EVEBRIEF

Legal & Parliamentary

Volume 37(04) 01 June 2015

POST–ELECTION BLUES OR FIFTY SHADES OF GREEN

Steve Hile
Editor

Clearly the last six weeks have been dominated by the General Election and what colour or colours would make up the new administration. Now we know it is blue, at least until the small majority is worn down, then the machine of Government can get back to work, as it has been distinctly quiet over the last few months in terms of policy announcements.

At items 10, 14 and 17 we report on a number of Policy Papers from the previous administration. Only time will tell whether these continue in their existing form.

At item 15 we report on Broadway Malyan's Report on a new approach to the Green Belt with the topical title of "50 Shades of Green Belt" and the rather provocative suggestion that we re-assess the values of selected areas of Green Belt. Considering the number of new homes that are needed in the coming years, it is almost certain that some areas of Green Belt will need to be lost, particularly in the South East where the need is greatest. This is illustrated further in the latest Housing Market Bulletin and the London New Home Monitor Report, which we report on at items 13 and 22 and which show rising prices and targets not being met.

GERALDEVE

LANDLORD & TENANT

01 Court of Appeal

Repairing obligations – s1 Landlord and Tenant Act 1985 – damp – whether caused by defective damp-proof course for which appellant council liable

*UDDIN V ISLINGTON LONDON BOROUGH COUNCIL
[2015] PLSCS 128 – Decision given 10.03.15

Facts: The respondents, U, were joint weekly tenants of a four-bedroom maisonette occupying the basement and ground floor of a Victorian villa in Islington. The implied terms of s11 of the Landlord and Tenant Act 1985 required the appellant landlord, ILBC, to keep in repair the structure and exterior of the dwellinghouse, including the gutters, drains and external pipes. The maisonette suffered from damp and, in proceedings for damages brought against ILBC by U, the judge, relying on written reports from surveyors who were not called to give evidence in person, found that these were caused by rising damp. Previous measures to rectify the problem, including the installation of a damp-proof course and replacement of internal wall plaster with waterproof cement-based render, had not been successful due to defective workmanship. The judge allowed U's claim and awarded damages in the sum of £14,680.

Point of dispute: Whether to allow ILBC's appeal against the judge's ruling. ILBC contended that the judge had erred in finding that the damp was caused by the failed remedial measures, but argued that the rising damp was the result of an inherent defect in the property which fell outside the landlord's repairing obligation.

Held: The appeal was dismissed.

i. Since there had been no order of the court excluding the surveyors' reports from evidence and ILBC had not given written notice objecting to their admissibility, these reports were admissible at the hearing as evidence of their contents.

ii. The existing damp-proof course was part of the structure of the dwellinghouse and ILBC was liable to keep it in repair. On the basis of the material before him the judge was entitled to find that the structure of the dwelling had deteriorated for which ILBC were responsible and which had been the cause of the damp. Whether it was the original Victorian damp-proof course or a later replacement did not matter for that purpose.

02 First-Tier Tribunal: Property Chamber

Service charges – consultation – s20 Landlord and Tenant Act 1985 (s20) – Service Charges (Consultation Requirements) (England) Regulations 2003 (the 2003 Regulations) – whether appropriate to grant dispensation from consultation requirements

*CAMDEN LONDON BOROUGH COUNCIL V LEASEHOLDERS OF 46 FLATS IN HARBEN ROAD ESTATE
[2015] PLSCS 136 – Decision given 27.04.15

Facts: One quarter of the flats on an estate owned by the applicant local authority, CLBC, were held by private leaseholders on long leases under which service charges were payable. From 2011 to 2012 CLBC carried out works under a qualifying long term agreement to replace malfunctioning communal central heating boilers serving the estate at a cost of £247,000. CLBC did not consult the leaseholders in advance about these works which they were required to do by s20 and the 2003 Regulations.

Point of dispute: Whether to allow CLBC's application for dispensation from the consultation requirements pursuant to s20ZA of the 1985 Act. The leaseholders objected to the application contending that they had been prejudiced by the failure to consult as it would have been cheaper to install boilers in each of the individual flats and that their service charge contribution to the cost of the works should be capped at £250 pursuant to s20(1). CLBC contended that the only relevant kind of prejudice was that of a financial nature and that this had not been proved since there was no evidence that CLBC's chosen option of replacing the communal boilers was not in fact the cheapest one.

