EVEBRIEF

Legal & Parliamentary

Volume 38(05) 18 July 2016

LITTLE NEW GOVERNMENTAL POLICY AS THE EU REFERENDUM PUTS THINGS ON HOLD

In this edition of Evebrief we primarily report on decisions of various courts as very little new real estate policy has been coming out of Government. The slow-down started in the run up to the vote with ministers concentrating of the EU issue and has stagnated post the result and the changes in Governmental personnel.

On planning matters the Court of Appeal took the common sense view and allowed the Sec of State's appeal against a narrow interpretation by the lower court of his inspector's consideration of relevant planning matters. One hopes that this will reduce such challenges. See Item 2.

Prior to the EU Referendum vote a number of planning matters were on the cusp of release, for example Starter Homes details. It will be interesting to see how these issues evolve given that potentially the Civil Service will have to concentrate on more fundamental aspects of our own legislation in a life being removed from the EU.

Let's hope that current uncertainties are resolved as soon as possible.

Peter Dines
Editor

GERALDEVE

LANDLORD & TENANT

01 Upper Tribunal: Lands Chamber

Service charge – sinking fund maintained by freeholder under terms of headlease – whether headlessee could recover proportion of sinking fund contribution from long leaseholder

*BALKHI V SOUTHERN LAND SECURITIES LTD
[2016] PLSCS 164 – Decision given 18.05.16

Facts: The appellant, B, was the long leaseholder of a flat in a building in London W1. SLS, his immediate landlord, held a headlease from the freeholder of the residential parts on the upper four floors of the building. The terms of the headlease entitled the freeholder to recover a service charge from SLS in respect of the cost of repairing, maintaining and decorating the structural parts of the building and there was also provision for a sinking fund. Under the terms of his underlease B was liable to pay a service charge to SLS for its obligations under the underlease including "all costs and expenses payable to the superior landlord under the headlease in respect of… services relating to the Building". These services were set out in a schedule which included the setting aside of a sinking fund in such amount as was reasonably required to meet such future costs as SLS reasonably expected to incur in replacing, maintaining or renewing items for which it was responsible under the underlease. For many years SLS had included in the service charge a "landlord estate charge" representing the amount that it had paid to the freeholder under the terms of the headlease in respect of various matters, including a sinking fund. From 2011 the estate charge increased and B withheld payment in respect of the years 2011-13.

Point of dispute: Whether to allow B's appeal against the decision of the judge in the county court below that he was liable to pay over £11,000 to SLS in respect of the unpaid landlord estate charge. The issue was whether the charge was payable and reasonable.

Held: The appeal was allowed in part.

i. The wording of the service charge provisions in B's underlease was wide enough to include sums properly payable to the freeholder under the headlease, notwithstanding that such payments included a payment towards the freeholder's sinking fund.

ii. B had advanced sufficient evidence to raise a question about the reasonableness of the disputed sums and SLS had not produced any evidence to show that they were reasonable. The court found that a sinking fund of £40,000 for the building was reasonable, but not one of £70,000 to which SLS had contributed in 2011-13. The amounts claimed by SLS from B were unreasonably high and should be reduced to £8,500.

PLANNING

02 Court of Appeal

Development plan – whether inspector obliged to consider whether proposal for residential development was compliant with development plan as a whole notwithstanding conflict with one particular policy

*BDW TRADING LTD (T/A DAVID WILSON HOMES (CENTRAL, MERCIA AND WEST MIDLANDS)) V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2016] PLSCS 161 – Decision given 27.05.16

Facts: The respondent, BDW, wished to carry out a substantial residential development on a site on the edge of Stone, Staffordshire. The site was 5ha of farmland which was not allocated for development in the development plan, but it adjoined an existing residential estate. The lpa refused permission on the grounds of increased traffic and the effect that the development would have on the amenity of neighbouring residents. BDW's appeal to the Sec of State was unsuccessful, the inspector finding that the proposal would conflict with a development plan policy on residential amenity and she concluded that the acknowledged benefits of the scheme did not outweigh the harm to other residents in terms of increased traffic noise and disturbance.

Point of dispute: Whether to allow the Sec of State's appeal against the ruling of the judge in the court below who quashed the inspector's decision. The judge held that the inspector had failed to comply with the duty contained in s38(6) of the Planning and Compulsory Purchase Act 2004 to make her decision in accordance with the development plan unless material considerations indicated otherwise. While she had been entitled to find that the proposed development was contrary to the development plan policy on residential amenity, she had failed to consider whether the development accorded with the development plan as a whole.

Held: The appeal was allowed.

i. The s38(6) duty was essential to the "plan-led" system of development control – embodying a presumption in favour of the development plan while also weighing other material considerations in the balance. The s38(6) duty was not displaced or modified by government policy in the NPPF.

ii. In this case the inspector had not failed to do what s38(6) required. The main issue was about noise and disturbance to residents from additional traffic and in dealing with that single main issue, the inspector was entitled to proceed as she did.

iii. This was a case where the outcome turned on the application of one single, simply expressed, policy. The proposed development was in conflict with the development plan because it was contrary to a single policy of the plan, even though it did not offend other policies in it. The inspector had not failed to give the required statutory priority to the development plan under s38(6). She had considered the question of whether the proposal accorded with the plan and had concluded that it did not because it did not accord with the policy on residential amenity. She then found that the considerations weighing in favour of granting planning permission were insufficient to outweigh the conflict with the plan. This was a classic balancing exercise which the inspector had conducted appropriately and lawfully.

03 Court of Appeal

Gypsies living on unauthorised site in green belt – appeal against enforcement notice – likelihood of family moving to another unauthorised site in green belt with same or greater harm as that arising on existing site

*LEE V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2016] PLSCS – Decision given 17.06.16

Facts: L was a gypsy who lived in a mobile home on an unauthorised site in the green belt near Chertsey, Surrey. Her application for planning permission to retain the mobile home was refused by the lpa which issued an enforcement notice against the development and giving a period of nine months within which to comply. The planning inspector appointed by the Sec of State recommended the grant of a temporary permission for the development. Considering the issue as to whether very special circumstances existed to outweigh the harm to the green belt caused by the development, the inspector found that if planning permission were refused the family would move to another unauthorised site, probably within the green belt, with attendant problems for the family which would lead to an infringement of their rights under Article 8 of the Human Rights Act 1988. He thus concluded that very special circumstances existed justifying the grant of permission for the development in the green belt. While the Sec of State substantially agreed with the inspector's findings he concluded that very special circumstances did not exist to justify the development and accordingly he decided that planning permission should not be granted, although he extended the time for compliance with the enforcement notice from nine to eighteen months.

