EVEBRIEF

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SITE SPECIFIC PLANNING POLICIES AND COMPULSORY PURCHASE COMPENSATION

Ben Aldridge
Editor

In this edition, amongst other matters we report on two notable compulsory purchase cases. The first of these, Item 18, is a Court of Appeal decision relating to planning assumptions to be adopted when assessing compensation. The land in question was acquired for inclusion in a business park scheme which was predominantly commercial but which included some residential elements. The claimant argued for value based upon independent residential development of its land on the assumption that in the 'no scheme world' the planning policy would be relaxed. The Court held that, in valuing the land, the correct approach was to disregard not only the scheme but also policies put in place specifically in support of the scheme where they affected value. The site specific policies which supported residential development as part of the business park development fell to be disregarded in this instance. In this case the land would have been 'greenfield' but for the specific policy, and the disregard of the policy meant that independent development would have been very unlikely; the position may be very different however in the case of a town centre site where a 'comprehensive development' policy might enable a claim based on potential for stand-alone development if that policy falls to be disregarded as part of the 'scheme'.

The second, at Item 20, is a High Court case in which compensation had not been finalised some 23 years after entry was taken of land required for construction of a new road. The claimant applied for the matter to be referred to the Upper Tribunal (Lands Chamber). The Council argued that the claims were barred by the six-year Limitation Act time limit for referral of claims. The High Court found the acquiring authority was estopped from relying upon the expiry of the time limit because of the nature of the ongoing negotiations between the parties and an earlier assurance from the Council that it would refer the claim if it were not settled. It is unlikely however that the mere fact that negotiations continue will be taken in other cases to amount to a waiver of the limitation period.

Finally, at Item 21, we report on Draft Interim Housing Supplementary Planning Guidance issued by the Mayor of London, which provides guidance on the implementation of housing policies in the 2015 London Plan. The consultation period ends on 7 August and those involved in residential development in London may wish to make their views known.

GERALDEVE

LANDLORD & TENANT

01 Upper Tribunal: Lands Chamber

Service charges – respondent council carrying out major refurbishment programme on housing estates, including recladding of exterior of blocks – whether costs reasonably incurred – whether more modest programme of repairs would have sufficed – whether appellant's service charge contribution should be reduced to take account of funding received by respondent from third party

*OLIVER V SHEFFIELD CITY COUNCIL
[2015] PLSCS 171 – Decision given 12.05.15

Facts: The appellant, O, was the leaseholder of a maisonette on a council estate in Sheffield, one of two estates owned by the respondent council, SCC. O had acquired her maisonette under the right to buy legislation. Following statutory consultation with the tenants SCC undertook a major programme of works to the estates in 2011 and 2012, including recladding the exterior of each of the blocks to prevent water ingress and assist with insulation. The works cost over £11m and the service charge contribution from O was calculated to be £9,378.72. Although it received a funding contribution under the Community Energy Saving Programme (CESP) from an energy company, SCC did not pass this on to the leaseholders to set off against their service charge contributions.

Point of dispute: Whether to allow O's appeal against a determination by the LVT that the cost of the major works had been reasonably incurred, as required by s19 of the Landlord & Tenant Act 1985, and that she was required to contribute to them through the service charge. O argued that it was not reasonable for SCC to completely replace all the cladding to the blocks and that a more modest scheme of regular repairs to the original cladding would have sufficed. She also argued the service charge contributions should be reduced to take account of the CESP funding.

Held: The appeal was allowed in part.

i. The cost of the works had been reasonably incurred and the works had been carried out to a reasonable standard within the meaning of s19 of the 1985 Act. It had been reasonable for SCC to incur the cost of recladding the blocks as a long term solution to their problems and this would result in lower maintenance and energy bills for the leaseholders in the future. The lack of sufficient repairs in the past had no effect on the liability of leaseholders to contribute towards the cost of these major works because, whatever SCC had or had not done in previous years, by 2011 a programme of major refurbishment would have been needed.

ii. Whether the works were characterised as repairs or improvements made no difference to O's liability to pay.

iii. SCC had adopted a reasonable method of apportioning the costs between leaseholders.

iv. O was not liable to pay the sums charged by SCC to the extent that the works were funded by the CESP contribution. SCC could not treat this money as if it were part of its general revenue. SCC had not established that their treatment of the CESP funding was in accordance with the requirements of the lease. O was entitled to be credited with £1,885.44 for the CESP funding received by SCC on account of the works carried out to her flat.

02 Upper Tribunal: Lands Chamber

Service charge – consultation – Section 20 Landlord & Tenant Act 1985 – Service Charges (Consultation Requirements) Regulations 2003 – availability of documents for inspection

*ASHLEIGH COURT RIGHT TO MANAGE CO LTD V DE-NUCCIO
[2015] PLSCS 164 – Decision given 20.05.15

Facts: The respondents were leaseholders in a block of flats under long leases which provided for the payment of a service charge. The appellant company (ACRM) managed the block pursuant to Chapter 1 of Part 2 of the Commonhold and Leasehold Reform Act 2002. In 2012 ACRM resolved to carry out substantial works to the roof of the block and initiated a process of consultation with the leaseholders as required by the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) Regulations 2003. It informed the leaseholders that the tenders and other relevant documentation could be inspected at its offices between 9am and midday during the one month consultation period, but they had to contact the managing agent at least 48 hours in advance of a visit to ensure that someone was available to meet them. No contact details for the managing agent were given. Eventually one leaseholder succeeded in contacting him by email to be told that he should contact ACRM's secretary at his registered office. Ten days before the closure of the consultation period a director of ACRM contacted the leaseholders and offered to provide electronic copies of the documentation to anyone who wanted it, and he later sent these to three leaseholders.

Point of dispute: Whether ACRM had complied with the consultation requirements with regard to inspection of documents. The respondents' argument that it had not was upheld in the First Tier Tribunal (FTT), which found that ACRM had not complied with the requirement, contained in para 2 of Part 2 of Schedule 4 to the 2003 Regulations, to specify a reasonable place and hours at which the estimates could be inspected. It ordered that ACRM could therefore recover only £250 per leaseholder in respect of service charges in accordance with s20 of the 1985 Act.