Held: The application was allowed in part.

i. Once the leaseholders had put forward a credible case for prejudice it was for the landlord to rebut it. The court could impose conditions on a grant of dispensation, including one that the landlord should pay the leaseholders' reasonable costs in connection with the landlord's application. However, in many cases it would be impossible for the leaseholders to benefit from this because of the need to instruct professionals well in advance of a hearing of the application and also provide credible assurance that they would be paid.

ii. The leaseholders could also show prejudice of a non-financial nature in an application for dispensation, which might have been relevant here, but as the leaseholders in this case had only adduced financial prejudice that was all the tribunal could consider.

iii. The worse the landlord's failure, the more readily would a tribunal accept that the leaseholders had suffered prejudice. In this case temporary boilers could have provided heating and hot water while adequate consultation was carried out. CLBC had also delayed in applying for dispensation which had increased the prejudice suffered by the leaseholders.

iv. The tribunal had to consider the leaseholders' arguments sympathetically, but it could not be said that CLBC would be acting unreasonably if, because of the vulnerability of some of the tenants, it decided that it would be better to incur the greater initial cost of new communal boilers. Dispensation was granted, subject to a condition limiting the costs to which the leaseholders were required to contribute in respect of the works, in addition to one that CLBC pay the leaseholders' legal costs. The leaseholders had to contribute to the cost of the urgent works not exceeding £60,000, divisible between them.

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

PLANNING

03 Court of Appeal

Change of use – Class C1 hotel use to mixed use as hotel and hostel

*WESTMINSTER CITY COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT [2015] PLSCS 154 – Decision given 19.05.15

Facts: The appellant council, WCC, issued an enforcement notice alleging a material change of use of premises in London W2, without planning permission, from their lawful use as a Class C1 hotel to a mixed use of hotel and hostel. Allowing the occupier's appeal against the notice the planning inspector appointed by the Sec of State found that the matters alleged in the notice had not occurred or did not constitute a breach of planning control. On the facts of the case there was no mixed use, and, even if there was, any change of use that it involved was not "material". Although there were some elements of hostel use she found that no part of the premises was used exclusively as a hostel or a hotel because the same rooms could be used for both purposes. She concluded that the current use of the premises had not altered so much as to amount to a material change of use requiring planning permission.

Point of dispute: Whether to allow WCC's appeal against the decision of the court below, which upheld the inspector's decision. WCC argued that the inspector had been wrong to ask whether there was exclusive use as a hotel in one part of the premises and exclusive use as a hostel in another. WCC also contended that in finding that any change of use had not been material the inspector had failed to consider the effects of the current use on the local residential community.

Held: The appeal was allowed.

i. The enforcement notice alleged that there was a mixed use of the premises with two separate primary uses of a hostel and a hotel. The inspector had erred in law with regard to her approach to the question of mixed use. She should not have asked whether part of the premises were being used exclusively as a hotel and part as a hostel since a mixed use could subsist where the different elements were not associated with particular parts of the premises. In the light of her findings of fact, it was difficult to see how she could have reached any conclusion other than that there was a mixed hotel and hostel use as alleged.

ii. When deciding whether there had been a material change of use the test to be applied was whether there had been a change in the character of the use. The inspector should have addressed the concerns that had been raised about the off-site impacts of the current use. The impact of the use on other premises was a relevant factor in assessing whether there was a change in the character of the use and this was a matter which the inspector should have addressed.

04 Administrative Court

Planning permission for crematorium – claimant owner of alternative site applying for judicial review

*R (ON THE APPLICATION OF WESTERLEIGH GROUP LTD) V AYLESBURY VALE DISTRICT COUNCIL [2015] PLSCS 114 – Decision given 30.03.15

Facts: The defendant local authority, AVDC, granted planning permission to a third party to build a crematorium on agricultural land north of Aylesbury. The claimant, WGL, which operated a number of crematoria in the UK, had objected to the application and had also applied for planning permission for a crematorium on another site in the same vicinity which had been recommended for approval and was with AVDC for the issue of planning permission. WGL and AVDC were both in agreement that a new crematorium was needed, but that the area was unlikely to support more than one.

Point of dispute: Whether to allow WGL's application for judicial review of the decision to issue planning permission to the third party. WGL contended that: (i) AVDC's officers had wrongly failed to take the planning application back to committee after it had received advice from the county council archaeological service that investigatory work should be undertaken before the application was determined; and (ii) there was a material error in the officer's report which failed to advise the planning committee that WGL's site was an alternative site and in its advice in relation to European protected species.

Held: The application was granted.

i. The archaeological service was not a formal consultee in the application process which meant that their response could not reasonably have been anticipated. However, their concession that their concerns could be addressed by attaching a condition to the planning permission meant that its response did not amount to a new material consideration requiring the planning permission to be taken back to committee.

ii. However, the fact that there was no evidence of European protected species on the alternative site, which consequently did not require derogation from the duty to safeguard protected species, had been a material consideration which should have been brought to the attention of the planning committee. The court was unable to find that the decision of the committee would have been the same if this error had been corrected.