Point of dispute: Whether to allow L's appeal against the decision of the judge in the court below who upheld the Sec of State's decision. L's argument was that any move by the family would be to another site within the green belt which would cause the same, and perhaps greater, harm as the continued residential use of their existing site.

Held: The appeal was dismissed.

i. The Sec of State had not failed to grapple with the issue raised by L. Having accepted the inspector's findings as to the likelihood of L's family moving to another unauthorised site if the appeals failed it was not necessary for him to go further and specifically refer, as the inspector had done, to the likelihood that that site would also be in the green belt. The Sec of State was not obliged to replicate all the statements in the inspector's report and it would be plain to anyone reading his decision letter that the unauthorised site would be within the green belt.

ii. The judge had sufficiently dealt with the issue of the impact of the decision on L's family and their traditional way of life.

04 Court of Appeal

Appeal against refusal of permission for wind farm development – whether decision reached in breach of natural justice because of lobbying Member of Parliament

*BROADVIEW ENERGY LTD V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT [2016] PLSCS 177 – Decision given 22.06.16

Facts: BE, an independent renewable energy company which developed and operated wind farms throughout the UK, was refused permission for the development of a wind farm on a site in Northamptonshire. The Sec of State's planning inspector granted permission on appeal, but that decision was quashed in proceedings brought by the lpa and an action group. The Sec of State recovered the appeal against that decision for his own determination because it involved a renewable energy development. There was a further public inquiry before a different inspector who indicated that the matter was finely balanced but he recommended that planning permission be granted. After a delay of several months the decision was made to refuse permission, this letter having been written by a minister to whom the Sec of State had delegated the decision.

Point of dispute: Whether to allow BE's appeal against the refusal of planning permission for the development. BE argued that the minister's decision had been unlawfully influenced by alleged lobbying activities of the local MP for the constituency in which the development site lay, giving rise to a breach of natural justice and an appearance of bias. BE relied on correspondence during the period of the first and second inquiries, including a letter which referred to a conversation between the MP and the minister in the House of Commons tea room.

Held: The appeal was dismissed.

i. There had been no breach of the Town and Country Planning (Inquiries Procedure) Rules 2000 in this case, nor was the decision made unlawful by reason of any breach of para 4 of the Guidance on Planning Propriety Issues 2012. The MP's written representations had added nothing new to what had been debated at the inquiry. In those circumstances the minister had not "entertained" privately made representations. Although there had been a technical breach of para 4 of the Guidance, there was no breach of the rules of natural justice.

ii. Para 4 made no distinction between private representations and those made face-to-face and the same principles applied. If these oral representations repeated matters that had already been ventilated at the inquiry there was no need to inform other parties of them and invite comment. However, in the case of oral representations one could not be sure of what had been said. The judge had been wrong to say that lobbying of ministers was part and parcel of the representative role of a constituency MP which implied that such lobbying was permissible even when the minister was making a quasi-judicial decision in relation to a controversial planning application. The tea room conversation between the minister and the MP should not have occurred.

iii. However, no breach of natural justice had occurred in this case by reason of the minister failing to say that he could not listen to the MP. The conversation took place before it had been decided whether the Sec of State or the minister would take the decision, well before the inspector made his report and a full year before the minister's decision was made. At most the conversation was a technical breach which could not have made any difference to the ultimate decision and was not such as to justify quashing the minister's decision.

05 Court of Appeal

Retail development – sequential test

*R (ON THE APPLICATION OF WARNERS RETAIL (MORETON) LTD) V COTSWOLD DISTRICT COUNCIL
[2016] PLSCS 186 – Decision given 24.06.16

Facts: In 2013 CDC granted outline planning permission for the development of a food store on land in Moreton-in-Marsh, Gloucestershire. The proposed development was about 500m from the commercial centre of the town. The appellant, WR, who owned a food store in the High Street of the town with planning permission to extend it, objected to the proposed development. In granting planning permission CDC considered the sequential test for retail development set out in para 24 of the NPPF. It found that the site was accessible and well-connected to the town centre and that there were no other sequentially preferable sites in town centre or edge-of-centre locations. Although the development was contrary to local plan policy, CDC took the view that there were material considerations justifying the grant of permission including the fact that the development would "claw back" shoppers who were currently shopping outside the town, it would provide employment opportunities and reduce vehicle journeys by local residents.

Point of dispute: Whether to allow WR's appeal against the decision of the court below which dismissed its application for judicial review of the grant of planning permission. WR contended that CDC had not properly applied the sequential test since they had not properly considered WR's site even though it was the preferred location sequentially.

Held: The appeal was dismissed.

i. The planning officer's advice to CDC on the sequential test was not materially deficient or misleading. Unlike the earlier PPS4 the policies for retail development in the NPPF did not require an applicant for planning permission for retail development outside a town centre to demonstrate a need for it.

ii. However the need for additional food shopping facilities in the town was not immaterial and it was clear that a large proportion of expenditure on convenience foods was going to food stores in other locations. In arguing that its store was preferable WR was seeking to restore to national planning policy for retail development a test of need that was no longer there.

iii. CDC had not failed to apply the sequential test with appropriate flexibility.

iv. CDC had properly understood and lawfully applied the sequential test in accordance with government policy in para 24 of the NPPF and the relevant parts of the practice guidance dealing with the three considerations of "availability", "suitability" and "viability".

06 Court of Appeal

Noise from music venue – whether inspector properly dealing with issues of noise and sound insulation – whether failing to take into account risk to appellant's business if local residents complained about noise – whether adequately dealing with appellant's case on blocking of light to the venue

*FORSTER V SEC OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
[2016] PLSCS 189 – Decision given 29.06.16

Facts: The claimant, F, owned a tavern which was used for live music events, film-making and photographic shoots. A developer applied for planning permission to demolish the building next door and replace it with a mixed use three-storey building, including commercial uses and flats. F objected to the proposal on the grounds that the development might jeopardise her business as there was a risk that residents of the flats would complain about noise from the tavern. She also argued that the development would block light to the building and so jeopardise its use for photography and film shoots. The lpa refused permission for the development, but that decision was overturned on appeal by an inspector appointed by the Sec of State who, having considered an acoustic report submitted by the developer on noise levels and the effectiveness of proposed sound insulation measures, concluded that permission should be granted subject to a condition requiring the developer to obtain the lpa's approval to a scheme to protect the residents of the flats from noise.