Held: ACRM's appeal against the ruling of the FTT was dismissed. The question was whether the place and hours specified for the inspection was "reasonable" and that should take into account the nature and resources of both landlord and leaseholders. The location had to be relatively convenient, but the leaseholders also had to be reasonably accommodating. The FTT had to consider all the information that was provided by the landlord in the course of its Stage 2 notice. The FTT had been correct to find that the arrangements for inspection had not been properly set up, given that the managing agent did not have authority to act and the consultation process was effectively being managed by ACRM itself. On the evidence FTT had been entitled to find that ACRM had not complied with the 2003 Regulations because: (i) the "place and hours" specified for the inspection of documents were not reasonable; and (ii) the estimates were not in fact "available for inspection, free of charge, at that place and during those hours". Substantial compliance was not enough and, to the extent that there had been non-compliance, the question of whether any serious prejudice had been occasioned to the leaseholders was a material consideration only if the landlord made an application under s20ZA of the 1985 Act to dispense with the consultation requirements, which ACRM had not done.

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

Grant of planning permission for large residential development on site in green belt – affordable housing element and contribution to cost of link road improvements – whether grant of permission contrary to policies in NPPF on green belt

*R (ON THE APPLICATION OF LUTON BOROUGH COUNCIL) V CENTRAL BEDFORDSHIRE COUNCIL [2015] PLSCS 156 – Decision given 20.05.15

Facts: In 2014 the respondent council, CBC, granted planning permission for a large residential development on a 262ha green belt site in Bedfordshire. There were to be some mixed and retail uses on the site in order to provide local amenities. As a condition of the grant of permission the developers entered into a s106 agreement to provide some affordable housing and to make a financial contribution to improvements to a link road. For some time the site had been identified in local planning policies as an area for regeneration with proposals to take the site out of the green belt. These proposals were set out both in a joint core strategy, prepared jointly by CBC and the appellants, LBC, and in CBC's draft development strategy. LBC considered that the element of affordable housing in the proposed development was too low, being less than the 30% suggested in the joint core strategy and the draft development strategy, but CBC decided that it was in the public interest to grant permission because of the need for regeneration of the area and for new housing.

Point of dispute: Whether to allow LBC's appeal against the decision of the court below which rejected its challenge to the grant of planning permission. LBC considered that CBC had erred in: (i) failing to take account of para 83 of the NPPF, under which green belt boundaries were to be altered only in exceptional circumstances; (ii) misapplying para 216 of the NPPF, by failing to take into account LBC's unresolved objections to relevant policies in the emerging development strategy; (iii) treating the adoption of the draft development strategy as inevitable; (iv) failing to consider whether local planning needs might be better met by alternative sites, or by an alternative strategy within the site so as to reduce the retail element to make room for more affordable housing; and (v) failing to apply sequential impact tests in respect of the proposed main town centre uses.

Held: The appeal was dismissed.

i. CBC had applied the correct tests. Proposals for development within an area of green belt were governed by paras 87 and 88 of the NPPF and required "very special circumstances" to be shown, a stricter test than "exceptional circumstances" in para 83 which related to a proposal to alter the boundaries of the green belt within a local plan. There was a proper basis on which CBC could lawfully and rationally conclude that "very special circumstances" existed to justify the grant of planning permission on this site.

ii. The relevant criterion in para 216 of the NPPF had been properly identified and set out in the planning officer's report.

iii. It was apparent from the planning officer's report that the approval of the development strategy was not treated as a completely foregone conclusion. Careful consideration of a number of factors made it likely that the allocation of the site for development as set out in the development strategy would eventually be endorsed.

iv. On the facts of the case CBC had not acted irrationally in failing to assess alternative sites. CBC had done a lot of work in connection with the sustainability appraisal to assess possible alternative sites which might be better suited to meet local planning needs but no better site had been identified. The planning officer's report had identified economic viability and other reasons why the retail element of the scheme was said to be justified and neither LBC nor anyone else had suggested a reduction in the retail element as a means of increasing the amount of affordable housing.

v. There was no merit in the assertion that CBC had failed to apply sequential impact tests.

04 Court of Appeal

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 179 – Decision given 11.06.15

Facts: A developer applied to the lpa for planning permission to redevelop a 3.5ha 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, the Sec of State followed the recommendations of his inspector and planning permission for the development was granted. T's challenge to the grant of permission was rejected in the court below, with the judge finding that the inspector's conduct had not been such as to give rise to apparent bias. (See Evebrief, Volume 37(03) i07)

Point of dispute: Whether to allow T's appeal against the decision of the court below. T relied on witness statements from another objector at the inquiry as showing that the inspector's conduct had created an impression of bias.

Held: The appeal was dismissed.

i. The test to determine whether there had been apparent bias was whether, having regard to all the circumstances, a notional "fair-minded observer" forming an objective judgment would conclude that there was a real possibility that the inspector was biased.

ii. The objector on whose evidence T relied could not be regarded as wholly neutral and disinterested and it would be inappropriate to treat his views as if they were those of the fair-minded observer.

iii. The functions and responsibilities of the inspector had to be taken into account. He had to manage the case robustly within a limited time frame, which required focused questioning and concentrating on the real points of contention.

iv. The Planning Inspectorate's guidance document "*The Inspector's Code of Conduct*" sets out principles of conduct for inspectors and is designed to promote best practice, but it does not in itself set the standard by which an appearance of bias was to be judged.

v. The inspector had done nothing to give any appearance of bias to the notional, fair-minded and informed observer. He had treated the objectors to the scheme, including T, fairly both before and during the inquiry. His pre-inquiry decisions did not indicate any hostility to T or any objector or create an impression that he had predetermined the inquiry result.

vi. Overall the inspector's conduct of the inquiry had been proper and appropriate and the steps he took to focus debate were legitimate ones, in line with the standards to be expected for efficiently and effectively managing the conduct of a planning inquiry.

05 Court of Appeal

Development plan – whether planning legislation permitted inclusion of site allocation policies in neighbourhood development plans (NDP)

*R (ON THE APPLICATION OF LARKFLEET HOMES LTD) V RUTLAND COUNTY COUNCIL [2015] PLSCS 183 – Decision given 17.06.15

Facts: The appellant developer, LH, had an interest in land near Uppingham, Rutland, which it hoped to develop for housing. Early versions of the development plan document (DPD) identified LH's site as a sustainable location for new development, but the final version, submitted to the Sec of State for public examination in 2013, omitted any provision for development in the Uppingham area. By this time a neighbourhood development plan (NDP) was in the course of preparation, but although the draft NDP contained a policy allocating three sites at Uppingham for development LH's site was not one of them. RCC decided that the NDP should proceed to a referendum when a large majority voted in favour of it. LH brought judicial review proceedings to challenge RCC's decision to put the NDP to referendum.

