EVEBRIEF

Legal & Parliamentary

Volume 38(02) 14 March 2016

RATES LIABILITY MATTERS

We report in this issue on two rating cases, at Items 12 and 13 respectively. The first concerns the correct method of valuation to be applied in respect of three small independent primary schools. The Upper Tribunal found that all of the comparable evidence was flawed in some way and preferred the contractor's method of valuation. The second relates to the application of 80% charitable relief. In this case the decision went against the ratepayer as the use of 42% of the property was deemed insufficient to constitute 'wholly or mainly' charitable use. The remainder was unused so the court decided that the main use was 'no use'.

These cases provide clarity on issues that have already been looked at in some detail. However, they also fall into the pattern of increased pressure on rates and ratepayers. On the one hand the Valuation Office seems determined to find more rateable value whether by rating property not previously separately assessed, for example ATMs ('cash machines'), or by reviewing valuation and approach. On the other hand, billing authorities are set to look more closely at liability and reliefs. As local rates retention increases to 100% in 2020 we expect such matters to be subject to even greater scrutiny and challenge.

If there is any good news on the horizon (at least as far as increases in assessments are concerned) it is that after 31.03.16 the effect of any change to a rateable value made by a Valuation Officer may be backdated only as far as 01.04.15. Until the end of this month a change could be backdated to 01.04.10, creating significant and often unexpected retrospective liability.

Hilary Wescombe
Editor

GERALDEVE

LANDLORD & TENANT

01 Upper Tribunal: Lands Chamber

Landlord seeking to recover legal expenses through service charge

*GEYFORDS LTD V O'SULLIVAN
[2016] PLSCS 16 – Decision given 17.12.15

Facts: The appellant, G, owned the freehold of mixed use premises in Wallington, Surrey. The respondents owned long leases of some of the flats in the building which provided for the payment of a service charge to cover G's expenses in respect of various specific matters listed in the fourth schedule and, in para 6, *"all other expenses (if any) incurred in and about the maintenance and proper and convenient management and running of the development"*. A dispute between G and the respondents over the latter's liability to contribute through the service charge to the cost of major works to the building ended with an application by the respondents to the LVT who determined the issue substantially in G's favour, but G was barred from recovering any of its costs of the proceedings through the service charge.

Point of dispute: Whether to allow G's appeal against the ruling of the FTT that the language of the service charge provisions in the leases was not wide enough to allow the landlord to recover expenditure which it incurred in contesting legal proceedings brought against it.

Held: The appeal was dismissed.

- The proper approach to the interpretation of service charge provisions in leases was the same as the approach to the interpretation of other contractual terms.
- The words *"proper and convenient management and running"*, used in the context of a mixed residential and commercial building, did not have a precise meaning which either clearly included or excluded the activity of litigating over collecting or quantifying the sums required to repair the building. *"Management"* could include obtaining professional advice, but it was less clear that proceedings to enforce the obligations of individual leaseholders fell naturally within the scope of *"management and running"*.
- Parties to a contract need clarity when defining their payment obligations. Clear and unambiguous terms would be needed to impose an onerous and unusual payment obligation requiring lessees, who paid their rent and service charges, to subsidise the landlord's costs of proceedings against defaulting lessees.
- The language of para 6 of the fourth schedule to the respondents' leases was not clear enough for the cost of proceedings against defaulting leaseholders to be recoverable as costs and expenses of "proper and convenient management and running of the development" and it was unlikely that the parties intended such costs to be included in the residual *"all other (if any)"* category.

02 CLG Guidance

Model agreement for a shorthold assured tenancy

This model tenancy agreement was first published on 11.09.14, but was updated in February 2016 in order to reflect recent legislative changes. The agreement, which also contains guidance on its use and clauses, has been designed for use when the landlord and tenant are entering into a shorthold assured tenancy agreement in the private rented sector. It is particularly relevant for longer terms (more than two years) and contains provisions for rent reviews and for bringing the agreement to an end during the fixed term if the circumstances of either the landlord or tenant change. Use of this model agreement is voluntary.

https://www.gov.uk/government/publications/model-agreement-for-a-shorthold-assured-tenancy

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

Challenge to grant of planning permission for mixed use development including housing – error in planning officer's report concerning unmet housing need – whether error affected outcome of decision

*R (ON THE APPLICATION OF SMECH PROPERTIES LTD) V RUNNYMEDE BOROUGH COUNCIL [2016] PLSCS 36 – Decision given 03.02.16

Facts: In August 2014 the respondent council, RBC, granted planning permission to the second respondents for a mixed use development, including 200 dwellings, on a 33 hectare site near to the M3 in Chertsey, Surrey. The site was in the metropolitan green belt which meant that development could not be approved except in very special circumstances. The appellant, SPL, who owned land near to the application site, objected to the proposed development. The "very special circumstances" outlined in the planning officer's report recommending grant of permission were that it would not be possible to demonstrate a five-year supply of housing land, in accordance with para 49 of the NPPF, without the inclusion of the proposed housing on the application site. This advice was based on RBC's emerging local plan core strategy (LPCS) which indicated a need for 595 homes per year from 2013 to 2018, but proposed only 220 homes per year, and on a housing technical paper prepared in support of the LPCS. This advice was erroneous because the technical paper showed that 220 homes per year could be provided without using the application site, and even with the addition of the site the need for 595 homes could not be met. The LPCS was subsequently withdrawn.

Point of dispute: Whether to allow SPL's appeal against the ruling of the judge in the court below that the planning permission should not be quashed because, although the officer's report had materially misled RBC about material matters, the need for housing was greater than previously thought and RBC would inevitably have reached the same conclusion in any event.

Held: The appeal was dismissed.

- Being a review of the decision of the lower court rather than a rehearing it may be appropriate for the appeal court to give weight to the assessment of the facts made by the judge below, and this was particularly so where that judge had particular expertise of the area in question or where he/she had had more opportunity to go into the case in some depth than the appeal court. Both factors applied in this case.
- The advice in the officer's report regarding housing provision had been erroneous which had materially misled RBC, but nonetheless the judge had been entitled to refuse relief in the exercise of her discretion. She had rejected SPL's case and, in doing so, had implicitly found that creating 200 new homes on an achievable deliverable housing site was a significant contribution to meeting the pressing housing need in RBC's area. She had been fully entitled to make this assessment.
- The judge had correctly approached the matter by reference to the full, objectively assessed needs of the area rather than any lower target figure. It was open to her to assess that if properly advised RBC would have judged the proposed development to be a justified way in planning terms to make a significant contribution to meeting the significant housing needs of the area at minimal cost to the green belt and on a particularly well-placed site in infrastructure terms.
- The judge had noted that the site was already covered with dilapidated buildings so the impact on the openness of the green belt from the development would be limited.
- The judge had not underestimated the stringency of the "very special circumstances" test under para 87 of the NPPF.
- The judge had been entitled to conclude that had it been properly advised about the position in relation to housing need in its area RBC would inevitably have reached the same decision to grant planning permission.