Point of dispute: Whether to allow F's appeal against the decision of the judge in the court below who dismissed her claim under s288 of the Town and Country Planning Act 1990 to quash the grant of permission (see Evebrief, Volume 37(08), i9). The judge dismissed F's argument that the inspector had erred in his consideration of the noise issue and that the conditions attached to the permission were inadequate to deal with it and that he had failed to have regard to the harm that the development might cause to the operation of her business. He found that the conditions attached to the grant of planning permission were adequate to secure effective noise protection for residents of the flats. F also contended that the inspector had failed to deal adequately with her case on light.

Held: The appeal was allowed.

i. The impact of a prospective planning permission on the viability of a neighbouring business could, in principle, amount to a material planning consideration. However, such an argument would have to be presented to the inspector with supporting evidence. In this case the alleged effects of the proposed development on F's business were not clear; F needed to make an evidence-based case, but her submissions had been cast in general terms. The inspector's task was to make planning judgments on the land use planning issues, not to anticipate the likelihood or outcome of future proceedings against F as the owner of the tavern.

ii. However, the inspector had erred in failing to deal adequately with F's case on the blocking of light to the venue. The issue about light, and the effect of its diminution on F's business, was specific and distinct from the noise issue and the inspector had not dealt with it. The grant of planning permission was quashed.

07 Planning Court

Planning permission for wind turbine – local community donation – material consideration – application to quash permission granted

*R (ON THE APPLICATION OF WRIGHT) V FOREST OF DEAN DISTRICT COUNCIL
[2016] PLSCS 165 – Decision given 09.06.16

Facts: The interested party applied to FDDC for planning permission to change the use of agricultural land to the installation of a wind turbine to generate renewable energy. The application was stated to be one of a new range of community wind projects where the interested party would be offering shares to fund the project to the local community as well as setting up a community fund which would be administered by trustees. The local community would be given the opportunity to invest in shares with a high rate of return, while it was also proposed that approximately 4% of the gross revenues would be donated to the host community via a Community Fund. Notwithstanding W's objections to the proposed development FDDC resolved to grant planning permission subject to a number of conditions. The local community donation was taken into account as a positive feature.

Point of dispute: Whether to allow W's application for judicial review of the decision to grant planning permission for the windfarm development. One of the issues was whether it was lawful for FDDC to take into account as a material consideration some of the socio-economic benefits associated with the development, namely the local community donation based on turnover generated by the wind turbine.

Held: The application was granted.

i. The community donation neither served a planning purpose nor was it fairly and reasonably related to the development proposed.

ii. Off-site benefits had to have a real connection with the development. In this case there no real connection between the development of the wind turbine and the gift of monies to be used for any purpose which appointed members of the community considered their community would derive a benefit from.

iii. FDDC was not entitled to take into account as a material consideration in their planning decisions the offer of the local community donation made by the interested party as part of their proposal. The decision reached by FDDC was therefore unlawful.

iv. The court did not accept that the members' decision-making process would not have been any different had they realised that the community donation should not be taken into account in determining whether consent should be granted.

08 Planning Court

Judicial review of grant of planning permission for gypsy site – whether application being made in accordance with development plan

*R (ON THE APPLICATION OF COOPER) V ASHFORD BOROUGH COUNCIL
[2016] PLSCS 181 – Decision given 24.06.16

Facts: The defendant lpa, ABC, granted planning permission for four gypsy pitches on a site near Shadoxhurst in Kent. The site, which was on a private road and in an area covered by a blanket tree preservation order and designated as ancient woodland, was a strip of land to the rear of an existing authorised gypsy traveller site. The areas proposed for development already had hard-surfaced trackway and lawful hard-surfaced and tarmacked areas. Access to the road would be through the authorised site.

Point of dispute: Whether to allow the claimant's application for judicial review of the decision to grant permission for the development. C contended that ABC had failed to apply s38(6) of the Planning and Compulsory Purchase Act 2004 which required the application to be determined in accordance with the development plan unless material considerations indicated otherwise. C argued that ABC had not done this since no judgment had been reached on whether the proposed development accorded with a number of key development policies or with the development plan as a whole. C had to demonstrate that on the balance of probabilities the development control manager had failed to make the determinations required when taking the decision.

Held: The application was allowed.

i. Although ABC's assessment had identified all the relevant development plan policies when considering the proposed development, it was not enough just to refer to those in order to discharge their duty under s70(2)(a) of the Town and Country Planning Act 1990; the policies needed to be interpreted correctly and it was also necessary to determine whether individual material policies supported or counted against the proposed development and whether or not the proposed development was in accordance with the development plan as a whole.

ii. There was no statutory obligation on a lpa to give reasons for granting a planning permission, but when it came to litigation it might be better for the lpa to call witnesses than to rely on summary grounds it had filed. The decision-making process had to be explained and where that was not apparent from the documents the lpa should discharge its duty of candour with witness statements.

iii. In this case the summary grounds disclosed two errors of law. Firstly, one of the local plan policies required permission to be refused for any development proposals which would damage important woodlands. Secondly, another policy stated that, if required, sites for gypsies and travellers would be identified in a site allocation development plan document – there was no such document and accordingly the site could not be one that was allocated in it.

09 High Court

Judicial review of planning permission for solar farm near to Grade I listed building – whether planning committee failing properly to interpret policies in core strategy

*R (ON THE APPLICATION OF BUTLER) V EAST DORSET DISTRICT COUNCIL
[2016] PLSCS 191 – Decision given 28.06.16

Facts: EDDC granted planning permission for the construction of a solar farm near to the hamlet of Mapperton (a conservation area) in Dorset. The site was about 1km from a Grade I listed building set in a Grade II listed park and garden within which was a Grade II listed tower. The permission was to last for 30 years.

Point of dispute: Whether to allow B's application for judicial review of the decision to grant planning permission. B argued that the planning officer and members of the planning committee of EDDC had failed properly to interpret policies that were designed to protect heritage assets.