05 Administrative Court

Compulsory Purchase Order (CPO) – first defendant refusing planning permission for wharf development but confirming CPO to reactivate wharf – claimant wharf owners applying for order quashing CPO decision

*GRAFTON GROUP (UK) PLC V SECRETARYOF STATE FOR TRANSPORT
[2015] PLSCS 123 – Decision given 21.04.15

Facts: The claimants, GG, owned a wharf on the River Thames near to its confluence with the River Lea. The wharf was unused and vacant but for a few derelict buildings and GG hoped to develop the land at some stage in the future for various uses including residential, a boat yard and a waste-to-energy facility. The Port of London Authority (the second defendant) made a CPO for the acquisition of the wharf in order to bring it back into active use as a wharf. The third and fourth defendants applied for and were refused planning permission for the operational development required to bring the wharf back into use as such, due to the impact of the buildings on the character and appearance of the area in a prominent riverfront location. On appeal against the refusal of planning permission an inspector appointed by the defendant Sec of State recommended that planning permission be refused but that the CPO be confirmed. This recommendation was accepted by the Sec of State.

Point of dispute: Whether to allow GG's application to quash the decision to confirm the CPO under s23 of the Acquisition of Land Act 1981. GG contended that: (i) the inspector had failed to reach conclusions about the basis upon which the wharf continued to be safeguarded as a wharf in the London Plan policy; (ii) the inspector had ignored material factors or reached unreasonable conclusions in dealing with the need for a wharf handling aggregates; (iii) the inspector had failed to consider the benefits of any alternative scheme; and (iv) GG had not had a fair opportunity to deal with the change of basis for confirming the CPO.

Held: The application was granted for the following reasons:–

i. the inspector had not erred in law in his approach to the significance of the identification of the appeal site as a safeguarded wharf;

ii. the inspector had not erred in law in his approach to the planning policy test for viability and the CPO test for need;

iii. however, there was an insufficient evidential basis for the conclusion that there was a reasonable prospect of an acceptable planning permission being granted and implemented, sufficient to warrant confirmation of the CPO; the justification for the CPO had to be compelling in the public interest; and

iv. the decision was unfair because GG had not had an opportunity to deal with a change in the basis of confirmation of the CPO; most importantly GG had had no chance to explore and comment on the prospect of permission for an alternative scheme being implemented.

06 Planning Court

Judicial review of third grant of planning permission for out of town retail store – assessment of harm to town centre – whether local authority adopting an inconsistent and irrational approach to s106 contributions

*R (ON THE APPLICATION OF MIDCOUNTIES CO–OPERATIVE LTD) V FOREST OF DEAN DISTRICT COUNCIL
[2015] PLSCS 138 – Decision given 06.05.15

Facts: The defendant lpa, FDDC, granted planning permission to the interested party for an out of town retail store outside Cinderford, Glos. The claimant, MCL, owned and operated a Co–op supermarket in the centre of the town. This was the third time that planning permission had been granted for this development, the first two permissions having both been quashed in successful judicial review proceedings by MCL.

Point of dispute: Whether to allow MCL's application for judicial review of this grant of planning permission. MCL contended that: (i) FDDC had failed to consider and/or take reasonable steps to assess the true extent of the harm to the town centre and/or the planning officers had significantly misled the planning committee in their report as to the true extent of that harm; and (ii) FDDC had adopted an inconsistent and irrational approach to s106 contributions and/or breached Regulation 122(2)(a) of the Community Infrastructure Regulations 2010.

Held: MCL's application was granted.

i. The planning officers' report was defective because the full impact of the proposal on the town centre, and in particular MCL's existing store had not been clearly set out. It had not made clear that the proposed store would take away half of MCL's turnover and full extent of the harm that it was likely to cause.

ii. The planning officer's report had stated that the s106 benefits were regarded as necessary pursuant to Regulation 122(2)(a), but nowhere in the report was it explained why s106 benefits were necessary to make the development acceptable. This was a second ground upon which the approach taken to the balancing judgment in the present case was flawed by an error of law.

07 Planning Court

Time limits – challenge to consent order approving wind farm

*R (ON THE APPLICATION OF WILLIAMS) V SEC OF STATE FOR ENERGY AND CLIMATE CHANGE [2015] PLSCS140 – Decision given 30.04.15

Facts: An application was made for a development consent order under s37 of the Planning Act 2008 for the construction of up to 32 wind turbines on an extensive site in North Wales. Local residents, including the applicant, W, objected to the development, but the order was made. W applied for judicial review of the development consent order made by the defendant Sec of State under s114 of the 2008 Act.