Point of dispute: Whether to allow LH's appeal against the decision of the court below to dismiss its application. LH argued that s17(7)(za) of the Compulsory Purchase Act 2004 and Regulation 5 of the Town and Country Planning (Local Planning) (England) Regulations 2012 did not permit the allocation of particular sites in NDPs. Documents containing such policies had to be prepared as "local development documents" and go through formal adoption processes. It also submitted that RCC had been wrong to decide that the NDP did not need an strategic environmental assessment (SEA).

Held: The appeal was dismissed.

i. Section 17 of the 2004 had nothing to do with NDPs and was concerned with local development documents setting out the policies of the local planning authority relating to the development and use of land in their area. NDPs were not prepared by a local planning authority and were governed by a different statutory regime – inserted into the 2004 Act as ss38A-38C – and the relevant definition of "development plan" in s38(3) drew a clear distinction between DPDs and NDPs. The provisions relating to NDPs were wide enough to allow the inclusion of site allocation policies in them. This statutory power was not cut down by regulations made under a power conferred by s17, located in a different part of the statute and dealing with different subject matter.

ii. In their screening report RCC had concluded that the NDP was not likely to have significant environmental effects and that an SEA was therefore not required in respect of it. It was apparent that the author of the screening report had given detailed consideration to the SEAs already carried out for the core strategy and the DPD on site allocations and policies and to the question of whether the NDP introduced any significant changes. Although the report had been poorly expressed the judge had been entitled to find that the author of the report had considered both positive and negative effects on the environment.

06 Court of Appeal

Condition restricting hours of use of multi-use games area adjacent to appellant's property – council removing condition – whether council failing to consider noise policies in NPPF – whether these more stringent than local plan policies

*R (ON THE APPLICATION OF MAY) V ROTHER DISTRICT COUNCIL
[2015] PLSCS 185 – Decision given 22.06.15

Facts: M's house and garden adjoined a multi-use games area (MUGA) which was originally subject to a planning condition that it was only to be used between the hours of 9am and sunset or 8.30pm, whichever was the earlier. After a trial period of unrestricted use the council (RDC) removed this condition on the basis that the curfew did not solve the noise problem and that, in any event, no unreasonable or substantial noise was emanating from the MUGA. RDC considered that the removal of the planning condition would not result in an unacceptable impact on residential amenity and that it was acceptable in terms of local plan policies.

Point of dispute: Whether to allow M's appeal against the ruling of the judge in the court below who had refused M's application for judicial review of RDC's decision. The judge dismissed M's argument that RDC had failed to have regard to para 123 of the NPPF on noise caused by new development, which required that planning policies and decisions should mitigate and reduce to a minimum adverse impacts on health and quality of life arising from noise, including through the use of conditions. M contended that para 123 was more stringent on noise than the local plan policy which RDC had considered, as well as requiring specific consideration of impact on health, whereas the local plan policy only considered impact on amenity by reference to the enjoyment of property.

Held: The appeal was dismissed.

- The government's Noise Policy Statement for England, referred to in the footnotes to para 123 of the NPPF, stated that noise impact was to be minimised "within the context of Government policy on sustainable development", which meant that the policy was to be interpreted as minimising noise as far as reasonably practicable; thus reasonable steps were to be taken to minimise noise.
- Whether the imposition of a condition was a "reasonable step" was a matter of planning judgment; the differences between the NPPF and the local plan policy on noise were essentially a matter of semantics.
- The NPPF had to be read as a whole, including the requirement that development that accorded with an up-to-date local plan was to be approved unless material considerations indicated otherwise. RDC's proposal to remove the condition accorded with the development plan.
- Para 206 was also relevant insofar as it restated the position that a planning condition should be imposed where it was "necessary, relevant to planning, enforceable, precise and reasonable in all other respects". RDC's conclusion, which was a matter of planning judgement, was that the planning condition no longer served a useful purpose since it did not "solve the problem" and the noise itself was neither unreasonable nor substantial.

07 Planning Court

Appeal against enforcement notice – whether requirements in notice exceeded steps necessary to remedy injury to amenity caused by breach of planning control

*MIARIS V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2015] PLSCS 170 – Decision given 04.06.15

Facts: The lpa issued an enforcement notice against M alleging a breach of planning control consisting of a material change of use of his premises on North Parade, Bath, from their lawful use as a restaurant to a mixed use of restaurant, drinking establishment and nightclub. The lpa alleged that the change of use had increased pedestrian movements to and from the premises, noise, vibration and disturbance with a detrimental effect on the well-being and amenity of local residents and the environment. M's appeal against the notice was dismissed by an inspector appointed by the Sec of State.

Point of dispute: Whether to allow M's appeal against the inspector's decision. M's argument, relying on ground (f) of s174(2) of the Town and Country Planning Act 1990, was that the steps required to comply with the requirements of the notice were excessive. The issue was whether, in cases where planning permission was not sought on ground (a) for any of the matters constituting the breach of planning control to which the enforcement notice related, the Sec of State could still entertain a ground (f) appeal. M contended that any injury to amenity caused by the use of his premises could be remedied by imposing a requirement not to use them as a nightclub or drinking establishment for more than 60 non-dining customers, rather than an outright ban on all such use.

Held: The appeal was dismissed.

- Under s173(3) and (4) of the 1990 Act the steps required by an enforcement notice might be for the purpose of (a) remedying any breach of planning control, or (b) remedying any injury to amenity constituted by the matters causing the breach. It was possible that planning objections to any of the matters constituting the breach might remain, even if any injury to amenity was eliminated.
- An appeal against an enforcement notice could be brought relying on ground (f) on the grounds that the steps required to remedy the breach exceeded what was necessary to remedy any injury to amenity caused by the relevant breach of planning control, rather than the breach itself. However, such an appeal was not permissible where the objections were not limited to any injury to amenity, unless the appellant also appealed on ground (a) that planning permission should be granted for any breach alleged in the notice.
- The inspector had not erred in law in refusing to consider the merits of M's contentions in support of its ground (f) appeal. M had not advanced any ground (a) appeal and the relevant steps set out in the enforcement notice requiring cessation of the use of M's premises as a drinking establishment did not seek solely to remedy the injury to amenity that this use had caused.