Held: The application was granted.

i. The officer's report made clear that he was advising members of the committee that some harm had been found to designated heritage assets which had to be weighed against the public benefit of the proposal pursuant to para 134 of the NPPF. This meant that there would be a conflict with policy HE1 of the Core Strategy (Valuing and Conserving our Historic Environment) which provided that heritage assets were to be conserved and their significance protected. In a conservation area special attention was to be paid to the desirability of preserving or enhancing its character or appearance, preserving meaning "not harming". There was nothing in policy HE1 to suggest that its harm would be permitted provided it was only temporary. The officer had misled the committee in saying that in the circumstances the proposal would accord with the policy.

ii. Policy ME5 requires a view to be formed as to whether a proposal for renewable energy apparatus would avoid harm to the significance and setting of heritage assets. In the case of heritage assets the only acceptable criterion was avoidance of harm – the officer should have advised the committee members of that, and he had not done so.

iii. Accordingly, there was considerable doubt as to whether the officer and then the members of the committee were of the view that the proposed development was in accordance with the development plan, taken as a whole, or not.

iv. It could not be said that the members of the committee would have been likely to vote in favour of granting planning permission if they had been properly advised that the proposal before them was in breach of the key policies of the development plan dealing with heritage assets (HE1) and renewable energy (ME5). The permission would be quashed.

10 National Infrastructure Commission Consultation

National Infrastructure Assessment

Deadline for Comments: 05.08.16

The National Infrastructure Commission is currently in interim form and is functioning within the terms of reference laid out by the Government. This includes a responsibility for the National Infrastructure Commission to produce a National Infrastructure Assessment (NIA). This document is a consultation on a possible approach to developing a NIA.

- the first section introduces the NIA and outlines its proposed aims and objectives
- the second explores the possible scope of the NIA and the stages in which its findings will be published
- section 3 sets out a possible methodology for the NIA
- section 4 outlines the possible approach to external engagement and the opportunities for stakeholders to engage with the process
- the governance and management of the NIA is outlined in section 5

https://www.gov.uk/government/consultations/national-infrastructure-assessment-consultation

11 CLG Statistical Publication

Planning applications in England: January to March 2016

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. Between January and March 2016 district planning authorities in England:

- received 119,700 planning applications, 1% fewer than during the same quarter in 2015;
- granted 86,200 decisions, 3% more than during the same period in 2015;
- decided 82% of major applications within 13 weeks, up from 77% a year earlier; and
- granted 11,300 residential applications, 1% fewer than a year earlier.

In the year ending March 2016 district level planning authorities:

- granted 372,600 decisions, up 3% from the figure for the year ending March 2015; and
- granted 46,700 decisions on residential developments – 5,900 for major developments and 40,800 for minor ones.

https://www.gov.uk/government/statistics/planning-applications-in-england-january-to-march-2016

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 office building – VTE determining that building had nominal rateable value of £1 – lack of demand for property on open market – whether property to be valued instead by reference to "general demand" for other properties with similar characteristics

*HEWITT (VO) V TELEREAL TRILLIUM
[2016] PLSCS 185 – Decision given 16.06.16

Facts: TT was the ratepayer in respect of a purpose-built 1970s office building in Blackpool which the appellant VO listed in the non-domestic rating list with RV £490,000 w.e.f. April 2010. At the antecedent valuation date (AVD) of April 2008 the property was subject to a lease to the Sec of State for the environment for a term of 42 years from September 1972, but TT had taken a virtual assignment of the lease and was responsible for running the property and for conducting rent review negotiations. The property had been occupied continuously by the Department for Work and Pensions and HMRC since 1972, but shortly before the AVD it was announced they would be vacating the premises and on the material day in April 2010 it was unoccupied. The VO rejected TT's argument that the assessment was inaccurate, but the VTE determined that the property should be listed with a RV of £1 w.e.f. April 2010 since there was no demand for the property.

Point of dispute: Whether to allow the VO's appeal against the VTE's ruling. The VO accepted that had the property been on the market on the AVD no one would have wanted to occupy it or pay a positive price, but he argued that the fact the property was unoccupied did not, of itself, justify a lesser value than comparable premises which were occupied.

Held: The appeal was allowed.

i. Para 2 of Schedule 6 to the Local Government Finance Act 1988 obliged the tribunal to determine the amount at which the hereditament might reasonably be expected to let. It had to be assumed that a hypothetical landlord and a hypothetical tenant would agree terms for such a let; a conclusion that no bidder would be found was not possible.

ii. A valuation for rating purposes was based on the concept of the value of the occupation. If there was something about the hereditament which made occupation of it intrinsically valueless in anyone's hands, then a nil value would be appropriate.

iii. Once it was accepted that there had to be a tenancy granted on the statutory terms between the hypothetical landlord and the hypothetical tenant after negotiation, it could not be said that the latter did not want the tenancy unless the hereditament was intrinsically valueless, or where the tenant's responsibilities were such that no beneficial occupation was possible in the commercial sense.

iv. The VTE had erred in valuing TT's property at £1. Comparable properties were being beneficially occupied at substantial rents so it was unlikely that a hypothetical landlord and a hypothetical tenant would agree on a £1 rent for the tenancy.

v. The tenancy would be granted at a rent that was more than nominal and represented the value of occupation. The rent would be negotiated between the hypothetical landlord and the hypothetical tenant by reference to the "general demand" for such properties.

vi. The RV should be determined at £370,000.

13 CLG Consultation

Self-sufficient local government: 100% business rates retention

Deadline for Comments: 26.09.16

This consultation concerns the government's proposal to allow local government to retain 100% of the business rates that are raised locally and specifically seeks to identify some of the issues that need to be considered when designing the reforms.

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

https://www.gov.uk/government/consultations/self-sufficient-local-government-100-business-rates-retention

HOUSING

14 CLG Statistical Release

House building in England: January to March 2016

This release presents figures on new build housing starts and completions in England.