Point of dispute: Whether the court had jurisdiction to entertain the claim. Section 118 of the 2008 Act (which contained the applicable law at that time, but since 13.04.15 has been superceded by s92(4) of the Criminal Justice and Courts Act 2015) provided that proceedings for questioning a development consent order by judicial review must be filed within six weeks beginning with the day on which the order was published or, if later, the day on which the statement of reasons for making the order was published.

Held: The application was dismissed.

i. Once the court's jurisdiction has been challenged, however late in the day, that issue must be resolved before anything else.

ii. A time limit of six weeks has traditionally been used by Parliament in planning and compulsory purchase cases and s118(1) of the 2008 Act followed that tradition. The claim had to be filed within the period of six weeks "beginning with" the day on which the order was published. The court had no discretion to extend the time limit. There was a distinction between time limits framed in terms of a claim having to be issued within six weeks "from" the date of a decision and those framed in terms of a claim "starting with" that date. The former meant the first day to be counted was the day after the decision, while with the latter the first day was the day of the decision itself.

iii. The calculation of the period for challenge set by s118 included the day on which the order in question and the Sec of State's reasons were published. In this case the claim had been issued out of time and the court had no power to extend the time limit.

08 Planning Court

Outline planning permission – whether Sec of State failing to identify nature and extent of conflict with neighbourhood plan – whether national planning policy being applied to emerging development plan – prematurity – weight to be given to emerging plan

*WOODCOCK HOLDING LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT [2015] PLSCS 149 – Decision given 01.05.15

Facts: The claimant, WHL, applied for outline planning permission for a mixed use development, including 120 dwellings, at Sayers Common, West Sussex. Permission was refused by the lpa, but on appeal a planning inspector recommended that this decision be overturned. The Sec of State, having directed that he would decide the appeal himself as it raised important issues of development control and/or legal difficulties, dismissed it because the proposal conflicted with, and was premature in relation to, policy H4 of the emerging neighbourhood plan, which provided for between 30 and 40 new dwellings.

Point of dispute: Whether to allow WHL's application to quash the Sec of State's decision. WHL argued that the Sec of State had: (i) failed to identify the nature and extent of any conflict with the draft neighbourhood plan; (ii) failed to apply para 49 of the NPPF (relevant policies for the supply of housing) to the emerging development plan; (iii) failed to take into account and apply his own policy on prematurity contained in the PPG; and (iv) failed to take into account and apply his own policy in relation to the weight to be given to an emerging plan contained in para 216 of the NPPF.

Held: The application was granted.

i. Although the Sec of State had treated the proposal as being in conflict with the scale of housing proposed in the draft neighbourhood plan, he had failed to weigh that conclusion against his findings that the scale and density of the proposal were acceptable for the village, the location was sustainable and that the infrastructure constraints could be overcome. He had also failed to take into account WHL's case that the weight to be attached to policy H4 should be reduced because it imposed a cap on housing, despite the absence of an up-to-date objective assessment of housing needs.

ii. It would be inappropriate to treat para 49 of the NPPF as restricting the circumstances in which national policy lent additional support to a housing proposal because of the lack of a five year land supply, to cases where the relevant policies for the supply of housing were contained in statutory, but not draft, development plans. Both para 14 (presumption in favour of sustainable development) and 49 applied to the housing supply policies in a draft development plan, including a draft neighbourhood plan, and should have been applied in the present case.

iii. It was unsatisfactory for the Sec of State to disagree with the inspector's carefully reasoned recommendation that WHL's appeal should be allowed by putting forward a poor argument regarding prematurity. He had not taken into account and applied his own policy on the circumstances in which prematurity might justify a refusal of planning permission.

iv. The Sec of State should have given reasons explaining how he had applied the important criteria contained in para 216 of the NPPF, but his decision letter had failed to do this.