04 Court of Appeal

Planning appeal – inspector granting permission on appeal for stationing mobile home in green belt – decision quashed on ground of error in findings relating to five-year housing supply – whether judge erred in approach to quashing order

*SOUTH GLOUCESTERSHIRE COUNCIL V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2016] PLSCS 40 – Decision given 05.02.16

Facts: The second respondent, X, sought planning permission for a mobile home in the green belt. He suffered from serious mental health illness and had been living in the mobile home for approximately ten years. When SGC failed to determine the planning application X appealed to the appellant Sec of State. The Sec of State's planning inspector resolved to grant permission on the grounds that SGC's core strategy failed to provide a five-year supply of housing land as required by the NPPF. He also found that there would only be very limited harm to the appearance of the area and that because of the exceptional health needs and personal circumstances of the family there were very special circumstances which justified the inappropriate development in the green belt. The inspector's decision was quashed in proceedings brought by SGC. It was ruled that the inspector had erred in his findings regarding the five-year housing supply and he had misapplied the PPG.

Point of dispute: Whether to allow the appellant Sec of State's appeal against the decision of the court below. The Sec of State did not dispute that the inspector's decision was flawed, but contended that the judge should have exercised his discretion not to grant a quashing order since the inspector would have reached the same decision even if he had not fallen into error.

Held: The appeal was allowed.

- If the court was to exercise its discretion not to grant relief where unlawfulness had been found it had to be satisfied that the decision-maker would have reached the same decision but for the legal error. That test was met on the facts of this case.
- While the lack of an up-to-date housing supply had weighed in SGC's favour the inspector had not returned to that issue in dealing with the other crucial issue in this appeal – whether the harm to the green belt was outweighed by other considerations amounting to very special circumstances justifying the development.
- The exceptional health needs of X and personal circumstances of the family weighed heavily in favour of the development. Those conclusions formed the core of the inspector's analysis and it is unlikely that evidence regarding five-year housing supply would have affected his decision. The addition of a single dwelling subject to a personal condition limiting its occupation to X would not have made a material difference to the housing supply. It was inconceivable that the inspector would have reached a different decision had he dealt with the housing land supply issue correctly.
- The judge had erred in the exercise of his discretion in such a way as to justify setting his decision aside. In the unusual circumstances of this case it was appropriate for the appeal court to exercise its own discretion to uphold the inspector's decision to grant planning permission.

05 Court of Appeal

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
[2016] PLSCS 39 – Decision given 05.02.16

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 on the ground in s174(2) of the Town and Country Planning Act 1990, namely that the steps required to comply with the notice requirements were excessive, was dismissed by an inspector appointed by the Sec of State and his appeal against that decision was also dismissed by the judge in the court below.

Point of dispute: Whether to allow M's appeal against the judge's decision.

Held: The appeal was dismissed. M's real complaint was that the inspector did not consider the planning merits of the alternative proposal, which was for use as a restaurant and drinking establishment. He was not seeking approval for the use enforced against which included a nightclub as well. That outcome could not be achieved by means of an appeal on ground (f) in the absence of a ground (a) appeal and a deemed application for planning permission. The planning harm which the lpa had identified in their reasons for issuing the notice were not concerned merely with injury to amenity but extended to other planning considerations. The inspector had been entitled to conclude that he could not take account of the general planning considerations raised in the appeal since they were more appropriate to an appeal on ground (a).

06 Court of Appeal

Judicial review of planning permission for solar farm – extension of time granted for claim under CPR 54.5 – breach of legitimate expectation that respondent local resident would be informed by letter of planning application – whether reasonable grounds for delay in bringing claim

*R (ON THE APPLICATION OF GERBER) V WILTSHIRE COUNCIL
[2016] PLSCS 59 – Decision given 23.02.16

Facts: In June 2013 the appellant planning authority, WC, granted planning permission for a solar farm on 22ha of land at Broughton Gifford, Wilts. The respondent, G, owned a Grade II* listed building nearby. WC had posted notices about the planning application in various locations in the vicinity of the site, which G did not see, nor did he see the notice of the application published in the local newspaper and on WC's website. G first became aware of the development when works started in March 2014 and notified WC of his objection to it on grounds relating to its impact on the setting of his property. In August 2014 he brought a claim for judicial review of the planning permission. At the hearing on whether G could bring this claim, notwithstanding his delay, the judge held that an extension of time should be granted because WC had, in their Statement of Community Involvement (SCI), created a legitimate expectation in G that he would receive a letter of notification about the planning application as an owner of a neighbouring property.

Point of dispute: The court below ruled in G's favour on the issues in the substantive claim. Whether to allow WC's appeal solely on the issues of legitimate expectation and delay.

Held: The appeal was allowed.

i. In order to give rise to a legitimate expectation there had to be a promise by a public authority which was clear, unambiguous and devoid of relevant qualification. The judge had been wrong to say that WC's SCI contained an unambiguous promise to consult G directly about the application for planning permission. The policy was directed to consultation with the owners of properties adjoining sites for proposed development. Gifford Hall did not adjoin the site, so G did not fall within the policy.

ii. The judge's error regarding legitimate expectation had affected the exercise of his discretion to extend time for G to bring his claim. There was no reasonable explanation for his delay between June 2013 and March 2014 when he first contacted WC objecting to the development.

iii. An objector to a grant of planning permission must act speedily to challenge the grant in the courts so as not to prejudice those with other interests such as the developer.

iv. In the absence of any legitimate expectation G was in the same position as any member of the public regarding notification of applications for planning permission in the locality. Landowners were expected to be reasonably observant and to look out for developments happening in their locality which might affect them.

v. The judge had erred in finding that G had a reasonable explanation, based on his reliance on legal advice, for the delay between March 2014 and bringing legal proceedings in August 2014. Other than in exceptional circumstances it would be wrong in principle for the court to exercise its discretion to extend time to bring judicial review proceedings in the planning context by reference to legal advice which an objector might have received. The extension of time granted to G under CPR 54.5 should be set aside, as, in consequence, should the judge's order quashing the planning permission.

07 Planning Court

Judicial review of conditional planning permission

*R (ON THE APPLICATION OF SKELMERSDALE LTD PARTNERSHIP) V WEST LANCASHIRE BOROUGH COUNCIL
[2016] PLSCS 31 – Decision given 27.01.16

Facts: The claimant, SLP, owned a shopping centre called The Concourse in Skelmersdale. The interested party applied for planning permission for a new retail-led development on another site in Skelmersdale, further away from the town centre, part of which was owned by the defendant lpa, WLBC. WLBC granted permission subject to a condition that for a period of five years no retail floor space should be occupied by any retailer who, at the date of the permission or 12 months prior to the occupation of the new development, occupied retail floor space exceeding 250 square metres within The Concourse.