- it is estimated that there were 35,530 housing starts in England during the March quarter (seasonally adjusted), a decrease of 3% on the previous quarter and 9% fewer than during the same period in 2015
- completions were estimated at 32,950 (seasonally adjusted), 9% lower than the previous quarter and 3% lower than the previous year
- during 2015-16 there were 139,680 housing starts, up by 1% compared with 2014-15
- there were 139,690 completions in 2015-16 a 12% increase on the previous year
- starts are now 107% above the trough in the March quarter of 2009 but still 27% below the March quarter 2007 peak
- completions are 33% above the trough in the March quarter 2013 and 32% below their March quarter 2007 peak

https://www.gov.uk/government/statistics/house-building-in-england-january-to-march-2016

COMPENSATION

15 Upper Tribunal: Lands Chamber

Substitution, outside the Limitation Act period, of the name of the respondent in a reference to the Tribunal

*WILLIAM HILL ORGANIZATION LIMITED V CROSSRAIL LIMITED
[2016] UK UT0275 (LC) – Decision given 17.06.16

Facts: A betting office in Charing Cross Road, London, occupied by WHO, was compulsorily acquired in September 2009 for the Crossrail project. Following negotiations over compensation, in which no final agreement was reached, WHO's solicitor delivered to the Tribunal a notice of reference in respect of the claim. The notice of reference named Crossrail Limited as the compensating/acquiring/respondent authority. However, as a result of the Crossrail (Devolution of Functions) Order 2010, Transport for London (TfL) became the authority responsible for meeting compensation claims arising from acquisitions of property for Crossrail.

Point of Dispute: Whether to allow WHO's application, made after the expiry of the six-year Limitation Act period, to substitute TfL in place of Crossrail Limited as the respondent to the reference.

Held: Section 35(4), Limitation Act 1980 provides for substitution of one party to proceedings by another where the proceedings were started within the limitation period and the substitution is necessary, but only where the original party was named by mistake or where the claim cannot properly be carried on unless the new party is substituted in place of the original. The mistake must be as to the name of the party rather than its identity; it was obvious in this case that it was possible to identify the intended respondent in this case, particularly as Gerald Eve, as WHO's agents, had previously engaged in correspondence and meetings with TfL. The only prejudice which would be suffered by TfL if substitution were ordered would be the loss of its right to defeat the claim by relying on a limitation defence, but this was not by itself sufficient reason to refuse to make the order for substitution. Accordingly TfL should be substituted for Crossrail Limited as the respondent to the reference.

(Editor's note: Gerald Eve's Partner Tony Chase is advising William Hill on compensation matters)

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

COMPULSORY PURCHASE

16 Court of Appeal

Lawfulness of Compulsory Purchase Order (CPO)

*GRAFTON GROUP (UK) PLC V SEC OF STATE FOR TRANSPORT
[2016] PLSCS 176 – Decision given 21.06.16

Facts: The respondents, GG, owned an unused and vacant wharf on the River Thames which they hoped to develop for mixed uses. In May 2012 the port authority made a CPO for the acquisition of the wharf with a view to bringing it into active use as a wharf for handling river-borne aggregates and cement. The lpa refused permission for the development and following an inquiry before a planning inspector the Sec of State dismissed an appeal against that refusal. However, the CPO was confirmed following the inspector's recommendation that while the specific development proposals did not accord with the development plan due to poor design and layout, it should be possible to devise a more viable scheme.

Point of dispute: GG's claim challenging the CPO was allowed on the grounds that there was no legally sufficient evidence to support the inspector's findings as to the viability of a revised scheme. The Sec of State appealed against the judge's ruling that the appropriate relief to be granted under s24 of the Acquisition of Land Act 1981 was to quash the CPO in its entirety, the judge having rejected the suggestion that the court could quash the Sec of State's confirmation while leaving intact the CPO made by the second appellant port authority.

Held: The appeal was allowed in part.

i. If a court decides to quash an unlawful CPO the quashing order had to apply to the CPO in its entirety, as made and confirmed.

ii. The term "compulsory purchase order" in s24(2) referred to the CPO as made and confirmed.

iii. The court had no power to grant a lesser form of relief than a quashing order.

iv. It was possible in principle to confirm the CPO despite the dismissal of the planning appeal. On the evidence the inspector was entitled to decide that there was a sufficient probability of an alternative, adjusted scheme coming forward and that, in those circumstances, the CPO should be confirmed. In essence, this was a matter of planning judgment.

v. However, there had been procedural unfairness since the inspector had introduced the possibility of a satisfactory alternative scheme as a ground for confirming the CPO without giving GG a proper opportunity to deal with that argument. It followed that the CPO had been unfairly, and therefore unlawfully, confirmed.

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

LEASEHOLD REFORM

17 Upper Tribunal: Lands Chamber

Application for new extended lease of maisonette in London – premium payable – unimproved freehold value – deferment rate

*DENHOLM V STOBBS
[2016] PLSCS 197 – Decision given 20.07.16

Facts: The respondent held a long lease of a two-bedroom maisonette on the upper floors of a building in Notting Hill. The lease was for a term of 90 years to 2056 at a fixed ground rent of £45 pa. In 2013 she applied to acquire a new 90-year lease to commence on the expiry of the existing term. The FTT determined the premium payable at £293,500, but the decision contained errors of calculation and both parties disagreed with the method of calculation.

Point of dispute: The UT was asked to rehear the whole matter and determine the correct premium payable for the new lease. The UT found that the level of accommodation was fairly basic and that the flat would benefit from refurbishment. The new lease should be granted on the same terms as the old one, including the repairing covenants, save that it should be at a peppercorn rent. It also determined that no value should be attributed to the attic space, owing to access difficulties and the covenant against alterations.

Held:

i. The unimproved value of the property was best determined by reference to comparable evidence, consisting of nine other sales of properties in the area but adjusted to reflect the value as at August 2013 by reference to the Savills Prime London Residential Capital Values Index for central London flats and maisonettes. The average overall freehold value came out at £1,323.74 psf, resulting in an unimproved freehold value of £1,200,629 for the respondent's property.

ii. A deferment rate of 5% should be applied to the unimproved freehold value by reference to the generic rate for flats laid down in Earl Cadogan v Sportelli [2007]1 EGLR 153 to reflect the value at the end of the lease term.

iii. The value of the respondent's existing leasehold interest should be calculated as a percentage relative to the freehold value by using graphs of relativity. The most reliable one was the Gerald Eve graph of relativity which, after making a 1% deduction to reflect the fact that the property was outside PCL area produced a figure of 67.7%. The unusual repairing covenants in the lease should be reflected in a further 1.5% discount in the relativity to 66.2%.

iv. The premium payable for the new lease was determined at £260,000.