09 Nathaniel Lichfield & Partners (NLP) Research Report

Signal failure? A Review of Local Plans and Housing Requirements

This paper argues that, despite a core principle in the 2012 NPPF being for planning to be "genuinely plan-led", three years on there has been only marginal progress in the adoption of new Local Plans. Only around a quarter of local authorities have an NPPF compliant up-to-date adopted Plan, while about a fifth have a plan submitted and an examination underway or forthcoming. Large parts of the country have yet to formally publish new Local Plans since the changes to the planning system were made. This report is the third in a series of annual studies that NLP has undertaken on reviewing the progress of Local Plan preparation and assessing what has happened to housing requirements during the process of plan preparation. It examines the impact on Inspectors' decisions of the new Planning Practice Guidance (PPG) that was introduced on 06.03.14 and contains guidance on how housing development needs should be assessed and translating these into local housing policies.

http://nlpplanning.com/uploads/ffiles/2015/03/219520.pdf

10 Coalition Government Policy Papers

These policy papers set out the policies of the 2010 to 2015 Conservative and Liberal Democrat coalition government in the following areas:

2010 to 2015 government policy: planning reform
https://www.gov.uk/government/publications/2010-to-2015-government-policy-planning-reform

2010 to 2015 government policy: planning system
https://www.gov.uk/government/publications/2010-to-2015-government-policy-planning-system

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

COMPULSORY PURCHASE

11 Upper Tribunal: Lands Chamber

Compulsory purchase – valuation– whether auction price reliable guide to freehold value for assessing compensation

*BEHCHET V SOUTHWARK LONDON BOROUGH COUNCIL
[2015] PLSCS 142 – Decision given 24.04.15

Facts: In March 2008 the acquiring authority, SLBC, acquired an empty Georgian terraced house in London SE11 from B, the claimant, pursuant to a CPO made under s17 of the Housing Act 1985. The property was Grade II listed and in a conservation area and since 2003 had been on English Heritage's "at risk" register. The CPO was made because the property had been empty for some time and was in a state of disrepair. SLBC sold the property at auction in July 2008 for £580,000 on a 125 year building lease which required the purchaser to carry out certain specified works. Once these were completed he would be able to buy the freehold for £1, but the lease could not be assigned or sublet and occupation was only permitted for the refurbishment works. In March 2009 the purchaser bought a replacement property, in which he was living, from a company in which he owned 80% of the share capital.

Point of dispute: The Upper Tribunal was asked to determine various issues:

i. whether the auction price achieved for the building lease was a reliable guide to the value of B's freehold title; and

ii. whether B was entitled to "reinvestment costs" of more than £13,500 under s10A of the Land Compensation Act 1961, as the costs of acquiring his replacement property including stamp duty land tax and fees. SLBC argued that the new property could not be regarded as a replacement since B already effectively owned it.

Held:

i. The terms of the building lease were sufficiently unusual to cast doubt on the reliability of the auction price as evidence of value of the unencumbered freehold interest without reference to further comparable evidence. The best evidence of valuation in this case were the views of estate agents from whom B had requested marketing and valuation advice three months before the March 2008 valuation date. The evidence of a very experienced fourth agent, who had inspected the property in January 2008 and who had experience of this geographical area, was particularly relevant; on the basis of this it was determined that the open market value of the property at the valuation date was £800,000.

ii. B's claim for reinvestment costs should not fail because he had an interest in the company which owned the replacement property he had bought. Under the principle of equivalence he should not be any better or worse off as a result of the CPO.

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

HOUSING

12 DCLG announcement

Changes to guidance on Vacant Building Credit regime

CLG has announced changes to the guidance on the vacant building credit (VBC) regime, which was initially announced last November. VBC is intended to act as an incentive for brownfield development on sites containing vacant buildings. It can operate with respect to either the number of affordable housing units or the amount of financial contribution towards affordable housing. The revised guidance clarifies that there is discretion for local planning authorities (lpas) in the way that VBC is applied. Lpas can consider whether the building was made vacant for the sole purpose of redevelopment and whether it was already covered by an existing or recently expired planning permission for a development similar to that now proposed. The updated advice also sets out the detailed procedure for determining the VBC where there are changes in the gross floor space of vacant buildings on the site, which affect the amount of affordable housing contribution.

https://portaldirector.wordpress.com/2015/04/23/dclg-modifies-guidance-on-vacant-building-credit-regime/

13 HCA bulletin

Housing market bulletin, March 2015

The housing market bulletin provides the latest information on the housing market, the economy and the housebuilding industry. The following are the key points:

- Average house prices continue to increase. Although the national average rate of increase is easing it is still high by historical standards and there is a large amount of regional variation;
- First time buyers and home movers have seen lending decline, but buy to let mortgages have increased; and
- GDP and employment have increased again, whilst unemployment and the CPI continue to fall.