Point of dispute: Whether to allow SLP's application for judicial review of the condition in the planning permission. SLP contended that: (i) the condition was unenforceable owing to the lack of an implementation clause; (ii) the condition was unenforceable because the owners and occupiers had no control over third-party land and its terms were too vague to be enforced; (iii) the condition would fail to achieve its stated purpose, which was the long-term viability of the shopping centre, and thus WLBC had ignored material considerations; and (iv) the condition was unreasonable because it discriminated against named companies.

Held: The application was dismissed.

i. The condition required the giving of a legally binding commitment.

ii. The interested party had no control over the activities of the retailers in the Concourse Centre. In practice, the condition would be enforced by WLBC requiring retailers to enter into a s106 agreement committing them to retain a presence in the centre for the relevant period of time. In any event the condition was not too vague to be enforced because there was an appropriate mechanism for making and adjudicating on reasonable planning judgments.

iii. An application for judicial review based on criticisms of the planning officer's report would not normally begin to merit consideration unless the overall effect of the report significantly misled the committee about material matters which thereafter were left uncorrected before the decision was taken. In this case there was nothing to suggest that planning officers had been misled by the report.

iv. The impact of the condition was not discriminatory in any legally relevant way. Its purpose was to prevent retailers from leaving The Concourse Centre and relocating to the new site, and thus to protect existing town centre businesses. This was a legitimate planning purpose.

08 Planning Court

Appeal against refusal of planning permission for residential development – procedural unfairness

*EDWARD WARE HOMES LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT [2016] PLSCS 30 – Decision given 27.01.16

Facts: The claimant company, EWH, appealed against refusal of planning permission for residential development on three different sites in rural locations near Bath. The inspector issued decision letters dismissing the appeals in respect of two of the sites which were greenfield locations in the Somer Valley and outside settlement boundaries.

Point of dispute: Whether to allow EWH's application to quash the inspector's decisions (the two claims being heard together as the issues in each were identical). The inspector had identified the main issue as being whether there was a five-year housing land supply available in the housing market area and how that might bear upon the relevance of development plan policies affecting the direction of growth and the release of housing sites in Bath.

EWH contended that:

i. the inspector had misdirected himself with regard to para 14 of the NPPF, containing the presumption that planning permission should be granted unless specific policies in the framework indicated that development should be restricted;

ii. the inspector had unfairly relied on the conclusion that the appeal proposals would undermine the spatial strategy for directing growth initiatives towards Bath which was not based on any evidence or submissions at the inquiry; and

iii. the inspector had acted unfairly by rejecting the appeal proposals on the basis of frontloading, raising new points in his decision letter for the first time which had not been raised earlier in the appeal process.

Held: The application was allowed.

i. Where a five-year supply of housing land did not exist, para 49 of the NPPF deemed the policies in the local plan for the supply of housing land to be out-of-date, even if that would not otherwise be the case under para 14. The deeming provision in para 49 engaged the presumption in favour of development in para 14. The weight to be given to housing supply policies in a development plan was a matter of judgment for the decision-maker and he could conclude that the policy was up-to-date, notwithstanding paras 14 and 49. In this case the inspector's approach had been correct when he decided that the rationale for the relevant distribution policies continued to be strong notwithstanding the lack of a five-year supply for the district as a whole.

ii. At the inquiry there had been no discussion of whether allowing the appeals would divert development away from Bath or whether it would impede the strategy of directing a certain level of growth to Bath. There was nothing in the core strategy to indicate that development in Somer should be restrained in order to direct growth to Bath. This point not having been raised by either party or the inspector meant that EWH had unfairly been denied the opportunity of presenting any evidence on it.

iii. The inspector had acted unfairly by rejecting the appeal proposals on the basis of frontloading. This had caused material prejudice to EWH and procedural unfairness because the inspector had relied on the frontloading point as a further reason for dismissing the appeals, without the point being raised as an issue to be addressed.

09 Administrative Court

Whether planning permission required for cycle superhighway in London – whether development under s55 of the Town and Country Planning Act 1990

*R (ON THE APPLICATION OF THE LICENSED TAXI DRIVERS ASSOCIATION) V TRANSPORT FOR LONDON [2016] PLSCS 46 – Decision given 10.02.16

Facts: In 2015, following an environmental evaluation report (EER) the defendant, TFL, which was the highway authority for all roads in Greater London, approved the construction of four cycle superhighways, including the East-West Cycle Superhighway (EWCS) a 9.5km largely segregated cycle route between Tower Hill and Acton. The claimant, a representative body for licensed taxi drivers in London, (TDA), objected to the project which involved changing the road layout to provide a wide two-way kerb segregated cycle track within the road.

Point of dispute: Whether to allow TDA's application for judicial review of the decision to permit the construction of EWCS. It sought a declaration that the construction of the EWCS by TFL without planning permission constituted a breach of planning control. Section 55(2)(b)of the 1990 TCPA excepted from the definition of development which required planning permission 'the carrying out on land within the boundaries of a road by a highway authority of any works required for the maintenance or improvement of a road, but in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment'. TFL considered that the works were improvements within s55(2)(b) of the 1990 TCPA which did not require planning permission because they would not have a significant adverse impact on the environment .

Held: The application was dismissed.

- The works were in the boundaries of a road and being carried out by TFL as highway authority. At all times TFL was acting as highway authority and so fell within s55(2)(b) of the 1990 Act. The cycleway constituted an improvement to the road.
- The words 'any works' in s55(1)(b) meant that the court had to have regard to the entirety of the works constituting phase one of the EWCS.
- The conclusion of the EER was that the proposals had no significant effect on the environment. The court was satisfied that TFL did not err in law and had not been irrational in reaching the conclusion that the project would have no significant environmental effect.
- On the evidence before the court, planning permission was not required for phase one of EWCS as a whole.
- In any event, in the exercise of its discretion the court would have refused relief. Most of the works involved in EWCS could be carried out lawfully without any recourse to a local planning authority and it was unlikely that the court could grant any declaration in the terms sought. Whether there was any adverse environmental impact from the project was a matter of planning judgement for the lpa,
- TDA should have raised its concerns during the consultation stage of EWCS.