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

REAL PROPERTY

18 Court of Appeal

Easement – appellants claiming prescriptive right of way on foot and with vehicles over car park for benefit of fish and chip shop – whether erection of signs sufficient to prevent acquisition of vehicular right – whether signs rendered use contentious and not "as of right"

*BENNETT V WINTERBURN
[2016] PLSCS 154 – Decision given 25.05.16

Facts: The appellants owned a fish and chip shop in Keighley, West Yorkshire. For many years their shop had been accessed by customers and suppliers crossing a car park which belonged to the adjoining Conservative club, and they had also parked cars there. The club had erected signs in the car park stating that it was private for the use of club patrons only. In 2010 the club building and car park were acquired by the respondent whose tenant obstructed access to the car park. The first tier tribunal (FTT) upheld the appellants' claim that they had acquired prescriptive rights of way on foot and with vehicles over the car park for the benefit of themselves, their licensees and customers as a result of more than 20-years use as of right. It held that the signs were not sufficient to prevent vehicular rights arising when they pre-dated the appellants' arrival and the respondents had taken no additional steps to protest.

Point of dispute: Whether to allow the appellants' appeal against the finding of the Upper Tribunal which upheld the FTT's finding that a pedestrian right of way had been established, but not a vehicular one since the presence of the signs prevented the acquisition of such a right.

Held: The appeal was dismissed. A right by prescription would be acquired only if the use was "as of right" – in the sense of being without force, secrecy or permission. The latter two elements were fulfilled since the use of the respondents' car park was known about and no permission for it had been given. However, the "without force" element was in dispute – the person asserting the right had to demonstrate that his user was not contentious or allowed only under protest. The issue was whether the owner had taken sufficient steps effectively to indicate that he did not acquiesce in the unlawful user. In this case it was clear from the signs that the landowners objected to the parking. The presence of the signs was a proportionate protest and it made no difference that the signs had been up before the appellants went into occupation of the fish and chip shop. There was no need for further signs to be erected ordering the unlawful parking to cease or for the landowner to take further steps such as erecting a chain across the car park entrance. In circumstances where the owners had made their position clear through the erection of visible signs the unauthorised use of the land could not be said to be "as of right" and the signs were sufficient to make the parking of vehicles by the appellants contentious.

19 Court of Appeal

Restrictive covenants – building scheme – whether scheme of development established

*BIRDLIP LTD V HUNTER
[2016] PLSCS – Decision given 28.06.16

Facts: The appellant and respondent owned adjoining properties in Gerards Cross, Bucks. The land had been developed early in the 20th century and the appellant's title derived from two separate conveyances from common owners dated 1909 and 1910 respectively. These conveyances contained a series of purchasers' covenants and other conveyances of land in the area contained similar covenants. The appellant obtained planning permission to build two new detached houses on part of its land although the development was prohibited by the 1909 and 1910 conveyances. The respondent, who objected to the development, claimed that the covenants in those conveyances formed part of a building scheme involving mutually enforceable restrictive covenants.

Point of dispute: Whether to allow the appellant's appeal against the decision of the judge in the court below who refused its application for a declaration under s84(2) of the Law of Property Act 1925 that the respondents were not entitled to enforce the restrictive covenants. The judge found that there was a scheme of development.

Held: The appeal was allowed.

i. The characteristics of a scheme of development were that:
   a) it applied to a defined area;
   b) owners of properties within that area had purchased their properties from a common owner;
   c) each of the properties was burdened by covenants which were meant to be mutually enforceable as between several owners;
   d) the limits of the defined area were known to each of the purchasers;
   e) the common owner was itself bound by the scheme which crystallised when the first plot was sold so that it could not sell other plots other than on the terms of the scheme; and
   f) the effect of the scheme would bind future purchasers of land within the area for ever.

ii. There were two prerequisites to a scheme of mutual covenants:
   a) the land to which the scheme related had to be identified; and
   b) each purchaser of part of the land from the common owner had to accept that the benefit of covenants that he had entered into would be for the benefit of the vendor and those deriving title from him, and correspondingly, he would enjoy the benefit of covenants entered into by purchasers of other parts of the land.

iii. Given that a scheme of mutual covenants was meant to last for ever it should be readily ascertainable.

iv. The existence of a scheme could sometimes be inferred from the circumstances surrounding the initial sales e.g. where a common vendor was selling all of his land by auction. However, the mere fact that a series of conveyances contained similar covenants was not enough to lead to the inference that a scheme of mutual covenants existed.

v. In this case no scheme of mutually enforceable covenants had been established. Relevant factors included the following:
   a) the 1909 and 1910 conveyances did not define any estate of which the conveyed land formed part;
   b) the conveyance plan showed no lots, only the particular property being conveyed;
   c) the conveyance did not refer to any other plan;
   d) the benefit of the covenants was given for a much wider area in three different parishes than the area which it was now argued was subject to the scheme;
   e) there was no express provision in the conveyances that the covenants were mutually enforceable as between purchasers of different parts of the land from the common owners;
   f) some of the covenants were positive covenants which were unlikely to have been intended to be enforceable by individual original purchasers; and
   g) the stipulations included a power for the vendors to vary the covenants.

This all pointed to a provisional conclusion that no scheme had been established.

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

CONTRACT

20

Validity of contract for sale of land – whether contract void where first respondent lacking authority of second respondent to contract on her behalf – section 2 Law of Property (Miscellaneous Provisions) Act 1989

*MARLBRAY LTD V LADITI
[2016] PLSCS 152 – Decision given 24.05.16

Facts: In 2005 a sales fair was held to market M's aparthotel development in the old GLC building next to Westminster Bridge. Individual hotel rooms were being sold off-plan on 999-year leases with, in many cases, exchange of contracts taking place on that day. The respondent, L, a married couple were interested in buying a unit. Mr L signed an "instruction memorandum" which instructed a solicitor to act on L's behalf in the purchase at a price of £315,000 plus VAT and to proceed to immediate exchange of contracts. Mr L also signed a contract between M, L and M's agent for the grant of a long lease of the unit. This document set out the details of the transaction and provided for L to pay an initial deposit of £1,000 to M's solicitor followed by a further deposit, payable in stages representing 25% of the purchase price. The contract also provided: "Where two or more persons constitute the Purchaser all obligations contained in this Agreement on the part of the Purchaser shall be joint and several obligations on the part of such persons". These documents were not signed by Mrs L. Mr L paid the initial £1,000 and over the next two years the balance of the 25% deposit, but he and his wife could not obtain a mortgage for the balance of the purchase price and were unable to complete. M gave notice that it was rescinding the contract and forfeiting the deposit.