08 Planning Court

Housing supply – lpa applying to quash inspector's decision to grant developers planning permission for 120 new dwellings – whether inspector erroneously adopting test for inclusion of student accommodation in housing supply

*EXETER CITY COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2015] PLSCS 188 – Decision given 12.06.15

Facts: An inspector appointed by the Sec of State allowed an appeal by a developer against the decision of the claimant lpa, ECC, to refuse planning permission for a development of 120 dwellings near Exeter. The inspector concluded that on the evidence before her, in deciding whether the proposal would be a sustainable form of development, student accommodation was not to be included as part of the housing supply and that ECC had failed to demonstrate a five year supply of housing.

Point of dispute: Whether to allow ECC's appeal against the inspector's decision. ECC argued that the inspector had erred: (i) in relation to the housing requirement/supply; and (ii) in adopting tests for inclusion of student accommodation in housing supply in a situation where the student population was stable and the number of general market dwellings occupied by students would fall as more student accommodation was provided.

Held: The application was dismissed.

i. The inspector's approach to the question of student accommodation and housing supply had been correct in law. She had looked at the facts of the case and considered whether there had been any basis for taking any of the new student accommodation into account when assessing housing supply. Given the evidence that a substantial number of new additional market dwellings had been occupied by students, she had been entitled to find that there had not been; however, she had accepted that the situation might change in the future if delivery of student accommodation significantly exceeded the increase in student population.

ii. The inspector had not sought to establish a test for including student accommodation in housing supply, but she had exemplified ways in which it might be established that student accommodation released dwellings into the general housing market and might properly be included in the housing supply figure. This case did not, however, fit those examples.

iii. The inspector was bound to conclude that permission for the development should be granted on other grounds as the benefits of the proposal outweighed the harm by a considerable margin.

09 Administrative Court

Wind farm – apparent bias – whether Sec of State's decision in breach of natural justice because of lobbying by Member of Parliament (MP)

*BROADVIEW ENERGY LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT [2015] PLSCS 189 – Decision given 19.06.15

Facts: The claimant, BE, sought planning permission for a wind farm which was initially refused. The appeal against refusal of permission was resubmitted for determination. A planning inspector recommended that permission be granted, but the Sec of State decided to determine the matter for himself on the grounds that the appeal involved a renewable energy development and ultimately he refused permission for the development. The MP for the constituency in which the proposed wind farm was located had campaigned against on- shore wind farms. She had expressed her approval when the lpa refused permission for the development, she had written both to the Sec of Sate and the chief executive of the planning inspectorate, and had herself objected to the proposal.

Point of dispute: Whether to allow BE's application to quash the Sec of State's decision to refuse planning permission for the wind farm. BE argued that it should have been informed of the correspondence between the defendant Sec of State and the MP and that there had been actual or apparent bias. BE argued that the decision had been taken in breach of the Sec of State's own planning propriety guidance, and that it should have been provided with copies of correspondence between the MP, the Sec of State and the Minister in the Department of Communities and Local Government who had made the decision, including letters after the inquiry had closed. The MP had also lobbied the Minister face to face in the House of Commons.

Held: The application was dismissed.

i. The lobbying of Ministers by MPs was part of the role of a constituency MP, There was nothing in BE's challenge based on breach of natural justice and common law fairness and it had failed on general principles.

ii. A fair-minded and informed observer would conclude that there had been no real possibility of ministerial bias.

iii. Regarding the planning proprietary guidance the need for consultation with further correspondence depended upon its nature and whether it raised issues which influenced the decision. The MP's letters had not raised any new matters and were not treated by the Sec of State as the basis for his disagreement with the planning inspector. BE had not established that there had been any material breaches of the guidance in how ministers dealt with MPs' lobbying.

10 Historic England Good Practice Advice

Historic Environment Good Practice Advice in Planning – Notes 1-3

These notes aim to provide information on good practice to assist local authorities, planning and other consultants, owners, applicants and other interested parties in implementing historic environment policy in the NPPF and the related guidance in the PPG.

- Note 1 contains information to help local planning authorities make well informed and effective local plans.
- Note 2 advises on assessing the significance of heritage assets, using appropriate expertise, historic environment records, recording and furthering understanding, neglected and unauthorised works, marketing, design and distinctiveness.
- Note 3 contains guidance on managing change within the settings of heritage assets, including archaeological remains and historic buildings, sites, areas and landscapes.

http://historicengland.org.uk/images-books/publications/gpa1-historic-environment-local-plans/?dm_i=10MV,39W2Q,8BB25Y,BVY03,1

http://historicengland.org.uk/images-books/publications/gpa2-managing-significance-in-decision-taking/?dm_i=10MV,39W2Q,8BB25Y,BVY03,1

http://historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/?dm_i=10MV,39W2Q,8BB25Y,BVY03,1

11 CLG Statistics

Planning applications in England: January to March 2015

This release presents National Statistics on authorities that undertake district and county level planning activities in England. It covers information on planning applications received and decided including decisions on applications for residential developments (dwellings) and enforcement activities.

- 17% more residential decisions were made during this quarter than during the same quarter in 2014.
- In the year ending March 2015 district level planning authorities granted 360,200 decisions, up 3% from the figure for the year ending March 2014.

https://www.gov.uk/government/statistics/planning-applications-in-england-january-to-march-2015

12 DCLG – House of Commons Written Statement made by the Sec of State for Communities and Local Government on 18.06.15

Wind Farm Regime Change

As from 18.06.15 local councils can only grant permission for wind turbines in their area if:

- the site is in any area identified as suitable for wind energy as part of a Local or Neighbourhood Plan; and
- following consultation, the planning impacts identified by affected local communities have been fully addressed and the proposed development therefore has their backing.

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

https://portaldirector.wordpress.com/2015/06/25/ministers-announce-onshore-wind-farm-regime-change/

RATING

13 High Court

Implications of a defective completion notice – power of the Valuation Tribunal for England to direct the Valuation Officer to order the deletion of a rating assessment from a closed Rating List

*JOHN REEVES (VO) V VALUATION TRIBUNAL FOR ENGLAND
CO/0046/2014 Decision given 05.03.15

Facts: This is a judicial review of the decision issued on 07.10.13 by the VTE in the case of *Tull Properties Ltd v South Gloucester Council*. The original appeal concerned the validity of a completion notice served by the billing authority on 14.08.08 following which the Valuation Officer entered the property into the list w.e.f. 20.08.13.The subject property had been included in the 2000 List, but it was deleted in 2003 after being vandalised. The ratepayer argued that the property was not a "new building" according to the ordinary meaning of a new building as defined under s46(a) of the Local Government Finance Act 1988. The VTE allowed the appeal, declared the completion notice as invalid and ordered that the subject hereditament should be deleted from the 2005 Rating List.