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

14 Coalition Government Policy Papers

These policy papers set out the policies of the 2010 to 2015 Conservative and Liberal Democrat coalition government in the following areas:

2010 to 2015 government policy: homebuying
https://www.gov.uk/government/publications/2010-to-2015-government-policy-homebuying

2010 to 2015 government policy: housing for older and vulnerable people
https://www.gov.uk/government/publications/2010-to-2015-government-policy-housing-for-older-and-vulnerable-people

2010 to 2015 government policy: rented housing sector
https://www.gov.uk/government/publications/2010-to-2015-government-policy-rented-housing-sector

15 Report by Broadway Malyan

50 Shades of Green Belt – how a new approach to "green" can help to solve the housing crisis

This report, which can be read online, argues that increasing the supply of housing can only be achieved through rethinking the relationship between cities and their surrounding sub-regions and, within these areas, through reassessing the values of selected areas of Green Belt. It will be necessary to look beyond the conventional approaches to development in these areas, such as "brownfield first", which have consistently failed to deliver the level of new housing needed. The report argues that only through a more intelligent approach to land, which recognises different levels of "value", can sustainable growth of cities, towns and villages be achieved at the same time as protecting the natural environment.

http://issuu.com/broadwaymalyan/docs/50_shades_of_green_belt_report

CONSTRUCTION

16 Response to Consultation

Consultation response – Next steps to zero carbon homes: small sites exemption

This publication is the Mayor of London's response to the DCLG's consultation on the exemption of smaller housing sites from meeting the zero carbon homes standard. The consultation suggested different definitions for a 'small' development, based on either the size of the site (e.g. ten units or fewer) or the size of the developer (e.g. 49 employees or less). The consultation also asked for views as to whether small sites should be exempt from meeting the minimum on-site energy efficiency standards in addition to the allowable solutions element of 'zero carbon', and the timescale over which the exemption should be reviewed.

http://www.london.gov.uk/priorities/environment/publications/consultation-response-next-steps-to-zero-carbon-homes-small

17 Coalition Government Policy Papers

These policy papers set out the policies of the 2010 to 2015 Conservative and Liberal Democrat coalition government in the following areas:

2010 to 2015 government policy: building regulation
https://www.gov.uk/government/publications/2010-to-2015-government-policy-building-regulation

2010 to 2015 government policy: energy efficiency in buildings
https://www.gov.uk/government/publications/2010-to-2015-government-policy-energy-efficiency-in-buildings

2010 to 2015 government policy: house building
https://www.gov.uk/government/publications/2010-to-2015-government-policy-house-building

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

ENERGY

18 CLG Statistics

Energy Performance of Buildings Certificates in England and Wales: 2008 to March 2015

Information about certificates on the energy efficiency of domestic and non-domestic buildings in England and Wales that have been constructed, sold, or let since 2008, and of larger public authority buildings since 2008. These statistics do not cover the entire building stock across England and Wales.

Figures are drawn from two datasets on the Energy Performance of Buildings Registers:

- Energy Performance Certificates (EPCs) for domestic and non-domestic properties covering England and Wales; and
- Display Energy Certificates (DECs) for larger buildings occupied by public authorities in England and Wales.

https://www.gov.uk/government/statistics/energy-performance-of-buildings-certificates-in-england-and-wales-2008-to-march-2015

REAL PROPERTY

19 Upper Tribunal: Lands Chamber

Adverse possession – applicant challenging decision of First Tier Tribunal that respondent had established 12 years possession of grass verge – whether facts indicating necessary factual possession – s9(5) Land Registration Act 2002

*HEANEY V KIRKBY
[2015] PLSCS 121 – Decision given 10.04.15

Facts: A dispute arose about the ownership of a grass verge in front of the respondent's house. The appellant was the paper title owner of the verge, having acquired it in February 2012, but the respondent claimed ownership of it by adverse possession for a period of 12 years. The First Tier Tribunal (FTT) decided in the respondent's favour, finding that she has established 12 years adverse possession of the verge and that she was in possession of the land on 10.04.12 when she applied to the Land Registry for first registration.

Point of dispute: Whether to allow the appellant's appeal against the FTT's decision. She contended that the FTT had erred in finding that: (i) the respondent had established the necessary actual possession and intention to possess the verge at any time prior to April 2000; and (ii) the respondent was in possession of the verge for the purposes of s9(5) of the Land Registration Act 2002.