Point of dispute: Whether to allow M's appeal against the ruling of the judge at first instance who upheld L's claim that there had been no valid contract between M and L since Mr L did not have his wife's actual or ostensible authority to contract for her.

Held: The appeal was allowed.

i. The judge had erred in holding that, because Mr L had no actual, or ostensible, authority to contract on behalf of Mrs L, then there was no contract unless and until there was ratification.

ii. Where the contract expressly provided that the obligations of the persons constituting the purchaser should be joint and several, there was no reason why the several obligations of the one person who did sign the contract, and authorise the solicitor to exchange, should not be contractually bound to purchase the property and to pay the deposits and the balance of the purchase price on completion. There was no universal rule that a valid contract of sale could never come into existence between a vendor and a purchase in circumstances where it was intended at the time of signing the contract that another party, who in the event had not signed the contract, would also be the purchaser. Whether or not a valid contract had come into existence depended on the common intention of the parties as ascertained from the circumstances surrounding the transaction. On the facts of this case the agreement of Mr L to enter into the contract was not conditional on Mrs L also signing it. There was nothing to support the proposition that Mr L signed the contract on the understanding, or condition, that he would only be liable if Mrs L had authorised him to sign on her behalf, was contractually bound, or subsequently ratified it.

iii. A memorandum in writing that adequately documented the essential terms of the contract between M and Mr L would be sufficient for the purposes of s2 of the 1989 Act, notwithstanding that M knew from what was written on the particulars that Mr L was also purporting to sign the joint contract on behalf of himself and his wife.

iv. Mr L was contractually bound under his several contract with M to purchase the property.

TORT

21 Court of Appeal

Valuation of development site in connection with loan facility – borrower already indebted to appellant under earlier loan facility – claim for damages for negligent valuation – whether negligence causing loss

*TIUTA INTERNATIONAL LTD (IN LIQUIDATION) V DE VILLIERS SURVEYORS
[2016] PLSCS 195 – Decision given 01.07.16

Facts: In February 2011 the respondent firm of surveyors, DVS, valued a partly-built residential development in Sunningdale for the appellant lender, TIL. On the basis of DVS's valuation of £3.25m TIL lent the developer more than £2.5m secured by a first legal charge over the property. In November 2011 the developer sought to increase its loan facility. DVS valued the site again at £3.25m as it stood and £4.9m when it was complete. A further valuation report was provided in December 2011 when TIL valued the development in its then current state at £3.5m. TIL entered into a new loan agreement with the developer for over £3m, part of that sum being used to repay the original loan and the remainder was advanced as additional funds. The original charge was released and a new charge executed and registered. When the term of the new facility expired £2.84m remained outstanding on the loan. TIL sought to enforce its security, but the sale of the property raised only £2.1m. TIL brought a claim against DVS in negligence to recover its loss, contending that DVS had negligently overvalued the property in its November and December 2011 valuations.

Point of dispute: Whether to allow TIL's appeal against the decision of the judge in the court below who held that the November and December 2011 valuations had caused no loss to TIL. According to the "but for" test causation had not been established – any loss was attributable to the existing indebtedness under the original loan facility to which TIL would have remained exposed even in the absence of the second loan and which had been advanced in reliance on the February 2011 valuation which had not been negligent. TIL argued that the new loan facility was a separate transaction unrelated to the original loan facility, and therefore had to be viewed on its own.

Held (by a majority of 3:2): The appeal was allowed.

i. The judge had been wrong to apply the "but for" test in this case as it did not take into account the fact that the transaction was structured in such a way that the second loan was used to pay off the first, which released DVS from any potential liability in respect of the first valuation. The second loan stood apart from the first and TIL's loss was ascertained by comparing the amount of the second loan and the value of the security.

ii. TIL had entered into the second transaction in reliance on DVS's valuation. If the valuation had not been negligent TIL would not have entered into the second transaction and it would have been left with the first loan and the security for it, together with any claim it might have had against the valuer. The loss that TIL sustained as a result of entering into the second transaction was the advance of the second loan, less the developer's covenant and the true value of the security. If the property was negligently overstated DVS would be liable to the extent that TIL's loss was caused by its over-valuation.

ENERGY

22 Statutory Instrument

SI 2016/660 The Energy Efficiency (Private Rented Property) (England and Wales) (Amendment) Regulations 2016

The 2015 Regulations introduced measures to improve the energy efficiency of certain private rented property in England and Wales. Part 3 prescribes a minimum level of energy efficiency for private rented properties, and introduces a prohibition on letting private rented properties which fall below that standard. It provides that, subject to prescribed exemptions, the landlord of a sub-standard property must not: (a) grant a new tenancy of the property after 1.4.18, or (b) continue to let the property after 1.4.20 (in the case of domestic private rented property), or after 1.4.23 (in the case of non-domestic private rented property).

Part 3, which was due to come into force on 01.10.16, enables landlords seeking to rely on a prescribed exemption when letting a sub-standard property to register that exemption prior to the prohibition on letting sub-standard private rented properties coming into effect.

W.e.f. 22.06.16 these Regulations amend the coming into force date of Part 3, so that it comes into force on 01.04.17 in relation to non-domestic private rented properties, and on 01.10.17 in relation to domestic private rented properties. This has the effect of changing the date from which landlords may register exemptions.

http://www.legislation.gov.uk/uksi/2016/660/contents/made

GENERAL

23 CLG Publication

Estates regeneration: statement

The Government has launched a new estates regeneration programme. It is to provide £140m of loan funding to be used as a springboard for partnership and joint venture arrangements with the aim of transforming up to 100 estates, increase the provision of housing and improve estate residents' quality of life and is inviting expressions of interest. This statement sets out guiding principles for expressions of interest.

https://www.gov.uk/government/publications/estates-regeneration-statement

GERALD EVE'S UK OFFICE NETWORK

Gerald Eve LLP is an independent firm of chartered surveyors and property consultants, employing more than 390 people across the UK.