Point of dispute: In the claim for judicial review the Valuation Officer accepted that the VTE had jurisdiction to determine the validity of the completion notice, but challenged the order to delete the assessment from the 2005 list on the basis that the regulations impose a long stop date for the exercise by the VO of his power to make alterations directly to the rating list the effect of which is that he cannot alter the list after the first year of the anniversary of the day on which the next list is compiled. In the case of the 2005 list this long stop date was 01.04.11.

Held: Following detailed consideration of the regulations, Mr Justice Holgate concluded that the VTE was not empowered to make the order that the hereditament be deleted from the 2005 rating list. The correct procedure for the ratepayer to have followed would have been to make a proposal challenging the entry of the property into the list which could have been dealt with at the same time as any completion notice appeal. Therefore, whilst the completion notice was quashed, the rating list could not be amended as no proposal had been made challenging the assessment entered into the list as a result of the original completion notice. The assessment should remain in the list.

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

HOUSING

14 CLG Statistical Release

House building in England: March quarter 2015

- It is estimated that there were 40,300 seasonally adjusted house building starts in England in the March quarter of 2015, which is 31% more than in the previous quarter and 11% more than in the same quarter of 2014.
- In the March quarter of 2015 it is estimated that there were 34,040 seasonally adjusted completions, 10% higher than the previous quarter and 21% more than during this quarter in 2014.
- Seasonally adjusted housing starts are now 136% above the 2009 March quarter trough but 18% below the 2007 March quarter peak. Completions are 30% below their March quarter 2007 peak.
- In the 12 months to March 2015 there were 140,500 housing starts, 5% more than during the previous year. 125,110 dwellings were completed, and increase of 11% on the previous year.

https://www.gov.uk/government/statistics/house-building-in-england-january-to-march-2015

15 HCA Bulletin

HCA Monthly Housing Market Bulletin, June 2015

- House price increases have remained strong, although at a lower rate than this time last year.
- The seasonally adjusted number of home sales and gross mortgage lending have both decreased slightly in the 12 months to June 2015.

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

REAL PROPERTY

16 Court of Appeal

Easements – right of way – conveyance – parties owning neighbouring properties – previously in common ownership – whether appellants having rights of way over respondent's land by virtue of s62 of Law of Property Act 1925 as advantages enjoyed with the land at time of transfer

*WOOD V WADDINGTON
[2015] PLSCS 157 – Decision given 21.05.15

Facts: The appellants and the respondent owned neighbouring properties near Salisbury, Wiltshire, which had previously been in common ownership as part of a residential, agricultural and sporting estate. When the estate was sold off in 1998 the respondent had acquired some cottages along with most of the agricultural land. Other parts of the estate, including a manor house, coach house, stables and paddock, had been sold to the appellants' predecessors in title with the benefit of "all liberties privileges and advantages of a continuous nature now used or enjoyed by or over the Property". The appellants ran a livery stables business which they had taken over from their predecessors in title. The appellants asserted that they had rights of access to their property over a track on the respondent's land on the basis that these rights had been included in the 1998 transfer to their predecessors in title either: (i) by the terms of the transfer, so far as it expressly conveyed all "liberties, privileges and advantages of a continuing nature now used and enjoyed" by or over the property; or (ii) by operation of s62 of the Law of Property Act 1925, as liberties, privileges, easements, rights and advantages enjoyed with the land at the time of the 1998 sale.

Point of dispute: Whether to allow the appellant's appeal against the ruling of the judge in the court below who held that the general words in the 1998 transfer were not intended to confer unspecified rights of access in addition to those for which it provided in detail and that the use of the land, while it had been in common ownership, was not such as to give rise to an easement under s62 of the 1925 Act.

Held: The appeal was allowed.

i. The 1998 transfer, properly construed, did not grant the rights claimed by the appellants. The rights granted by the conveyance were confined to those of a "continuous" nature such as a right to use drains or a right to light, as opposed to one requiring personal activity for its enjoyment, such as a right of way.

ii. That interpretation of the transfer was not affected by the fact that the appellants' predecessors in title had used the way without objection from the respondent.

iii. However, the appellants were entitled to the rights they claimed by virtue of s62 of the Law of Property Act 1925. If a quasi-easement fell within the category of easements "enjoyed with" the land conveyed, there was no additional requirement, for the purposes of s62, that the easement should be necessary for the reasonable enjoyment of the land. In order for an easement to arise under s62, the way also had to have been used within a reasonable period preceding the conveyance. There were visible signs that the way had been used by vehicles for the benefit of the property now owned by the appellants; on the judge's findings of fact, the way had been used roughly once a month, which was a sufficient pattern of use to count as "enjoyment" for the purposes of s62.

iv. Although there had also been vehicular use of the way over which the appellants now claimed a right of way on foot and with animals, the mismatch between the content of the rights now claimed and the nature of the rights proved did not prevent those rights from arising. The right to use the ways on horseback was not limited to domestic use, but extended to use for the appellants' livery business, even though that use had not existed at the time of the 1998 transfer. A description of a right as "at present enjoyed" did not refer to the purposes for which the right was used, but to the manner of use, such as on foot only, with animals or with vehicles. Accordingly, the mere fact that use changed from domestic to commercial did not of itself amount to use in excess of the right granted. There had already been stables on the land in 1998 so the appellants' livery business did not amount to a radical change in the dominant tenement. The livery business was an intensification of use of a kind that would not result in a substantial increase or alteration in the burden on the servient land.

v. The application of s62 was not excluded by any "contrary intention" expressed in the conveyance.

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TORT

17 High Court

Professional negligence – action against solicitor for negligent advice regarding option agreement – whether claimant showing causation

*FRYATT V PRESTON MELLOR HARRISON
[2015] PLSCS 187 – Decision given 12.06.15

Facts: F, the claimant, was a property developer who engaged the defendant firm of solicitors, PMH, to act for him in relation to an option agreement in connection with the acquisition of land in Dartford, Kent. The option land comprised a parcel owned by a holding company and a neighbouring house. The option ultimately took effect as a right to acquire the house and to acquire the entire share capital in the holding company of the other parcel of land. Before the option was exercised the holding company went into liquidation and its shares were sold to the liquidator.

Point of dispute: Whether to allow F's claim against PMH for professional negligence. F argued that PMH should have advised him of the significance of taking an option over the shares in the holding company rather than over the land itself. He argued that if he had been properly advised he would have taken an option over the land, which would have given him a proprietary interest in it which he would have been enforceable against the liquidator. F sought to recover the loss of profit that he would otherwise have made from the onward sale of the land or from developing it himself. F alleged that his losses were greater than the £100,000 compensation that he had received from the liquidator.