10 CLG and Department for Environment, Food and Rural Affairs Consultation

Rural planning review: call for evidence
Deadline for Comments: 21.04.16

The rural productivity plan committed the government to review the planning constraints on rural businesses and to review the use of agricultural buildings for residential purposes. The rural planning review takes forward these commitments and this call for evidence invites those with an interest in rural areas, especially farmers and other businesses operating in rural areas, to give their views to the government on how they consider that the planning system is working in rural areas and how they consider that it could be improved.

https://www.gov.uk/government/consultations/rural-planning-review-call-for-evidence

11 CLG Consultation

Implementation of planning changes: technical consultation
Deadline for Comments: 15.04.16

This consultation seeks views on the proposed approach to implementation of measures in the Housing and Planning Bill, and some other planning measures. Responses to this consultation will inform the detail of the secondary legislation which will be prepared once the Bill gains Royal Assent. The following areas are covered:

- Changes to planning application fees;
- Permission in principle;
- Brownfield register;
- Small sites register;
- Neighbourhood planning;
- Local plans;
- Expanding the performance regime;
- Testing completion in the processing of planning applications;
- Information about financial benefits;
- Section 106 dispute resolution;
- Permitted development rights for state-funded schools; and
- Changes to statutory consultation on planning applications.

https://www.gov.uk/government/consultations/implementation-of-planning-changes-technical-consultation

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

RATING

12 Upper Tribunal: Lands Chamber

Rating of three small private independent primary schools in north London – Tribunal valuing schools on contractor's basis – whether sufficient rental evidence to justify valuation on rentals basis

*TURNBULL (VO) V GOODWIN SCHOOL
[2016] PLSCS 57 – Decision given 15.02.16

Facts: The VTE was asked to determine the rateable values of three small independent primary schools in north London. Taking the view that there was insufficient rental evidence to value the properties on the rentals basis it reached values of £34,250, £8,000 and £18,750 respectively using the contractor's basis of valuation.

Point of dispute: Whether to allow the VO's appeal against the VTE's decision. The VO argued that there was a rental market in small private independent schools and therefore sufficient evidence to support the use of the rentals basis of valuation. His rental evidence comprised a sample of ten comparables, some of which were located outside Greater London. The respondents contended that these were insufficient to support the use of the rentals basis.

Held: The VO's appeal was dismissed.

- It was well established that where possible the rentals basis of valuation should be used. There were no rules about how close the comparables had to be to the property being valued, nor did they have to be used in exactly the same way.
- However, there would be cases where the rentals basis could not be used, either because there was no rental evidence, or insufficient rental evidence in the sense that there was too little evidence or the comparable properties were insufficiently similar to the property to be valued to give a real indication of the latter's rental value. In such situations the contractor's method was used as it was in valuing independent secondary schools, hospitals, museums and state schools.
- The fact that state schools were valued according to the contractor's method was not a reason to ignore a rental market in private school premises if it existed.
- The VO had not discharged the burden of proving that there was sufficient satisfactory, appropriate and relevant comparable rental evidence available in the market place for the rentals system to prevail. There were flaws in each item in his sample. The rents for the comparable premises showed no evidence that there was a market for small private independent schools and none of the items contained any useful information from which the amount of rent that any of the respondents' schools could fetch on the open market could be ascertained.
- The VO's rental evidence was not sufficient to determine the rateable value of the premises of the three schools; according they should be valued using the contractor's method.

13 Administrative Court

Non-domestic rates – whether charity entitled to mandatory charitable relief from rates on ground that premises wholly or mainly used for charitable purposes – whether extent of use of premises relevant for determining use for charitable purposes

*SOUTH KESTEVEN DISTRICT COUNCIL V DIGITAL PIPELINE LTD
[2016] PLSCS 28 – Decision given 27.01.16

Facts: The former Curry's Building, London Road Retail Park, Grantham, a large warehouse, was leased to the respondent, DPL, on a 'meanwhile use' lease at a peppercorn rent. DPL was a charity which collected unwanted IT equipment from donors in the UK, processed it and transported it to Africa for use in schools there. Public access appeals were held at the premises on ten separate two-day periods between June 2012 and June 2014 when the lease came to an end (the appeal days). A deputy judge dismissed an application by the appellant local authority (SKDC) to make liability orders for non-domestic rates in respect of DPL's occupation of the premises. The judge held that DPL would be relieved from paying at least 80% of the rates for appeal days and did not have to pay non-domestic rates for the periods in between.

Point of dispute: Whether to allow SKDC's appeal against the judge's finding. It argued that the judge was not entitled to find that the premises were used wholly or mainly for charitable purposes.

Held: The appeal was allowed.

- The test was whether the premises were being used wholly or mainly for a charitable activity. As long as they were being so used it did not matter that they could have been used more efficiently or that the charity strictly only needed to use part of the premises. The test had to be applied to the facts as they were – it was widely known that the rules on charitable exemption could be manipulated to the advantage of both the owners of premises (who would otherwise find themselves liable to pay rates on unoccupied business premises) and the charity leasing the premises. In the present case it had not been perverse for the judge to make a finding that the premises were wholly or mainly used for charitable purposes just because the floor space in use was only 42%.
- However, the district judge had placed too much weight on the fact that no other activity was taking place at the premises. If, having regard to the nature and extent of the use, the conclusion was that the premises could not properly be said to be wholly or mainly used by the charity that conclusion could not change simply because the rest of the premises were empty. The judge appeared to assume that the fact that the remainder of the premises were unused was a factor in the charity's favour. On the facts it was not self-evident whether a judge would find that the premises were used wholly or mainly for a charitable purpose or not.
- The district judge had not been entitled to take into account as a factor, when assessing whether the premises were wholly or mainly used for a charitable purpose, the fact that they were not used for any other purpose. To that extent his decision was flawed and the matter would be remitted for further consideration.

14 Statutory Instrument

SI 2016/146 The Central Rating List (England) (Amendment) Regulations 2016

The Central Rating List Regulations 2005 designate persons and prescribe in relation to those persons descriptions of non-domestic hereditaments, under s53(1) of the Local Government Finance Act, with a view to securing the central rating en bloc of those hereditaments. The Schedule to the 2005 Regulations lists all designated persons and sets out the description of hereditament prescribed in relation to each of them. National Grid is a designated person in the Schedule. W.e.f. 11.02.16, these Regulations amend the 2005 Regulations so as to amend the definition of 'National Grid' and remove the reference to each subsidiary of National Grid Transco plc. Section 53(4) of the Local Government Finance Act 1988 provides that amending regulations altering the designated person in relation to a description of hereditament may have effect from a date earlier than that on which the amending regulations are made. Pursuant to that power, the substitution made by these regulations has effect from the date on which ownership of the relevant pipe-line transferred.

http://www.legislation.gov.uk/uksi/2016/146/contents/made

15 Statutory Instrument

SI 2016/143 The Non-Domestic Rating (Small Business Rate Relief) (England) (Amendment) Order 2016

This Order amends the 2012 Order to make provision for a continued temporary increase in the level of small business rate relief for the financial year beginning 01.04.16. The temporary increase would otherwise have ended on 31.03.16.

http://www.legislation.gov.uk/uksi/2016/143/contents/made

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

LEASEHOLD REFORM

16 Upper Tribunal (Lands Chamber)

Leasehold Enfranchisement – purchase price on enfranchisement – amendments introduced into s9(1A) of Leasehold Reform Act 1967 by s23(1) of Housing and Planning Act 1986 – s23(3) providing that these amendments do not apply to a case where a s14 notice of desire to have an extended lease was given before 5.3.86 – whether s23(3) continues to apply, after the repeal of the presently relevant amendments made by s23(1) of the 1986 Act, to the similar wording introduced into s9(1AA) of the 1967 Act by s.143 of Commonhold and Leasehold Reform Act 2002 – valuation of 3.195 year lease – appeal allowed

*LONDON SEPHARDI TRUST V JOHN LYON'S CHARITY
[2015] UKUT 0619 (LC) – Decision given 19.11.15

Facts: 3 Vale Close, London W9 1RR. A freehold claim for a house under the 1967 Act, subject to a date of valuation of 14.10.13. The original lease would have expired in 2016, but it had been extended by 50 years to 2066 by virtue of s14 of the 1967 Act in 1983. The FTT determined the correct expiry date was 2016, rather than 2066, resulting in an enfranchisement price of £2,888,258.