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

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

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

London (City)
Fergus Jagger Tel. +44 (0)20 7653 6831
fjagger@geraldeve.com

Birmingham
Alan Hampton Tel. +44 (0)121 616 4800
ahampton@geraldeve.com

Cardiff
Joseph Funtek Tel. +44 (0)29 2038 8044
jfuntek@geraldeve.com

Glasgow
Ken Thurtell Tel. +44 (0)141 221 6397
kthurtell@geraldeve.com

Leeds
Philip King Tel. +44 (0)113 244 0708
pking@geraldeve.com

Manchester
Mark Walsh Tel. +44 (0)161 830 7091
mwalsh@geraldeve.com

Milton Keynes
Simon Dye Tel. +44 (0)1908 685 950
sdye@geraldeve.com

West Malling
Andrew Rudd Tel. +44 (0)1732 229 420
arudd@geraldeve.com

To add your name to the evebrief distribution list, please contact us at evebrief@geraldeve.com

Evebrief has been established for more than 30 years. It is a summary of the latest statutory and legal cases affecting the property industry and is widely regarded in the industry as the most comprehensive document of its type.

Evebrief editorial team
Tony Chase
Steve Hile
Peter Dines
Hilary Wescombe
Gemma Dow
Ben Aldridge
Annette Lanaghan
Ian Heritage

Abbreviations
The following abbreviations are used in evebrief:

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

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

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

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

* Interesting but non–essential reading.

Contact details
If you require full details of any of the cases presented in this publication, or would like to discuss them in further detail, please contact our specialists:

Agency
Simon Prichard Tel. +44 (0)20 7489 8900
sprichard@geraldeve.com

Compensation & Compulsory Purchase
Tony Chase Tel. +44 (0)20 7333 6282
tchase@geraldeve.com

Building Consultancy
Richard Fiddes Tel. +44 (0)20 7333 6294
rfiddes@geraldeve.com

Environment & Contamination
Keith Norman Tel. +44 (0)20 7333 6346
knorman@geraldeve.com

Landlord & Tenant
Graham Foster Tel. +44 (0)20 7653 6832
gfoster@geraldeve.com

Leasehold Reform
Julian Clark Tel. +44 (0)20 7333 6361
jclark@geraldeve.com

Minerals & Waste Management
Philip King Tel. +44 (0)113 244 0708
pking@geraldeve.com

Planning & Development
Hugh Bullock Tel. +44 (0)20 7333 6302
hbullock@geraldeve.com

Rating
Jerry Schurder Tel. +44 (0)20 7333 6324
jschurder@geraldeve.com

Real Property
Annette Lanaghan Tel. +44 (0)20 7333 6419
alanaghan@geraldeve.com

Valuation
Michael Riordan Tel. +44 (0)20 7333 7828
mriordan@geraldeve.com

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

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

EVEBRIEF

Legal & Parliamentary

Volume 38(05) 18 July 2016

SCOTLAND

PLANNING

01 Scottish Planning System Review

Empowering Planning to Deliver Great Places

In September 2015 an independent panel was appointed by Scottish Ministers to review the Scottish planning system with the aim of achieving a faster, more accessible and more efficient planning process in Scotland. The review focused on six key themes: development planning; housing delivery; planning for infrastructure; development management; leadership; resourcing and skills; and community engagement. This is the report of the panel and its recommendations are currently being considered by the Scottish Government which will publish its response in due course.

http://www.gov.scot/Topics/Built-Environment/planning/Review-of-Planning

02 Scottish Government Circular

Guidance on Householder Permitted Development Rights

This Circular contains advice and guidance on householder permitted development. It updates the original Circular on this subject which was published on 22.02.12.

http://www.gov.scot/Publications/2012/02/9140

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

GERALDEVE

HOUSING

03 Scottish Government Statistical Publication

Quarterly Housing Statistics Update

This quarterly publication provides information on recent trends in the following areas:

- new build housing starts and completions by sector;
- the Affordable Housing Supply Programme (up to the end of March 2016); and
- Local Authority house sales including Right to Buy (up to the end of December 2015)

http://www.gov.scot/Publications/2016/06/6424

GENERAL

04 Scottish Government Publication

Scottish Vacant and Derelict Land Survey 2015

There has been a large upward revision to the total amount of derelict land reported for 2014, from 8,509 to 10,753 hectares. (This increase was mainly due to the addition of 2,217 hectares of land that became derelict in East Ayrshire due to the liquidation of British Coal and ATH Resources causing several surface coal mines to fall out of use.) The total amount of derelict and urban vacant land in Scotland decreased by 458 hectares (or 3.5%) from 13,132 hectares in 2014 to 12,674 hectares in 2015.

http://www.gov.scot/Publications/2016/05/1596

WALES

CONSTRUCTION

05 Statutory Instrument

WSI 2016/611 The Building Regulations &c. (Amendment) (Wales) Regulations 2016

These Regulations, which came into force on 17.06.16, amend the Building Regulations 2010 and the Building (Approved Inspectors etc) Regulations 2010.

- Regulation 2 amends the 2010 Building Regulations and revokes requirements relating to the provision of energy performance certificates for new and certain converted buildings. Those requirements have been consolidated in amendments made to the Energy Performance of Buildings (England and Wales) Regulations 2012 by the Energy Performance of Buildings (England and Wales) (Amendment) Regulations 2016. They also make changes to the methodology for calculating the energy performance of buildings and the setting of minimum energy performance requirements contained in Directive 2013/31/EU of the European Parliament and of the Council on the energy performance of buildings.
- Regulation 3 amends the Approved Inspectors Regulations making provision consequential on the revocation in Regulation 2 of requirements relating to the provision of energy performance certificates for new and certain converted buildings.

http://www.legislation.gov.uk/wsi/2016/611/introduction/made

NORTHERN IRELAND

PLANNING

06 Department for Infrastructure Practice Note

Development Management Practice Note 11: Planning Fees (NI)

This Practice Note provides guidance in relation to the main legislative provisions associated with planning fees for different types of planning applications for planning permission and consent applications. It also provides guidance on planning fee issues that can arise, the method for calculating planning fees and payment of fees.

http://www.planningni.gov.uk/index/news/dfi_planning_news/news_releases_2015_onwards/news-dmpn11-may2016.htm

07 Department for Infrastructure Guidance Document

Planning Fees – Explanatory Notes for Applicants

This document has recently been updated following the dissolution of the Department of the Environment.

http://www.planningni.gov.uk/index/news/dfi_planning_news/news_releases_2015_onwards/news-updated-explanatory-note-fees.htm

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