Held: The claim was dismissed.

i. The legal executive at PMH who had worked on the transaction had not properly understood it. F had not appreciated that the option agreement did not extend to, or confer any interest in, the land itself. The legal executive had failed to remedy this misunderstanding which meant that PMH had been negligent.

ii. However, on the evidence, even if he had been correctly advised, F would not have taken an option over the land rather than over the shares. Accordingly, F had failed to show causation.

iii. F had not established that he had, in fact, lost any profit from a possible resale of the parcel of land. The alternative claim, for loss of profits from a future redevelopment of the land, was too speculative to provide a basis for a claim to damages. F had therefore failed to prove that he had suffered any loss or damage.

COMPULSORY PURCHASE

18 Court of Appeal

Compensation – Land Compensation Act 1961 – assessment of compensation for acquisition of land for residential development as part of business park – whether compensation to be assessed on assumption that planning permission would otherwise have been granted for independent residential development to be carried out by respondent – appropriate planning assumptions to be made when applying s6 of and Schedule 1 to 1961 Act

** JS BLOOR (WILMSLOW) LTD V HOMES AND COMMUNITIES AGENCY
[2015] PLSCS 160 – Decision given 22.05.15

Facts: JSB owned 27 acres of poor quality grazing land ("the reference land") compulsorily acquired with other mainly green field land for a business park development. The existing use value was estimated by HCA at approximately £2,000 per acre; JSB claimed just under £2.6 million based on the planning permission for the acquiring authority's scheme or alternatively 'hope value' based on the prospect of permission for residential development being granted. Both the long-standing and emerging planning policies supported development of a business park, with a residential element but only as a part of a comprehensive business park development. JSB argued that, in the absence of the business park scheme on which the CPO was predicated, the planning policy would be relaxed and permission would be granted for stand-alone residential development. The Upper Tribunal (Lands Chamber) awarded compensation of £746,000 based on a 50% chance of planning permission being granted for residential development.

Point of dispute: Whether HCA's appeal against the Tribunal's decision should be allowed. HCA contended that the valuation exercise was based on an incorrect application of the statutory tests to be applied; the land was not 'allocated' for development and therefore planning permission could not be assumed, and there was no meaningful prospect of permission being obtained for an independent residential development.

Held: The appeal was allowed.

i. The appeal essentially related to implementation of the statutory disregards in s6 and Schedule 1, Land Compensation Act 1961.

ii. The application of the disregards, under s6 LCA 1961 and/or the Pointe Gourde principle, in order to eliminate positive or negative impact of the 'scheme' on the value, was contingent on establishing the planning assumptions. The Tribunal should first have decided what planning permissions were to be treated as being in place in respect of the reference land and what other permissions had some prospect of being granted; once those matters were determined a valuation of the land could be undertaken.

iii. It may be necessary to exclude some of the planning assumptions in order to provide a valuation of the land unaffected by the scheme. If an assumed or potential planning permission were dependent in this case on the business park scheme and the planning status of the land to be developed with the scheme, then the effect on the value of the reference land is to be excluded by ignoring that planning permission.

iv. It was in this case difficult to exclude or disregard the impact of the scheme on value except by some modification to the actual planning situation whereby it is assumed that not only the scheme, but also the planning policies supporting it, are no longer in place.

v. The disregard, in s6 (1) LCA 1961, of the prospect of development of the business park land was to be construed as referring to the scheme of development itself, together with the development plan strategy and policies and the implementation of the policies by the grant of planning permission and the making of the CPO, as well as the physical development of the land. This interpretation of s6 (1) is consistent with the Point Gourde principle.

vi. The Tribunal should therefore have considered the planning potential of the reference land without regard to the development scheme and its underlying policies and therefore its effect on value.

vii. It is not however necessary to 'rewrite history'. Regard may still be had to wider planning policies not specific to the scheme underlying the acquisition.

19 Upper Tribunal: Lands Chamber

Compulsory Purchase – costs – agreement for compensating authority to take temporary possession of claimant's basement premises to use as working site during Crossrail project – UT determining references for compensation

*BPP (FARRINGDON ROAD) LTD V CROSSRAIL LTD
[2015] PLSCS 195 – Decision given 18.06.15

Facts: In August 2007 the compensating authority, Crossrail Ltd (C), took temporary possession of BPP's basement premises in London EC1 to use as a working site in connection with the Crossrail project. Initially it was agreed that compensation would be payable as if the temporary possession had been acquired compulsorily under the Crossrail Bill. Subsequently the Crossrail Act 2008 enacted that issues over compensation were to be determined under Part 1 of the Land Compensation Act 1961. C took possession of the basement in January 2010 and it was anticipated that possession would be returned to BPP in 2018. BPP sought £29.75m in compensation. The Upper Tribunal rejected an application by C to strike out that reference.

Point of dispute: Whether BPP should be awarded its costs in the proceedings. C argued none of the relevant rules conferred a power to award costs where the proceedings concerned the exercise of only temporary, rather than permanent, rights of possession.

Held: The issue was determined in BPP's favour.

i. Section 4 of the 1961 Act provided a freestanding jurisdiction to award costs in the cases to which it applied. The expression "acquiring authority" in the section could be understood to mean a nominated undertaker who was obliged to pay any compensation due. Likewise, the "land" in question should be understood to comprise rights over land, which would include the right, conferred by para 1(1) of Schedule 5 to the 2008 Act, to use and temporarily occupy the basement of the property. So far as para 1(5) of Schedule 5 to the 2008 Act expressly provided for determination of disputes "under and in accordance with Part 1" of the 1961 Act, it was apparent that the whole of Part 1 was intended to be applicable and that, in particular, the s4 costs regime was to apply to the resolution of disputes arising out of the exercise of the power of temporary possession.

ii. In this case, however, the UT was not dependent on s4 of the 1961 Act for its power to award costs. It could also award costs under s29 of the Tribunals Courts and Enforcement Act 2007 and the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010. The reference in Rule 10(6)(a) was wide enough to include proceedings for compensation where temporary possession of land was taken under statutory powers. Even though the authority had not permanently acquired the land it had taken control of it and the wording of Rule 10 was wide enough to embrace this.