Points of dispute:

- Whether to adopt the original expiry date of the lease in 2016, with an unexpired term of 3.195 years as per the FTT decision, or to assume the lease would expire in 2066 with 53.195 years unexpired.
- Specific to the valuation of the short lease, the correct methodology for arriving at the value of the existing lease under the Act.

Held: The appeal was allowed.

- By virtue of the Interpretation Act 1978, s17(2), the provisions of s23(3) of the Housing and Planning Act 1986 apply to the provisions of s9(1AA)(a) of the Housing Reform Act 1967. As such it was determined the correct valuation assumption was to adopt an expiry date of 2066.
- Although the valuation of the short lease was therefore not required, both parties had requested this point be considered. The existing lease value was arrived at primarily by reference to the capitalisation of the net rental value at a dual rate of 2.27% (Clutton's gross yield for houses less 30% to adjust to a net figure), an annual sinking fund of 2.25%, with tax at 30%, as well as a passing reference to the bid an occupier purchaser would make using a single rate yield. Limited account of market evidence was also taken into consideration concerning a house which sold originally on an unenfranchiseable lease and then again less than four years later with the benefit of the freehold.

The enfranchisement price was determined at £1,748,000, in contrast to the alternative valuation of £2,866,295.

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

HOUSING

17 Homes & Communities Agency Bulletin

Housing market bulletin – January 2016

The housing market bulletin provides the latest information on the housing market, the economy and the housebuilding industry. Key facts from the January 2016 bulletin are as follows:

- Average house price growth has now returned to all English regions, but prices continue to rise most rapidly in the south and east;
- The seasonally adjusted number of home sales generally increased throughout 2015 with total mortgage lending continuing to rise; and
- Housebuilding output has suffered due to an increasingly cautious public sector. Construction industry order levels were unchanged year-on-year.

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

18 CLG Statistics

English housing survey 2014 to 2015: headline report

These are the latest findings from the English housing survey on the age, type, condition and energy efficiency of housing stock and the characteristics of households. First time buyers are included for the first time, while rents, housing benefit, buying expectations, overcrowding and under-occupation, and well-being are also examined.

https://www.gov.uk/government/statistics/english-housing-survey-2014-to-2015-headline-report

19 National Housing Federation Report

Lyons Housing Commission – Update Report

The Lyons Housing Commission is an independent group of 12 housing experts chaired by Sir Michael Lyons which was first convened in 2013 to advise on how a future government might bring about a sustainable increase in house building in England. In response to the Conservative government's target of creating one million new homes by 2020, the members of the Commission reconvened in December 2015 to consider whether current policy initiatives could achieve that target and, if not, what other measures could be considered. This report summarises the members' findings and makes recommendations to the Government on what needs to be done in order to fulfil their house building commitments.

https://www.housing.org.uk/resource-library/browse/lyons-housing-commission-update-report/

COMPENSATION

20 Upper Tribunal: Lands Chamber

Compulsory purchase – compensation – acquiring authority giving notice to claimant to exercise option to purchase land needed for bus station – purchase price determined by expert – land then acquired by compulsory purchase – authority applying to strike out reference for determination of compensation payable to claimant – Section 1 Land Compensation Act 1961

*PHOENIX DEVELOPMENTS (JPJ) LTD V LANCASHIRE COUNTY COUNCIL
[2016] PLSCS 34 – Decision given 26.01.16

Facts: The claimant, PD, owned an area of disused land in Accrington, Lancs for which the acquiring authority, LCC, had refused permission for a mixed-use development because it was earmarked for a new bus station in the town centre master plan. In 2010 PD served a purchase notice on LCC requiring it to buy the land because the refusal of planning permission meant that it was incapable of beneficial use. Negotiations led to the parties entering into an option agreement in 2011 under which LCC was entitled to acquire the land at a price to be determined by an expert, to represent the aggregate of the land's market value and all other sums to which PD would have been entitled had the land been acquired compulsorily. In August 2012 LCC gave notice to exercise the option and an expert determined the price for the land at £197,327. PD was dissatisfied with this price and the sale did not proceed. In 2013 LCC exercised compulsory purchase powers and the land vested in it in January 2015. PD made a reference to the UT to determine the amount of compensation payable for the land; PD claimed £300,000 as the market value, £107,000 in costs and fees and over £1.5m for lost profit from the development which could not proceed because of LCC's scheme.

Point of dispute: Whether to allow LCC's application to strike out the reference. LCC argued that the expert's determination of the contractual purchase price under the option agreement meant that there was no 'question of disputed compensation' capable of being referred to the UT under s1 of the Land Compensation Act 1961.

Held: The application was dismissed.

- The land was purchased by the exercise of compulsory powers in January 2015. The parties had not agreed the amount of compensation payable which meant that PD was entitled to refer the matter to the UT under the 1961 Act.
- The expert's determination under the option agreement was irrelevant to whether the UT had jurisdiction to entertain the reference. That determination had been for a different purpose. The power given to the expert was to resolve disputes under the option agreement and did not extend to making binding determinations of PD's statutory entitlement to compensation.
- LCC's rights under the 2012 contract would need to be taken into account in determining the amount of compensation due to PD, although the price reached by the expert did not bind the UT when determining the value of the land by reference to hypothetical parties negotiating a sale. The authority's rights under the contract might discourage potential purchasers from bidding.

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REAL PROPERTY

21 Upper Tribunal: Lands Chamber

Discharge or modification of restrictive covenants in relation to leasehold property – conversion of two flats into one – whether leases met requirement in s84(12) of LPA 1925 that at least 25 years of lease term expired – whether deed of variation of lease took effect as surrender and regrant to create fresh term

*STEVENS V ISMAIL
[2016] PLSCS 47 – Decision given 03.02.16

Facts: The applicants were the long leaseholders of the garden flat and the hall flat in a building in London NW3 in which there were two other flats. The applicants obtained planning permission to connect their flats together to form a single maisonette, although those works were contrary to covenants in the leases which prohibited the making or acquisition of any new easements over the demised premises. The lease of the hall flat also contained a covenant that it should be used and occupied solely as a self-contained residential flat.