Held: The appeal was dismissed.

i. Under s15(1) of the Limitation Act 1980 the relevant limitation period for the recovery of land by action was 12 years from the date on which the right of action accrued. After the expiration of the 12 year period the title of the paper owner was extinguished.

ii. The relevant question to be answered was whether the person in adverse possession had dispossessed the paper owner by going into ordinary possession of the land for the requisite period without consent. Legal possession comprised two elements, factual possession and an intention to possess. The former involved a sufficient degree of exclusive possession exercised by a sufficient degree of exclusive physical control which depended on the overall circumstances of the case. Fencing or enclosing the land was a classic way of establishing exclusive possession, but it did not follow that the absence of such fencing was fatal to a claim for adverse possession.

iii. In this case the essential issue was whether the FTT's decision could be upheld in the light of the primary facts as found. An objective assessment had to be made of all the circumstances and all of those taken as a whole. The FTT had been entitled to reach the decision he had on the evidence.

iv. The judge had been entitled to reach the conclusion that the respondent was in actual possession on the relevant date and that the paper title owner's estate had been extinguished.

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

LONDON

20 Greater London Authority Supplementary Planning Guidance

Social Infrastructure

Social infrastructure includes a wide range of services and facilities including health, education, community, cultural, play, recreation and sports facilities, faith, emergency facilities and many other local services. Inter alia, this guidance:

- gives a range of information sources to evaluate need for social infrastructure at the strategic planning level;
- emphasises the need for planning across services to ensure that social infrastructure is delivered efficiently and in a way that meets the broader built environment aims of the London Plan; and
- provides a comprehensive range of resources for the assessment of social infrastructure need arising from individual applications.

http://www.london.gov.uk/priorities/planning/publications/social-infrastructure-supplementary-planning-guidance-spg

21 London First publication

From Wasted Space to Living Place

In February 2015, the London Land Commission was launched. Published in conjunction with law firm Berwin Leighton Paisner, this publication is an analysis of the task ahead, assessing the opportunities and challenges facing the Commission in delivering housing for the capital.

Including developing a comprehensive database of surplus public land in London – a "21st Century Domesday Book". The report argues that this presents "a tremendous opportunity to make real inroads into London's housing shortfall" when combined with new powers in the recent Infrastructure Act. However, it also concludes that the Commission has big hurdles to overcome, arguing that it must have real power rather than becoming a talking shop.

http://londonfirst.co.uk/creating-a-21st-century-domesday-book-for-london/

22 Publication by Stirling Ackroyd

London New Home Monitor Report

This report argues that London's new home targets are unachievable with the current rate of planning permissions. Planning permissions are being granted at a rate of 27,470 per year, with 6,870 made possible last quarter. This figure represents only two thirds of the government's 40,000 annual target for finished London homes. Completed homes are even further behind target. Based on Stirling Ackroyd's latest research planning permission will cap London's efforts to provide new homes at just two-thirds of official targets if approvals continue at the current rate.

http://www.stirlingackroyd.com/News/8535/London-New-Home-Monitor-Report.aspx

MINERALS

23

The Mineral Products Association (MPA) together with the Planning Officers' Society has published a best practice guide on so-called Local Aggregates Assessments (LAAs). The guidance highlights what can be expected in terms of LAA style and content for all interested parties. Ken Hobden, director of mineral planning with the MPA, said, "Over the last 2–3 years, mineral planning authorities have been producing LAAs, often to different standards and degrees of consistency with what the National Planning Policy Framework (NPPF) requires. "This document provides mineral planning authorities (MPAs) with advice on good practice in producing LAAs and guides Aggregate Working Parties (AWPs) and the minerals industry in terms of what can be expected to be included in an LAA."

http://www.mineralproducts.org/documents/LAA_Guidance.pdf

If you require advice on minerals & waste management issues, contact Philip King on Tel. +44 (0)113 244 0708 pking@geraldeve.com

GENERAL

24 Coalition Government Policy Papers

The following policy papers set out the policies of the 2010 to 2015 Conservative and Liberal Democrat coalition government in the following areas:

2010 to 2015 government policy: high streets and town centres
https://www.gov.uk/government/publications/2010-to-2015-government-policy-high-streets-and-town-centres

2010 to 2015 government policy: economic development in coastal and seaside areas
https://www.gov.uk/government/publications/2010-to-2015-government-policy-economic-development-in-coastal-and-seaside-areas

2010 to 2015 government policy: localism
https://www.gov.uk/government/publications/2010-to-2015-government-policy-localism

2010 to 2015 government policy: Regional Growth Fund
https://www.gov.uk/government/publications/2010-to-2015-government-policy-regional-growth-fund

2010 to 2015 government policy: Local Enterprise Partnerships (LEPs) and enterprise zones
https://www.gov.uk/government/publications/2010-to-2015-government-policy-local-enterprise-partnerships-leps-and-enterprise-zones

2010 to 2015 government policy: sustainable development
https://www.gov.uk/government/publications/2010-to-2015-government-policy-sustainable-development