20 High Court

CPO – compensation – limitation – injunction to prevent use of road

**SAUNDERS V CAERPHILLY COUNTY BOROUGH COUNCIL
[2015] PLSCS 180 – Decision given 11.06.15

Facts: In December 1991 the predecessor in title of the defendant council, CCBC, as highway authority, served notice to treat under a CPO in respect of a strip of land on S's farm which was needed for the construction of a new road. Shortly thereafter CCBC entered the strip and built the road, the effect of which was to sever the farm in two and cut off the drainage system to the farm buildings. During the course of negotiations CCBC suggested that it was premature to refer the claim for assessment by the Tribunal but clearly communicated in a letter that that if it were not agreed it would be referred. 23 years after the date of entry the final assessment of compensation due to S under the Compulsory Purchase Act 1965 had not taken place. S applied for an order that CCBC should refer the matter for assessment and an injunction restraining CCBC from using the road. CCBC argued that these claims were barred by the Limitation Act 1980.

Points of dispute: The court ordered three preliminary issues to be tried:

i. Whether s9(1) of the 1980 Act (which imposed a six year limitation period for bringing the action) was applicable to S's claims;

ii. If so, whether CCBC was prevented from raising a defence based on limitation; and

iii. Whether S's claim for an injunction preventing the use of the road should be struck out as it disclosed no reasonable ground for bringing or defending the claim.

Held: The claim was allowed in part.

i. The ambit of s9 was wide enough to embrace the claims in this case.

ii. The acquiring authority was estopped by convention from relying upon the expiry of the time limit because of the nature of the ongoing negotiations between the parties and given the clear assurance by CCBC. Given the circumstances it would have been unconscionable for CCBC now to take the limitation defence.

iii. As the matter of compensation would now be referred to the Tribunal, there was no purpose in granting the injunction sought. If it had been necessary to do so the court would have decided that, as the surface of the road had been vested in CCBC as the highway authority, there was no reasonable ground for bringing this claim.

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

LONDON

21 Mayor of London Consultation

Draft Interim Housing Supplementary Planning Guidance
Deadline for Comments: 07.08.15

This draft SPG provides guidance on the implementation of housing policies in the 2015 London Plan, taking account of changes made through the Further Alterations to the London Plan which sought to respond to substantial projected increases in London's population. It is anticipated that London needs to provide 49,000 new homes each year between 2015 and 2036. This document addresses housing supply, housing quality, housing choice, affordable housing, investment in existing housing stock, social infrastructure and mixed use and large developments.

https://www.london.gov.uk/sites/default/files/Draft%20Interim%20Housing%20Supplementary%20Planning%20Guidance.pdf

22 Mayor of London Supplementary Planning Guidance

Social Infrastructure

Social infrastructure includes a range of services and facilities including health, education, community, cultural, play, recreation and sports facilities and other local services which contribute to quality of life. 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 the efficient and timely delivery of social infrastructure in a way that meets the broader built environment aims of the London Plan;
- provides advice on planning for London Neighbourhoods;
- describes Department of Health models for service delivery in a way that will help planners and health professionals to communicate with each other;
- sets specific targets for the provision of burial space based upon projections of need and survey of existing capacity set out in the 2011 Audit of London Burial Provision; 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

MINERALS

23 Planning Officers Society and Mineral Products Association Publication

Practice Guidance on the Production and use of Local Aggregate Assessments

This document provides mineral planning authorities (MPAs) with advice on good practice in producing Local Aggregate Assessments (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

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TRANSPORT

24 Government Publication

Airports Commission: Final Report

The final report sets out the Airports Commission's:

- assessment of the three shortlisted options for expanding the UK's aviation capacity; and
- recommendations to government as to which of the options best addresses the UK's capacity and connectivity needs.

The report concludes that capacity should be expanded at Heathrow with the construction of a new Northwest runway.

A 'Business case and sustainability assessment' containing the supporting evidence base has been published alongside the final report.

https://www.gov.uk/government/publications/airports-commission-final-report

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Abbreviations
The following abbreviations are used in evebrief:

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

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

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

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

* Interesting but non–essential reading.

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EVEBRIEF

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01 Scotland – Planning
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SCOTLAND

PLANNING

01 Statutory Instrument

SSI 2015/232 – The Scheduled Monuments (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Regulations 2015

These Regulations come into force on 01.10.15 and prescribe the classes of appeal which are to be determined by persons appointed for the purpose by the Scottish Ministers instead of by the Scottish Ministers themselves.

http://www.legislation.gov.uk/ssi/2015/232/contents/made

02 Statutory Instrument

SSI 2015/233 – The Town and Country Planning (Appeals) (Scotland) Amendment Regulations 2015

These Regulations come into force on 01.10.15 and amend the 2013 Regulations to extend the application of those Regulations to appeals under s5B of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 which is concerned with proceedings for questioning the validity of orders, decisions and directions.

http://www.legislation.gov.uk/ssi/2015/233/contents/made

GERALDEVE

03 Statutory Instrument

SSI 2015/235 – The Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2015

This Order, which comes into force on 01.10.15, amends the 1992 Order. Article 3(4) inserts Part 25B into Schedule 1 of the 1992 Order conferring permitted development rights in respect of development by or on behalf of the Scottish Ministers in relation to the maintenance, repair or reinstatement of ancient monuments and the exercise of other functions under the Ancient Monuments and Archaeological Areas Act 1979.

http://www.legislation.govuk/ssi/2015/235/contents/made

04 Statutory Instrument

SSI 2015/236 – The Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) (Scotland) Amendment Regulations 2015

W.e.f. 01.10.15 these Regulations amend the 2010 Regulations by extending those classes of appeal which are to be determined by persons appointed for the purpose by the Scottish Ministers instead of being determined by the Ministers themselves to include appeals under s58 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997.

http://www.legislation.gov.uk/ssi/2015/236/contents/made

05 Statutory Instrument

SSI 2015/237 – The Town and Country Planning (Historic Environment Scotland) Amendment Regulations 2015

These Regulations, which also come into force on 01.10.15, make amendments to a number of Scottish Regulations following the establishment of Historic Environment Scotland by the Historic Environment Scotland Act ("the 2014 Act").