Point of dispute: Whether to allow the applicants' application to modify the covenants under s84(1) of the Law of Property Act 1925 to enable the development to proceed. One of the other leaseholders objected contending that a deed of variation of the garden flat executed in 1998 prevented it from meeting the requirement in s84(12) that for s84 to apply to a leasehold property the lease had to be for a term of more than 40 years of which at least 25 years had expired. He contended that the deed of variation should be regarded as being a surrender and regrant meaning that less than 25 years of the term had expired. The deed of variation granted a right to park and a right of vehicular access over land at the front of the building, but stated 'Save as hereby varied, the covenants and conditions contained in the Lease shall continue in full force and effect in all respects'. The objector also contended that the user covenant in the hall flat lease was not a restrictive covenant, and therefore fell outside the s84(1) jurisdiction. Preliminary issues were determined.

Held: The preliminary issues were determined in favour of the applicants.

i. The deed of variation had added a right to park on land at the front of the building over which the lessee had previously only enjoyed a right of way on foot. This was not sufficient to terminate the original lease and create a new term by surrender and regrant. The language used by the parties made it clear there was no intention to surrender the original lease. The deed of variation had not had the unintended effect of a surrender and regrant. Therefore more than 25 years of the lease had elapsed which meant that the tribunal had jurisdiction to vary the restrictive covenants.

ii. Read in context the user covenant in the hall lease was a restrictive rather than a positive covenant. A covenant to use premises in a particular way was ordinarily treated as limiting the use which could be made of those premises, rather than as compelling their use in a the specified manner. The covenant had the same character as the conventional one not to use premises other than for a specified purpose. It would be unusual to find a positive obligation in a lease of a residential flat requiring it to be used and occupied for the purpose for which it was designed. The tribunal had jurisdiction to modify the user covenant in the lease of the hall floor flat.

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CONSTRUCTION

22 CLG Circular Letter

Approved inspectors' Final Certificates and Regulation 17 of the Building (Approved Inspectors etc.) Regulations 2010

This letter informs building control bodies in England and Wales on the effect of Regulation 17 of the Building (Approved Inspectors etc.) Regulations 2010 with regard to the giving of final certificates by approved inspectors. The guidance applies to buildings and building work in England and also to excepted energy buildings in Wales.

https://www.gov.uk/government/publications/approved-inspectors-final-certificates-and-regulation-17

23 CLG Guidance

Self-build and custom housebuilding: draft planning practice guidance

This guidance advises on the requirements in the Self-build and Custom Housebuilding (Register) Regulations 2016 made under the Self-Build and Custom Housebuilding Act 2015. It should be used by relevant authorities in designing the register they are required to keep under the Act, of individuals and associations of individuals, who are seeking to acquire serviced plots of land in their area in order to build homes for those individuals to occupy. It should be read alongside the current guidance on the housing and economic development needs assessment and the housing and economic land availability assessment.

https://www.gov.uk/government/publications/self-build-and-custom-housebuilding-draft-planning-practice-guidance

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ENERGY

24 Statutory Instrument

SI 2016/21 The Onshore Wind Generating Stations (Exemption) (England and Wales) Order 2016

Section 36 of the Electricity Act 1989 provides that generating stations may not be constructed, extended or operated without a consent under s36(1). This Order, which came into force on 01.03.16, makes a direction under s36(4) of the Act to provide that the requirement for consent does not apply to wind powered generating stations which are onshore in England and Wales and which have not already received consent under s36(1) of the Act before this Order came into force. The provisions of s36 continue to apply so far as existing consents are concerned, including where those consents are varied.

http://www.legislation.gov.uk/uksi/2016/21/contents/made

25 CLG Statistics

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

These statistics contain information about 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. The figures are drawn from Energy Performance Certificates for domestic and non-domestic properties in England and Wales and from Display Energy Certificates 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-december-2015

LONDON

26 GLA Economics Paper

Working Paper 73 – The changing spatial nature of business and employment in London

GLA Economics commissioned Trends Business Research to undertake a study of the changing spatial nature of businesses in London over time which will inform ongoing work developing the Economic Evidence Base for London. This study found that overall, London has been a net contributor of firms and employment to the rest of the UK economy through outward migration. Information, communication, finance, insurance, professional, scientific and technical activities sectors are London's particular industrial specialisations, although the extent of this specialisation appears to have diminished slightly between 2004 and 2013.

https://www.london.gov.uk/business-and-economy-publications/changing-spatial-nature-business-and-employment-london

27 CLG Consultation

Upward extensions in London
Deadline for Comments: 15.04.16

This consultation invites views on proposals to increase housing supply in London by building upwards while protecting green spaces and the green belt. Three complementary ways to encourage building upwards by adding a limited number of storeys to existing buildings are proposed:

- a London-wide permitted development right with a prior approval, for up to two additional storeys, up to the roofline of an adjoining building;
- planning policies in the London Plan to support upward extensions for new homes; and
- boroughs making local development orders which grant planning permission to extend upwards for all or part of their area, or for particular types of buildings.

https://www.gov.uk/government/consultations/upward-extensions-in-london

GENERAL

28 Adam Smith Institute Research Report

A Garden of One's Own (Adam Smith Institute – Green Belts)

This paper argues that green belts are unsustainable because urban containment policies drive up rents and house prices (thus increasing the cost of living), force households into smaller homes and more cramped transport, damage the environment and depress people's quality of life. Focussing on the Metropolitan Green Belt around London it seeks to provide examples of where development could take place in the green belt in order to demonstrate that there is ample land within it that would be suitable for development and which could be built upon without undermining the overall purpose of Green Belt policy as defined in the NPPF. Six scenarios are examined each of which, it is argued, could make an important contribution to meeting housing need in London and the South East:

- declassify Metropolitan Green Belt land within walking distance of a railway station;
- declassify Green Belt land in London within cycling distance of a railway station;
- allow development of Green Belt golf courses;
- infill areas of Green Belt that do not support Green Belt Policy;
- remove agricultural land from the Green Belt; and
- declassify and re-use already developed Green Belt land.

http://www.adamsmith.org/research/reports/a-garden-of-ones-own/

29 BPF (The Fragmented Ownership Group) Report

Town Centre Investment Zones

This report, which is based on the findings of a study funded by the Department for Communities and Local Government, examines how investment can be encouraged into town centres in order to achieve a change in their role from being purely focussed on retail activities to becoming social centres, engines of economic growth and new residential locations. It argues that the main barrier to this change of role is fragmented ownership and that the solution to this could be the adoption of an asset management approach – Town Centre Investment Management. Using over 20 case studies, where an asset management approach has proved successful, and applying the principles to three pilot feasibility studies which appraise real properties in Dartford, Weston-Super-Mare and Melton Mowbray, the study tests the viability of the concept and its funding potential, concluding that it can be made to work and proposing that it be adopted and taken further by both national and local government.