2010 to 2015 government policy: business and the environment
https://www.gov.uk/government/publications/2010-to-2015-government-policy-business-and-the-environment

2010 to 2015 government policy: access to the countryside
https://www.gov.uk/government/publications/2010-to-2015-government-policy-access-to-the-countryside

25 Nathaniel Lichfield & Partners (NLP) Research Report

Workspace Futures. The changing dynamics of office locations, April 2015

The last few years have seen significant shifts in the way in which business is conducted. New technology and working practices have transformed how companies communicate and organise themselves. This means, in turn, that the ways in which offices are used have also become more complicated. In order to attract talented key workers workspaces need to be in close proximity to a range of services, amenities and entertainment, while these denser work environments enable companies to thrive and benefit from agglomeration economies such as sharing ideas, resources, and having access to a large pool of potential labour and customers. The highly competitive nature of office markets means that companies have had to adapt the way in which they use office space in order to survive in these locations. Flexible working practices, supported by technological advances and enhanced broadband connectivity, have relinquished some space requirement but smaller workstation space is in some cases offset by growing communal space for leisure, amenities and collaborative workspace to meet the needs of modern office-based occupiers.

This report shows that while the scale, type and location of office stock varies considerably there are three broad location types that shape the office markets in major towns and cities – the urban core, the fringe/ periphery and out-of-centre.

The challenge for workspace providers, developers and local authorities is to plan for what today's office market occupiers are looking for and mould the various locations to suit their needs. The rising costs of offices in urban core locations provide opportunities for fringe and peripheral locations to capture market overspill. This paper argues that developers and policymakers need to plan for the reinvigoration of out-of-centre business parks e.g. by improving connections to city centres, extending their range of amenities and improving the sustainability credentials that modern office occupiers are looking for.

http://nlpplanning.com/uploads/ffiles/2015/04/589259.pdf

26 British Council of Offices Research Report

Putting People First: Designing for health and wellbeing in the built environment

This paper addresses the question of the extent to which architects and engineers have a duty to ensure that the occupants of the buildings they design and build are healthy and happy. As people spend, on average, 90% of their time in buildings it argues that this presents the professionals with opportunities positively to affect people's health and wellbeing. This paper builds upon an earlier BCO report "Making the business case for wellbeing", which was published in July 2014.

http://www.bco.org.uk/Research/Publications/Putting_People_First_Designing_for_health_and_wellbeing_in_the_built_environment.aspx

GERALD EVE'S UK OFFICE NETWORK

Gerald Eve LLP is an independent firm of chartered surveyors and property consultants, employing more than 370 people across the UK.

We provide a comprehensive range of services to our private and public sector clients — including more than 40 per cent of the FTSE100 — covering agency, corporate property management, professional and transaction–based advice.

Our philosophy is to serve clients by identifying opportunities and solving problems relating to property through the provision of high quality, thoroughly researched cost effective advice.

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

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(04) 01 June 2015

WALES

PLANNING

01 Welsh Assembly Government Consultation

Consultation: Developments of National Significance (Wales)
Deadline for Comments: 12.08.15

This consultation seeks views on detailed proposals to establish a new system for the Welsh Ministers to process "Developments of National Significance" (DNS), a new category of planning application, including the following:

- thresholds and criteria of what qualifies as an application for DNS;
- which secondary consents may be submitted for consideration and determination alongside an application for DNS;
- the procedure for considering and determining an application for DNS;
- proposed fee structure for DNS applications; and
- the role of planning authorities in the process.

http://gov.wales/consultations/planning/developments-of-national-significance/?lang=en

SCOTLAND

LANDLORD & TENANT

02 Scottish Assembly Government consultation

Second Consultation on a New Tenancy for the Private Sector
This consultation closed on 10.05.15

This consultation builds on the proposals outlined in the first consultation on this subject, held in 2014. It takes account of feedback and analysis from the first consultation and addresses the key issues that were raised and also seeks views on the more developed proposals.

http://www.gov.scot/Publications/2015/03/6142

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

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

GERALDEVE

GENERAL

03 Scottish Assembly Government publication

Town Centre Toolkit

The Town Centre Toolkit comprises a range of tools and associated case studies which focus on the development and use of town assets with the aim of supporting and encouraging town centre revitalisation. These are grouped under four key headings: 'attractive'; 'active'; 'accessible'; and 'making it happen'.

The toolkit aims to assist an understanding of the areas that impact on town centre vitality, and where and how Scotland's town centres could be used to transform ideas into new opportunities. It complements the actions identified in the Town Centre Action Plan, to help support enterprising communities and vibrant local economies.

http://www.gov.scot/Publications/2015/04/9849