- Regulation 2 amends the Environmental Impact Assessment (Scotland) Regulations 1999 to include Historic Environment Scotland as a consultation body for the purposes of Part 4 of those Regulations.
- Regulation 3 amends the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 to add Historic Environment Scotland to the list of bodies specified as a key agency for the purposes of various provisions of the Town and Country Planning (Scotland) Act 1997.
- Regulation 4 amends the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 to include Historic Environment Scotland as a consultation body for the purposes of those Regulations.
- Regulation 5 amends the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013 to update the definition of "category A listed building" to take account of changes made by the 2014 Act and to provide for consultation with Historic Environment Scotland, rather than the Scottish Ministers, in connection with planning applications in circumstances where development may affect aspects of the historic environment.

http://www.legislation.gov.uk/ssi/2015/237/contents/made

06 Statutory Instrument

SSI 2015/238 – The Historic Environment Scotland (First Planning Period) Order 2015

This Order comes into force on 01.10.15 and specifies the period from 01.04.16 to 31.03.19 as the first planning period for Historic Scotland's corporate plan.

http://www.legislation.gov.uk/ssi/2015/238/contents/made

07 Statutory Instrument

SSI 2015/239 The Historic Environment Scotland Act 2014 (Saving, Transitional and Consequential Provisions) Order 2015

W.e.f. 01.10.15 this Order makes saving, transitional and consequential provisions in relation to the commencement of various provisions of the Historic Environment Scotland Act 2014.

http://www.legislation.gov.uk/ssi/2015/239/contents/made

08 Statutory Instrument

SSI 2015/241 The Listed Buildings (Notification and Publication) (Scotland) Regulations 2015

These Regulations, which come into force on 01.10.15, make provision in respect of the notification and publication requirements introduced by the Historic Environment Scotland Act 2014, where a listed building is either included in or excluded from the list of buildings of special architectural or historic interest compiled or approved under s1 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, or where an entry relating to a building in that list is amended.

http://www.legislation.gov.uk/ssi/2015/241/contents/made

09 Statutory Instrument

SSI 2015/243 The Planning (Listed Building Consent and Conservation Area Consent Procedure) (Scotland) Regulations 2015

These Regulations revoke and replace the 1987 Regulations and provide for the procedures to be followed in relation to applications for listed building consent, applications for conservation area consent and applications for variation and discharge of conditions made on or after 01.10.15, the date on which Historic Environment Scotland is established under the Historic Environment Act 2014.

http://www.legislation.gov.uk/ssi/2015/243/contents/made

10 Statutory Instrument

SSI 2015/249 The Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2015

W.e.f. 14.09.15 these Regulations make various amendments to the following Regulations:

- the Conservation (Natural Habitats, &c.) Regulations 1994;
- the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010;
- the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010;
- the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011;
- the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013;
- the Town and Country Planning (Appeals) (Scotland) Regulations 2013; and
- the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013.

http://www.legislation.gov.uk/ssi/2015/249/contents/made

11 Scottish Assembly Government Circular

Circular 2/2015 – Consolidated Circular on Non-Domestic Permitted Development Rights

This Circular brings together guidance previously contained in a number of separate Circulars concerning relevant aspects of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended. It also updates and replaces previous guidance, where relevant, to take account of wider legislative changes, including the implementation of the Planning etc. (Scotland) Act 2006 and associated secondary legislation.

http://www.gov.scot/Publications/2015/06/3717

12 Scottish Assembly Government Consultation

Permitted Development Rights: Non-Domestic Solar Panels and Domestic Air Source Heat Pumps Deadline for Comments: 27.08.15

This consultation invites comments on proposals to expand the range of situations in which non-domestic solar panels and domestic air source heat pumps can be installed without first having to apply for planning permission.

http://www.gov.scot/Publications/2015/06/6617

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WALES

PLANNING

13 Statutory Instrument

WSI 2015/1330 The Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2015

W.e.f. 22.06.15 this Order makes various amendments to the 2012 Order, relating to definitions, bringing internal operations of a certain size and description within planning control, publicity for applications for planning permission, time limits, consultation requirements and appeals.

http://www.legislation.gov.uk/wsi/2015/1330/contents/made

14 Statutory Instrument

WSI 2015/1331 The Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2015

W.e.f. 22.06.15 these Regulations lay down the procedure and time limits in connection with the determination of certain prescribed applications that are referred to the Welsh Ministers and appeals where the matters are to be considered on the basis of written representations. They revoke and replace, with some changes, the 2003 Regulations, subject to transitional and saving provisions. The main changes are the introduction of a new, expedited procedure in Part 1 of the Regulations which applies where the Welsh Ministers have determined under s319B of the Town and Country Planning Act 1990 that a householder, advertisement consent or minor commercial appeal is to be dealt with on the basis of representations in writing.

http://www.legislation.gov.uk/wsi/2015/1331/contents/made

15 Statutory Instrument

WSI 2015/1332 The Planning (Listed Buildings and Conservation Areas) (Wales) (Amendment) Regulations 2015

W.e.f. 22.06.15 these Regulations amend the 2012 Regulations as follows:

- Regulation 2(2) and (3) amend Regulation 12 of the 2012 Regulations by removing the six month time limit for lodging an appeal following the failure of a local planning authority to determine an application for listed building consent within the determination period prescribed in Regulation 3(5) of the 2012 Regulations; and
- Regulation 2(4) inserts a provision into the 2012 Regulations prescribing an additional period of four weeks for the purposes of s20A of the Planning (Listed Buildings and Conservation Areas) Act 1990.

http://www.legislation.gov.uk/wsi/2015/1332/contents/made

16 Welsh Assembly Government Consultation

Developments of National Significance (DNS)
Deadline for Comments 12.08.15

This consultation paper seeks views on detailed proposals to establish a new system for the processing by the Welsh Ministers of Developments of National Significance (DNS), which is a new category of planning application. The matters covered by this consultation include:

- the thresholds and criteria for qualification as an application for DNS;
- which secondary consents may be submitted for consideration and determination alongside a DNS application;
- how the pre-application notification, advice and consultation is to be undertaken;
- the procedure for considering and determining a DNS application;
- the proposed fee structure for DNS applications; and
- the role of local planning authorities.

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

17 Welsh Assembly Government Consultation

Secondary legislation for development management
Deadline for Comments: 11.09.15

This consultation invites comments on proposals for some of the secondary legislation which would be introduced once the Planning (Wales) Bill receives Royal Assent. Some of the proposals directly relate to the new development management provisions in the Bill, while others promote the wider principle of making the planning system more effective and efficient.

The new provisions that it is proposed to introduce relate to:

- invalid applications, notices and appeals;
- decision notices;
- notification of development;
- consultations in respect of certain applications for approval;
- appeals against a notice issued in respect of unsightly land;
- post-submission amendments; and
- changes to applications made under s73 of the Town and Country Planning Act 1990.

http://gov.wales/consultations/planning/secondary-legislation-for-development-management/?lang=en

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