http://www.bonddickinson.com/sites/default/files/tcim_summary_paper_final.pdf

30 Homes & Communities Agency Review

Land Development & Disposal Plan

This plan provides an updated overview of the landholdings that the HCA expects to bring forward for development and/or disposal over the next 15 months (up to the end of March 2017). It replaces the previous Land Development and Disposal Plan issued in July 2014 and will be updated on a quarterly basis.

https://www.gov.uk/government/publications/land-development-and-disposal-plan

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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

Legal & Parliamentary

Volume 38(02) 14 March 2016

SCOTLAND

CONSTRUCTION

01 Statutory Instrument

SSI 2016/70 The Building (Scotland) Amendment Regulations 2016

W.e.f. 01.07.16 these Regulations will amend the 2004 Regulations by inserting a new standard 1.14 which requires physical infrastructure for high speed electronic communications networks to be provided to new buildings and when major renovation works to buildings are carried out, in implementation of Article 8 of Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks. The new standard will apply to building work in respect of which an application for a building warrant is made after 31.12.16.

http://www.legislation.gov.uk/ssi/2016/70/contents/made

02 Statutory Instrument

SSI 2016/71 The Building (Energy Performance of Buildings) (Scotland) Amendment Regulations 2016

W.e.f. 13.03.16 these Regulations amend the 2004 Regulations to insert requirements in relation to the inspection of air-conditioning systems in buildings and nearly zero-energy buildings in order to implement Articles 9 and 15 of Directive 2010/31/EU on the energy performance of buildings. These amendments will apply from 01.01.19 in the case of buildings occupied and owned by public authorities and from 31.12.20 in respect of all other buildings.

http://www.legislation.gov.uk/ssi/2016/71/contents/made

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GERALDEVE

WALES

PLANNING

03 Welsh Government Bill

The Historic Environment (Wales) Bill

This Bill has been introduced to improve the protection and sustainable management of Wales' historic environment. The two principal pieces of legislation which are currently relied on are:

- The Ancient Monuments and Archaeological Areas Act 1979; and
- The Planning (Listed Buildings and Conservation Areas) Act 1990.

The Bill amends the existing legislation and introduces new stand-alone provisions with the aim of:

- giving more effective protection to listed buildings and scheduled ancient monuments;
- improving the sustainable management of the historic environment; and
- introducing greater transparency and accountability into decision making on the historic environment.

The Bill forms the core of an integrated suite of legislation policy, advice and guidance which together are aimed to give Wales flexible and effective systems for the sustainable management of the Welsh historic environment reflecting current conservation principles and practice.

http://gov.wales/newsroom/cultureandsport/2016/160209-Bill-to-make-history/?lang=en

04 Statutory Instrument

WSI 2016/28 The Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2016

W.e.f. 25.02.16 this Order has amended Class C3 (dwellinghouses) in the 1987 Use Classes Order as follows:

i. to include a definition of a 'single household' which only applies to Class C3(a); and

ii. to remove from the scope of Class C3(c) houses in multiple occupation.

The Order introduces a new Use Class C4 (houses in multiple occupation) which covers use of a dwellinghouse as a house in multiple occupation, as defined in s254 of the Housing Act 2004 – where tenanted living accommodation is occupied by 3 to 6 people as their only or main residence who are not related and who share one or more basic amenities.

http://www.legislation.gov.uk/wsi/2016/28/contents/made

05 Statutory Instrument

WSI 2016/29 The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2016

W.e.f 25.02.16 this Order amends Part 3 of Schedule 2 of the 1995 GPDO giving new permitted development rights for a change of use so that buildings used as small scale houses in multiple occupation shared by three to six people may subsequently be used as dwellinghouses.

http://www.legislation.gov.uk/wsi/2016/29/contents/made

06 Statutory Instrument

WSI 2016/52 The Planning (Wales) Act 2015 (Commencement No.3 and Transitional Provisions) Order 2016

This Order is the third commencement order made by the Welsh Ministers under the Planning (Wales) Act 2015 and it brought into force on 01.03.16 a number of provisions in this Act relating to, inter alia, pre-application matters, applications and other matters relating to developments of national significance and costs and procedure on appeals.

http://www.legislation.gov.uk/wsi/2016/52/contents/made

07 Statutory Instrument

WSI 2016/53 The Developments of National Significance (Specified Criteria and Prescribed Secondary Consents) (Wales) Regulations 2016

These Regulations, which came into force on 01.03.16, specify the criteria for development which is of national significance for the purposes of s62D of the Town and Country Planning Act 1990 ('the 1990 Act').

- Regulation 3 specifies the types of development which could be of national significance: generating stations; underground gas storage facilities; facilities for liquid natural gas; gas reception facilities; airports; railways; rail freight interchanges; dams and reservoirs; transfer of water resources; waste water treatment plants and hazardous waste facilities.
- Regulations 4–14 set out the applicable criteria in relation to each type of development.
- The Regulations also prescribe secondary consents for the purposes of the 1990 Act and make consequential amendments. The effect of being prescribed by these Regulations is that the consent can be considered by the Welsh Ministers alongside an application made to them for planning permission for a development of national significance.

http://www.legislation.gov.uk/wsi/2016/53/contents/made

08 Statutory Instrument

WSI 2016/54 The Developments of National Significance (Application of Enactments) (Wales) Order 2016

W.e.f. 01.03.16 this Order applies various enactments to applications made to the Welsh Ministers for planning permission for development which is of national significance. In certain cases the Order also modifies those enactments.

http://www.legislation.gov.uk/wsi/2016/54/contents/made

09 Statutory Instrument

WSI 2016/55 The Developments of National Significance (Procedure) (Wales) Order 2016

W.e.f. 01.03.16 this Order makes provision for the manner in which applications for planning permission for developments of national significance are to be dealt with by the Welsh Ministers.

http://www.legislation.gov.uk/wsi/2016/55/contents/made

10 Statutory Instrument

WSI 2016/56 The Developments of National Significance (Wales) Regulations 2016

W.e.f. 01.03.16 these Regulations deal with various further matters relating to development which is of national significance to Wales.

http://www.legislation.gov.uk/wsi/2016/56/contents/made

11 Statutory Instrument

WSI 2016/57 The Developments of National Significance (Fees) (Wales) Regulations 2016

W.e.f. 01.03.16 these Regulations provide for the payment of fees in respect of:

- pre-application services provided by the Welsh Ministers and local planning authorities under the Developments of National Significance (Wales) Regulations 2016;
- notifications of proposed applications under s62D of the Town and Country Planning Act 1990 ('the 1990 Act'); and
- applications under s62D of the 1990 Act, including fees for local impact reports required in relation to such applications by s62I of the 1990 Act.

