2015

These Regulations, which came into force on 01.04.15, make provision for the new development management processes for determining planning applications. The statutory rule puts in place the regulatory framework required to implement the development management provisions in Part 3 of the Planning Act (Northern Ireland) 2011.

http://www.legislation.gov.uk/nisr/2015/71/contents/made

08 Statutory Instrument

NISR 2015/72 The Planning (General Development Procedure) Order (Northern Ireland) 2015

This Order, which came into force on 01.04.15, revokes the Planning 1993 Order and subsequent amendment orders. Its main purpose is to permit the management of development within a new two tier planning system with both councils and the Department operating as planning authorities where appropriate. Although many of the development management functions from the 1993 Order are replicated in this Order, it also contains new provisions that relate either to the operation of the two tier system or that implement the reforms introduced by the Planning Act (Northern Ireland) 2011. The Order relates purely to development management – those provisions in the 1993 Order that dealt with permitted development have been moved and can now be found in a separate permitted development order.

http://www.legislation.gov.uk/nisr/2015/72/contents/made

09 Statutory Instrument

NISR 2015/74 The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015

These Regulations, which came into force on 01.04.15, revoke and replace the 2012 Regulations and have been made in order to implement the EIA Directive under the new two tier planning system created by the Planning (Northern Ireland) Act 2011.

http://www.legislation.gov.uk/nisr/2015/74/contents/made

10 Statutory Instrument

NISR 2015/107 The Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015

These Regulations, which came into force on 01.04.15, were made under the Planning (Northern Ireland) Act 2011 in order to update and replace the 1988 Regulations so as to take account of that Act. They provide the necessary procedures for the obtaining of conservation area consent for the demolition in a conservation area of a building which is neither a listed building nor an ecclesiastical building nor a building guarded, protected or scheduled under the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995.

http://www.legislation.gov.uk/nisr/2015/107/contents/made

11 Statutory Instrument

NISR 2015/108 The Planning (Listed Buildings) Regulations (Northern Ireland) 2015

These Regulations, which came into force on 01.04.15, were made under the Planning (Northern Ireland) Act 2011 in order to update and replace the 1992 Regulations so as to take account of that Act.

http://www.legislation.gov.uk/nisr/2015/108/contents/made

12 Statutory Instrument

NISR 2015/188 The Planning (Simplified Planning Zones) Regulations (Northern Ireland) 2015

The Planning Act (Northern Ireland) 2011 empowers a council to make simplified planning zone schemes. Such a scheme provides planning permission within the area covered by the scheme for development in accordance with the scheme without the need for a specific application. These Regulations, which come into force on 22.04.15, are concerned with the procedure for making and altering such schemes. They are made under, and supplement the provision made by, Schedule 1 to the 2011 Act.

http://www.legislation.gov.uk/nisr/2015/188/contents/made

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

RATING

13 Statutory Instrument

NISR 2015/75 The Rates (Regional Rates) Order (Northern Ireland) 2015

This Order, which came into force on 11.03.15, fixes the amount of the regional rate for the year ending 31.03.16. The non-domestic regional rate (levied on the rateable net annual values of hereditaments) is 31.86 pence in the pound and the domestic regional rate (levied on the rateable capital values of hereditaments) is 0.4042 pence in the pound. This applies an increase of 1.4% after the effects of the non-domestic revaluation exercise are taken into account – this will come into operation on 01.04.15. Hereditaments which are dwellinghouses, private garages and private storage premises have a rateable capital value. Hereditaments which are used partly for the purposes of a private dwelling have a rateable capital value and rateable net annual value. All other hereditaments have a rateable net annual value.

http://www.legislation.gov.uk/nisr/2015/75/contents/made

14 Statutory Instrument

NISR 2015/83 The Rates (Transitional Relief) Order (Northern Ireland) 2015

Changes to local government districts involving a reduction in the number of councils from 26 to 11 took effect on 01.04.15. This Order provides for transitional rate relief to ensure that there is no sudden and excessive increase in the district rates payable in respect of any property arising out of local government reorganisation. The relief takes the form or reductions in the amounts chargeable in respect of district rates. The reductions will be progressively decreased over a four year period and will end on 31.03.19.

http://www.legislation.gov.uk/nisr/2015/83/contents/made

15 Statutory Instrument

NISR 2015/123 The Rates (Small Business Hereditament Relief) (Amendment) Regulations (Northern Ireland) 2015

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

These Regulations, which came into force on 01.04.15, amend the definition of "qualifying year" in the 2010 Regulations to provide for an extension of the small business rate relief scheme until 31.03.16.

http://www.legislation.gov.uk/nisr/2015/123/contents/made