They also prescribe the circumstances in which:

- part of initial fees paid to the Welsh Ministers in respect of applications under s62D of the 1990 Act are refunded; and
- fees paid to the Welsh Ministers for local impact reports are remitted to local planning authorities or refunded to applicants.

http://www.legislation.gov.uk/wsi/2016/57/contents/made

12 Statutory Instrument

WSI 2016/62 The Town and Country Planning (Fees for Applications, Deemed Applications and Site Visits) (Wales) (Amendment) Regulations 2016

W.e.f. 16.03.16 these Regulations amend the 2015 Regulations as follows:

- Regulation 2 makes provision for fees payable in respect of requests for pre-application services made to local planning authorities;
- Regulation 3 makes minor amendments to Regulations 8(3), 9(3) and 15 of the 2015 Regulations in relation to applications for approval of reserved matters;
- Regulation 4 provides for reduced fees to be payable for applications under s73 of the Town and Country Planning Act 1990 where an earlier application under s96A(4) of that Act has been refused, partially refused or not determined within the relevant period; and
- Regulation 5 makes provision for fees payable in respect of amendments to applications for major development submitted before the lpa determine the application (post submission amendments).

http://www.legislation.gov.uk/wsi/2016/62/contents/made

13 Welsh Government Consultation

Proposals relating to the Statement of Public Participation for the National Development Framework Deadline for Comments: 25.04.16

The National Development Framework (NDF) will be a national land-use development plan setting out the Welsh Government's social, economic and environmental spatial planning objectives for the next 20 years. This consultation concerns the first stage in the process of preparing the NDF, the preparation of the Statement of Public Participation which sets out the key stages and timetable for preparing the NDF and the steps that the Welsh Government will take to engage stakeholders and the public.

http://gov.wales/consultations/planning/proposals-relating-to-the-statement-of-public-participation-for-the-national-development-framework/?lang=en

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RATING

14 Statutory Instrument

WSI 2016/31 The Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2016

W.e.f. 01.04.16 this Order amends s66 of the Local Government Finance Act 1988 ('the 1988 Act'), which defines, firstly, domestic property for the purposes of Part III (non-domestic rating) of that Act and, secondly, self-catering accommodation which is not domestic property. This Order adds further circumstances in which a building or self-contained part of a building is self-catering accommodation and therefore is not domestic property.

- Where a building or self-contained part of a building is let for at least 70 days during the previous year, and the remainder of s66(2BB)(a) to (c) has been complied with, the building or self-contained part of a building will continue not to be domestic property.
- However, the definition is amended so that where a building or self-contained part of a building is let for less than 70 days over the previous year as part of a business which lets a number of such buildings or self-contained parts of a building at the same location or within very close proximity of each other, it may nevertheless in some circumstances not be domestic property. Where the average number of days in which each of the buildings or self-contained parts of buildings at the same location or within a very close proximity of each other is let over the previous year is at least 70, each building or self-contained part of a building is not to be domestic property.
- A building or self-contained part of a building may only be included in one calculation in the relevant year.

http://www.legislation.gov.uk/wsi/2016/31/contents/made

15 Statutory Instrument

WSI 2016/32 The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2016

W.e.f. 08.02.16 this Order amends the 2015 Order which provided for a rate relief scheme and a temporary rate relief scheme to run from 01.04.15 to 31.03.16, and applying only to certain categories of hereditament. This Order extends the period of time for which the temporary rate relief scheme is to apply to 31.03.17.

http://www.legislation.gov.uk/wsi/2016/32/contents/made

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HOUSING

16 Statutory Instrument

WSI 2016/173 The Housing Act 1985 (Amendment of Schedule 2A) (Serious Offences) (Wales) Order 2016

Schedule 2A to the Housing Act 1985 lists the serious offences relating to the absolute grounds for possession for anti-social behaviour provided for by s84A of the Housing Act 1985 (secure tenancies), and ground 7A of Part 1 of Schedule 2 to the Housing Act 1988 (assured tenancies). Sections 1 and 2 of the Modern Slavery Act 2015 introduced offences relating to slavery, servitude and forced or compulsory labour, and human trafficking respectively. W.e.f. 16.02.16 this Order added these offences to Schedule 2A of the 1985 Act.

http://www.legislation.gov.uk/wsi/2016/173/contents/made

NORTHERN IRELAND

PLANNING

17 Statutory Instrument

NSI 2016/27 The Planning (Local Development Plan) (Amendment) Regulations (Northern Ireland) 2016

W.e.f. 29.02.16 these regulations amend the transitional provisions in the 2015 Regulations to include development plans prepared and adopted by the Department under the Planning (Northern Ireland) Order 1972 within the definition of a departmental development plan under the Planning Act (Northern Ireland) 2011.

http://www.legislation.gov.uk/nisr/2016/27/contents/made

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

RATING

18 Statutory Instrument

NISR 2016/16 The Rates (Regional Rates) Order (Northern Ireland) 2016

This Order fixes the amount of the regional rate for the year ending 31.03.17. It fixes 32.40 pence in the pound as the amount of the regional rate to be levied on the rateable net annual values of hereditaments ('non-domestic regional rate') and 0.4111 pence in the pound as the amount of the regional rate to be levied on the rateable capital values of hereditaments ('domestic regional rate'). The non-domestic regional rate and the domestic regional rate are both increased by 1.7 per cent.

http://www.legislation.gov.uk/nisr/2016/16/contents/made

19 Statutory Instrument

NISR 2016/18 The Rates (Temporary Rebate) (Amendment) Order (Northern Ireland) 2016

Article 31D of the Rates (Northern Ireland) Order 1977 provides for a rebate on occupied rates for certain retail properties. This rebate applies to properties which become occupied during the four year period ending on 31.03.16 after having been unoccupied for a continuous period of at least twelve months. The amount of the rebate is one half of the rates chargeable in respect of the net annual value of the property and is granted for a period of twelve months. W.e.f. 01.04.16 this Order extends the rebate to retail properties which become occupied during the year ending on 31.03.17.

http://www.legislation.gov.uk/nisr/2016/18/contents/made

20 Statutory Instrument

NSI The Rates (Small Business Hereditament Relief) (Amendment) Regulations (Northern Ireland) 2016

W.e.f 01.04.16 these Regulations amend the definition of "qualifying year" in the 2010 Regulations to provide for an extension of the small business rate relief scheme until 31.03.17.

http://www.legislation.gov.uk/nisr/2016/26/contents/made

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

HOUSING

21 Department for Social Development Research Report

Developer Contributions for Affordable Housing in Northern Ireland

This independent research was commissioned to provide up to date and Northern Ireland specific evidence on the economic impact of introducing a Developer Contributions Scheme.

https://www.dsdni.gov.uk/publications/developer-contributions-affordable-housing-nothern-ireland